



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, August 29, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
8-13-2024 [[35](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

NO RULING.

2. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ARVEST BANK
8-2-2024 [[31](#)]

ARVEST BANK/MV
STEPHEN LABIAK/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the certificate of service does not comply with LBR 9004-2(b)(5), which provides that the first page of each document shall contain, among other things, the date, time, and location of the hearing, if applicable. Here, in the caption of the certificate of service, the declarant incorrectly listed the hearing date as July 31, 2024 instead of August 29, 2024. Doc. #34. In the future, counsel for the objecting party should ensure that the hearing date on every document is accurate and consistent.

The debtor filed his chapter 13 plan ("Plan") on July 2, 2024. Doc. #13. Arvest Bank ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$2,984.62 default on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are provided for fully. Doc. #31.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states

that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on July 23, 2024. Claim 7.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #13. The Plan fails to account for Creditor's claim. Claim 7; Doc. #13. Also, because there are pre-petition arrears owed to Creditor, Creditor needs to be listed in Class 1, not Class 4. Therefore, a new chapter 13 plan needs to be filed and a motion to confirm that plan noticed and set for hearing.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

3. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[SAD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-30-2024 [\[21\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
STEPHEN LABIAK/ATTY. FOR DBT.
SHANNON DOYLE/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

U.S. Bank National Association, not in its individual capacity but solely as trustee of Homeward Opportunities Fund Trust 2020-2, its successors and/or assigns ("Movant"), seeks relief from the automatic stay to

allow Movant to foreclose on real property commonly referred to as 530 W. Kaweah Ave, Visalia, California 93277 (the "Property"). Doc. #21. Movant is the assignee of a promissory note signed by MTF Enterprises, LLC ("MTF"), a company of Mark Tan Florentino ("Debtor"). Doc. #21; Exs. 2 and 4, Doc. #24. The promissory note is secured by a deed of trust against the Property. Doc. #21; Ex. 1, Doc. #24. Movant asserts a claim against Debtor arising out of a personal guaranty that Debtor gave to Movant for that debt. Doc. #21; Ex. 3, Doc. #24.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

Based on the evidence before the court, the court finds cause exists to grant relief from the automatic stay to permit Movant to foreclose on the Property because the Property is not Property of Debtor's bankruptcy estate. Debtor is merely a guarantor on the promissory note between Movant and MTF. Decl. of Carlie Balsa, Doc. #23. The legal or equitable interest in the Property belongs to MTF, and Debtor has not scheduled the Property. Id.; Schedules A/B, Doc. #12.

Movant also seeks waiver of the 14-day stay imposed by Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). The court finds cause exists to waive the 14-day stay under Rule 4001(a)(3) because the Property belongs to MTF and is not property of Debtor's bankruptcy estate.

4. [24-11760](#)-A-13 **IN RE: ISAAC TORRES AND MARIA VALADEZ-ROMO**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
8-13-2024 [\[18\]](#)

LILIAN TSANG/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to September 25, 2024 at 2:00 p.m.

ORDER: The court will issue an order.

Isaac Torres and Maria Guadalupe Valadez-Romo (together, "Debtors") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on June 26, 2024. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Debtors (1) seek a voluntary contribution for a retirement plan that is unreasonable in light of the proposed 19% payment to general unsecured creditors, and (2) do not increase plan payments after the repayment of a retirement loan completes during the plan term. Doc. #18. While Trustee also objects to confirmation of the plan on the basis that amended schedules have not been filed, amended schedules were filed on the same day that Trustee filed her objection. Doc. ##16, 18.

This objection will be continued to September 25, 2024 at 2:00 p.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than September 11, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is

disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by September 18, 2024.

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 18, 2024. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

5. [24-10892](#)-A-13 **IN RE: MADELYN BERNARDINO**
[TCS-1](#)

MOTION FOR COMPENSATION FOR TIMOTHY C. SPRINGER, DEBTORS ATTORNEY(S)
7-30-2024 [\[27\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the name and address in the notice of hearing for the chapter 13 trustee to which any opposition should be sent is inaccurate. The name and address listed is: Michael H. Meyer, P.O. Box 28950, Fresno, CA 93729. Doc. #28. However, Lilian G. Tsang, not Mr. Meyer, is the chapter 13 trustee assigned to this bankruptcy case. Doc. #11. Thus, the name and address for the chapter 13 trustee that should have been used in the notice of hearing is: Lilian G. Tsang, P.O. Box 3051, Modesto, CA 95353-3051. Id.

The Law Offices of Timothy C. Springer ("Movant"), counsel for Madelyn Bernardino ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$10,300.00 and no reimbursement for expenses for services rendered from March 23, 2024 through July 20, 2024. Doc. #27. Debtor's confirmed plan provides, in addition to \$207.00 paid prior to filing the case, for \$19,793.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 24. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #27.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) fact gathering and filing this chapter 13 case; (2) preparing petition, schedules, and related forms as well as amendments thereto; (3) attending meeting of creditors; (4) preparing and confirming Debtor's plan, including addressing objections thereto; (5) preparing the fee application; and (6) general case administration. Exs. B & C, Doc. #29. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$10,300.00 and no reimbursement for expenses to be paid in a manner consistent with the terms of the confirmed plan.

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [\[1\]](#)

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar

ORDER: The court will issue an order.

A judgment in favor of the plaintiffs was entered on July 16, 2024. Doc. #213.
The adversary proceeding was administratively closed on August 5, 2024.
Therefore, the pre-trial conference will be dropped from calendar.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[22-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [\[1\]](#)

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar

ORDER: The court will issue an order.

A judgment in favor of the plaintiffs was entered on July 16, 2024. Doc. #206.
The adversary proceeding was administratively closed on August 5, 2024.
Therefore, the pre-trial conference will be dropped from calendar.

4. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[22-1022](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[18-1017](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2018 [[1](#)]

SALVEN V. CALIFORNIA DEPARTMENT OF FOOD & AG
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.