



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Wednesday, August 30, 2023**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (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.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

**Video web address:**

<https://www.zoomgov.com/j/1602245742?pwd=bzl1Y2FsbHBsbm0zdXNTRUFbZ20wZz09>

**Meeting ID:** 160 224 5742  
**Password:** 113809  
**ZoomGov Telephone:** (669) 254-5252 (Toll-Free)

Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screenshots" 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.

**Post-Publication Changes:** 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 any possible updates.

9:30 AM

1. [23-11410](#)-B-13     **IN RE: MATTHEW/KATHRYN WALTHER**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
8-14-2023     [\[16\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
SCOTT LYONS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION:     Continued to September 28, 2023.

ORDER:     The court will issue an order.

Toyota Motor Credit Corporation ("Creditor") objects to Confirmation of the Chapter 13 Plan of Debtors Matthew Benjamin Walther and Kathryn Elizabeth Walther ("Debtors"). Doc. #16. The collateral at issue is a 2016 Toyota 4Runner ("the Property") which the plan asserts a value of \$24,705.00 but which Creditor's Proof of Claim values at \$29,291.49. *Id.* The Objection raises to issues: (1) that the Plan proposes to pay less than the full replacement value of the Property, but there has been no motion to value said Property, and (2) that, based on the Debtors' projected net monthly income, they cannot afford to pay the full value of the Property as listed in the Proof of Claim, and so the plan is not feasible. *Id.*

Sections 1.04 and 3.08(c) of the plan require separately served and filed motions to value collateral for claims classified in class 2. Doc. #5. Creditor's claim is in Class 2B. As of August 24, 2023, debtor has not filed any such motion.

This motion to confirm plan will be CONTINUED to September 28, 2023, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections not later than September 14, 2023. The response shall specifically address each issue raised in Trustee's and Creditor's objections to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee and Creditor shall file and serve a reply, if any, by September 21, 2023.

If the Debtor elects to withdraw the 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 21, 2023. If the Debtor does not timely file a modified plan or a written response, the objections will be sustained on the grounds stated, and the motion will be denied without further hearing.

2. [22-11741](#)-B-13     **IN RE: JOSEPH MARTIN**  
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS  
ATTORNEY(S)  
7-21-2023    [\[75\]](#)

NEIL SCHWARTZ/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.

Neil E. Schwartz ("Schwartz"), counsel for Debtor in this case, comes before the court on Applicant's First Application for Fees And Expenses Pursuant to 11 U.S.C. § 331 or 330. Doc. #75. The Application requests attorney fees in the amount of \$12,827.50 and expenses in the amount of \$142.00 for a total application of \$12,969.50. *Id.* Applicant brings this request pursuant to LBR 2016-1, 11 U.S.C. § 329 and 330, and Fed. R. Bankr. P, 2002, 2006, and 2017.

This is the First Application brought by this Applicant, and it covers services rendered and actual, necessary expenses incurred from October 10, 2022 through July 21, 2023. Doc. #75. Included with the Application is a form statement electronically signed by the Debtor stating "I/we are the dobtor(s) in the above-entitled bankruptcy proceeding. I/we have reviewed the Fee Application set forth above and have no objection thereto." *Id.*

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, 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 may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

Exhibits accompanying the Application include (A) a narrative summary, and (B) itemized time entries by date and itemized costs. Doc. #77.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$12,969.50 in attorney's fees and expenses. As \$1,687.00 has already been paid by the Debtor prepetition, the Chapter 13 Trustee is authorized to pay the remaining balance of \$11,282.50 through the plan as an administrative expense to the extent the plan provides sufficient funding to do so.

3. [23-11452](#)-B-13     **IN RE: TANNIA ESQUIVEL**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER  
8-14-2023    [\[15\]](#)

MICHAEL MEYER/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Continued to September 28, 2023.

ORDER:             The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Tanya Esquivel's ("Debtor") plan confirmation under 11 U.S.C. § 1325(b)(1) on the grounds that (1) the plan does not correctly provide an accurate account of the general unsecured claims owed as stated in Debtor's Schedules, and (2) that the plan proposes to pay a Class 6 claim that is not listed in the Schedules and which, if paid in full at the rate proposed by the plan, would require more than the proposed term of 36 months to complete. Doc. #165. In fact, upon review of Debtor's Schedules, it appears that the claim alluded to was not listed as a Class 6 claim in the plan, but rather an executory contract listed on Schedule G but omitted entirely from the Plan. See Doc. ## 1, 9. However, the Declaration accompanying the instant motion (Doc. #17) alludes to statements made by Debtor during the 341 meeting which are not a part of the record.

Under 11 U.S.C. § 1325(b)(1), if the trustee objects to confirmation the plan, then the court may not approve the plan unless (A) the value of property distributed under the plan exceeds the amount of allowed unsecured claims; or (B) the plan provides that all the debtor's projected disposable income to be provided and applied to allowed unsecured claims. Debtor carries the burden by a preponderance of the evidence that the plan complies with the criteria set forth in § 1325 for confirmation. *In re Arnold and Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994); *In re Warren*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (*superseded by statute on other grounds*).

This motion to confirm plan will be CONTINUED to September 28, 2023, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Creditor's objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections not later than September 14, 2023. The response shall specifically address each issue raised in Trustee's and Creditor's objections to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee and Creditor shall file and serve a reply, if any, by September 21, 2023.

If the Debtor elects to withdraw the 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 21, 2023. If the Debtor does not timely file a modified plan or a written response, the objections will be sustained on the grounds stated, and the motion will be denied without further hearing.

4. [23-11676](#)-B-13     **IN RE: KATHERINE J SCONIERS STANPHILL**  
[SLL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-3-2023    [7]

KATHERINE J SCONIERS  
STANPHILL/MV  
STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

ORDER:                            The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Katherine J. Sconiers Stanphill ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #8.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. According to the Debtor's Declaration, Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 2023-11046B-13. Doc. #9. That case was filed on May 13, 2023 and was dismissed on July 18, 2023 for failure to pay the court filing fee and failure to timely make the first plan payment. *Id.* The instant case was filed on August 1, 2023, Doc. #1, although the instant Motion and accompany Declaration both erroneously say that it was (or will be) filed on September 1, 2023. Doc. ##7, 9. Debtor will have the opportunity to address this discrepancy at the hearing if necessary, Absent extension, the automatic stay will expire on September 1, 2023.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

Debtor declares that the previous case was dismissed because she failed to pay the required filing fee with her petition and because she failed to timely make her first plan payment. Doc. #9. She further avers that in the instant case, she prepaid her filing fee through her attorney, and the docket reflects that the filing fee was paid on August 1, 2023, the same day that her petition was filed. The record is unclear on whether any outstanding filing fee from her prior bankruptcy has been paid. Debtor further avers that she has also prepaid her first month's plan payment through her attorney, and she attributes her failure to make required plan payments in the prior case due to the unexpected hospitalization of

her son, during which time she "was focused on [her] child's medical situation, and [she] failed to take care of [her] bankruptcy requirements." Doc. #9. Finally, Debtor asserts that she is now fully employed and that her income is increased by approximately \$2,000.00 per month.

The *Chapter 13 Plan* dated August 1, 2023, provides for 60 monthly payments of \$2592.00 with a 100% dividend to unsecured claims. Doc. #3. Debtor's *Schedules I* and *J* indicate that Debtor receives \$4,000.00 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1.

In contrast, Debtor's monthly net income in her prior case was only \$2,400.00, so Debtor's financial condition has materially changed since the prior case was filed. See Bankr. Case No. 23-11046, Doc. #1.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial condition and circumstances have materially changed. Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).



11:00 AM

1. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**  
[23-1024](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
5-11-2023 [[1](#)]

RUBIO V. MADERA COMMUNITY  
HOSPITAL  
EILEEN GOLDSMITH/ATTY. FOR PL.

NO RULING.

2. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**  
[23-1024](#) [WJH-1](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF  
REMOVAL  
6-9-2023 [[11](#)]

RUBIO V. MADERA COMMUNITY  
HOSPITAL  
RILEY WALTER/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. Defendant to file answer within 14  
days of order entry.

ORDER: The court will issue the order.

Defendant-Debtor Madera Community Hospital ("Debtor") filed a motion to dismiss a putative class action complaint filed by Plaintiff Antonio Rubio ("Plaintiff"). Plaintiff was allegedly a maintenance mechanic employed by Debtor for 14 years. Plaintiff alleges he will be the class representative on behalf of over 770 employees who were terminated January 2, 2023 by Debtor without Debtor complying with Federal and California WARN Acts, without payment for accrued paid time off and other benefits violating the California Labor Code, and for penalties.

Debtor's motion to dismiss argues that the complaint should be dismissed for lack of subject matter jurisdiction under Civ. Rule 12 (b) (1) (Fed. R. Bankr. Proc. 7012 "Rule") and 12 (b) (6) for failure to state a claim upon which relief can be granted. Finding that there is jurisdiction and that the motion does not attack the substantive claims raised in the complaint, the court will DENY the motion.

## I

The complaint alleges that in late December 2022, Debtor notified over 770 employees of impending layoffs. (Doc. # 1) The employees were terminated January 2, 2023, without the requisite 60-day notice required under the Federal and California WARN Acts. The complaint goes on to allege that when laid off, the putative class received their last paychecks but no accrued vacation time or other benefits. The allegations continue that Debtor was presented with no circumstances warranting reduction of the notification periods and that Debtor's actions were willful with no reasonable grounds or basis to violate the Acts.

The complaint asks for class certification, a declaration that the Acts were violated, unpaid wages and benefits on a priority basis up to \$15,150 per employee and unsecured claims for any amount above that, loss of benefits, penalties, expenses and attorney's fees.

The motion to dismiss argues first the court has no subject matter jurisdiction since Debtor filed schedules and those claims listed as liquidated, non-contingent or undisputed will have allowed claims. If the claims are disputed, the claim allowance process will provide a forum for resolution. So, Debtor concludes there is no case or controversy to adjudicate presently.

Second, Debtor argues there is no showing that the court should exercise its discretion to certify a class or entertain this adversary proceeding nor should the court exercise its discretion to allow the complaint as an "informal proof of claim." So, no claim for relief is now stated.

Plaintiff responds by arguing first, courts across the country recognize a class action in the bankruptcy context especially for WARN Act claims. (Doc. # 27) Plaintiff explains that since Rule 7023 does not automatically apply to contested matters under Rule 9014, Plaintiff and the class will have to wait until Debtor objects to claims to start the contested matter which may bring into play the class action rules.

Alternatively, Plaintiff says the court should allow stay relief to permit a previously file Federal District Court litigations to proceed.

Finally, in reply, Debtor argues that the class certification issue can be resolved promptly during claim litigation. (Doc. # 29) Further, Debtor argues it should not be required to simultaneously litigate claim objections and a class action. Also, Debtor contends stay relief is not appropriate and the request is procedurally improper.

## II.

This is not a class certification motion. The court will not opine on or decide that issue now. In addition, the motion does not

attack the sufficiency of the allegations of the complaint. Rather, the motion asks the court to exercise its discretion to dismiss the complaint for reasons unrelated to the nature of the allegations. We examine those issues now.

A.

The court has subject matter jurisdiction. This is a civil proceeding arising in a case under title 11. 28 U.S.C. § 1334 (b). It concerns allowance of claims filed in this bankruptcy case, namely the class claims filed here. The issue is the procedural mechanism for determining the claims. That is left to this court's discretion. *In re First Alliance Mortgage Co.*, 269 B.R. 428, 441 (C.D. Cal., 2001). How to exercise the jurisdiction focuses on the individual circumstances of the case. *Id.* at pg. 445; *Gentry v. Sigel*, 668 F. 3d 83, 90 (4th Cir. 2012).

It is beyond cavil that this court has authority to adjudicate claims as permitted by law. The existence of the class claims certainly invokes that jurisdiction. This ground of the motion lacks merit.

B.

The Civ. Rule 12 (b)(6) challenge is likewise subject to disposal. Debtor's challenge of the complaint is effectively asking the court to weigh whether the class action can proceed at this moment before claim objections. In this case, after considering the issues, the answer is it can.

True enough, there is some authority that suggests this court may decline to entertain a class action complaint in favor of the claim adjudication process. *Binford v. First Magnus Fin. Corp (In re First Magnus Fin. Corp)*, 403 B.R. 659, 63-64 (D. Ariz. 2009) (Affirming bankruptcy court ruling dismissing class action complaint as duplicative of the claims process). But many cases hold otherwise, e.g., *Brady v. Quantegy (In re Quantegy)* (Holding duplicating claims process is no bar to class action when the adversary proceeding is more expeditious and efficient instead of multiple claims objections); *In re Conncaught Grp. Ltd.*, 491 B.R. 88, 93-94 (Bankr. S.D.N.Y. 2013) (WARN Act claims are "particularly amenable to class litigation.")

This case is about six months old; only three months old when this adversary proceeding began. No Plan has been proposed and Debtor has successfully sought an order extending the Plan exclusivity period. No claims objections have been prosecuted. Debtor is desperately trying to retain its license and has aggressively sought funding. Debtor may have an operator soon. That should be contrasted with Debtor's authority *In re Ephedra Prods. Liab. Litig.*, 327 B.R. 1,7 (Bankr. S.D.N.Y. 2005). There, a Plan had been proposed and was out for voting and a Disclosure Statement approved. This case is not close to that stage.

Ripeness issues are another way of attacking class certification. That is not before the court currently. Class claims have been

filed. The pending adversary proceeding provides the forum for the debtor to object to the claims or narrow the class through appropriate motion practice.

The court has considered Debtor's argument that the class action may prevent other interested parties in the case from objecting to claims. That may be true but there are many procedural mechanisms to allow other parties to take part in the litigation should it proceed. See, Civ. Rules 18, 24 and 42 (Rules 7018, 7024, 7042). The court has authority to apply any one of these rules in an adversary proceeding and Rule 7042 in contested matters without separate order.

Debtor's concern that it will need to litigate the claims on multiple fronts is not necessarily true. If the class is certified, the adversary proceeding will be the forum, consistent with bankruptcy policies. As noted above, there are procedural mechanisms to combine related issues.

### III.

The motion is DENIED. Debtor to file an answer within 14 days of entry of the order.