



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, September 7, 2023  
Department A – 510 19<sup>th</sup> Street  
Bakersfield, California

*At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.*

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone 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 Policies and Procedures](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

**Video web address:**

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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](#).

**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.

**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. [23-11501](#)-A-13     **IN RE: SYLVIA RENTERIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-17-2023     [\[19\]](#)

DISMISSED 8/18/23

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

DISPOSITION:                    Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on August 18, 2023. Doc. #20. The order to show cause will be dropped as moot. No appearance is necessary.

2. [22-11714](#)-A-13     **IN RE: FERNANDO/MARIA GARIBAY**  
[RSW-3](#)

MOTION TO CONFIRM PLAN  
7-11-2023     [\[81\]](#)

MARIA GARIBAY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADINGS

NO RULING.

3. [23-11523](#)-A-13     **IN RE: JOSE TIRADO PEREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-18-2023     [\[41\]](#)

\$79.00 INSTALLMENT PAYMENT 8/21/23

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

DISPOSITION:                    The order to show cause will be vacated.

ORDER:                            The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

4. [23-11523](#)-A-13      **IN RE: JOSE TIRADO PEREZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
8-10-2023    [\[24\]](#)

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

NO RULING.

5. [23-11229](#)-A-13      **IN RE: DUNCAN NORWOOD**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-28-2023    [\[24\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:      Sustained.

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 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.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Duncan Keith Norwood ("Debtor"), objects to Debtor's claim of a \$339,203.00 exemption in Debtor's real property located at 10901 Rosedale Hwy, Bakersfield, California (the "Property"). Obj., Doc. #24; see Schedule C, Doc. #22. The Property is still in the name of Debtor's deceased mother. Obj., Doc. #24. Debtor claims an automatic homestead exemption in the Property under C.C.P. § 704.730. Schedule C, Doc. #22. Debtor has not responded to Trustee's objection.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires him to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala

(In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, [Fed. R. Bankr. P.] 4003(c) does not change that allocation.").

California has opted out of the federal exemption scheme. C.C.P. § 703.130; Philips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018). "As a result, '[t]he bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law.'" Gilman, 887 F.3d at 964 (quoting Diaz, 547 B.R. at 334). However, 11 U.S.C. § 522(p)(1) limits a state homestead exemption to \$189,050.00 for any amount of interest in the property that the debtor acquired during the 1,215-day period preceding the date of his filing of the bankruptcy petition. 11 U.S.C. § 522(p)(1); In re Greene, 583 F.3d 614, 624 (9th Cir. 2009).

Trustee objects to Debtor's exemption on the grounds that Debtor acquired his interest in the Property within the 1,215-day period preceding the bankruptcy filing, which caps his homestead exemption to \$189,050.00 pursuant to 11 U.S.C. § 522(p)(1). Debtor testified at the 341 meeting of creditors held on July 25, 2023 that Debtor's mother passed away on December 31, 2021. Decl. of Lilian G. Tsang, Doc. #26. Trustee asserts that the date of Debtor's mother's death is the date on which Debtor acquired or became entitled to acquire an inheritance, devise, or bequest for purposes of 11 U.S.C. § 541(a)(5)(A). See In re Ormiston, 501 B.R. 303, 309-10 (Bankr. E.D.N.C. 2013); see also In re Chenoweth, 3 F.3d 1111, 1113 (7th Cir.1993).

Based on the moving papers, the court finds that Debtor acquired an interest in the Property no earlier than December 31, 2021. Because December 31, 2021 falls within the 1,215-day period preceding the bankruptcy filing, 11 U.S.C. § 522(p)(1) caps Debtor's homestead exemption to \$189,050.00.

Accordingly, Trustee's objection is SUSTAINED.

6. [23-10943](#)-A-13      **IN RE: DE QIANG/AMY FENG**  
[MHM-1](#)

MOTION TO DISMISS CASE  
7-19-2023    [\[18\]](#)

MICHAEL REID/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

7. [23-10943](#)-A-13     **IN RE: DE QIANG/AMY FENG**  
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
7-25-2023    [[22](#)]

MICHAEL REID/ATTY. FOR DBT.

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on July 25, 2023 (WLG-1, Doc. #27), with a motion to confirm the modified plan set for hearing on September 7, 2023 at 9:00 a.m. Doc. ##27-34, 39-40.

8. [23-10943](#)-A-13     **IN RE: DE QIANG/AMY FENG**  
[WLG-1](#)

MOTION TO CONFIRM PLAN  
7-25-2023    [[29](#)]

AMY FENG/MV  
MICHAEL REID/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

9. [23-11048](#)-A-13     **IN RE: TIMOTHY CRANE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
8-8-2023    [[30](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

10. [22-12164](#)-A-13     **IN RE: EFREN VIEYRA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
8-4-2023    [\[27\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 5, 2023. Doc. #33.

11. [23-10684](#)-A-13     **IN RE: CHERYL MELIZA LOPEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
8-3-2023    [\[21\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Continued to October 5, 2023 at 9:00 a.m.

ORDER:                            The court will issue an order.

The motion to dismiss is continued to October 5, 2023 at 9:00 a.m. to be heard in connection with a motion to confirm modified plan [RSW-1] by the court. See Doc. ##27-32.

12. [20-13596](#)-A-13     **IN RE: KEITH/MICHELLE LOGAN**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
7-20-2023    [\[23\]](#)

MICHELLE LOGAN/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

10:00 AM

1. [23-10747](#)-A-7     **IN RE: JUAN PATINO**  
[RSW-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
8-15-2023    [\[25\]](#)

JUAN PATINO/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent August 15, 2023, with a hearing date set for September 7, 2023. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. While the second paragraph of the notice of hearing filed with the motion states that opposition, if any, may be presented at the hearing, the third paragraph of the notice of hearing states that opposition must be accompanied by evidence establishing its factual allegations and the failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions. Because the notice of hearing has conflicting language as to whether written opposition is required or not, the notice of hearing does not comply with LBR 9014-1(f)(2).



1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

2. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**  
[IJL-9](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO ASSUME LEASE OR  
EXECUTORY CONTRACT  
8-17-2023 [[221](#)]

JUAREZ BROTHERS INVESTMENTS, LLC/MV  
IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

As an initial procedural matter, there is no certificate of service on the docket showing that the notice of hearing with respect to this motion (Doc. #225) was served on all parties in interest as required by Federal Rules of Bankruptcy Procedure 2002 and 9014. Unless a certificate of service is filed before the hearing showing that the notice of hearing (Doc. #225) was served not later than August 24, 2023 on all parties in interest, this motion will be denied without prejudice for improper notice.

As a further procedural matter, on August 24, 2023, the moving party filed a motion to shorten time ("Application") for the hearing on this motion. Doc. #224. No proposed order was submitted with the Application. On September 1, 2023, Grimmway Enterprises, Inc. filed an opposition to the Application. Doc. #228. The court will consider the Application and related opposition at the hearing on September 7, 2023.

As a further procedural matter, the certificate of service filed in connection with this motion (Doc. #222) does not comply with Local Rule of Practice ("LBR") 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

As a further procedural matter, the motion, declaration, and exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The motion and declaration were filed as a single document that included the movant's exhibits. Doc. #221.

The court encourages counsel for the debtor 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>.