

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, September 8, 2021
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.

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 telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878

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.

9:00 AM

1. [20-13208](#)-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
[MHM-4](#)

CONTINUED MOTION TO DISMISS CASE
5-6-2021 [\[80\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew the motion on August 25, 2021. Doc. #92. Accordingly, the matter will be DROPPED FROM CALENDAR.

2. [20-11914](#)-B-13 **IN RE: ROSA GODOY**
[RSW-3](#)

MOTION TO MODIFY PLAN
7-12-2021 [\[43\]](#)

ROSA GODOY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 7, 2021 at 9:00 a.m.

ORDER: The court will issue an order.

Rosa Elena Huezo Godoy ("Debtor") seeks confirmation of her First Modified Chapter 13 Plan. Doc. #43. Debtor wishes to extend the duration of the plan from 60 months to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because the debtor will not be able to make all payments under the plan and comply with the plan. Doc. #51.

This matter will be CONTINUED to October 7, 2021 at 9:00 a.m.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, U.S. Trustee, or any other party in interest except Trustee 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, Debtor fell behind in plan payments because she was diagnosed with COVID-19 and sick from May 19, 2021 through June 20, 2021. Doc. #45. Debtor's family members were also diagnosed with COVID-19. Debtor declares that because she was sick, she was unable to report hours worked and therefore unable to collect income from In-Home Support Services ("IHSS"). Moreover, Debtor's expenses increased because she had to pay for doctor visits and medications. Though Debtor's IHSS income has resumed, both of these caused her to experience material financial hardship directly caused by the COVID-19 pandemic.

Debtor's previous plan was confirmed on November 4, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #38. Accordingly, Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

However, Trustee objects because the Class 1 ongoing mortgage payment is delinquent \$1,466.95, which consists of three payments through July 2021. Doc. #51. The plan does not address the post-petition delinquency and all funds on hand will be paid to the Class 1 creditor until current. Trustee will make no payments on account of pre-petition arrears, class 2 arrears, or attorney fees, which will be until October 2021 assuming that Debtors timely pay all plan payments.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response not later than September 23, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by September 30, 2021.

If Debtor elects 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 30, 2021. If Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

3. [19-13021](#)-B-13 **IN RE: ANNA SOLIS**
[RSW-2](#)

MOTION TO MODIFY PLAN
7-28-2021 [\[69\]](#)

ANNA SOLIS/MV
ROBERT WILLIAMS/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.

Anna Marie Solis ("Debtor") seeks confirmation of her Second Modified Chapter 13 Plan. Doc. #69. Debtor wishes to retain the same 84-month duration of her previous plan under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 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 amounts of damages). *Televideo Systems, 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, which the movant has done here.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, Debtor fell behind in plan payments because she became sick in April 2021, was hospitalized, and underwent a 24-hour watch due to her critical condition. Doc. #72. At first it was believed to be COVID-19, but Debtor believes it may have been a new strain that is even worse. Debtor's expenses increased because she had to pay for doctor visits and medications, which caused her to experience material financial hardship directly caused by the COVID-19 pandemic.

Debtor's previous plan was confirmed on November 30, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #64. This plan provided for an 84-month duration under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. Doc. #59. Before that, Debtor's original plan was confirmed on December 9, 2019. Doc. #45. Accordingly, Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [18-14322](#)-B-13 **IN RE: PATSY ALLEN**
[MHM-1](#)

MOTION TO DISMISS CASE
8-3-2021 [[78](#)]

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on September 2, 2021. Doc. #84. Accordingly, this matter will be DROPPED FROM CALENDAR.

5. [21-12030](#)-B-13 **IN RE: JOSE ARREGUIN**
[AF-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-25-2021 [\[8\]](#)

JOSE ARREGUIN/MV
ARASTO FARSAD/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 court will issue the order.

Jose R. Arreguin ("Debtor") seeks an order extending the automatic stay pursuant to 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) of this section shall terminate with respect to the debtor on the 30th day after the filing of the latter case. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 20-12291-A-13. That case was filed on July 8, 2020 and was dismissed on June 16, 2021 for failure to pay plan payments. This case was filed on August 20, 2021 and the automatic stay will expire on September 19, 2021. Doc. #1. Debtor has also filed three other bankruptcy cases, but none of those were pending within the previous one-year period.¹

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 or a party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed.

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)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith – the prior case was dismissed because Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c) (3) (C) (i) (II) (cc).

Debtor declares that the previous case was filed to prevent non-judicial foreclosure of real property located at 33207 W. El Progreso Avenue, Cantua Creek, CA 93608 ("Property"). Doc. #10. He attempted to resolve the lump sum demand from the lienholder, Mid Valley Services, Inc. ("Mid Valley"), but he became unemployed due to COVID-19 and did not receive his typical payments from the California Employment Development Department when his seasonal farm work ended. *Id.* As result, he fell behind on his chapter 13 plan payments and was unable to resolve the lien in favor of Mid Valley.²

Debtor declares that he is not trying to abuse the bankruptcy process, nor attempting to avoid or delay paying creditors. *Id.* Debtor does not believe there will be any feasibility issues and intends to make his plan payments with integrity and responsibility. *Id.* Debtor's changed circumstance in this case is that he will now receive monthly rental income of approximately \$950 per month, which coupled with his seasonal employment income, will be enough to prevent delinquency. Debtor believes that extension of the automatic stay is in the best interests of his creditors. *Id.*

Additionally, Debtor filed a chapter 13 plan with the petition. See Doc. #7. The plan provides for 60 monthly payments of \$1,280.00 and a 0% dividend to allowed unsecured claims. *Id.* Debtor's schedules indicate that he has \$1,289.00 monthly net income. Doc. #1, *Sched. J.*

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted. Debtor's petition appears to have been filed in good faith. The court intends to grant the motion and extend the automatic stay as to all creditors provided that no opposition is presented at the hearing.

The court is inclined to GRANT the motion and extend the automatic stay for all purposes as to all parties who received notice, unless terminated by further order of this court. 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).

¹ Debtor's other prior cases consist of two chapter 13 cases and one chapter 7 case:

- (1) Case No. 18-10851-A-13 was filed on March 9, 2018 and dismissed on March 27, 2018 for failure to make chapter 13 plan payments.
- (2) Case No. 16-10651-A-7 was filed on March 3, 2016. Debtor received a chapter 7 discharge on July 18, 2016.
- (3) Case No. 98-11935-A-13 was filed on March 3, 1998. Debtor received a chapter 13 discharge on July 11, 2001.

² The court notes that Mid Valley's CEO, Keith Korth, was served by certified mail at Mid Valley's main office address on August 25, 2021. Debtor has complied with Fed. R. Bankr. P. 7004(b)(3). Doc. #11.

6. [21-11443](#)-B-13 **IN RE: CARLOS DELGADILLO**
[MHM-1](#)

MOTION TO DISMISS CASE
8-9-2021 [\[16\]](#)

MICHAEL MEYER/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to October 7, 2021 at
 9:00 a.m.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1), (3) due to unreasonable delay by the debtor that is prejudicial to creditors, failure to set a plan for hearing with notice to creditors, and failure to cooperate with trustee as required by 11 U.S.C. § 521(a)(3)(A). Doc. #16. Despite two requests, Trustee says that Debtor has failed to provide (a) complete copies of Debtor's pay statements for December 2020 through June 2021, (b) proof of income for Debtor's spouse, and (c) 2020 state and federal tax returns.

Debtor timely responded, denying that there has been an unreasonable delay that is prejudicial to creditors. Doc. #24. Debtor's motion to confirm plan is set for hearing on October 7, 2021, but he is remitting his required monthly payments to Trustee. On confirmation of his chapter 13 plan, his one secured creditor will receive payments and his unsecured creditors will receive a 1% dividend. Doc. #13.

Moreover, Debtor states that he has forwarded to the Trustee copies of all pay statements on hand, but three are still outstanding and will be provided soon. Debtor also intends to forward to Trustee evidence of Debtor's non-filing spouse's unemployment income and copies of their 2020 federal and state tax returns.

This motion was filed and served on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The court notes that Debtor's opposition does not comply with the local rules. Debtor did not file a certificate of service with his opposition. LBR 9014-1(e)(1) requires service of all pleadings and documents filed in support of, or opposition to, a motion to be made on or before the date they are filed with the court. LBR 9014-1(e)(2) requires proof of service, in the form of a certificate of service, to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after the papers were filed. Debtor's counsel is advised to review the local rules, cure the service defect, and ensure procedural compliance in subsequent matters.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for being delinquent in making plan payments.

Separately, Debtor's failure to provide all pertinent information to the Trustee is a task the Debtor must expeditiously accomplish. Either one of these independently is a basis to dismiss this case. This matter will be called as scheduled to inquire whether Trustee is in receipt of the requested documents.

Since Debtor has a pending motion to confirm plan, if this motion is not granted, it may be CONTINUED to October 7, 2021 at 9:00 a.m. to be heard in connection with Debtor's motion to confirm plan. Debtor is ordered to cure the service defect by filing a proof of service conforming with the local and federal rules on or before September 17, 2021.

7. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-9](#)

MOTION TO MODIFY PLAN
8-2-2021 [\[141\]](#)

LATUNJIA JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without further proof.

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

an order. If granted, the Moving Party shall submit a proposed order after hearing.

David Deshawn Johnson and Latunjia Monia Johnson ("Debtors") seek confirmation of their Third Modified Chapter 13 Plan. Doc. #141.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because the debtors will not be able to make all payments under the plan and comply with the plan. Doc. #150. Trustee states that the dividend for Class 2 creditor, Global Lending Services, LLC, will take 46 months to fund, but there are only 43 months remaining on the plan. The plan payment would need to increase by \$27.94 to support a dividend high enough to fund the plan as proposed.

Debtors responded agreeing to increase the plan payment by \$27.94 throughout the remaining term of the plan. Doc. #152. Debtors say they will file a supplemental I and J evidencing their ability to make the increased plan payment. *Id.* However, no such amended schedules I or J have been filed as of the time of this writing.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure any party in interest except Trustee 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered.

This matter will be called as scheduled. If Debtors file Amended Schedules I and J showing feasibility, the court may GRANT the motion. Otherwise, the motion will be DENIED. Any confirmation order shall be approved by Trustee, include the docket control number of the motion, and reference the plan by the date it was filed.

8. [19-15053](#)-B-13 **IN RE: YASMIN APRESA**
[RSW-5](#)

MOTION TO MODIFY PLAN
7-12-2021 [\[68\]](#)

YASMIN APRESA/MV
ROBERT WILLIAMS/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.

Yasmin Araceli Apresa ("Debtor") seeks confirmation of her Third Modified Chapter 13 Plan. Doc. #71. Debtor wishes to retain the same 84-month duration of her previous plan under 11 U.S.C. § 1329(d) and

the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 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 amounts of damages). *Televideo Systems, 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, which the movant has done here.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, Debtor declares that she was diagnosed with COVID in January 2021, which caused her to miss a few weeks of working and fall behind on her plan payment. Doc. #70. Then, Debtor's husband and son also became ill with COVID, which caused additional financial difficulties. Debtor has experienced material financial hardship directly caused by the COVID-19 pandemic.

Debtor's Second Modified Plan was confirmed on January 8, 2021, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #65. The First Modified Plan was confirmed on September 18, 2020. Doc. #53. Both plans provided for an 84-month duration under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. Docs #48; #60. Before that, Debtor's original plan was confirmed on March 17, 2020. Doc. #39. Accordingly, Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

9. [20-13965](#)-B-13 **IN RE: STEPHANIE FOREMAN**
[DMG-3](#)

MOTION TO AVOID LIEN OF GEORGE FOREMAN
8-5-2021 [\[53\]](#)

STEPHANIE FOREMAN/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as a scheduling
conference.

DISPOSITION: Continued to a date to be determined.

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

Stephanie Maryann Foreman ("Debtor") moves to avoid a judicial lien in favor of George Foreman ("Creditor"), Debtor's ex-husband, in the amount of \$24,500.00 and encumbering residential real property located at 111 S. Mt. Whitney Dr., Lone Pine, CA 93545 ("Property"). Doc. #53. Debtor claims that Property had a value of \$120,000 on the petition date. Since the judgment lien, homestead exemption, and unavoidable liens total more than the value of Property, Debtor insists that the lien should be avoided.³

Creditor timely responded. Doc. #58. Creditor contends that the motion should be denied because the lien fixed at the same time Debtor's interest in Property was created. Since Debtor never possessed her fee simple interest in Property before Creditor's lien fixed, Creditor claims that Debtor cannot avoid the lien under 11 U.S.C. § 522(f)(1) as a matter of law. If the motion is not denied outright, Creditor requests an opportunity to obtain an appraisal.

Debtor replied and objected to the admissibility of Creditor's evidence. Docs. #62; #65.

This matter will be called as scheduled and proceed as a scheduling conference.

This motion was filed on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of any party in interest except George Foreman 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of all non-responding parties will be entered.

Debtor and Creditor were married between 2008 and July 20, 2020. Doc. #59. After they each stipulated to judgment, the Inyo County Superior Court entered a judgment for the dissolution of their marriage effective June 20, 2020 in the parties' divorce case (Case No. SICVFL 17-61665) on August 10, 2020. Doc. #60, Ex. A.

Prior to the divorce, Debtor and Creditor owned Property in joint tenancy. Per the stipulation, the parties agreed that Debtor shall be awarded Property as her sole and separate property. *Id.*, at 2. The parties further agreed that Debtor would pay Creditor \$24,500.00 as an equalization payment for their community property, which shall be due and payable upon receipt of Debtor's anticipated CalPERS disability benefits. *Id.*, at 3. Creditor alleges Debtor never paid him. Doc. #59.

So, Creditor obtained a \$24,500 judgment against Debtor on August 10, 2020. Docs. #56, Ex. A; #60, Ex. B. The abstract of judgment was issued on September 15, 2020 and recorded in Inyo County on October 13, 2020. *Id.* That lien attached to Debtor's interest in Property. The motion estimates the balance on the lien to be approximately \$25,000 at the time of filing based on accrual of interest at 10 percent.

Creditor argues that this case is nearly identical to the facts in *Farrey v. Sanderfoot*, 500 U.S. 291 (1991). Doc. #58. In *Farrey*, a husband and wife owned a parcel of real property in joint tenancy, but the dissolution judgment simultaneously gave the debtor the property and the non-debtor spouse a lien to secure an equal division of property. The Court held that "unless the debtor had the property interest in which the lien attached at some point before the lien attached to the interest, he or she cannot avoid the fixing of the lien under the terms of §522 (f)(1)." *Id.* at pg. 296.

Unlike *Farrey*, here, Debtor acquired the property "effective June 20, 2020." Doc. #60. The judicial lien was not simultaneously granted to Creditor here. The abstract of judgment was issued three months later and recorded four months later. Doc. #56. Thus, *Farrey* is inapplicable because Debtor acquired her current interest in Property months before Creditor recorded ("fixed") his judicial lien.

In *In re Barnes*, 198 B.R. 779 (B.A.P. 9th Cir. 1996), the Ninth Circuit found that when a lien was recorded does not matter for when a lien is considered fixed under § 522(f). *Barnes*, 198 B.R. at 783. Instead, if the court divides community property by granting a money judgment, the lien is considered part of the division of assets. So, the time that the community property is divided will be the date that the lien "fixed."

But, as argued by Debtor, the family court did not award a judgment lien. Instead, the court ordered an equalization payment and stated that the stipulated judgment shall become null and void if the parties' expectations are not realized. Doc. #63, Ex. A. That equalization payment was to come from assets other than real estate. Debtor's alleged failure to abide by the stipulated dissolution decree triggered the fixing of the lien here not the decree itself.

Valuation Contentions

Debtor contends that the value of Property is \$120,000.00. Doc. #53. Property was listed in the amended schedules with a value of \$120,000.00 on the petition date. Doc. #31, *Am. Sched. A/B*. The only

unavoidable lien on that same date was a deed of trust in favor of El Dorado Savings Bank in the amount of \$39,358.00. Doc. #11, *Sched. D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000.00. *Id.*, *Sched. C*.

Creditor, meanwhile, insists that Property was worth more than \$250,000 at the time the bankruptcy was filed. Doc. #59. Creditor relies on a Comparative Market Analysis conducted by John Martindale of Home Town Properties in Bishop, California. Doc. #60, Ex. C. Additionally, Creditor includes a Zillow listing that states Property was assessed in 2018 for \$123,165. *Id.*, Ex. D. On this basis, Creditor argues that there is sufficient equity such that Debtor's exemption would not be impaired.

Proof Problems

Debtor's original moving papers were not sufficient on their face to support a *prima facie* case. The declaration merely states the debtor filed bankruptcy and confirmed a plan. Doc. #55. Debtor included exhibits with the motion partially consisting of portions of her schedules. Doc. #56, Exs. B-D.

Debtor did not authenticate anything. Even if the court got passed that problem, there is no request for judicial notice. Even if the request for judicial notice had been included, the court could only notice the fact that the Debtor contends Property was worth \$120,000.00 at the time of filing. Competent evidence, but not very persuasive. *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 492-93 (Bankr. D. Me. 2008).

Creditor's opposition does not fare much better. The "Zillow" reference is neither authenticated nor is any evidence submitted as to reliability. Zillow is not admissible as a compilation under Fed. R. Evid. 803(17). *In re Phillips*, 491 B.R. 255, 261 n.7 (Bankr. D. Nev. 2013); *In re DaRosa*, 442 B.R. 173, 177 (Bankr. D. Mass. 2010) ("Zillow is a participatory cite almost like Wikipedia . . . A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property. This of course makes Zillow inherently unreliable.").

The Comparative Market Analysis was prepared "[f]or marketing the property" and every page states that it was "provided as a courtesy estimate only. It should not be relied upon and is not a guarantee of any kind." Doc. #60, Ex. C. Further, the Opinion of Value is hearsay and Creditor provides no evidence that would allow the court to consider the opinion now.

Debtor's reply is too late to establish facts that should have been part of the original motion and puts the Creditor at an unfair disadvantage at this time. Debtor's "opinion" is based on hearsay: the possible appraisal that was part of the dissolution proceeding and the "assessed" value, "to the best of [her] recollection[.]" Doc. #64.

This matter is deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the sole factual issue appears to be the value of Property.

The sole legal issue is the extent, if any, to which Creditor's lien impairs Debtor's exemption.

Though Debtor claims the fixing of the lien is a preference, no action to avoid the preference has been filed. Further, depending on the result of any court finding of the value of Property, there could be doubt about the Debtor's solvency when the petition was filed.

³ Debtor's prayer for relief requests to avoid the lien of Harco National Insurance Company. Doc. #53. This appears to be a clerical error.

10. [21-10070](#)-B-13 **IN RE: MARIA/RICARDO CUEVAS**
[MHM-3](#)

MOTION TO DISMISS CASE
7-13-2021 [\[53\]](#)

MICHAEL MEYER/MV
LEROY AUSTIN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors. Doc #53.

Maria Cuevas and Ricardo Cuevas ("Debtors") did not oppose.

Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, 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 amounts of damages). *Televideo Systems, 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, which the movant has done here.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The Debtors failed to confirm a chapter 13 plan on July 7, 2021. Docs. #49; #52. No new motions to confirm plan and no opposition to this motion have been filed. As of the date of this hearing, more than two months will have passed since the motion to confirm plan was denied.

The court has reviewed the amended schedules and determined that there are no non-exempt, unencumbered assets in the estate that could be administered for the benefit of unsecured claims. Docs. #1, *Sched. D*; #20, *Am. Sched. C*; #36, *Am Sched. A/B*. All of Debtors' assets are either encumbered or exempted. Accordingly, the best interests of creditors and the estate are served by dismissal. The motion will be GRANTED, and the case will be dismissed.

11. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[LKW-22](#)

MOTION TO MODIFY PLAN
7-20-2021 [\[427\]](#)

CAROL KING/MV
LEONARD WELSH/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.

Shelby Dane King and Carol Dean King ("Debtors") seek confirmation of their Fourth Modified Chapter 13 Plan. Doc. #427.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 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 amounts of damages). *Televideo Systems, 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, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

The court notes that the motion does not comply with LBR 9004-2(c)(1), which requires motions, exhibits, and other specified pleadings to be filed as separate documents. Here, a copy of the plan was attached to the motion and should have been filed with the other exhibits. Counsel is advised to review the local rules and ensure procedural compliance in future matters.

12. [21-10976](#)-B-13 **IN RE: MARK HALL AND LOUISE JURACEK HALL**
[PK-2](#)

MOTION TO CONFIRM PLAN
7-12-2021 [\[36\]](#)

LOUISE JURACEK HALL/MV
PATRICK KAVANAGH/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.

Mark Stephen Hall and Louise Clara Juracek Hall ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #36.

Chapter 13 trustee Michael H. Meyer ("Trustee") was prepared to object to confirmation under 11 U.S.C. § 1322(a) on grounds that Debtors were not meeting liquidation requirements. Doc. #71. However, the parties stipulated to resolve that prospective objection, which was filed on September 2, 2021. *Id.*

Under the terms of the stipulation, Debtors agree to list real property at 7800 Westfield Road, #11, Bakersfield, CA for sale within 12 months of the confirmation hearing. All net proceeds from the sale of both that property and real property at 4701 Beechwood, Apt 48, Bakersfield, CA shall be paid to the estate.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). 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 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 amounts of damages). *Televideo Systems, 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, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10:00 AM

1. [16-14447](#)-B-7 **IN RE: JEFFREY/ELIZABETH GIBSON**
[LNH-7](#)

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES
ATTORNEY(S)
8-3-2021 [\[100\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/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.

Lisa Noxon Holder, PC ("Applicant"), general counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation of \$4,446.50 under 11 U.S.C. § 330. Doc. #100. This amount consists of \$4,307.00 in fees as reasonable compensation and \$139.50 for reimbursement of incurred expenses for actual, necessary services rendered to the estate from March 2, 2020 through July 7, 2021.

Trustee filed a declaration in support of the fee application. Doc. #103. Trustee believes the application is an accurate account of the work performed by Applicant and states that her services were necessary and beneficial to the estate. Moreover, Trustee declares that the benefit to the estate from Applicant's and his efforts resulted in liquidating a claim for \$350,000. Trustee has approximately \$160,000 on hand that will be used to pay this fee application and the remaining claims.

No party in interest timely filed written opposition. The motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 amounts of damages). *Televideo Systems, 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, which the movant has done here.

This case has some unusual characteristics. Jeffrey Lee Gibson and Elizabeth Gibson ("Debtors") filed chapter 7 bankruptcy on December 13, 2016. Jeffrey M. Vetter was appointed as interim trustee on that same day. Doc. #2. The § 341(a) meeting of creditors was held and concluded on February 10, 2017. Vetter became the permanent trustee at that meeting and filed a Report of No Distribution on February 11, 2017. Doc. #17. Debtors' discharge was entered on April 17, 2017 and the case was closed on April 21, 2017. Docs. #16; #18.

Debtors reopened the case on April 30, 2018 to administer omitted assets. Doc. #23. Vetter continued acting as trustee and filed a Notice of Assets on May 14, 2018, stating that the § 341 meeting had concluded on February 10, 2017. See docket generally. He moved to employ special and general counsel on July 20, 2018. LNH-1; LNH-2.

Applicant's employment was first authorized as general bankruptcy counsel subject to 11 U.S.C. §§ 327, 329-331 on July 30, 2018, effective June 20, 2018. Doc. #35. Vetter also sought approval of a settlement agreement and fees for special counsel. Doc. #52.

But Vetter had not been reappointed as trustee after his duties were discharged and the case was closed. On November 17, 2019, U.S. Trustee Tracy Hope Davis ("UST") sought authority to appoint a successor trustee after it was realized that Vetter had not been reappointed and did not have authority to represent the estate. Doc. #53. The court authorized UST to appoint a new chapter 7 trustee on January 21, 2020. Doc. #57. UST then proceeded to appoint Trustee Fear as successor trustee on February 27, 2020. Doc. #58.

On July 8, 2020, Trustee sought further approval to employ Applicant a second time, which was granted on July 17, 2020 under 11 U.S.C. §§ 330(a), 331. Doc. #63. The second employment order is effective for services rendered on or after June 8, 2020. *Id.*

As noted above, Applicant is seeking fees beginning March 2, 2020, which is before the effective date of the second employment order. Based on the time sheets, Applicant performed an additional 21.70 hours of services between July 2, 2018 and February 27, 2020 totaling \$5,841.00 in fees that are not requested in this motion because those services were performed at the direction of Vetter. Doc. #104, Ex. A.

Then, between March 2, 2020 and June 1, 2020, Applicant performed 1.8 billable hours of services totaling \$531.00 in fees. *Id.* The remaining \$3,776.00 (of the \$4,307 requested) is derived from 12.8 hours of services that were rendered between June 8, 2020 and July 7, 2021. *Id.*

LBR 2014-1(b)(1) provides that an employment order under Fed. R. Bankr. P. 2014(a) shall be presumed to relate back to 30 days before filing the motion to employ or the petition date, whichever is later. LBR 2014-1(b)(2) states that all requests for retroactive authorization exceeding 30 days duration must be set for hearing,

show exceptional circumstances, satisfactorily explain the applicant's failure to receive prior judicial approval, and demonstrate that the services benefited the estate in a significant manner.

The Supreme Court recently rejected federal courts' use of *nunc pro tunc* orders to retroactively re-write the record. *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 701 (2020). Although *nunc pro tunc* employment is no longer available, pre-employment services can still be approved and compensated. The Ninth Circuit uses *In re THC Fin. Corp.* and *Atkins* as its standard for compensation under § 330 for pre-employment services. *In re Miller*, 620 B.R. 637, 643 (Bankr. E.D. Cal. 2020).

"Retroactive approval should be limited to situations in which 'exceptional circumstances' exist." *In re THC Fin. Corp.*, 837 F.2d 389, 392 (9th Cir. 1988). LBR 2014-1(b)(2) mimics the test for the court to find exceptional circumstances: (1) satisfactorily explain the failure to receive prior judicial approval and (2) demonstrate that the services benefited the bankruptcy estate in a significant manner. *Id.* "Moreover, the professional must have satisfied the criteria for employment pursuant to 11 U.S.C. § 327, other than the usual requirement of pre-employment approval." *Atkins v. Wain*, 69 F.3d 970, 972 (9th Cir. 1995).

Here, the court did not retroactively grant Applicant's employment, instead setting the effective date at 30 days before the second employment application was filed. Doc. #63. Nevertheless, exceptional circumstances are present. Applicant's first employment would have been proper if Vetter had the authority as the estate's representative to hire professionals. He did not, but Applicant was unaware of that. She appears to have operated in good faith under the mistaken belief that her employment was properly authorized as of June 20, 2017 pursuant to the first employment order.

Applicant's services also benefited the bankruptcy estate in a significant manner. Of the services not requested in this application, Applicant filed applications to employ special counsel for a state court tort lawsuit, which resulted in a gross settlement of \$350,000.00. Applicant communicated with special counsel, represented Trustee and the estate in multi-party mediation, drafted motions to approve the settlement agreement under Fed. R. Bankr. P. 9019, and successfully obtained approval to approve the settlement agreement and compensate special counsel. Apart from resolution of the state court litigation, these services had to be completed again after Applicant was employed for the second time. None of these services totaling \$5,841.00 are requested, including the expenses associated with those services. Doc. #104, Ex. A. The only pre-authorization services Applicant requests are the 1.8 billable hours totaling \$531.00 from March 2, 2020 to June 1, 2020.

The estate benefited significantly from Applicant's pre-authorization services by liquidating its claim with a gross settlement of \$350,000. The court will allow the compensation of \$531.00 as requested for 1.8 hours in pre-authorization services.

In total, this application covers 14.60 billable hours at a rate of \$295.00 per hour, totaling **\$4,307.00**. Applicant also incurred **\$139.00** in expenses as follows:

EXPENSES

Postage	\$34.10
Copies	+ \$105.40
Total Costs	= \$139.50

Id. These combined fees and expenses total **\$4,446.50**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) case administration and advising Trustee; (2) filing and prosecuting the second employment application for herself (LNH-4) and special counsel (LNH-6); (3) filing and prosecuting the second motion to approve settlement and compensate special counsel (LNH-5); and (3) preparing and filing this fee application (LNH-6, LNH-7). Doc. #102. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the application and consents to payment of the requested compensation. Doc. #103.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$4,307.00 in fees and \$139.50 in expenses on a final basis under § 330. Trustee, in his discretion, will be authorized to pay Applicant \$4,446.50 for services rendered to and costs incurred by the estate between March 2, 2020 and July 7, 2021.

2. [21-11677](#)-B-7 **IN RE: EMILY GOODWIN**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
6-30-2021 [\[5\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

NO RULING.

Emily Goodwin ("Debtor") filed this application for waiver of the chapter 7 filing fee. Doc. #5.

Debtor receives \$3,699.70 in monthly net income (\$44,396.40 annually): \$2,240.00 in unemployment benefits and \$1,459.70 in Social Security. Doc. #1, *Sched. I*. Debtor has no dependents. To qualify for a filing fee waiver, Debtor must show an income below 150% of the federal poverty guidelines published by the United States Department of Health and Human Services. For a family of one,

the maximum allowable income to still qualify for a fee waiver is \$1,610 per month (\$19,320 annually).⁴

At the time Debtor filed this application, she did not qualify for a fee waiver because her income exceeded the threshold for a household of her size.

However, Debtor states that her unemployment benefits are scheduled to terminate "this month." So, her monthly income will be reduced to \$1,459.70, which falls below the HHS poverty guidelines for a family of one.

This matter will be called as scheduled to inquire whether Debtor is still receiving unemployment compensation, or any other benefits, causing her income to exceed \$1,610.00 per month. If Debtor's income has been reduced as anticipated, the court may GRANT the motion. The court may also order the Debtor to pay the filing fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted. In the event that assets are discovered, the Clerk of Court may collect the filing fee as an administrative expense in this case.

⁴ See, <https://www.uscourts.gov/sites/default/files/poverty-guidelines.pdf> (Jan. 13, 2021).

11:00 AM

1. [21-10734](#)-B-7 **IN RE: MANUEL GONZALES**
[21-1030](#)

STATUS CONFERENCE RE: COMPLAINT
7-8-2021 [[1](#)]

STRATA FEDERAL CREDIT UNION V.
GONZALES, III
BRANDON ORMONDE/ATTY. FOR PL.

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

DISPOSITION: Continued to October 7, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Secured creditor Strata Federal Credit Union ("Plaintiff") filed this adversary complaint against debtor Manuel Gonzales ("Defendant") on July 8, 2021. Doc. #1. Plaintiff seeks a determination that the debt owed by Defendant be deemed non-dischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(6).

Defendant did not file an answer. Plaintiff requested entry of default on August 27, 2021. Doc. #12. Defendant's default was entered on August 30, 2021 and Plaintiff was directed to apply for a default judgment and schedule a "prove up" hearing within 30 days. Doc. #14. Accordingly, this status conference will be continued to October 7, 2021 at 11:00 a.m. If Plaintiff applies for a default judgment, the court will further continue this status conference to the date and time of the "prove up" hearing.

11:30 AM

1. [21-11486](#)-B-7 **IN RE: LESLEY/SUZANNE EMBREY**

PRO SE REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
8-17-2021 [[15](#)]

NO RULING.