



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, September 13, 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.

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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. [23-10501](#)-B-13 **IN RE: BEATRICE MCCARTY**
[SL-1](#)

MOTION TO MODIFY PLAN
8-7-2023 [\[18\]](#)

BEATRICE MCCARTY/MV
SCOTT LYONS/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.

Beatrice Ruth McCarty ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated August 7, 2023. Doc. #18. The plan proposes that Debtors shall make 60 monthly payments of \$750.00 per month with a 100% dividend to allowed, non-priority unsecured claims. Doc. #20. The plan also includes payments two Class 4 claims paid directly by Debtors: \$1,324.22 per month by Debtor to Mr. Cooper on the mortgage for Debtor's home at 4143 E. Sue Avenue, Visalia, California; and \$388.00 per month by Debtor's daughter to Regional Acceptance Corp. for a 2056 Nissan Altima. *Id*, Debtor's *Amended Schedules I & J* indicate a net monthly income of \$3,223.84 per month, including expenses for the Class 4 payments, which is sufficient to afford the proposed plan payment. Doc. #32. No party in interest timely filed written opposition.

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 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, which the movant has done here.

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

2. [23-10501](#)-B-13 **IN RE: BEATRICE MCCARTY**
[SL-2](#)

AMENDED MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS
ATTORNEY(S)
8-11-2023 [\[28\]](#)

SCOTT LYONS/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.

Scott Lyons ("Applicant"), 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. #28. The Application requests attorney fees in the amount of \$8,493.50 and expenses in the amount of \$939.48 for a total application of \$9,432.98. *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 7, 2022, through August 7, 2023. Doc. #28. Included with the Application is a form statement electronically signed by the Debtor stating "I/we are the debtor(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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *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.

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).

Exhibits accompanying the Application include (A) a narrative summary, and (B) itemized time entries by date and itemized costs. Doc. #30. 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 \$9,432.98 in attorney's fees and expenses. As \$1,696.00 has already been paid by the Debtor prepetition, the Chapter 13 Trustee is authorized to pay the remaining balance of \$7,463.98 through the plan as an administrative expense to the extent the plan provides sufficient funding to do so.

3. [20-11157](#)-B-13 **IN RE: JUAN ARECHIGA**
[TMO-1](#)

MOTION TO AVOID LIEN OF CITIBANK, NATIONAL ASSOCIATION
8-8-2023 [\[54\]](#)

JUAN ARECHIGA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

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

DISPOSITION: DENIED WITHOUT PREJUDICE.

ORDER: The court will enter the order.

Juan Arechiga, Debtor in this Chapter 13 proceeding ("Debtor"), has filed this motion seeking to avoid a judicial lien on his homestead property. Doc. #54. However, while the moving papers and Certificate of Service indicate that the lienholder is Citibank National Association, the caption of the motion purports to avoid the lien of Sequoia Concepts, Inc. *Id.*

Local Rule 9004-2(b)(5) outlines the requirements for the caption page of any document filed with this court. LBR 9004-2(b)(5). This Rule requires *inter alia* that the title of every document describe

the character of the paper and state the relief sought. LBR 9004-2(b)(5)(A). Debtor's error in listing the wrong party as lienholder, even if the correct name is used within the body of the motion, is misleading and raises an inference that proper notice and service was not effected. Accordingly, this motion is DENIED WITHOUT PREJUDICE.

4. [23-11268](#)-B-13 **IN RE: MELISSA JOHNSON**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
8-14-2023 [\[22\]](#)

MICHAEL MEYER/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Michael H. Meyer, Chapter 13 Trustee, filed this Objection to Confirmation on August 14, 2023, asserting (1) Melissa Johnson ("Debtor") will not be able to make all plan payments and comply with the plan's terms and (2) the plan does not provide for all Debtor's projected disposable income to be applied to unsecured creditors under the plan as required by 11 U.S.C. § 1325(b). Doc. #22. On September 7, 2023, Debtor filed an Amended Plan. Doc. #29. Accordingly, the instant Objection shall be overruled as moot.

5. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[AF-6](#)

MOTION TO MODIFY PLAN
7-25-2023 [\[100\]](#)

IGNACIO DALUDDUNG/MV
MARSHALL MOUSHIGIAN/ATTY. FOR DBT.
ARASTO FARSAD/ATTY. FOR MV.

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

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 approved as to form by Trustee.

Ignacio Lira Daluddung ("Debtors") moves for an order confirming the *Amended Chapter 13 Plan* dated July 25, 2023. Doc. #10. No objections have been filed, and this 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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

The Motion avers that this modification was necessitated by the Debtor losing his job and by the completion of payments for his vehicle through the plan. Doc. #100. In the original confirmed 60-month plan, Debtor was to pay \$755.00 per month for five months beginning in May, 2019, followed by \$810.00 per month for fifty-five months, with a 0% distribution to general unsecureds. Under the proposed amended plan, Debtor will pay \$325.00 per month for the remaining ten months of the plan, which remains a 60-month, 0% plan. As noted, no party has responded to the instant motion, and the court is satisfied that the Debtor has proven his prima facie case.

The motion is GRANTED. The order approving modification shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

6. [23-11276](#)-B-13 **IN RE: DARREN/SANDRA ALEXANDER**
[PBB-1](#)

MOTION TO CONFIRM PLAN
8-8-2023 [19]

SANDRA ALEXANDER/MV
PETER BUNTING/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.

Darren and Sandra Alexander (collectively "Debtors") seek an order confirming the *First Modified Chapter 13 Plan* dated August 8, 2023. Doc. #19 and 24. The plan proposes that Debtors shall make 60 monthly payments of \$2,375.00 per month with an 100% dividend to allowed, non-priority unsecured claims. Doc. #24. The plan also includes payments for one Class 2 claim paid to BMW Financial Services for a 2020 BMW with a dividend of \$2,000.00 per month. *Id.* Debtors will also be making a Class 4 payment in the amount \$2,324.37 per month directly to Wells Fargo Home Mortgage for their home at 2615 W. Tyler Ave., Visalia, California. *Id.* Debtors' *Amended Schedules I & J* indicate a monthly net income of \$8,527.09. Doc. #17. While the court notes that the Debtors' monthly payment of \$2,324.37 on their mortgage is not disclosed on Schedule J, their monthly net income is nevertheless more than adequate to pay the Class 4 payment and the monthly plan payment. *Id.* No party in interest timely filed written opposition.

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 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, which the movant has done here.

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

7. [23-11682](#)-B-13 **IN RE: DAVID WOODRUFF**

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-18-2023 [\[16\]](#)

PAR 4 PROPERTIES/MV
PETER RUSSO/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Par 4 Properties ("Movant") seeks to modify the automatic stay pursuant to 11 U.S.C. § 362 with respect to 2274 E. Cromwell Avenue, Fresno, California ("Property") and to proceed in a state court unlawful detainer lawsuit against David Woodruff ("Debtor") currently pending in Fresno County Superior Court, Case No. 23CECL04822. Doc. #16. This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") in several ways, including but not limited to the following.

First, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d).

Movant's certificates of service did not use Form EDC 007-05. Docs. ##16-18. Additionally, United States Trustee ("UST") was not served. The UST may raise, appear, and be heard on any issue in any case under § 307 and should be served or notified. Since no relief is being sought from or against the UST, electronic notification under Rule 7005 and LBR 7005-1 is sufficient.

Second, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, the motion and supporting documents entirely omit the use of a DCN. Docs. ##16-18. This is incorrect. Each new matter filed with the court requires all pleadings in that matter to be linked together with a unique DCN. For example, Movant could have used DCN

PR-1, the initial of its attorney, Peter Russo, or any other unused iteration of any DCN.

Third, LBR 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. Here, the documents filed consisted of a motion, notice of hearing, and memorandum of points and authorities. Docs. ##16-18. No declarations, exhibits, or any other competent evidence was submitted in support of this motion. No Relief from Stay Summary Sheet (EDC 3-468) or separate certificates of service were filed with this motion.

Fourth, LBR 9004-2(c)(1) requires all motions, certificates of service, and other specified pleadings to be filed as separate documents. LBR 9004-2(e)(1), (e)(2), and LBR 9014-1(e)(3) require the proof of service for any documents to be itself filed as a separate document, and copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. Here, certificates of service were attached to each document. Docs. ##16-18. Movant may use one certificate of service if it includes only documents related to a single matter. See LBR 9004-2(e)(3).

Fifth, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. For motions filed on 28 days or more of notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing. Furthermore, LBR 9014-1(d)(3)(B)(i) also requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice does not provide any information regarding whether or when opposition must be filed and served. Doc. #17.

Sixth, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice of hearing did not contain any language directing respondents to the pre-hearing dispositions on the court's website. Doc. #21.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

8. [23-10290](#)-B-13 **IN RE: EMILY MARTIN**
[RSW-3](#)

MOTION TO CONFIRM PLAN
8-8-2023 [[63](#)]

EMILY MARTIN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 11, 2023 at 9:30 am.

ORDER: The court will issue the order.

On August 8, 2023, Debtor Emily Martin ("Debtor"), filed an Amended Chapter 13 Plan in conjunction with the instant Motion to Confirm. Doc. ##63,64. On August 25, 2023, Chapter 13 Trustee Michael Meyer ("Trustee") filed an Objection to Confirmation. Doc. #76.

This motion to confirm plan will be CONTINUED to **October 11, 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 no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, no later than seven (7) days prior to the hearing date.

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 seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

9. [23-10290](#)-B-13 **IN RE: EMILY MARTIN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
8-3-2023 [[59](#)]

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

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

DISPOSITION: Continued to October 11, 2023 at 9:30 am.

ORDER: The court will issue an order

Michael Meyer, Chapter 13 Trustee ("Trustee"), filed the instant motion to dismiss this case on August 3, 2023. Doc. #59. The basis

for the motion is Debtor's failure to timely confirm a Plan. On August 8, 2023, Debtor Emily Martin ("Debtor") filed an Amended/Modified Chapter 13 Plan. Doc. #64. Accordingly, the instant motion will be continued to October 11, 2023, at 9:30 am to be heard with RSW-3, Debtor's motion to confirm a modified Plan. If no Plan is confirmed that date, the court may dismiss the case.