



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Wednesday, September 25, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, 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 or stated below.

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

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

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

**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. [23-11700](#)-B-13     **IN RE: JOSEPH/VALERIE RODRIGUEZ**  
[BDB-4](#)

MOTION TO MODIFY PLAN  
8-21-2024    [\[74\]](#)

VALERIE RODRIGUEZ/MV  
BENNY BARCO/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.

Joseph and Valerie Rodriguez (collectively "Debtors") move for an order confirming Debtors' *Second Amended Chapter 13 Plan* dated August 21, 2024. Docs. #74, #77. Debtor's prior plan dated August 16, 2023, was confirmed on October 25, 2023. Docs. #14, #33. No party has timely objected.

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 any party in interest, including but not limited to creditors, the U.S. Trustee, and the case 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 granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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).

The motion requests that the confirmed plan be modified as follows:

1. The plan payment will increase from \$5,910.00 per month to \$5,920.97 per month. Debtors' *Amended Schedule I & J* indicate that they can afford to make this plan payment. See *Doc. #79*.
2. Class 4 creditor QUANTUM3 GROUP LLC as agent for Aqua Finance, Inc. will be paid \$732.00 per month for its secured claim directly by Debtors.
3. Class 2 creditor First Tech FCU will be paid \$393.00 per month in months 1 through 12. The dividend will increase to \$403.00 for months 13 through 60.
4. The plan proposes to pay creditor Solar Mosaic a monthly dividend of \$36.50 in months 1 through 12 for the arrearage owed on the contract. The dividend will increase to \$92.00 for months 13 through 60 for its claim set forth in Section 4.02.
5. The plan proposes to pay the IRS \$56,751.78 for its priority claim under Section 3.12. The total amount to be paid for priority unsecured claims will increase from \$81,302.00 to \$83,772.59.

6. Unsecured creditors will continue to be paid no less than 16.6% dividend on total unsecured claims filed.
7. The plan is otherwise unchanged.

Doc. #30.

Debtors aver that this modification is necessary because creditor Quantum Group LLC was omitted from their original confirmed plan and needed to be added. Also, it appears that some distributions were modified after the court ruled on motions for valuation and after certain claims filed were less than originally anticipated. Docs. #74, ##76-77.

No party has objected, and so, this motion is GRANTED. The order 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.

2. [24-11833](#)-B-13     **IN RE: NANCY RODRIGUEZ**  
[LGT-1](#)

MOTION TO DISMISS CASE  
8-26-2024    [\[21\]](#)

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

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

Chapter 13 trustee Lillian G. Tsang ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #21. Nancy Rodriguez ("Debtor") 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 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.

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)(1) for unreasonable delay.

The record shows that there has been unreasonable delay by the *pro se* debtor that is prejudicial to creditors for the following reasons:

1. Debtor has failed to appear and testify at the initial 341 Meeting of Creditors which was set for August 6, 2024, as required by 11 U.S.C. § 341 and/or Fed. R. Bankr. Pro. 4002.
2. Debtor has failed to file a proposed plan within the time set by the *Order Extending Time to File Missing Documents*. See *Doc. #3*. Furthermore, the plan which was untimely filed one day late is deficient in several ways.
3. Debtor has failed to provide various required documents to the Trustee (as outlined in the motion).
4. Debtor's Schedules contain several inaccuracies and omissions.
5. Debtor is ineligible to be a Chapter 13 debtor as she has failed to provide a Credit Counseling Certificate as required by 11 U.S.C. § 109(h).

*Doc. #21*. Because of the inaccurate or incomplete nature of Debtor's schedules and other filings, Trustee states that she is unable to determine liquidation and so seeks dismissal of the case. *Id.*

Accordingly, the motion will be GRANTED, and the case dismissed.

3. [24-11837](#)-B-13     **IN RE: DAVID/RICCI COMBS**  
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LANGLEY  
FEDERAL CREDIT UNION  
8-13-2024    [\[18\]](#)

LANGLEY FEDERAL CREDIT UNION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This matter was originally set for hearing on August 28, 2024. Doc.  
#26.

Langley Federal Credit Union ("Creditor") objects to confirmation of  
the Chapter 13 Plan filed by David and Ricci Combs (collectively  
"Debtors") on July 1, 2024, on the following basis:

1. The Plan proposes to treat Creditor's debt secured by a 2016 Dodge 1500 as a Class 2 re-amortized debt with an interest rate of 4.49% on the secured claim. This interest rate is inadequate to satisfy the requirements of Till and should be increased to 10.5%.

Doc. #18. On September 11, 2024, Debtors filed a Response stating that "[t]he Debtors believe they can reach a stipulation with the creditor" and that "[w]ith this stipulation, the Debtors believe this objection can be resolved in the Order Confirming Plan." Doc. #40. While Debtors "request" that Creditor withdraw its objection to confirmation, they do not deny the basis of Creditor's Objection. *Id.*

Unless this matter is withdrawn, it will be heard as scheduled, and this Objection will be SUSTAINED.

4. [24-11837](#)-B-13     **IN RE: DAVID/RICCI COMBS**  
[JCW-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LANGLEY  
FEDERAL CREDIT UNION  
8-13-2024    [\[22\]](#)

LANGLEY FEDERAL CREDIT UNION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This matter was originally set for hearing on August 28, 2024. Doc.  
#27.

Langley Federal Credit Union ("Creditor") objects to confirmation of  
the Chapter 13 Plan filed by David and Ricci Combs (collectively  
"Debtors") on July 1, 2024, on the following basis:

1. The Plan proposes to treat Creditor's debt secured by a 2019 Hyundai Elantra as a Class 2 re-amortized debt with an interest rate of 4.49% on the secured claim. This interest rate is inadequate to satisfy the requirements of Till and should be increased to 10.5%.

Doc. #18. On September 11, 2024, Debtors filed a Response stating that "[t]he Debtors believe they can reach a stipulation with the creditor" and that "[w]ith this stipulation, the Debtors believe this objection can be resolved in the Order Confirming Plan." Doc. #40. While Debtors "request" that Creditor withdraw its objection to confirmation, they do not deny the basis of Creditor's Objection. *Id.*

Unless this matter is withdrawn, it will be heard as scheduled, and this Objection will be SUSTAINED.

5. [24-11837](#)-B-13     **IN RE: DAVID/RICCI COMBS**  
[LGT-1](#)

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

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

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

DISPOSITION:     Continued to October 30, 2024, at 9:30 a.m.

ORDER:             The court will prepare the order.

This matter was originally set for hearing on August 28, 2024.

Chapter 13 Trustee Lilian G. Tsang ("Trustee") objects to confirmation of the Chapter 13 Plan filed by David and Ricci Combs (collectively "Debtors") on July 1, 2024, on the following basis:

1. The 341 Meeting of Creditors has not been concluded due to Debtors' failure to appear. The continued meeting will be held on August 20, 2024. Trustee may have further objections based on the testimony of the Debtors at the continued meeting.

Doc. #13. On September 11, 2024, Debtors filed a Response indicating that they would be attending the continued 341 hearing which was set for September 17, 2024. Doc. #38.

The court's docket reflects that Debtors did attend the 341 meeting held on that date. *Docket generally*. However, the entry also indicates that the meeting was not concluded but merely adjourned and would be resumed at a continued 341 meeting which is scheduled for October 24, 2024, at 1:00 p.m.

Accordingly, this matter will be continued until after the continued 341 hearing and will be heard on **October 30, 2024, at 9:30 a.m.**



6. [24-11747](#)-B-13     **IN RE: SAMUEL/CHRISTI HALL**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
8-13-2024     [\[16\]](#)

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

TENTATIVE RULING:             This matter will be heard as scheduled.

DISPOSITION:                    OVERRULE, SUSTAIN, or CONTINUE.

ORDER:                             The minutes of the hearing will be the court's  
findings and conclusions. Preparation of the  
order will be determined at the hearing.

This matter was originally set for hearing on August 28, 2024. Doc.  
#20.

Chapter 13 Trustee Lilian G. Tsang ("Trustee") objects to  
confirmation of the Chapter 13 Plan filed by Samuel David Hall and  
Christi Laine Hall (collectively "Debtors") on June 24, 2024, on the  
following basis:

1. The Debtors have not yet filed the Business Income and  
Expense attachment to Schedule I. The Trustee is therefore  
unable to determine whether the plan is feasible.
2. The Debtors have not provided Trustee with the requested 6  
months of prior bank statements.
3. Debtors Statement of Financial Affairs at line #5 fails to  
include year-to-date rental income and does not include  
additional sources of income received in 2022. This form  
must be amended.

Doc. #16. On September 11, 2024, Debtors filed a Response stating  
that the believed they had provided all the requested documents to  
the Trustee and requesting that the Objection either be withdrawn by  
the Trustee or overruled by the Court. Doc. #29. The deadline for  
any Reply was September 18, 2024 (see Doc. #20), and no such Reply  
has been filed by the Trustee thus far.

If this Objection is not withdrawn, it will be heard as scheduled so  
that the court may inquire of Debtors and Trustee whether all  
required documents have been submitted or not. The court may  
OVERRULE the Objection, SUSTAIN it, or CONTINUE the matter so that  
Debtors may have more time to respond.

7. [24-11358](#)-B-13     **IN RE: MARIA NAVARRO CHAVEZ**  
[HDN-2](#)

MOTION FOR COMPENSATION FOR HENRY D. NUNEZ, DEBTORS ATTORNEY(S)  
8-15-2024     [\[36\]](#)

HENRY NUNEZ/ATTY. FOR DBT.  
DISMISSED 06/07/2024

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Fees allowed as stated. Those disallowed will  
be refunded as indicated.

ORDER:                             The court will issue the order.

Counsel Henry Nunez ("Nunez") was ordered by Chief Judge Clement on June 17, 2024 (Doc. #16) to file this Motion for Allowance of Compensation. After some delay, the motion was filed and considered by the court. Based on the evidence presented, the court allows compensation to Nunez totaling \$1150.00. The remaining fee retainer, \$975.00 plus unused costs of \$62.00 is to be refunded to Debtor Maria Navarro Chavez ("Debtor").

I

Debtor retained Nunez when they each signed a "Retainer Agreement" in April 2024. (Doc. #41). Under the agreement - which is not specific to representation in a bankruptcy case - Debtor was to pay a \$2500.00 retainer which amount (as stated in bold type in the agreement) did not include filing fees. *Id.*

Nunez filed an incomplete Chapter 13 bankruptcy petition for Debtor about one month later. (Doc. #16). In the Disclosure of Compensation (Doc. #10) signed by Nunez, it is acknowledged that his office received \$2125.00 for fees. The filing fee, \$313.00, was paid when the petition was filed. (See docket generally).

No schedules, statement of affairs, chapter 13 Plan, Schedule I or J, or summary of assets and liabilities were ever filed. Debtor did file a master address list. (Doc. #7) The clerk sent a notice of intent to dismiss if documents were not timely filed. No documents were filed, and the case was dismissed for that reason on June 7, 2024. (Doc. #13)

About ten days later, Chief Judge Clement issued an order for Nunez to file a fee application ("Fee Application Order"). (Doc. #16). The Fee Application Order outlined some of the facts above and noted that since no Plan was filed, under LBR 2016-1(a) Nunez never elected to be compensated based on the "flat fee" set forth in that rule - \$8500.00 for non-business cases. Thus, he is required to file a fee application. *Id.*

Nunez was ordered to file the application before this court by July 9, 2024. *Id.* It was not. Instead, it was filed July 30, 2024 (Docs. ##23-28). Nunez says he did not even see the Fee Application

Order until July 22, 2024. The Fee Application Order was apparently misplaced in a paralegal's office until then and the paralegal was out of town for "more than" one week during that delay. (Doc. #38)

This first fee application (HDN-1) was denied without prejudice on August 15, 2024, because the Debtor was not served. (Doc. #35)

The current fee application was filed August 15, 2024 (Docs. ##36-42). It is supported by: (1) Nunez' declaration, (2) a declaration from Debtor, (3) a declaration from Yolanda Gonzalez-Bra, a secretary for Nunez, and (4) two exhibits. *Id.* It also includes points and authorities that provides legal analysis for an award of attorney's fees following litigation in a dischargeability case. It does not discuss the relevant law relating to debtor's counsel fee applications. (Doc. #42)

The application includes lumped time entries between June 23, 2022, and July 26, 2024. A total of 15 hours is listed at Nunez' rate of \$400 per hour for \$6,000.00. The hourly rate was agreed upon by Debtor in the Retainer Agreement.

Nunez claims that Debtor never paid his office the \$2500.00 retainer required under the Retainer Agreement. (Docs. #38, #39). We will discuss the allowed fee then the issue of returning the remaining balance.

## II.

The proper amount of fees to award counsel is subject to the court's discretion. *Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 880 (9th Cir., 1995) cert. den. 516 U.S. 1049 (1996). The burden of proof is on the applicant. *American Law Ctr. P.C. v. Stanley (In re Jastrem)* 253 F.3d 438, 443 (9th Cir. 2001). If an attorney's compensation exceeds the reasonable value of services, the court may cancel the agreement with the client, or order the return of any such payment, to the extent excessive to "the entity that made such payment" if there is no bankruptcy estate. § 329 (b). There is no estate here, the case is dismissed.

In a chapter 13 case such as this the court "may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth [in § 330]." § 330 (a) (4) (B). The factors are well known including those in § 330 (a) (2), (3) and (4) (A).

The time entries are difficult to decipher because the entries are lumped and not explained by time entries for each task. Nevertheless, the court will explain the reductions.

6/23 and 24/2022. 3.5 hours \$1400. These entries relate to litigation facing Debtor and her company nearly two years before the bankruptcy petition was filed. There is some mention of bankruptcy, but it is temporally too remote to apply to this case. No fee allowance is permitted here.

3/12/24. 1.5 hours \$600. Though bankruptcy options are discussed and the need for tax returns and financial information mentioned, much is of little benefit. Business options may have been discussed but Debtor filed individually. No Plan was filed, and no work helping the client compile the information was described. It appears that lists of requirements were given the client but little strategic work. The court will allow .75 hours - \$300.

4/17/2024. 1.0 hours \$400. This one-hour meeting one month later included "certificate of counseling" explanation and signing the retainer agreement. It appears the status of Debtor's efforts to obtain documents was discussed, but many of the tasks look repetitive with previous entries. The court will allow .5 hours - \$200.

5/7/2024. .25 hours \$100. This entry does not appear in the Nunez declaration (Doc. #38) but as a portion of the exhibits (Doc. #41). It is a telephone call and email with the California Department of Tax and Fee Administration. It purports to be about Debtor and her business. But this agency administers sales taxes, which relates to Debtor's corporation. Only \$50 is allowed here since Debtor's liability, if any, would be secondary and the business was a topic of the conference and email.

5/20/2024. 1.0 hours \$400. This one-hour meeting took place one month after the previous meeting and two months after the first bankruptcy meeting. Apparently, Debtor's civil case was not going well, and a summary judgment motion was pending. So, Debtor requested an "urgent filing." Again, tax returns and documents were needed to complete the filing and potential dismissal of the case was discussed. It appears that at this time, it was likely the chapter 13 was of little benefit other than delay the litigation for a short while. Because of the lack of benefit and repetitive tasks, the court will allow .5 hours - \$200.

5/28/2024. 1.0 hours \$400. This meeting occurs eight days after the petition is filed and purports to involve draft preparation of the schedules, but they are incomplete. The disclosure of compensation is noted as is the entry "client stated retainer fee \$2,500 paid." No schedules were ever filed. This entry appears to be of no benefit. No amount is allowed.

5/30/2024. 2.25 hours \$900. This meeting took place two days later "to complete schedules." As far as can be determined from the entry Schedule I and J information was provided and the amount of tax debt. Counsel determines Chapter 13 is not feasible and schedules cannot be completed. The strategy apparently is to either affirmatively dismiss, convert to Chapter 7, or let the court dismiss the case. The analysis that the case is not feasible appears to benefit the Debtor. 1.0 hour will be allowed - \$400.

6/7/2024, 7/22, 7/26/2024 4.5 hours \$1800. These time entries relate to the dismissal and post dismissal work by counsel responding to The Fee Application Order. None of the services

benefitted or were necessary to the Debtor under § 330 (a) (4) (B). No fees will be allowed.

These reductions are also informed by Debtor's own declaration (Doc. #40) where she states she does not dispute that legal services were performed but does dispute the services after the case was dismissed. *Id.* Also, the benefit of proceeding with the bankruptcy case at all should have been questioned as early as May 20, 2024, when the filing occurred. Tax documents were not forthcoming after at least two prior meetings. The need for creditor information was explained. Later, it appeared clear the case was going nowhere, and a dismissal or conversion was planned.

There is nothing unusual about the case or any stated facts suggesting this case required unusual pre-petition work. The Debtor and counsel met on two occasions - one month apart - before the case was filed. The meeting for the "urgent filing" was one month after the previous meeting.

In addition, the identities of the creditors were known since the Debtor filed a master address list. So, at an early stage it appears counsel knew the case was in serious trouble. Also, the points and authorities filed supporting this application was not relevant to the fee application.

Taking all factors into account, fees allowed total \$1150.00. The remaining retainer, \$975 plus unused costs which based on the evidence (\$375.00-\$313.00 filing fee) total \$62.00 (total \$1037.00).

### III.

Now, the refund issue.

Nunez contends that there is no record of Debtor's payment of the retainer of \$2500. (Doc. #38). In addition to his declaration, *Id.*, Nunez submitted the declaration of his secretary, Ms. Gonzalez-Bra who claims there is no proof of receipt of the \$2500.00 retainer.

The court is not convinced.

First, the Retainer Agreement (Doc. #41) signed by Debtor and Nunez April 17, 2024, (before the "urgent filing") says the retainer of \$2500 will be advanced. Both Nunez and Debtor signed the provision. It makes no sense that counsel would sign the agreement without the retainer.

Second, the Disclosure of Compensation filed May 28, 2024 (Doc. #10) states that prior to filing the statement, Nunez received \$2125.00. Notably, the Retainer Agreement and the Nunez declaration says the retainer was \$2500 consisting of \$2125 for fees and \$375 for costs. The Disclosure of Compensation is contemporaneous with the meetings with the Debtor. In fact, the time entry on May 28, 2024, says "client stated retainer fee \$2500.00 paid." Not so the declarations in support of this application submitted months later.

Third, the August 15, 2024, declaration of the Debtor is telling. (Dec. #40). It was submitted by Nunez and presented as a declaration in support of the application. *Id.* No mention is made by Debtor confirming or denying her payment of the retainer. The court construes this omission as evidence that the retainer was paid. The declaration was a perfect opportunity for counsel to lay this issue to rest and the crucial fact was not included in the declaration.

Fourth, upon close examination, the Nunez and Gonzalez-Bra declarations do not resolve the discrepancy. The Nunez declaration says he "research" (sic) his files, records, and bank statements and he found no evidence of having received \$2500.00 from Debtor. (Doc. #38). But the contemporaneous records including the Disclosure of Compensation and time records state otherwise. Plus, there is no foundation as to how the Nunez firm handles the retainers in the ordinary course. Some areas of missing proof include how the records are kept, who has access to the records, whether there are accounts other than those Nunez searched, the accuracy of the records.

The Gonzalez-Bra declaration is not conclusive. She apparently handles the billing and collection of funds for the firm. (Doc. #39). Ms. Gonzalez-Bra searched "business records" but does not specify which records. She states she finds no proof of payment of the retainer, but the extent of the search is not described. Further, Ms. Gonzalez-Bra may handle billing and collection but that does not mean she is the custodian of the records or knows how all the records are kept. She is not proven to be either a custodian or qualified witness to meet the hearsay rule exception for business records. FRE 803(6). In short, the proof does not reach the level that a preponderance of evidence supports the failure of Debtor to make the payment.

#### IV.

For the above reasons, the court allows compensation of \$1150.00. The court will also allow expenses of \$313.00 which was the filing fee. Counsel to refund the remaining fee retainer, \$975.00, plus unused costs of \$62.00 for a total of \$1037.00 to the Debtor.

8. [24-11861](#)-B-13     **IN RE: BENITO/ALEXA GARCIA**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
8-8-2024     [\[12\]](#)

LILIAN TSANG/MV  
JERRY LOWE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to October 23, 2024, at 9:30 a.m.

ORDER:     The court will issue an order.

This matter was originally set for hearing on August 28, 2024.  
Doc. #20.

Chapter 13 Trustee Lilian G. Tsang ("Trustee") objects to confirmation of the Chapter 13 Plan filed by Benito and Alexa Garcia (collectively "Debtors") on July 2, 2024, on the following basis:

1. The 341 Meeting of Creditors has not been concluded due to Debtors' failure to appear. The continued meeting will be held on August 20, 2024. Trustee may have further objections based on the testimony of the Debtors at the continued meeting.

Doc. #12. On September 11, 2024, the Debtors filed a Response averring that they attended the continued 341 meeting, which was concluded by the Trustee. Doc. #24. The court's docket confirms this. See *Docket entry dated August 20, 2024*.

On September 17, 2024, the Trustee supplemented the Objection stating that, based on Amended Schedules filed by the Debtors on August 23, 2024, Trustee's potential concerns about the liquidation test have been resolved. Doc. #26. However, the Trustee raised the following additional basis for objecting to confirmation:

1. Joint Debtor's paystubs (combining pay advices from Community Medical Centers, Herndon Surgery Center and Central California Anesthesiology Solutions) which were provided on August 20, 2024, show an average monthly gross income of \$12,747.55. However, Form 122C-1 I lists gross income of \$8,616.30. Trustee therefore suspects Joint Debtor's income may be understated based on the most recent paystubs provided, and the Joint Debtor's disposable income may actually be higher than shown on Schedule J. Until the Debtor files an amended Form 122C-1 and possibly amended Schedules I and J and clarifies this discrepancy, the Trustee cannot determine if the plan was filed in good faith, or if it pays in all the Debtors' disposable income for the remaining term of his plan.

2. Joint Debtor has a retirement loan that is due to payoff March 24, 2028. This is month 44 of the plan. The monthly payment for the loan is \$354.88. As this plan proposes to pay less than 100% to unsecured creditors, the plan payment should be increased by this amount to \$1,227.55 in month 45. The Trustee is not opposed to resolving this in an order confirming plan.

*Id.* As the Supplement to the Objection raises grounds not a part of the original Objection, the court elects to continue this matter to give Debtors an opportunity to respond.

This motion to confirm plan will be CONTINUED to **October 23, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or all objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections raised in Trustee's Supplemental Document (Doc. #18) 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. Any replies shall file and served 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. [24-11976](#)-B-13      **IN RE: AMANDA/CLARISSA TORRALVA**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
9-9-2024    [\[13\]](#)

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

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

**DISPOSITION:**      Conditionally overruled.

**ORDER:**              The court will issue an order.

Chapter 13 trustee Lilian Tsang ("Trustee") objects to plan confirmation due to the Debtors' failure to appear and testify at the § 341(a) meeting of creditors held on September 3, 2024. Doc. #13.

Amanda and Clarissa Torralva ("Debtors"), by and through counsel, timely filed written opposition. Doc. #16. Debtors did not give any reason for their failure to attend the September 3, 2024, 341



meeting, but their counsel avers that they will appear at the continued hearing on September 17, 2024. *Id.*

This Objection to dismiss will be CONDITIONALLY OVERRULED.

Debtors shall attend the meeting of creditors rescheduled for September 17, 2024, at 3:00 p.m. See Doc. generally. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

10. [24-11786](#)-B-13      **IN RE: OSCAR/NATALIE VILLAGOMEZ LEMUS**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
8-13-2024    [\[23\]](#)

LILIAN TSANG/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted subject to agreed modifications.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

This matter was originally heard on August 28, 2024.

Chapter 13 Trustee Lilian G. Tsang ("Trustee") objected to confirmation of the Chapter 13 Plan filed by Oscar and Natalie Villagomez Lemus (collectively "Debtors") on June 28, 2024, on the following basis:

1. The Plan provides Capital One Auto Finance ("Capital One") as a class 2 claim and proposes to pay the value of the collateral securing the claim, but the court has not entered an order on a motion for valuation.
2. Trustee believes there are non-exempt assets available to pay general unsecured creditors in the amount estimated to be \$123,809.12. Debtors' scheduled non-priority general unsecured claims total \$60,559.58. Therefore, the plan should provide for a 100% distribution plus interest at the Federal Judgment Rate of 5.10%. The plan as proposed provides a 100% distribution but does not include the federal judgment interest rate.

Doc. #23. On September 18, 2024, the court granted Debtor's *Motion for Valuation*, and set the value of the 2018 Honda Civic which secures the lien of Capital One Auto Finance at \$12,149.00. Doc. #35. On August 29, 2024, the Debtors filed a Response to the Objection noting that the valuation hearing was set for September 18, 2024. Doc. #27. The Debtors also stated that they would agree to an increase in their plan payment to pay the Federal Judgment interest rate of 5.10% and proposed that such modification be incorporated into the Confirmation Order. *Id.*

This matter will be called and proceed as scheduled. The court will inquire whether the Debtors' response resolves the Trustee's Objections. If so, this motion may be GRANTED subject to the incorporation of new interest rate into the plan by way of the confirmation order.

If granted, the confirmation order 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.

11:00 AM

1. [23-12426](#)-B-7     **IN RE: RAUL FERNANDEZ-MARTINEZ**  
[24-1016](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
6-19-2024     [[1](#)]

FEAR V. FERNANDEZ-MARTINEZ, JR.  
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION:     Continued to October 23, 2024, at 11:00 a.m.

The court will enter the order.

On September 18, 2024, Peter L. Fear, Chapter 7 Trustee in the underlying bankruptcy case and Plaintiff in this adversary ("Trustee"), submitted a Status Report advising the court that the default of debtor-defendant Raul Fernandez-Martinez, Jr. was entered on September 9, 2024, and that Trustee's deadline to apply for default judgment is October 9, 2024. Trustee requests a continuance to allow time to file an application for default judgment by the deadline. Accordingly, this matter is CONTINUED to **October 23, 2024, at 11:00 a.m.**

2. [23-12831](#)-B-7     **IN RE: EMANUEL SILVA**  
[24-1005](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
4-8-2024     [[1](#)]

EDMONDS V. SILVA, JR. ET AL  
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION:     Continued to November 13, 2024, at 11:00 a.m.

No order is required.

Pursuant to a *Stipulation* entered into by the parties, this Status Conference is hereby CONTINUED to **November 13, 2024, at 11:00 a.m.** and all proceedings and processes held in abeyance pending the continued Status Conference.

3. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[23-1024](#)     [CAE-1](#)

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

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

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

DISPOSITION:     Continued to October 30, 2024, at 11:00 am.

ORDER:             The court will issue the order.

The court has reviewed both status reports. Based on the terms of the earlier stipulation (Doc. #51), this matter remains stayed pending further court order. Plaintiff has noted that a motion to modify that stay will be filed and prosecuted. The court will continue this status conference to allow for the filing and scheduling of that motion.