



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Department B – 510 19th Street
Bakersfield, California**

Hearing Date: Wednesday, October 4, 2023

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

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:00 AM

1. [23-11502](#)-B-13 **IN RE: ERIN STEVENSON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-13-2023 [\[27\]](#)

MATTHEW DECAMINADA/ATTY. FOR DBT.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Continued to November 8, 2023, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Erin Stevenson ("Debtor") on July 15, 2023, under 11 U.S.C. § 1325(a)(9) because Debtor has not paid all applicable taxes. Doc. #27. Trustee avers that Debtor has not filed a tax return for 2019, 2020, and 2022. *Id.* Trustee also objects that the plan calls for a "17,15%" [sic] distribution to general unsecured creditors, and Trustee cannot determine the percentage provided for.

This objection will be CONTINUED to November 8, 2023, at **9:00** a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **fourteen (14) days before hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **seven (7) days before hearing**.

If the Debtors elect 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 hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

The court notes the Trustee has filed a motion to dismiss scheduled for November 8, 2023, due to Debtor's failure to file tax returns.

2. [23-10907](#)-B-13 **IN RE: LAURA MIRANDA**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR
FIRST FRANKLIN MORTGAGE LOAN TRUST
5-30-2023 [\[14\]](#)

FIRST FRANKLIN MORTGAGE LOAN
TRUST/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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 court will issue
the order.

This objection was originally set for July 6, 2023. Doc. #28.

First Franklin Mortgage Loan Trust ("Creditor") objects to
confirmation of the *Amended Chapter 13 Plan* filed by Laura Elena
Miranda ("Debtor") on May 3, 2023. Doc. #14.

Creditor objects to confirmation for two reasons. First, Creditor
has a secured claim in the approximate amount of \$93,628.36, which
is secured by real property located at 963 Buna Lane, Bakersfield,
CA 93307 ("Property"). *Exs. A-C*, Doc. #16. The plan lists Creditor
as having a \$42,000 claim in Class 2(C) for claims reduced to \$0
based on the value of collateral. Creditor objected under 11 U.S.C.
§ 1322(b) (5) because the plan does not provide for the curing of the
full amount of arrears owed on Creditor's claim. Doc. #14.

Second, Creditor argues that the plan is not feasible as required by
11 U.S.C. § 1325(a) (6) because the plan provides for 36 monthly
payments of \$200.00 and Debtor's monthly net income is only \$200.46.
Id. If Debtor cures the arrearage owed to Creditor, there will be
insufficient funds to pay the cure amount plus the plan payment. *Id.*

In her response, Debtor originally averred that the plan does not
propose to pay Creditor \$42,000; instead, Creditor will be paid \$0
based on the value of the collateral and Creditor's claim will be
treated as a general unsecured claim. Doc. #23. In conjunction with
the response, Debtor filed a motion to value collateral that was
heard on August 9, 2023, but the court denied that motion without
prejudice for procedural reasons. Doc. ## 18, 36. Debtor has not
filed a new motion for valuation which is free from the procedural
errors that dogged the prior motion.

On August 9, 2023, after denying the motion for valuation, the court
continued this matter to October 4, 2023.

Sections 1.04 and 3.08(c) of the plan require separately filed and served motions to value collateral for claims classified in Class 2. Doc. #8. Although Debtor did file a motion to value collateral, the court denied that motion without prejudice and Debtor has not filed a new motion for valuation.

This matter will be called and proceed as scheduled to inquire about the parties' positions. The court intends to SUSTAIN the objection because Debtor has failed to properly value Creditor's collateral.

3. [19-11809](#)-B-13 **IN RE: CHRISTINE WOOD**
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
8-25-2023 [\[55\]](#)

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.

Patrick Kavanaugh ("Applicant"), counsel for Debtor in the above-styled Chapter 13 case ("Debtor"), comes before the court on Applicant's Final Application for Fees And Expenses Pursuant to 11 U.S.C. § 329 and § 330. Doc. #55. The Application requests attorney fees in the amount of \$1,687.79 and nothing in expenses, for a total application of \$1,687.70. *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 Final Application brought by this Applicant, and it covers services rendered from February 25, 2020, through the close of the case. Doc. #55. Included with the Application is a form statement signed by Debtor evincing her consent to this fee application. *Id.*

This Application also requests that the one previous fee applications granted on an interim basis be finalized. *Id.* This court previously granted a Motion for Compensation on June 5, 2020, granting \$4,712.70 in combined fees and expenses. #45.

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

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief

requested by the moving party, an actual hearing may be unnecessary in the absence of opposition. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Exhibits accompanying the Application include (A) a narrative summary, (B) a summary of costs and expenses by date, and (C) a summary of time by project. Doc. #57.

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

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,687.70 in attorney's fees and \$0.00 in expenses, for a total award of \$1,687.70. The Chapter 13 Trustee is authorized to pay the allowed fees and expenses as an administrative expense to the extent the plan provides sufficient funding to do so.

4. [20-12215](#)-B-13 **IN RE: JONATHAN/CHRISTINA CURTIS**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
8-24-2023 [\[69\]](#)

MICHAEL MEYER/MV
RAJ WADHWANI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Jonathan William Curtis and Christina Renee Curtis

("Debtors") have cured the pre-petition default on their loan with Nationstar Mortgage LLC; (2) Trustee has paid all ongoing post-petition mortgage payments that came due between November 2020 and June 2023; (3) Debtors are current on their post-petition mortgage payment to Nationstar Mortgage LLC through August 2023; and (4) the post-petition fees outstanding should be reduced from \$829.80 to \$804.80. Doc. #69.

On September 20, 2023, Nationstar Mortgage ("Creditor") filed a Response noting that it had filed an Amended Response to Notice of Final Cure Payment under Rule 3002.1 and that its prior objections to the Notice had been cured. Doc. #74. No other party in interest timely filed written opposition. 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). 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 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.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim.

Rule 3002.1(g) provides that within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on January 21, 2022. Doc. ##87. Creditor did not provide Trustee with a Rule 3002.1(g) response. Since no response was filed, Trustee filed this motion. Doc. #93.

The record reflects that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through August 2023. The claim was originally filed by ServiceMac LLC on August 25, 2020. Claim 8-1. During the pendency of this case, the claim was transferred from ServiceMac LLC to Nationstar Mortgage LLC. Doc. #57. Trustee indicates that his office has paid a total of \$73,562.06 towards the ongoing mortgage payment, \$1,182.84 towards the pre-petition arrearage claim, and \$87.19 in late fees. Doc. #69.

Other than NationStar, no party in interest timely filed written opposition, and the NationStar response indicates that its objections to the Notice of Final Cure Payment have been resolved. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtors have cured the default and are current on mortgage payments through August 2023.

5. [22-10130](#)-B-13 **IN RE: DOMONIC GUERRERO**
[WSL-2](#)

MOTION TO MODIFY PLAN
8-9-2023 [\[36\]](#)

DOMONIC GUERRERO/MV
RAJ WADHWANI/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.

Domonic Guerrero ("Debtor") moves for an order confirming his *First Amended Chapter 13 Plan*. Doc. #36. No objection has been filed. This motion will be GRANTED.

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 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 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).

Here, the 44-month, 100%-dividend plan proposes that Debtor's monthly payment shall increase to \$471.00 per month beginning in month 20 of the plan. Doc. #40. The Debtor's Declaration avers that this increase is necessary to cure a deficiency in plan payments

which has arisen due to various unexpected expenses related to a recent move. Doc. #38. Debtor has also filed an amended Schedule I&J which confirms the feasibility of the proposed amended plan. Doc. #34. Except for the increase described in this paragraph, the terms of the plan are otherwise unchanged from the original confirmed plan.

This motion is 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.

6. [23-11439](#)-B-13 **IN RE: FELIX/IRENE MONTIEL**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-13-2023 [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 8, 2023, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Felix and Irene Montiel ("Debtors") on July 4, 2023, under 11 U.S.C. § 1325(a)(9) because Debtor has not paid all applicable taxes. Doc. #13. Trustee avers that the Class 1 prepetition arrears dividend must increase to \$392.25 per month and the overall plan payment must increase to \$1,721.36 per month beginning in month 9 in order for the plan to complete within 60 months. *Id.* Trustee further alleges that the plan fails to satisfy the liquidation test because Debtors have approximately \$4,500.00 in non-exempt equity in a vehicle and will also receive a \$5,254.00 tax refund from their 2022 federal tax return. Finally, Trustee asserts that Debtors are delinquent \$1,719.00 in plan payments through August 2023.

Even though no written response was required, the Debtor filed a response on September 27, 2023, which purported to address some (but not all) of the Trustee's objections to confirmation by amending Schedules A/B and C to increase the exemption on the vehicle to \$5000.00 and to disclose and exempt Debtor's 2022 tax refund. Doc. #16. The response does not address the other issues raised in Trustee's objection.

This objection will be CONTINUED to November 8, 2023, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to all grounds for the objection not later than **fourteen (14) days before hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or

undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **seven (7) days before hearing**.

If the Debtors elect 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 hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

7. [23-11573](#)-B-13 **IN RE: JASON/JULIE MUNIZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
9-11-2023 [\[28\]](#)

GREGORY SHANFELD/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 8, 2023, at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Jason and Julie Muniz ("Debtors") on July 21, 2023, under 11 U.S.C. § 1325(a)(9) because multiple errors are found in Debtors' Form 122C Means Test. Doc. #28.

This objection will be CONTINUED to November 8, 2023, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **fourteen (14) days before hearing**. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by **seven (7) days before hearing**.

If the Debtors elect 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 hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

8. [23-11573](#)-B-13 **IN RE: JASON/JULIE MUNIZ**
[SCF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PLANET HOME LENDING,
LLC
9-12-2023 [\[31\]](#)

PLANET HOME LENDING, LLC/MV
GREGORY SHANFELD/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION: Continued to November 8, 2023, at 9:00 a.m.

ORDER: The court will issue an order.

Creditor Planet Home Lending, LLC ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Jason and Julie Muniz ("Debtors") on July 21, 2023, under 11 U.S.C. § 1325. Doc. #31. Specifically, Creditor objects because the Plan does not properly provide for payment of the arrearage owed by Debtors to Creditor on the debt which is secured by Debtors' home. *Id.* Under the proposed Plan, the creditor's proof of claim controls the amount of the claim subject to an appropriate objection.

Creditors claim shows an arrearage of \$5004.32. Debtors classify the claim in class four-direct payment. But that class is unavailable to loans in default. Hence, Debtors will need to either object to the claim or file a modified Plan.

This objection will be CONTINUED to November 8, 2023, at 9:00 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Creditor's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than **fourteen (14) days before hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Creditor shall file and serve a reply, if any, by **seven (7) days before hearing**.

If the Debtors elect 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 hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

9. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[MHM-3](#)

MOTION TO DISMISS CASE
8-15-2023 [\[121\]](#)

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

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Continued to October 25, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to October 25, 2023, at 9:30 a.m., to be heard in connection with the Debtor's motion to confirm/modify plan. See, Docs. ##125-131; RSW-5.

10. [18-11987](#)-B-13 **IN RE: HECTOR CHAVEZ**
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
8-23-2023 [\[112\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
WITHDRAWN

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Michael H. Meyer ("Trustee") withdrew this Motion to Determine Final Cure and Mortgage Payment under Rule 3002.1 on September 20, 2023. Doc. #119. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

11. [23-11974](#)-B-13 **IN RE: SALLY REYES**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-25-2023 [\[15\]](#)

SALLY REYES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
OST 9/25/23

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.

Sally Reyes ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #15.

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. Furthermore, the motion was accompanied by a Motion/Application to Shorten Time (which this court has granted). Doc.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtors had one case pending within the preceding one-year period that was dismissed: Case No. 19-13329 in the Eastern District of California. That case was filed on August 29, 2019, and was dismissed on June 22, 2023, for failure to make all payments due under the confirmed chapter 13 plan. Doc. #1, 19. See also Case No. 19-13329, Doc. #101. The instant case was filed on September 4, 2023. Doc. #1. The automatic stay will expire on October 4, 2023.

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

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

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than one previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to perform the terms of a confirmed plan. § 362(c)(3)(C)(i)(I), (c)(3)(C)(i)(II)(cc). . . .

Debtor declares that the previous case was dismissed because of unexpected financial difficulties in paying for medications for her daughter's cancer treatment. Doc. #19. She avers that her son, who lives with her and will be assisting with plan payments, has improved his financial circumstances and that changes to insurance coverage for Debtor's family will make her daughter's medication more affordable. *Id.* The Amended Schedule I&J filed by Debtor seem to support Debtor's claims of feasibility, though barely. Debtor further declares that she is proposing a plan with a 0% dividend to unsecured creditors. *Id.*

The *Chapter 13 Plan* dated September 4, 2023, provides for 60 monthly payments of \$2,160.58 with a 0% dividend to unsecured claims. Doc. #3. Debtor's *Schedules I and J* indicate that Debtor receives \$2,160.58 in monthly net income, which is barely sufficient for Debtor to afford the proposed plan payment. Doc. #3.

For comparison, Debtor was receiving \$3,285.13 in monthly net income in the previous case, but the plan payment called for \$2,169.00 a month for 60 months, so Debtor's financial condition seems to have materially worsened since the last case was filed. See, Bankr. Case No. 19-13329, Doc. ##10, 11.

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

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

That said, while the court will grant this motion, it only does so because it has chosen to exercise its discretion and grant Debtor's Motion to Shorten Time, without which it would be impossible to hear this matter within the thirty-day time limit imposed by § 362(c) (3) (A). However, the court notes that Debtor's prior bankruptcy proceeding was listed in the petition itself on page 3, line 9. Doc. #1. And yet, while the petition was filed on September 4, 2023, the instant motion, and the accompanying motion to shorten time were not filed until September 25, 2023, twenty-one days after filing and only nine days before the expiration of the 30-day deadline. In his Declaration, Debtor's counsel attributes the delay to attorney error, stating that he "miscalculated the date for the appointment to have [Debtor] sign the declaration to extend the automatic stay" and that he was unable to have her sign the declaration until there were less than 14 days remaining before expiration of the 30-day deadline. Doc. #17. While the court accepts that explanation, it begs the question of why there was any delay at all in preparing the moving papers including Debtor's Declaration for the instant motion when the prior bankruptcy case was disclosed on the date of filing.

Also, though not necessarily important for this matter, the Debtor's reliance on family contributions may be problematic at plan confirmation absent a strong showing with admissible evidence.

10:00 AM

1. [23-12016](#)-B-7 **IN RE: ANNA SOLIS**
[JSP-1](#)

MOTION TO COMPEL ABANDONMENT
9-17-2023 [\[15\]](#)

ANNA SOLIS/MV
JOSEPH PEARL/ATTY. FOR DBT.

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

Disposition: Denied without prejudice.

Order: The Court will issue the order.

Debtor Anna Solis ("Debtor") asks to court to compel the Trustee to abandon her purported one-ninth (1/9) interest in real property subject to a pending probate proceeding. The property is described in the motion as 4112 Glenbrook Avenue, Bakersfield, California.

The court DENIES the motion without prejudice for failure to comply with LBR 7005-1.

For nearly one year, the court has required the use of a mandatory Certificate of Service form under LBR 7005-1. Though the motion here did have a Certificate of Service filed with the motion, the Certificate of Service did not comply with the Local Bankruptcy Rule.

Accordingly, the motion will be DENIED without prejudice.

If Debtor elects to file another motion with the proper Certificate of Service form, the court reminds counsel that a new docket control number needs to be used.

2. [23-11559](#)-B-7 **IN RE: PREMIER LABOR CONTRACTING, INC.**
[JMV-2](#)

MOTION TO SELL
9-6-2023 [\[28\]](#)

JEFFREY VETTER/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 after hearing.

Chapter 7 trustee Jeffrey Vetter ("Trustee") seeks authorization to sell the estate's interest in certain personal property assets, including: (1) a 2013 Ford F-350 Supercrew Cab Truck, (2) a field trailer, (3) a Massey Ferguson Model 2605 Tractor, (4) multiple portable toilets, and (5) an ice machine (collectively "the Assets"). Doc. #28. Per the Schedules filed by Debtor Premier Labor Contracting, Inc. ("Debtor"), the Assets have a combined value of \$28,410.00. Doc. #21. The Motion avers that "[t]he 14 day stay or order imposed by Federal Rules of Bankruptcy Procedure 6004(H) [be]is waived and not applicable to this order." Doc. #28.

Trustee proposes to sell the Assets at auction on December 16, 2023, at 9:00 a.m, at 6100 Price Way, Bakersfield, CA 93308. Trustee has contracted with Jerry Gould of Gould Auction and Appraisal Company ("Auctioneer") to advertise, manage, and conduct the auction. Doc. #28. Under the terms of the proposed agreement between Trustee and Auctioneer, the latter is to be paid a 15% commission on the gross proceeds of the sale of the Assets, plus a 10% buyer's premium to be paid by the buyer. *Id.* Any buyer who purchases an Asset through the online service Proxibid will pay an additional 3% fee paid directly to Proxibid. *Id.* Finally, Auctioneer will receive \$500.00 in expense reimbursement for picking up and storing the Assets, as well as "extraordinary expense" (except that court approval is required for payment of any extraordinary expenses exceeding \$300.00. *Id.*

The court has previously approved Trustee's Application to Employ Auctioneer under the terms outlined above in an order dated September 15, 2023. Doc. #32. Thus, the only issue presently before the court is the motion to sell the Assets. No party in interest timely filed written opposition. 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).

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, the Assets are listed individually in Schedule B and are collectively valued by Debtor at \$28,410.00. Doc. #21 (*Amend. Sch A/B*). None of the Assets appear to be encumbered. Debtor is a corporation, and so exemptions are not an issue.

If Trustee sells Vehicle at public auction at the scheduled sale price under § 363(b), then the proposed sale would be illustrated as follows:

Sale price	\$28,410.00
Auctioneer fees (15%)	- \$4,261.50
Estimated expenses (≤ \$500)	- \$500.00
Estimated net proceeds (≥)	= \$23,648.50

Trustee assets that using the auction process to sell the Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #28. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest has responded to the instant motion, and the defaults of all interested parties will be entered. In the absence of opposition, this motion will be GRANTED. Trustee will be permitted to sell the Assets at public auction and, if the sale is completed, compensate Auctioneer under the terms outlined above.

3. [23-11577](#)-B-7 **IN RE: ROSAURA POMPA**
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-22-2023 [\[12\]](#)

BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHAD BUTLER/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.

Bank of America, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Toyota Rava4 ("Vehicle"). Doc. #12.

Rosaura Ayon Pompa ("Debtor") did not file opposition. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. No other party in interest timely filed written opposition. This motion will be GRANTED.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least seven complete pre-petition payments. The Movant has produced evidence that Debtor is delinquent at least \$5,756.52. Doc. #14.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$32,200.00 and Debtor owes \$46,026.52. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d) (1) and (d) (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

4. [23-10884](#)-B-7 **IN RE: LANCE KELSEY**

NOTICE OF HEARING AND OPPOSITION RE: TRUSTEE'S MOTION TO
DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF
CREDITORS
8-25-2023 [\[56\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors. Doc. #56. The docket reflects that the meeting of creditors was originally scheduled for June 11, 2023, and the Trustee reported that Debtor did not attend and that the meeting was continued to August 18, 2023. Doc. #40. Trustee subsequently reported that Debtor did not attend that meeting either, and Trustee filed the instant motion. Doc. #45, 57.

Lance Kelsey ("Debtor") timely filed written opposition, after a fashion. Doc. #63. However, in the court's view, that response was at best non-responsive to the Motion to Dismiss and at worst incomprehensible. *Id.* Nevertheless, the court acknowledges that Debtor filed this opposition *pro se* and is therefore held to less stringent standards. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted). However, "*pro se* litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986). "Thus, before dismissing a *pro se* complaint, the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986).

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for October 6, 2023, at 11:00 a.m. See Doc. #56. 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 in Fed. R. Bankr. P. 1017(e)(1) and 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.

11:30 AM

1. [23-11303](#)-B-7 **IN RE: JOHN/VENNESSA MARTINEZ**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES,
INC. DBA GM FINANCIAL
8-31-2023 [[17](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING

2. [23-11135](#)-B-7 **IN RE: TIFFANY COOKS**

AMENDED PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN
FINANCIAL GROUP, LLC
8-18-2023 [[15](#)]

R. BELL/ATTY. FOR DBT.

NO RULING