



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

Hearing Date: Wednesday, October 23, 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/CourtAppearances>. 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. [24-12413](#)-B-13 **IN RE: ROYCE DUNCAN**
[EAM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DPS FINANCE COMPANY
9-27-2024 [\[26\]](#)

DPS FINANCE COMPANY/MV
ERIC MITNICK/ATTY. FOR MV.

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

DISPOSITION: Continued to November 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Creditor DPS Finance Company ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed Royce Duncan ("Debtor") on August 20, 2024, on the following basis:

1. Debtor's prior case was dismissed on August 12, 2024, for failure to timely file documents. He filed the instant case on August 20, 2024. Debtor did not appear at the 341 meeting scheduled on September 24, 2024. Debtor has not filed a motion to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3), and the 30-day window to do so has expired.
2. Creditor's secured claim is over secured, and so it continues to accrue interest, costs and attorneys' fees post-petition which are not addressed in the plan. 11 U.S.C. § 506(b).
3. Creditor's Note will mature on May 1, 2026. Therefore, Debtor must pay the entire secured claim of Creditor, \$195,977.00, plus post-petition attorneys' fees and costs over the 5-year term of the plan. The plan fails to do so.
4. The plan is not feasible because if the full amount owed to Creditor is to be paid over the life of the plan, Creditor estimates that the monthly payment should be in excess of \$4,163.97. However, the plan proposes to pay only \$225.78 per month, and his Schedule I & J indicate that his net monthly income is only \$274.33.
5. The plan has too many uncurable deficiencies and was not filed in good faith.
6. The case is presumptively not filed in good faith.

Doc. #26.

This objection will be CONTINUED to **November 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and

serve a written response to the Objection not later than **14 days before the 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. Any reply shall be served no later than **7 days before the 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 **7 days before the 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.

2. [24-12413](#)-B-13 **IN RE: ROYCE DUNCAN**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
9-26-2024 [\[19\]](#)

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

DISPOSITION: Continued to November 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed Royce Duncan ("Debtor") on August 20, 2024, on the following basis:

The Trustee has not yet concluded the Meeting of the Creditors as Debtor failed to appear at the Initial 341 Meeting of Creditors on September 24, 2024. Debtor has also failed to provide any of the required documents to the Trustee, including, but not limited to his 2023 tax returns, proof of income and identity verification. The continued meeting will be held on October 8, 2024. Debtor is required to appear and submit to an examination under oath. [11 U.S.C. § 343]. The Trustee may have further objections to the plan, based on the testimony of Debtor at the continued Meeting of the Creditors. This case is not ready to be confirmed. The Trustee will supplement this objection when the Trustee becomes aware of further issues regarding confirmation as is required by Congress under 11 U.S.C. § 1302(b)(2)(B).

Doc. #19. The docket reflects that on October 8, 2024, the Debtor appeared at the continued 341 hearing, but it was adjourned without conclusion, and the meeting of creditors was continued to November 12, 2024, at 10:00 a.m. *Docket generally.*

This objection will be CONTINUED to **November 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the 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. Any reply shall be served no later than **7 days before the 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 **7 days before the 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.

3. [18-14914](#)-B-13 **IN RE: MARIA AVILA**
[LGT-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
9-19-2024 [[97](#)]

LILIAN TSANG/MV
NIMA VOKSHORI/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Lilian G. Tsang ("Trustee") moves for an order determining: (1) that Maria Avila ("Debtor") has cured the default with respect to the promissory note dated April 12, 2007, secured by a deed of trust on real property located at 5149 San Joaquin, Visalia, CA 93277 ("Property") in favor of Wilmington Savings Funds Society c/o Selene Finance, LP ("Selene Finance"); and (2) all post-petition payments due and owing as of January 2019 through December 2023 have been paid. Doc. #97.

This case was filed on December 11, 2018. Doc. #1. The 60-month plan was filed December 18, 2018. Doc. #14.

Trustee filed a *Notice of Final Cure Payment* on August 16, 2024, which indicated that Debtor's prepetition arrearage had been paid through the Plan in the total amount of \$21,085.30. Doc. #92. The *Notice*

further stated that "Mortgage is paid through the trustee" and "The next post-petition payment is due on 01/01/2024." *Id.*

On August 29, 2024, Selene Finance filed a *Response to Notice of Final Cure* agreeing that Debtor has cured the prepetition default but stating that Debtor was not current on all post-petition payments consistent with § 1322(b)(5); that the total post-petition ongoing payments due amounted to \$14,610.29, minus \$830.97 in suspense, for a final deficiency of \$13,779.32; and that debtors are contractually obligated for the post-petition payments that first became due on 12/17/2023. See *Docket Entry at 8/29/2024*.

On September 19, 2024, Trustee filed the instant motion. Doc. 97.

On October 9, 2024, Selene Finance filed a response again agreeing that the arrearage had been cured. Doc. #106. However, Selene Finance argues that because the case was filed on December 11, 2018, the Plan was filed on December 18, 2018 with Trustee mortgage payments to commence in January 2019, and mortgage payments were due on the 17th of each month, Debtor was obligated to pay directly the December 2018 payment which became due between the filing of the petition and the commencement of Trustee mortgage payments, and she failed to do so. *Id.* Perhaps more significantly, Selene Finance also asserts that Debtor has made no payments on the mortgage since the completion of Trustee post-petition payments in December 2023. *Id.*

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.

No party in interest other than Selene Financial has responded, and the defaults of all non-responding parties are entered. Nevertheless, because Selene Financing has responded, this matter will proceed so that the court may hear any additional arguments from Selene Financial and Trustee.

The court notes that Selene Financial filed its Response and its Certificate of Service as part of a single document. LBR 9004-2(c)(1)

requires that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents. In light of the posture of this contested matter, the court will forgive the procedural error.

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 claim was originally filed by Selene Finance on February 19, 2023. POC #3-1. The mortgage holder as of the petition date was DLJ Mortgage Capital, Inc., which transferred the claim to Selene Finance on or about December 17, 2019. Doc. #41.

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through December 2023 except for the one payment which became due after the petition date but before the commencement of Trustee disbursements.

Trustee indicates that her office has paid a total of \$70,997.70 towards the ongoing mortgage payment and \$21,085.30 towards the pre-petition arrearage claim and that Trustee has paid all ongoing mortgage payments that came due between January 2019 and December 2023 as required by the Plan. Doc. #97. Selene Finance appears to concede all of this. Doc. #106. Its objection appears to be that the *Notice* is inaccurate because it does not address the issue of those payments which should have been paid by Debtor rather than Trustee, but which were not.

It is clear to the court that the Trustee made all pre-petition arrearage payments required of her under the Plan. The Trustee made

all post-petition mortgage payments to the creditor that came due between January 17, 2019, and December 17, 2023. It appears that the Debtor was and is responsible for the December 17, 2018, payment since it was due during the first month of the case and for all later payments that came due after December 17, 2023, when plan payments and Trustee distributions were completed.

Accordingly, the Trustee's motion is GRANTED. The court finds that the Debtor has cured the prepetition arrearage and is current on all mortgage payments which came due between January 17, 2019, and December 17, 2023. This order does not address the December 17, 2018, payment or mortgage payments which came due after December 17, 2023, as those matters are not before the court in the context of this motion.

4. [24-12315](#)-B-13 **IN RE: KATHERINE SCONIERS STANPHILL**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-26-2024 [[21](#)]

LILIAN TSANG/MV
DISMISSED 10/10/24

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

DISPOSITION: Overruled as moot.

No order is required.

On October 10, 2024, this case was dismissed for failure to pay fees. Doc. #26. Accordingly, this Objection will be OVERRULED AS MOOT.

5. [24-12317](#)-B-13 **IN RE: KHALID CHAOU**
[JM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LENDMARK FINANCIAL SERVICES, LLC
9-9-2024 [\[21\]](#)

LENDMARK FINANCIAL SERVICES, LLC/MV
JAMES MACLEOD/ATTY. FOR MV.

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

DISPOSITION: Continued to November 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Creditor Lendmark Financial Services ("Lendmark") objects to confirmation of the *Chapter 13 Plan* filed Khalid Chaoui ("Debtor") on August 26, 2024, on the following basis:

1. The Plan fails to provide for the curing of a default and maintenance payments on secured claims in which the final payment owed to Lendmark is due after the proposed final payment of the plan.

Doc. #21.

This objection will be CONTINUED to **November 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the 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. Any reply shall be served no later than **7 days before the hearing**.

6. [24-12317](#)-B-13 **IN RE: KHALID CHAOU**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-27-2024 [\[31\]](#)

LILIAN TSANG/MV

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

DISPOSITION: Continued to November 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed Khalid Chaoui ("Debtor") on August 26, 2024, on the following basis:

The Trustee has not yet concluded the Meeting of the Creditors as Debtor failed to appear at the Initial 341 Meeting of Creditors on September 24, 2024. Debtor has also failed to provide valid photo identification, copies of Debtor's Social Security card, 2023 income tax returns and payment advices by September 17, 2024/ The continued meeting will be held on October 8, 2024. Debtor is required to appear and submit to an examination under oath. [11 U.S.C. § 343]. The Trustee may have further objections to the plan, based on the testimony of Debtor at the continued Meeting of the Creditors. This case is not ready to be confirmed. The Trustee will supplement this objection when the Trustee becomes aware of further issues regarding confirmation as is required by Congress under 11 U.S.C. § 1302(b) (2) (B).

Doc. #19. The docket reflects that on October 8, 2024, the Debtor did not appear at the continued 341 hearing, and it was continued to October 28, 2024, at 3:00 p.m. *Docket generally.*

This objection will be CONTINUED to **November 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the 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. Any reply shall be served no later than **7 days before the hearing**.

7. [24-11341](#)-B-13 **IN RE: JOHN/CARLA ZAYAC**
[JDR-1](#)

MOTION TO INCUR DEBT
10-8-2024 [\[20\]](#)

CARLA ZAYAC/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

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, neither the original nor the amended notices contain the required language directing respondents to the pre-hearing dispositions on the court's website, or that parties appearing telephonically are required to view the pre-hearing dispositions prior to appearing at the hearing. Doc. #21.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

8. [21-10061](#)-B-13 **IN RE: JACINTO/KAREN FRONTERAS**
[GEG-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GATES LAW
GROUP, APC FOR GLEN E. GATES, DEBTORS ATTORNEY(S)
8-26-2024 [\[242\]](#)

GLEN GATES/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.

Glen E. Gates ("Gates") of the Law Office of Gates Law Group, APC ("Applicant"), attorney for Jacinto and Karen Fronteras ("Debtors"), requests final compensation in the sum of **\$20,053.75** under 11 U.S.C. § 330. Doc. #242. This amount consists of **\$19,726.00** in fees and **\$327.75** in expenses from November 19, 2020, through July 31, 2024. *Id.* This is Applicant's first and final fee application. *Id.*

Debtors executed a statement of consent dated August 21, 2024, indicating that Debtors have read the fee application and approve the same. *Id.* § 9(7). Debtors further executed an approval that same day acknowledging that the fees reserved in the plan are insufficient to cover the fees sought, and that any fees approved by this court but not paid through the plan will be nondischargeable and will be paid post-discharge. Doc. #244 (*Exhib. F*).

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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.

Section 3.05 of the *Third Modified Chapter 13 Plan* dated February 21, 2024, confirmed April 24, 2024, indicates that Applicant was paid \$2,500.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #211, #218.

Gates was the only employee of Applicant to work on this case. Doc. #244 (*Exhib B*). He billed at \$395.00 per hour except for one entry on 11/19/20 for 2.60 hours at \$375.00 per hour. In total, he billed for **56.40** hours of work for a total of \$22,226.00 in fees. *Id.* After application of the \$2,500.00 retainer, Applicant seeks **\$19,726.00** in fees through this Application. *Id.*

Applicant also incurred (excluding the Debtors' direct payment of the \$338.00 filing fee), **\$327.76** in expenses as follows:

CourtCall	\$22.50
Amended Schedule filing fee	\$32.00
CourtCall	\$22.50
CourtCall	\$22.50
Motion to Sell Real Property filing fee	\$188.00
CourtCall	\$27.75
Filing Fee	\$12.50
Total	\$327.75

Doc. #244 (*Exhib. D*). These combined fees and expenses total **\$20,053.75**.

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

Applicant's services here included, without limitation: prepetition consultation and fact gathering; independent verification of information; amendments to petitions and/or schedules; 341 preparation and attendance; drafting, motions and objections for the first, second and third amended plans; claim administration and objections; relief from stay proceedings; motions; fee applications; and case administration Doc. #244 (*Exhib. C*). The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees, including those to be paid directly and outside the plan post-discharge. *Id.* § 9(7); Doc. #244 (*Exhib. F*).

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$19,726.00** in fees as reasonable compensation for services rendered and **\$327.76** in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. The total compensation award is **\$20,053.75.00**. Of that, the chapter 13 trustee will be authorized to pay Applicant through the confirmed plan for services and expenses from November 19, 2020, through July 31, 2024. The remaining balance of **\$8,053.75** will be paid directly by the Debtors post-petition and shall be non-dischargeable in accordance with the Employment Agreement between Applicant and Debtors.

9. [24-10161](#)-B-13 **IN RE: ERNESTO/ASHLEY ARELLANO**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
9-16-2024 [\[48\]](#)

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, Attorney at Law ("Applicant"), attorney for Ernesto and Ashley Arellano ("Debtors"), requests interim compensation in the sum of **\$9,986.26** under 11 U.S.C. § 330 and 331. Doc. #48. This amount consists of **\$9,588.00** in fees and **\$398.26** in expenses from March 3, 2023, through September 6, 2024. *Id.* This is Applicant's first fee application. *Id.*

Debtors executed a statement of consent dated August 21, 2024, indicating that Debtors have read the fee application and approve the same. *Id.* § 9(7)

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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.

Section 3.05 of the *Third Modified Chapter 13 Plan* dated January 24, 2024, confirmed July 5, 2024, indicates that Applicant was paid \$1,584.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #3, #42.

Applicant's firm provided **41.44** billable hours at the following rates, totaling **\$9,588.00** in fees:

Professional	Rate	Billed	Total
Scott Lyons	\$400.00	0.31	\$124.00
Louis Lyons	\$350.00	20.06	\$6,303.50
Sylvia Gutierrez, LS	\$150.00	17.85	\$2,677.50
Courtney Giesbrecht-Lyons, LS	\$150.00	3.22	\$483.00
Total		41.44	\$9,588.00

Doc. #50 (*Exhib. B*). Applicant also incurred **\$398.26** expenses as follows:

Postage, Reproduction & Stationery	\$11.26
Filing Fees	\$313.00
Other: Credit Reports, CourtCall fee	\$74.00
Total	\$398.26

Id. These combined fees and expenses total **\$9,986.26**. After deducting the prepetition retainer, filing fees, and credit report fees paid by Debtors prepetition, Applicant seeks a total of **\$8,099.26**. *Id.* (*Exhib. A*).

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

Applicant's services here included, without limitation: prepetition consultation and fact gathering; preparation of voluntary petition,

Schedules, and Form 22-C; independent verification of information; amendments to petitions and/or schedules; original plan, hearings, objections; 341 preparation and attendance; drafting, motions and objections for the first amended plan; motions; case administration; and "Other/Communication-Correspondence." Doc. #48. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. *Id.* § 9(7).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$9,588.00** in fees as reasonable compensation for services rendered and **\$398.26** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. § 330, for a total award of **\$9,986.26**, subject to final review pursuant to § 330. After application of the prepetition retainer and fees paid by Debtors, the remaining award is **\$8,099.26**. The chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant **\$8,099.26** for services rendered and costs incurred between March 3, 2023, through September 6, 2024.

10. [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.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard 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:

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 raised grounds not a part of the original Objection, the court continued this matter to October 23, 2024, to give Debtors an opportunity to respond. Doc. #29. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

11. [24-11964](#)-B-13 **IN RE: AMANDA QUIZ**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
8-27-2024 [\[16\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN 10/9/24

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

DISPOSITION: Withdrawn.

No order is required.

On October 9, 2024, the Trustee withdrew this Objection to Confirmation. Doc. #32. Accordingly, this Objection is WITHDRAWN.

12. [24-12078](#)-B-13 **IN RE: ROBERT FLORES**
[LGT-1](#)

MOTION TO DISMISS CASE
10-7-2024 [\[19\]](#)

LILIAN TSANG/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

This matter was noticed pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondent's default and grant the motion. 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). The court will issue an order if a further hearing is necessary.

The chapter 13 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 and 11 U.S.C. § 1307(c)(4) for failure to make payments due under the plan. Doc. #19.

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).

Here, the Debtor failed to:

- Appear and testify at the initial 341 Meeting of Creditors on September 3, 2024;
- Provide required documentation to the trustee; and
- Debtor has failed to make payments due under the plan and is delinquent in the amount of \$1,636.64.

Doc. #21.

Unless this motion is adequately opposed at the hearing, or withdrawn, the motion will be GRANTED, and the case dismissed.

13. [23-12481](#)-B-13 **IN RE: CAROL DEYON**
[NES-2](#)

MOTION TO MODIFY PLAN
8-23-2024 [\[36\]](#)

CAROL DEYON/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Carol Deyon ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated August 27, 2024. Doc. #40. Debtor's current plan was confirmed on December 22, 2023. Doc. #13. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the modified plan for the following reason(s):

1. Debtor will not be able to make all payments under the plan and comply with the plan. The proposed monthly plan payment is \$1,675.00 for months 13 and then \$4,205.00 per month for months 10-60, but month 9 was August 2024. Debtor is delinquent \$1,750.00. A total of \$15,075.00 has be paid through and including August 2024, of which Debtor has only paid \$13,325.00, with additional plan payment accruing.'

2. Debtor has failed to file an Amended Schedule I&J to account for the loss of \$1,280.00 in "Family Support" income scheduled to terminate in June 2024, without which the plan is not feasible.
3. The modified plan proposes to reclassify Essex Mortgage from Class 4 to Class 2 but fails to give a start date for the ongoing or prepetition arrears payments. Without a start date, payments are presumed to begin at month 1, resulting in substantial delinquencies for both claims.

Doc. #41.

This motion to confirm plan will be CONTINUED to **November 20, 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 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 be filed 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.

14. [24-10581](#)-B-13 **IN RE: JULIO CABALLEROS ROMAN**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2024 [\[38\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
RYAN WOOD/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2022 Toyota Highlander, (V.I.N. 5TDFARAH6NS016286) ("Vehicle"). Doc. #38.

Julio Caballeros Roman ("Debtor") did not file opposition and the Vehicle was surrendered to the Movant on July 29, 2024. Debtor's Second Amended Chapter 13 Plan indicated that the Vehicle would be surrendered. Doc. #56.

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 amount 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.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed one post-petition payment in the amount of \$782.08. Docs. #40, #42. Additionally, Movant recovered possession of the Vehicle pre-petition on July 29, 2024. *Id.* Since the Vehicle has been recovered, the only issue is disposition of the collateral.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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.

15. [24-11589](#)-B-13 **IN RE: LINA SHIRLEY**
[LGT-1](#)

MOTION TO DISMISS CASE
9-30-2024 [\[38\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Lillian G. Tsang ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for failure to make all payments due under the plan. Doc. #38. Debtor is delinquent in the amount of \$13,360.43. *Id.* Lina Shirley ("Debtor") did not oppose.

Written opposition was not required and may be presented at the hearing. This matter will be called and proceed as scheduled.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014 1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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). The court will issue an order if a further hearing is necessary.

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 debtor that is prejudicial to creditors because Debtor has failed to make all payments due under the plan. Trustee indicates that Debtor is delinquent in the amount of \$13,360.43 as of September 30, 2024. Doc. #38. Before this hearing, two more payment in the amount of \$890.00 will also become due on June 25 and July 25, 2023. *Id.*

In addition, Trustee has reviewed the schedules and determined that Debtor's assets are over encumbered and are of no benefit to the

estate. Doc. #38. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, best serves the interests of creditors and the estate.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and GRANT the motion to dismiss. 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). The court will issue an order if a further hearing is necessary.

16. [24-11589](#)-B-13 **IN RE: LINA SHIRLEY**
[TCS-1](#)

CONTINUED MOTION TO CONFIRM PLAN
9-4-2024 [\[20\]](#)

LINA SHIRLEY/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or denied as moot.

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

Lina Shirley ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated September 4, 2024. Docs. #20, #25. No plan has been confirmed so far. The 60-month plan proposes the following terms:

1. Debtor's payments will be \$4,407.00 per month for months 1-2 and \$4,546.43 for months 3-60.
2. Outstanding Attorney's fees in the amount of \$8,293.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
 - a. ShellPoint Mortgage (Class 1, Mortgage). \$54,242.65 in arrears to be paid at 0.00%. Arrearage Dividend is \$1,390.84. Monthly post-petition payment is \$2,363.32.
 - b. GM Financial (Class 2A, 2014 Ford F-150, PMSI). \$6,716.51 at 8.00% to be paid at \$303.77 per month, beginning in month 3.
4. A dividend of 100% to unsecured creditors.

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.

No party in interest has filed an opposition to this motion, and the defaults of all nonresponding parties are entered.

Nevertheless, this matter will proceed as scheduled because the Trustee has filed a *Motion to Dismiss* in this case which is set for hearing on the same day as the instant motion. See *Item #15, above*. If the Motion to Dismiss is granted, this motion will be DENIED AS MOOT. If the Motion to Dismiss with either withdrawn prior to the hearing date or denied, this motion will be GRANTED, and the confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

17. [24-12497](#)-B-13 **IN RE: JEFFREY HEDRICK**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-26-2024 [\[17\]](#)

LILIAN TSANG/MV
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 20, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Jeffrey Hedrick ("Debtor") on August 27, 2024, on the following basis:

1. The plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors under the plan. Debtor's Schedule I reflects a \$250.00 per month payroll deduction for voluntary contributions to a retirement plan. Schedule I also reflects tax and Social Security withholdings of \$1,542.08, but Debtor's pay

advices reflect an average of \$1,182.43 per month for the first six months of 2024.

Doc. #19. The docket reflects that on October 8, 2024, the Debtor did not appear at the continued 341 hearing, and it was continued to October 28, 2024, at 3:00 p.m. *Docket generally.*

This objection will be CONTINUED to **November 20, 2024, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the 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. Any reply shall be served no later than **7 days before the hearing.**

11:00 AM

1. [24-11702](#)-B-7 **IN RE: AL HAYTHAM DOSOUQI**
[24-1026](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-20-2024 [[1](#)]

DOSOUQI V. MOHELA

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

DISPOSITION: Status Conference concluded and removed from
calendar.

ORDER: The court will issue an order.

On October 15, 2024, the clerk issued a new summons in this matter and set a new status conference date for December 11, 2024. Thus, this Status Conference will be concluded and removed from calendar.

2. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[24-1023](#)

MOTION TO EXTEND TIME TO RESPOND TO ADVERSARY COMPLAINT
9-12-2024 [[7](#)]

HOLDER V. AUGUSTAR LIFE ASSURANCE CORPORATION
REBEKKA MARTORANO/ATTY. FOR MV.

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

DISPOSITION: Concluded and removed from calendar

ORDER: The court will issue an order.

On September 16, 2024, the court granted Defendant's *Ex Parte* application for an extension of time to file a responsive pleading (Doc. #15). So, the need for this hearing is now moot and Defendant has filed responsive pleadings including a motion to withdraw the reference and a motion to dismiss the complaint.

The court needs to determine the status of the District Court's handling of the motion to withdraw the reference.

The court notes Defendant has filed pleadings without docket control numbers. The court suggests counsel carefully review LBR 9014-1 (c) and the other local rules that are applicable to filings in this

court. Failure to follow the rules may result in denial of the relief requested without prejudice.

3. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[24-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-14-2024 [[1](#)]

HOLDER V. AUGUSTAR LIFE ASSURANCE CORPORATION
ESTELA PINO/ATTY. FOR PL.

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

DISPOSITION: Continued to November 20, 2024, at 11:00 am.

ORDER: The court will issue the order.

For the reasons noted in matter #2 above, the court will continue the status conference to November 20, 2024. Plaintiff is to file and serve a status report on or before November 13, 2024.

4. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[24-1024](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-19-2024 [[1](#)]

HOLDER V. SILVA AUTO GROUP, INC. ET AL
RAMANDEEP MAHAL/ATTY. FOR PL.
SUMMONS REISSUED TO 12/11/24

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

DISPOSITION: Concluded and removed from calendar.

ORDER: The court will issue an order.

The clerk reissued the summons in this adversary proceeding. The new date for the status conference is December 11, 2024, at 11:00 am. Thus, this status conference is no longer needed and will be removed from the calendar since a new status conference has been set with the reissued summons.

5. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[24-1025](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-19-2024 [[1](#)]

HOLDER V. STYLES ET AL
LISA HOLDER/ATTY. FOR PL.

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

DISPOSITION: Concluded and removed from calendar.

ORDER: The court will enter the order.

On October 15, 2024, the clerk issued a new summons in this matter. The new summons set the status conference for December 11, 2024. Accordingly, this status conference is not needed and is moot. This conference will be concluded and removed from calendar.

6. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[21-1039](#)

CONTINUED STATUS CONFERENCE RE: FIRST AMENDED COMPLAINT
10-27-2022 [[58](#)]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP V. SLOAN ET
KURT VOTE/ATTY. FOR PL.

NO RULING.

7. [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 on this matter.

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

ORDER: The court will issue the order.

On September 26, 2024, Plaintiff filed a motion for entry of default judgment. (Docs. ##22-30). The hearing on the motion is set for October 30, 2024, at 11:00 am.

Accordingly, this status conference will be continued to that date and time to be heard with the motion for entry of default judgment.

Motion for entry of default is pending.

8. [19-13631](#)-B-7 **IN RE: CHRISTINA RUELAS**
[24-1012](#)

MOTION TO AMEND ANSWER
9-25-2024 [\[16\]](#)

ROBERTS V. RUELAS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The court will issue the order.

Debtor Christine Marie Ruelas ("Ruelas" or "Debtor") asks the court for leave to file an amended answer in this adversary proceeding. Plaintiff Gregg Roberts ("Roberts" or "Plaintiff") opposes the granting of the motion.

Though Ruelas has been cavalier in following many procedural rules, the court is constrained by the applicable Federal Rules of Bankruptcy Procedure and controlling decisions stressing liberality in permitting pleading amendments. There being no prejudice explained by Roberts, the court will GRANT the motion.

I.

Roberts is the assignee of a claim previously asserted by Lisa Donahue (now Barlow) arising from disciplinary proceedings which began in 2014 conducted by the California Contractors' State Licensing Board ("CSLB"). The CSLB sought administrative revocation of Ruelas' contractor's license stemming from a home repair and remodeling contract between one of Ruelas' sole proprietorships, "Granite Depot," and Lisa Donahue.

In September 2016, Ruelas and CSLB settled the dispute which provided in part for revocation of Ruelas' license that would be suspended provided Ruelas performed certain actions. Among those was restitution to Lisa Donahue in the amount of \$11,486.00 with monthly payments for 30 months.

Evidently, Ruelas made no payments under the settlement and in November 2017 the CSLB entered an order by default revoking the license and providing for payment of restitution to Lisa Donahue in the sum of \$14,395.56.

On August 23, 2019, Ruelas filed a Chapter 7 bankruptcy case. It was a "no asset" case. Both the Master Address List and the schedules listed Lisa Donahue as a creditor whose address was 956 Hanover Avenue, Lemoore, California 93245. (Main Case Docs. #1, #4). Lisa Donahue was served with a notice of the filing of the bankruptcy case which stated that creditors had until November 22, 2019, to file a nondischargeability action. (Main Case. Doc. #7). Donahue was listed as a claimant with an undisputed, noncontingent, liquidated claim of \$20,800.00. (Main Case Doc. #1). Ruelas received her discharge November 27, 2019. (Main Case Doc. #5). The court takes judicial notice of these documents under Fed. R. Evid. 201.

II.

In April 2024, Lisa Donahue (now Barlow) assigned her claim to Roberts. Roberts moved to have the Ruelas Chapter 7 case reopened. This adversary proceeding was then filed.

In June 2024, Ruelas filed her initial answer which was a form general denial. She admitted that a sum was owed but denied the remaining allegations.

Following the first status conference, the court entered a scheduling order July 19, 2024. The scheduling order currently contains the current schedule for this litigation.

Roberts' complaint alleges the debt owed by Ruelas is nondischargeable because it is a debt for willful and malicious injury 11 U.S.C. § 523(a)(6) and for fraud under 11 U.S.C. § 523(a)(2)(A). The complaint alleges that Ruelas falsely presented to Donahue that she was licensed to do the full scope of work to be performed on Donahue's kitchen and bathroom remodel at Donahue's Lemoore property.

Specifically, the complaint alleges that Ruelas had no building permit; did not properly supervise the construction; failed to perform the construction properly and remediate any problems, and also failed to refund monies owed to Donahue. It is alleged that these acts and omissions were willful and malicious.

The complaint also alleges that Ruelas falsely entered into the settlement agreement without any intention of performing the agreement. The complaint alleges that Ruelas made no payments under the settlement agreement. It is alleged that Ruelas' actions were willful and malicious in connection with the settlement agreement.

Near the end of September 2024. Ruelas filed this motion. She filed the "amended answer" and attached a copy of the amended answer as an exhibit to the motion.

III.

A.

Under Fed. R. Civ. P. 15 (applicable to bankruptcy adversary proceedings by Fed. R. Bank. Proc. 7015) at this stage, Ruelas may amend her answer only with Roberts' written consent or the court's leave. Fed. R. Civ. P. 15(a)(2). Roberts specifically did not consent to the amendment but the court should "freely give leave [to amend] when justice so requires." *Id.* The grounds for refusing to permit an amendment are undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the opposing party, and futility of the proposed amendment. *Foman v. Davis*, 371 U.S. 178 (1962); *Roth v. Garcia-Marquez*, 942 F2d. 617, 628 (9th Cir. 1991). Ruelas here has waited three months after the filing of the original answer to file this motion. Though the delay is not fully explained, Ruelas does state that she has looked into the documentation concerning her bankruptcy case and believes that Roberts' predecessor did receive notice of the bankruptcy case. That is a critical gateway issue in this adversary proceeding. Though the issue may have been joined when Ruelas filed her original answer, the amended answer is far more specific responding to each allegation of the complaint and adding the affirmative defense of her discharge.

The issue of notice of the bankruptcy case is not new or novel in this adversary proceeding. Indeed, Roberts' complaint even alleges why his predecessor contends she did not receive notice.

Given the liberality in granting amendments absent some showing of prejudice or bad faith on the part of the party seeking to amend, the amendment appears to be appropriate. No party has asked and the court is not granting any modification of the scheduling order so the granting of the motion should not delay litigation in this matter.

B.

Roberts opposes the amendment and generally argues that the amendment is futile, untimely, prejudicial, unjustified, and non-compliant with many rules. Roberts' many attacks on the motion can be distilled into three general arguments. First, Roberts argues that the amendments are prejudicial and untimely because Ruelas failed to follow LBR 7015-1 by failing to either submit a redline copy of her amended answer or a table that specifies the location by citation of each addition or deletion. Roberts also asserts that the amended answer is nothing significantly different than the original answer, and if it is significant, Ruelas should have requested more time to file her original answer.

Ruelas's first answer was filed in June 2024 based on a form that is now 26 years old. Fed. R. Civ. P. 8(b)(3) (applicable to bankruptcy adversary proceedings by Fed. R. Bankr. P. 7008) permits a general denial if the pleader intends to deny all allegations in good faith. There is no argument or evidence by Roberts that the first answer was filed in bad faith.

Also, Fed. R. Civ. P. 8(e) provides that pleadings must be construed to do justice. The general denial originally filed by Ruelas included a denial of the paragraph dealing with Roberts' predecessor's alleged lack of notice of the bankruptcy case. Accordingly, the notice issue is not new and Roberts can demonstrate no prejudice. If in fact Roberts has a basis to claim prejudice, the forum is not on a motion for leave to amend an answer. Rather if there is prejudice because Roberts needs more time to prepare - which seems unlikely - there are other remedies including moving for a modified scheduling order if there is a factual basis and good cause.

Next, Roberts argues that the amendment is unjustified and is not in the interest of judicial economy. Specifically, Roberts essentially admits that the timeliness of notice issue was joined when Ruelas filed the original answer. Roberts questions that if that is the case, why amend now? The answer is Ruelas wants to feature the affirmative defense of discharge. If these facts were available to Roberts and Ruelas earlier, how is Roberts prejudiced?

Roberts also noted that Ruelas was the subject of many litigated matters to argue that she is sophisticated enough to have included all necessary allegations in her original answer. Notably, virtually all the references to previous litigation involving Ruelas occurred before her bankruptcy filing in 2019 and has little relevance now five years later.

Third, Roberts urges that there so many rule violations in Ruelas' pleadings that the motion should be summarily denied.

Roberts points to the failure to submit a redline version of the answer. That argument is a "red herring." Though the Local Rule does

provide for a redline, it is fairly obvious the differences between the original form answer and the amended answer Ruelas now seeks to file. The obvious purpose of LBR 7015-1 is to present to the opposing party an easy reference to highlight changes in a previous pleading. Those changes are obvious without a redline here.

Roberts is correct that Ruelas failed to include a docket control number on her pleadings for this motion. That is a violation of LBR 9014-1(c). Future violations by either party may result in denial of the motion or striking the pleadings affected.

Roberts also says that the certificate of service is faulty because the serving party, Kathy Ruelas (apparently Ruelas' mother) is not an attorney or a trustee which is how she signed the certificate. Ruelas should file an amended certificate of service to correct the error. However, the purpose of the certificate of service is to establish that in fact a necessary party was served. The certificate of service does provide that information. It is just incorrect in the way it is signed. An amendment should handle that problem.

Roberts also claims that the "amended answer" does not narrow any issues because of the number of allegations that are simply "denied." Roberts is the plaintiff. Roberts will have to prove the contested facts. Answers are not necessarily used to narrow issues. Pre-trial discovery, pre-trial motion practice, and the pre-trial order when entered in this case are ways to narrow issues. That is not a basis to deny the motion to amend the answer.

For the foregoing reasons, the motion will be **GRANTED**. The amended answer will be deemed Ruelas' answer to the complaint.

Roberts has asked the court to referee the manner in which the parties will communicate with each other concerning the case. Apparently, Ruelas wants to limit communication to strictly email. Roberts indicates that he agrees to do so. The court declines to get involved in that issue. If there are problems in discovery or other pre-trial issues, an appropriate motion needs to be brought before the court.

9. [24-10350](#)-B-7 **IN RE: RAYMOND/CAROL TAVITA**
[24-1028](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-27-2024 [\[1\]](#)

TAVITA V. DEPARTMENT OF EDUCATION/MOHELA ET AL
CAROL TAVITA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

10. [24-12751](#)-B-11 **IN RE: BIKRAM SINGH AND HARSIMRAN SANDHU**
[24-1035](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-7-2024 [\[78\]](#)

AMERICAN AGCREDIT, FLCA ET AL V. KUMAR ET AL
\$350.00 FILING FEE PAID 10/10/24

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

DISPOSITION: The Order to Show Cause will be vacated.

ORDER: The court will issue the order.

The filing fee having been paid on October 10, 2024, the Order to Show Cause will be vacated.