



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

Hearing Date: Wednesday, November 1, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [23-11700](#)-B-13 **IN RE: JOSEPH/VALERIE RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-10-2023 [[28](#)]

BENNY BARCO/ATTY. FOR DBT.
\$234.00 FILING FEE PAID ON 10/11/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full. Accordingly, the order to show cause will be VACATED.

2. [23-11410](#)-B-13 **IN RE: MATTHEW/KATHRYN WALTHER**
[SL-1](#)

MOTION TO CONFIRM PLAN
9-22-2023 [[27](#)]

KATHRYN WALTHER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

Matthew Benjamin Walther and Kathryn Elizabeth Walter ("Debtors") seek an order confirming the *First Modified Chapter 13 Plan* dated September 22, 2023. Doc. #27. The plan proposes that Debtors shall make 60 monthly payments of \$2,460.00 per month with an 100% dividend to allowed, non-priority unsecured claims. Doc. #29.

The plan also provides for secured creditors to be sorted into appropriate Classes and paid as follows:

- (1) Toyota Motor Credit Corporation (Class 2A). \$29,291.49 with a dividend of \$636.97 per month at 9.27%. Collateral is a 2016 Toyota 4 Runner.
- (2) Safe 1 Credit Union (Class 4). \$628.86 in monthly contract installments to be paid by the Debtors.

No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

3. [23-12210](#)-B-13 **IN RE: ROBERT/LUCY GARIBAY**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-12-2023 [\[11\]](#)

LUCY GARIBAY/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 the order.

Robert Garibay and Lucy Garibay ("Debtors") request an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #11.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was

dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtor Robert Garibay had one case pending within the preceding one-year period that he voluntarily dismissed: Case No.22-12071. That case was filed on December 6, 2022, and was dismissed on October 13, 2023. Debtor Lucy Garibay has not been a debtor in a case within the last year. The instant case was filed on October 2, 2023. Doc. #1. The automatic stay will expire on November 1, 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. Those conditions include:

(i) as to all creditors, if—

(I) *more than 1* previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the latter case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb)if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii)as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor ...

11 U.S.C. §362(c) (3) .

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)).

Here, Robert Garibay avers through his Declaration that the Debtors' material circumstances have significantly changed because Lucy Garibay is now a co-debtor, which changes the economic analysis of this case relative to the prior one. Doc. #13. The Declaration further avers that Debtors believe they can make all plan payments going forward. *Id.* None of the other conditions outlined in § 362(c) (3) seem applicable to this case.

A comparison of the proposed plans from the prior case and the current one reflects as follows.

In the *First Amended Chapter 13 Plan* filed on January 26, 2023, in the prior case, Debtor Robert Garibay proposed to pay \$1,468.44 a month for 60 months with a 100% dividend to unsecured creditors. See *Case No. 2022-12071, Doc. #24*. Debtor Garibay's *Amended Schedules I and J* filed on January 26, 2023, in the prior case indicated that Debtors receive \$4,509.22 in monthly net income, which was sufficient for Debtor to afford the proposed plan payment in the prior case. *Id. Doc. #29*.

In the current *Chapter 13 Plan* filed on October 2, 2023, in the current case, the Joint Debtors proposed to pay \$3,008.00 a month for 60 months with a 100% dividend to unsecured claims. Doc. #3. Debtors' *Schedules I and J* indicate that Debtors receive \$3,812.22 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1.

While the first plan obviously created a better "cushion" for Debtor Garibay than the current one (\$1,468.44 a month against \$4,509.22 in net monthly income compared to \$3,008.00 a month against \$3,812.22 in net monthly income), the court recognizes that the new plan will

also hopefully lead to a discharge of Lucy Garibay's debts as well as Robert Garibay's, which the court considers to be a material change in circumstances enough to satisfy Debtors' burden under § 362(c).

This matter will be called and proceed as scheduled. Unless opposition rebuts these statements or presents arguments that the one or more of the other § 362(c)(3) conditions apply, the court is inclined to GRANT this motion and extend the automatic stay. 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).

4. [18-14811](#)-B-13 **IN RE: ALICE RUBIO**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-2-2023 [\[50\]](#)

GABRIEL WADDELL/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.

Gabriel Waddell ("Waddell") of Fear Waddell P.C. ("Applicant"), attorney for Alice Soto Rubio ("Debtor"), requests final compensation in the sum of \$5,709.29 under 11 U.S.C. § 330. Doc. #50. This amount consists of \$5,577.50 in fees and \$164.79 in expenses from August 1, 2019, to September 25, 2023 *Id.* Applicant also requests that the fees and costs previously approved on an interim basis be approved on a final basis. *Id.*

Debtor executed a statement of consent dated May 27, 2023, indicating that Debtor has read the fee application and approves the same. Doc. #52, *Exhibit E*.

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 *Chapter 13 Plan* dated November 30, 2019, confirmed February 2, 2019, indicates that Applicant was paid \$2,680.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 would 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. Doc. #2.

This is Applicant's second and final fee application. Doc. #50. Applicant was previously awarded \$2,560.37 in compensation on September 12, 2019, for services and expenses from October 9, 2018, through July 31, 2019. Docs. ##28, 34.

Applicant provided 19.90 billable hours at the following rates, totaling \$5,541.50 in fees:

Professional	Rate	Billed	Total
Gabriel Waddell	Variable rate ranging from \$310 to \$360.00	13.80	\$4,743.50
Katie Waddell	\$210.00	.20	\$42.00
Kayla Schlaak	Variable rate ranging from \$80.00 to \$140.00	5.50	\$713.00
Laurel Guenther	Variable rate ranging from \$100.00 to \$115.00	.40	\$43.00
Total Hours & Fees			\$5,541.50

The court notes a three-dollar discrepancy between the sum of \$5,544.50 requested in fees and documented in the narrative contained in Applicant's Exhibit and the \$5,541.50 sum found in the "Summary by Professional" contained in the Motion itself. Compare Doc. #50, pg. 3 with Doc. #52, pp. 1-5. As the moving paper otherwise support the higher figure, the court will use that one.

Applicant also incurred \$164.79 in expenses:

Photocopying	\$80.64
Postage	\$84.15
Total Expenses	\$164.79

Id. 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: (a) Amendments to Petitions and/or Schedules, (b) Claim Administration and Claim Objections, (c) Original Plan, Hearings, and Objections, (d) Motions to Dismiss, (e) Fee Application, (f) Discharge and Case Closing, and (g) Case Administration. Doc. #52.

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.*

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$5,544.50 in fees as reasonable compensation for services rendered and \$164.70 in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. The chapter 13 trustee will be authorized to pay Applicant \$5,709.29 through the confirmed plan for services and expenses from August 1, 2019, to September 25, 2023.

Additionally, the court will approve on a final basis the \$2,560.37 in compensation awarded on an interim basis on September 19, 2019. The total fees paid to Applicant in this case will be \$8,268.66.

5. [19-15248](#)-B-13 **IN RE: TOMMY SAYARATH**
[MHM-1](#)

MOTION TO DISMISS CASE
10-4-2023 [\[30\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by Tommy Sayarath ("Debtor") that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for failure to complete the terms of the confirmed plan (11 U.S.C. § 1307(c)(6)). Doc. #30. Debtor did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to 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.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan. Doc. #30.

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.

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$3,353.26 after trustee compensation if the case were converted to chapter 7. Doc. #32. This amount is comprised of the value of Debtor's 2017 Ram 1500, 2010 Honda Civic, guns, and bank account. *Id.* The liquidation value of this case is de minimis. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

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

6. [23-11790](#)-B-13 **IN RE: RONALD HUTT**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-18-2023 [\[20\]](#)

ANH NGUYEN/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: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on October 30, 2023. (Doc. #24). The motion will be DENIED AS MOOT.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-3](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION
3-13-2023 [[18](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[23-1012](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-9-2023 [[1](#)]

SUGARMAN V. UNITED STATES
TRUSTEE PROGRAM, BY AND
RILEY WALTER/ATTY. FOR PL.
CONT'D TO 5/1/24 PER ECF ORDER #14

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

DISPOSITION: This matter will be continued to May 1, 2024, at
11:00 a.m.

ORDER: The court will issue the order.

Pursuant to an order of the court entered on October 16, 2023, this
matter is continued to May 1, 2024, at 11:00 a.m.

2. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[23-1024](#) [CAE-1](#)

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

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

NO RULING.