



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 21, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (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 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 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 who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest 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 appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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.

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 POSSIBLE UPDATES.

11:00 AM

1. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-23-2024 [[1](#)]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
ZAC FANCHER/ATTY. FOR PL.
REISSUED SUMMONS FOR 12/12/24

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A reissued summons was issued on October 3, 2024 setting a new status conference for December 12, 2024. Doc. #62. Accordingly, this status conference is dropped from calendar.

2. [21-11450](#)-A-7 **IN RE: ANTHONY FLORES**
[21-1036](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
8-24-2021 [[1](#)]

SAWUSCH ET AL V. FLORES
JESSICA WELLINGTON/ATTY. FOR PL.
DISMISSED 10/21/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on October 21, 2024. Doc. #67.

3. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[24-1027](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-21-2024 [[1](#)]

LA HACIENDA MOBILE ESTATES, LLC V. CITY OF FRESNO ET AL
ADAM BOLT/ATTY. FOR PL.

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

DISPOSITION: Continued December 12, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

On October 21, 2024, defendant City of Fresno filed a motion to dismiss this adversary proceeding and set a hearing on that motion for December 12, 2024 at 11:00 a.m. Doc. ##26-28. Accordingly, the status conference is continued to December 12, 2024 at 11:00 a.m. to be heard in conjunction with the motion to dismiss.

1. [24-12503](#)-A-13 **IN RE: STANLEY KRUSZEWSKI AND STEVEE LOPEZ**
[LGT-1](#)

RESCHEDULED HEARING RE: OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
9-26-2024 [[12](#)]

JOEL WINTER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on November 13, 2024. Doc. #22.

2. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[KMM-1](#)

RESCHEDULED HEARING RE: MOTION FOR RELIEF FROM AUTOMATIC STAY
10-23-2024 [[63](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV
STEPHEN LABIAK/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 20, 2024. Doc. #80.

3. [24-12327](#)-A-13 **IN RE: ROBERT NAVARRA AND GEMMA CASIANO-NAVARRA**
[LGT-1](#)

RESCHEDULED HEARING RE: OBJECTION TO CONFIRMATION OF PLAN BY
LILIAN G. TSANG
9-27-2024 [\[19\]](#)

LILIAN TSANG/MV
PETER SAUER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on November 13, 2024. Doc. #30.

4. [24-11328](#)-A-13 **IN RE: HARRY BROUSE**
[SAH-2](#)

RESCHEDULED HEARING RE: MOTION FOR COMPENSATION FOR SUSAN A. HEMB,
DEBTORS ATTORNEY(S)
10-16-2024 [\[28\]](#)

HARRY BROUSE/MV
SUSAN HEMB/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.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Hemb Law Group ("Movant"), counsel for Harry J. Brouse ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$4,000.00 and no reimbursement for expenses for services rendered from January 3, 2024 through July 2, 2024. Doc. #28. Debtor's confirmed plan

provides, in addition to \$2,000.00 paid prior to filing the case, for \$2,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #3, 16. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Decl. of Harry J. Brouse, Doc. #30.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first plan; (2) preparing for and attending meeting of creditors (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Ex. A, Doc. #31. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$4,000.00 and no reimbursement for expenses to be paid in a manner consistent with the terms of the confirmed plan.

5. [24-12832](#)-A-13 **IN RE: SHAWN SALCIDO**
[LGT-1](#)

RESCHEDULED HEARING RE: OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
10-30-2024 [\[12\]](#)

HENRY NUNEZ/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on November 13, 2024. Doc. #21.

6. [24-12359](#)-A-13 **IN RE: JUAN GONZALEZ**
[LGT-1](#)

RESCHEDULED HEARING RE: OBJECTION TO CONFIRMATION OF PLAN BY
LILIAN G. TSANG
9-26-2024 [\[15\]](#)

LILIAN TSANG/MV
JOSHUA STERNBERG/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 12, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the objection to confirmation of the plan to December 12, 2024, at 9:30 a.m. The court has already issued an order on November 19, 2024. Doc. #37.

Any further pleadings by the trustee shall be filed and served no later than December 5, 2024.

7. [20-13584](#)-A-13 **IN RE: JOEL/CHRISTINE CLARKSON**
[JDR-1](#)

RESCHEDULED HEARING RE: MOTION FOR COMPENSATION FOR JEFFREY D. ROWE,
DEBTORS ATTORNEY(S)
10-25-2024 [\[41\]](#)

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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent October 25, 2024, with a hearing date set for November 21, 2024. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the motion stated that opposition must be filed and served no later than fourteen days before the hearing and the failure to file a written response may result in the court granting the motion prior to the hearing. Doc. #42. The notice of hearing does not comply with LBR 9014-1(f)(2), and the motion is denied without prejudice for improper service.

RESCHEDULED HEARING RE: MOTION FOR COMPENSATION BY THE LAW OFFICE OF
HEMB LAW GROUP FOR SUSAN A. HEMB, DEBTORS ATTORNEY(S)
10-18-2024 [\[77\]](#)

SUSAN HEMB/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Lilian G. Tsang ("Trustee"), the chapter 13 trustee, timely filed written opposition on November 7, 2024. Doc. #84. The failure of other creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Hemb Law Group ("Movant"), counsel for Samuel A. Castillo and Keri N. Castillo (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$6,172.50 and no reimbursement for expenses for services rendered from March 1, 2019 through October 15, 2024. Doc. #77.

Trustee opposes Movant's application on the grounds that the application fails to disclose that Movant opted into the "no-look" fee pursuant to LBR 2016-1(c) upon filing and confirming the chapter 13 plan. Plan, Doc. #4; Order, Doc. #59; Doc. #84. Further, Trustee opposes Movant's application for failing to disclose the \$2,500.00 Trustee has already disbursed to Movant through the confirmed plan. Doc. #84. Trustee has no objection to Movant's application as to the amount of the fees requested because the full amount of the requested fees will fund through the plan. Id. However, Trustee requests clarification on whether the \$2,500.00 in disbursed funds is included or is in addition the fees requested in the application. Id.

While Movant has filed a fee application and appears to be under the impression that Movant chose to seek approval of attorneys' fees by filing and serving a fee application in Section 3.05 of Debtors' confirmed plan and the plan payment incorporates up to \$15,000 in an administrative payment to Movant, that is not the case. Decl. of Susan A. Hemb, Doc. #80. Section 3.05 of Debtors' confirmed plan clearly states that the \$4,000 in total attorney fees are to be approved by complying with LBR 2016-1(c), and the order confirming Debtors' plan specifically approves \$4,000.00 in attorneys' fees to Movant under the "no-look" provisions of LBR 2016-1(c). Plan, Doc. #4; Order, Doc. #59.

Because Debtors filed their chapter 13 case on March 25, 2020, former LBR 2016-1(c)(5) applies to Debtor's case. Former LBR 2016-1(c)(5) provides that the court may allow compensation different from the compensation provided under LBR 2016-1(c) "any time prior to entry of a final decree, if such compensation

proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation."

Here, Movant has failed to address the requirements of former LBR 2016-1(c)(5). Movant's application demonstrates services rendered relating to: (1) meeting with Debtors and preparing documents to file their bankruptcy case; (2) preparing for and attending meeting of creditors; (3) preparing motion to value collateral and addressing opposition thereto; and (4) general case administration. Ex. A, Doc. #81. Other than addressing opposition to the motion to value collateral, the services listed by Movant are those typically provided to debtors in chapter 13 cases. Moreover, the opposition to the motion to value collateral was known at the time Debtors' plan was confirmed. Movant has not demonstrated that any of the services for which fees are requested in Movant's application were not capable of being anticipated at the time Debtors' plan was confirmed.

Accordingly, the court is inclined to DENY this motion. Movant's award of attorneys' fees pursuant to LBR 2016-1(c) as set forth in the order confirming Debtors' chapter 13 plan (Doc. #59) shall remain unaffected.