

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 1, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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.

1. [22-11116](#)-A-13 **IN RE: THEDFORD JONES**
[MJB-3](#)

OBJECTION TO CLAIM OF DENISE BALESTIER, CLAIM NUMBER 5
10-25-2022 [\[74\]](#)

THEDFORD JONES/MV
MICHAEL BERGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Set discovery schedule.

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

This objection to claim was filed and served on fewer than 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(2) and will proceed as scheduled. Opposition can be presented at the hearing. Whether or not opposition is presented at the hearing, the court will require a further hearing before sustaining the objection. The court will issue an order if the debtor seeks to present additional evidence in support of the objection or if opposition is presented at the hearing.

Thedford Lewis Jones ("Debtor"), the chapter 13 debtor in this bankruptcy case, objects to claim no. 5-1 (the "Claim") filed by Denise Balestier ("Claimant") on the grounds that the Claim is a general unsecured claim and not a priority claim as set forth in the Claim. Debtor's Obj., Doc. #74.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

The Claim was filed on August 4, 2022 and asserts a priority unsecured claim of \$389,095.41 as a domestic support obligation under either 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). Claim 5-1. Debtor asserts that the Marital Settlement Agreement that forms the basis for the Claim specifically states that the amount upon which the Claim is based is an equalization payment and is not a domestic support obligation, so the Claim must be treated as a general unsecured claim and not as a priority claim. Debtor's Obj., Doc. #74. However, the court believes that Debtor is incorrect regarding what evidence the

bankruptcy court can examine in determining whether a debt is in the nature of a domestic support obligation under the Bankruptcy Code and, therefore, entitled to priority treatment.

As the court understands the applicable law, "[i]n determining whether an obligation is a [domestic support obligation] entitled to priority under § 507(a), the court looks to the interpretation of [domestic support obligation] discussed in cases relating to the dischargeability of support under former § 523(a)(5)." In re Nelson, 451 B.R. 918, 921 (Bankr. D. Ore. 2011) (emphasis in original) (citations omitted).

Per In re Sternberg, 85 F.3d 1400 (9th Cir. 1996), rev'd on other grounds, In re Bammer, 131 F.3d 788 (9th Cir. 1997), whether an obligation is in the nature of support, and thus qualifies as support under bankruptcy law, is a question of federal law. Sternberg, 85 F.3d at 1405.

In determining whether an obligation is in the nature of a domestic support obligation, "the court must look beyond the language of the decree to the intent of the parties and to the substance of the obligation." Shaver v. Shaver, 736 F.2d 1314, 1316 (9th Cir. 1984).

As explained by the Nelson court, under Ninth Circuit authority:

When the obligation is created by a stipulated dissolution judgment, "the intent of the parties at the time the settlement agreement is executed is dispositive." Sternberg, 85 F.3d at 1405. Factors to be considered in determining the intent of the parties include "whether the recipient spouse actually needed spousal support at the time of the divorce[,] " which requires looking at whether there was an "imbalance in the relative income of the parties" at the time of the divorce. Id. Other considerations are whether the obligation terminates on the death or remarriage of the recipient spouse, and whether payments are made directly to the spouse in installments over a substantial period of time. Id.; Shaver, 736 F.2d at 1316-1317. The labels the parties used for the payments may also provide evidence of the parties' intent. Sternberg, 85 F.3d at 1405.

Nelson, 451 B.R. at 921-22. Thus, the court has to look at more than just the four corners of the Marital Settlement Agreement to determine whether the payment that forms the basis of the Claim is entitled to priority status.

Accordingly, the court is inclined to overrule the objection based solely on the language in the Marital Settlement Agreement. Because Debtor was mistaken as to the applicable law, the court is inclined to continue the hearing to permit Debtor to file additional evidence in support of his objection to claim.

CONTINUED MOTION TO DISMISS CASE
8-10-2022 [[61](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/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 the order.

On August 10, 2022, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure to make all payments due under the plan. Doc. #61. Plan payments are delinquent in the amount of \$994.74 as of August 10, 2022, with an additional \$1,020.62 due on August 25, 2022. Id. The debtors responded on September 1, 2022, stating that the debtors are separating and did not realize that neither debtor had made the plan payment. Doc. #65.

On September 7, 2022, the debtors filed a second modified plan that was subsequently withdrawn. Doc. ##66-71, 73, 83. On October 20, 2022, the debtors filed and served a motion to confirm the debtors' third modified plan and set that motion for hearing on December 1, 2022. Doc. ##88-93, 95. That motion has been granted by final ruling, matter #3 below.

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). It appears that confirmation of the debtors' third modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1) or (c)(6).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

3. [18-11832](#)-A-13 **IN RE: MANUEL/ALICE FLORES**
[TCS-3](#)

MOTION TO MODIFY PLAN
10-20-2022 [\[88\]](#)

ALICE FLORES/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 movants have done here.

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

4. [18-11834](#)-A-13 **IN RE: LISA DELGADO**
[TCS-2](#)

MOTION TO MODIFY PLAN
10-17-2022 [\[44\]](#)

LISA DELGADO/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 movants have done here.

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

5. [22-10545](#)-A-13 **IN RE: AMY LOCKWOOD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-3-2022 [\[52\]](#)

MICHAEL MOORE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Amy Marie Lockwood ("Debtor") filed her Chapter 13 Plan (the "Plan") on September 14, 2022. Doc. #41. Michael Meyer, chapter 13 trustee ("Trustee"), objects to confirmation of the Plan. Tr.'s Obj., Doc. #52.

Trustee objects to confirmation of the Plan on the grounds that the Plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors as required by 11 U.S.C. § 1325(b). Tr.'s Obj., Doc. #52. Specifically, Trustee asserts that Form 122C-2 is not accurate because the calculation of Debtor's current monthly income does not include paystubs for September 2021. Id. Based on the paystubs provided to Trustee, Debtor's average monthly gross income is \$10,426.47 instead of the \$8,879.66 listed by Debtor. Id. In addition, Debtor's expense calculations are too high for two reasons. First, Debtor, who is an above-median debtor (Doc. #43), improperly deducts her actual rent expense rather than using the lower local and national standard, citing In re Rodriguez, 602 B.R. 94, 100 (B.A.P. 9th Cir. 2020). Id. Second, Debtor deducts for a retirement loan that has been paid in full. Id. Based on Trustee's calculations, Debtor's monthly disposable income should be \$2,777.20, not the \$183.58 listed in Form 122C-2. Id.

Upon the objection of the trustee or the holder of an allowed unsecured claim, 11 U.S.C. § 1325(b) requires the plan provide for all of the debtor's projected

disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan to be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b). Trustee has set forth sufficient evidence to support his assertion that Debtor's Form 122C-2 is not accurate and that Debtor is not applying all of Debtor's projected disposable income to unsecured creditors.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

6. [22-11349](#)-A-13 **IN RE: IAN FRITZ**
[WSL-1](#)

CONTINUED MOTION TO CONFIRM PLAN
9-22-2022 [[19](#)]

IAN FRITZ/MV
GREGORY SHANFELD/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 10, 2022. Doc. #44.

7. [22-11666](#)-A-13 **IN RE: LAWRENCE CHANG**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
11-7-2022 [[15](#)]

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

NO RULING.

8. [22-11572](#)-A-13 **IN RE: BRANDEE LEONARD**
[MAZ-2](#)

MOTION TO CONFIRM PLAN
10-24-2022 [\[22\]](#)

BRANDEE LEONARD/MV
MARK ZIMMERMAN/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 movants have done here.

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

9. [22-11281](#)-A-13 **IN RE: DWAYNE HAUGHTON**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-25-2022 [\[49\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DARLENE VIGIL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

10. [22-11281](#)-A-13 **IN RE: DWAYNE HAUGHTON**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
9-19-2022 [\[31\]](#)

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

NO RULING.

11. [22-10185](#)-A-13 **IN RE: TIMOTHY CORNELL**
[SL-2](#)

MOTION TO MODIFY PLAN
10-13-2022 [\[27\]](#)

TIMOTHY CORNELL/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.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 movants have done here.

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

1. [22-11304](#)-A-7 **IN RE: ESTEHER GONZALEZ VASQUEZ**
[22-1021](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-21-2022 [[1](#)]

LOPEZ V. GONZALEZ VASQUEZ
DISMISSED 11/10/22

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on November 10, 2022. Doc. #17.

2. [22-10113](#)-A-7 **IN RE: ANTHONY LOPEZ**
[22-1013](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
FOR FAILURE TO PROSECUTE
10-20-2022 [[35](#)]

THE GOLDEN 1 CREDIT UNION V. LOPEZ

NO RULING.

3. [22-10113](#)-A-7 **IN RE: ANTHONY LOPEZ**
[22-1013](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-6-2022 [[1](#)]

THE GOLDEN 1 CREDIT UNION V. LOPEZ
KAREL ROCHA/ATTY. FOR PL.

NO RULING.

4. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[22-1016](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-11-2022 [[1](#)]

LIMA V. RENNA
HENRY NUNEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[22-1023](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
FOR FAILURE TO PROSECUTE
10-20-2022 [[74](#)]

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL

NO RULING.

8. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
ROBERT RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

9. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.

NO RULING.

10. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[22-1022](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.