



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

**Hearing Date: Wednesday, December 18, 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. [22-11500](#)-B-13     **IN RE: DARREN/STEPHANIE GODWIN**  
[PBB-2](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AND  
FOR APPOINTMENT OF REPRESENTATIVE AS TO JOINT DEBTOR  
11-21-2024     [\[33\]](#)

DARREN GODWIN/MV  
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted.

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

On November 8, 2024, Stephanie Ann Godwin ("Decedent") passed away. Docs. ##30-31. She is survived by her husband, joint debtor Darren Don Godwin ("Debtor"). *Id.* Debtor seeks to be substituted as the representative for or successor to Decedent for this joint chapter 13 case. Doc. #33. Debtor seeks a waiver of the certification requirements for entry of discharge in a Chapter 13 case "to the extent that Florentino Mendoza can demonstrate an inability to provide such certifications." *Id.* There is no indication of who Florentino Mendoza is or what their connection is to these proceedings, but from the context and the rest of the moving papers, the court infers that "Florentino Mendoza" was inadvertently used in place of Decedent's name. The court recommends that Debtor's counsel be more attentive in the future when reusing prior filings as templates.

Although Debtor does not specifically request continued administration of the chapter 13 case after Decedent's death, the court interprets the motion to request that relief as well. The motion is supported by a Declaration from Debtor. Doc. #35. Debtor has previously filed a *Notice of Death of a Debtor*, accompanied by an Exhibit consisting of Decedent's death certificate. Docs. ##30-31.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

No party in interest has responded and the defaults of all non-responding parties are entered. Nevertheless, for the reasons outlined below, the hearing on this matter will proceed as scheduled.

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. ("Civ. Rule") 25(a) (Fed. R. Bankr. P. ("Rule") 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Civ. Rule 18(a) (Rules 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. Rule Civ. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Rule 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Here, Debtor filed this motion for omnibus relief as required with a notice of death and redacted death certificate for Decedent that was timely filed. See Docs. #31, #33. Prior to her passing, Decedent completed her post-petition debtor education course. Doc. #10.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Rule 1016 permits the case to proceed and be concluded in the same manner, so far as possible, as though the death had not occurred if two pre-requisites are met: (1) further administration is possible and (2) administration is in the best interest of all parties. However, Rule 1016 also allows the case to be dismissed.

Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007) (permitting further administration because it is both possible and in the best interests of parties); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration permitted if a personal representative is appointed and the confirmed plan is made current and paid through completion); *cf. In re Spider*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999) (further administration deemed not possible because debtors' chapter 13 plan was not confirmed before death).

Here, the Debtor and his late spouse filed Chapter 13 bankruptcy on August 30, 2022, and their Chapter 13 plan dated that same day was confirmed on October 14, 2022. Docs. #1, #3, #15. According to their Schedule I&J, the two debtors had a combined monthly income of \$4,260.44, to which the Decedent did not contribute, and a monthly net income of \$350.44. Doc. #1 (*Sched. I&J*). Under the confirmed 52-month plan (which is ongoing), Debtor and Decedent were to pay \$350.00 per month. Doc. #3. Because Decedent did not contribute to the couple's monthly income, her passing should not impair Debtor's ability to make the required payments under the plan.

No party in interest has responded to the motion, and the defaults of all nonresponding parties are entered. Debtor has complied with the requirements of Federal Rule 25 and LBR 1016-1. This motion will be GRANTED provided counsel clarifies the apparent erroneous identification of the decedent. Debtor Darren Don Godwin is hereby substituted as representative for and/or successor to the Decedent Stephanie Ann Godwin. This case will continue to be administered under Chapter 13 pursuant to Rule 1016. And finally, the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g), is hereby waived as to Decedent Stephanie Ann Godwin.

2. [24-11213](#)-B-13      **IN RE: JEANNE CHRISTENSEN**  
[LGT-2](#)

CONTINUED MOTION TO DISMISS CASE  
9-4-2024    [\[26\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:      Withdrawn.

No order is required.

On December 16, 2024, the Trustee withdrew the *Motion for Order of Dismissal*. Doc. #60. Accordingly, this matter is WITHDRAWN.

3. [24-12714](#)-B-13     **IN RE: SEBASTIAN GUTIERREZ**  
[BRB-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SAMANTHA RYAN  
11-5-2024    [\[26\]](#)

SAMANTHA RYAN/MV  
PETER MACALUSO/ATTY. FOR DBT.  
BRADLEY BOWLES/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This hearing will proceed as scheduled.

DISPOSITION:                Sustained.

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

This matter was originally set for hearing on November 20, 2024. Doc.  
#31.

Samantha Ryan ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Sebastian Gutierrez ("Debtor") on October 2, 2024, on the following basis:

1. Lack of Good Faith. Creditor asserts that Debtor filed this bankruptcy solely to evade his responsibilities under a settlement of Creditor's sexual assault claims against him.
2. Feasibility Issues. Creditor argues that Debtor's plan is unlikely to succeed based on his unwillingness to honor the terms of the settlement agreement.
3. Bad Faith in Filing. Debtor argues that the filing was strategically timed to prevent Creditor from enforcing her judgment against him rather than a genuine reorganization.

Docs. #26, #28. On December 2, 2024, Debtor filed a brief response that did not respond to Creditor's assertion that Debtor filed for bankruptcy solely to evade and frustrate Creditor. Doc. #39. Debtor also asserts that, absent a future failure to make plan payments as promised, Debtor meets all other requirements under the Code for Confirmation. *Id.* The court notes that Debtor's Response was not accompanied by a Certificate of Service. The court also notes the Chapter 13 Trustee raised numerous deficiencies in Debtor's submissions and has continued the meeting of creditors.

On December 11, 2024, Creditor filed a *Reply* noting that Debtor did not respond substantively to Creditor's bad faith arguments.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) but later continued with a direction for Debtor

to file a response to the objection, which the Debtor did. This matter will proceed as scheduled.

One of the requirements for confirmation of a chapter 13 plan is that it be proposed in good faith. § 1325(a)(3). "Good faith" is not defined in the Bankruptcy Code. The Ninth Circuit has held that "the proper inquiry is whether the [debtors] acted equitably in proposing their Chapter 13 plan." *Goeb v. Heid (In re Goeb)*, 675 F.2d 1386, 1391 (9th Cir. 1982). In making that inquiry, the court applies a "totality of the circumstances" test, taking into consideration (1) whether the debtor misrepresented facts, unfairly manipulated the Bankruptcy Code or otherwise proposed the plan in an inequitable manner; (2) the history of the debtor's filings and dismissals; (3) whether the debtor intended only to defeat state court litigation; and (4) whether the debtor's behavior was egregious. *Leavitt*, 171 F.3d at 1224 (applying same factors for good faith filing of chapter 13 petition).

*In re Lopez*, 574 B.R. 159, 163 (Bankr. E.D. Cal. 2017) (quoting *Drummond v. Welsh (In re Welsh)*, 465 B.R. 843, 851 (9th Cir. BAP 2012) (*aff'd*, *In re Welsh*, 711 F.3d 1120 (9th Cir. 2013)). The four factors listed above are known as the *Leavitt* factors. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999) (*superseded on other grounds as recognized by In re Burkes*, Nos. 21-23813-rmb, 22-20431-rmb, 2025 Bankr. LEXIS 2401, at \*17 (Bankr. E.D. Wis. Sep. 29, 2025)).

"[T]he court is not obligated to count the four *Leavitt* factors as though they present some sort of a box-score but rather is to consider them all and weigh them in judging the 'totality of the circumstances.'" *In re Lehr*, 479 B.R. 90, 98 (Bankr. N.D. Cal. 2012). The court considers the *Leavitt* factors under the "preponderance of the evidence" standard. *In re Dores*, 2017 Bankr. LEXIS 1539, at \*14 (Bankr. E.D. Cal. June 7, 2017).

Here, viewed holistically, this cases raises troubling issues. Debtor has scheduled \$80,087.54 in nonpriority unsecured claims, of which \$74,000.00 is the settlement amount and stipulated judgment owed to Creditor. Doc. #12. The remainder of the scheduled unsecured debt consists of \$329.54 owed to "FRS" (which appears to be a debt collection agency) and 5,758.00 owed to Travis Credit Union for a credit card bill. *Id.* The court notes that there is an unscheduled unsecured claim by Cavalry SPC I, LLC ("Cavalry"), in the amount of \$6,841.41, which appears to be a judgment obtained by Citibank, N.A. against Debtor. *See Proof of Claim #2-1.*

Debtor proposes a plan which pays 0% to unsecured creditors. Doc. #13. The plan proposes to pay \$37,416.00 owed to Class 2(A) creditor Santander Consumer USA for a 2023 Toyota Tacoma for which Debtor will provide by paying the full amount owed. *Id.* The only things to be paid through the plan are (1) the Santander Consumer USA debt, (2) Debtor's

outstanding attorney fees (\$2,000.00 of which was paid prepetition, with \$6,000.00 outstanding), and (3) Trustee fees. *Id.*

While there is no evidence currently before the court of any misrepresented fact, the court finds by a preponderance of the evidence that Debtor has unfairly manipulated the Bankruptcy Code and/or proposed the plan in an inequitable manner, and he did so for the primary if not the sole purpose of defeating Creditor's state court litigation. *Leavitt*, 171 F.3d at 1224.

If the court were to remove Creditor's \$74,000.00 claim from the equation, the plan would have the following effects: (1) Debtor would pay effectively the same amount for the Toyota Tacoma that he would have paid outside of bankruptcy, (2) Debtor would (in the absence of any nondischargability issues not currently on the horizon) discharge between \$6,087.54 and approximately \$12,928.95 in general unsecured debt, depending on the disposition of the unscheduled Cavalry debt, and (3) Debtor would have paid a total of \$8,000.00 in attorneys' fees, plus Trustee commission. In other words, disregarding the Creditor's claim, Debtor saves little and likely loses money by filing for bankruptcy, and his decision to file only makes sense in light of the \$74,000.00 settlement/stipulated judgment hanging over him.

Of course, the court cannot simply ignore the benefit of discharging Creditor's \$74,000.00 claim, which is a substantial benefit to Debtor if Creditor does not timely file an adversary proceeding and successfully have the claim declared nondischargeable. See 11 U.S.C. § 4007. But the fact that this bankruptcy would be completely unnecessary but for a single debt arising from the settlement of an intentional tort of this nature obviously raises an implication that this bankruptcy was filed solely to frustrate a single creditor.

Admittedly, the second *Leavitt* factor ("the history of the debtor's filings and dismissals") is not implicated as this is Debtor's first bankruptcy filing. But looking at the facts of this case under the totality of the circumstances, the court certainly finds the blatancy with which Debtor used his Chapter 13 case for the primary (if not sole) purpose of frustrating his only significant unsecured creditor to be "egregious," the final *Leavitt* factor.

The Debtor has the burden to prove all elements of Plan confirmation including good faith and feasibility. Debtor has presented no evidence to contest Creditor's counsel's declaration and, in fact, admits that the settlement was reached and not performed except for one \$1,000.00 payment. Accordingly, there is no record the Debtor can assert which supports a finding of good faith or the other elements for confirmation. Likewise, there is no factual record indicating further factual inquiry is necessary on this confirmation motion.



This matter will proceed as scheduled. Absent further evidence demonstrating that Debtor did, in fact, file this case in good faith, the court is inclined to SUSTAIN this objection.

4. [24-12714](#)-B-13     **IN RE: SEBASTIAN GUTIERREZ**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
11-5-2024     [\[22\]](#)

PETER MACALUSO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:             This hearing will proceed as scheduled.

DISPOSITION:                     Sustained.

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

This matter was originally set for hearing on November 20, 2024. Doc. #31.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the Chapter 13 Plan filed by Sebastian Gutierrez ("Debtor") on October 2, 2024, on the following basis:

1. Trustee has not concluded the 341 meeting as Debtor failed to provide his 2023 tax returns and several other requested documents. The continued meeting is set for December 3, 2024.
2. Local Rule 1002-1(e). Based on Debtor's filings and testimony at the 341 meeting, it is unclear how long Debtor has resided in California.

Doc. #32. On December 3, 2024, Debtor submitted a response stating:

1. The meeting of creditors has been continued to January 14, 2024.
2. Debtor has provided the documents required under 11 U.S.C. § 521.
3. Debtor has provided additional documents to Trustee to prove his California residency.

Doc. #38. On December 11, 2024, the Trustee submitted a Reply stating:

1. The 341 meeting is not yet concluded, and there are still documents which Debtor has failed to provide, including:
  - a. A copy of Debtor's 2023 tax returns.
  - b. 6 months of bank statements for all accounts of which Debtor is a signatory.

- c. The Business Case Questionnaire.
- d. Business Tax returns.
- 2. Debtor has failed to disclose a business on his Schedules A/B; failed to provide a statement for each property/business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income regarding Schedule I for Line 8a; and failed to amend the Statement of Financial Affairs.
- 3. Debtor is delinquent \$950.00 in plan payments as of December 11, 2024.

Unless this Objection is withdrawn, a hearing in this matter will proceed as scheduled. If Debtor has not resolved the Trustee's grounds for objection, this Objection may be SUSTAINED.

5. [24-11629](#)-B-13     **IN RE: GUSTAVO/LINDA LEAL**  
[LGT-2](#)

MOTION TO DISMISS CASE  
11-14-2024    [\[29\]](#)

LILIAN TSANG/MV  
JOEL WINTER/ATTY. FOR DBT.

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

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

DISPOSITION:     Continued to February 6, 2025, at 9:30 a.m.

ORDER:             The court will issue an order.

The trustee's motion to dismiss will be continued to February 6, 2025, at 9:30 a.m., to be heard in connection with the debtors' motion to confirm plan. See, Docs. ##33-36; JDW-1.

6. [24-12848](#)-B-13     **IN RE: CECILIA AGUILAR AND DAVID QUINONEZ**  
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE  
AUTO FINANCE  
11-5-2024    [[17](#)]

CAPITAL ONE AUTO FINANCE/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION:        Sustained.

ORDER:                The court will issue an order.

This matter was originally set for hearing on November 20, 2024. Docs.  
##20-21.

Capital One Auto Finance ("Creditor") objects to confirmation of the  
*Chapter 13 Plan* filed by Cecilia Aguilar and David Quinonez  
("Debtors") on October 1, 2024, on the following basis:

1. Debtors' proposed treatment of Creditor's claim calls for  
payment at a 7% interest rate. Creditor asserts that the  
proper *Till* rate is at least 9.0%.

Doc. #17.

The court continued this objection to December 18, 2024, at 9:30 a.m.  
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.

7. [24-12651](#)-B-13     **IN RE: ROBERT NEUMAN**  
[EPE-2](#)

MOTION FOR COMPENSATION FOR ERIC P. ESCAMILLA, DEBTORS ATTORNEY(S)  
11-15-2024    [\[27\]](#)

ERIC ESCAMILLA/ATTY. FOR DBT.  
DISMISSED 10/11/2024

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will prepare the order.

Eric P. Escamilla ("Escamilla"), attorney for Robert Neuman, the Debtor in the above-styled case, moves for allowance of attorney's fees in the amount of \$3,125.00. Doc. #27.

On February 28, 2023, General Order 23-02, signed by all the bankruptcy judges of this district, was entered, stating as follows:

It is hereby ordered that if a Chapter 7 case is dismissed due to the failure to file the documents specified in 11 U.S.C. § 21(a)(1), or if a Chapter 13 case is dismissed without confirmation of a plan, the case shall be referred to the Chief Bankruptcy Judge for review of debtors' counsel's fee under 11 U.S.C. § 329(b). The Chief Bankruptcy Judge may also conduct any ancillary proceedings deemed necessary.

(emphasis added). This Chapter 13 case was dismissed on October 11, 2024, for failure to timely file required documents. Doc. #21. No plan was ever confirmed. *Docket generally*. Accordingly, this motion will be DENIED WITHOUT PREJUDICE. Any fee application by Escamilla arising from this case must be referred to the Chief Bankruptcy Judge for the Eastern District of California.

Should the Chief Judge so order, this court will consider the fee application once it is returned to this court.

8. [24-12658](#)-B-13     **IN RE: GILBERT/REYNA VALLE**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
10-23-2024    [\[26\]](#)

LILIAN TSANG/MV  
PETER BUNTING/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

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

DISPOSITION:     Withdrawn.

No order is required.

On December 17, 2024, the Trustee gave notice that she was withdrawing the Objection to Confirmation. Accordingly, this Objection is WITHDRAWN.

9. [24-11861](#)-B-13     **IN RE: BENITO/ALEXA GARCIA**  
[JRL-1](#)

MOTION TO CONFIRM PLAN  
11-12-2024    [\[37\]](#)

ALEXA GARCIA/MV  
JERRY LOWE/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.

Benito and Alexa Garcia ("Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated November 13, 2024. Docs. #37, #41. No plan has been confirmed thus far.

No party has timely objected.

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 any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, to file written opposition at least 14 days

prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Unusually, the First Modified Plan is identical to the original plan. Compare Docs. #3 and #41. On August 8, 2024, the Trustee filed an *Objection* to the original plan and later a *Supplemental Objection* which the court subsequently sustained. Docs. #12, #26, #34. However, the Trustee's objections were based on discrepancies between Debtors' paystubs and their Form 122C. Doc. #26.

In a Declaration accompanying the instant motion, Debtors' counsel avers that he has filed an Amended Form 122C which corrects the errors alluded to by Trustee. Doc. #40. See Doc. #36 (*Amended Form 122C*). Debtor's counsel avers that the Amended Form 122C resolves the issues raised by Trustee vis a vis the original plan. Doc. #40.

The 60-month plan proposes the following terms:

1. Debtors' monthly plan payment is \$873.17.
2. Outstanding Attorney's fees in the amount of \$6,500.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. GMFinanial/2021 Cadilla XT6. (Class 2A, PMSI). \$21,011.00 at 1.00% to be paid at \$369.16 per month.
  - b. Golden 1 Credit Union/2020 GMC Sierra 1500. (Class 2A, PMSI). \$17,400.14 at 4.29% to be paid at \$322.73 per month.
4. A dividend of 1% to unsecured creditors.

No party in interest has objected, and the defaults of all non-responding parties in interest are entered. This motion is GRANTED. The order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

10. [24-10581](#)-B-13     **IN RE: JULIO CABALLEROS ROMAN**  
[RCW-3](#)

MOTION FOR COMPENSATION FOR RYAN C. WOOD, DEBTORS  
ATTORNEY(S)  
11-10-2024     [\[72\]](#)

RYAN WOOD/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, the Notice does not 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. #73.

For the above reason(s), this motion will be DENIED WITHOUT PREJUDICE.

11. [24-12495](#)-B-13     **IN RE: SHANNON SIMPSON**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
11-20-2024    [\[23\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION:        Continued to January 15, 2025, at 9:30 a.m.

ORDER:                The court will issue an order.

U.S. Bank N.A. ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Shannon Simpson ("Debtors") on September 24, 2024. Doc. #23. Creditor holds a secured claim that is secured by Debtor's real property at 11112 Grand Prairie Drive., Bakersfield, California ("the Property"). *Id.*

Creditor objects because the plan proposes that Debtor pay the post-petition monthly payment on the mortgage through the plan, but the arrearage on the Property "shall be resolved by a loan modification." Doc. #19 (Section 7.01). Creditor argues that the plan does not propose to repay the arrearage in a reasonable amount of time as required by 11 U.S.C. § 1322(b)(5). Doc. #23. Creditor also argues that the plan violates § 1322(b)(2) because it effectively constitutes a forbearance on the arrearage of up to five years without Creditor's consent. *Id.*

This objection will be CONTINUED to **January 15, 2025, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor 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 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 **7 days before the hearing**. If the Debtor does 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.



12. [24-12497](#)-B-13     **IN RE: JEFFREY HEDRICK**  
[SDS-1](#)

MOTION TO CONFIRM PLAN  
11-6-2024    [\[25\]](#)

JEFFREY HEDRICK/MV  
SUSAN SILVEIRA/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.

Jeffrey Hedrick ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated November 6, 2024. Doc. #27. No plan has been confirmed so far. The 60-month plan proposes the following terms:

1. Debtor's payment for months 1-2 will be \$1,030.00 per month.  
Debtor's payments for months 3-60 will be \$1,099.00 per month.
2. Outstanding Attorney's fees in the amount of \$9,200.00 to be paid through the plan. Nonstandard Provision 7.02 states that "attorney fees and costs approved by the bankruptcy court pursuant to 11 U.S.C. § 330 but remaining unpaid upon the completion of the case shall not be discharged and shall be paid directly by the debtor to counsel for the debtor before and/or after entry of discharge."
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. Capital One Auto Finance/2021 Toyota Tacoma (Class 2A, PMSI). \$17,232.00 at 3.00% to be paid at \$309.64 per month.
  - b. M&T Bank/2022 Bushwacker (Class 2A, PMSI). \$14,404.00 at 6.74% to be paid at \$283.45 per month.
4. A dividend of 4.5% 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.

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.

11:00 AM

1. [24-10350](#)-B-7    **IN RE: RAYMOND/CAROL TAVITA**  
[24-1028](#)    [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP  
STATEMENT  
11-13-2024    [[21](#)]

TAVITA V. DEPARTMENT OF  
EDUCATION/MOHELA ET AL

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

Educational Credit Management Corporation filed a Corporate Ownership Statement (Doc. #22) on November 13, 2024, as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #21. Accordingly, the OSC will be VACATED.

2. [24-11852](#)-B-7    **IN RE: ROBERT/SHARYN SMITH**  
[24-1039](#)    [CAE-2](#)

ORDER TO SHOW CAUSE  
11-13-2024    [[9](#)]

BATESEL CO. LLC V. SMITH ET AL

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

Batesel Co. LLC filed a Corporate Ownership Statement (Doc. #11) on November 18, 2024 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #9. Accordingly, the OSC will be VACATED.

3. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[23-1040](#)

MOTION TO INSTRUCT TRUSTEE TO RELEASE LEGAL ANALYSIS,  
MEMORANDA AND OTHER WORK PRODUCT RELATING TO ADVERSARY CLAIM  
AGAINST PLAINTIFF TO PARTIES IN THE INTEREST OF COURT  
EFFICIENCY WITHOUT PREJUDICE TO DEFENDANT  
11-27-2024    [\[52\]](#)

SALVEN V. BLAIN

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

DISPOSITION:            Denied.

ORDER:                    The court will issue an order.

Ben King ("King") moves for an order instructing James Salven, Trustee in the above-styled Chapter 7 case ("Trustee"), to release any legal analysis, memoranda, or other work product or allegedly attorney-client privileged information relating to the adversary proceeding ("the AP") brought by the estate against Brian Blain ("Blain") styled *Salven v. Blain*, AP No. 23-1040. Doc. #58. The underlying bankruptcy case is *In re: Blain Farming Co., Inc.*, Case No. 21-12473 ("the Main Case").

King purchased the estate's claim against Blain at a hearing conducted on October 8, 2024, after the Trustee submitted a proposed settlement with Blain which was subject to higher and better bids. Main Case Doc. #295. The court has approved Trustee's motion to substitute King for Trustee in the AP. *See Item #4, below.*

This motion will be DENIED WITHOUT PREJUDICE for procedural errors including but not limited to the following:

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, or if an unrepresented party, perhaps the initials of that party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm or party in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, no DCN was included at all for the Motion or the Notice of Hearing. Docs. #53, #55. A DCN was included on the two Certificates of Service filed in connection with this motion, but it was a DCN (FW-2)

which was previously used for the Trustee's Motion for Order Approving Stipulation Regarding Scheduling. See *Doc. #23 et seq.*

Also, the certificate of service indicates service by first-class mail of documents that have nothing to do with this motion. Item 4 on the certificates of service do not include a date of service nor describe the document(s) served or reference an attachment describing the documents served. So, the two certificates of service are inadequate.

LBR 9004-2(d) requires (1) exhibits to be filed as a separate exhibit document, (2) an exhibit index stating the page number at which each exhibit is found within the exhibit document, and (3) use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the only exhibit is attached to the motion. Doc. #52.

Motions set in adversary proceedings require at least 28 days' notice of hearing, and motions noticed on less than 28 days are not permitted. LBR 9014-1(f)(2)(A).

This motion was filed and served on November 27, 2024, noticed on December 2, 2024, and set for hearing on December 18, 2024. Docs. #52, #53, #55. November 27, 2024, is 21 days before December 18, 2024. Furthermore, the Notice was only filed and served just 16 days before the hearing date. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2)(A), which is improper in the context of an adversary proceeding.

Trustee has filed a response noting that, while denial without prejudice was appropriate due to procedural errors, the court should instead deny the motion with prejudice. Doc. #58. Trustee's substantive objection to the motion is that the documents sought by King through this motion are privileged, either through the attorney-client privilege or protected from disclosure by the attorney work product doctrine. *Id.* Trustee's response is accompanied by an Exhibit in the form of email exchanges between King and Gabriel J. Waddell ("Waddell"), counsel for the Trustee, in which Waddell clearly states that, if King was indeed the winning bidder for the right to pursue the AP, Waddell would provide King with any discovery previously obtained but nothing else. Doc. #59.

The court declines the Trustee's invitation to consider the substance of King's motion. As a threshold matter, this motion presents an unusual issue for consideration in that attorney-client privilege and work-product privilege typically arise in the context of an evidentiary dispute between opposing parties in litigation. See *In re 4-S Ranch Partners, LLC*, Nos. 20-10800-B-11, 2020 Bankr. LEXIS 2709, at \*6 (Bankr. E.D. Cal. Sep. 30, 2020). The court is aware of no controlling authority nor was any provided any by the parties governing application of the two privileges when one party has purchased the claim of another party and seeks purportedly privileged

information from the former claim-holder's attorney in order to prosecute the claim.

Here, Trustee presents evidence in the form of an email chain that King understood before purchasing the claim that he would not receive any documents from Trustee's counsel that were protected by work-product or attorney-client privilege. Doc. #59. Absent from Trustee's filings, however, is sufficient predicate information for the court to assume that the privileges asserted apply in the first place or that either privilege is even applicable in a situation where another party has figuratively stepped into the shoes of an attorney's former client.

If King refiles this motion and overcomes the various procedural hurdles, Trustee will have opportunity to present evidence of the applicability of the two privileges. The burden will then shift to King to show that the information is not privileged or protected from disclosure, or that a waiver applies, with Trustee entitled to rebut. At present, however, there is insufficient information before the court to address the motion on its substance.

4. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[23-1040](#)     [FW-4](#)

MOTION TO SUBSTITUTE PARTY IN INTEREST  
11-20-2024     [\[44\]](#)

SALVEN V. BLAIN  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:     Granted.

ORDER:             The Movant shall prepare the order in conformance with  
the  
                        opinion below.

James Salven, Chapter 7 Trustee ("Trustee") in the bankruptcy case of Blain Farming Co., Inc. ("Debtor"), moves to substitute Ben King ("King") for Trustee in this adversary proceeding ("AP"). AP Doc. #44.

Debtor filed this bankruptcy on or about October 22, 2021, in Case No. 21-12473 ("the Main Case"). Main Case Doc. #1. In the course of administering the case, Trustee was informed that Debtor forgave a debt owed to Brian Blain ("Blain") prior to filing and also forgave a lease arrangement between Debtor and Blain for no consideration, allowing Blain to keep the process of farming operations for the former leased premises. AP Doc. #48. Trustee concluded that both the debt forgiveness and the lease termination were avoidable for the benefit of the bankruptcy estate and filed an adversary proceeding

against Blain in Adv. Pro. No. 23-0140 ("the Adversary Proceeding"). *Id.* Trustee and Blain negotiated a settlement of the Adversary Proceeding that was subject to higher and better bids at the hearing on approval of the settlement. *Id.* At the hearing, King appeared and presented what was ultimately the highest and best bid, which was approved by the court. *Id.*; Main Case Doc. #293. As a result of King's successful bid, King became the owner of the claims raised in the Adversary Proceeding and, Trustee avers, is the real party in interest to pursue those claims. AP. Doc. #48.

Trustee has previously filed a motion to substitute King as the plaintiff in this action, but that motion was denied without prejudice on procedural grounds. AP. Docs. ##43-44.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition, and the defaults of all nonresponding parties will be entered. This motion will be GRANTED.

As Trustee notes, courts have permitted the substitution of parties where a plaintiff has transferred his interest in the subject matter of the action, as has happened here with the court approved sale of Trustee's claims to King. *See e.g. McComb v. Row River Lumber Co.*, 177 F.2d 129, 130 (9th Cir. 1949). Also, Fed. R. Civ. Pro. 17(a)(1) requires that an action "must be prosecuted in the name of the real party in interest." A Rule 17(a) substitution should be "liberally allowed when the change is merely formal and in no way alters the original complaint's factual allegations as to the events or the participants." *Copelan v. Techtronics Indus. Co.*, 95 F. Supp. 3d 1230, 1235 (S.D. Cal. 2015), quoting *Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 20 (2d Cir.1997).

The court is persuaded by Trustee's arguments. No party in interest opposes this motion, which will be GRANTED. Accordingly, Ben King is

hereby substituted as Plaintiff in the above-captioned adversary proceeding in the place and name of Trustee.

5. [23-11175](#)-B-7     **IN RE: JASWINDER SINGH**  
[23-1047](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
5-3-2024     [[24](#)]

VETTER V. SINGH ET AL  
D. GARDNER/ATTY. FOR PL.

NO RULING.

6. [23-11175](#)-B-7     **IN RE: JASWINDER SINGH**  
[DMG-1](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
9-5-2023     [[38](#)]

JEFFREY VETTER/MV  
VINCENT GORSKI/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

NO RULING.