

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, January 26, 2022
Place: Department B - Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions)

Due to rising COVID-19 cases, all appearances shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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.

9:30 AM

1. [21-12407](#)-B-13 **IN RE: MANUELA BETTENCOURT**
[SDS-1](#)

MOTION TO CONFIRM PLAN
12-2-2021 [[30](#)]

MANUELA BETTENCOURT/MV
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Manuela Bettencourt ("Debtor") seeks an order confirming the Second Modified Amended Chapter 13 Plan. Doc. #30.

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

The plan and supporting documents were not properly noticed to all parties in interest. Here, the certificate of service indicates "[t]he Chapter 13 Trustee and U.S. Trustee will receive such notice upon the electronic filing of this document." Doc. #35.

Rule 2002(a)(9) requires 21 days' notice by mail to the trustee and other parties in interest of the time fixed for filing objections to confirmation of a chapter 13 plan. Rule 2002(b) requires 28 days' notice by mail to the trustee and other parties in interest for the hearing to consider confirmation of a chapter 13 plan. The United States Trustee ("UST") is also afforded copies of the notice. Rule 2002(k). In compliance with Rule 2002, LBR 3015-1(d)(1) requires parties in interest to be served at least 35 days before the hearing, including the Trustee and UST.

LBR 7005-1 governs service by electronic means and requires the certificate of service to include the names and email addresses of the parties served electronically. No such email addresses were listed for the Trustee or UST trustee.

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

2. [21-12613](#)-B-13 **IN RE: WILLIAM/STEPHANIE CROSS**
[FW-1](#)

MOTION TO CONFIRM PLAN
12-8-2021 [\[21\]](#)

STEPHANIE CROSS/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

William Ronald Cross and Stephanie Kaye Cross ("Debtors") seek an order confirming their First Modified Chapter 13 Plan. Doc. #21.

Chapter 13 trustee Michael H. Meyer ("Trustee") was prepared to file an objection to confirmation for failure to file accurate schedules, including Form 122C2-2, and failure to provide all disposable income. Doc. #36. At the continued meeting of creditors on January 11, 2021, Debtors and Trustee resolved the potential objection and stipulated to modifications to the order confirming plan. Doc. #37, *Ex. A*.

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. As in the attached exhibit, the lodged confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

3. [21-12520](#)-B-13 **IN RE: DAVID/DELIA HAYES**
[SLL-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
11-2-2021 [[10](#)]

DELIA HAYES/MV
STEPHEN LABIAK/ATTY. FOR DBT.
DISMISSED 12/28/21

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This matter was previously continued so that David Lee Hayes and Delia Marie Hayes ("Debtors") could augment the record. Docs. ##22-23. On December 23, 2021, Debtors requested to voluntarily dismiss the case. Doc. #26. The court granted the motion and dismissed the case on December 28, 2021. Doc. #28. Accordingly, this motion will be DENIED AS MOOT because the case has already been dismissed.

4. [17-13929](#)-B-13 **IN RE: ALBERT/TERRY MCCLAREN**
[PLG-2](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT,
SUBSTITUTE PARTY, AS TO JOINT DEBTOR
1-12-2022 [[67](#)]

TERRY MCCLAREN/MV
L. RODKEY/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 Moving Party shall submit a proposed order after hearing.

On September 22, 2021, joint debtor Terry Sue McClaren ("Decedent") died. Doc. #67. She is survived by her husband, joint debtor Albert Steve McClaren ("Debtor"). Debtor seeks (1) be substituted as the representative for or successor to Decedent for this joint chapter 13 case; (2) allow for the continued administration of the chapter 13 case after Decedent death; and (3) waive the 11 U.S.C. § 1328 certification requirements for entry of discharge with respect to Decedent.

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 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.

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. 25(a) (Fed. R. Bankr. P. 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 Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 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).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Docs. #67; 69, *Ex. 1*. The court notes that both Debtor and Decedent filed certificates of post-petition debtor education pursuant to 11 U.S.C. § 1328(g). Docs. ##10-11.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Fed. R. Bankr. P. 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, Fed. R. Bankr. P. 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 debtors filed chapter 13 bankruptcy on October 11, 2017. Doc. #1. Their chapter 13 plan confirmed January 22, 2018 provided for 60 monthly payments of \$2,454.63. Docs. #5; #27. The 60th month after the petition date is January 2023, so approximately one year is remaining in the plan.

The schedules indicate that Debtor is retired with a monthly retirement income of \$5,386.81. Doc. #1, *Sched. I*. Decedent was a "homemaker" and contributed approximately \$400.00 per month from her social security income. *Ibid.* After payment of expenses, the debtors had a monthly net income of \$2,824.81. *Id.*, *Sched. J*. Though no amended schedules have been filed, reducing debtors' net income by Decedent's contribution, while assuming that expenses remain unchanged, leaves approximately \$2,424.81 in monthly net income, which is \$29.82 short of being able to maintain plan payments.

Debtor declares that Decedent's property was community property, so he holds and controls all assets formerly possessed by Decedent and is likely the best option to substitute in as representative for or successor to Decedent. Doc. #71. Debtor wishes to continue with the chapter 13 case and says that he can reasonably and timely prosecute actions needed to administer the case to conclusion. *Id.* Additionally, Debtor received approximately \$11,000 from State Farm after Decedent passed away. Those funds were used to pay for her final expenses.

If Debtor's expenses decreased by \$29.82 or more, or if Debtor's income has increased, then the chapter 13 plan will likely still be feasible, and continued administration may be both possible and in the best interests of the parties.

This matter will be called as scheduled to inquire whether any parties in interest oppose the requested relief. In the absence of opposition at the hearing, this motion may be GRANTED provided that Debtor has sufficient monthly disposable income to afford the chapter 13 plan payment. Debtor shall promptly file amended *Schedules I* and *J* with current income and expenses.

5. [21-12030](#)-B-13 **IN RE: JOSE ARREGUIN**
[MHM-1](#)

MOTION TO DISMISS CASE
12-23-2021 [\[48\]](#)

MICHAEL MEYER/MV
ARASTO FARASAD/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. §§ 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #48. Elizabeth Roberts declares that payments are delinquent \$2,551.00 as of December 23, 2021. Doc. #50. Two additional payments of \$1,280.00 each will become due on December 25, 2021 and January 25, 2022, for an approximate total of \$5,111.00 if no payments are made. *Id.*

Jose Arreguin ("Debtor") timely responded. Doc. #53. Debtor acknowledges the delinquency and intends to be current by the time of the hearing. *Id.*

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 U.S. Trustee, or any other party in interest except Debtor 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 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).

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)(6) for being delinquent in making plan payments.

This matter will be called to confirm whether Debtor has cured the outstanding delinquency. If Debtor has cured the \$5,111.00 delinquency, the motion will be denied. If not, the motion may be granted unless the Debtor can, with competent evidence, establish a material factual dispute.

According to the schedules, it appears there are no non-exempt assets in the estate to be administered for the benefit of unsecured claims. All of Debtors' property is either fully encumbered or exempted in its entirety. Doc. #1. Accordingly, dismissal serves the interests of creditors and the estate.

6. [21-12734](#)-B-13 **IN RE: HAROLD FARRIS**

OBJECTION TO CONFIRMATION OF PLAN BY WILLIAM D. AUSMAN
1-4-2022 [\[14\]](#)

WILLIAM AUSMAN/MV
GABRIEL WADDELL/ATTY. FOR DBT.

NO RULING.

Creditor William D. Ausman ("Creditor") objects to the confirmation of Harold Wayne Farris' ("Debtor") chapter 13 plan. Doc. #14. Creditor contends (1) Debtor understated the debt owed to Creditor in the plan; (2) the plan was not proposed in good faith; (3) Debtor has undisclosed assets, as evidenced by \$570,593.00 listed in business and personal assets in his 1991 prenuptial agreement, which were purportedly transferred to his wife, Judy Wathen-Farris, in 2010 to conceal the assets from creditors; (4) Debtor is not eligible for chapter 13 due to unreported disposable income; and (5) Debtor is distributing less to allowed unsecured creditors than they would receive in a chapter 7 liquidation.

This objection does not procedurally comply with the Local Rules of Practice ("LBR") or the Federal Rules of Bankruptcy Procedure ("Rule"). Typically, these errors would result in the objection being pre-disposed without a hearing and overruled without prejudice. However, because the § 341 meeting of creditors was concluded on December 28, 2021, the timeframe to file objections to plan confirmation under LBR 3015-1(c)(4) expired on January 4, 2021, which was the day this objection was filed. Accordingly, this matter will be called and proceed as scheduled. Counsel is advised to review the local rules that are available on the court's website.¹

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion or objection requires a new DCN. Here, the pleadings entirely omit a DCN.

Second, no separate certificate of service was filed with this objection. LBR 9004-2(e)(1) provides that proofs of service shall be filed as separate documents. LBR 9004-2(e)(2) states that copies of the pleadings served "SHALL NOT be attached to the proof of service filed with the court."

LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

Here, at the bottom of the objection, Creditor certifies under penalty of perjury that the objection was mailed to the attorney for the debtor and the chapter 13 trustee. Doc. #14. This is insufficient. The certificate of service should have been filed separately and not attached to the objection.

Third, Debtor was not served. Rule 3015 indicates that an objection to plan confirmation is governed by Rule 9014. Rule 9014(b) requires service in accordance with Rule 7004. Rule 7004(b)(9) requires service upon the debtor until the case is dismissed or closed by mailing a copy of the pleadings to the address shown in the petition, or another address if designated. If represented, Rule 7004(g) requires the debtor's attorney to be served in addition to the debtor.

Debtor's attorney, Gabriel J. Waddell, was properly served, but Debtor was not served. Doc. #14. This warrants overruling the objection.

Fourth, the notice of hearing does not comply with the procedure specified in LBR 3015-1(c)(4), 9014-1(a)-(e), (f)(2), and (g)-(1). LBR 3015-1(c)(4) provides, "[t]he notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing." LBR 9014-1(f)(2) outlines the procedure when written opposition is not required.

Instead, the notice of hearing here says that written opposition is required and must be served not later than 14 days from the date of service, and if no opposition is filed, the court may enter an order "granting [*sic*]" the objection without further hearing. Doc. #16.

Fifth, the notice omits language directing respondents to the court's website. *Id.* 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.

Sixth, the motion contained attached exhibits. LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibits did not contain an index, were not consecutively numbered, and were attached to the motion.

Seventh, Section 3.01 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount to be repaid under the plan. Doc. #3. The objection will be overruled insofar as it objects to Debtor understating the amount of Creditor's claim in the plan.

This matter will be called as scheduled. The court is inclined to OVERRULE WITHOUT PREJUDICE this objection.

¹ <http://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRules2021.pdf>.

7. [16-13240](#)-B-13 **IN RE: EDWARD/SHARON RODGERS**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-18-2021 [\[56\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This matter was previously continued. Doc. #63. At the January 5, 2022 hearing, the Debtors had not cured a \$3,756.61 plan payment delinquency. Doc. #62. Debtors' 60-month plan term ended September 2021 and the \$3,756.61 represents the amount needed to complete the case. At the request of Debtors' counsel, the motion was continued to give Debtors an opportunity to bring the plan to completion or else have the case dismissed. *Id.*

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)(6) for being delinquent in making plan payments.

This matter will be called to confirm whether Debtors have cured the outstanding delinquency. If Debtors have cured the \$3,756.61 delinquency, the motion will be denied. If not, the motion may be granted unless the Debtors can, with competent evidence, establish a material factual dispute.

According to the schedules, it appears there are no non-exempt assets in the estate to be administered for the benefit of unsecured claims. All of Debtors' property is either fully encumbered or exempted in its entirety. Doc. #1. Accordingly, dismissal serves the interests of creditors and the estate.

8. [19-12041](#)-B-13 **IN RE: JERRY WALKER**
[WLG-4](#)

MOTION TO SELL
1-10-2022 [[62](#)]

JERRY WALKER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
OST 1/11/22

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 Moving Party shall submit a proposed order after hearing.

Jerry Keith Walker ("Debtor") seeks authorization to sell real property located at 904 Silver Oak Drive, Bakersfield, CA 93312 ("Property") to Zachary Lee Kolb and Madison Kolb ("Proposed Buyers") for \$340,000.00, subject to higher and better bids at the hearing. Doc. #62.

This motion was filed with an order shortening time ("OST") to permit the sale to occur with less than 21 days' notice under Fed. R. Bankr. P. 2002(a)(2). Doc. #70.

Consequently, no parties in interest were required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is

offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

In the absence of opposition at the hearing, this motion may be granted. The court will inquire at the hearing whether the OST was served on all parties in interest.

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Proposed Buyers. There is no indication that Proposed Buyers are insiders. Proposed Buyers are not listed in the schedules or master address list and do not appear to be creditors, co-debtors, or other parties in interest, notwithstanding their involvement in this sale. Docs. ##1-2; #16. Further, Debtor declares that he has no personal relationship with Proposed Buyers and the motion states that this is an arm's length transaction. Docs. ##62-63.

Property is listed in the petition with a value of \$240,245.00. Doc. #1, *Sched. A/B*. Property is encumbered by a deed of trust in favor of InterCap Lending in the amount of \$225,340.00. *Id.*, *Sched. D*. It appears that Freedom Mortgage is the current holder of this deed of trust. Doc. #63. Debtors claimed an exemption under Cal. Code Civ. Proc. § 703.140(b)(1) in the amount of \$14,905.00. Doc. #16, *Am. Sched. C*. Property appears to be community property co-owned with Norma A. Walker. *Id.*, *Am. Sched. H*.

Debtor declares that Property is encumbered by a lien from Freedom Mortgage in the sum of \$201,166.74, which will be paid through escrow. Doc. #63. Sale costs totaling \$25,196.30 will also be paid by Debtor, which leaves a net of \$113,636.96 for the estate. *Id.* Debtor requests that the chapter 13 trustee be authorized to make a demand upon escrow for sufficient funds to pay off the chapter 13 plan with a 100% dividend to unsecured creditors. After payoff, Debtor requests the remaining funds be returned to him. *Id.*

The proposed closing statement lists the following payout:

| | |
|-------------------------------|-----------------------|
| Sale price | \$340,000.00 |
| Property taxes | - \$3,473.23 |
| Pro-rated property tax credit | + \$1,630.48 |
| First mortgage | - \$201,166.74 |
| Broker commissions (6%) | - \$20,400.00 |
| Closing costs | - \$2,953.55 |
| Net to the estate | = \$113,636.96 |

Doc. #64, *Ex. B*.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Debtor's business judgment, and proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best results. There is no opposition to the sale. The sale will pay off the first mortgage and the chapter 13 plan in full with a 100% dividend to unsecured creditors. Debtor's judgment appears to be reasonable and will be given deference.

This matter will be called as scheduled to inquire whether the OST was properly served with the motion and supporting pleadings, and whether any party in interest opposes this sale. In the absence of opposition at the hearing, this motion will be GRANTED and proceed for higher and better bids. If opposition is presented, this matter will be continued and proceed as a scheduling conference.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the property; it is being sold "as-is, where-is."

9. [11-60647](#)-B-13 **IN RE: RON/CYNTHIA KURISU**
[JDM-4](#)

MOTION TO AVOID LIEN OF RIVERWALK HOLDINGS LTD
12-21-2021 [\[99\]](#)

CYNTHIA KURISU/MV
JAMES MILLER/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.

Ron Hideo Kurisu and Cynthia Stormy Kurisu ("Debtors") seek to avoid two judicial liens encumbering real property located at 136 W. El Paso Avenue, Clovis, California 93611 ("Property") in the amounts of (a) \$20,367.45 in favor of Riverwalk Holdings Ltd. ("Riverwalk"); and (b) 5,856.18 in favor of Discover Bank ("Discover").² Doc. #99.

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). 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.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re*

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered in favor of Discover Bank against joint debtor Cynthia Kirusu in the sum of \$5,856.18 on December 15, 2009. Doc. #102, *Ex. D*. The abstract of judgment was issued on April 27, 2011 and recorded in Fresno County on June 28, 2011. *Id.* This appears to be the most senior judgment lien.

On April 21, 2011, a second judgment was entered in favor of Riverwalk against joint debtor Ron Kurisu in the sum of \$20,367.45. *Id.*, *Ex. C*. The abstract of judgment of judgment was issued on July 12, 2011 and recorded in Fresno County on September 1, 2011. *Id.* This appears to be the most junior judgment lien as of the petition date.

Both of these judgment liens attached to Property pre-petition. Doc. #101. Although both judgments were entered more than 10 years ago, neither have expired due to the filing of this bankruptcy case. Under Cal. Code Civ. Proc. ("C.C.P.") § 697.310(b), a judgment lien continues in effect until 10 years from the date of entry of judgment. Pursuant to C.C.P. § 683.020, a 10-year-old judgment may not be enforced, all enforcement proceedings shall cease, and any lien created by an enforcement procedure is extinguished. However, 11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect. See *In re Spirtos*, 221 F.3d 1079, 1080 (9th Cir. 2000).

The automatic stay paused the tolling of the renewal period when Debtors filed bankruptcy on September 26, 2011. Doc. #1. The automatic stay will remain in effect until 30 days after the case is closed or dismissed. 11 U.S.C. §§ 108(c), 362(c)(1), (c)(2). Debtors received an order of discharge on February 27, 2017 and the case was closed by final decree on March 13, 2017. Docs. #74; #76. So, tolling resumed on April 12, 2017. Though Debtors reopened the case on September 14, 2021, "[r]eopening does not bring property back into the estate nor does it cause the automatic stay to be revived." *In re Lopez*, 283 B.R. 22, 32 (B.A.P. 9th Cir. 2002).

The most junior judgment lien in favor of Discover Bank was entered on December 15, 2009. It tolled for 650 days until the bankruptcy was filed, and then paused until April 12, 2017. From April 12, 2017 until January 26, 2022, the date of this hearing, the stay tolled another 1,750 days, for a total of 2,400 days, or approximately six and one-half years. So, the judgments have not expired and may be avoided here.

As of the petition date, Property had an approximate value of \$219,275.00. Docs. #101; #13, *Am. Sched. A/B*. The unavoidable liens encumbering Property consisted of a first mortgage in favor of CitiMortgage in the amount of \$184,728.01, and a second mortgage in favor of State Center Credit Union in the amount of \$70,561.01. *Id.*, *Am. Sched. D*. Debtors claimed a "wildcard" exemption pursuant to Cal.

Civ. Proc. Code § 703.140(b) (5) in the amount of \$1.00. Doc. #102, Am. Sched. C.

When a debtor seeks to avoid multiple liens under § 522(f) (1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid*. Riverwalk's judgment lien is junior to Discover Bank's and must be avoided first. Strict application of the § 522(f) (2) formula is as follows:

| | |
|--|----------------|
| Riverwalk's judicial lien | \$20,367.45 |
| Total amount of all other unavoidable liens ³ | + \$261,145.20 |
| Debtors' wildcard exemption | + \$1.00 |
| <i>Sum</i> | = \$281,513.65 |
| Value of Debtors' interest absent liens | - \$219,275.00 |
| Amount Riverwalk's lien impairs Debtors' exemption | = \$62,238.65 |

Meyer, 373 B.R. at 91. As result, Riverwalk's judgment lien impairs Debtors' exemption and can be avoided. The same analysis applies to Discover Bank's judgment lien:

| | |
|--|----------------|
| Discover Bank's judicial lien | \$5,856.18 |
| Total amount of all other unavoidable liens | + \$255,289.02 |
| Debtors' wildcard exemption | + \$1.00 |
| <i>Sum</i> | = \$261,146.20 |
| Value of Debtors' interest absent liens | - \$219,275.00 |
| Amount Discover Bank's lien impairs Debtors' exemption | = \$41,871.20 |

Both judgment liens are therefore avoidable. The § 522(f) (2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

| | |
|-------------------------------------|-----------------|
| Fair market Value of Property | \$219,275.00 |
| Total amount of unavoidable liens | - \$255,289.02 |
| Remaining equity | = (\$36,014.02) |
| Debtors' wildcard exemption | - \$1.00 |
| Remaining equity for judicial liens | = (\$36,015.02) |
| Riverwalk's judgment lien | - \$20,367.45 |
| Discover Bank's judgment lien | - \$5,856.18 |
| Extent Debtor's exemption impaired | = (\$62,238.65) |

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED.

² Debtors complied with Fed. R. Bankr. P. 7004(b) and (h) by serving Jay Ledford, Riverwalk's general partner, and Roger C. Hochschild, Discover's CEO and President, by certified mail on December 21, 2021. Doc. #103.

³ This amount includes the Discover Bank judgment lien because it is unavoidable until the junior judgment liens are avoided.

10. [21-12449](#)-B-13 **IN RE: PHILIP BURNLEY**
[EPE-1](#)

MOTION TO CONFIRM PLAN
12-22-2021 [\[26\]](#)

PHILIP BURNLEY/MV
ERIC ESCAMILLA/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.

Philip Zuante Burnley ("Debtor") seeks an order confirming the Second Modified Chapter 13 Plan. Doc. #23

Chapter 13 trustee Michael H. Meyer ("Trustee") was prepared to file an objection to confirmation for failure to file accurate schedules, including Form 122C2-2, and failure to provide all disposable income. Doc. #31. At the continued meeting of creditors on December 28, 2021, Debtor and Trustee resolved the potential objection and stipulated to modifications to the order confirming plan. Doc. #32, *Ex. A*.

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. As in the attached exhibit, the lodged confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

11. [20-11751](#)-B-13 **IN RE: JENNIFER ROBELLO**
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS
ATTORNEY(S)
12-27-2021 [\[21\]](#)

DAVID JENKINS/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.

David R. Jenkins ("Applicant"), attorney for Jennifer Robello ("Debtor"), seeks final compensation in the sum of \$4,000.00 under to 11 U.S.C. § 330. Doc. #14. Applicant provided services worth \$6,405.00 in fees and incurred \$125.00 in actual, necessary expenses from April 4, 2020 through December 26, 2021, but Applicant provided a courtesy discount of \$1,105.00, and \$1,425.00 was paid by Debtor's ARAG Legal Insurance post-petition. The remaining balance of \$4,000.00 is requested in this motion. *Id.*

Debtor signed a statement of consent on December 27, 2021 indicating that Debtor has received and read the fee application and approves the same. Doc. #23, *Ex. D.*

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). The failure of the creditors, the debtor, 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.

The original chapter 13 plan is the operative plan in this case. Docs. #2; #14. Section 3.05 indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$2,550.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #2. The *Disclosure of Compensation*, Form B2030, indicates that Applicant was paid \$1,450.00 from legal insurance. Doc. #1.

Other than the insurance payment, Applicant declares that he has not accepted or demanded from Debtor or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #23, *Ex. A*.

This is Applicant's first and final request for compensation. Doc. #21. The source of funds for payment of the fees will be \$4,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 18.30 billable hours of legal services at a rate of \$350.00 per hour, totaling \$6,405.00 in fees, and incurred \$125.00 in costs for service, but Applicant provided a courtesy discount of \$1,105.00 and ARAG Legal Insurance paid \$1,425.00 post-petition. The requested fees and expenses here are limited to **\$4,000.00**. *Id.*; Doc. #21, *Ex. B*.

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtor's financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) confirming the original chapter 13 plan; and (7) preparing and filing this motion for compensation (DRJ-2). Doc. #21, *Exs. A, B, C*. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to the fee application. *Id.*, *Ex. D*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,000.00 in

fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from April 4, 2020 through December 26, 2021.

12. [21-12355](#)-B-13 **IN RE: MONICA RAMOS**
[DMG-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ABDUL H. ALI
AND NAZLI ABBAS
11-23-2021 [[14](#)]

NAZLI ABBAS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Resolved by stipulation.

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

Secured creditors Abdul H. Ali's and Nazli Abbas' ("Creditors") objection was previously continued so that Monica Marcella Ramos ("Debtor") could file and serve a reply by January 19, 2022. Docs. ##23-24.

On January 19, 2022, Debtors and Creditors agreed to pay Creditors' claim at a 6% interest rate. Doc. #32. Accordingly, this objection has been resolved by stipulation and will be dropped from calendar.

13. [21-12469](#)-B-13 **IN RE: JUAN/SARAH AYON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-5-2022 [[17](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 23, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of Juan Carlos Ayon's and Sarah Louise Ayon's ("Debtors")

plan because it does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors. Doc. #17. Additionally, Trustee objects to payment scheme outlined in the plan's Additional Provisions in Section 7.01.

This objection will be CONTINUED to February 23, 2022 at 9:30 a.m.

First, Trustee objects under 11 U.S.C. § 1325(b)(1) because the plan fails to pay the unsecured, non-priority creditors all of Debtors projected disposable income as defined in § 1325(b)(1)(B). *Id.* At the § 341 meeting of creditors on December 7, 2021, joint debtor Juan Ayon testified that he had received a raise in August 2021, causing his base salary to increase from \$7,743.09 to \$8,544.64, or \$801.55 per month. Additionally, Mr. Ayon testified that he is required to work up to 80 hours of overtime per month. *Id.* Trustee indicates that Mr. Ayon's overtime income for August and September 2021 is represented as follows:

| Pay Date | Hours | Gross Amount |
|--------------------|-------|--------------|
| August 12, 2021 | 80.00 | \$5,575.32 |
| September 13, 2021 | 93.17 | \$6,827.23 |

Id., at 3. Meanwhile, Trustee notes discrepancies in the Debtors' Form 122C-2 for certain deductions and requests that Debtors amend Form 122C-2 or provide additional evidence, if any, supporting the claimed deductions. *Id.* After this objection was filed, Debtors amended Form 122C-1 and -2 on January 6, 2022. Doc. #20. Those disputed deductions are as follows:

¶ 17, Involuntary deductions: \$1,345.16 is deducted for involuntary retirement contributions, but Trustee says that Mr. Ayon's paystubs mandatory retirement contributions and union dues collectively total \$1,105.41 per month. Doc. #1, Form 122C-2. Debtor contributes to a voluntary post-retirement benefit plan labeled "OPEB/CERBT" in the amount of \$309.72, but the Bankruptcy Appellate Panel has held that for above-median income debtors, post-petition retirement contributions are not excluded from disposable income. *In re Parks*, 475 B.R. 703 (2012). Debtors reduced this deduction to \$1,087.06. Doc. #20.

¶ 35, Priority claims: Debtors claim \$73,264.00 in past due priority claims, which equates to \$1,221.07 over 60 months. However, proofs of claim filed by the Franchise Tax Board and Internal Revenue Service show that the priority debt totals \$59,804.03, which only allows for a deduction of \$996.73 over 60 months. Claim Nos. #2; #6. In the amended Form 122C-2, this deduction was unchanged. Doc. #20.

¶ 36, Projected chapter 13 payment: Debtors project a plan payment of \$2,850.00 at 10% interest. Trustee objects because the U.S. Trustee website only allows for an administrative expense

multiplier of 7.2% for cases filed on or after May 15, 2021.⁴ Debtors reduced the multiplier percentage to 7.2%. *Id.*

It is unclear whether Debtor provided additional evidence to Trustee supporting the past due priority claims deduction that was unchanged. The updated Form 122C-2 lists \$2,581.83 in monthly disposable income under § 1325(b)(2). *Id.*

Second, Trustee objects to the Additional Provisions in Section 7.01 of the plan. The plan provides for monthly payments of \$2,825.00 per month for 60 months. Doc. #3. Debtors' attorney was paid \$1,761.00 prior to filing the case and additional fees of \$32,451.00 will be paid through the plan pursuant to court approval under §§ 329 and 330.

Under Section 3.06, \$2,550.00 of the monthly payment is allocated to administrative expenses until paid in full. Section 7.01(1) requires Trustee to set aside this portion except to maintain post-petition monthly payments to holders of Class 1 claims (there are none). *Id.* Under 7.01(2)(a) and (b), Debtors' attorney is to file a fee application by the later of 310 days after the petition date (August 27, 2022), or 180 days after plan confirmation. If that deadline is missed, Trustee may distribute the funds to creditors.

Trustee notes that Debtors' attorney does not anticipate performing any of the following services: objecting to improper or invalid proofs of claim; filing and serving motions to buy, sell, or refinance property; preparing, filing, and serving motions to avoid liens or motions to value; or any litigation. Doc. #17. Debtors' attorney might file a motion to incur debt to cosign student loans, and he does anticipate performing other tasks typically required as duties for attorneys electing to be compensated under the \$4,000.00 "no look" fee of LBR 2016-1(c).

Though Trustee says that Debtors' attorney does not anticipate enough work to require the fees provided for in the plan, only nominal amounts are distributed to creditors until the \$32,451.00 in attorney fees are paid in full. Trustee also notes that the distribution of excess funds after payment of the monthly dividend to creditors is never paid pro-rata to the attorney fee claim and nothing in the plan directs Trustee to retain the monthly dividend for attorney administrative claims if the attorney elects to be paid through an application for compensation. Further, the plan, Bankruptcy Code, Federal Rules, and LBR do not provide any guidance as to the appropriate amount or range of fees that should be withheld pending application for approval of fees. As result, under the current plan, no creditors will be paid for nearly a year. A sum of \$28,050.00 is accumulated during the first 11 months for attorney fees and, if the case is dismissed, returned to the Debtor with no payments to creditors. If a maximum fee application is approved after 12 months, an additional \$4,401.00 will be accumulated before any priority creditors receive payment, and only in month 14 will priority claims begin to be paid.

Trustee requests the court to review this case and determine the following:

- (1) What amount is appropriate to anticipate and set aside for attorney fees?
- (2) What is a reasonable monthly dividend to set aside for attorney fees?
- (3) What deadlines should be set for Debtors' attorney to file attorney fees?

This objection will be CONTINUED to February 23, 2021 at 9:30 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response not later than February 9, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by February 16, 2022.

If Debtors elect to withdraw this 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 February 16, 2022. If Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

⁴ https://www.justice.gov/ust/eo/bapcpa/20210515/bci_data/ch13_exp_mult.html.

14. [19-13072](#)-B-13 **IN RE: GARY/SANDRA BOZARTH**
[DMG-4](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
1-6-2022 [[67](#)]

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

D. Max Gardner, attorney for Gary Michael Bozarth and Sandra Marie Bozarth ("Debtors"), requests final approval of interim compensation in the sum of \$1,120.77, as well as confirming \$6,184.92 in compensation previously awarded. Doc. #67. The interim sum consists of \$1,085.00 in reasonable attorney fees and \$35.77 in actual, necessary expenses incurred for the benefit of the estate from April 21, 2020 through January 26, 2022.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules").

Rule 2002(a)(6) requires at least 21 days' notice to the debtor, trustee, all creditors, and other parties in interest of a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000.00.

This motion was filed and served on January 6, 2022, which is 20 days before this scheduled hearing on January 26, 2022. Doc. #71. Though sufficient for LBR 9014-1(f)(2) notice, Rule 2002(a)(6) requires 21 days' notice to all parties. No order shortening time was filed with this motion.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

15. [19-13588](#)-B-13 **IN RE: KEVIN SISEMORE**
[DRJ-3](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS
ATTORNEY(S)
12-27-2021 [\[35\]](#)

DAVID JENKINS/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 Moving Party shall submit a proposed order after hearing.

David R. Jenkins ("Applicant"), attorney for Kevin J. Sisemore ("Debtor"), seeks final compensation in the sum of \$5,000.00 under to 11 U.S.C. § 330. Doc. #35. Applicant provided services worth \$8,470.00 in fees and incurred \$361.50 in actual, necessary expenses from July 22, 2019 through December 20, 2021, but Applicant provided a courtesy discount of \$2,406.50, and \$1,425.00 was paid by Debtor's ARAG Legal insurance policy post-petition. The remaining balance of \$5,000.00 is requested in this motion. *Id.*

Debtor signed a statement of consent on December 22, 2021 indicating that Debtor has received and read the fee application and approves the same. Doc. #37, *Ex. D*.

No party in interest timely filed written opposition, but there is a minor discrepancy between the plan and motion as to how much was paid by ARAG Legal Insurance. 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 will proceed as scheduled. The failure of the creditors, the debtor, 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). 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).

The First Modified Chapter 13 Plan is the operative plan in this case. Docs. #25; #32. Section 3.05 indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$2,550.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #25. Additional Provision 7.04 amends the Section 3.05 to provide Applicant additional fees of \$5,000.00 to be paid through the plan. *Id.* Additional Provision 7.01 notes that Applicant was paid \$1,450.00 by ARAG Legal Insurance shortly after the petition was filed. *Id.* The court notes that there is a \$25 discrepancy between the motion and the plan regarding whether Applicant was paid \$1,425 or \$1,450 by ARAG Legal Insurance. The *Disclosure of Compensation*, Form B2030, indicates that Applicant was paid \$1,450.00 from legal insurance. Doc. #1.

Other than the insurance payment, Applicant declares that he has not accepted or demanded from Debtor or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #37, *Ex. A*.

This is Applicant's first and final request for compensation. Doc. #35. The source of funds for payment of the fees will be \$5,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 24.20 billable hours of legal services at a rate of \$350.00 per hour, totaling \$7,140.00 in fees, and incurred \$361.50 in costs for service, but Applicant provided a courtesy discount of \$2,406.50 and ARAG Legal Insurance paid either \$1,425.00 or \$1,450.00 post-petition. The requested fees and expenses here are limited to **\$5,000.00**. *Id.*; Doc. #37, *Ex. B*.

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtor's financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) responding to a motion to dismiss (MHM-1); (7) confirming the original chapter 13 plan; and (8) preparing and filing this motion for compensation (DRJ-2). Doc. #38, *Exs. A, B, C*. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to the fee application. *Id.*, *Ex. D*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$3,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$3,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from May 17, 2019 through December 11, 2021.

16. [19-12190](#)-B-13 **IN RE: CHRISTOPHER/ROBYN NELSON**
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS
ATTORNEY(S)
12-21-2021 [\[50\]](#)

DAVID JENKINS/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.

David R. Jenkins ("Applicant"), attorney for Christopher Allen Nelson and Robyn Karyl Nelson ("Debtors"), seeks final compensation in the sum of \$3,000.00 under to 11 U.S.C. § 330. Doc. #50. Applicant provided services worth \$10,955.00 in fees and incurred \$120.00 in actual, necessary expenses from October 21, 2018 through December 10, 2021, but Applicant provided a courtesy discount of \$5,075.00, and \$3,000.00 was paid by Debtors pre-petition. Doc. #52, *Ex. B*. The remaining balance of \$3,000.00 is requested in this motion. Doc. #50.

Debtors signed a statement of consent on December 20, 2021 indicating that Debtors have received and read the fee application and approves the same. Doc. #52, *Ex. D*.

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). The failure of the creditors, the debtor, 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.

The original chapter 13 plan is the operative plan in this case. Docs. #3; #44. Section 3.05 indicates that Applicant was paid \$3,000.00 prior to filing the case and, subject to court approval, additional fees of \$3,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #3.

Other than the pre-petition fees, Applicant declares that he has not accepted or demanded from Debtor or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #52, *Ex. A*.

This is Applicant's first and final request for compensation. Doc. #50. The source of funds for payment of the fees will be \$3,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 31.30 billable hours of legal services at a rate of \$350.00 per hour, totaling \$10,955.00 in fees, and incurred \$120.00 in costs for service, but Applicant provided a courtesy discount of \$5,075.00 and Debtors paid \$3,000.00 pre-petition. The requested fees and expenses here are limited to **\$3,000.00**. *Id.*; Doc. #52, *Ex. B*.

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtor's financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) prosecuting the trustee's objection to confirmation (MHM-1); (7) confirming the original chapter 13 plan; and (8) preparing and filing this motion for compensation (DRJ-2).

Doc. #50, *Exs. A, B, C*. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, *Ex. D*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$3,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$3,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from October 21, 2018 through December 10, 2021.

17. [20-12494](#)-B-13 **IN RE: NATHANAEL/CRYSTAL LOPEZ**
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS
ATTORNEY(S)
12-28-2021 [\[19\]](#)

DAVID JENKINS/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.

David R. Jenkins ("Applicant"), attorney for Nathanael L. Lopez and Crystal D. Lopez ("Debtors"), seeks final compensation in the sum of \$5,000.00 under to 11 U.S.C. § 330. Doc. #19. Applicant provided services worth \$7,700.00 in fees and incurred \$175.00 in actual, necessary expenses from July 16, 2020 through December 23, 2021, but Applicant provided a courtesy discount of \$1,440.00, and \$1,435.00 was paid by Debtors' ARAG Legal insurance policy post-petition. Doc. #21, *Ex. B*. The remaining balance of \$5,000.00 is requested in this motion. Doc. #19.

Debtors signed a statement of consent on December 27, 2021 indicating that Debtors have received and read the fee application and approves the same. Doc. #21, *Ex. D*.

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). The failure of the creditors, the debtor, 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.

The original chapter 13 plan is the operative plan in this case. Docs. #4; #16. Section 3.05 indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$5,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #4. The *Disclosure of Compensation*, Form B2030, indicates that Applicant was paid \$1,435.00 from legal insurance. Doc. #1.

Other than the insurance payment, Applicant declares that he has not accepted or demanded from Debtor or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #21, *Ex. A*.

This is Applicant's first and final request for compensation. Doc. #19. The source of funds for payment of the fees will be \$5,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 22.00 billable hours of legal services at a rate of \$350.00 per hour, totaling \$7,700.00 in fees, and incurred \$175.00 in costs for service, but Applicant provided a courtesy discount of \$1,440.00 and ARAG Legal Insurance paid \$1,435.00 post-petition. The requested fees and expenses here are limited to **\$5,000.00**. *Id.*; Doc. #21, *Ex. B*.

Applicant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtor's financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) confirming the original chapter 13 plan; and (7) preparing and filing this motion for compensation (DRJ-2). Doc. #21, *Exs. A, B, C*. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to the fee application. *Id.*, *Ex. D*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$5,000.00 in

fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$5,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from July 16, 2020 through December 23, 2021.

18. [21-12297](#)-B-13 **IN RE: ISAAC/WANDA SANTOS**
[TCS-3](#)

MOTION TO CONFIRM PLAN
12-20-2021 [\[49\]](#)

WANDA SANTOS/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.

Isaac Genaro Santos and Wanda Santos ("Debtors") seek confirmation of their Second Modified Chapter 13 Plan. Doc. #49.

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 it shall reference the plan by the date it was filed.

11:00 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[21-1039](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-3-2021 [[1](#)]

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

NO RULING.

2. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[21-1043](#)

STATUS CONFERENCE RE: COMPLAINT
11-23-2021 [[1](#)]

LANGSTON ET AL V. CALIFORNIA
DEPARTMENT OF DEVELOPMENTAL
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.

3. [21-10368](#)-B-7 **IN RE: SIMONA PASILLAS**
[21-1038](#) [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-27-2021 [[53](#)]

SALVEN V. PASILLAS ET AL
GABRIEL WADDELL/ATTY. FOR MV.
CONT'D TO 2/9/22 WITHOUT ORDER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 9, 2022 at 11:00 a.m.

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

This motion was originally scheduled for hearing on January 26, 2022
at 11:00 a.m. Doc. #54. On January 10, 2022, an amended notice of
hearing was filed and served, setting the hearing for February 9, 2022

at 11:00 a.m. Docs. ##64-65. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See LBR 9014-1(j). However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application.

If the plaintiff's counsel appears at the hearing to orally request a continuance, then the motion will be CONTINUED to February 9, 2022 at 11:00 a.m. But if no written application for a continuance is received by the court before this hearing, and if counsel does not appear at the hearing, the motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice.

4. [20-11296](#)-B-7 **IN RE: KYLE/DEANNA MAURIN**
[20-1044](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
7-10-2020 [\[1\]](#)

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 23, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

The parties stipulated to modify the pre-trial scheduling order on January 12, 2022. Doc. #75. The court approved the stipulation on January 18, 2022 and continued the hearing to February 23, 2022 at 11:00 a.m. Doc. #77. Per that order, Plaintiff's and Defendant's deadlines to file a pre-trial statement were extend through and including February 9 and 16, 2022, respectively. *Id.*

1:30 PM

1. [21-11939](#)-B-13 **IN RE: PARGAT DHALIWAL**
[CZD-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-19-2021 [\[35\]](#)

BMO HARRIS BANK N.A./MV
D. GARDNER/ATTY. FOR DBT.
CASEY DONOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

BMO Harris Bank, N.A. ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (2) to permit Movant to exercise its rights and remedies against the following estate assets (collectively "Property" or "Volvos"):

1. 2016 Volvo VNL-Series: VNL64T/780 SLRP 189" BBC CONV CAB SBA TRACTOR 6X4 ("2016 Volvo"); and
2. 2018 Volvo VNL-Series: VNL64T/780 SLR 189" BBC CONV CAB SBA TRACTOR 6X4 ("2018 Volvo").

Doc. #35. Movant also requests waiver of the 14-day stay described in Fed. R. Bankr. P. 4001(a)(3).

Pargat Singh Dhaliwal ("Debtor") initially opposed.⁵ Doc. #59. The matter was continued. Doc. #62. Debtor then filed written opposition and Movant replied with an evidentiary objection. Docs. #78; ##81-82.

This matter was continued pending an evidentiary hearing on Debtor's motion to value collateral, originally scheduled in matter #2 below. See DMG-3. The court ordered the automatic stay continued in effect pending the resolution of a final hearing under 11 U.S.C. § 362(e)(2)(B). Doc. #95. As adequate protection, Debtor was required to provide proof of insurance and file a declaration stating that the transfer of the 2018 Volvo to Gallop Transport, Inc. was rescinded. *Id.* Debtor filed the requisite declaration on December 13, 2021. Doc. #101.

However, since the last hearing, Debtor withdrew the motion to value collateral and requested that the evidentiary hearing be taken off calendar. Doc. #103. As result, cause for continuance no longer exists because there is no pending motion to value collateral and no reorganization in prospect. This matter will be called as scheduled. The court is inclined to GRANT this motion.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

Movant financed the purchase of Property, along with a third Volvo ("2017 Volvo"), pursuant to multiple written loan and security agreements. Docs. #39; #40, *Exs. 1, 5*. Debtor agreed that he (1) would maintain insurance for the actual cash value of Property for the life of the agreement and (2) would not sell, lend, encumber, pledge, transfer, secrete, or dispose of the Property without Movant's prior written consent. *Id.*

Debtor defaulted on those agreements in 2020 and subsequently filed bankruptcy on August 5, 2021. Doc. #1. As of the petition date, the balances due and values for both Volvos were:

- (a) \$20,760.10 for the 2016 Volvo, scheduled at \$15,000; and
- (b) \$71,296.14 for the 2018 Volvo, scheduled at \$29,500.

Doc. #39, ¶¶ 12, 26; *cf.* Doc. #21, *Sched. A/B*. Debtor's motion to value collateral sought to value the 2016 Volvo at \$14,050.00 and the 2018 Volvo at \$34,000.00. Doc. #54.

§ 362(d)(1)

Bryan J. Schrepel, Movant's Litigation Specialist, declared that Debtor breached the agreement by leasing or assigning his interests in the 2016 Volvo to PSD Transport, Inc. ("PSD"), and the 2018 Volvo to Gallop Transport ("Gallop"), which is owned by Debtor's friend, Gurmail Singh. Doc. #39, ¶¶ 15, 29. PSD is 100% owned by Debtor. Doc. #30, *Sched. A/B*, ¶ 19. Movant's other argument was that Debtor had not previously provided proof of insurance listing Movant as an additional insured or a loss payee, which necessitated the November 17, 2021 adequate protection order. Doc. #62.

Debtor's response stated that proof of insurance was provided to Movant's counsel, so cause did not exist to lift the automatic stay under § 362(d)(1). Doc. #78; *see also* Doc. #74, *Ex 1*. Debtor declared he is rescinding the lease of the 2018 Volvo to Gallop Transport, who

will agree to the release. Doc. #79. Since the last hearing, Debtor successfully rescinded the lease. Doc. #101.

§ 362(d)(2)

As to § 362(d)(2) relief, Debtor referenced the contrary values proposed in Movant's opposition (Doc. #65) to Debtor's valuation motion and argues that "Movant "can't have it both ways." Doc. #78. If these other values are used, then Debtor will have an equity interest in both trucks and the request for § 362(d)(2) relief fails. Debtor disputes these valuations and simultaneously argues that § 362(d)(2) relief still fails using Debtor's values because Property is necessary for a reorganization because both trucks will be used to make chapter 13 plan payments. Debtor asked for an evidentiary hearing on the motion to value collateral. Doc. #86.

Movant replied, first objecting to Debtor's declaration as inadmissible hearsay under Fed. R. Evid. 802 regarding whether Gallop Transport will agree to release the lease of the 2016 Volvo. This statement is based on an out-of-court representation from Gallop Transport. Doc. #82. The court SUSTAINED the objection as to Gallop Transport's assent to the lease rescission but OVERRULED as to whether Debtor is rescinding the lease. Doc. #96.

The court scheduled an evidentiary hearing on the motion to value collateral, but it was withdrawn by Debtor on January 4, 2022. Doc. #103. Thus, the evidence before the court currently is Debtor's concession that the value of the 2016 Volvo is \$15,000, with an outstanding balance of \$20,760.10, and the value of the 2018 Volvo is \$29,500.00, with an outstanding balance of \$71,296.14. Doc. #39, ¶¶ 12, 26; *cf.* Doc. #21, *Sched. A/B*. Debtor does not appear to have an equity interest in the Volvos.

Second, Movant argued the motion should be granted because its security interest is not adequately protected. Doc. #81. Since Property is declining in value as result of ongoing use, there is no equity cushion, and Debtor has not made any adequate protection payments since August 5, 2021. Doc. #81. Movant claimed the combined amount owed by Debtor is \$172,366.59, but Property is only worth \$170,225. Movant's new \$172,366.59 figure includes the 2017 Volvo that is totaled, valued at \$0, and is not the subject of this motion. Movant sought § 362(d)(2) relief by using the vehicles' collective values and balances, which appears to be the result of cross-collateralization in the underlying contracts.

Movant argued that the burden is on Debtor to establish that the collateral is necessary to an effective reorganization, which Debtor has failed to do despite the lease rescission. *Id.*, citing *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 375 (1988). And if the lease rescission is successful, Gallop Transport presumably will have a damage claim that will render Debtor's chapter 13 plan even more infeasible.

Debtor's motion to confirm chapter 13 plan was denied on December 8, 2021. Doc. #91. No new plans have been filed, so it does not appear that any reorganization is in prospect. Therefore, § 362(d)(2) relief is appropriate because Debtor does not have any equity in the Volvos and they are not necessary for an effective reorganization.

This matter will be called as scheduled. The court is inclined to GRANT the motion pursuant to § 362(d)(2).

2. [21-11939](#)-B-13 **IN RE: PARGAT DHALIWAL**
[DMG-3](#)

EVIDENTIARY HEARING RE: MOTION TO VALUE COLLATERAL OF BMO
HARRIS BANK, NA
11-9-2021 [\[54\]](#)

PARGAT DHALIWAL/MV
D. GARDNER/ATTY. FOR DBT.
MOTION WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor Pargat Singh Dhaliwal withdrew this motion on January 4, 2022. Doc. #103. Accordingly, this evidentiary hearing is concluded and will be DROPPED FROM CALENDAR.

⁵ The motion was set for hearing on November 10, 2021 pursuant to LBR 9014-1(f)(2). Doc. #59. Written opposition was not required. Doc. #36.