

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 1, 2021
Place: Department A - Courtroom #11
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [20-13341](#)-A-13 **IN RE: ANN MARIE RUIZ**
[PBB-3](#)

MOTION TO MODIFY PLAN
5-20-2021 [[40](#)]

ANN MARIE RUIZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

2. [21-10941](#)-A-13 **IN RE: LINDA HOGAN**
[USA-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY UNITED STATES INTERNAL
REVENUE SERVICE
6-8-2021 [[14](#)]

UNITED STATES INTERNAL REVENUE SERVICE/MV
SUSAN HEMB/ATTY. FOR DBT.
JEFFREY LODGE/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed a modified plan on June 14, 2021 (SAH-1, Doc. #21), with a motion to confirm the modified plan set for hearing on July 29, 2021, at 9:30 a.m. Doc. ##17-21.

3. [20-11944](#)-A-13 **IN RE: CHAD/ALLISON GILLIES**
[NES-4](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
5-27-2021 [[58](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Neil E. Schwartz ("Movant"), counsel for Chad Mitchell Gillies and Allison Marie Gillies (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of interim compensation in the amount of \$12,407.50 and reimbursement for expenses in the amount of \$468.50 for services rendered from December 3, 2019 through May 21, 2021. Doc. #58.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration; (3) original plan, hearings, and objections; (4) modified plan, motions, and objections; (5) preparation of voluntary petition, schedules, and form 22C; and (6) claims administration and objections. Ex. B, Doc. #60. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$12,407.50 and reimbursement for expenses in the amount of \$468.50. In light of a pre-petition retainer of \$2,000, the court allows \$10,876.00 to be paid through the plan in a manner consistent with the terms of the confirmed plan.

MOTION TO VALUE COLLATERAL OF EXETER FINANCE, LLC
6-10-2021 [24]

AMELIA CAVE/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Mark David Cave and Amelia Ann Cave (together, "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' 2017 Hyundai Sonata, VIN 5NPE34AF8HH549936 ("Property"), which is the collateral of Exeter Finance, LLC ("Creditor"). Doc. #24.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert the Property was purchased more than 910 days before the filing of this case. Decl. of Amelia Anne Cave, Doc. #26. Debtors assert a replacement value of the Property of \$16,730.00 and ask the court for an order valuing the Property at \$16,730.00. Doc. #24; Doc. #26. Debtors is competent to testify as to the value of the Property. Creditor filed a proof of claim on May 19, 2021,

which also valued the Property at \$16,730.00. Claim 9. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$16,730.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

11:00 AM

1. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[20-1057](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-11-2021 [[30](#)]

SALVEN V. MOORE ET AL
PETER SAUER/ATTY. FOR PL.
CONT'D TO 8/12/21 PER ECF ORDER #51

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

DISPOSITION: Continued to August 12, 2021, at 11:00 a.m.

NO ORDER REQUIRED.

On June 14, 2021, the court issued an order continuing the status conference to August 12, 2021, at 11:00 a.m. Doc. #51

2. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[20-1057](#) [DW-2](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
1-25-2021 [[31](#)]

SALVEN V. MOORE ET AL
MATTHEW OLSON/ATTY. FOR MV.
CONT'D TO 8/12/21 PER ECF ORDER #51

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

DISPOSITION: Continued to August 12, 2021, at 11:00 a.m.

NO ORDER REQUIRED.

On June 14, 2021, the court issued an order continuing the motion to dismiss to August 12, 2021, at 11:00 a.m. Doc. #51

3. [20-11908](#)-A-13 **IN RE: BRIAN/STEPHANIE RICH**
[21-1003](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-1-2021 [[1](#)]

RICH ET AL V. ASPEN PROPERTIES GROUP, LLC AS TRUSTEE OF AG3
PETER BUNTING/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 2, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement, the status conference will be continued to September 2, 2021, at 11:00 a.m. Doc. #14.

The parties shall file either joint or unilateral status report(s) not later than August 26, 2021.

4. [19-14729](#)-A-13 **IN RE: JASON/JODI ANDERSON**
[19-1131](#)

STATUS CONFERENCE RE: COMPLAINT
12-10-2019 [1]

ANDERSON ET AL V. NATIONAL ENTERPRISE SYSTEMS, INC.
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 2, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement, the status conference will be continued to September 2, 2021, at 11:00 a.m. Doc. #137.

The parties shall file either joint or unilateral status report(s) not later than August 26, 2021.

5. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-5-2021 [1]

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 30, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement, the status conference will be continued to September 30, 2021, at 11:00 a.m. Doc. #13.

The parties shall file either joint or unilateral status report(s) not later than September 23, 2021.

6. [20-13785](#)-A-7 **IN RE: BRANDON/JENIFER THACKER**
[21-1011](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-2-2021 [[1](#)]

MERCED SCHOOL EMPLOYEES FEDERAL CREDIT UNION V. THACKER
BRANDON ORMONDE/ATTY. FOR PL.
DISMISSED 6/23/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on June 23, 2021. Doc. #15.