UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 7, 2021
Place: Department B – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys 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.

9:00 AM

1. 21-10607-B-13 **IN RE: AZRREL HERREJON**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-8-2021 [15]

PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Azrrel Abet Herrejon's ("Debtor") plan confirmation under 11 U.S.C. § 1325(b)(1) on the grounds that the plan does not provide for all of Debtor's disposable income to be applied to unsecured creditors under the plan. Doc. #15.

Though not required, Debtor opposed. Doc. #20.

This objection 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 except the Trustee's and Debtor's. If further 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.

Under 11 U.S.C. § 1325(b)(1), if the trustee objects to confirmation the plan, then the court may not approve the plan unless (A) the value of property distributed under the plan exceeds the amount of allowed unsecured claims; or (B) the plan provides that all of the debtor's projected disposable income to be provided and applied to allowed unsecured claims. Debtor carries the burden by a preponderance of the evidence that the plan complies with the criteria set forth in § 1325 for confirmation. *In re Arnold and Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994); *In re Warren*,

89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (superseded by statute on other grounds).

Trustee states that Debtor is above median income. Doc. #15. Per Form 122C-1, Debtor receives monthly wages in the amount of $7,008.45. Doc. #1, *Form 122C-1*. However, Debtor recently changed jobs and is now employed at Kingston Healthcare Center, where she works 40 hours per week and earns $47.00 per hour. Docs. #17; #18, Ex. A. At this hourly rate, Trustee estimates that Debtor's annual income is approximately $97,760.00, or $8,146.66 per month. Doc. #15. Trustee contends that Schedule I and Form 122C-2 must be amended to reflect Debtor's increase in income.

Additionally, Trustee is uncertain whether Debtor's involuntary deductions (¶ 17), life insurance (¶ 18), and health insurance (¶ 25) are actual expenses since Debtor has changed jobs. Trustee notes that Schedules I and J filed June 1, 2021, do not reflect these expenses. *Cf.* Doc. #14, *Schedule I*.

In response, Debtor claims that amended Schedules I and J have been filed to reflect her new job and pay arrangement. Doc. #20. Although Debtor's income has increased, she notes that her expenses have had a slight increase. On this basis, Debtor suggests that the court confirm the plan.

It appears that the amended Schedules I and J referenced in Debtor's response are the same referenced in Trustee's objection. Debtor's most recent Schedules I and J were filed on June 1, 2021, which was before Trustee filed this objection. Doc. #14. Notably, the initial Schedules I and J did not reflect the employment of the non-filing spouse, though the June 1, 2021 schedules do. Doc. #14; *cf.* Doc. #1. No amended Form 122C-1 or 122C-2 has been filed since the objection.

Based on the current record, it appears that the plan as currently proposed does not provide for all of Debtor's disposable income and therefore cannot be confirmed. This matter will be called as scheduled. The court is inclined to SUSTAIN the objection.

2. 20-13208-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
MHM-4

MOTION TO DISMISS CASE
5-6-2021 [80]

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtors are delinquent in the amount of $5,064.00. Doc. #82. Before this hearing, another two payments totaling $5,064.00 will also come due. *Id.* Debtor did not oppose.

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 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 Systems, 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.

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)(1) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

3. 18-12731-B-13 **IN RE: MARK/ALICIA GARAY**
PK-7

MOTION TO MODIFY PLAN
6-1-2021 [112]

ALICIA GARAY/MV
PATRICK KAVANAGH/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.

Mark Garay and Alicia Marie Garay ("Debtors") seek confirmation of their Fourth Modified Chapter 13 Plan. Docs. #101; #112.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 Systems, 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.

4. 18-12731-B-13 **IN RE: MARK/ALICIA GARAY**
PK-8

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
6-2-2021 [123]

PATRICK KAVANAGH/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant Patrick Kavanagh withdrew this motion on June 17, 2021. Accordingly, this motion will be dropped from calendar.

5. 21-10843-B-13 **IN RE: VICHAI VONGSVIRATES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-9-2021 [28]

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The chapter 13 trustee's motion to dismiss (MHM-1) in matter #6 below will be granted on the grounds set forth in the motion. Therefore, this Order to Show Cause will be DROPPED AS MOOT. No appearance is necessary.

6. 21-10843-B-13 **IN RE: VICHAI VONGSVIRATES**
MHM-1

MOTION TO DISMISS CASE
6-8-2021 [24]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307 for failure to appear at the scheduled 341 Meeting of Creditors. Doc #24. Debtor did not oppose.

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 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 Systems, 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 record shows that the debtor failed to appear at the scheduled 341 Meeting of Creditors.

Accordingly, the motion will be GRANTED. The case will be dismissed.

7. 21-11149-B-13 **IN RE: DENNIS/LAUREN DEVERA**
RDW-1

OBJECTION TO CONFIRMATION OF PLAN BY SERVIS ONE, INC.
6-8-2021 [16]

SERVIS ONE, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Servis One, Inc. dba BSI Financial Services ("Creditor") objects to Dennis Marcello Devera and Lauren Louise Devera's ("Debtors") plan confirmation under 11 U.S.C. §§ 1325(a)(5), (a)(6), and 1332(b)(2) on grounds that the plan does not account for the entire amount of pre-petition arrears and is likely not feasible. Doc. #16.

Though not required, Debtors timely responded. Doc. #24.

Opposition was not required and may be presented at the hearing. The court is inclined to OVERRULE the objection. This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled.

Creditor is a Class 4 secured creditor and holder of a promissory note in the amount of $245,160.00 secured by a deed of trust encumbering real property located at 24333 Woodland Ave., Tehachapi, CA 93561 ("Property"). As of July 2, 2021, Creditor has not filed a proof of claim. Creditor states that Debtors have defaulted on the note and owe total amount of $270,546.52, which includes approximately $36,599.97 in pre-petition arrears and 21 delinquent monthly payments, late charges, and foreclosure fees.

Since Debtors' proposed plan contemplates payments of $968.00 for 60 months and has $970.35 in disposable income available, Creditor argues that Debtors will not be able to afford plan payments after adjusting the payment to cure arrears. Doc. #16.

In response, Debtors agree that there are pre-petition arrears of $36,599.97, but note that there is a forbearance agreement until September 2021. Doc. #24. Thus, Debtors claim to not be in default. Debtors also note that Creditor is listed in Class 4, so if the plan is confirmed, Creditor has stay relief to foreclose if the Debtors default. Despite being in forbearance, Debtors claim that they have been continuing to make mortgage payments anyways. Lastly, Debtors claim that an additional forbearance will be granted upon request, though this is mere speculation without more supporting facts.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #4. Creditor has not filed a proof of claim. *See* Doc. #10.

Creditor is classified in Class 4 – paid directly by Debtors. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Doc. #4, § 3.11. The Debtors may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Creditor will have stay relief and may pursue its remedies upon default. This objection will be OVERRULED.

8. 21-10070-B-13 **IN RE: MARIA/RICARDO CUEVAS**

MOTION TO CONFIRM PLAN
5-18-2021 [32]

RICARDO CUEVAS/MV
LEROY AUSTIN/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.

Maria Cuevas and Ricardo Cuevas ("Debtors") seek confirmation of their Second Amended Chapter 13 Plan. Doc. #32.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed under 11 U.S.C. §§ 1322(a), 1325(a)(6), (b), and Fed. R. Bankr. P. 3015(c) and 3015.1. Doc. #39. Trustee contends: (1) the plan fails to provide for submission of all of Debtors' future income to the supervision and control of the trustee as necessary to execute the plan; (2) the plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors; (3) Debtors will not be able to make all payments under the plan and comply with the plan; and (4) Debtors impermissibly altered the plan form.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) 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 requires a new DCN. Here, the motion and supporting documents did not contain a DCN. Docs. ##32-35.

Second, LBR 9004-2(c)(1) and 9014-1(d)(4) requires motions, declarations, and other specified to be filed as separate documents. Here, the declaration (Doc. #34) contained two separate declarations, one for each of the Debtors. These declarations should have been filed separately.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

9. 21-10070-B-13 **IN RE: MARIA/RICARDO CUEVAS**
MHM-2

OBJECTION TO PROFESSIONAL FEES OF LEROY B. AUSTIN
6-23-2021 [44]

MICHAEL MEYER/MV
LEROY AUSTIN/ATTY. FOR DBT.

The court has changed its intended ruling on this matter since posting the original pre-hearing dispositions.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the attorney fee compensation of Leroy Bishop Austin under Local Rule of Practice ("LBR") 2016-1(c)(5) because Mr. Austin was suspended from the practice of law on June 2, 2021. Doc. #44.

In the absence of opposition, the court is inclined to SUSTAIN this objection.

This objection 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 sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

First, no certificate of service was originally filed with this motion. This is a contested matter under Federal Rule of Bankruptcy Procedure ("Rule") 9014, so Mr. Austin and the debtors must be served in accordance with Rule 7004.

Moreover, LBR 9014-1(e) requires service of all pleadings and documents filed in support of a motion on or before the day they are filed with the court, with proof of service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e)(1), (2).

On July 2, 2021, Trustee filed a certificate of service stating that the debtors and Mr. Austin were served on June 23, 2021 by U.S. first class mail. Doc. #48. Although the certificate was not filed concurrently with the pleadings served or within three days after they were filed, the required parties were properly served under Rule 7004.

Fed. R. Civ. P. 4(*l*)(3) (incorporated by Rule 7004(a)(1)) provides that failure to prove service does not affect the validity of service, and the court may permit proof of service to be amended. Further, LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Rules to accommodate the needs of a particular case or proceeding. Trustee corrected his earlier failure to prove service by showing that the parties were properly served. Because Trustee effected valid service on the debtors and Mr. Austin on June 23, 2021, the court will overlook the fact that proof of service was not filed timely.

Maria Cuevas and Ricardo Cuevas ("Debtors") filed a chapter 13 bankruptcy on January 12, 2021. Doc. #1. Mr. Austin was Debtors' attorney of record. Doc. #3. He opted-in to the "no look fee" under LBR 2016-1(c) and was paid $1,000.00 in attorney fees prior to filing the case, with the remaining $3,000.00 to be paid through the chapter 13 plan. *Id.*; Doc. #12. No plan has been confirmed, but a motion to confirm plan is set for hearing on July 7, 2021 in matter #8 above.

Under LBR 2016-1(c), the "no look fee" provides for a maximum fee of $4,000.00 in non-business cases and $6,000.00 in business cases. This fee is intended to fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services. "Only in instances where substantial and unanticipated post-confirmation work is necessary" will counsel be able to request additional fees. LBR 2016-1(c)(3). Alternatively, a court may modify compensation if it proves to be improvident in light of circumstances not anticipated at plan confirmation LBR 2016-1(c)(5). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329, 330, Fed. R. Bankr. P. 2002, 2016, and 2017. LBR 2016-1(a).

Mr. Austin was suspended from the practice of law effective June 2, 2021. Doc. #47, Ex. A; *see also* http://www.calbar.ca.gov. The Supreme Court of California ordered Mr. Austin suspended for two years, but execution of that period was stayed. Mr. Austin was placed on for probation for three years provided that: (1) he is suspended from the practice of law for the first six months of probation; (2) he complies with the other conditions of probation; (3) if he has complied with all of the conditions of probation by its expiration, the stayed suspension will be satisfied and terminated. Doc. #47, Ex. A.

Since Mr. Austin is suspended, Trustee objects to his receipt of attorney fees and contends that he will be unable to provide the legal services to assist Debtors in confirming their chapter 13 plan, along with all other post-confirmation services. Doc. #44. This court, sitting *en banc* with the Honorable Ronald H. Sargis and the Honorable Fredrick E. Clement, previously ordered fees disgorged in another bankruptcy case involving the suspension of an attorney who had opted to receive fees pursuant to LBR 2016-1(c). *In re Cervantes*, 617 B.R. 687 (Bankr. E.D. Cal. 2020).

As discussed in *Cervantes*, § 330 sets the threshold for awarding fees to most professionals. When evaluating the reasonableness of

fees, under § 330(a)(3) the court is instructed to consider the "time spent, rates charged, necessity or beneficial nature of the service, the timeliness, skill of the professional and customary compensation by comparably skilled professionals outside of the bankruptcy field. *Cervantes*, 617 B.R. 693-94. With chapter 13 cases, § 330(a)(4) states:

> In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other facts set forth in this section.

11 U.S.C. § 330(a)(4)(B). *See also*, *In re Pedersen*, 229 B.R. 445, 448 (Bankr. E.D. Cal. 1999). Apart from § 330, this court has inherent authority to order disgorgement of all compensation in the appropriate case. *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1997) (disgorgement ordered due to counsel's misrepresentation in appointing documents and acceptance of fees post-petition).

11 U.S.C. § 329(b) gives the court a statutory basis to evaluate Mr. Austin's compensation:

> If such [debtor's attorney's] compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
>
> (1) the estate, if the property transferred—
>
> (A) would have been property of the estate; or
>
> (B) was paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
>
> (2) the entity that made such payment.

11 U.S.C. § 329(b). Section 330 sets the standard by which fees are evaluated under § 329. *Am. Law Ctr. PC, v. Stanley (In re Jastrem)*, 253 F.3d 438, 443 (9th Cir. 2001); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 298 B.R. 392, 401 (B.A.P. 9th Cir. 2006) (*aff'd in part, rev'd in part and remanded by Eliapo*, 468 F.3d at 592). Additionally, LBR 2016-1(c)(5) provides authority to scrutinize the no-look fee:

> The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation.

LBR. 2016-1(c)(5). Mr. Austin's pre-confirmation suspension was not anticipated, and he will not be available to provide legal services to Debtors for at least six months.

As part of this court's determination in *Cervantes*, the court considered "rubrics" offered by the chapter 13 trustee and the suspended counsel in that case, took into account the specific circumstances each of these cases involved, and found the following formula as an "appropriate template if the court is asked to consider fees paid or promised in those cases in which [a suspended attorney] was counsel and has received some or all of the opt-in fee." *In re Cervantes*, 617 B.R. at 698. This table shows the percentage of the opt-in fee *earned* at each stage of the case:

> Phase I (pre-petition through meeting of creditors) – 30% earned.
>
> Phase II (meeting of creditors through initial confirmation) – 60% earned.
>
> Phase III (confirmation to 90 days after Notice of Filed Claims) – 80% earned.
>
> Phase IV (discharge, closure, certifications, necessary lien clearances) – 100%.

Ibid. Although *Cervantes* is pending appeal, having recently been consolidated with related cases in the District Court in May 2021, this court has adopted this rubric until a final determination is made.

This matter will be called as scheduled. The court is inclined to SUSTAIN the objection. Mr. Austin will be required to seek authorization for any and all attorney fees sought in accordance with 11 U.S.C. §§ 329, 330, Fed. R. Bankr. P. 2002, 2016, and 2017, including the fees of $1,000 received pre-petition.

10. 16-11473-B-13 **IN RE: SHELBY/CAROL KING**
LKW-21

MOTION TO MODIFY PLAN
5-7-2021 [416]

CAROL KING/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

Shelby Dane King and Carol Dean King ("Debtors") seek confirmation of their Fourth Modified Chapter 13 plan. Doc. #416.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because Debtors failed to use the standard form for chapter 13 plans, Form EDC 3-080 (Rev. 11/09/18) as required by Federal Rules of Bankruptcy Procedure ("Rules") 3015(c), 3015.1, and Local Rule of Practice ("LBR") 3015-1(a).

This matter will be called as scheduled. The court is inclined to DENY the motion WITHOUT PREJUDICE.

This motion was filed pursuant to LBR 3015-1(d)(2) and will proceed as scheduled.

Under Rule 3015(c), if there is an Official Form for a plan in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. Rule 3015.1 provides conditions and requirements that must be satisfied for a district court to require that a Local Form for a plan in chapter 13 cases be used instead of an Official Form.

On November 9, 2018, the court issued General Order 18-03, which revised Local Form EDC 3-080 effective November 11, 2018. LBR 3015-1(a) requires use of this form.

Here, it appears that Debtors did not file an amended plan. Debtors attach the Third Modified Plan as an exhibit and request specific changes in their motion. Doc. #419, Ex. A; *cf.* Doc. #416. Debtors must file a plan using the correct Local Form.

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

11. 20-12688-B-13 **IN RE: MARY HELEN BARRO**
PK-2

MOTION TO MODIFY PLAN
5-5-2021 [64]

MARY HELEN BARRO/MV
PATRICK KAVANAGH/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.

Mary Helen Barro ("Debtor") seeks confirmation of her First Modified Chapter 13 Plan. Doc. #69.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 Systems, 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 court notes that Debtor filed an amended certificate of service on June 1, 2021. LBR 9014-1(e)(1) and (2) require: (1) service of all pleadings on or before the date they are filed with the court; and (2) proof of service, in the form of a certificate of service, to be filed with the Clerk concurrently or not more than three days after the pleadings are filed. The chapter 13 trustee and U.S. trustee were originally served by electronic transmission (Doc. #70) on the date the pleadings were filed. Debtor's amended certificate corrects the service defect by serving the pleadings by mail on the chapter 13 trustee and U.S. trustee on June 1, 2021. This error is *de minimis* because the parties were properly served at least 35 days before the hearing, so the court will overlook the procedural deficiency under LBR 1001-1(f).

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.

12. 21-10391-B-13 **IN RE: SHARON PARKS**
MHM-1

CONTINUED MOTION TO DISMISS CASE
5-5-2021 [39]

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. The case will be converted to Ch. 7.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 1307(c)(1), (c)(4), and (e) for: (1) unreasonable delay by the debtor that is prejudicial to creditors; (2) failure to make all plan payments; and (3) failure to file 2019 tax returns. Doc. #39.

Sharon Kathleen Parks ("Debtor") timely responded. Doc. #49. Debtor declares that she incurred unexpected expenses relating to health insurance, supplemental house insurance, and automobile insurance and registration, which affected her ability to make plan payments. Doc. #50. Patrick Kavanagh, Debtor's attorney, declares that a motion to confirm a modified plan will be filed and set for hearing in July. Doc. #51. Mr. Kavanagh also states that the 2019 taxes are being completed by his tax preparer, who will prioritize the filing of her return to get it filed by Monday, May 24, 2021. *Id.*

This case has had problems. They include skeletal filing necessitating an order granting additional time to file schedules, tardy installment payments, numerous amendments to the Statement of Financial Affairs, at least three continuances of creditor's meetings, debtor's counsel intervened to have an accountant prepare the missing tax returns, no evidence of tax returns being filed and submitted before the creditor's meeting even though the Trustee continued the meeting. See § 1308.

There is no evidence, other than "problems of data collection" showing failure to timely file the returns are due to circumstances beyond the debtors' control. The evidence concerning data collection and the "falling out" with the accountant is only hearsay.

According to debtor's counsel, the debtor ran a successful business for quite some time. The debtor surely knows the significance of failing to file tax returns.

Under the circumstances, conversion seems appropriate under § 1307 (e). There is unencumbered value for the creditors and a Chapter 7 Trustee can more swiftly list and sell non-exempt assets. Debtor claims $550,000.00 in unencumbered real property value. Doc. #20. The claimed exemption is $300,000.00.

This matter will be called as scheduled to inquire whether Debtor's tax returns were submitted to Trustee. If not, the court will GRANT the motion. It appears that there are unencumbered assets available to a Chapter 7 trustee. So, it would be in the best interests of the estate to CONVERT the case to Chapter 7.

13. 21-10391-B-13 **IN RE: SHARON PARKS**
PK-3

MOTION TO CONFIRM PLAN
5-20-2021 [53]

SHARON PARKS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion may be denied as moot if the court dismisses or converts the case in matter #13 above. If the motion is not granted, the following will be the ruling.

Sharon Kathleen Parks ("Debtor") seeks confirmation of her First Modified Chapter 13 Plan. Docs. #53; #58.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects to plan confirmation under 11 U.S.C. § 1325(a)(6) on grounds that Debtor will not be able to make all payments under the plan and comply with the plan.

Debtor responded. Doc. #71.

This motion was filed pursuant to LBR 3015-1(d)(2) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties except Trustee are entered.

Section 7.01 of the plan provides that Debtor shall make payments of $0 for months 1-2, $1,200.00 per month for 36 months, and $165,500.00 or funds sufficient to pay off the plan for one month in month 37. Doc. #58, § 7.01. The Debtor's plan proposes the payment source for the final payment of $165,500.00 is refinancing one of Debtor's properties that Debtor owns free and clear.

Since the plan proposes to sell or refinance property, Trustee argues that Debtor has the burden to provide evidence of "past marketing efforts, the state of the market for the subject asset, current sale prospects, the existence and maintenance of any 'equity cushion' in the property, and all other circumstances that bear on whether the creditor will see its way out of the case financially whole." Doc. #66, citing *In re Barbarena*, 2009 Bankr. LEXIS 222, *7

(Bankr. E.D. Cal. Jan. 28, 2009) (quoting *In re Newton*, 161 B.R. 207, 217-18 (Bankr. D. Minn. 1993)).

In response, Debtor contends that *Barbarena* is inapplicable here. Doc. #71. In *Barbarena*, the objecting creditor was secured by a second priority deed of trust in the amount of $100,000. *Barbarena*, 2009 Bankr. LEXIS 222, at *2. The loan was secured by a one-year, interest-only loan encumbering the debtors' residence and six other properties. The debtors valued the residence at $120,000 and the combined value of all seven properties was $828,000. The debtors proposed a plan with payments of $200 per month plan and proposed to fund the plan by selling one of the six other parcels for at least $80,000 within one year and refinancing the remaining debt against the residence within two years. *Id.*, **2-3. If either of these conditions were not met, the case would automatically be dismissed.

The objecting creditor argued that the plan was too speculative because no evidence was provided that the debtors could sell or refinance the properties within the specified time periods. *Id.*, *6. The creditor likened the situation to a "disguised plan" to allow the debtors to remain in the residence for two years at no cost.

Since the debtors did not provide any evidence as to the fair market value of the properties, the court was not persuaded that the debtors would be able to sell or refinance the property. *Id.*, **7-8. The *Barbarena* court denied confirmation because the debtors had not met their burden of proving that the plan was feasible, adequately protected the objecting creditor, and filed in good faith.

Instead, Debtor urges the court to follow *In re Gregory*, 143 B.R. 424 (Bankr. E.D. Tex. 1992). The debtors in *Gregory* owed the IRS a non-dischargeable tax assessment in the amount of $39,166.77. *Id.*, at 425. Their plan proposed to sell their unencumbered home, valued at $200,000, during the 36-month plan duration and use a portion of the equity to pay the IRS a lump sum directly. *Id.*, at 426. The IRS consented to this treatment.

The trustee objected to confirmation because (1) the balloon payment to the IRS was unduly speculative; (2) the Bankruptcy Code required priority unsecured claims to be disbursed via the trustee; and (3) the plan was underfunded.

The *Gregory* court overruled the objection because the plan was "not so speculative under the circumstances as to render [it] unconfirmable." *Ibid.* It acknowledged that if the IRS had not consented to the proposed payment scheme, its priority claim would have to be paid over the life of the plan under § 1322(a)(2). *Id.*, at 427-28. The court balanced numerous considerations, determined that there was good cause to allow the debtors to act as the disbursing agent for the payment to the IRS, and the plan was confirmed.

Here, since Debtor has scheduled $550,000.00 in unencumbered real estate and proposes to pay only $165,000.00, Debtor insists that, as in *Gregory*, the plan is not so speculative as to render it unconfirmable. Doc. #71.

Patrick Kavanagh, Debtor's attorney, declares that he has familiarity with the sub-prime hard money lending industry because he has represented debtors who have obtained these loans and represents small non-institutional hard money lenders once or twice per year. Doc. #72. Mr. Kavanagh believes that Debtor has the ability to obtain a $165,000.00 loan with a 12% interest rate. *Id.*

Mr. Kavanagh is a seasoned and skilled bankruptcy attorney – not a sub-prime loan underwriting expert. But, even if he could be considered an "expert" on sub-prime hard money lending practices, it is entirely speculative whether the court would approve the loan, even if the Debtor would qualify for one. There are also numerous claims in this case and the largest is apparently subject to dispute.

The court is not persuaded that *Gregory* is applicable. The Debtor here has missed two plan payments and wants to go into a 36-month plan. In *Gregory*, there were five previous plans confirmed by the court but the creditor benefitting from the proposed "balloon payment" consented to the treatment. *All creditors* will be affected by the "balloon payment" here. Feasibility problems have already been demonstrated in this case.

There is no evidence the proposed property to be sold is listed or any evidence of the fair market value of the property except the schedules. The Debtor is qualified to opine on property she owns, but the question here is feasibility of the plan. In this case, it is the Debtor's burden to establish all the elements of confirmation. Confirmation is unsupported on this record.

On balance the plan is not feasible on this record. The motion will be DENIED.

14. 18-14396-B-13 **IN RE: DARIO/MARIA MENDEZ**
PK-3

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
6-1-2021 [41]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion will be DENIED AS MOOT.

Patrick Kavanagh of the Law Office of Patrick Kavanagh ("Movant") requests final compensation of $6,203.81 for services rendered from August 8, 2018 through the closing of this case. Doc. #41.

Movant previously filed this motion on April 19, 2021, which was scheduled for hearing on June 2, 2021. PK-2. That matter was originally pre-disposed and denied without prejudice because the chapter 13 trustee was electronically notified, rather than served by mail under Fed. R. Bankr. P. ("Rule") 7004. Prior to issuance of an order, the court reconsidered service requirements and determined that electronic notification is sufficient for compensation motions under Rule 2006(a)(6) and 9036. Movant's original motion was granted on June 8, 2021. Doc. #50. However, in the interim, Movant re-filed this motion with Rule 7004 service, which is now duplicative because Movant has already been awarded $6,203.81 for fees and costs from August 8, 2018 through case closing. In light of Movant's retainer of $1,000.00 and the $600.00 received from Merrick Bank, Trustee was authorized to pay fees and costs of $4,603.81 through the plan.

Accordingly, this motion will be DENIED AS MOOT because Movant has already been awarded the fees requested in this motion.

10:00 AM

1. 21-11102-B-7 **IN RE: HECTOR LOPEZ ARELIS**
KEH-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-2021 [12]

BALBOA THRIFT AND LOAN/MV
KEITH HERRON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at http://www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Doc. #13.

Second, LBR 9004-2(c)(1) requires that motions, notices, inter alia, to be filed as separate documents. Here, the declaration, exhibits, and proof of service were combined into one document and not filed separately. Doc. #15.

The court also notes that the Docket Control Number is missing from the Relief from Stay Summary Sheet. Doc. #14. Movant is urged to review the LBR before filing another motion.

2. 21-11004-B-7 **IN RE: HECTOR GUERRERO AND KASSANDRA TURCIOS**
DJP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-2021 [16]

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
SCOTT LYONS/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

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.

The movant, Educational Employees Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Ford Explorer XLT Sport Utility 4D ("Vehicle"). Doc. #16

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.

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.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors are 2 post-petition payments past due in the amount of $880.78, plus late fees of $26.42. Doc. #19.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Debtor values the Vehicle at $11,250.00 and the amount owed to Movant is $16,492.62. Doc. #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Adequate protection is unnecessary because of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make at least 2 post-petition payments and the Vehicle is a depreciating asset.

3. 21-10612-B-7 **IN RE: GRACIELA BAEZA**
KEH-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-2021 [13]

BALBOA THRIFT & LOAN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KEITH HERRON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at http://www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Doc. #14.

Second, LBR 9004-2(c)(1) requires that motions, notices, inter alia, to be filed as separate documents. Here, the declaration, exhibits, and proof of service were combined into one document and not filed separately. Doc. #15.

The court also notes that the Docket Control Number is missing from the Relief from Stay Summary Sheet. Doc. #16. Movant is urged to review the LBR before filing another motion.

4. 17-10026-B-7 **IN RE: FRYE CONSTRUCTION, INC.**
JMV-2

MOTION FOR ADMINISTRATIVE EXPENSES
6-8-2021 [62]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
PHILLIP GILLET/ATTY. FOR MV.

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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authority to pay administrative tax claims in the amount of $3,892 to the Franchise Tax Board ("FTB") for tax years 2017 through 2021.

Doc. #62. Trustee also requests to be authorized to pay up to $1,000.00 for any unexpected tax liabilities without further court approval.

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 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 Systems, 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.

11 U.S.C. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of certain administrative expenses shall be allowed, other than those specified in § 502(f), including:

> (B) any tax—
> (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;
> (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and
> (D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense[.]

11 U.S.C. § 503(b)(1)(B)-(D). Under 28 U.S.C. § 960(b), trustees are required to pay estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobeck)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Frye Construction, Inc. ("Debtor") filed chapter 7 bankruptcy on January 6, 2017. Doc. #1. Trustee was appointed as interim trustee on that same date and permanent trustee at the first § 341 meeting of creditors on March 3, 2017. Doc. #2. Trustee employed Ratzlaff, Tamberi, and Wong ("Accountant") to provide accounting services to the estate on June 12, 2018. Doc. #33. Accountant has advised Trustee that the estate has the following tax liability due to FTB:

Time Period	Tax Amount
January 1, 2017 - December 31, 2017	$281.00
January 1, 2018 - December 31, 2018	$1,052.00
January 1, 2019 - December 31, 2019	$932.00
January 1, 2020 - December 31, 2020	$827.00
January 1, 2021 - December 31, 2021	$800.00
Total Owed	**$3,892.00**

Doc. #64. Trustee believes that the estate may have additional tax liability due, potential incidental charges of interest, or other penalties on account of the administrative tax claim. *Id.* Thus, Trustee asks for an order allowing payment to FTB totaling $3,892.00 plus an additional $1,000.00 as a small buffer so the estate will not need to incur further expenses seeking additional approval for a nominal amount of tax liability.

This motion was fully noticed and no party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion, $3,892.00 to FTB for the tax years of 2017 through 2021. Further, Trustee will be authorized to pay an additional amount up to $1,000.00 for any unexpected tax liabilities without further court approval.

5. 17-10026-B-7 **IN RE: FRYE CONSTRUCTION, INC.**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
6-7-2021 [55]

RATZLAFF, TAMBERI & WONG/MV
LEONARD WELSH/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.

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee Jeffrey M. Vetter ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the amount of $2,962.73, consisting of $2,951.00 in fees and $11.73 in costs for services rendered from June 1, 2018 through May 17, 2021.

Doc. #55. Trustee declares that he has reviewed the fee application, believes that all fees and expenses are reasonable and necessary for the administration of the estate, and has no objection to those fees and expenses. Doc. #59.

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 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 Systems, 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.

On June 12, 2018, the court approved Applicant's employment effective for services rendered on or after May 1, 2018 under 11 U.S.C. §§ 327, 330, and 331. Doc. #33. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Monthly applications for interim compensation under § 331 were permitted. Acceptance of employment was deemed an irrevocable waiver by Applicant of any pre-petition claim, if any, against the bankruptcy estate.

Applicant spent 13.8 billable hours at an hourly rate ranging from $205.00 to $225.00 per hour totaling $2,951.00 as follows:

Professional	Rate	Hours	Total Amount
Chris Ratzlaff (2018)	$205.00	4.60	$943.00
Chris Ratzlaff (2019)	$210.00	3.20	$672.00
Chris Ratzlaff (2020)	$220.00	2.80	$616.00
Chris Ratzlaff (2021)	$225.00	3.20	$720.00
Total		**13.80**	**$2,951.00**

Doc. #58, Ex. A. Applicant also incurred $11.73 in expenses for postage. *Ibid.* These total fees and expenses total **$2,962.73.**

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary

expenses." Applicant's services included, without limitation: (1) Reviewing financial statements and accounting information provided by Trustee; (2) Preparing and filing federal and state corporation income tax returns for the periods ending December 31, 2017, 2018, 2019, and 2020; (3) Preparing, filing, and serving the final fee application. Doc. #58, Ex. A.

No party in interest timely filed written opposition. Applicant shall be awarded $2,951.00 in fees and $11.73 in costs. Trustee will be authorized to pay Applicant $2,962.73 for services rendered from June 1, 2018 through May 17, 2021.

10:30 AM

1. 20-12642-B-11 **IN RE: 3MB, LLC**
LKW-16

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
6-8-2021 [260]

LEONARD WELSH/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.

Leonard K. Welsh of the Law Offices of Leonard K. Welsh ("Applicant"), attorney for debtor-in-possession 3MB, LLC ("3MB"), requests interim compensation under 11 U.S.C. §§ 330 and 331 in the amount of $16,186.70, consisting of $15,960.00 in fees and $226.70 in costs for services rendered from March 1, 2021 through May 31, 2021. Doc. #260. Robert Bell, 3MB's authorized representative, declares that he has reviewed the fee application and has no objection to being authorized to pay the requested fees. Doc. #263. Mr. Bell states that the fees will be paid from (1) income generated by 3MB from operation of its business or (2) capital contributions to 3MB made by its members. *Id.*

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 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 Systems, 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 is Applicant's fourth fee application.

On September 3, 2020, Applicant's employment was authorized effective July 10, 2020. Doc. #29. The order specified that

Applicant was authorized to employ Applicant pursuant to 11 U.S.C. § 328(a), subject to the applicable terms and conditions of §§ 327, 329-331. *Id.* Compensation was set at the "lodestar rate" applicable at the time services are rendered per *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.*, at ¶ 3. The order further specified that monthly applications for interim compensation pursuant to § 331 would be entertained. *Id.*, at ¶ 5.

Form B2030, *Disclosure of Compensation of Attorney for Debtor(s)*, indicates that Applicant was paid $6,717.00 by 3MB prior to the filing of the petition. Of that pre-petition payment, Applicant applied $1,717.00 to costs incurred before the filing of the chapter 11 case. Doc. #1, *Form B2030*. All fees and costs after August 4, 2020 will be paid by application as approved by this court. *Id.*

The court previously authorized the following fee applications:

1. On December 3, 2020, the court authorized compensation of $18,682.55. 3MB was permitted to pay Applicant $13,682.55 and Applicant was allowed to apply a $5,000.00 retainer for payment of $18,460.00 in fees and $222.55 in expenses for services rendered from August 1, 2020 through October 31, 2020. Doc. #123.

2. On January 21, 2021, the court authorized 3MB to pay Applicant $9,129.70. 3MB was permitted to pay Applicant $9,030.00 in fees and $99.70 in expenses for services rendered from November 1, 2020 through November 30, 2020. Doc. #167.

3. On May 3, 2021, the court authorized 3MB to pay Applicant $20,129.90. Applicant was authorized to be paid $19,700.00 in fees and $429.90 in costs for services rendered from December 1, 2020 through February 28, 2021, but 3MB was not authorized to pay any amounts from US Bank's cash collateral without further order. Doc. #253.

Applicant has been awarded a total of $47,942.15 and has been paid a total of $47,849.75 of the fees authorized. Doc. #260. Applicant's remaining balance due but unpaid is $92.40. *Id.*

US Bank previously filed a notice of non-consent to use cash collateral. Doc. #10. The parties stipulated to use of cash collateral through December 31, 2020. Doc. #108. US Bank objected to 3MB's previous cash collateral motion on the basis that it had not authorized any subsequent use of cash collateral and sought additional adequate protection payments. Doc. #222. The parties recently stipulated to stay relief, wherein 3MB agreed to turnover and return any cash collateral held in 3MB's debtor-in-possession accounts. Doc. #270.

Applicant declares that the fees will be paid directly by 3MB from income generated from operation of its business, or from capital contributions from 3MB's members. Doc. #262. As noted above, Mr. Bell declares the same. Doc. #263. Applicant contends that payment by 3MB's members is not prohibited or inappropriate without the showing of an actual conflict of interest between 3MB and its

members. Doc. #260, citing § 329(b)(2); *In re Lotus Props.*, 200 B.R. 388, 392-95 (Bankr. C.D. Cal. 1996). US Bank did not object. There is also a pending motion to dismiss the case filed by 3MB, which is set for hearing on July 27, 2021. *See* Doc. #279; LKW-17. If the case is dismissed, cash collateral will no longer be an issue.

Applicant's office provided 46.10 billable hours of legal services for 3MB totaling $15,960.00 as follows:

Professional	**Rate**	**Hours**	**Total Amount**
Leonard K. Welsh	$350.00	45.60	$15,960.00
Leonard K. Welsh	No charge	0.50	$0.00
Total		**46.10**	**$15,960.00**

Doc. #260, ¶ 11; Doc. #264, Ex. B. Applicant also seeks reimbursement of $226.70 in expenses:

Postage	$131.20
Telephonic Appearances	$67.50
WebPACER Charges	$28.00
Total Costs	**$226.70**

Ibid.; Doc. #260, ¶ 14. These combined fees and expenses total **$16,186.70.**

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . .[a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) advising 3MB about its duties and the administration of the chapter 11 case; (2) preparing for status conferences; (3) preparing monthly operating reports for February, March, and April 2021; (4) communicating with the U.S. trustee regarding payment of quarterly fees and communicating with US Bank regarding case administration and negotiation of disputes; (5) reviewing emails and grant deeds regarding 3MB's Shopping Center; (6) assisting 3MB in its effort to sell part or all of the Shopping Center; (7) opposing US Bank's motion for relief from the automatic stay (AG-4); (8) preparing and prosecuting the third fee application (LKW-13); (9) completing work associated with the approval of the First Amended Disclosure Statement and proceedings related to confirmation of the First Amended Plan of Reorganization (LKW-11); and (10) reviewing documents filed in the *US Bank v. 3MB, LLC* lawsuit and the *Singh JI Khalsa Darbar v. 3MB, LLC* lawsuit. Docs. #260; #264, Ex. B. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

This motion will be GRANTED. Applicant shall be awarded $16,186.70 on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330. Applicant will be authorized to receive $15,960.00 in fees and $226.70 in costs for services rendered from

March 1, 2021 through May 31, 2021 provided that payment is consistent with the court's prior orders and the parties' agreements regarding the use of US Bank's cash collateral.