

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 15, 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. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[MHM-5](#)

OBJECTION TO PROFESSIONAL FEES OF GARY S. SAUNDERS
6-24-2021 [[103](#)]

MICHAEL MEYER/MV
GARY SAUNDERS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Heliberto Elizondo ("Debtor"), objects to the attorney fee compensation for Gary S. Saunders ("Saunders"), Debtor's attorney of record. Tr.'s Obj., Doc. #103.

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). LBR 2016-1(a) authorizes a debtor's attorney in a chapter 13 case to: (1) accept fixed fees without court approval under Subpart (c); or (2) opt out of Subpart (c) and request compensation in accordance with 11 U.S.C. §§ 329 and 330. Subpart (c) permits a maximum fee of \$4,000 (the "no-look fee") for nonbusiness cases that "will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed." LBR 2016-1(c).

Trustee objects to Saunders' compensation on the grounds that Saunders was suspended from the practice of law. Doc. #103. Saunders began serving a 90-day suspension from the State Bar of California on April 28, 2021. Doc. #102. Additionally, Saunders' license to practice was suspended for a two-year period with the execution of that period stayed and Saunders placed on probation for one year. Doc. #103. In the present case, Saunders opted for a fixed fee of \$4,000 pursuant to LBR 2016-1(c). To date, Saunders has received the following payments:

December 3, 2019 Retainer	\$ 1,157.00
Trustee Disbursement	1,416.16
Total	\$ 2,573.16

The chapter 13 plan in this case was confirmed on October 2, 2020, all claim bar dates have passed, and the Notice of Filed Claims was filed on November 18, 2020. Decl. of Michael H. Meyer, Doc. #105.

Section 329 of the Bankruptcy Code permits the court to cancel an agreement between a debtor and their attorney or order the return of payment from the debtor's attorney if an attorney's compensation, paid or agreed to be paid, exceeds the reasonable value of any such services rendered or to be rendered in connection with the case. 11 U.S.C. § 329. Further, LBR 2016-1(c) (5) authorizes the court to examine the no-look fee "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."

Here, it was not foreseen that Saunders would face suspension when this chapter 13 plan was confirmed. The \$4,000 no-look fee was intended to compensate Saunders for all pre-confirmation services and most post-confirmation services. Saunders will not be able to provide legal services to Debtor until the entry of final decree. Saunders' suspension, post-confirmation, was not anticipated. Therefore, the court will exercise its authority to examine the no-look fee and determine the remaining compensation to be awarded to Saunders.

With respect to chapter 13 cases filed in the Eastern District of California by suspended attorney Thomas O. Gillis, where the court was asked to examine fees paid or promised to a debtor's attorney who had been suspended from the practice of law, this court established fee tiers for services to determine the proper fee that should be awarded to the suspended attorney (the "Fee Rubric"). In re Cervantes, 617 B.R. 687, 698 (Bankr. E.D. Cal. 2020). The Fee Rubric was created by a panel of bankruptcy judges to develop an economically prudent methodology for determining what portion of the no-look fee is reasonable for the services actually provided by the suspended attorney. Id. The panel stated that this formula should be helpful in other cases. Id.

The Fee Rubric distributes the no-look fee to four different phases of a chapter 13 bankruptcy case as follows:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
I	Pre-petition through meeting of creditors	30% Aggregate Fees Earned
II	Meeting of creditors through initial confirmation	60% Aggregate Fees Earned
III	Confirmation to 90 days after Notice of Filed Claims	80% Aggregate Fees Earned
IV	Plan completed, certificates filed, discharge entered (unless no discharge to be granted in the case), necessary lien releases	100% Aggregate Fees Earned

Cervantes, 617 B.R. at 698. In Cervantes, the debtor's attorney was paid a \$4,000 no-look fee but suspended for a 2-year period from the State Bar of California prior to the entry of final decree. Id. at 689. After creation of the Fee Rubric, this court calculated the reasonable fee that the suspended attorney was entitled to in the two bankruptcy cases before the panel by determining the phase of the case and applying the respective aggregate percentage to the no-look fee. Id. at 699. Trustee referenced the court's decision in the Cervantes case to assist this court in making its determination with respect to Saunders. Doc. #103; Decl., Doc. #105; Ex. A, Doc. #106. Thus, Trustee supports the application of the Fee Rubric. This court is inclined to

adopt the Fee Rubric created in Cervantes to calculate the reasonable and proper fee that Saunders is entitled to in this chapter 13 case.

Per the Fee Rubric, Saunders is entitled to 80% of aggregate fees earned because the chapter 13 plan in this case has been confirmed and the Notice of Filed Claims was filed on November 18, 2020. Accordingly, this court calculates Saunders' proper fee as follows:

Aggregate No-Look Fee	\$ 4,000.00
Phase III Fee Rubric Rate	80%
Saunders' Proper Fee	3,200.00
Total Paid-to-date	(2,573.16)
Remaining Balance	\$ 626.84

Saunders notes that Saunders Law Group will continue to operate on behalf of all clients during Saunders' suspension and Trang P. Nguyen will act as the supervising attorney for all bankruptcy matters. Ex. A, Doc. #102. However, the Disclosure of Compensation of Attorney for Debtor lists "Gary S. Saunders" as the attorney on record and the attorney receiving all compensation, not Saunders Law Group. Doc. #1. Further, there is no indication that Trang P. Nguyen has filed any pleadings substituting in as the new attorney of record for Debtor or provided any post-confirmation legal services to Debtor.

Accordingly, Trustee's objection is SUSTAINED. The court allows final compensation in the amount of \$3,200.00, of which \$626.84 remains to be paid in a manner consistent with the terms of the confirmed plan.

2. [21-10001](#)-A-13 **IN RE: ENRIQUE CASTELLANOS**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTOR'S ATTORNEY(S)
6-8-2021 [[33](#)]

ENRIQUE CASTELLANOS/MV
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 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 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 Enrique Castellanos, Jr. ("Debtor"), the debtor in this chapter 13 case, requests allowance of interim compensation in the amount of \$8,410.00 and reimbursement for expenses in the amount of \$391.00 for services rendered from November 3, 2020 through May 28, 2021. Doc. #33.

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) preparation of voluntary petition, schedules, and Form 122C; (3) original plan, hearings, and objections; (4) 341 preparation and attendance; and (5) general case administration. Ex. B, Doc. #35. 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 \$8,410.00 and reimbursement for expenses in the amount of \$391.00. In light of a \$2,000.00 retainer, the court authorizes a payment of \$6,801.00 to be paid in a manner consistent with the terms of the confirmed plan.

3. [19-10803](#)-A-13 **IN RE: CHRISTY BEELER**
[TCS-6](#)

MOTION TO APPROVE LOAN MODIFICATION
6-24-2021 [[100](#)]

CHRISTY BEELER/MV
NANCY KLEPAC/ATTY. FOR DBT.
TIMOTHY SPRINGER/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 the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Christy Marie Beeler ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to modify the existing home loan. Doc. #100. Debtor states that the modification is necessary to bring Debtor

current on the mortgage and court approval is required to finalize the loan modification agreement. Decl. of Debtor, Doc. #102. The residence is located at 1050 Columbus Way, Lemoore, CA 93245. Id. The Deed of Trust on the subject property is held or serviced by PennyMac Loan Services, LLC. Id. The proposed modification would set a 3% fixed interest rate for 360 months with a monthly payment of \$1,672.12. Id. Debtor will continue to make mortgage payments outside the confirmed plan. Id. There will be no cash out from the modification. Id.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtor is not current on chapter 13 plan payments or that the chapter 13 plan is in default. Debtor filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new mortgage payments. Doc. #111. The modified debt is a single loan incurred only to modify existing debt encumbering Debtor's residence. The only security for the debt will be Debtor's existing residence.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtor is authorized, but not required, to complete the loan modification. Debtor shall continue making plan payments in accordance with the confirmed chapter 13 plan and must modify the plan if the payments under the modified loan prevent Debtor from paying under the plan.

4. [18-13311](#)-A-13 **IN RE: MELINDA MARTINDALE**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
6-10-2021 [[141](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV
D. GARDNER/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

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 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 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.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2012 Lexus CT 200H, VIN JTHKD5BH3C2119035 ("Vehicle"). Doc. #141. Movant also seeks relief from the codebtor stay under 11 U.S.C. § 1301(c). Doc. #141. Melinda Lou Martindale ("Debtor") and Priscilla Marie Brown ("Codebtor") executed a written contractual agreement in 2015 for the purchase of the Vehicle. Decl. of Donna Delahanty, Doc. #143. Under the terms of the agreement, both Debtor and Codebtor are obligated to Movant. Id.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least three complete post-petition payments. Ex. C, Doc. #144. Movant's allowed secured claim is not provided for by Debtor's chapter 13 plan. Plan, Doc. #118; Claim 12. Movant has been unable to verify insurance coverage on the Vehicle. Decl., Doc. #143.

Section 1301 of the Bankruptcy Code provides for a codebtor stay that prohibits a creditor from acting to collect any part of a consumer debt from an individual that is liable on the debt with the bankruptcy debtor. 11 U.S.C. § 1301(a). Relief from the codebtor stay must be granted if "the plan filed by the debtor proposes not to pay such claim." 11 U.S.C. § 1301(c)(2); see In re Williams, 374 B.R. 713, 715-16 (Bankr. W.D. Mo. 2007). Here, Debtor's confirmed chapter 13 plan does not provide for Movant's allowed secured claim and does not propose to pay such claim. Plan, Doc. #118.

Accordingly, the motion will be granted as to Debtor pursuant to 11 U.S.C. § 362(d)(1) and as to Codebtor pursuant to 11 U.S.C. § 1301(c) to permit 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.

5. [20-10011](#)-A-13 **IN RE: TY SALES**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
6-24-2021 [[59](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due have not been paid prior to the hearing, the pleading may be stricken and sanctions imposed on the filer and/or their counsel.

6. [21-10632](#)-A-13 **IN RE: MARCO LOPEZ AGUIRRE AND MAYRA LOPEZ**
[MHM-2](#)

OBJECTION TO PROFESSIONAL FEES OF LEROY B. AUSTIN
6-24-2021 [[35](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Marco Antonio Lopez Aguirre and Mayra Margarita Lopez (together, "Debtors"), objects to the attorney fee compensation for Leroy Bishop Austin ("Austin"), Debtors' attorney of record. Tr.'s Obj., Doc. #35.

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). LBR 2016-1(a) authorizes a debtor's attorney in a chapter 13 case to: (1) accept fixed fees without court approval under Subpart (c); or (2) opt out of Subpart (c) and request compensation in accordance with 11 U.S.C. §§ 329 and 330. Subpart (c) permits a maximum fee of \$4,000 (the "no-look fee") for

nonbusiness cases that "will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed." LBR 2016-1(c).

Trustee objects to Austin's compensation on the grounds that Austin was suspended from the practice of law. Doc. #35. Austin began serving a six-month suspension from the State Bar of California on June 2, 2021. Doc. #35; Ex. A, Doc. #38. Additionally, Austin's license to practice was suspended for a two-year period with the execution of that period stayed and Austin placed on probation for three years. Ex. A Doc. #38. In the present case, Austin opted for a fixed fee of \$4,000 pursuant to LBR 2016-1(c). To date, Austin has received the following payments:

October 2020 Retainer	\$ 1,000.00
Trustee Disbursement	-
Total	\$ 1,000.00

The chapter 13 plan in this case has not yet been confirmed and the claims bar dates for all creditors except governmental units has passed. Decl. of Michael H. Meyer, Doc. #37. The bar date for governmental units is September 13, 2021. *Id.* The Meeting of Creditors concluded on June 1, 2021. On June 28, 2021, Trustee objected to Debtors' claim of exemptions. Doc. #40. On June 29, 2021, Trustee filed a motion to dismiss Debtors' chapter 13 bankruptcy case. Doc. #43.

Section 329 of the Bankruptcy Code permits the court to cancel an agreement between a debtor and their attorney or order the return of payment from the debtor's attorney if an attorney's compensation, paid or agreed to be paid, exceeds the reasonable value of any such services rendered or to be rendered in connection with the case. 11 U.S.C. § 329. Further, LBR 2016-1(c)(5) authorizes the court to examine the no-look fee "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."

Here, it was not foreseen that Austin would face suspension when this chapter 13 case was filed. The \$4,000 no-look fee was intended to compensate Austin for all pre-confirmation services and most post-confirmation services. Austin will not be able to provide legal services to Debtors through confirmation of the plan until the entry of final decree. Austin's suspension was not anticipated. Therefore, the court will exercise its authority to examine the no-look fee and determine the remaining compensation to be awarded to Austin.

With respect to chapter 13 cases filed in the Eastern District of California by suspended attorney Thomas O. Gillis, where the court was asked to examine fees paid or promised to a debtor's attorney who had been suspended from the practice of law, this court established fee tiers for services to determine the proper fee that should be awarded to the suspended attorney (the "Fee Rubric"). *In re Cervantes*, 617 B.R. 687, 698 (Bankr. E.D. Cal. 2020). The Fee Rubric was created by a panel of bankruptcy judges to develop an economically prudent methodology for determining what portion of the no-look fee is reasonable for the services actually provided by the suspended attorney. *Id.* The panel stated that this formula should be helpful in other cases. *Id.*

The Fee Rubric distributes the no-look fee to four different phases of a chapter 13 bankruptcy case as follows:

Phase	Services Provided	Aggregate Percentage of No-Look Fee Earned
I	Pre-petition through meeting of creditors	30% Aggregate Fees Earned
II	Meeting of creditors through initial confirmation	60% Aggregate Fees Earned
III	Confirmation to 90 days after Notice of Filed Claims	80% Aggregate Fees Earned
IV	Plan completed, certificates filed, discharge entered (unless no discharge to be granted in the case), necessary lien releases	100% Aggregate Fees Earned

Cervantes, 617 B.R. at 698. In Cervantes, the debtor's attorney was paid a \$4,000 no-look fee but suspended for a 2-year period from the State Bar of California prior to the entry of final decree. Id. at 689. After creation of the Fee Rubric, this court calculated the reasonable fee that the suspended attorney was entitled to in the two bankruptcy cases before the panel by determining the phase of the case and applying the respective aggregate percentage to the no-look fee. Id. at 699. Trustee referenced the court's decision in the Cervantes case to assist this court in making its determination with respect to Austin. Doc. #35; Decl., Doc. #37; Ex. B, Doc. #38. Thus, Trustee supports the application of the Fee Rubric. This court is inclined to adopt the Fee Rubric created in Cervantes to calculate the reasonable and proper fee that Austin is entitled to in this chapter 13 case.

Per the Fee Rubric, Austin is entitled to 30% of aggregate fees earned because the docket shows filings by Austin from the pre-petition phase through the Meeting of Creditors. The Meeting of Creditors concluded on June 1, 2021, one day prior to Austin's suspension. The chapter 13 plan in this case has not been confirmed. Accordingly, this court calculates Austin's proper and reasonable fee as follows:

Aggregate No-Look Fee	\$	4,000.00
Phase I Fee Rubric Rate		30%
Austin's Proper Fee		1,200.00
Total Paid-to-date		(1,000.00)
Remaining Balance	\$	200.00

Accordingly, Trustee's objection is SUSTAINED. Compensation beyond the \$1,000.00 retainer already paid to Austin by Debtors is limited to an additional \$200.00.

7. [16-10445](#)-A-13 **IN RE: DONALD/NANCY NEWSOME**
WDC-6

MOTION TO CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS
TO JOINT DEBTOR AND/OR NOTICE OF DEATH OF A DEBTOR
6-11-2021 [[81](#)]

NANCY NEWSOME/MV
VARDUHI PETROSYAN/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.

Nancy Louise Newsome ("Movant"), the surviving spouse of Donald Gene Newsome ("Joint Debtor") and joint debtor in this chapter 13 case, requests the court name Movant as the successor to the deceased Joint Debtor and permit the continued administration of this chapter 13 case. Doc. #81.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Joint Debtor died on December 18, 2019. Doc. #86. Joint Debtor died intestate, and Movant is Joint Debtor's successor and qualified to represent Joint Debtor's estate in the bankruptcy case. Doc. #86. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

Accordingly, Movant's application to be substituted as the successor of Joint Debtor for the further administration of this bankruptcy case is GRANTED. Movant may continue the administration of this case under chapter 13.

8. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
6-4-2021 [[16](#)]

ALLY BANK/MV
DAVID JENKINS/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.
STIPULATION

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

The objection was resolved by stipulation filed on June 22, 2021. Doc. #22.

9. [20-13554](#)-A-13 **IN RE: CYRUSS/KRISTEN LA MARSNA**
[TCS-1](#)

MOTION TO MODIFY PLAN
5-28-2021 [\[30\]](#)

KRISTEN LA MARSNA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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 chapter 13 trustee ("Trustee") timely filed an objection to the debtors' motion to confirm the first modified chapter 13 plan. Tr.'s Opp'n, Doc. #40. 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). Therefore, the defaults of the non-responding parties in interest are entered. The court is inclined to deny the motion based on the opposition filed by Trustee. This matter will proceed as scheduled.

On May 28, 2021, the debtors filed a modified plan and set the confirmation hearing for July 15, 2021. Doc. ##30-36. Trustee opposes confirmation of the modified chapter 13 plan because the debtors will not be able to make all plan payments under the plan and comply with the plan, citing 11 U.S.C. § 1325(a)(6). Trustee alleges that the proposed plan will not fund over sixty months. Doc. #40.

On July 12, 2021, the debtors filed a reply to Trustee's opposition. Doc. #42. As a procedural matter, LBR 3015-1(d)(2) incorporates LBR 9014-1(f)(1) to a motion to modify a chapter 13 plan after confirmation. LBR 9014-1(f)(1)(C) does not require written replies to opposition, but when written replies are submitted, they must be filed at least seven days prior to the date of the hearing. Here, the debtors' reply was filed untimely. However, the court will hear the debtors' response to Trustee's objection at the hearing.

Section 1325(a)(6) of the Bankruptcy Code requires the court to confirm a plan if "the debtor will be able to make all payments under the plan and to comply with the plan." 11 U.S.C. § 1325(a)(6). In this case, the debtors propose a five-year plan and estimate that all priority claims total \$29,808.39. Plan ¶¶ 2.03, 3.12, Doc. #31. However, based on the claims filed that have not been objected to by the debtors, the priority claims total \$56,689.56. See Plan ¶ 3.12, Doc. #31; Claims 8, 22, & 23. As proposed, the plan would take approximately seventy-one months to complete. The debtors will not be able to make all payments under the plan and comply with the plan.

Accordingly, the motion to confirm the first modified chapter 13 plan will be DENIED.

10. [20-12179](#)-A-13 **IN RE: BURRON/ANNA CUMMINGS**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-15-2021 [[44](#)]

GLOBAL LENDING SERVICES LLC/MV
GABRIEL WADDELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
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 after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors timely opposed on June 30, 2021. Doc. #50. 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). Therefore, the defaults of the non-responding parties in interest are entered. The court is inclined to deny the motion. This matter will proceed as scheduled.

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Nissan Altima, VIN 1N4AL3AP5JC196340 (the "Vehicle"). Doc. #44. Burron Marcel Cummings and Anna Mae Cummings (together, "Debtors"), a married couple and joint debtors in this chapter 13 case, oppose the motion. Doc. #50. Movant also articulates a request for relief from the automatic stay under 11 U.S.C. § 1301, commonly referred to as the codebtor stay. However, the alleged codebtor is in fact joint debtor Burron Marcel Cummings. Relief under § 1301 applies to "any individual that is liable on such debt with the debtor," but is not applicable to joint debtors who file a case under 11 U.S.C. § 302 because joint debtors are protected by the automatic stay provided in 11 U.S.C. § 362(a). Therefore, the court will not consider relief under § 1301.

Debtors' chapter 13 plan was confirmed September 1, 2020. Doc. #24. The confirmed plan places Movant in Class 4. Plan ¶ 3.10, Doc. #2. Paragraph 3.11 of the confirmed plan states that "[u]pon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) . . . [is] modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Plan ¶ 3.11(a), Doc. #2. Under the terms of the confirmed plan, if Debtors default under the applicable law or contract, there is no automatic stay in place preventing Movant from exercising its rights against the Vehicle.

To the extent there is an automatic stay in place under § 362(a), Movant requests relief from the stay for cause. 11 U.S.C. § 362(d)(1) allows the court

to grant relief from the stay for cause. "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). Movant states that Debtors have failed to make payments every month since August 2020, leaving an amount due to Movant of \$4,523.20. Doc. #46; Ex. C, Doc. #48. Movant also alleges that Debtors do not have insurance on the Vehicle. Doc. #46.

Debtors oppose the motion, stating that joint debtor Anna Mae Cummings contacted Movant soon after filing for bankruptcy and asked Movant how Debtors' son could make the Vehicle payments. Decl. of Anna Mae Cummings, Doc. #50. Movant said that it could not accept any payments. Id. Debtors assumed that Movant would send a notice indicating that post-petition payments would be accepted. Id. Debtors did not receive a notice, being informed that payments are due immediately as a result of Movant's motion for relief from stay. Id. Debtors' son is willing and able to make the catch-up payment, and Debtors anticipate that the catch-up payment will be made prior to the hearing on this motion. Id. Debtors also provided proof of insurance. Id.; Ex. A, Doc. #51.

After review of the included evidence, the court finds that no "cause" exists to lift the stay because Debtors' failure to make post-petition payments is the result of a miscommunication between Movant and Debtors. The Vehicle is insured. Debtors state that the outstanding balance owed to Movant can be paid immediately and anticipate doing so prior to the hearing on the motion.

However, as noted above, the terms of the confirmed plan have modified the automatic stay with respect to Movant.

Accordingly, the motion will be DENIED.

11. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SN-3](#)

MOTION TO AVOID LIEN OF T2M INVESTMENTS, LLC
5-7-2021 [[103](#)]

SYLVIA NICOLE/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied with prejudice.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor T2M Investments, LLC timely filed written opposition on June 18, 2021. Doc. #152. 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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B), which requires the notice to advise respondents whether and when written opposition is required, the potential consequences of failing to file written opposition, that respondents can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Sylvia Nicole ("Debtor"), the debtor in this Chapter 13 case, moves to avoid the deed of trust held by T2M Investments, LLC ("Creditor") on residential real property located at 1521 South 7th Street, Los Banos, CA 93635 (the "Property"). Doc. #103. Debtor does not state a legal basis by which this court can avoid a lien by motion.

As noted by Creditor, "a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or 4003(b)" must be brought by adversary proceeding. Fed. R. Bankr. P. 7001(2). Federal Rule of Bankruptcy Procedure ("Rule") 3012 does not apply with respect to this motion.

Rule 4003(d) permits a proceeding under § 522(f) to avoid a lien to be commenced by motion. In order 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). 11 U.S.C. § 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)).

Creditor filed written opposition on June 18, 2021. Doc. #152. Creditor's opposition focuses on the fourth requirement of lien avoidance under § 522(f)(1): that the lien be either a judicial lien or a non-possessory, non-purchase money security interest in personal property. Doc. #152. On July 8, 2021, Debtor filed an untimely reply that did not raise any new legal or factual issues. Doc. #164.

The Bankruptcy Code defines "judicial lien" as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). Creditor's lien is not a judicial lien and cannot be avoided under § 522(f)(1)(A).

Because Creditor's lien is not a judicial lien, it may only be avoided by motion under Rule 4003(d) if the lien is:

a nonpossessory, nonpurchase-money security interest in any-

- (i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

- (ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or
- (iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

11 U.S.C. § 522(f) (1) (B). The lien Debtor seeks to remove is a deed of trust on the Property. It is not a lien of the type described in § 522(f) (1) (B).

Accordingly, this motion is DENIED WITH PREJUDICE. Creditor's lien cannot be avoided by motion. The court notes that Debtor has commenced an adversary proceeding to determine the extent and validity of Creditor's lien (Adv. Proc. No. 21-1015), which is still pending and has not been resolved.

12. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SN-6](#)

MOTION TO CONFIRM PLAN
6-3-2021 [[124](#)]

SYLVIA NICOLE/MV
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on July 14, 2021. Doc. #169. However, the modified plan was not accompanied with a motion to confirm the modified plan as required by Local Rule of Practice 3015-1(d)(1). The debtor shall promptly move to confirm the modified plan in accordance with the local rules. The rules can be accessed at <http://www.caeb.uscourts.gov/LocalRules.aspx>.

13. [18-14905](#)-A-13 **IN RE: TRACEY PRITCHETT**
[TCS-10](#)

MOTION TO INCUR DEBT
7-1-2021 [[149](#)]

TRACEY PRITCHETT/MV
NANCY KLEPAC/ATTY. FOR DBT.
TIMOTHY SPRINGER/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 the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Tracey Lavelle Pritchett ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to incur new debt. Doc. #149. Debtor states that she totaled her vehicle and needs to purchase a new vehicle because Debtor is permanently disabled and an automobile is necessary for travel to and from doctor's appointments and around town. Decl. of Tracey Pritchett, Doc. #152. Debtor is seeking to purchase a 2021 Fiat 500x with a loan amount of \$27,450.36 and believes this vehicle will best suit her financial and physical needs. Decl., Doc. #152; Mot., Doc. #149. Debtor expects the monthly payments on the vehicle to be around \$569 per month for 72 months with an interest rate of 19.99%. Decl., Doc. #152.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtor is not current on her chapter 13 plan payments or that the chapter 13 plan is in default. Debtor filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new debt. The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of Debtor. The only security for the new debt will be the motor vehicle to be purchased by Debtor.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtor is authorized, but not required, to purchase a vehicle in a manner consistent with the motion.

1. [19-11430](#)-A-7 **IN RE: VINCENT/CAROL HERNANDEZ**
[20-1055](#) **THA-1**

MOTION FOR SUBSTITUTION OF PARTY
6-17-2021 [36]

SALVEN V. HERNANDEZ ET AL
RUSSELL REYNOLDS/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.

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.

James E. Salven ("Trustee"), the chapter 7 trustee and plaintiff in this adversary proceeding, requests the court substitute Oscar Rios in the place of Cathy Colmenero Hastings ("Hastings"). Doc. #36.

Trustee commenced an adversary proceeding to sell co-owned property, of which Hastings held a 25% interest. Doc. #36. Hastings passed away on January 26, 2021. Decl. of Oscar Rios, Doc. #39. By reason of Hastings' revocable trust, Hasting's 25% interest in the property will pass to her surviving husband Oscar Rios. Id. Oscar Rios is the sole beneficiary under the trust. Id. Oscar Rios consents to his substitution in this proceeding. Id.

Federal Rule of Civil Procedure ("Rule") 25 is made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7025. Rule 25(a) permits the court to order the substitution of the proper parties if a party dies and the claim is not extinguished. If a motion to substitute is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed. Rule 25(a)(1). However, "in order to trigger the running of the 90 day period . . . a party must formally suggest the death of the party upon the record. Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994).

A review of the record indicates that no formal suggestion of death has been made on the record and the 90-day period has not run. Oscar Rios, as Hastings'

surviving spouse and sole beneficiary of Hastings' revocable trust, is the proper party to substitute.

Accordingly, this motion is GRANTED.

2. [19-12047](#)-A-7 **IN RE: ROBERT FLETCHER**
[19-1097](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-30-2019 [[8](#)]

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.