

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 5, 2020
Place: Department A - 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. 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. 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. [19-13701](#)-A-13 **IN RE: PAUL/KATHERINE MCCURRY**
[DMG-3](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
10-8-2020 [[74](#)]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

D. Max Gardner ("Movant"), counsel for Paul Lee McCurry and Katherine Anne McCurry, the debtors in this chapter 13 case, requests allowance of interim compensation in the amount of \$4,566.00 and reimbursement for expenses in the amount of \$129.00 for services rendered August 28, 2019 through October 8, 2020 Doc. #74.

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). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration; and (3) the original plan, hearings, and objections. Doc. #77. 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 \$4,566.00 and reimbursement for expenses in the amount of \$129.00, equaling a total payout of \$4,695.00, to be paid in a manner consistent with the terms of the confirmed plan.

MOTION FOR SUBSTITUTION AS THE SUCCESSOR FOR DECEASED DEBTOR AND/OR
MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AS TO DEBTOR
10-2-2020 [[61](#)]

DENISE GRANT/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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.

Denise Grant ("Debtor"), the surviving co-debtor in this Chapter 13 case, requests the court name Debtor as the successor to the deceased co-debtor, waive the § 1328 certification requirements as to the deceased co-debtor, and authorize the transfer of any probate property exclusively to Debtor. None of the three requests for relief are supported by necessary evidence or any legal grounds. Doc. #61.

Local Rule of Practice ("LBR") 9014-1(d)(3)(A) provides, in part, that the "application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefore." LBR 9014-1(d)(3)(D) provides that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4)." The evidence provided for the relief requested in the motion is only the Certificate of Death of Ronald Vance Grant, the deceased co-debtor ("Decedent").

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. The motion fails to provide any evidence or legal analysis explaining how or why further administration of this Chapter 13 case is possible and in the best interests of the parties should the court name Debtor as the successor to Decedent. Decedent's death certificate, on its own, is insufficient to meet the showings required under Federal Rule of Bankruptcy Procedure 1016.

With respect to a waiver of the certification requirements for entry of discharge under 11 U.S.C. § 1328 as to Decedent only, Debtor has not provided any evidence that Decedent failed to meet the post-petition financial education requirements before he died.

Finally, the motion is not supported by any evidence or legal analysis explaining how or why this court can and should authorize the transfer of probate property directly, and exclusively, to Debtor. At a minimum, the court requires citation to some legal authority as to how this court has jurisdiction over probate property of Decedent.

Accordingly, this motion is DENIED WITHOUT PREJUDICE.

3. [18-12106](#)-A-13 **IN RE: HECTOR SOLIZ AND BEATRIZ GOMEZ SOLIZ**
[RSW-2](#)

MOTION TO MODIFY PLAN
9-4-2020 [[63](#)]

HECTOR SOLIZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition in consideration of terms agreeable to the debtors and put forth in a stipulation and proposed order filed October 26, 2020. Doc. ##75, 76. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #76.

4. [19-15109](#)-A-13 **IN RE: HENRY/REBECCA COVARRUBIAS**
[RSW-1](#)

OBJECTION TO CLAIM OF SRP 2012-4, CLAIM NUMBER 5
9-22-2020 [[26](#)]

HENRY COVARRUBIAS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(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 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. 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.

Henry Luis Covarrubias and Rebecca Elaine Covarrubias (together, "Debtors"), the Chapter 13 debtors in this bankruptcy case, object to claim no. 5 (the "Claim") filed by SRP 2012-4, LLC ("Claimant") on the grounds that the debt giving rise to the Claim was discharged in Debtors' prior bankruptcy. Doc. #26.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide "sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." Id. (quoting Ashford v. Consol. Pioneer. Mortg. (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995)).

The Claim asserts an unsecured claim of \$39,891.80 stemming from money loaned. Claim 5. The Claim includes as an attachment a purchase money note between Henry Covarrubias and America's Wholesale Lender dated June 30, 2006 (the "Note"), which lists the principal amount of the Note as \$40,062.00 with a last payment of \$32,928.90 due July 01, 2021. Attach. 1, Claim 5. The Claim amount does not include interest or other charges. Claim 5.

Debtors contend that their prior Chapter 7 bankruptcy, Case No. 13-11078-RR, filed in the Central District of California on April 26, 2013, discharged the debt underlying the Claim. Doc. #26; Decl. of Henry Covarrubias, Doc. #28.

A claim cannot be allowed under § 502(b)(1) if it was discharged in a prior bankruptcy case. In re US Airways, Inc., 2006 Bankr. LEXIS 352, *13-14 (Bankr. E.D. Va. Mar. 6, 2006), aff'd, Garland v. US Airways, Inc. (In re US Airways, Inc.), 2006 U.S. Dist. LEXIS 75707 (E.D. Va. Oct. 13, 2006). Having reviewed the Claim and Debtors' objection, the court finds that Debtors rebutted the prima facie showing made by the Claim. Claimant has not responded.

Accordingly, Debtors' objection is SUSTAINED.

5. [20-10931](#)-A-13 **IN RE: EDWARD FELICIANO**
[RSW-3](#)

MOTION TO CONFIRM PLAN
9-23-2020 [[65](#)]

EDWARD FELICIANO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

6. [19-10438](#)-A-13 **IN RE: JOSE/JENNIFER RODRIGUEZ**
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
9-30-2020 [[77](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be

deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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.

Neil E. Schwartz ("Movant"), counsel for Jose Luis Rodriguez and Jennifer Kay Rodriguez, the debtors in this chapter 13 case, seems to request allowance of interim compensation in the amount of \$11,247.50 and reimbursement for expenses in the amount of \$726.00 for services rendered January 30, 2019 through September 15, 2020. Doc. #77.

The court notices a discrepancy in the amount of compensation requested. In Exhibit A in support of Movant's application for compensation, Movant asks the court "to allow total attorney fees and costs of \$12,306.00. In light of the pre-petition retainer, [Movant] request[s] \$10,306.00, be payable through the plan." Ex. A, Doc. #79. However, in Exhibit B, the "current balance due and owing" is listed as \$11,973.50 after crediting the \$2,000 retainer. Ex. B, Doc. #79. The court will call this matter so Movant can resolve this discrepancy at the hearing.

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). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration; (3) original plan, hearings, and objections; and (4) claims administration and objections. Doc. #77. 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.

Upon Movant clarifying the amount sought, this motion is GRANTED. The Moving Party shall submit an order.

7. [20-11149](#)-A-13 **IN RE: RAYSHAWN LYONS**
[RSW-3](#)

CONTINUED MOTION TO CONFIRM PLAN
6-25-2020 [[39](#)]

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
OPPOSITION WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, and the court continued the hearing on this motion to November 5, 2020 at 9:00 a.m. Order, Doc. #81. The Chapter 13 trustee withdrew his opposition on October 20, 2020. Doc. #83. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

8. [18-10050](#)-A-13 **IN RE: EDWIN/LALAIN CARDENAS**
[RSW-1](#)

MOTION TO MODIFY PLAN
9-25-2020 [[44](#)]

EDWIN CARDENAS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

9. [17-11454](#)-A-13 **IN RE: CHERYL JUAREZ**
[PK-5](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
10-13-2020 [\[72\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Patrick Kavanagh ("Movant"), counsel for the Chapter 13 debtor, requests allowance of supplemental final compensation in the amount of \$500.00 for services rendered August 1, 2020 through October 12, 2020. Doc. #72.

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). 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's services in the relevant period included, without limitation, a motion to borrow. Doc. #72. The court finds that the compensation sought is reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows supplemental final compensation in the amount of \$500.00 to be paid in a manner consistent with the terms of the confirmed plan.

10. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
6-26-2020 [\[41\]](#)

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-4](#)

CONTINUED MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
7-17-2020 [[56](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [20-12867](#)-A-13 **IN RE: ULF JENSEN AND BARBARA KIRKEGAARD-JENSEN**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CIT BANK, N.A.
10-20-2020 [[25](#)]

CIT BANK, N.A./MV
PATRICK KAVANAGH/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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.

The debtors filed their Chapter 13 plan ("Plan") on September 14, 2020. Doc. #14. CIT Bank, N.A. ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not properly account for Creditor's secured claim because the secured claim will mature during the term of the Plan and the Plan does not provide for payment in full of Creditor's claim by the maturity date. Doc. #14. However, Creditor failed to file any evidence in support of its objection and has not filed a proof of claim.

Accordingly, the objection will be OVERRULED WITHOUT PREJUDICE.

13. [20-12867](#)-A-13 **IN RE: ULF JENSEN AND BARBARA KIRKEGAARD-JENSEN**
[MHM-1](#)

MOTION TO DISMISS CASE
10-8-2020 [\[21\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 3, 2020 at 9:00 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed 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 filed a written response on October 22, 2020 (Doc. #28) and this matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Ulf Jensen and Barbara Ann Kirkegaard-Jensen (together, "Debtors"), moves the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors and because Debtors have failed to move for plan confirmation. Tr.'s Mot., Doc. #21. Debtors timely opposed Trustee's motion and attribute the delay to the increasing medical expenses and decreased income of co-debtor Ulf Jensen. Debtors' Resp., Doc. #28; Decls., Doc. ##29, 30. Debtors intend to promptly file an amended plan. Decl. of Patrick Kavanagh, Doc. #29.

Although Debtors filed a Chapter 13 plan on September 14, 2020 (Doc. #14), a review of the court's docket in this case shows Debtors have not yet filed a motion to confirm a Chapter 13 plan. The court is inclined to continue the hearing on this matter to December 3, 2020 at 9:00 a.m. unless, before the November 5 hearing, an amended plan is filed and noticed for hearing.

14. [20-12668](#)-A-13 **IN RE: MICHAEL/ALICIA AGUIRRE**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT CORP.
9-29-2020 [\[16\]](#)

HARLEY-DAVIDSON CREDIT CORP./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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 will submit a proposed order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) 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.

The debtors filed their Chapter 13 plan ("Plan") on August 12, 2020. Doc. #2. Harley-Davidson Credit Corp. ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not properly account for Creditor's secured claim as required under 11 U.S.C. § 1325(a)(5)(B). Doc. #16.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on September 4, 2020. Claim 6.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #2. The debtors' plan fails to fully account for Creditor's claim. Claim 6; Doc. #2.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

15. [19-13473](#)-A-13 **IN RE: CHRISTOPHER LOCASCIO**
[RSW-3](#)

MOTION TO MODIFY PLAN
9-23-2020 [\[74\]](#)

CHRISTOPHER LOCASCIO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
OPPOSITION WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition on October 19, 2020. Doc. #84. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d

915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

16. [18-12678](#)-A-13 **IN RE: MICHAEL PFEIFFER**
[DMG-4](#)

CONTINUED MOTION TO MODIFY PLAN
7-30-2020 [[96](#)]

MICHAEL PFEIFFER/MV
D. GARDNER/ATTY. FOR DBT.
OPPOSITION WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, and the court continued the hearing on this motion to November 5, 2020 at 9:00 a.m. Order, Doc. #112. The Chapter 13 trustee withdrew his opposition in consideration of resolutions included in a stipulation and proposed order filed October 22, 2020. Doc. ##114-115. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #115.

17. [20-12578](#)-A-13 **IN RE: MARIO/SUSANA GONZALEZ**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HOMEBRIDGE FINANCIAL
SERVICES, INC.
9-8-2020 [[16](#)]

HOMEBRIDGE FINANCIAL SERVICES, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

18. [18-10785](#)-A-13 **IN RE: GERARDO/AMANDA CASTANEDA**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
10-15-2020 [[31](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Patrick Kavanagh ("Movant"), counsel for the Chapter 13 debtors, requests allowance of interim compensation for services valued at \$4,620.00 and reimbursement for expenses valued at \$48.55 for services rendered January 24, 2018 through October 15, 2020. Doc. #31. In light of a retainer of \$1,5000.00, Movant requests a combined payment of only \$3,168.55. Doc. #31.

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). 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's services in the relevant period included, without limitation: (1) pre-petition consultation and fact gathering; (2) preparing and filing the petition, schedules, and forms; (3) hearings; and (4) claim administration and objections. Doc. #31. 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 and reimbursement for expenses in the amount of \$3,168.55 to be paid in a manner consistent with the terms of the confirmed plan.

19. [19-12394](#)-A-13 **IN RE: JUAN/CONSUELO ARZATE**
[RSW-1](#)

MOTION TO MODIFY PLAN
9-8-2020 [[36](#)]

JUAN ARZATE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

20. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[RSW-3](#)

CONTINUED MOTION TO MODIFY PLAN
8-13-2020 [[66](#)]

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
OPPOSITION RESOLVED BY STIPULATION

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, and the court continued the hearing on this motion to November 5, 2020 at 9:00 a.m. Order, Doc. #78. The Chapter 13 trustee withdrew his opposition, and a stipulation and proposed order were filed October 22, 2020. Doc. ##80-83. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #83.

1. [20-12919](#)-A-7 **IN RE: LORENA AGUAYO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-24-2020 [[13](#)]

\$335.00 FILING FEE PAID 9/24/20

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees due have been paid in full.

2. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[LAK-5](#)

MOTION FOR ADMINISTRATIVE EXPENSES
10-15-2020 [[1127](#)]

SALLYPORT COMMERCIAL FINANCE,
LLC/MV
RILEY WALTER/ATTY. FOR DBT.
SCOTT SIEGEL/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.

Sallyport Commercial Finance, LLC ("Movant"), a creditor and post-petition lender to Don Rose Oil Co., Inc ("Debtor"), moves the court for an order authorizing Movant's administrative expense claim of \$2,085,344.03. Mot., Doc. #1127.

On or about June 19, 2017, an involuntary Chapter 7 bankruptcy case was filed against Debtor. Debtor filed this case under Chapter 11 on June 22, 2017. On July 14, 2017, the court authorized a continuation of certain financing agreements between Movant and Debtor ("July 14 Order"). July 14 Order, Doc. #99. The July 14 Order provided that Movant would have a priority administrative expense claim should the collateral prove insufficient to fully

reimburse Movant for Debtor's obligations during the Chapter 11 case. Doc. #99. The court continued to authorize Movant's financing facilities while the case was in Chapter 11. E.g., Doc. #584. The court ordered this case converted to Chapter 7, pursuant to 11 U.S.C. § 1112(b), effective March 28, 2018. Doc. ##779, 804. On August 13, 2020, the court set October 15, 2020, as the last date for any claimant to file a Chapter 11 administrative expense claim against the estate. Doc. #1105. Claimant filed this motion on October 15, 2020. Doc. #1127.

11 U.S.C. § 503(b)(1)(A)(i) states that, after notice and a hearing, administrative expenses shall be allowed for "the actual, necessary costs and expenses of preserving the estate including [] wages, salaries, and commissions for services rendered after the commencement of the case[.]" To be deemed an administrative expense, the claim must have arisen from a transaction with the debtor in possession (or other person qualified as a trustee under § 322) and directly and substantially benefitted the estate. Boeing N. Am., Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018, 1025 (9th Cir. 2005) (citing Abercrombie v. Hayden Corp. (In re Abercrombie), 139 F.3d 755, 756 (9th Cir. 1998)). The bankruptcy court has broad discretion whether to grant such a claim, and only "the actual, necessary costs and expenses of preserving the estate" shall be approved. Microsoft Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th Cir. 1995).

In accordance with the July 14 Order (Doc. #99), and in consideration of the evidence Movant filed in support of this motion, the court is inclined to allow an administrative expense in the amount requested subject to allocation of the priority of various aspects of the administrative expense claim with the consent of the Chapter 7 trustee or further court order.

Accordingly, pending any opposition at hearing, the motion will be GRANTED authorizing Movant's administrative expense claim of \$2,085,344.03, subject to allocation of priority with the consent of the Chapter 7 trustee or further court order.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-14](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY JOINT DEBTOR AMALIA
PEREZ GARCIA, DEBTOR EDUARDO ZAVALA GARCIA
9-9-2020 [[269](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-16](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
10-8-2020 [[311](#)]

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.

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

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (together, "DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #311. Movant requests the court allow compensation in the amount of \$8,405.00 and reimbursement for expenses in the amount of \$307.80 for legal services rendered September 1, 2020 through September 30, 2020. Doc. #311.

Section 330(a)(1) 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 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of general counsel, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Doc. #33. 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).

Movant's services included, without limitation: (1) case administration; (2) asset disposition; (3) relief from stay proceedings; and (4) plan and disclosure statement completion. Doc. #311. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$8,405.00 and reimbursement for expenses in the amount of \$307.80. Movant is authorized to draw on any retainer held. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

4. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[NB-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-2020 [[172](#)]

KEEVMO, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RICARDO ARANDA/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

5. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[NB-4](#)

CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO APPOINT TRUSTEE,
MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
7-16-2020 [[181](#)]

KEEVMO, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RICARDO ARANDA/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

6. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
10-7-2020 [[156](#)]

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.

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 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors Jared Allen Watts and Sarah Danielle Watts (collectively, "DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #148. Movant requests that the court allow compensation in the amount of \$7,410.00 and reimbursement for expenses in the amount of \$394.35 for legal services rendered September 1, 2020 through September 30, 2020. Doc. #156.

Section 330(a)(1) 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 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of general counsel, Movant may submit monthly applications for interim compensation pursuant to

11 U.S.C. § 331. Doc. #51. 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).

Movant's services included, without limitation: (1) case administration; (2) asset analysis and recover; (3) financing and business operations; (4) relief from stay proceedings; (5) fee and employment applications; and (6) claims administration. Doc. #156. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$7,410.00 and reimbursement for expenses in the amount of \$394.35. Movant is authorized to draw on any retainer held. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

7. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
10-7-2020 [[176](#)]

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.

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 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Temblor Petroleum Company, LLC ("DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #176. Movant requests that the court allow compensation in the amount of \$3,782.50 and reimbursement for expenses in the amount of \$292.20 for legal services rendered September 1, 2020 through September 30, 2020. Doc. #176.

Section 330(a)(1) 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 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of general counsel, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Doc. #21. 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).

Movant's services included, without limitation: (1) case administration; (2) asset analysis and recover; (3) asset disposition; (4) fee and employment applications; and (5) claims administration. Doc. #176. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$3,782.50 and reimbursement for expenses in the amount of \$292.20. Movant is authorized to draw on any retainer held. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

1. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [[40](#)]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.

NO RULING.

2. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [PK-3](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-21-2020 [[58](#)]

BROWN V. CHAGOYA ET AL
PATRICK KAVANAGH/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.

This motion was set for hearing on 28 days' notice as required by Local Rules of Practice 9014-1(f)(1) and 9014-1(f)(2)(A) and will proceed as scheduled.

On September 21, 2020, Defendants Mark Chagoya and Susan Chagoya (collectively, "Defendants") filed a motion to dismiss the amended complaint ("Complaint") filed by Plaintiff Gretchen Brown in her capacity as administrator of the probate estate of Lynda Lou Caitlin ("Plaintiff") on July 6, 2020 (Doc. #40) (the "Motion"). The Motion seeks such relief pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 7012. Doc. #58. The Motion was accompanied by a points and authorities in support of the Motion as well as two exhibits and a supporting declaration. Doc. ##60, 61, 62. Plaintiff filed a timely opposition ("Opposition"), also with exhibits and two declarations. Doc. ##65, 66, 67. Defendants did not reply to Plaintiff's Opposition.

For the reasons set forth below, the court is inclined to deny the Motion.

As an initial procedural matter, Defendants and Plaintiff filed exhibits in support of the Motion and Opposition. Doc. ##62, 65. In reviewing a motion to dismiss under FRCP 12(b)(6), "a court may consider the allegations in the complaint; exhibits attached to the complaint or incorporated therein by reference; matters in which judicial notice may be taken; and documents of which plaintiff has notice and on which it relied in bringing its claim or that are integral to its claim." Enron Corp. v. Credit Suisse First Boston Int'l (In re Enron), 328 B.R. 58, 65 (Bankr. S.D.N.Y. 2005) (citations omitted). Here,

Exhibit B filed with the Motion and Exhibit 12, pages 2-7, filed with the Opposition relate to the standing allegations (Complaint ¶¶ 2-6), so the court may consider those documents. Exhibit A filed with the Motion and Exhibit 12, pages 8-25, filed with the Opposition are not relied upon by Plaintiff in the Complaint, so the court will not consider those documents in reviewing the Motion.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). "In considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief." Enron, 328 B.R. at 64 (citations omitted).

The Motion first seeks to dismiss the Complaint on the grounds that Plaintiff lacks standing to sue Defendants. This argument is based on the assertion that the claims asserted by Plaintiff are personal to Gretchen Brown and should have been scheduled in Ms. Brown's Chapter 7 bankruptcy case filed on April 29, 2010. Because those claims were not so scheduled, Defendants contend that Ms. Brown's claims remain property of Ms. Brown's bankruptcy estate and thus, only the Chapter 7 trustee of Ms. Brown's bankruptcy case has standing to bring the claims asserted in the Complaint. This is not so because the claims Plaintiff asserts in the Complaint are for debts owed by Defendants to the probate estate of Lynda Lou Caitlin ("Probate Estate") and are being pursued by Ms. Brown in her capacity as the administrator of the Probate Estate. The Complaint does not allege debts owed by Defendants to Ms. Brown individually. Although Ms. Brown asserted claims based on an oral contract in state court, those claims were denied by the California Court of Appeal. Plaintiff's claims alleged in the Complaint are only for actions Defendants took against the Probate Estate, not against Ms. Brown individually.

As a corollary to the standing argument, the Motion seeks to dismiss the Complaint on the grounds of judicial estoppel because the underlying claims that Plaintiff seeks to have determined to be non-dischargeable were not scheduled in Plaintiff's Chapter 7 bankruptcy case filed in 2010. As discussed above, Plaintiff asserts the claims in the Complaint in her capacity as the administrator of the Probate Estate and not in her individual capacity. Thus, those claims did not need to be scheduled in her personal bankruptcy case, and judicial estoppel does not bar Plaintiff from prosecuting the Complaint. Additionally, the court notes that both parties agree that Lynda Lou Caitlin passed away on February 23, 2011, so claims against the Probate Estate did not arise until significantly after Ms. Brown's bankruptcy case was filed.

Finally, Defendants assert that the causes of action do not meet the standards required for pleading under Iqbal. The court finds that the Complaint, as plead, meets the pleading standards under Iqbal.

The first cause of action seeks to have Plaintiff's claim against Defendants determined to be non-dischargeable under 11 U.S.C. § 523(a)(4). Section 524(a)(4) is based on (a) fraud or defalcation while acting in a fiduciary capacity, (b) embezzlement or (c) larceny. Urological Grp., Ltd. v. Petersen (In re Petersen), 296 B.R. 766, 785 (Bankr. C.D. Ill. 2003). With respect to the first aspect, a creditor seeking to except a debt from discharge under § 523(a)(4) has "to prove, by a preponderance of the evidence, that: (1)[the debtor] was acting in a fiduciary capacity; and (2) while acting in that capacity, he engaged in fraud or defalcation." Lovell v. Stanifer (In re Stanifer), 236 B.R. 709, 713 (B.A.P. 9th Cir. 1999). With respect to the second

and third aspects, for purposes of § 523(a)(4), a bankruptcy court is not bound by the state law definitions of larceny or embezzlement but, rather, may follow federal common law. See Ormsby v. First Am. Title Co. (In re Ormsby), 591 F.3d 1199, 1206 (9th Cir. 2010) (fraud); In re Littleton, 942 F.2d 551, 555 (9th Cir. 1991) (embezzlement). Embezzlement in the context of non-dischargeability requires three elements: (1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud. Littleton, 942 F.2d at 555 (citations and punctuation omitted). Federal common law "defines larceny as a felonious taking of another's personal property with intent to convert it or deprive the owner of the same." Ormsby, 591 F.3d at 1206. "[A] 'felonious taking' refers to a situation in which a debtor comes into possession of property of another by unlawful means; it does not refer to the subsequent withholding of property from its alleged owner." In re Jenkins, 2015 Bankr. LEXIS 578 at *12 (B.A.P. 9th Cir. Feb. 20, 2015) (analyzing Ormsby).

The second cause of action seeks to have Plaintiff's claim against Defendants determined to be non-dischargeable under 11 U.S.C. § 523(a)(6). A creditor seeking to except a debt from discharge under § 523(a)(6) has to prove both willfulness and malice. Hamilton v. Elite of Los Angeles, Inc. (In re Hamilton), 584 B.R. 310, 319 (B.A.P. 9th Cir. 2018). "A 'willful' injury is a 'deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.'" Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 706 (9th Cir. 2008). Under Ninth Circuit authority, the willful injury requirement under § 523(a)(6) "is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." Ormsby, 591 F.3d at 1206. Under Ninth Circuit authority, "[a] malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Id.

Here, the Complaint alleges that Defendants had possession of Probate Estate property while state court proceedings were pending over who had the right to the Probate Estate property. The Complaint lists Probate Estate property allegedly held by Defendants that was sold and converted to Defendants' personal use. That property was sold or retained with Defendants' full knowledge that the property belonged to the Probate Estate. The Complaint further alleges that defendant Mark Chagoya was a fiduciary with respect to the Probate Estate property and, while so acting engaged in multiple acts of defalcation in concert with defendant Susan Chagoya. The court finds that the factual allegations in the Complaint sufficiently plead causes of action against Defendants under 11 U.S.C. § 523(a)(4) and 11 U.S.C. § 523(a)(6) to survive a motion to dismiss under FRCP 12(b)(6).

Accordingly, the Motion is DENIED.

3. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[19-1026](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-4-2019 [[56](#)]

ALUISI ET AL V. JORGENSEN
MICHAEL FARLEY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on October 26, 2020. Doc. #120.

1. [20-12740](#)-A-7 **IN RE: DAVID/MARILYN SULLIVAN**

REAFFIRMATION AGREEMENT WITH STATE FARM BANK FSB
10-2-2020 [[24](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

2. [20-12740](#)-A-7 **IN RE: DAVID/MARILYN SULLIVAN**

REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
10-13-2020 [[33](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

3. [20-12746](#)-A-7 **IN RE: JANICE AUSTIN**

PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.
9-23-2020 [[13](#)]

NO RULING.