UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, January 13, 2021
Place: Department B – Courtroom #13
Fresno, 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.

9:30 AM

1. 20-12905-B-13 **IN RE: JUAN/ERICA ESCOBAR**
JDR-1

MOTION TO VALUE COLLATERAL OF PACIFIC SERVICE CREDIT UNION
12-8-2020 [19]

JUAN ESCOBAR/MV
JEFFREY ROWE/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Juan Escobar and Erica Escobar ("Debtors") ask the court for an order valuing a 2017 Chevrolet Silverado 1500 Crew Cab LT ("Vehicle") at $27,466.00. Doc. #19. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Pacific Service Credit Union ("Creditor") in the amount of $34,450.60. *See* Claim #4-2. Creditor did not timely file written opposition.

The motion will be GRANTED.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred

within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Debtors purchased the Vehicle on September 11, 2017, which is more than 910 days (1,094 days) preceding the petition filing date. Doc. #21, ¶ 6. Joint Debtor Erica Escobar filed a declaration stating that the Vehicle was acquired for personal use. *Ibid.* The elements of § 1325(a)(*) are not met and § 506 is applicable.

However, Ms. Escobar's declaration states the "fair market value" of the Vehicle is $27,466.00, which she obtained from Kelley Blue Book. *Id.*, ¶¶ 4, 8. Section 506(a)(2) requires the valuation to be "replacement value," not "fair market value" because it is not specific enough. Ms. Escobar does hint at "replacement value" when she states her belief that "this is what [she] would have to pay if not lower for a similar condition from a dealer in used 2017 Chevrolet Silverado." *Id.*, ¶ 9. Debtors do use the correct valuation in their motion, but the incorrect valuation in their points and authorities. Doc. #19; #22.

Moreover, Debtors cannot rely on Kelley Blue Book because they have not established themselves as experts under the Federal Rules of Evidence ("FRE"). *See* FRE 701; 702; 703. Ms. Escobar is competent to testify as to the value of the Vehicle as its owner. In the absence of contrary evidence, Debtors' opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Based on Ms. Escobar's statement regarding the $27,466.00 valuation, her claim that "this is what [she] would have to pay if not lower for a similar condition from a dealer in used 2017 Chevrolet Silverado[,]" and Debtors' use of the correct "replacement value" standard in the motion, this court will GRANT the motion because Ms. Escobar provided her opinion as Vehicle's owner that its replacement value is $27,466.00. Doc. #21, ¶ 9. A similar issue appears in matter #2 below, which this court intends to grant. Future improper valuation standards—testifying as to fair market value instead of replacement value–will result in denial without prejudice.

This motion will be GRANTED.

Creditor's secured claim will be fixed at $27,466.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

2. 20-12905-B-13 **IN RE: JUAN/ERICA ESCOBAR**
JDR-2

MOTION TO VALUE COLLATERAL OF AQUA FINANCE INC.
12-8-2020 [25]

JUAN ESCOBAR/MV
JEFFREY ROWE/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Juan Escobar and Erica Escobar ("Debtors") ask the court for an order valuing a Puronics Home Filtration System Softener Ionics and 6-Alkaline Stage Reverse Osmosis Drinking Water Filtration System, WQA Gold Seal ("Property") at $938.37. Doc. #25. The Property is encumbered by a purchase-money security interest in favor of creditor Aqua Finance, Inc. ("Creditor") in the amount of $4,867.30. *See* Claim #23-2. Creditor did not timely file written opposition.

The motion will be GRANTED.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) that collateral is personal property other than a motor vehicle acquired for the

personal use of the debtor, and (3) the debt was incurred within one year preceding the filing of the petition.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Debtors purchased the Property on November 16, 2016, which is more than one year preceding the petition filing date. Doc. #27, ¶ 6. Joint Debtor Erica Escobar filed a declaration stating that the Property was acquired for personal use. *Ibid.* The elements of § 1325(a)(*) are not met and § 506 is applicable.

However, Ms. Escobar's declaration states the "fair market value" of the Property is $938.37 in "good condition." *Id.*, ¶¶ 5, 8. Section 506(a)(2) requires the valuation to be "replacement value," not "fair market value" because it is not specific enough. Ms. Escobar does hint at "replacement value" when she states her belief that "this is what [she] would have to pay if not lower for a similar condition from a dealer in used Puronics Home Filtration System Softener Ionics and 6-Alkaline Stage Reverse Osmosis Drinking Water Filtration System, WQA Gold Seal." *Id.*, ¶ 9. Debtors do use the correct valuation in their motion, but the incorrect valuation in their points and authorities. Doc. #25; #29.

Ms. Escobar is competent to testify as to the value of the Property as its owner. In the absence of contrary evidence, Debtors' opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Furthermore, Creditor's claim is not actually being impaired. Creditor filed a proof of claim on December 23, 2020, which stated that $938.37 is the portion of the claim secured by Property. Claim #23-2, ¶ 9. Further, Creditor did not timely file opposition.

Based on Ms. Escobar's statement regarding the $938.37 valuation, her claim that "this is what [she] would have to pay if not lower for a similar condition from a dealer in used Puronics Home Filtration System Softener Ionics and 6-Alkaline Stage Reverse Osmosis Drinking Water Filtration System, WQA Gold Seal[,]" and Debtors' use of the correct "replacement value" standard in the motion, this court will GRANT the motion because Ms. Escobar provided her opinion as Property's owner that its replacement value is $938.37. Doc. #27, ¶ 9. A similar issue appears in matter #1 above, which this court intends to grant. Future improper valuation standards—testifying as to fair market value instead of replacement value–will result in denial without prejudice.

This motion will be GRANTED.

Creditor's secured claim will be fixed at $938.37. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

The court notes that Debtors analyzed tolling provisions for § 1325(a)(*) (the hanging paragraph) using 910-days rather than one-year for Property, which is non-motor vehicle personal property. Doc. #25. This error is *de minimis* because the debt securing Property was incurred before the one-year requisite timeframe.

3. 19-14108-B-13 **IN RE: JAMES WEST**
JHK-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
11-9-2020 [39]

FIRST INVESTORS FINANCIAL SERVICES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JOHN KIM/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 in conformance with the ruling below.

This motion was originally set for December 9, 2020 on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1) and was continued to January 13, 2021 after it appeared that James West ("Debtor") could reasonably cure his deficiency under 11 U.S.C. § 362(e).

First Investors Financial Services ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2011 Lincoln MKX ("Vehicle"). Doc. #39. Chapter 13 trustee Michael Meyer ("Trustee") timely responded stating that the debtor has made payments totaling $650.00 since the motion was filed but would still be delinquent $108.99 if the November 2020 payment was made. Doc. #47. James West ("Debtor") did not oppose and his default was entered. Doc. #49.

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

Debtor filed bankruptcy on September 28, 2019. Doc. #1. Vehicle was the subject of a motion to value collateral, which was resolved by stipulation wherein the parties agreed that Vehicle was worth $5,855.00 on the date of the petition. *See* Doc. #28; TCS-1. Debtor subsequently confirmed his chapter 13 plan on March 9, 2020. Doc. #34. As part of the plan, Movant was listed as a Class 2(B) creditor for claims reduced based on the value of collateral and was set to be paid a monthly dividend by the chapter 13 trustee ("Trustee"). *See* Doc. #2, ¶ 3.08. The chapter 13 plan requires Debtor to pay $215.00 per month to Trustee, *Id.*, ¶ 2.01.

As of October 23, 2020, Movant contended that Debtor was indebted to Movant in the sum of $19,813.76. Doc. #39, ¶ 6. At the time this motion was filed, Movant contended that Debtor was in default for a partial plan payment of $210.00 due August 25, 2020, and regular plan payments of $215.00 due September 25, 2020 through October 25, 2020, for a total of $640.00. *Id.*, ¶ 7. Since this motion was filed but before the December 9, 2020 hearing, Trustee indicated that Debtor made the following payments:

(a) $430.00 on November 13, 2020;
(b) $215.00 on November 17, 2020; and
(c) $5.00 on November 18, 2020.

Doc. #47 at ¶ 4. Trustee was to pay Movant a total of $566.04 at the end of November 2020 if the November 2020 payment was made, which Debtor appeared to have done at the last hearing. *Id.* at ¶ 5.

At the December 9, 2020 hearing, Movant stated that Debtor was delinquent with respect to its claim by approximately $428.00. Doc. #51. Trustee stated that Debtor was delinquent approximately $205.00 through November 2020. *Id.* Debtor's counsel appeared at the hearing and stated that Debtor would attempt to cure the delinquency with the December 2020 payment. *Id.*

This court made the finding under 11 U.S.C. § 362(e) that there was a more than reasonable likelihood that the Debtor would be able to cure the relatively small deficiency of $428.00 owed to Movant before the January hearing. This matter was continued to January 13, 2021. If Debtor is not current before this hearing, the court would grant relief.

The court notes that on January 6, 2021, Trustee filed a notice of default and motion to dismiss the case for failure to make plan payments because Debtor is delinquent $420.00. Doc. #53.

Although it does not appear from the docket that Debtor cured the plan deficiency, this matter will be called to inquire whether Debtor is current with respect to Movant. If Debtor has not cured the default, then "cause" exists to lift the stay because debtor is delinquent at least $428.00. Doc. #51.

Accordingly, if Debtor is still delinquent, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the collateral is a depreciating asset.

4. 17-14112-B-13 **IN RE: ARMANDO NATERA**
TAT-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-2020 [76]

ROGER WARD/MV
GABRIEL WADDELL/ATTY. FOR DBT.
THOMAS TRAPANI/ATTY. FOR MV.
DISMISSED 1/03/18, REOPEN 6/5/20. RESPONSIVE PLEADING.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

This matter was filed on 28 days' notice as required by Local Rule of Practice 9014-1(f)(1) and will proceed as a scheduling conference.[1]

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

Here, the notice of hearing (Doc. #77) stated that respondents could check tentative rulings at "www.caed.uscourts.gov" after 4:00 p.m. the day before the hearing. This is the court website for the U.S. District Court for the Eastern District of California, which is incorrect. The notice should have sent respondents to www.caeb.uscourts.gov, the website for the U.S. Bankruptcy Court for the Eastern District of California. However, on this page is a link entitled "Eastern District of California Bankruptcy Court" that does lead directly to www.caeb.uscourts.gov. Thus, this error is *de minimis* because one additional click will lead respondents to the correct website.

Roger Ward and Sandra Ward (collectively "the Wards") filed this motion seeking to retroactively annul the automatic stay pursuant to

[1] Unless otherwise indicated, references to "LBR" are to the Local Rules of Practice; "Rules" are to the Federal Rules of Bankruptcy Procedure; and all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

§ 362(d)(1) and (d)(2) as October 25, 2017, the same date that Armando Natera's ("Debtor") petition was filed and a foreclosure sale was conducted with respect to real property located at 2430 E. Orrland Avenue, Pixley, CA 93256 ("Property"). Doc. ##76-84. The Wards contend (1) the balance of equities referenced in *Fjeldsted v. Lien (In re Fjelsted)*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003) favors retroactively annulling the automatic stay; and (2) as result, the automatic stay should be annulled under § 362(d)(2). Doc. #80.

Debtor timely responded opposing the Ward's motion, objecting to the Ward's evidence, and submitting his own declarations, exhibits, and a request for judicial notice. Doc. ##85-93. Debtor contends: (1) the Wards were aware of the bankruptcy proceeding but ignored it; (2) the Wards should not be entitled to annul the stay for cause under § 362(d)(1); and (3) the Wards are not entitled to annulment of the stay under § 362(d)(2). Doc. #85.

The Wards filed a reply brief contending (1) Debtor's chapter 13 case would not have succeeded considering the case was dismissed for failing to make installment payments; (2) the Wards and other purchasers were not given notice; and (3) the motion should be granted. Doc. #94.

Section 362(d) provides:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> (1) for cause, including the lack of adequate protection of an interest in property;
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if—
>
> (A) the debtor does not have an equity in such property; and
>
> (B) such property is not necessary to an effective reorganization

§ 362(d)(1) & (d)(2). Section 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985). Section 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization. These sections give "the bankruptcy court wide latitude in crafting relief from the automatic stay, including power to grant retroactive relief from the stay." *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 572 (9th Cir. 1992).

The Ninth Circuit Bankruptcy Appellate Panel warned that retroactive relief should only be "applied in extreme circumstances." *In re Aheong*, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations

omitted). When deciding a motion to annul the automatic stay, the court may consider the "*Fjeldsted*" factors:

> 1. Number of filings;
>
> 2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
>
> 3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
>
> 4. The Debtor's overall good faith (totality of circumstances test;
>
> 5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;
>
> 6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
>
> 7. The relative ease of restoring parties to the *status quo ante*;
>
> 8. The costs of annulment to debtors and creditors;
>
> 9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative contract;
>
> 10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
>
> 11. Whether annulment of the stay will cause irreparable injury to the debtor;
>
> 12. Whether stay relief will promote judicial economy or other efficiencies.

In re Fjeldsted v. Lien (In re Fjelsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). One factor alone may be dispositive. *Id.*

This matter is now deemed to be a contested matter. Pursuant to Rule 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

The court intends to rule on Debtors' evidentiary objections at the hearing.

Based on the record, the factual issues appear to include:
(1) When did the Wards first learn of the Debtor's bankruptcy?
(2) Did Richard Allen Barnes Trust dated September 1, 2011 ("Barnes") receive notice of Debtor's bankruptcy at 1:59 p.m. the day of the foreclosure sale scheduled for 2:00 p.m.?

(3) Did Parker Foreclosure Services, LLC ("Parker"), receive notice of the bankruptcy prior to conducting the foreclosure sale?
(4) Were Michael Lincicum and Mitzi Lincicum (collectively "the Lincicums") contacted and informed of the bankruptcy prior to purchasing the Property from Barnes?

The legal issues appear to include:
(1) Did Barnes or Parker have actual or constructive knowledge of the bankruptcy at the time of the foreclosure sale?
(2) Did the Lincicums have actual or constructive knowledge of the bankruptcy prior to the purchasing the Property from Barnes?
(3) Did the Wards have actual or constructive knowledge of the bankruptcy prior to purchasing the Property from the Lincicums.
(4) Whether "cause" exists to annul the automatic stay.
(5) Whether the property had equity and was necessary for an effective reorganization that was in propect?
(6) Whether Debtor engaged in unreasonable or inequitable conduct as informing the Wards of the bankruptcy and the automatic stay.
(7) Whether the *Fjeldsted* factors or other facts weigh in favor of retroactively annulling the automatic stay

5. 20-13217-B-13 **IN RE: LARRY/DOLORES SYRA**
MAZ-1

MOTION TO VALUE COLLATERAL OF ALLY BANK
11-27-2020 [26]

LARRY SYRA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice and the Federal Rules of Bankruptcy Procedure.[2]

First, LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed on November 27, 2020 and set for hearing on January 13, 2021. Doc. #26. January 13, 2021 is 47 days after November 27, 2020, and therefore this hearing was set 28 days'

[2] Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice; "Rules" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and "section" or "§" will be to Title 11 of the United States Code.

notice under LBR 9014-1(f)(1). The notice correctly stated that that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #27. However, immediately thereafter, the notice stated that objection shall be served not later than "December 28, 2020." *Id.* December 28, 2020 is sixteen (16) days before January 13, 2021. This is incorrect. The notice should have stated that opposition was due by December 30, 2020, which is 14 days before the scheduled hearing. Alternatively, the notice could have omitted a precise date after correctly stating that opposition is due 14 days before the hearing.

Second, Rule 3012(b) applies to motions under § 506 and provides:

> [A] request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or chapter 13 case. When the request is made in a chapter 12 or chapter 13 plan, the plan shall be served on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004. A request to determine the amount of claim entitled to priority may be made only by motion after a claim is filed or in a claim objection.

Rule 3012(b). Meanwhile, Rule 9036 governs notice and service generally, and provides:

> Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk, or some other person as the court or these rules may direct, may send the notice to—or serve the paper on—a registered user by filing it with the court's electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. In either of these events, service or notice is complete upon filing or sending but it is not effective if the filer or sender receives notice that it did not reach the person to be served. ***This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004***.

Rule 9036 (emphasis added). Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is sought pursuant to Rule 7004. Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10). And if the United States trustee is sued or otherwise a party to litigation unrelated to its capacity as trustee, then the requirements of 7004(b)(5) also apply. *See* 10 Collier on Bankruptcy App. 7004, at ¶ 3 (16th 2020).

Here, the certificate of service indicates that both the chapter 13 trustee ("Trustee") and United States trustee ("UST") were served via email. Doc. #30. No relief is being sought against the UST, so electronic service is sufficient for the UST in this instance.

However, because this motion will affect property of the estate, Trustee must be served in accordance with Rule 9014. Rule 7004, which is applicable for motions to determine the amount of a secured claim under Rules 3012 and 9014, is specifically precluded from electronic service pursuant to Rule 9036. This service requirement is not subject to waiver under Civil Rule 4(d). *See* Rule 7004(a)(1). Thus, Debtors must serve the chapter 13 Trustee in conformance with Rule 7004.

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

6. 18-14322-B-13 **IN RE: PATSY ALLEN**
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
12-15-2020 [54]

CHAMPION MORTGAGE COMPANY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
BONNI MANTOVANI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 10, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was filed and served on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Patsy Allen ("Debtor") timely responded. Doc. #61.

Typically, this motion would be DENIED WITHOUT PREJUDICE for failure to comply with the local rules, but this matter will instead be continued to February 10, 2021 at 9:30 a.m. because Debtor requested a continuance.

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

Here, the notice of hearing (Doc. #55) stated that respondents could check tentative rulings at "www.cacb.uscourts.gov" after 4:00 p.m.

the day before the hearing. This is the court website for the U.S. Bankruptcy Court in the Central District of California, which is incorrect. The notice should have sent respondents to www.caeb.uscourts.gov, the website for the U.S. Bankruptcy Court in the Eastern District of California.

This motion would typically be denied without prejudice for the foregoing noticing defect. But as noted above, Debtor timely filed a written response requesting a continuance so that she would have time to reimburse the movant. Doc. #61. Accordingly, this matter will be continued to February 10, 2021 at 9:30 a.m. The movant shall file an amended notice of the continued hearing conforming to the local rules and serve it upon all parties in interest not later than 7 days after entry of this order.

7. 19-12724-B-13 **IN RE: RICHARD/KATHLEEN KOHLER**
PLG-2

MOTION TO MODIFY PLAN
12-8-2020 [49]

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

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

8. 18-14334-B-13 **IN RE: SHANNON TAYLOR**
SL-3

MOTION TO MODIFY PLAN
11-23-2020 [47]

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

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

9. 20-12939-B-13 **IN RE: TYLER HARGRAVE**
SLL-1

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
11-30-2020 [17]

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

Tyler Hargrave's ("Debtor") counsel, Stephen L. Labiak of the Law Office of Stephen Labiak ("Movant") requests fees of $6,250.00 and costs of $48.05 for a total of $6,298.05 for services rendered from July 27, 2020 through November 23, 2020. Doc. #17. Debtor filed a declaration stating that he reviewed the fee application and has no objection to authorizing the chapter 13 trustee Michael Meyer ("Trustee") to pay $6,298.05 to Movant. Doc. #19, ¶¶ 5-6. No party in interest timely filed written opposition.

This motion will be GRANTED.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid $0.00 prior to the filing of the case and additional fees of $12,000 shall be paid through this plan, subject to court approval, by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #2, ¶ 3.05; #3.

This case had specific issues due to Debtor being married but filing individually, which Movant describes in his declaration. Doc. #20, at 4. Debtor had "wildly varying income each month," requiring preparation of different scenarios based on "filing today versus waiting one month versus waiting two months" to file given Debtor's fluctuations in income. *Ibid.* Additionally, this case involved different tax analyses with each change in income, requiring time to "be balanced with the contracts from the vehicles. If [Debtor] waited too long the vehicles would have to go into the plan costing the debtor a 10% trustee fee." *Ibid.*

Movant indicates that his firm spent the following billable hours totaling $6,250.00 in fees:

Professional	Hours	Rate	Fees
Stephen L. Labiak	16.4	$350.00	$5,740.00
Linda Fellner	5.1	$100.00	$510.00
Totals:	**21.5**		**$6,250.00**

Doc. #17, at 4, ¶ 7; *see also* #21, Ex. B. Ms. Fellner appears to be the paralegal referenced in Movant's declaration. Doc. #20, at 2, ¶ 14. Movant also incurred the following expenses:

Postage for § 341 letter	$0.50
Copies	$47.55
Total Costs	**$48.05**

Ibid.; Doc. #17, at 4, ¶ 6. The combined fees and expenses requested in this fee application totals $6,298.05.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) reviewing Debtor's financial information, the effects of exemptions, repossession, value of assets, and value of business; (3) gathering information and documents to prepare the petition; (4) preparing the petition, schedules, statements, and chapter 13 plan; (5) preparing and sending § 341 meeting documents to Trustee; (6) attending and completing the § 341 meeting of creditors; (7) confirming a chapter 13 plan. Doc. #20. The court finds the services reasonable and necessary and the expenses requested actual and necessary. As noted above, no party in interest timely filed written opposition at least 14 days before the hearing.

Accordingly, this motion will be GRANTED. Movant shall be awarded $6,250.00 in fees and $48.05 in costs.

10. 20-11040-B-13 **IN RE: REED/KIMBERLY BARBER**
NES-1

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
12-3-2020 [22]

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially

alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Reed Barber's and Kimberly Barber's ("Debtors") counsel, Neil E. Schwartz of the Law Offices of Neil E. Schwartz ("Movant") requests fees of $7,120.00 and costs of $503.50 for a total of $7,623.50 for services rendered from March 10, 2020 through December 3, 2020. Doc. #22. The source of the fees and compensation will be paid by chapter 13 trustee Michael Meyer ("Trustee") in accordance with the confirmed chapter 13 plan. *Id.*, at 2, ¶ 1(f). The application included a statement signed by the Debtors indicating that they have reviewed the fee application and have no objections. *Id.*, at 5, ¶ 9(7). No party in interest timely filed written opposition.

This motion will be GRANTED.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid $0.00 prior to the filing of the case and subject to court approval, additional fees of $12,000 shall be paid through this plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #4, ¶ 3.05; #5.

Movant includes a narrative summary noting that this case was filed in response to Debtors' need to restructure payments to pay unsecured creditors. Doc. #24, Ex. A.

Movant's application includes a table showing that his firm spent 29.45 billable hours totaling $7,120.00. Doc. #22, at 4, ¶ 7. At first glance, this table appears to contain arithmetical errors because the hourly rate multiplied by the hours worked does not equate to the amount requested. This discrepancy appears to be caused by 0.5 attorney hours ($150) and 2.3 paralegal hours ($287.50) being marked as "NO CHARGE" according to the timesheets. *See* Doc. #24, Ex. B. The requested fees actually billed can be adjusted as follows:

Professional	Hours	Rate	Fees
N.S. Attorney	21.65	$300.00	$6,495.00
J.L. Paralegal	5.00	$125.00	$625.00
Totals:	**26.65**		**$7,120.00**

Ibid. "J.L. Paralegal" appears to be a paralegal on the basis of her title in Movant's exhibits. Movant also incurred the following expenses:

Credit Counseling Course	$25.00
Debtor Education Course	$25.00
Credit Report	$56.00
Chapter 13 Filing Fee	$310.00
Court Call Fee	$22.50
Postage	$65.00
Total Costs	**$503.50**

Ibid.; *see also* Doc. #22, at 4, ¶ 6. The combined fees and expenses requested in this fee application totals $7,623.50.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) consulting with Debtors about their bankruptcy; (2) gathering information and documents to prepare the petition; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) attending and completing the § 341 meeting of creditors; (5) confirming a chapter 13 plan. Doc. #24, Ex. B. The court finds the services reasonable and necessary and the expenses requested actual and necessary. As noted above, no party in interest timely filed written opposition at least 14 days before the hearing.

Accordingly, this motion will be GRANTED. Movant shall be awarded $7,120.00 in fees and $503.50 in costs.

11. 19-12058-B-13 **IN RE: RICHARD/DAWN MARTINES**
NDK-1

MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C. SPRINGER FOR NANCY D. KLEPAC, DEBTORS ATTORNEY(S)
12-5-2020 [113]

TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditional based on result of hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

Richard Martines' and Dawn Martines' ("Debtors") counsel, Nancy D. Klepac of the Law Offices of Timothy C. Springer ("Movant") requests fees of $14,005.00 and costs of $0.00 for services rendered from August 2, 2017 through October 8, 2020. Doc. #113. The court notes

that Debtors did not file bankruptcy until May 14, 2019 and do not appear to have other filings in this District within the last ten years. Doc. #1. This appears to be a clerical error with respect to the timeframe specified in the application. Debtors appear to have signed their *Rights and Responsibilities* Form EDC-096 on May 13, 2019, which is likely closer to the start date of these legal services. Doc. #5.

The source of the fees and compensation is proposed to be paid by chapter 13 trustee Michael Meyer ("Trustee") in accordance with the confirmed chapter 13 plan. *Id.*, at 1, ¶ 1(f). The application included a statement signed by the Debtors indicating that they have reviewed the fee application and have no objections. *Id.*, at 5, ¶ 9(7). Additional consent from the Debtors was filed with the moving papers. *See* Doc. #115, Ex. D-1. No party in interest timely filed written opposition.

This motion will be GRANTED, but only as to $3,815.00 and insofar as Trustee has not already made disbursements in accordance with the confirmed chapter 13 plan.

Section 3.05 of the plan (Doc. #89, ¶ 3.05) and Form EDC 3-096 (Doc. #5) indicate that Movant was paid $185.00 prior to the filing of the case. However, the plan states that Movant shall be paid additional fees of $3,815.00 in compliance with the "no look" fee of LBR 2016-1(c). Doc. #89, ¶ 3.05. Meanwhile, Form EDC 3-096, the *Rights and Responsibilities* form, states that Movant will be paid $8,000.00 through the plan and may seek additional fees subject to court approval. Doc. #5, at 3. No amended Form EDC 3-096 was ever filed. The order confirming the plan, on the other hand, states "debtor's attorney will seek approval of his fees by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017." Doc. #107.

The first plan was filed on May 14, 2019 and provided for attorney fees of $8,000.00, with $7,885.00 to be paid through the plan subject to court approval in accordance with §§ 329 and 330. Doc. #5. Trustee objected to confirmation (Doc. #15) causing Debtors to file their first amended plan on October 11, 2019. Doc. #53. This modified plan opted-in to LBR 2016-1(c)'s total $4,000.00 "no look" fee. *Id.* But Trustee objected on the basis that it did not satisfy the liquidation value analysis of § 1325(a)(4), as well as to certain claimed exemptions. Doc. #62. This caused Debtors to file their second amended plan on November 27, 2019, again opting-in to LBR 2016-1(c) with $185.00 paid up front and $3,815.00 to be paid through the plan. Doc. #89. This plan was pre-disposed and confirmed without objection on January 15, 2020. *See* Doc. #101. However, the order was not entered until February 12, 2020 and as noted above, provided for attorney fees in accordance with §§ 329 and 330 and subject to court approval. Doc. #107.

This presents an unusual situation. If Trustee were basing payments off of the plan (Doc. #89), then monthly disbursements would have been made until the allocated $3,815.00 was depleted. But if Trustee were going off of the order, then perhaps $3,815.00 would remain in trust to be paid to Movant upon application and with court approval.

Movant includes a narrative summary stating "[t]his case was taken by [Movant's] firm on an hourly basis because it was clear from the beginning that this would not be an ordinary Chapter 13 case." Doc. #115, Ex. A-1. Movant further states that Debtors were above-median income, had atypical expenses, owned exempt property "that was not normally seen in a Chapter 13 case" and that Trustee objections to exemptions could result in above-average amounts of legal work. *Ibid.* Movant states that her firm "has spent a substantial amount of time calculating plans, the means test and the Debtors' exemptions[.] Based on the work performed thus far, [Movant] believes that an initial fee application of $14,005.00 was justified by the amount of work done." *Id.*, Ex. A-2.

Movant states that her firm spent 42.3 billable hours totaling $14,005.00. *Id.*, Ex. B & C; Doc. #113, ¶¶ 5, 7. The requested fees can be illustrated as follows:

Professional	Hours	Rate	Fees
Nancy D. Klepac	34	$350.00	$11,900.00
Timothy C. Springer	4.3	$350.00	$1,505.00
Office Assistant	4	$150.00	$600.00
Totals:	**42.3**		**$14,005.00**

Ibid. Movant did not request reimbursement for any incurred expenses.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) consulting with Debtors about their bankruptcy; (2) gathering information and documents to prepare the petition; (3) preparing the petition, schedules, statements, and first chapter 13 plan; (4) preparing the second and third amended plans and responding to objections to exemptions; (5) initiating stay violation proceedings; and (6) preparing and filing this fee application. Doc. #113, ¶ 5. These services appear to be reasonable and necessary. As noted above, no party in interest timely filed written opposition at least 14 days before the hearing.

The court will not approve $600.00 for "Office Assistant" services. Without more evidence including the professional status of the "office assistant," that cost should part of counsel's overhead. A review of the time entries for the "office assistant" reveals only clerical tasks. Doc. #115, Ex. B and C. Applicant will be given the opportunity to supplement the fee application to establish a reasonable basis for awarding these fees.

Although Debtors have consented to the fee application, as noted above, the plan only provides for $3,815.00 in attorney fees to be paid through the plan. Movant may seek additional fees for substantial and unanticipated post-confirmation work that was necessary under LBR 2016-1(c)(3) but must first modify the plan to

provide for these additional fees and then seek further court approval in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Movant may very well be entitled to additional fees for substantial and unanticipated post-confirmation work. For example, included in the application but not referenced in the narrative summary, Movant lists violation of the automatic stay proceedings that resulted in a settlement of $2,500.00. *See* DJP-1.

This matter will be called to inquire whether Movant has already been paid the LBR 2016-1(c) no-look fee. If Movant has not already received that payment, then this motion will be GRANTED as to $3,815.00 as is provided for in the confirmed chapter 13 plan, and Movant shall be awarded $3,815.00 in fees. If Movant has already been paid in accordance with the plan, then this motion will be DENIED AS MOOT.

Alternatively, the court will inquire about Plan feasibility if the fee application (at least most of it) were approved. The order confirming the Second Amended Plan does provide that counsel was to file a fee application.

If Movant requires additional fees for substantial and unanticipated post-confirmation work in accordance with LBR 2016-1(c)(3), then Movant will need to modify the plan and seek further fee approval with admissible evidence of such substantial and unanticipated post-confirmation work that proved to be necessary for completion of the case.

12. 20-12664-B-13 **IN RE: NIOMI/CARLOS MEJIA**
MHM-1

MOTION TO DISMISS CASE
12-9-2020 [54]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors. Doc #54. Debtor did not oppose.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to set a modified plan for hearing with notice to creditors. Accordingly, the motion will be GRANTED, and the case dismissed.

13. 20-12884-B-13 **IN RE: CELIA TORRES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-8-2020 [36]

MARK HANNON/ATTY. FOR DBT.
DISMISSED 12/17/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on December 17, 2020, (Docket No. 40). Therefore, the Order to Show Cause will be dropped as moot.

14. 20-12486-B-13 **IN RE: DOUGLAS/HEATHERLY MICHAEL**
APN-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-2-2020 [34]

VW CREDIT, INC./MV
GABRIEL WADDELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 10, 2021 at 9:30 a.m.

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

This motion was originally scheduled for hearing on January 6, 2021 at 9:30 a.m. Doc. #35. The following day, an amended notice of hearing was filed and served setting the hearing for January 13, 2019 at 9:30 a.m. Doc. #42. On January 7, 2021, a second amended notice of hearing was filed and served upon the United States Trustee ("UST") by United States Mail, along with all motion documents as required by Federal Rules of Bankruptcy Procedure ("Rule") 4001(a), 7004, and 9014(a). Doc. #46; #47. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). *See* LBR 9014-1(j).

However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application.

If counsel appears at the hearing to orally request a continuance or if a written application for a continuance is received by the court before the hearing, then this matter will be continued to February 10, 2021 at 9:30 a.m.

The court notes that the movant properly complied with Rules 4001(a), 7004, and 9014(a) regarding service upon the UST by serving the second amended notice and all motion documents on the UST by mail. Doc. #47. The other parties—the debtors, debtors' counsel, and the chapter 13 trustee—already had received the motion documents and first amended notice by mail. Doc. #39; #43. These parties also received the second amended notice, but this certificate of service was not filed separately. Doc. #46. The movant shall file a separate proof of service of the second amended notice upon the debtor, debtors' counsel, and chapter 13 trustee within 7 days after entry of this order.

15. 18-13595-B-13 **IN RE: DIMAS COELHO**
TCS-5

CONTINUED HEARING RE: MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C. SPRINGER FOR NANCY D. KLEPAC, DEBTORS ATTORNEY(S)
11-25-2020 [98]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This matter was previously set for hearing on December 23, 2020 and continued to allow Nancy D. Klepac of the Law Office of Timothy C. Springer ("Movant") to file an updated statement of consent from Dimas Coelho ("Debtor"). *See* Doc. #103; #106.

Movant filed an updated Debtor consent statement dated December 28, 2020, wherein Debtor states that they have read the fee application and approve the same. Doc. #110.

As discussed in detail in this court's previous minutes (Doc. #103), 11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

Movant asserts that her firm has spent 21.3 billable hours as illustrated below:

Professional	Hours	Rate	Fees
Nancy D. Klepac	15.5	$350.00	$5,425.00
Office Assistant	5.8	$150.00	$870.00
Totals:	**21.3**		**$6,295.00**

Doc. #98, ¶ 7.
Movant also incurred "Other" expenses of $22.50. *Id.*, ¶ 6. Movant completed the following services, including but without limitation: (1) preparing and filing motions to substitute counsel (TCS-1) and disgorge fees (TCS-3); (2) preparing and filing the first (TCS-2) and second (TCS-4) modified plans and responding to objections, if any; (3) analyzing potential claims for violation of the discharge injunction; and (4) preparing and filing this fee application. Doc. #98, ¶ 5.

The court will not approve $870.00 for "Office Assistant" services. Without more evidence including the professional status of the "office assistant," that cost should part of counsel's overhead. A review of the time entries for the "office assistant" reveals only clerical tasks. Doc. #100, Ex. B and C. Applicant may supplement the fee application to establish a reasonable basis for awarding these fees.

The plan provides for $3,100.00 in attorney fees to be paid in accordance with the plan by chapter 13 trustee Michael Meyer ("Trustee"). Doc. #89, ¶ 3.05. The nonstandard provisions in the plan provide, in relevant part:

> All cash on hand to be allocated towards Debtor's attorney's fees to be paid after the fee application is granted. When Debtor's motion to disgorge fees is granted, the amount is to be paid into the plan as attorney fees to Debtor's current attorney . . . Any remaining attorney fees not paid under the plan shall be discharged.

Id., ¶ 7. This court previously ordered $800.00 in fees be disgorged by former attorney Thomas O. Gillis after finding that Gillis was only entitled to keep $3,200.00 of the $4,000.00 "no look" fee he received pre-petition. Doc. #97. Assuming Gillis tenders $800.00 to the estate, $3,900.00 will be available to disburse for attorney fees. After subtracting the $870.00 for clerical services performed

by Movant’s Office Assistant, this fee application totals $5,447.50. If $3,900.00 were available to be paid toward this balance, then approximately $1,547.50 will remain subject to Debtor’s ability to voluntarily repay the debt.

This motion will be GRANTED. Trustee will be authorized to pay $3,900.00, assuming that amount is available to be repaid under the chapter 13 plan.

11:00 AM

1. 19-15103-B-7 **IN RE: NATHAN/AMY PERRY**
20-1017

CONTINUED FURTHER STATUS CONFERENCE RE: COMPLAINT
3-15-2020 [1]

RICHNER ET AL V. PERRY
RICHARD FREEMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

This matter was reset for further status conference because the adversary proceeding cover sheet (Doc. #2) indicates that the lead cause of action is both objection/revocation of discharge under § 727 and a dischargeability action under § 523. As result, the § 727 flag was triggered preventing a discharge in Nathan Perry's and Amy Perry's ("Debtors") related chapter 7 bankruptcy, case no. 19-15103. But in reviewing the complaint, objection to or revocation of discharge under § 727 is not alleged and the complaint focuses primarily on dischargeability of certain debts under § 523. Doc. #1.

This status conference will be called to confirm that Plaintiffs are not alleging objection to or revocation of Debtors' discharge under § 727 and then continue the status conference out for further hearing.

As discussed in the last hearing (Doc. #37), these proceedings will be stayed pending further development in the state civil and criminal cases. Either party may bring this status conference back on calendar by filing a request for a status conference and providing notice to all parties with at least 14 days' notice.

2. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1007

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-7-2019 [1]

SUGARMAN V. BOARDMAN TREE
FARM, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: This matter will be continued to June 16, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

The parties filed a joint status report on January 6, 2021 stating that they had agreed to "trail the resolution of this dispute to outcome of AP 19-1033" in matter #3 below. Doc. #119. The parties state that significant discovery remains to be completed and a jury demand has been made in that adversary proceeding. *Id.*

Accordingly, this matter will be continued to June 16, 2021 at 11:00 a.m. The parties shall file and serve a joint or unilateral status report 7 days before the date of the continued status conference.

3. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1033

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-8-2019 [1]

SUGARMAN V. IRZ CONSULTING, LLC
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: This matter will be continued to June 16, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

The parties filed a joint status report on January 6, 2021 stating that the parties have engaged in documentary discovery, on-site inspections of the property, and were intending to commence depositions that required "significant travel by one or both counsel. Then COVID 19 hit, essentially suspending progress in this case." Doc. #157. The parties state their intent to proceed on a third-party claim within the next 60 days, followed by continued discovery, which may be conducted via Zoom in light of current stay-at-home orders. *Id.*

Further, the parties note that they have not seriously discussed settlement or alternate dispute resolution because more discovery is needed before those discussions can become productive. *Id.*

Lastly, the parties have suggested that the status report be continued approximately 150 days with another joint status report due at least seven days before the hearing. *Id.*

Accordingly, this matter will be continued to June 16, 2021 at 11:00 a.m. The parties shall file and serve a joint or unilateral status report 7 days before the date of the continued status conference.

4. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
19-1037

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
7-23-2018 [1]

IRZ CONSULTING LLC V. TEVELDE
ET AL
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: This matter will be continued to June 16, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

The parties filed a joint status report on January 6, 2021 stating that this action is "almost entirely duplicative of the related Adversary Proceedings, A.P. Nos. 19-1007 and 19-1033" in matters #2 and #3 above. Doc. #112. The report references the two reports filed in the above matters as to suggested further proceedings in this dispute. Accordingly, this matter will be continued to June 16, 2021 at 11:00 a.m. The parties shall file and serve a joint or unilateral status report 7 days before the date of the continued status conference.

5. 20-12269-B-7 **IN RE: ANTHONY VILLA**
20-1054

STATUS CONFERENCE RE: AMENDED COMPLAINT
11-12-2020 [23]

VOKSHORI LAW GROUP V. VILLA
NIMA VOKSHORI/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. 17-11570-B-13 **IN RE: GREGGORY KIRKPATRICK**
19-1100

PRE-TRIAL CONFERENCE RE: COMPLAINT
9-24-2019 [1]

KIRKPATRICK V. CALLISON ET AL
MARTIN GAMULIN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

Per this court's July 7, 2020 scheduling order, the deadline for dispositive motions expired December 2, 2020, Plaintiff's pre-trial

statement was due not later than December 30, 2020, and Defendants' pre-trial statement was due not later than January 6, 2021. Doc. #76. Plaintiff filed his pre-trial statement on January 11, 2021, but it was due by December 30, 2020 and therefore not timely filed. Doc. #109. Defendants did not file a pre-trial statement.

This matter will be called as scheduled to inquire about the parties' outstanding pre-trial statements.