



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 16, 2025
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-12212](#)-A-13 **IN RE: JOSEF/TAMARA KONYA**
[WSL-1](#)

MOTION TO CONFIRM PLAN
12-9-2024 [\[21\]](#)

TAMARA KONYA/MV
RAJ WADHWANI/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 prior to the hearing date pursuant to 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.

2. [24-13213](#)-A-13 **IN RE: ALEJO CALIXTRO GIL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-6-2024 [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
\$79.00 INSTALLMENT FEE PAID 12/13/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that all installment fees now due have been paid. The case shall remain pending.

3. [24-13213](#)-A-13 **IN RE: ALEJO CALIXTRO GIL**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
12-5-2024 [\[15\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation of the plan on December 20, 2024.
Doc. #24.

4. [23-12314](#)-A-13 **IN RE: DELILA RUCH**
[AP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-2024 [\[55\]](#)

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

5. [24-13317](#)-A-13 **IN RE: TODOR/LILIYA TABAKOV**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
12-18-2024 [\[14\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 13, 2025 at 9:30 a.m.

ORDER: The court will issue an order.

Because the trustee's objection to confirmation of plan is based on a motion to avoid lien, the trustee's objection to confirmation of plan is continued to February 13, 2025 at 9:30 a.m. to be heard with the debtors' motion to avoid lien. Doc. ##17-22.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
12-16-2024 [\[199\]](#)

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

Fear Waddell, P.C. ("Movant"), counsel for Thedford Lewis Jones, Jr. ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$38,886.50 and reimbursement for expenses in the amount of \$431.40 for services rendered from February 22, 2024 through November 30, 2024. Doc. #199. Debtor's confirmed plan provides, in addition to \$7,187.00 paid prior to filing the case, for \$100,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #182; Order, Doc. #198. One prior fee application has been approved authorizing interim compensation in the amount of \$50,256.00 and reimbursement of expenses in the amount of \$1,200.97. Doc. #139. Debtor consents to the amount requested in Movant's application. Ex. F, Doc. #201.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) significant and involved claim objection litigation between Debtor and his ex-spouse; (2) drafting and confirming an amended plan; (3) preparing motion for sanctions; (4) preparing the fee application; and (5) general case administration. Exs. A-D, Doc. #201. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$38,886.50 and reimbursement for expenses in the amount of \$431.40 to be paid in a manner consistent with the terms of the confirmed plan.

7. [24-13336](#)-A-13 **IN RE: WILLIAM BOBENRIETH**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
12-18-2024 [[12](#)]

LILIAN TSANG/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 13, 2025 at 9:30 a.m.

ORDER: The court will issue an order.

William Andrew Bobenrieth, Jr. ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on November 18, 2024. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because the 341 meeting of creditors has not been concluded. Doc. #12. Debtor's 341 meeting of creditors has been continued to January 21, 2025 at 10:00 a.m. See court docket entry entered on December 17, 2024.

This objection will be continued to February 13, 2025 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than January 30, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by February 6, 2025.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 6, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

8. [24-10846](#)-A-13 **IN RE: KENNETH MYERS**
[DCJ-2](#)

CONTINUED MOTION TO CONFIRM PLAN
9-11-2024 [[47](#)]

KENNETH MYERS/MV
DAVID JOHNSTON/ATTY. FOR DBT.

NO RULING.

9. [24-12953](#)-A-13 **IN RE: ROSA RAMIREZ**
[LGT-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-11-2024 [\[16\]](#)

LILIAN TSANG/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to claim of exemption on January 10, 2025.
Doc. #35.

10. [24-12359](#)-A-13 **IN RE: JUAN GONZALEZ**
[SLG-1](#)

MOTION TO CONFIRM PLAN
12-4-2024 [\[41\]](#)

JUAN GONZALEZ/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 13, 2025 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an opposition to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #52. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than January 30, 2025. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by February 6, 2025.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 6, 2025. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

11. [24-11760](#)-A-13 **IN RE: ISAAC TORRES AND MARIA VALADEZ-ROMO**
[LGT-2](#)

CONTINUED MOTION TO DISMISS CASE
10-30-2024 [[27](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [24-11760](#)-A-13 **IN RE: ISAAC TORRES AND MARIA VALADEZ-ROMO**
[TCS-2](#)

MOTION TO CONFIRM PLAN
12-11-2024 [[54](#)]

MARIA VALADEZ-ROMO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

13. [24-12361](#)-A-13 **IN RE: EDWARD/CRYSTAL PEREZ**
[PLG-1](#)

MOTION TO MODIFY PLAN
12-3-2024 [[29](#)]

CRYSTAL PEREZ/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

14. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[SL-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF CHICAGO TITLE
INSURANCE COMPANY, CLAIM NUMBER 6
4-11-2023 [[44](#)]

TINA GARCIA/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

15. [22-12163](#)-A-13 **IN RE: TINA GARCIA**
[SL-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
CHICAGO TITLE INSURANCE COMPANY
12-13-2024 [\[125\]](#)

TINA GARCIA/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Local Rule of Practice 9014-1(d)(3)(D) requires in relevant part 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." Here, there is no declaration filed with the motion (Doc. #125) to support the relief sought by the debtor.

Further, approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). In making such a determination, the court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Here, the debtor has provided no analysis or evidence to enable the court to consider and balance the four factors as required by A & C Properties and Woodson.

Accordingly, this motion is DENIED WITHOUT PREJUDICE.

16. [24-12967](#)-A-13 **IN RE: SERENA LOCATELLI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-19-2024 [\[24\]](#)

BENNY BARCO/ATTY. FOR DBT.
\$78.00 INSTALLMENT FEE PAID 12/20/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
12-6-2024 [\[16\]](#)

RACHEL CALDERON/MV
CARL GUSTAFSON/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.

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #20. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of a motion to value collateral be made on the secured creditor pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

Rachel Denise Calderon ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's 2020 Toyota Camry ("Vehicle"), which is the collateral of Travis Credit Union ("Creditor"), at \$20,000.00. Doc. #16; Claim 1-1. In its proof of claim, Creditor values the Vehicle at \$22,261.00. Claim 1-1.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy

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

Pursuant to the attachments to Creditor's proof of claim filed on October 29, 2024, the Vehicle was purchased on October 12, 2021, which is more than 910 days before this bankruptcy case was filed on October 24, 2024, and is a purchase money security interest. Doc. #1; Attachment 5 to Claim 1-1. Debtor asserts a replacement value of the Vehicle of \$20,000.00 and asks the court for an order valuing the Vehicle at \$20,000.00. Decl. of Rachel Calderon, Doc. #18. Debtor is competent to testify as to the value of the Vehicle.

Accordingly, pending opposition being raised at the hearing, the motion will be GRANTED. Creditor's secured claim will be fixed at \$20,000.00. 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.

18. [24-13081](#)-A-13 **IN RE: RACHEL CALDERON**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
12-5-2024 [\[13\]](#)

CARL GUSTAFSON/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a modified plan on December 17, 2024 (Doc. #24), with a motion to confirm the modified plan set for hearing on February 13, 2025 at 9:30 a.m. CRG-2, Doc. ##24-29.

19. [20-13584](#)-A-13 **IN RE: JOEL/CHRISTINE CLARKSON**
[JDR-2](#)

MOTION FOR COMPENSATION FOR JEFFREY D. ROWE, DEBTORS ATTORNEY(S)
11-26-2024 [\[55\]](#)

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

The Law Offices of Jeffrey D. Rowe ("Movant"), counsel for Joel Thomas Clarkson and Christine Antoinette G. Clarkson (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$5,810.00 and no reimbursement for expenses for services rendered from July 30, 2014 through October 23, 2024. Doc. #55. Debtors' confirmed plan provides, in addition to \$1,810.00 paid prior to filing the case, for \$15,000.00 in attorney's fees. Plan, Doc. #9; Order, Doc. #19. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Ex. F, Doc. #59.

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) consulting and fact gathering to file bankruptcy case; (2) preparing petition, schedules and related pleadings; (3) preparing and filing original and modified plans; (4) preparing and attending 341 meeting of creditors; (5) general case administration; and (6) preparing fee application. Exs. A-C, Doc. #59. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows on a final basis compensation requested by this motion in the amount of \$5,810.00 and no reimbursement for expenses to be paid in a manner consistent with the terms of the confirmed plan.

MOTION FOR COMPENSATION FOR SUSAN A. HEMB, DEBTORS ATTORNEY(S)
12-10-2024 [\[89\]](#)

SUSAN HEMB/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 prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Lilian G. Tsang ("Trustee"), the chapter 13 trustee, timely filed written opposition on December 11, 2024. Doc. #95. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Hemb Law Group ("Movant"), counsel for Samuel A. Castillo and Keri N. Castillo (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$6,172.50 and no reimbursement for expenses for services rendered from March 1, 2019 through October 15, 2024. Doc. #89. Debtors' confirmed plan provides, in addition to \$1,500.00 paid prior to filing the case, for \$2,500.00 in attorney's fees to be paid through the plan. Plan, Doc. #4, 59. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Decl. of Samuel and Keri Castillo, Doc. #93.

Trustee opposes Movant's application on the grounds that the application fails to disclose that Movant opted into the "no-look" fee pursuant to LBR 2016-1(c) upon filing and confirming the chapter 13 plan. Plan, Doc. #4; Order, Doc. #59; Doc. #95. Further, Trustee opposes Movant's application for failing to disclose the \$2,500.00 Trustee has already disbursed to Movant through the confirmed plan. Doc. #95. Trustee has no objection to Movant's application as to the amount of the fees requested because the full amount of the requested fees will fund through the confirmed plan. Id. However, Trustee requests clarification on whether the \$2,500.00 in funds already disbursed to Movant is included in or is in addition to the fees requested in the application. Id.

Section 3.05 of Debtors' confirmed plan clearly states that the \$4,000 in total attorney fees are to be approved by complying with LBR 2016-1(c), and the order confirming Debtors' plan specifically approves \$4,000.00 in attorneys' fees to Movant under the "no-look" provisions of LBR 2016-1(c). Plan, Doc. #4; Order, Doc. #59.

Because Debtors filed their chapter 13 case on March 25, 2020, former LBR 2016-1(c)(5) applies to Debtor's case. Former LBR 2016-1(c)(5) provides that the court may allow compensation different from the compensation provided under LBR 2016-1(c) "any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation."

Here, Movant states that it was discovered after Debtors' plan was confirmed that Debtors' student loans were not addressed. Hemb Decl., Doc. #92. Further, Movant states that the negotiations with US Bank regarding the motion to value collateral was unanticipated and required a lot of correspondences between the parties. Id. The court finds that Movant has satisfactorily explained why the "no-look" fee in this case was improvident in light of developments not capable of being anticipated at the time the plan was confirmed.

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

Movant's application demonstrates services rendered relating to: (1) meeting with Debtors and preparing documents to file their bankruptcy case; (2) preparing for and attending meeting of creditors; (3) preparing motion to value collateral and addressing opposition thereto; (4) negotiating with US Bank regarding the Motion to Value Collateral and entering into a stipulation to resolve issues; (5) corresponding and negotiating with the US Department of Education to ensure student loan was paid and (6) general case administration. Ex. A, Doc. #91.

In response to Trustee's opposition, Movant states her office is seeking authorization from the court to allow attorney fees in the total amount of \$6,172.50 of which \$2,500.00 has already been received. Doc. #97. Therefore, Movant is requesting the difference of said fees in the amount of \$3,672.50. Id. The court finds this adequately clarifies the amount of additional fees to be paid under the plan and that the compensation sought are reasonable, actual, and necessary.

Accordingly, Trustee's opposition is overruled, and this motion is GRANTED on a final basis. The court will allow final compensation in the amount of \$6,172.50, of which \$3,672.50 remains to be paid, and no reimbursement for expenses, to be paid in a manner consistent with the terms of the confirmed plan.

21. [25-10074](#)-A-12 **IN RE: CAPITAL FARMS, INC**
[FW-2](#)

MOTION TO USE CASH COLLATERAL
1-13-2025 [\[6\]](#)

CAPITAL FARMS, INC/MV
PETER FEAR/ATTY. FOR DBT.
OST 1/14/25

NO RULING.

1. [23-11803](#)-A-7 **IN RE: VALERIE RODRIGUEZ**
[23-1051](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-26-2024 [[46](#)]

RODRIGUEZ V. DEPT OF ED EDFINANCIAL ET AL
VALERIE RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [24-12115](#)-A-7 **IN RE: MICHAEL/TATUM SCOTT**
[24-1042](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-22-2024 [[1](#)]

NOLEN V. SCOTT
PAUL NOLEN/ATTY. FOR PL.

NO RULING.

3. [24-12861](#)-A-7 **IN RE: HOUA YANG**
[24-1043](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-28-2024 [[1](#)]

YANG V. CKS PRIME INVESTMENTS, LLC ET AL
TIMOTHY SPRINGER/ATTY. FOR PL.

NO RULING.

4. [24-12861](#)-A-7 **IN RE: HOUA YANG**
[24-1043](#) [CAE-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-18-2024 [[23](#)]

YANG V. CKS PRIME INVESTMENTS, LLC ET AL
TIMOTHY SPRINGER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendants 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 defendants to this motion are entered. The matter will proceed as scheduled.

Houa Yang ("Plaintiff") commenced this adversary proceeding by filing a complaint on October 28, 2024 ("Complaint"). Doc. #1. By the Complaint, Plaintiff seeks to set aside the pre-petition transfer of Plaintiff's exempt property to CKS Prime Investments, LLC (Creditor") pursuant to 11 U.S.C. § 522(h) and for violation of the automatic stay pursuant to 11 U.S.C. § 362(a) against Creditor, Velocity Portfolio Group, Inc. ("Velocity"), and Jack Kleinert, CEO ("Kleinart"). Doc. #1.

RELEVANT FACTS

The facts of the Complaint are as follows. Plaintiff filed a voluntary chapter 7 bankruptcy petition on September 30, 2024. Case No. 24-12861, Doc. #1. Creditor is a wholly owned subsidiary of defendant Velocity. Compl. ¶ 5, Doc. #1. Defendant Kleinert is the CEO of Velocity. Id. at ¶ 6.

Creditor was listed under Plaintiff's schedules as a creditor who has an unsecured claim. Id. at ¶ 7; Ex. A, Doc. #26. During the ninety days prior to the commencement Debtor's bankruptcy case, Creditor caused to be attached a total of \$2,431.66 (collectively, the "Funds") from Debtor's wages. Compl. ¶ 8, Doc. #1. The Funds consist of:

- (1) \$411.28 attached on July 3, 2024 (Ex. B, Doc. #26);
- (2) \$360.56 attached on July 17, 2024 (Ex. C, Doc. #26);
- (3) \$222.38 attached on July 31, 2024 (Ex. D, Doc. #26);
- (4) \$444.62 attached on August 14, 2024 (Ex. E, Doc. #26);
- (5) \$338.53 attached on August 28, 2024 (Ex. F, Doc. #26);
- (6) \$352.12 attached on September 11, 2024 (Ex. G, Doc. #26); and
- (7) \$302.17 attached on September 25, 2024 (Ex. H, Doc. #26).

Id. at ¶ 9. The Funds were payment for an antecedent debt to Creditor. Id. at ¶ 10. Plaintiff would have exempted the Funds taken by Creditor if the Funds had been recovered by the chapter 7 trustee as a preference under 11 U.S.C. § 547. Id. at ¶ 11. The trustee has not attempted to avoid this transfer resulting in Creditor receiving more than it would have received if the pre-petition transfers had not been made. Id. at ¶¶ 12-13. In addition, partial garnishment of Plaintiff's paycheck commenced post-petition on October 9, 2024 by Creditor, Velocity and Kleinart, which Plaintiff asserts has caused harm and emotional distress. Id. at ¶¶ 17, 20-23.

Creditor, Velocity and Kleinart each failed to respond to the Complaint. On December 2, 2024, Plaintiff filed requests for entry of default as to Creditor, Velocity and Kleinart (Doc. ##8-10), and, on December 5, 2024, the United States Bankruptcy Court Clerk entered the defaults of Creditor, Velocity and Kleinart. Doc. ##14, 16, 18.

Plaintiff moves to enter default judgment against Creditor, Velocity and Kleinart: (1) ordering Creditor to return the \$2,431.66 garnished by Creditor pre-petition; (2) for attorney's fees in the amount of \$5,440.00 for efforts required to get the preferential garnishment returned and the post-petition

garnishment stopped and refunded; and (3) any further relief deemed just and proper. Doc. #23. Creditor, Velocity and Kleinart have not responded to the motion.

APPLICABLE LAW

Federal Rule of Civil Procedure 55, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055, "gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Factors which may be considered by the court in exercising discretion as to the entry of default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

"[S]ection 522(h) requires a debtor to establish five conditions to shield his property from the bankruptcy estate: (1) the transfer cannot have been a voluntary transfer of property by the debtor; (2) the debtor cannot have concealed the property; (3) the trustee cannot have attempted to avoid the transfer; (4) the debtor must exercise an avoidance power usually used by the trustee that is listed within § 522(h); and (5) the transferred property must be of a kind that the debtor would have been able to exempt from the estate if the trustee (as opposed to the debtor) had avoided the transfer pursuant to one of the statutory provisions in § 522(g). See 11 U.S.C. §§ 522(g) and (h)." Elliott v. Pac. Western Bank (In re Elliott), 969 F.3d 1006, 1010 (9th Cir. 2020) (internal quotations omitted) (quoting DeMarah v. United States (In re DeMarah), 62 F.3d 1248, 1250 (9th Cir. 1995)).

The elements of a preference are: (i) a transfer, (ii) of the debtor's property; (iii) to or for a creditor's benefit; (iv) on account of an antecedent debt; (v) within 90 days prior to the filing of the petition (or within a year if the transferee is an insider); (vi) made while the debtor was insolvent; (vii) that prefers the creditor receiving the transfer. 11 U.S.C. § 547(b).

Attorneys' fees are not recoverable by a plaintiff with respect to a preference claim for relief. Alvarado v. Walsh (In re LCO Enters.), 180 B.R. 567 (B.A.P. 9th Cir. 1995), aff'd, 105 F.3d 665 (9th Cir. 1997).

To recover actual damages under 11 U.S.C. § 362(k), the debtor must allege and prove that the stay violation was willful, specifically that the defendants knew of the automatic stay and their actions in violation of the stay were intentional. Albert-Sheridan v. State Bar (In re Albert-Sheridan), 658 B.R. 516, 526 (B.A.P. 9th Cir. 2024).

In determining what constitute reasonable costs and attorneys' fees under 11 U.S.C. § 362(k), a court is to apply the standard set forth in § 330(a)(1) of the Bankruptcy Code for compensating professionals in bankruptcy cases. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 11 (B.A.P. 9th Cir. 2002) (analyzing 11 U.S.C. § 362(h), the predecessor to 11 U.S.C. § 362(k)). In determining the amount of reasonable compensation to be awarded to a professional person under 11 U.S.C. § 330(a)(1), 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).

In addition, the reasonableness inquiry in the context of 11 U.S.C. § 362(k) requires the bankruptcy court to "examine whether the debtor could have mitigated the damages. Generally, in determining the appropriate amount of attorneys' fees to award as a sanction, the court looks to two factors: '(1) what expenses or costs resulted from the violation and (2) what portion of those costs was reasonable, as opposed to costs that could have been mitigated.'" Roman, 283 B.R. at 12 (citations omitted). "One way to determine whether the debtors complied with their duty to mitigate is to consider who caused the attorney's fees to be incurred - the debtors or their creditor." Orian v. Asaf (In re Orian), No. CC-18-1092-SFL, 2018 Bankr. LEXIS 3734, at *21-22 (B.A.P. 9th Cir. Nov. 27, 2018).

LEGAL ANALYSIS

The merits of Plaintiff's claim, the sufficiency of the Complaint, and the lack of the possibility of disputes concerning material fact favor entering default judgment. The court finds that entry of default judgment is appropriate in this case against Creditor in the amount of \$2,431.66 for garnished pre-petition wages and against Creditor, Velocity and Kleinart jointly and severally in the amount of \$1,043.75 for attorneys' fees and costs expended in enforcing the automatic stay.

Here, the \$2,431.66 in the Funds garnished by Creditor pre-petition were not voluntary transfers by Plaintiff. The garnishment/preference claim against Creditor was listed in Plaintiff's bankruptcy schedules. Case No. 24-12861, Doc. #1. The chapter 7 trustee did not attempt to avoid the pre-petition transfer of the Funds, and Plaintiff has exempted the Funds. Id. In addition, Plaintiff has established that transfer of the Funds to Creditor constitutes a preference pursuant to 11 U.S.C. § 547(b). The garnished Funds were a transfer of Plaintiff's property for the benefit of Creditor within ninety days prior to the filing of Plaintiff's chapter 7 bankruptcy petition and made while Plaintiff was insolvent and preferred Creditor over other creditors of Plaintiff.

Because attorneys' fees are not recoverable by a plaintiff with respect to a preference claim for relief, any request by Plaintiff for recovery of attorneys' fees in connection with the return of the Funds from Creditor is denied.

With respect to Plaintiff's claim for relief under 11 U.S.C. § 362(k), Creditor was listed on Plaintiff's creditor matrix and received notice of Plaintiff's bankruptcy case. Case No. 24-12861, Doc. #8. In addition, Plaintiff's counsel personally informed Velocity and Kleinart of the existence of the automatic stay and the consequences for its violation. Decl. of Timothy C. Springer, Doc. #25. Nevertheless, Creditor, Velocity and Kleinart garnished wages from Plaintiff's paycheck post-petition that was eventually returned. Id. Plaintiff's counsel incurred \$1,040.00 in attorneys' fees and \$3.75 in reimbursable expenses in relation to enforcement of the automatic stay post-petition. Id. The court finds the compensation in the amount of \$1,043.75 is reasonable, actual, and necessary to enforce the automatic stay.

CONCLUSION

For the foregoing reasons, the court grants entry of default judgment against Creditor in the amount of \$2,431.66 and entry of default judgment against Creditor, Velocity and Kleinart jointly and severally in the amount of \$1,043.75.

5. [23-10963](#)-A-7 **IN RE: JESUS GUERRA**
[24-1033](#) [HDN-5](#)

MOTION FOR TEMPORARY RESTRAINING ORDER
10-2-2024 [[7](#)]

GUERRA V. ADAMS ET AL
HENRY NUNEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

On October 2, 2024, the plaintiff filed a motion for temporary restraining order (HDN-5), notice of hearing, declaration, memorandum of points and authorities, request for judicial notice, exhibits and certificate of service. Doc. ##7-15. On December 4, 2024, the plaintiff filed a motion for preliminary injunction (HDN-6), notice of hearing, declarations, memorandum of points and authorities, exhibits, request for judicial notice, certificate of service. Doc. ##45-52. The court has deemed Doc. ##45-52 to supersede Doc. ##7-15. Therefore, this motion and supporting documents (Doc. ##7-15) will be DROPPED AS MOOT.

6. [23-10963](#)-A-7 **IN RE: JESUS GUERRA**
[24-1033](#) [HDN-6](#)

MOTION FOR PRELIMINARY INJUNCTION
12-4-2024 [[45](#)]

GUERRA V. ADAMS ET AL
HENRY NUNEZ/ATTY. FOR MV.
CONT'D TO 1/30/25 PER ECF ORDER #62

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

DISPOSITION: Continued to January 30, 2025 at 11:00 a.m.

NO ORDER REQUIRED.

On December 19, 2024, the court issued an order continuing the motion for preliminary injunction to January 30, 2025 at 11:00 a.m. Doc. #62.

7. [24-12566](#)-A-7 **IN RE: CALIFORNIA CITRUS MARKETING, INC.**
[24-1052](#) [CAE-2](#)

ORDER TO SHOW CAUSE
12-11-2024 [\[8\]](#)

CONTRERAS FARMS, LLC V. CALIFORNIA CITRUS MARKETING, INC.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that, on December 31, 2024, the plaintiff Abe-El Produce, Inc. was voluntarily dismissed from the complaint (Doc. #12) and the missing corporate disclosure statement for Contreras Farms, LLC was filed (Doc. #15). Therefore, this order to show cause is VACATED.

8. [24-12566](#)-A-7 **IN RE: CALIFORNIA CITRUS MARKETING, INC.**
[24-1052](#) [CAE-3](#)

ORDER TO SHOW CAUSE
12-11-2024 [\[9\]](#)

CONTRERAS FARMS, LLC V. CALIFORNIA CITRUS MARKETING, INC.

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that Contreras Farms, LLC voluntarily dismissed the second through seventh claims for relief on December 31, 2024. Doc. #14. Therefore, this order to show cause is VACATED.

9. [24-12873](#)-A-11 **IN RE: GRIFFIN RESOURCES, LLC**
[WJH-4](#)

CONTINUED MOTION FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION
11-22-2024 [\[58\]](#)

GRIFFIN RESOURCES, LLC/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 2/13/25 PER ECF ORDER #152

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

DISPOSITION: Continued to February 13, 2025 at 11:00 a.m.

NO ORDER REQUIRED.

On January 7, 2025, the court issued an order continuing the motion for temporary restraining order to February 13, 2025 at 11:00 a.m. Doc. #152.

10. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[18-1017](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2018 [[1](#)]

SALVEN V. CALIFORNIA DEPARTMENT OF FOOD & AG
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.

NO RULING.