

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, February 9, 2022  
Place: Department B - Courtroom #13  
Fresno, California

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

*Due to rising COVID-19 cases, all appearances shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

9:30 AM

1. [16-13305](#)-B-13     **IN RE: JAMES MUNRO**  
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
1-6-2022     [[85](#)]

MICHAEL MEYER/MV  
PETER BUNTING/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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) James Kenneth Munro, Jr. ("Debtor") has cured the default with respect to a loan in favor of Fresno Fire Department Credit Union nka Central Valley Firefighters Credit Union ("Creditor") secured by a deed of trust encumbering residential real property located at 50 W. Bedford Avenue, Clovis, CA 93611 ("Property"); and (2) all post-petition payments due and owing from October 2016 through September 30, 2021 have been paid. Doc. #85.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(g) requires that within 21 days after service of the notice under subdivision (f), the holder shall file and serve on the debtor, debtor's counsel, and the trustee, a statement indicating: (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim; and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(h) on November 17, 2021. Docs. ##77-78. Creditor did not provide Trustee with a Rule 3002.1(g) statement. Doc. #87.

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through September 2021. *Id.* Trustee indicates that its office has paid a total of \$28,500.00 toward the ongoing mortgage payment, \$13,455.07 towards the pre-petition arrearage claim, and \$24.05 in late fees. *Id.*; *cf.* Doc. #77.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtor has cured the default and is current on mortgage payments through September 2021.

2. [19-13422](#)-B-13     **IN RE: LINNEY WADE**  
[MAZ-3](#)

MOTION TO MODIFY PLAN  
12-17-2021    [\[76\]](#)

LINNEY WADE/MV  
MARK ZIMMERMAN/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.

Linney S. Wade ("Debtor") seeks confirmation of the First Modified Chapter 13 Plan. Doc. #76.

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

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

The court notes that the motion and supporting declarations reference recent *Amended Schedules I and J*, but no such schedules have been filed. Docs. #76; ##78-79. However, Debtor's original schedules say that Debtor has monthly net income of \$2,337.00, which is sufficient to fund the proposed \$1,877.00 plan payment. Doc. #1, *Scheds. I, J*. Upon request by the chapter 13 trustee, Debtor shall file *Amended Schedules I and J* to reflect Debtor's current monthly net income. If Debtor is otherwise unable to afford plan payments, Debtor shall file, serve, and set for hearing a motion to modify the plan.

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.

3. [21-12324](#)-B-13     **IN RE: JOSE HERRERA**  
[RS-2](#)

MOTION TO CONFIRM PLAN  
1-3-2022    [[24](#)]

JOSE HERRERA/MV  
RICHARD STURDEVANT/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.

Jose Gonzalez Herrera seeks confirmation of the original chapter 13 plan. Doc. #24. The previous confirmation attempt was denied without prejudice due to inadequate notice on Class 1 creditor U.S. Department of Agriculture, Rural Development Agency. Doc. #20. Debtor has cured

that notice deficiency and complied with Fed. R. Bankr. P. 2002(j)(4). Doc. #28.

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 chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., 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.

As a procedural matter, the exhibits do not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibits were filed as a separate exhibit document, but did not include an index, and the exhibit pages were not consecutively numbered throughout the entire document. Doc. #27. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

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

4. [21-12634](#)-B-13      **IN RE: ALFONSO/MARY ESPARZA**  
[PBB-1](#)

MOTION TO CONFIRM PLAN  
1-3-2022    [\[17\]](#)

MARY ESPARZA/MV  
PETER BUNTING/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.

Alfonso Esparza and Mary Sotelo Esparza ("Debtors") seek confirmation of the First Modified Chapter 13 Plan. Doc. #17.

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 chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., 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.

5. [21-11939](#)-B-13      **IN RE: PARGAT DHALIWAL**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
10-28-2021    [\[44\]](#)

MICHAEL MEYER/MV  
D. GARDNER/ATTY. FOR DBT.

**Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.**

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

DISPOSITION:      Denied as moot.

ORDER:              The court will issue an order.

This matter was originally set for hearing on December 8, 2021. Doc. #89. Chapter 13 trustee Michael H. Meyer ("Trustee") asked the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to file and set a plan for hearing with notice to creditors. Doc. #44.

Pargat Singh Dhaliwal ("Debtor") did not oppose but filed an amended plan. DMG-2. The plan was denied as moot following Debtor's acknowledgment that the plan would have to be amended. The court continued the hearing and set February 9, 2022 as a bar date by which a chapter 13 plan must be confirmed, or the case would be dismissed on Trustee's declaration. Doc. #92.

On February 7, 2022, Debtor filed an *ex parte* motion to voluntarily dismiss the case pursuant to 11 U.S.C. § 1307(b). Doc. #112. On February 8, 2022, the court dismissed the case. Doc. #115.

Accordingly, Trustee's motion to dismiss will be DENIED AS MOOT because the case has already been dismissed.

6. [18-12246](#)-B-13     **IN RE: CHARLES/MICHAELA GIBBS**  
[DRJ-4](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS  
ATTORNEY(S)  
1-10-2022    [[83](#)]

DAVID JENKINS/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.

David R. Jenkins ("Applicant"), attorney for Charles Henry Gibbs and Michaela Raya Gibbs ("Debtors"), seeks final compensation in the sum of \$3,000.00 under 11 U.S.C. § 330. Doc. #83. Applicant provided services worth \$7,560.00 in fees and incurred \$718.52 in expenses from May 17, 2021 through January 8, 2022, but Applicant provided a courtesy discount of \$3,853.52, and \$1,425.00 was paid by Debtors' ARAG Legal Insurance post-petition. The remaining balance of \$3,000.00 is requested in this motion.

Debtors signed a statement of consent on January 10, 2022 indicating that Debtors have received and read the fee application and approve the same. Doc. #85, *Ex. D*.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving

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

The Chapter 13 Plan Dated September 25, 2021 is the operative plan in this case. Docs. #74; #79. Previous versions allocated \$12,000.00 in fees to paid through the plan, with \$1,500.00 paid prior to filing. Doc. #74, § 3.05. Additional Provision 7.08 modifies Section 3.05,

Debtors' prior counsel received attorney's fees as per the Order Confirming Plan. No further distributions shall be made to prior counsel. The language in the Order Confirming Plan ( Doc. #48) for Additional provision 7.03 shall be stricken in its entirety. Debtors' current counsel will be paid \$1425 by Debtors' legal insurance and the remaining balance of fees and costs of \$3000 shall be paid through this plan after filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, subject to court approval.

*Id.*, ¶ 7.08. Other than the insurance payment, Applicant declares that he has not accepted or demanded from Debtors or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #85, Ex. A.

This is Applicant's first and final request for compensation. Doc. #83. The source of funds for payment of the fees will be \$3,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 23.1 hours of legal services and billed for 21.6 of those hours at a rate of \$350.00 per hour, totaling \$7,560.00 in fees. Doc. #85, Exs. B, C. Applicant incurred \$468.52 in certificate of services fees, and anticipates an additional \$250.00 in service fees for this application. *Id.* However, Applicant provided a courtesy discount of \$3,853.52 and ARAG Legal Insurance paid \$1,425.00 post-petition. *Id.* The requested fees and expenses here are limited to **\$3,000.00**. *Id.*

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

Applicant's services included, without limitation: (1) communicating with and substituting for former counsel (DRJ-1); (2) preparing and



filing amended schedules, a modified plan (DRJ-2), and second modified plan (DRJ-3); (3) preparing and filing this motion for compensation (DRJ-4). Doc. #85, Exs. A, B, C. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, Ex. D.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$3,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$3,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from May 17, 2021 through January 8, 2022.

7. [17-14157](#)-B-13      **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**  
[TCS-6](#)

MOTION TO MODIFY PLAN  
12-28-2021    [\[200\]](#)

LORENA GONZALEZ/MV  
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.

Victor Islas and Lorena Gonzalez ("Debtors") seek confirmation of the Fifth Modified Chapter 13 Plan. Doc. #200. Debtors propose increasing the plan term from 60 to 72 months under the COVID-19 Bankruptcy Relief Extension Act of 2021 and 11 U.S.C. § 1329(d).

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

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, joint debtor Lorena Gonzalez declares that Debtors fell behind on plan payments when Ms. Gonzalez's brother died, the car transmission broke, and trying to keep up with other expenses. Doc. #203. Ms. Gonzalez's earnings were decreased due to reduced work hours and Debtors were forced to take time off work for quarantining. Debtors have therefore experienced material financial hardship due to the COVID-19 pandemic.

To date, Debtors have confirmed two plans: (1) the First Modified Plan on May 17, 2018 (Doc. #82) and (2) the Fourth Modified Plan on July 10, 2020. Doc. #195. Accordingly, Debtors satisfy the requirements to extend their plan to 72 months under § 1329(d).

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. [17-10661](#)-B-13      **IN RE: WILLIAM/STEPHANIE CROCKETT**  
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P. C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
12-21-2021    [\[25\]](#)

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.

Fear Waddell, P.C. ("Applicant"), attorney for William Henry Crockett and Stephanie Elaine Crockett ("Debtors"), seeks final compensation in the sum of \$2,257.14 under 11 U.S.C. § 330. Doc. #25. This amount consists of \$2,099.00 fees as reasonable compensation and \$158.14 in actual, necessary expenses incurred for the benefit of the estate from January 1, 2020 through December 9, 2021. Applicant also seeks final approval of \$1,831.30 awarded as interim compensation under § 331.

Debtors signed a statement of consent on December 14, 2021 indicating that Debtors have received and read the fee application and approve the same. Doc. #27, *Ex. E*.

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

The original chapter 13 plan is the operative plan in this case. Docs. #5; #14. Section 3.05 indicates that Applicant was paid \$1,990.00 prior to filing the case and, subject to court approval, additional fees of \$8,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #5. The *Disclosure of Compensation*, Form B2030, indicates that Applicant was paid \$1,990.00 by Debtors pre-petition, plus a \$310.00 filing fee. Doc. #1.

This is Applicant's second and final request for compensation. Doc. #27. The source of funds for payment of the fees will be \$2,257.14 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.* Applicant was previously awarded \$1,831.30 in fees and expenses on an interim basis on February 27, 2020. Doc. #24. Thus, \$6,168.70 remains allocated in the confirmed plan to pay for attorney fees.

Applicant provided 8.6 billable hours of legal services totaling **\$2,099.00** in fees at the following rates:

<b>Professional</b>	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Gabriel J. Waddell (2020)	\$320	0.50	\$160.00
Gabriel J. Waddell (2021)	\$330	1.50	\$495.00
Gabriel J. Waddell (2022) <sup>1</sup>	\$345	3.00	\$1,035.00
Katie Waddell (2020)	\$220	0.20	\$44.00
Kayla Schlaak (2020)	\$100	0.90	\$90.00
Kayla Schlaak (2021)	\$110	2.50	\$275.00
<b>Total Hours &amp; Fees</b>		<b>8.60</b>	<b>\$2,099.00</b>

Docs. #27, § 6; #27, *Exs. B, C*. Applicant also incurred **\$158.14** in expenses:

Photocopying	\$75.00
Postage	+ \$83.14
<b>Total Costs</b>	<b>= \$158.14</b>

*Id.*; Doc. #27, § 7. The requested fees and expenses total **\$2,257.14**.

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

Applicant's services included, without limitation: (1) communicating with Debtors and a creditor regarding claim issues; (2) finalizing the initial fee application and prepared order (FW-2); (3) case closing paperwork, and (4) drafting and delivering a demand for pink slips for three vehicles paid through the plan. Doc. #27, *Ex. A, B, C*. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, *Ex. E*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$2,099.00 in fees and \$158.14 in expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$2,257.14 in accordance with the chapter 13 plan for services rendered and expenses incurred from January 1, 2020 through December 9, 2021. Further, the court will approve on a final basis the \$1,831.30 previously awarded on February 27, 2020. The total fees and expenses for this chapter 13 case are \$4,088.44.

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<sup>1</sup> This amount consists of 3.0 hours in anticipated fees to review notice of completed plan payments, communicate with Debtors, prepare § 1328 statements, review trustee's final report, and draft and deliver a demand letter for pink slips for three vehicles paid through the plan. Doc. #27, *Ex. A*.

9. [20-13269](#)-B-13     **IN RE: PAUL/DEBRA BELT**  
[DRJ-2](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS  
ATTORNEY(S)  
1-10-2022     [\[31\]](#)

DAVID JENKINS/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.

David R. Jenkins ("Applicant"), attorney for Paul S. Belt, Jr., and Debra L. Belt ("Debtors"), seeks final compensation in the sum of \$4,000.00 under 11 U.S.C. § 330. Doc. #31. Applicant provided services worth \$9,555.00 in fees and incurred \$435.00 in expenses from October 6, 2020 through January 7, 2022, but Applicant provided a courtesy discount of \$680.00, and \$5,000.00 (plus a \$310 filing fee) was paid by Debtors pre-petition. *Cf.* Doc. #33, *Ex. A*. The remaining balance of \$4,000.00 is requested in this motion.

Debtors signed a statement of consent on January 7, 2022 indicating that Debtors have received and read the fee application and approve the same. Doc. #33, *Ex. D*.

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

The original chapter 13 plan is the operative plan in this case. Docs. #4; #20. Section 3.05 indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional fees of \$5,000.00 shall be paid through the plan by filing and serving

a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #4. The *Disclosure of Compensation*, Form B2030, indicates that Applicant was paid \$5,000.00 by Debtors pre-petition, plus a \$310.00 filing fee. Doc. #1.

Other than the pre-petition fees, Applicant declares that he has not accepted or demanded from Debtors or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #33, *Ex. A*.

This is Applicant's first and final request for compensation. Doc. #31. The source of funds for payment of the fees will be \$3,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. *Id.*

Applicant provided 27.3 billable hours of legal services at a rate of \$350.00 per hour, totaling \$9,555.00 in fees. Doc. #33, *Ex. B*. Applicant incurred \$310 in filing fees and anticipates an additional \$125.00 in service fees for this application. *Id.*, *Ex. C*. However, Debtors paid \$5,310.00 pre-petition and Applicant provided a courtesy discount of \$680.00. *Id.*, *Ex. C*. The requested fees and expenses here are limited to the remaining balance of **\$4,000.00**. *Id.*

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

Applicant's services included, without limitation: (1) advising Debtors about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and analyzing issues relating to an imminent foreclosure sale of Debtors' home; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) reviewing trustee's objection and withdrawal to confirmation of the plan (MHM-1) and confirming the original chapter 13 plan; and (7) preparing and filing this motion for compensation (DRJ-2). Doc. #33, *Ex. B, C, D*. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, *Ex. D*.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,000.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from October 6, 2020 through January 7, 2022.

10. [21-12385](#)-B-13     **IN RE: IRENE/TINISHA PEREZ**  
[JDM-1](#)

CONTINUED MOTION TO CONFIRM PLAN HEARING  
11-22-2021    [\[21\]](#)

TINISHA PEREZ/MV  
JAMES MILLER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

This matter was originally scheduled for January 7, 2022. Doc. #32.

Irene Alarcon Perez and Tinisha Chavez Perez ("Debtors") sought confirmation of the First Amended Chapter 13 Plan. Doc. #21.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #27. Trustee said Debtors are delinquent \$1,810.00 for their November 2021 payment, with the same amounts due in December 2021 and January 2022. Doc. #24. Additionally, Section 3.06 did not provide for administrative expenses, which could be corrected in the order confirming plan by providing that Debtors' attorney will be paid pro rata with unsecured creditors.

Debtors did not reply. Doc. #32. The court continued the hearing and ordered Debtors to file and serve either a written response not later than January 26, 2022, or a modified plan not later than February 2, 2022, or the motion would be denied for the grounds stated in Trustee's opposition without further hearing. Doc. #34. Debtors did neither. Accordingly, this motion will be DENIED WITHOUT PREJUDICE because Debtors will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6).

11. [21-11590](#)-B-13     **IN RE: JUAN PENA**  
[LE-2](#)

MOTION TO CONFIRM PLAN  
12-8-2021    [\[47\]](#)

JUAN PENA/MV  
LALEH ENSAFI/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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 approved as to form by Trustee after hearing.

Juan Pena, Jr. ("Debtor") seeks confirmation of the First Amended Chapter 13 Plan. Doc. #45. The previous confirmation attempt was denied without prejudice due to inadequate notice on Class 1 creditor U.S. Department of Agriculture, Rural Development Agency. Doc. #45. Debtor has cured that notice deficiency and complied with Fed. R. Bankr. P. 2002(j)(4). Doc. #50.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed pursuant to 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #51. Trustee says that the plan as proposed will take more than 63 months to fund at the current plan payment. However, the plan could fund over 60 months if (a) Debtor increases the plan payment from \$2,103.00 to \$2,160.00 per month, and (b) the attorney fee dividend is lowered to fund over the life of the plan.

Based on Debtor's payment history, Debtor is aware of the shortfall and has been paying the increased plan payment. Debtor has paid \$12,960.00 through December 30, 2021. *Id.*

Debtor responded in agreement to increasing the plan payment to \$2,160.00 per month. Doc. #53. Debtor will add such language to the order confirming plan.

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 U.S. Trustee, or any other party in interest except Trustee to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of



damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Debtor appears to have resolved the primary portion of Trustee's objection. This matter will be called as scheduled to inquire whether Debtor intends to address the attorney fee dividend issue in the order confirming plan.

If the attorney dividend issue is resolved, this motion will be GRANTED. Any confirmation order shall be approved as to form by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

12. [19-15396](#)-B-13     **IN RE: JUAN/MARYLOU BARRAGAN**  
[SL-2](#)

CONTINUED MOTION TO MODIFY PLAN  
12-2-2021    [\[56\]](#)

MARYLOU BARRAGAN/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This matter was originally scheduled for January 7, 2022. Doc. #67.

Juan Barragan and Marylou Barragan ("Debtors") sought confirmation of the First Amended Chapter 13 Plan. Doc. #56. Debtors proposed extending the plan term from 60 to 84 months under the COVID-19 Bankruptcy Relief Extension Act of 2021 and 11 U.S.C. § 1329(d).

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(1) and (a)(6) because the plan fails to comply with applicable provisions of the Bankruptcy Code and Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #65. Trustee said that Section 7.01 of the plan says Debtors have paid \$54,356.00 through November 25, 2021, but they have actually paid \$63,000.00 through that date. *Id.* Additionally, Debtors' schedules did not evidence sufficient income to fund the proposed plan payment, and expenses increased without adequate supporting documentations. Trustee requests that Debtors provide most current pay stubs with year-to-date earnings, the last two months of utility bills and proof of food, housekeeping, fuel and automobile maintenance, and closing costs. *Id.*

Debtors did not reply. Doc. #67. The court continued the hearing and ordered Debtors to file and serve either a written response not later

than January 26, 2022, or a modified plan not later than February 2, 2022, or the motion would be denied for the grounds stated in Trustee's opposition without further hearing. Doc. #68. Debtors did neither. Accordingly, this motion will be DENIED WITHOUT PREJUDICE because the plan does not comply with the provisions of the Bankruptcy Code and Debtors will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(1) and (a)(6).

11:00 AM

1. [19-15103](#)-B-7     **IN RE: NATHAN/AMY PERRY**  
[20-1017](#)

FURTHER STATUS CONFERENCE RE: COMPLAINT  
3-15-2020    [[1](#)]

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

NO RULING.

This adversary proceeding is stayed pending resolution of a state court matter. Doc. #44. The order continuing this status conference required Plaintiff to file and serve a status report not later than February 2, 2022. Doc. #46. No such status report was filed. The parties shall be prepared to discuss the status of the case at the hearing.

2. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[FW-3](#)

FURTHER SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY  
JUDGMENT  
9-14-2021    [[115](#)]

GABRIEL WADDELL/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:       Continued to March 30, 2022 at 11:00 a.m.

ORDER:                The court will issue an order.

In the parties' related adversary proceeding, Adv. Proc. No. 20-1035, Richard Barnes, The Richard Allen Barnes Trust, and Parker Foreclosure Services, LLC filed a third-party complaint against WFG National Title Insurance ("WFG") on November 25, 2022. An answer to the third-party complaint is due not later than February 25, 2022, which is 30 days after the summons was issued. Adv. Proc. Doc. #247. The third-party complaint status conference is set for March 30, 2022. *Id.* Since the pleadings are not settled, this scheduling conference will be continued to March 30, 2022 at 11:00 a.m. to be heard in connection with the third-party complaint status conference. Parties may file joint or unilateral scheduling conference statements not later than 7 days before the hearing.

3. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[TAT-2](#)

FURTHER SCHEDULING PRE-TRIAL CONFERENCE RE: MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
11-12-2020    [\[76\]](#)

SANDRA WARD/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
THOMAS TRAPANI/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to March 30, 2022 at 11:00 a.m.

ORDER:                The court will issue an order.

In the parties' related adversary proceeding, Adv. Proc. No. 20-1035, Richard Barnes, The Richard Allen Barnes Trust, and Parker Foreclosure Services, LLC filed a third-party complaint against WFG National Title Insurance ("WFG") on November 25, 2022. An answer to the third-party complaint is due not later than February 25, 2022, which is 30 days after the summons was issued. Adv. Proc. Doc. #247. The third-party complaint status conference is set for March 30, 2022. *Id.* Since the pleadings are not settled, this pre-trial conference will be continued to March 30, 2022 at 11:00 a.m. to be heard in connection with the third-party complaint status conference. Parties may file joint or unilateral pre-trial conference statements not later than 7 days before the hearing.

4. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
12-23-2020    [\[92\]](#)

NATERA V. BARNES ET AL  
GABRIEL WADDELL/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to March 30, 2022 at 11:00 a.m.

ORDER:                The court will issue an order.

Defendants and third-party plaintiffs Richard Barnes, The Richard Allen Barnes Trust, and Parker Foreclosure Services, LLC filed a third-party complaint against WFG National Title Insurance ("WFG") on November 25, 2022. An answer to the third-party complaint is due not

later than February 25, 2022, which is 30 days after the summons was issued. Doc. #247. The third-party complaint status conference is set for March 30, 2022. *Id.* Since the pleadings are not settled, this pre-trial conference will be continued to March 30, 2022 at 11:00 a.m. to be heard in connection with the third-party complaint status conference. Parties may file joint or unilateral pre-trial conference statements not later than 7 days before the hearing.

5. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [FW-6](#)

FURTHER SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY  
ADJUDICATION  
9-14-2021     [[138](#)]

NATERA V. BARNES ET AL  
GABRIEL WADDELL/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to March 30, 2022 at 11:00 a.m.

ORDER:     The court will issue an order.

Defendants and third-party plaintiffs Richard Barnes, The Richard Allen Barnes Trust, and Parker Foreclosure Services, LLC filed a third-party complaint against WFG National Title Insurance ("WFG") on November 25, 2022. An answer to the third-party complaint is due not later than February 25, 2022, which is 30 days after the summons was issued. Doc. #247. The third-party complaint status conference is set for March 30, 2022. *Id.* Since the pleadings are not settled, this scheduling conference will be continued to March 30, 2022 at 11:00 a.m. to be heard in connection with the third-party complaint status conference. Parties may file joint or unilateral scheduling conference statements not later than 7 days before the hearing.

6. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [TAT-3](#)

FURTHER SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY  
JUDGMENT  
9-1-2021     [[124](#)]

NATERA V. BARNES ET AL  
THOMAS TRAPANI/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to March 30, 2022 at 11:00 a.m.

ORDER:     The court will issue an order.

Defendants and third-party plaintiffs Richard Barnes, The Richard Allen Barnes Trust, and Parker Foreclosure Services, LLC filed a third-party complaint against WFG National Title Insurance ("WFG") on November 25, 2022. An answer to the third-party complaint is due not later than February 25, 2022, which is 30 days after the summons was issued. Doc. #247. The third-party complaint status conference is set for March 30, 2022. *Id.* Since the pleadings are not settled, this scheduling conference will be continued to March 30, 2022 at 11:00 a.m. to be heard in connection with the third-party complaint status conference. Parties may file joint or unilateral scheduling conference statements not later than 7 days before the hearing.

7. [21-10368](#)-B-7     **IN RE: SIMONA PASILLAS**  
[21-1038](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE COMPLAINT  
9-1-2021     [[1](#)]

SALVEN V. PASILLAS ET AL  
GABRIEL WADDELL/ATTY. FOR PL.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Concluded.

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

The court intends to enter default judgment in favor of the plaintiff in matter #8 below. Accordingly, the court intends to issue an order concluding the status conference.

8. [21-10368](#)-B-7     **IN RE: SIMONA PASILLAS**  
[21-1038](#)     [FW-1](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT  
12-27-2021     [\[53\]](#)

SALVEN V. PASILLAS ET AL  
GABRIEL WADDELL/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 shall submit a proposed order after hearing.

Chapter 7 trustee James. E. Salven ("Plaintiff") seeks entry of a default judgment against Maria Guadalupe Ramirez Pasillas, individually, as executor of the estate of Alta Pasillas, and as trustee of the Pasillas Living Trust dated July 17, 2007; Amparo Pasillas, individually; Jose Pasillas, individually; and Mary Ramirez, individually (collectively "Defendants") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7055. Doc. #53. Plaintiff requests an order determining that real property located at 40624 Eddy Road, Cutler, CA 93615 ("Property") is property of the bankruptcy estate and wants an order directing Defendants to turnover Property to the estate.

There is no opposition from Defendants. This matter will be called as scheduled. The court is inclined to GRANT IN PART, DENY IN PART AS MOOT, and DENY WITHOUT PREJUDICE IN PART.

Plaintiff's motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. In accordance with Rule 7004(b)(1), Defendants were properly served the summons and complaint on September 8, 2021, the request for entry of default on November 24, 2021, and this motion on December 27, 2021, with amended notice on January 10, 2022. Docs. #6; #34; #63; #65.

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(A) (matters concerning administration of estate), (b)(2)(E) (orders to turn over property of the estate), and (b)(2)(O) (proceedings affecting the liquidation of assets of the estate and the adjustment of the debtor-creditor relationship). Venue is proper under 28 U.S.C. § 1409(a).

The court entered Defendants' defaults on November 30, 2021. Docs. #35; #37, #39; #41; #43; #45. Plaintiff was directed to apply for a default judgment and set this "prove up" hearing within 30 days of entry of default. *Id.* Plaintiff properly applied for default judgment on December 27, 2021 and has complied with the order.

#### BACKGROUND

Simona Pasillas ("Debtor") filed chapter 7 bankruptcy on February 12, 2021. Bankr. Case No. 21-10368 ("Bankr") Doc. #1. Plaintiff was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on March 11, 2021. Doc. #5.

As part of her schedules, Debtor disclosed a fee simple ownership interest in Property, valued at \$215,755.00. Doc. #1, *Sched. A/B*. Prior to filing bankruptcy, Property was part of the Pasillas Living Trust dated July 18, 2007 ("Trust") as of May 8, 2017. Docs. #57; #59, *Ex. A*. Debtor is the beneficiary of Trust. Doc. #57. Prior to and during the time that Property was owned by the Trust, Debtor's mother, Alta Pasillas ("Alta"), was unable to afford to make payments on the Property. As result, Debtor made mortgage payments between 1997 and Property's eventual refinance. *Id.*

In 2018, Debtor acquired a direct ownership interest in Property when Alta made Debtor a joint tenant by grant deed ("2018 Transfer"), recorded in Tulare County on August 24, 2018 as document no. 2018-0046711. *Id.*, Doc. #62, *Ex. B*. Shortly after the 2018 Transfer, Debtor and Alta refinanced Property with a loan in both of their names. Doc. #57. The deed of trust memorializing this loan was recorded in Tulare County on September 10, 2018 as document no. 2018-0049819. Doc. #62, *Ex. C*. Debtor continued to make payments due on the loan. Doc. #57. Thereafter, Debtor acquired full ownership of the Property by grant deed ("2019 Transfer") signed by Debtor and Alta, which was recorded in Tulare County on June 3, 2019 as document no. 2019-0028840. Doc. #62, *Ex. D*. Prior to the transfer, Alta informed Debtor that she wanted to transfer Property to Debtor because Debtor had been making the payments on Property, and Alta wanted Debtor to continue making payments on Property and eventually own it outright. Doc. #57. As result of the 2019 Transfer, Debtor obtained full legal and beneficial ownership of Property. Alta passed away on or about July 14, 2021. Under the terms of the Trust, all property shall be distributed to Debtor. Further, any interest in Property as result of the 2018 Transfer reverted to the surviving joint tenant, Debtor.

#### APN Issues

Plaintiff's attorney, Gabriel J. Waddell, reviewed property records relating to Property, and of property address 40624 Santa Fe, Cutler, CA 93615, which is named in the Trust as restated May 8, 2017. Docs. #58; #61, *Ex. A*, at 70. Mr. Waddell reviewed these records in a database known as DataTree, a subscription service to access property



records online. Doc. #58. Mr. Waddell says that 40624 Santa Fe, Cutler, CA 93615 bears the same APN as Property, and DataTree indicates that this address also references Property. *Id.* However, the APN referenced for the property on page 67 (exhibit page 70) of the Trust is "032-104-012," which is one digit off of the actual APN of Property (032-104-017). Doc. #61, *Ex. A*, at 70. Searching the APN listed on the Trust documents yields a different property located at 12664 Sapphire St., Cutler, CA 93615. A copy of the transfer history from DataTree printed on December 22, 2021 is included as an exhibit, which shows that Rosie Pina Gomez has owned this property since 1988. See Doc. #62, *Ex. F*. Thus, Mr. Waddell declares that the APN in the Trust documents is a typographical error and based on the fact that the Santa Fe address references the Property, the property placed in the Trust included Property as of the May 8, 2017 restatement.

### Bankruptcy

When Debtor filed bankruptcy on February 12, 2021, Property became property of the bankruptcy estate. Doc. #56. Defendants, who are Debtor's siblings, contested ownership of Property as follows:

- a. Maria Guadalupe Ramirez Pasillas, individually;
- b. Maria Guadalupe Ramirez Pasillas, as executor of the estate of Alta Pasillas;
- c. Maria Guadalupe Ramirez Pasillas, as trustee of the Pasillas Living Trust dated July 18, 2007;
- d. Amparo Pasillas, individually;
- e. Jose Pasillas, individually; and
- f. Mary Ruth Ramirez, individually.

As result, Plaintiff filed this adversary proceeding seeking (1) a determination of the nature and extent of interests in property of the estate under Rule 7001(2); (2) turnover of real property of the estate under 11 U.S.C. § 542; or, alternatively, (3) sale of co-owned property of the estate under 11 U.S.C. § 363(h); and (4) turnover of personal property of the estate pursuant to 11 U.S.C. §§ 549, 542. Doc. #1.

### DISCUSSION

#### I. Default Judgment Standard

Fed. R. Civ. P. ("Civ. Rule") 55 (incorporated under Rule 7055) governs default judgments. "To obtain a default judgment of non-dischargeability of a loan debt, a two-step process is required: (1) entry of the party's default (normally by the clerk), and (2) entry of default judgment." *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006), citing *Brooks v. United States*, 29 F. Supp 2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*, 162 F.3d 1167 (9th Cir. 1998). "[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol.*

*Pretrial Proceedings in Air West Secs. Litig.*), 436 F. Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

Under Civ. Rule 8(d) (Rule 7008), the factual allegations of the complaint, except those relating to the amounts of damages, are deemed to be admitted. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo*, 826 F.2d at 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

## II. Turnover of Property

First, Debtor obtained sole ownership of Property as result of the 2019 Transfer. Doc. #62, *Ex. D*. The grant deed was signed by both Debtor and Alta, the two joint tenants at the time. The transfer constituted a valid transfer of real property to the sole beneficial and legal ownership of the Debtor.

Under 11 U.S.C. § 541(a), Debtor created a bankruptcy estate on February 12, 2021. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

Second, prior to the 2019 Transfer, the 2018 Transfer made Debtor and Alta joint tenants in the Property. Under California law, joint tenants have rights of survivorship. *Est. of Propst*, 50 Cal. 3d 448, 452 (1990) (the right of survivorship is the "principal characteristic" of joint tenancy); *McDonald v. Morley*, 15 Cal. 2d 409, 412 (1940) (right of survivorship is a "distinguishing incident" of joint tenancy). Those rights became property of the estate under § 541(a), and upon death of Alta, Property passed to Debtor as a joint tenant, and thus to the bankruptcy estate.

Third, prior to the 2018 Transfer, Property was held by the Trust by its alternate address at 40624 Santa Fe, Cutler, CA 93615. Doc. #61, *Ex. A*, at 70. Debtor was the beneficiary of the Trust, whose rights as beneficiary became property of the estate under § 541(a). As result of

the death of Alta, Debtor and therefore the bankruptcy estate became entitled to the Trust property.

Plaintiff, as trustee of the bankruptcy estate, has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtor and Defendants to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

Therefore, the court finds that Property is property of the bankruptcy estate and none of the Defendants has any interest in Property. The court will order that Property is property of the bankruptcy estate and each of the Defendants should turnover Property to the estate.

### III. Sale of Co-owned Property

As part of the complaint, Plaintiff seeks alternate relief in the form of authorization to sell co-owned real property pursuant to 11 U.S.C. § 363(h) in the event that the court finds the estate only holds a partial interest in Property as result of the 2018 Transfer. Doc. #1. Plaintiff contends that partition in kind among the co-owners is impractical because Property consists of a single-family residence, and sale of the estate's undivided interest would realize significantly less than a sale free of the interests of co-owners. *Id.* Since the benefit to the estate outweighs any detriment to Defendants, sale of the entire interest will maximize recovery to the estate.

Civ. Rule 54(c) (Rule 7054) permits entry of a default judgment that does not differ in kind from what is demanded in the pleadings. Civ. Rule 55 (Rule 7055) permits a court to hold hearings to establish the truth of any allegation by evidence, but the evidence does not support relief under § 363(h) because the court is finding that Property is property of the estate and not subject to Defendants' interests.

This request will be DENIED AS MOOT because the court intends to determine that the estate owns a 100% interest in Property and order Defendants to turnover Property to the estate.

### IV. Turnover of Fixtures and Other Personal Property

Lastly, Plaintiff seeks turnover of personal property of the estate pursuant to 11 U.S.C. §§ 549, 542. *Id.* Plaintiff alleges that Defendants have removed items from Property, including personal property assets and fixtures that were part of Property prior to being removed. Since Defendants have severed and wrongfully confiscated personal property and fixtures from Property, and the terms of the Trust require personal property assets of the Trust to be turned over

to Debtor, and thus to the estate, Trustee seeks an order requiring Defendants to return such personal property and fixtures.

However, neither Plaintiff's (Doc. #56), Debtor's (Doc. #57), nor Mr. Waddell's (Doc. #58) declarations provide any evidence that Defendants removed personal property or fixtures from the Property. There is no evidence documenting what property or fixtures were taken, when, or by whom. Plaintiff is required to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party, which Plaintiff has not done here.

The court is inclined to DENY WITHOUT PREJUDICE this cause of action, or alternatively, allow Plaintiff additional time to provide additional evidence.

#### CONCLUSION

This matter will be called and proceed as scheduled. The court is inclined to GRANT IN PART this motion as to a determination that Property is property of the bankruptcy estate and order Defendants to turnover Property. As to the remaining causes of action, the court intends to DENY AS MOOT the request to sell the interests of co-owners and DENY WITHOUT PREJUDICE the request to order turnover of fixtures and other personal property. Alternatively, the court may allow additional time for Plaintiff to present additional evidence as to the fourth cause of action.

9. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1123](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT  
12-19-2019    [\[11\]](#)

TULARE LOCAL HEALTHCARE  
DISTRICT V. MEDLINE  
MICHAEL WILHELM/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to March 30, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

The court continued the pre-trial conference to March 30, 2022 at 11:00 a.m. Doc. #169. Plaintiff and Defendant may file amended pre-trial statements, if any, not later than 14 and 7 days, respectively, before the continued pre-trial conference date.