

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

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**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. [21-12407](#)-B-13     **IN RE: MANUELA BETTENCOURT**  
[SDS-1](#)

MOTION TO CONFIRM PLAN  
12-2-2021    [[30](#)]

MANUELA BETTENCOURT/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Manuela Bettencourt ("Debtor") seeks an order confirming the Second Amended Chapter 13 Plan. Doc. #30.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN, including motions for reconsideration and countermotions.

The DCN shall consist of not more than three letters, which may be the initials of the attorney or the law firm, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that case. LBR 9014-1(c)(3).

This motion was filed on December 2, 2021 and set for hearing on January 26, 2022. Doc. #31. It was denied without prejudice for failure to properly notify the chapter 13 trustee ("Trustee") and United States Trustee ("UST") in accordance with Fed. R. Bankr. P. 2002 and LBR 7005-1.

On January 27, 2022, Debtor filed a *Notice of Rescheduled Hearing on Debtor's Motion to Confirm Second Amended Chapter 13 Plan*. Doc. #47. Although Debtor cured the original service defect by properly serving the motion, notice, and supporting documents on Trustee and UST more than 35 days before the hearing, Debtor cannot reuse the same DCN (SDS-1), motion, other supporting documents. That motion was already denied without prejudice. Since this is a separate matter, Debtor should have refiled the motion and all supporting documents with updated captions, including a new DCN such as SDS-2.

Further, LBR 9014-1(j) does not permit continuances without court approval. Debtor cannot unilaterally reschedule an old motion that has already been denied and concluded.

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

2. [18-13447](#)-B-13     **IN RE: WILEY GARDNER**  
[FW-2](#)

MOTION TO MODIFY PLAN  
1-26-2022    [\[76\]](#)

WILEY GARDNER/MV  
GABRIEL WADDELL/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 after hearing.

Wiley Carl Gardner ("Debtor") seeks confirmation of the Third Modified Chapter 13 Plan. Doc. #76.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects. Doc. #83.

Debtor replies. Doc. #85.

This matter will be called and proceed as scheduled.

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 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 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).

Debtor employed David Jenkins as attorney to file this case in 2018. Mr. Jenkins and Debtor agreed that Mr. Jenkins would be paid the "no look" fee under LBR 2016-1(c): \$2,000.00 pre-petition and \$2,000.00 to be paid through the plan. Docs. #57; #683 Trustee has paid \$1,640.00 of these fees, with \$360.00 remaining to be paid. Doc. #83.

Mr. Jenkins is retiring. On January 24, 2022, Gabriel J. Waddell substituted in as attorney of record for the remainder of the case. Under the proposed plan modification, \$14,000.00 is allocated for attorney fees to be paid through the plan by filing a motion and seeking court approval. Doc. #78, § 3.05. Per Debtor's reply, this amount represents \$12,000.00 for Mr. Waddell and \$2,000.00 for Mr. Jenkins. Doc. #85.

Trustee inquires (1) whether Mr. Jenkins should be required to disgorge fees based on the court's prior approved rubric, under which inability to perform duties would result in a 20% reduction of fees; (2) if Mr. Waddell's fees are approved, whether the approved fees will be the basis of a reduction to the percentage distributed to unsecured creditors, which amount was based on disposable income; (3) whether the amount of fees sought are reasonable given the period of time remaining in the plan. Doc. #83. Put differently, are post-petition attorney fees that are incurred after confirmation classified as "administrative claims"? If so, will unsecured creditors be required to reduce their recovery to pay for post-petition attorney fees? And is \$12,000.00 a reasonable amount given that this case is nearing completion?

Lastly, Trustee notes that Debtor qualifies to extend the term of the plan to 84 months under 11 U.S.C. § 1329(d) based on Debtor's declaration, which shows that Debtor has indirectly suffered material financial hardship due to the COVID-19 pandemic. Thus, Trustee proposes that Debtor extend the plan to catch up on missed payments. *Id.*

In response, Mr. Waddell has agreed to a reduction of \$400.00 from any otherwise reasonable fees to avoid any disgorgement of the "no look" fee from Mr. Jenkins. Doc. #85. Mr. Waddell indicates that the fees requested will be administrative fees under 11 U.S.C. § 503(b)(1)(A), entitled to priority pursuant to 11 U.S.C. § 507(a)(2). *Id.*

Further, Mr. Waddell says that whether \$12,000.00 in fees is reasonable has yet to be determined. *Id.* This showing will be made upon Mr. Waddell's eventual fee application. The \$12,000.00 estimate was chosen to protect the interests of creditors, both unsecured and administrative, which includes Mr. Waddell. If the estimate is too low, additional work would be needed to modify the plan again to provide for additional payment, thus reducing the amount available to general unsecured creditors. And if the estimate is too high, remaining amounts leftover will go to creditors to maximize the payout to unsecured claims. Thus, it appears that Debtor's counsel intends to err on the side of caution with respect to the fee allocation.

Finally, Debtor agrees that the circumstances of this plan modification do allow for an extension of the plan term under § 1329(d). *Id.* However, Debtor notes such modification can only be made "upon the request of the debtor" and declines the proposal to

increase the plan term. Debtor contends that all elements of § 1325(a) have been met and requests that Trustee's opposition be overruled, and the plan confirmed.

The court share's the Trustee's misgivings about the need for a \$12,000.00 attorney fee estimate given the status of this case on this record. The case is approximately four years old. Though Debtor's reply refers to a potential motion to avoid lien, there is little factual development of that potential now, nor an explanation why the lien avoidance motion was not brought before.

That said, the court does not have a fee application to consider now. Also, under § 503(b)(2), compensation awarded under § 330(a) is included as an administrative expense. Under § 330(a)(4)(B), compensation requests are to be viewed with benefit to the debtor in mind.

This matter will be called as scheduled to inquire about Trustee's position. The court is inclined to **OVERRULE** Trustee's objection and **GRANT** the motion to modify plan. If the plan is confirmed, the order shall contain standard language about prerequisites to exempt unpaid attorney's fees from discharge, be approved as to form by Trustee, include the docket control number of the motion, and reference the plan by the date it was filed.

3. [21-12394](#)-B-13     **IN RE: FELIX/RAMONA LEDESMA**  
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)  
2-1-2022    [\[39\]](#)

SCOTT LYONS/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.

Scott Lyons ("Applicant"), attorney for Felix Ledesma and Ramona Ledesma ("Debtors"), seeks interim compensation in the sum of \$10,904.82 under 11 U.S.C. § 330, 331. Doc. #39. This amount consists of \$10,267.50 in fees as reasonable compensation and \$637.32 in actual, necessary expenses incurred for the benefit of the estate from July 14, 2021 through February 1, 2022. *Id.*

Debtors signed a statement of consent on February 1, 2022 indicating that Debtors have received and read the fee application and approve the same. *Id.*, at 5, § 9(7).

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 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 October 14, 2021 is the operative plan in this case. Doc. #7; #34. Section 3.05 indicates that Applicant was paid \$1,537.00 prior to filing the case and, subject to court approval, additional fees of \$12,500.00 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. #7. The *Disclosure of Compensation of Attorney*, Form 2030, indicates that Applicant was paid \$1,224.00 pre-petition plus the \$313.00 filing fee, for a total of \$1,537.00. Doc. #1. This amount is for pre-petition services only.

This is Applicant's first interim request for compensation. The source of funds for payment of the award will be \$9,367.82 from the chapter 13 trustee in conformance with the chapter 13 plan and after application of the \$1,537.00 pre-petition payment.

Applicant's firm provided 63.23 hours of legal services (billing 62.73 hours) at the following rates, totaling **\$10,267.50** in fees:

Professional	Rate	Hours	Billed	Claimed Total	Actual Total
Scott Lyons	\$400.00	0.50	0.50	\$200.00	\$200.00
Louis Lyons	\$350.00	15.89	15.39	\$5,384.16	\$5,386.50
Sylvia Gutierrez	\$100.00	46.84	46.84	\$4,683.34	\$4,684.00
<b>Total Fees &amp; Hours</b>		63.23	62.73	<b>\$10,267.50</b>	<b>\$10,270.50</b>

Doc. #41, Ex. A. Of the 60 entries, 32 have rounding discrepancies. The differences between the claimed fees and actual fees, and the number of instances each discrepancy occurs are summarized below:

Discrepancy Amount	No. of Instances	Total
(\$1.17)	5	(\$5.85)
(\$0.33)	13	(\$4.29)
\$0.33	11	\$3.63
\$1.17	3	\$3.51
<b>Total</b>	<b>32</b>	<b>(\$3.00)</b>

*Id.* Although Applicant is now expressing time in base-100 decimal-hour format, it seems that the totals are still being calculated using base-60 hour-minute format. The discrepancies in this case are *de minimis*, but Applicant should ensure that the time records and spreadsheets are accurate. If the fee summary in the application does not correctly add up, then corrections are needed. The court will allow the requested **\$10,267.50** for compensation as prayed in this instance based on the partial improvement. In future fee applications, Applicant is advised to recalculate totals after converting to decimal-hour format.

Applicant also incurred **\$637.32** in expenses:

Filing fees	\$313.00
Credit report	+ \$90.00
Stamps/postage	+ \$234.32
<b>Total Costs</b>	<b>= \$637.32</b>

The combined fees and expenses total **\$10,904.82**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) advising Debtors about bankruptcy and non-bankruptcy alternatives; (2) reviewing Debtors' financial information, the effects of exemptions, and value of assets; (3) gathering information and documents to prepare the petition, and preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting of creditor documents to Trustee and attending the meeting; (5) confirming a chapter 13 plan; and (6) filing and serving this fee application (SL-1). Doc. #41, Ex. A. As noted above, Debtors have consented to payment of the requested fees. Doc. #39. at 5, § 9(7). The court finds the services and expenses actual, reasonable, and necessary.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$10,267.50 in fees and \$637.32 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the pre-petition payment of \$1,537.00, the chapter 13 trustee is authorized, in his discretion, to pay Applicant \$9,367.82 in accordance with the chapter 13 plan for services rendered and expenses incurred from July 14, 2021 through February 1, 2022.



11:00 AM

1. [20-10809](#)-B-11     **IN RE: STEPHEN SLOAN**  
[21-1039](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
9-3-2021     [[1](#)]

SANDTON CREDIT SOLUTIONS  
MASTER FUND IV, LP V. SLOAN ET  
KURT VOTE/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to September 28, 2022 at 11:00 a.m.

ORDER:     The court will issue an order.

The court is in receipt of the parties' *Joint Status Conference Report*. Doc. #44. The parties have agreed to jointly request a continuance to not sooner than September 15, 2022 to allow Defendant Stephen Sloan an opportunity to conclude initial asset sales as contemplated in the plan within 90 to 180 days of the effective date of the plan.

Accordingly, this status conference will be CONTINUED to September 28, 2022 at 11:00 a.m. Plaintiff Sandton Credit Solutions, Master Fund IV, LP shall file and serve a joint or unilateral status report not later than September 21, 2022. The remaining parties are invited, but not required, to file and serve joint or unilateral status reports not later than September 21, 2022.

2. [13-11337](#)-B-13     **IN RE: GREGORY/KARAN CARVER**  
[22-1001](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
1-6-2022     [[1](#)]

CARVER ET AL V. SETERUS INC.  
ET AL  
NANCY KLEPAC/ATTY. FOR PL.

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

DISPOSITION:     Continued to April 7, 2022 at 11:30 a.m.

ORDER:     The court will issue an order.

Debtors Gregory Thomas Carver and Karan Ann Carver ("Plaintiffs") have served neither the summons nor the complaint. Under Rule 7004(e), service made under Civ. Rule 4(e), (g), (h), (i), or (j)(2) shall be by delivery of the summons and complaint within seven days after the summons is issued.<sup>1</sup> If service is by mail, then the summons and complaint shall be deposited in the mail within seven days after the summons is issued. Since the summons issued January 6, 2022 was not timely delivered or mailed within seven days, another will need to be issued and served with the complaint. Doc. #3.

The court notes that Civ. Rule 4(m), *incorporated by* Rule 7004(a)(1), provides:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under [Civ.] Rule 4(f), 4(h)(2), or 4(j)(1), or to service under [Civ.] Rule 71.1(d)(3)(A).

April 6, 2022 will be the 90th day since Plaintiffs filed the complaint. Plaintiffs are hereby notified that this adversary proceeding may be dismissed for failure to serve the summons and complaint within 90 days under Civ. Rule 4(m) if they fail to properly effectuate service on the defendants under Rule 7004 by April 6, 2022.

Accordingly, this status conference will be continued to April 7, 2022 at 11:30 a.m. so that Plaintiffs may serve the summons and complaint.

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<sup>1</sup> Unless otherwise indicated, references to "Rule" will be to the Federal Rules of Bankruptcy Procedure; and "Civ. Rule" will be to the Federal Rules of Civil procedure.

3. [20-11296](#)-B-7     **IN RE: KYLE/DEANNA MAURIN**  
[20-1044](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
7-10-2020    [\[1\]](#)

KAPITUS SERVICING, INC. V.  
MAURIN  
MICHAEL MYERS/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 parties reached an agreement to settle the adversary proceeding and need additional time to finalize the settlement agreement. Accordingly, the parties stipulated to continue the pre-trial conference to March 30, 2022. Doc. #82. The court approved the stipulation on February 24, 2022 and continued the pre-trial conference to March 30, 2022 at 11:00 a.m. Doc. #85. The deadline for Plaintiff to file its pre-trial statement is extended through and including March 16, 2022, and the deadline for Defendant to do the same is extended through March 23, 2022. *Id.*