



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, March 15, 2023
Department B – Courtroom #13
Fresno, California**

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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.

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [18-11201](#)-B-13 **IN RE: DOUGLAS PARKS**
[MHM-4](#)

MOTION TO DISMISS CASE
2-9-2023 [[166](#)]

MICHAEL MEYER/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer withdrew this motion on March 3, 2023. Doc. #174. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

2. [21-12703](#)-B-13 **IN RE: TERESA DESATOFF**
[TCS-1](#)

MOTION TO MODIFY PLAN
1-31-2023 [[24](#)]

TERESA DESATOFF/MV
TIMOTHY SPRINGER/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.

Teresa Lynn Desatoff ("Debtor") seeks an order confirming the *First Modified Chapter 13 Plan* dated January 31, 2023. Doc. #24. The 36-month, 100%-dividend plan proposes that Debtor's aggregate payment for months 1-14 is \$9,841.00, and Debtor's monthly payment starting in Month 15 will be \$200.00 per month. Doc. #26. Debtor's *Amended Schedules I & J* indicate Debtor receives \$971.00 in monthly net income. Doc. #30.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation under 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. #32. Trustee indicates the plan, as proposed, funds in over 35 months and as of February 2023, there are 22 months remaining in the plan. Additionally, Ally Financial has a balance due of \$5,602.20 at 6% interest. To fund over the remaining months of the plan, the Ally Financial monthly dividend needs to increase to \$270.00, which would require the monthly plan payment to increase to \$293.00. *Id.*

Debtor replied, agreeing to increase the plan payment as necessary in the terms of the order confirming plan. Doc. #34.

No other parties in interest timely filed written opposition.

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 granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest 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).

This matter will be called and proceed as scheduled. It appears Debtor can resolve Trustee's objection in the order confirming plan. The court is inclined to GRANT this motion. If granted, the confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

3. [21-12008](#)-B-13 **IN RE: CELESTE MURILLO**
[JNV-6](#)

CONTINUED MOTION TO MODIFY PLAN
12-29-2022 [\[83\]](#)

CELESTE MURILLO/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This motion was originally heard on February 15, 2023. Doc. #98.

Celeste Lucia Murillo ("Debtor") sought confirmation of the *Fifth Modified Chapter 13 Plan* dated December 29, 2022 ("Proposed Plan"). Doc. #83.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation because Debtor has provided no explanation for the reduction in plan payment and no evidence that Debtor separated from her spouse or experienced a change in household size, income, or expenses. Doc. #95.

In reply, Debtor filed a supplemental memorandum of points and authorities arguing that this case was filed in good faith. Doc. #97.

The court noted this case has been pending for 1.5 years and five modified plans have been presented to the court. One has been confirmed, the *Third Modified Plan*. This Proposed Plan substantially changes the currently operative Plan by reducing the distribution to unsecured creditors to zero from 100% and surrendering a vehicle to a lender. The court continued the hearing on this motion to March 15, 2023 and ordered Debtor to augment the record not later than March 1, 2023, and Trustee to reply not later than March 8, 2023. Docs. #98; #101.

Debtor timely augmented the record with exhibits and a supplemental declaration. Docs. ##105-09. In support, Debtor filed a copy of her marriage certificate to Alex Murillo dated October 10, 2015. Doc. #106. However, the included screenshots from the Alameda County Superior Court for Mr. Murillo's dissolution from Desiree Murillo, case no. HF10540655, indicate that his former marriage had not been dissolved at the time he married Debtor. Docs. ##107-08. Thus, it does not appear that the two were legally married. Since they were not legally married and did not have any kids, Debtor does not have any claims for spousal or child support. Since Mr. Murillo is struggling to make ends meet since moving out, he is not helping with any expenses. Doc. #109. Thus, it appears the \$3,000.00 reduction in Debtor's income is preventing her from maintaining her former plan payment with a 100% dividend to allowed, non-priority unsecured claims.

This matter will be called and proceed as scheduled to inquire about Trustee's position. If granted, the confirmation order shall include the docket control number of the motion, reference the plan by the date it was filed, and be approved as to form by Trustee.

4. [21-12008](#)-B-13 **IN RE: CELESTE MURILLO**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
12-23-2022 [\[78\]](#)

MICHAEL MEYER/MV
JASON VOGELPOHL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

This matter will be called and proceed as scheduled. If Debtor's chapter 13 plan is confirmed in matter #3 above, this motion to dismiss may become moot.

5. [22-11410](#)-B-13 **IN RE: HOWARD/KIM CRAUSBY**
[MHM-2](#)

MOTION TO DISMISS CASE
2-15-2023 [\[84\]](#)

MICHAEL MEYER/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Continued to March 29, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to March 29, 2023 at 9:30 a.m. to be heard with the debtors' motion to confirm plan. DAB-4.

6. [22-11813](#)-B-13 **IN RE: STEVEN/LAURA BALLARD**
[SLL-1](#)

MOTION TO CONFIRM PLAN
1-26-2023 [\[26\]](#)

LAURA BALLARD/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Steven Ballard and Laura Ballard (collectively "Debtors") seek an order confirming the *First Modified Chapter 13 Plan* dated January 26, 2023. Doc. #26. The plan proposes that Debtors shall make 36 monthly payments of \$646.00 per month with an 18.55% dividend to allowed, non-priority unsecured claims. Doc. #28. The plan also includes payments two Class 4 claims paid directly by Debtors: \$410.00 per month to Chrysler Capital for a 2021 Jeep and \$1,408.67 per month to Carrington Mortgage for Debtors' residence. Debtors' *Amended Schedules I & J* indicate receipt of \$646.00 per month, including expenses for the Class 4 payments, which is sufficient to afford the proposed plan payment. Doc. #24. No party in interest timely filed written opposition.

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 reference the plan by the date it was filed.

7. [22-11617](#)-B-13 **IN RE: JOHNNY COELHO LOPES AND KATHLEEN LOPES**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
2-14-2023 [\[26\]](#)

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 Johnny Coelho Lopes and Kathleen Renee Lopes (collectively "Debtor"), seeks interim compensation in the sum of \$9,072.70 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #26. This amount consists of \$8,634.50 in fees as reasonable compensation for services rendered and \$438.20 in reimbursement for actual, necessary expenses from August 3, 2021 through February 10, 2023. *Id.*

Debtors executed a statement of consent dated February 13, 2023 indicating that they have read the fee application and approve the same. § 9(7), *id.*

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.

Section 3.05 of Debtors' confirmed plan provides Applicant was paid \$1,500.00 prior to filing the case and, subject to court approval, additional fees of \$18,000.00 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, 2016-17. The *Disclosure of Compensation of Attorney* form, B2030, indicates that Applicant also collected a \$313.00 filing fee in addition to the pre-petition retainer for a total of \$1,813.00. Doc. #1.

This is Applicant's first interim fee application. Doc. #26. Applicant's firm provided 54.66 billable hours of legal services at the following rates, totaling **\$8,634.50** in fees:

Professional	Rate	Hours	Fees
Scott Lyons	\$400	0.57	\$228.00
Louis Lyons	\$350	12.19	\$4,266.50
Louis Lyons (no charge)	\$0	0.50	\$0.00
Sylvia Gutierrez	\$100	41.40	\$4,140.00
Total Hours & Fees		54.66	\$8,634.50

Id.; *Ex. B*, Doc. #28. Applicant also incurred **\$438.20** in expenses:

Postage, reproduction, & stationary	\$51.20
Filing fees	\$313.00
Credit Reports, CourtCall	\$74.00
Total Costs	\$438.20

Id.; Doc. #26. These combined fees and expenses total **\$9,072.70**. After drawing down the \$1,813.00 in pre-petition payments, \$7,259.70 will remain to be paid by the chapter 13 trustee in accordance with the confirmed plan.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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 here included, without limitation: (1) advising Debtor of bankruptcy and non-bankruptcy alternatives; (2) preparing schedules, the plan, and petition; (3) confirming the chapter 13 plan; and (4) preparing and filing a motion to avoid lien (SL-1). *Ex. A*, Doc. #28. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. § 9(7), Doc. #26.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$8,634.50 in fees and \$438.20 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the \$1,813.00 in pre-petition payments, the chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant \$7,259.70 for services rendered and costs incurred between August 3, 2021 through February 10, 2023.

8. [23-10023](#)-B-13 **IN RE: MARIA URBIETA**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC.
2-27-2023 [[28](#)]

CARRINGTON MORTGAGE SERVICES, LLC./MV
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court intends to grant the trustee's motion to dismiss in matter
#9 below. MHM-1. Therefore, this objection to confirmation will be
OVERRULED AS MOOT.

9. [23-10023](#)-B-13 **IN RE: MARIA URBIETA**
[MHM-1](#)

MOTION TO DISMISS CASE
2-10-2023 [[23](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11
U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is
prejudicial to creditors, ineligibility to be a debtor under § 109(h),
failure to file a correct for plan and set it for hearing with notice
to creditors, and failure to file complete and accurate schedules.
Doc #28. Debtor did not oppose.

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

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the
creditors, the 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.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay.

The record shows that the debtor failed to file a credit counseling certificate, failed to file correct Chapter 13 Plan form, failed to set plan for hearing, and failed to file complete and accurate schedules.

Since the debtor has not received approved credit counseling, the debtor is not eligible to be a debtor. 11 U.S.C. § 109(h). Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

Accordingly, this motion will be GRANTED, and the case will be dismissed.

10. [23-10023](#)-B-13 **IN RE: MARIA URBIETA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-27-2023 [\[32\]](#)

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court intends to grant the trustee's motion to dismiss in matter #9 above. MHM-1. Therefore, this motion to dismiss will be DENIED AS MOOT.

11. [22-12129](#)-B-13 IN RE: BILLIE TENA
[MHM-2](#)

MOTION TO DISMISS CASE
2-15-2023 [[23](#)]

MICHAEL MEYER/MV
CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on March 13, 2023. Doc. #30. Accordingly, this motion will be dropped and taken off calendar pursuant to the trustee's withdrawal.

12. [22-11935](#)-B-13 IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-21-2023 [[43](#)]

BENNY BARCO/ATTY. FOR DBT.
DISMISSED 2/23/23

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

DISPOSITION: Taken off calendar.

NO ORDER REQUIRED.

An order dismissing the case was entered on February 23, 2023. Doc. #48. This order to show cause will be dropped and taken off calendar. No appearance is necessary.

13. [22-11941](#)-B-13 **IN RE: HARVEY/IRENE GONZALES**
[MHM-2](#)

MOTION TO DISMISS CASE
2-10-2023 [\[28\]](#)

MICHAEL MEYER/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Continued to March 29, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to March 29, 2023, at 9:30 a.m. to be heard with the debtors' motion to confirm plan. DAB-1.

14. [19-12843](#)-B-13 **IN RE: DONNIE EASON**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-27-2023 [\[85\]](#)

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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Donnie L. Eason ("Debtor"), seeks interim compensation in the sum of \$5,568.71 under 11 U.S.C. § 331, subject to final review pursuant to § 330. Doc. #85. This amount consists of \$5,271.50 in fees as reasonable compensation for services rendered and \$297.21 in reimbursement for actual, necessary expenses from December 21, 2021 through December 31, 2022. *Id.*

Debtor executed a statement of consent dated January 24, 2023 indicating that Debtor has read the fee application and approves the same. *Ex. E*, Doc. #87.

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.

Section 3.05 of Debtor's confirmed chapter 13 plan provides Debtor's attorney was paid \$2,000.00 prior to filing the case and, subject to court approval, additional fees of \$10,500.00 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, 2016-17. Docs. #45; #84. On March 17, 2022, Debtor's former attorney was awarded \$3,000.00 in fees to be paid through the plan for services from June 25, 2019 to February 7, 2022, not including the \$2,000.00 in pre-petition payments. Docs. ##34-35. Therefore, \$7,500.00 remains in the plan for attorney compensation.

Applicant substituted in for Debtor's former attorney on April 25, 2022. Doc. #38. This is Applicant's first interim fee application. Applicant's firm provided 18.70 billable hours of legal services at the following rates, totaling **\$5,271.50** in fees:

Professional	Rate	Hours	Fees
Gabriel J. Waddell (2022)	\$345	14.10	\$4,864.50
Gabriel J. Waddell (no charge)	\$0	0.40	\$0.00
Peter A. Sauer (2022)	\$260	0.20	\$52.00
Kayla Schlaak (2022)	\$125	2.20	\$275.00
Kayla Schlaak (no charge)	\$0	0.70	\$0.00
Laurel Guenther (2022)	\$100	0.80	\$80.00
Laurel Guenther (no charge)	0	0.30	\$0.00
Total Hours & Fees		18.70	\$5,271.50

Doc. #85; Exs. B, C, Doc. #87. Applicant also incurred **\$297.21** in expenses:

Photocopying	\$194.48
Postage	\$102.73
Total Costs	\$297.21

Ex. B, Id. These combined fees and expenses total **\$5,568.71**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney” 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 here included, without limitation: (1) substituting in for Debtor’s former counsel; (2) preparing and filing amended and supplemental schedules; (3) analyzing a notice of mortgage payment change; (4) preparing and filing the first modified chapter 13 plan and communicating with the chapter 13 trustee regarding the same (FW-2); (5) preparing, filing, and confirming the second modified plan (FW-3) to resolve the trustee’s motion to dismiss (MHM-1); and (6) preparing and filing this fee application (FW-3). *Ex. A, Doc. #87.* The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. *Ex. E, id.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$5,271.50 in fees and \$297.21 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. The chapter 13 trustee will be authorized, in the trustee’s discretion, to pay Applicant \$5,568.71 for services rendered and costs incurred between December 21, 2021 through December 31, 2022.

15. [22-12043](#)-B-13 **IN RE: MIGUEL ELIZONDO**
[MHM-1](#)

MOTION TO DISMISS CASE
2-15-2023 [\[23\]](#)

MICHAEL MEYER/MV
SIMRAN HUNDAL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 12, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 12, 2023 at 9:30 a.m. to be heard with the debtor's motion to confirm plan. SSH-1.

16. [18-12347](#)-B-13 **IN RE: FARID/IRMA CASTANEDA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-8-2023 [[55](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/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 court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtors that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #55. As of February 8, 2023, Farid Castaneda and Irma Macias Castaneda ("Debtors") have failed to make all payments due under the plan and Debtors are delinquent \$1,888.90. Doc. #57. Before the hearing on this motion, an additional payment of \$1,353.20 will become due on February 25, 2023 for a total of \$3,242.10 due before the hearing.

Debtors timely filed written opposition. Doc. #59. The Debtors' response is not supported by evidence and no reason was given for failure to make their plan payments.

This matter will be called as scheduled to inquire whether Debtors have cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, if the trustee's motion is not withdrawn at the hearing, the motion may be GRANTED IN PART, and the case CONVERTED TO CHAPTER 7.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay that is prejudicial to creditors and failure to make all payments due under the plan.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$15,185.63 after trustee compensation. Doc. #57. This value consists of Debtors' 2011 GMC Sierra, 1985 Chevy C10, 1995 Toyota Tercel and funds on hand in bank account on the petition date. Since proceeds could be realized for the benefit of unsecured claims, conversion, rather than dismissal, better serves the interests of creditors and the estate.

As noted above, Debtors intend to cure the delinquency prior to the hearing. This matter will be called as scheduled to inquire whether Debtors have cured the delinquency. If so, this motion may be DENIED WITHOUT PREJUDICE. Otherwise, the motion may be GRANTED IN PART, and the case CONVERTED TO CHAPTER 7.

17. [22-11559](#)-B-13 **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**
[RK-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
2-27-2023 [\[108\]](#)

VERONICA ZAMUDIO/MV
ARASTO FARSAD/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Transportation Alliance Bank ("Movant") requests an order extending the deadlines for filing a complaint objecting to Misael Cordero Delgado's and Veronica Rivas Zamudio's (collectively "Debtors") discharge under 11 U.S.C. § 727, and/or objecting to the

dischargeability of certain debts pursuant to 11 U.S.C. § 523.
Doc. #108.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served 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.

Federal Rule of Bankruptcy Procedure ("Rule") 4004(a) requires a complaint objecting to the debtor's discharge under § 727 to be filed no later than 60 days after the first date set for the § 341(a) meeting of creditors unless an extension of time is requested. Rule 4004(b)(1) allows the court to extend the time to object to discharge, for cause, on motion of any party in interest, and after a noticed hearing. The motion shall be filed before the time has expired unless the conditions specified in Rule 4004(b)(2) are met.

Rule 4007(c) requires a complaint to determine the dischargeability of a debt under § 523(c) to be filed no later than 60 days after the first date set for the § 341 meeting of creditors. The court may for "cause" extend the time fixed on request of any party in interest, after notice and a hearing, and filed before the time has expired.

Extension of time for "cause" under Rules 4004(b) and 4007(c) "should be granted liberally absent a clear showing of bad faith[.]" *In re Kellogg*, 41 B.R. 836, 838 (Bankr. W.D. Okla. 1984). "The moving party has the burden of proof to show cause to extend the time for matters relating to the debtor's discharge." *In re Bomarito*, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011), citing *In re Stonham*, 317 B.R. 544, 547 (Bankr. D. Colo. 2004).

The first 341 meeting here was scheduled for October 25, 2022. Doc. #26. Therefore, the deadline to file a complaint pursuant to §§ 523 or 727 was Saturday, December 24, 2022, which is extended under Rule 9006(a)(1) to Monday, December 26, 2022. On December 22, 2022, Debtors and Movant stipulated to extend the deadlines to February 27, 2022, which the court approved on December 28, 2022. Docs. #77; #81. The order provided that no further extensions will be granted absent a fully noticed motion supported by a factual record establishing good cause.

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge or the dischargeability of certain debts. These factors include:

- (1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
- (2) The complexity of the case;
- (3) Whether the moving party has exercised diligence; and
- (4) Whether the debtor has been uncooperative or acted in bad faith.

Bomarito, 448 B.R. at 249, citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Here, the parties are still discussing a possible settlement of Movant's claims against Debtors and seek an additional 3-week continuance of the deadlines to finalize a settlement and related documentation. To avoid incurring unnecessary fees and costs, and in an effort to promote judicial economy, the parties have stipulated to extend the deadline to object to Debtors' discharge or the dischargeability of certain debts through and including March 20, 2023. Doc. #110.

An extension of time will provide Movant with sufficient time to complete its evaluation of whether an adversary proceeding for nondischargeability is necessary. Cause exists based on the stipulation and the status of this case.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. The deadlines for Movant to file a complaint objecting to the Debtors' discharge or the dischargeability of certain debts under 11 U.S.C. §§ 523 & 727 will be extended up to and including March 20, 2023.

18. [22-12070](#)-B-13 **IN RE: MICHELLE ONTIVEROS**
[TCS-1](#)

MOTION TO CONFIRM PLAN
2-13-2023 [[20](#)]

MICHELLE ONTIVEROS/MV
TIMOTHY SPRINGER/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.

Michelle Lynn Ontiveros ("Debtor") seeks confirmation of the *First Modified Chapter 13 Plan* dated February 13, 2023. Doc. #20.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation because Debtor did not provide sufficient notice of hearing and Debtor failed to schedule all debts required to be scheduled pursuant to 11 U.S.C. § 521(a).

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

The plan was not set for hearing on at least 35 days' notice. LBR 3015-1(d)(1) requires any plan set for a confirmation hearing to comply with Fed. R. Bankr. P. ("Rule") 2002(a)(9), which requires at least 21 days' notice of the deadline to file an objection to confirmation, as well as LBR 9014-1(f)(1). To comply with both Rule 2002(a)(9) and LBR 9014-1(f)(1), parties in interest shall be served at least 35 days prior to the hearing.

This motion was filed and served on February 13, 2023 and set for hearing on March 15, 2023. Doc. #26. February 13, 2023 is 30 days before March 15, 2023, and therefore this hearing was not set on at least 35 days' notice as required by LBR 3015-1(d)(1).

For the above procedural reason, this motion will be DENIED WITHOUT PREJUDICE. Debtor's next motion should attempt to resolve Trustee's other objection.

19. [23-10171](#)-B-13 **IN RE: SOCORRO LOPEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
2-10-2023 [[12](#)]

MICHAEL MEYER/MV
DISMISSED 2/21/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on February 21, 2023. Doc. #16. Accordingly, the trustee's motion to dismiss will be DENIED AS MOOT.

20. [17-14775](#)-B-13 IN RE: TIM LOWMEXAY
[JRL-2](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
2-7-2023 [[47](#)]

DONEKEO KEODARA/MV
JERRY LOWE/ATTY. FOR DBT.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

NO RULING.

On December 9, 2022, Tim Mone Lowmexay ("Debtor") passed away. *Ex. A*, Doc. #49. He is survived by his brother, Donekeo Keodara, who has agreed to substitute in as successor to Debtor to assist in the completion of administration of this case. Debtor's attorney, Jerry R. Lowe, requests an order: (1) substituting Mr. Keodara as successor to Debtor, (2) allowing administration of this case to continue, and (3) waiving the certification requirements for entry of discharge. Doc. #47.

No party in interest timely filed written opposition. This matter will be called as scheduled to inquire about the current status of this case.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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).

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. 25(a) (Fed. R. Bankr. P. 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Fed. R. Civ. P. 18(a) (Fed. R. Bankr. P. 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Fed. R. Civ. P. 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Fed. R. Bankr. P. 1016; and
- 3) Waiver of the post-petition education requirement for entry of discharge under 1328, including the post-petition education requirement under subsection (g).

Pursuant to LBR 1016-1, Debtor's attorney filed this motion for omnibus relief with a notice of death and redacted death certificate for Debtor. Doc. #47; *Ex. A*, Doc. #49. The court notes that Debtor completed the post-petition debtor education requirement on March 22, 2018 pursuant to 11 U.S.C. § 1328(g). Doc. #21.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Fed. R. Bankr. P. 1016 permits the case to proceed and be concluded in the same manner, so far as possible, as though the death had not occurred if two pre-requisites are met: (1) further administration is possible and (2) administration is in the best interest of all parties. However, Fed. R. Bankr. P. 1016 also allows the case to be dismissed.

Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007) (permitting further administration because it is both possible and in the best interests of parties); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration permitted if a personal representative is appointed and the confirmed plan is made current and paid through completion); *cf. In re Spider*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999) (further administration deemed not possible because debtors' chapter 13 plan was not confirmed before death).

Here, Debtor filed chapter 13 bankruptcy on December 15, 2017. Doc. #1. The *Chapter 13 Plan* of that same date was confirmed on April 2, 2018 and provided for 60 monthly payments of \$351.00, plus Class 4 payments to Bay View Loan Servicing in the amount of \$377.14 per month. Docs. #5; #23. The 60th month after the petition date appears to be January 2023, so the plan term has been completed.

The motion indicates that Mr. Keodara has already paid the balance of the plan payments. Doc. #47. A copy of the payment receipt is attached as an exhibit, which shows a payment in the amount of \$710.71, including fees. *Ex. B*, Doc. #49.

Therefore, it appears that the plan has been completed and fully paid, so administration of this case is possible. However, there is no declaration from Mr. Keodara or Debtor's attorney supporting the attached exhibits.

This matter will be called and proceed as scheduled to inquire about the current status of this case. If the chapter 13 plan has been fully paid off, the court is inclined to GRANT this motion.

21. [20-12288](#)-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
2-9-2023 [[115](#)]

MICHAEL MEYER/MV
SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(6) debtors' failure to make all payments due under the plan. Doc #115. Francisco R. Ramirez and Melissa Diane Ramirez ("Debtors") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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.

Trustee indicates that Debtors are delinquent in the amount of \$7,936.79. Doc. #117. Before the hearing on this motion, an additional payment of \$4,328.37 will become due on February 25, 2023, for a total of \$12,265.16 due before the hearing.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay.

In addition, the trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,184.51 after trustee compensation if the case were converted to chapter 7. Doc. #117. This amount is comprised of Debtors' funds in bank account on petition date. The liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, serves the interests of creditors and the estate.

Accordingly, this motion will be GRANTED, and the case will be dismissed.