



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Wednesday, May 10, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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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**
[FW-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
4-11-2023 [[177](#)]

PETER FEAR/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.

Fear Waddell, P.C. ("Applicant"), counsel for Douglas Dale Parks ("Debtor"), requests compensation in the sum of \$17,862.78 on a final basis pursuant to 11 U.S.C. § 330. Doc. #177. This amount consists of \$17,419.00 in fees as reasonable compensation for services rendered and \$443.78 in reimbursement for actual, necessary expenses from January 1, 2019 through April 10, 2023. *Id.* Applicant also requests that the fees and costs previously approved on an interim basis be approved on a final basis. *Id.*

Although Applicant met in person with Debtor on January 30, 2023 and explained to him what fees are anticipated to be paid through the plan and what fees are anticipated to be paid following discharge, Debtor declined to sign the client consent form because the fees were not paid through the plan. Doc. #179.

Chapter 13 trustee Michael H. Meyer ("Trustee") filed comments to this application. Doc. #183. Trustee indicates he received a letter from Debtor stating that Debtor does not believe (1) "that the attorney put enough in the plan to cover his expenses[;]" (2) "along the 60 months counsel should have increased the payments to cover this large sum of money[;]" and (3) "that the Chapter 13 was to get the debtor out of debt . . . and that he would pay over several years[.]" *Id.*

No party in interest, including Debtor, timely filed written opposition. This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the Debtor, 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). 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 the operative *Second Modified Chapter 13 Plan* dated January 30, 2019, confirmed May 1, 2019, provides that Applicant was paid \$2,500.00 in fees (plus the \$310.00 filing fee, for a total of \$2,810.00) prior to filing the case and, subject to court approval, additional fees of \$16,620.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Rules 2002, 2016-17. Docs. #100; #116. The plan also includes a *Johnson* fee waiver, which is identical to the waiver contained in the order confirming the prior plan:

Pursuant to 11 U.S.C. Sec. 1322(a)(2), and *In re Johnson*, 344 B.R. 104 (BAP 9th Cir.2006), debtor and debtor's attorney agree that debtor's attorney fees and costs remaining unpaid upon completion of the case shall not be discharged and shall be paid directly by the debtor to counsel for the debtor before and/or after entry of the discharge, provided that all of the following conditions are satisfied: (1) debtor's attorney fees and costs are approved by the bankruptcy court pursuant to 11 U.S.C. Sec. 330, (2) based on the circumstances of the case, the court determines said fees and costs should be non-dischargeable, and (3) prior to submitting a fee application in which counsel is requesting that certain fees be non-dischargeable, counsel shall meet in person with the debtor to explain what fees are anticipated to be paid through the plan and what fees are anticipated to be paid following discharge.

Doc. #100 at 8. Debtor signed the plan and a declaration in support of plan confirmation on January 29, 2019. *Id.* at 7; Doc. #101. That same day, Debtor also signed a client consent form for approval of Applicant's first interim application, which stated:

I, DOUGLAS DALE PARKS, am a debtor in the above-entitled matter. I have read the Interim Fee Application of FEARWADDELL, P.C. and approve the same.

Professional	Rate	Hours	Amount
Gabriel J. Waddell (no charge)	\$0	0.10	\$0.00
Gabriel J. Waddell (2019)	\$310	10.40	\$3,224.00
Gabriel J. Waddell (2020)	\$320	17.90	\$5,728.00
Gabriel J. Waddell (2021)	\$330	5.00	\$1,650.00
Gabriel J. Waddell (2022)	\$345	8.20	\$2,829.00
Gabriel J. Waddell (2023)	\$360	4.50	\$1,620.00
Gabriel J. Waddell (2023). ¹	\$360	2.50	\$900.00
Katie Waddell (2019)	\$210	0.90	\$189.00
Kayla Schlaak (2019)	\$80	1.40	\$112.00
Kayla Schlaak (2020)	\$100	0.80	\$80.00
Kayla Schlaak (2021)	\$110	0.90	\$99.00
Kayla Schlaak (2022)	\$125	2.60	\$325.00
Kayla Schlaak (2023)	\$140	4.00	\$560.00
Laurel Guenther (2022)	\$100	0.80	\$80.00
Laurel Guenther (2023)	\$115	0.20	\$23.00
Total Hours & Fees		60.20	\$17,419.00

Docs. #177; #179; Exs. B-C, Doc. #180. Applicant also incurred **\$443.78** in expenses as follows:

Photocopying	\$233.55
Postage	\$187.73
CourtCall	\$22.50
Total Costs	\$443.78

Id. These combined fees and expenses total **\$17,862.78**. After application of \$4,703.96 remaining in the plan, \$13,158.82 would remain non-dischargeable to be paid by Debtor directly.

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 here included, without limitation: (1) preparing, filing, and confirming the *Second Modified Plan* (FW-5); (2) analyzing thirteen *Notices of Default* filed by Trustee and communicating with Debtor regarding the same; (3) opposing Trustee’s two motions to dismiss, which were ultimately withdrawn (MHM-3; MHM-4); (4) preparing motion on shortened time and obtaining authorization to incur debt to purchase house (FW-6); (5) preparing case closing paperwork; (6) administering the case and communicating with Debtor regarding the

debtor education course, issues related to creditor collection attempts, tax issues, COVID issues, and changes of address; and (7) preparing and filing this fee application (FW-7). The court finds these services and expenses actual, reasonable, and necessary. No party in interest has timely filed written opposition.

Although Debtor has not consented to the proposed payment, under 11 U.S.C. § 1322(a)(2) and *In re Johnson*, 344 B.R. 104 (B.A.P. 9th Cir. 2006), first, the fees and costs of \$32,588.82 are approved. There is no objection to specific services or any challenge to the *bona fides* of the services for which compensation is sought. Applicant's declaration states Debtor was aware of the fees. Doc. #179.

Second, based on the circumstances of this case, the fees and costs should be deemed non-dischargeable. Applicant and Debtor agreed that the fees and costs in the plan were insufficient for the amount of work required in this case. So, Applicant and Debtor agreed that fees not paid through the plan would be non-dischargeable and paid directly by Debtor before or after discharge. Doc. #100; *Ex. F*, Doc. #95.

Also, this appears to be a case requiring substantial post-confirmation services. Applicant responded to thirteen or fourteen *Notices of Default* and two dismissal motions. A motion (on shortened time) to incur debt was needed as well. The time constraints presented to Applicant were driven by Debtor's need to locate and purchase property to park trucks. The circumstances of this case required Applicant's attention and some of that attention was unanticipated when the plan was confirmed.

What's more, Debtor here acknowledged the reason for his potential lingering liability for fees. *Ex. F*, Doc. #95. The reason was unchanged plan payments. *Id.*; Doc. #179. Also uncontroverted is that Debtor and Applicant met earlier this year to discuss this further. It was only then that Debtor did not consent—four years after agreeing to the *Johnson* waiver. Absent specific objections to specific services a generic "I do not agree" is insufficient.

Third, as mentioned, Applicant met with Debtor in person on January 29, 2019 and January 30, 2023 and explained to him what fees are anticipated to be paid through the plan and what fees are anticipated to be paid following discharge *Ex. F*, Doc. #95; Doc. #179. Debtor is bound by the plan. § 1327(a).

Accordingly, this motion will be GRANTED. Applicant will be awarded \$17,419.00 in fees as reasonable compensation for services rendered and \$443.78 in reimbursement for actual, necessary expenses. Applicant will be awarded a total of \$17,862.78 in compensation for services rendered and costs incurred from January 1, 2019 through April 10, 2023.

Additionally, the court will approve on a final basis the \$14,726.04 in interim compensation awarded for services and expenses for February

28, 2018 through December 31, 2018. The total compensation approved in this case will be \$32,588.82.

Trustee will be authorized to pay Applicant the remaining \$4,703.96 in accordance with the confirmed chapter 13 plan. The remaining \$13,158.82 will be non-dischargeable and paid directly by Debtor in accordance with the confirmed chapter 13 plan.

¹ The services in this entry have yet to be performed. Applicant has estimated 2.5 billable hours for the following: (1) review of notice of completed plan payments, communication with client regarding the same, and case closing review and memorandum regarding deadlines and tasks for case closing (0.5 hours); (2) preparation of the statements required by 11 U.S.C. § 1328 and communication with client regarding the same (0.5 hours); (3) review of Trustee's final report and other communication, entry of discharge, and the final decree, and communication with Debtor regarding the same (1.0 hours); and (4) preparing demand letter for Debtor's pink slips for the vehicle being paid through the plan, and communication with the creditors and Debtor regarding the same (0.5 hours). *Ex. A, Doc. #180.*

2. [22-12101](#)-B-13 **IN RE: ANGEL ARELLANO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-17-2023 [\[38\]](#)

SCOTT LYONS/ATTY. FOR DBT.
\$78.00 FINAL INSTALLMENT PAYMENT 4/25/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the final installment fee now due have been paid. Accordingly, the order to show cause will be VACATED.

3. [21-12703](#)-B-13 **IN RE: TERESA DESATOFF**
[TCS-1](#)

CONTINUED 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: Denied without prejudice.

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

This motion was originally heard on March 15, 2023. Doc. #36.

Teresa Lynn Desatoff ("Debtor") sought 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. The plan also requires a motion to value collateral so that Class 2(B) creditor Ally Financial can be paid based on the alleged \$10,462.00 value at 6% interest on a 2016 Jeep Renegade Trailhawk. *Id.* 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. This motion was continued so Debtor could file a motion to value collateral "by the end of the week." Docs. ##36-37. To date, no such motion to value collateral has been filed.

This matter will be called and proceed as scheduled to inquire why a motion to value collateral has not been filed. It appears Debtor can resolve Trustee's objection in the order confirming plan, but Debtor must first successfully prosecute a motion to value collateral.

4. [22-11806](#)-B-13 **IN RE: GUSTAVO/ARACELI CERVANTES**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-16-2023 [\[30\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

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

This motion was originally heard on April 19, 2023. Doc. #46.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #30.

This motion was continued to May 10, 2023 to be heard in connection with Debtors' motion to confirm the *Second Modified Chapter 13 Plan* dated April 5, 2023. Docs. ##46-47. That plan was withdrawn on May 3, 2023. Doc. #57.

That same day, Debtors filed a response to this motion, indicating that they had filed the *Third Modified Chapter 13 Plan* that same day, which is set for hearing on June 14, 2023 at 9:30 a.m. Docs. #53; #59; TCS-3.

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 and failure to confirm a chapter 13 plan.

Here, this case was filed on October 21, 2022. Doc. #1. As of the date of this hearing, six months and 19 days have passed since this case was filed, and no plan has been confirmed.

Trustee has reviewed the schedules and determined that there is no equity in this case that could be realized for the benefit of unsecured claims. Doc. #30. Debtors have claimed exemptions in all of their personal property assets. Since there is no equity for unsecured

claims, dismissal, rather than conversion, best serves the interests of creditors and the estate.

This matter will be called as scheduled to inquire about the parties' positions. The court intends to CONDITIONALLY GRANT this motion. Pursuant to 11 U.S.C. § 1324(b), the court will set July 12, 2023 as a bar date by which a chapter 13 plan must be confirmed, or the case will be dismissed on Trustee's declaration.

5. [22-11806](#)-B-13 **IN RE: GUSTAVO/ARACELI CERVANTES**
[TCS-2](#)

MOTION TO CONFIRM PLAN
4-5-2023 [[34](#)]

ARACELI CERVANTES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The debtors withdrew the plan on May 3, 2023. Doc. #57. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

6. [22-11410](#)-B-13 **IN RE: HOWARD/KIM CRAUSBY**
[DAB-5](#)

MOTION TO CONFIRM PLAN
3-29-2023 [[101](#)]

KIM CRAUSBY/MV
DAVID BOONE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") seek an order confirming the *Third Amended Chapter 13 Plan* dated October 10, 2022. Doc. #101.

Although no party in interest timely filed written opposition, this matter will be called as scheduled to inquire about plan feasibility.

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). 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).

The 60-month, 100%-dividend plan proposes that Debtor shall make monthly payments of \$1,895.00 for 12 months, then \$3,200.00 for 48 months. Doc. #38. Debtors' *Amended Schedules I & J* indicate that they receive \$2,335.87 in monthly net income, which is sufficient to fund the proposed plan through month 12. Doc. #31. However, it is not sufficient to fund the plan for months 13-60. Starting month 13, Debtors will have a monthly deficit of \$864.13 per month. Over 48 months, Debtors will be short \$41,478.34.

This matter will be called as scheduled to inquire about plan feasibility. If resolved, this motion may be GRANTED. If granted, the confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

7. [22-11410](#)-B-13 **IN RE: HOWARD/KIM CRAUSBY**
[MHM-2](#)

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion was originally heard on March 15, 2023. Doc. #95.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #85.

On March 7, 2023, Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") filed opposition stating that a motion to confirm plan was filed on February 23, 2023, which will resolve the motion to dismiss. Doc. #88. So, the court continued this motion to March 29, 2023 to be heard in connection with the plan confirmation hearing. The court denied the motion to confirm plan without prejudice for procedural reasons. Docs. #99; #106.

On March 29, 2023, Debtors filed a new plan, which was set for hearing on May 10, 2023 in matter #6 above. DAB-5. Accordingly, the motion was further continued to May 10, 2023 to be heard in connection with the plan confirmation hearing.

The court intends to GRANT Debtors' motion to confirm plan in matter #6 above. This matter will be called as scheduled to verify the issues raised in Trustee's motion to dismiss have been resolved through plan confirmation. If so, this motion will be DENIED WITHOUT PREJUDICE.

8. [21-12317](#)-B-13 **IN RE: RYAN RHOADS**
[FW-2](#)

MOTION TO MODIFY PLAN
3-16-2023 [[34](#)]

RYAN RHOADS/MV
GABRIEL WADDELL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Ryan Christopher Rhoads ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated March 16, 2023. Doc. #34.

Although no party in interest timely filed written opposition, this matter will be called as scheduled to inquire about plan feasibility. If resolved, this motion may be GRANTED.

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). 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).

The 60-month plan proposes that Debtor shall make payments into the plan as follows:

- \$735 per month for 1 month (October, 2021)
- \$979.88 per month for 1 month (November, 2021)
- \$400 per month for 1 month (December, 2021)
- \$500 per month for 1 month (January, 2022)
- \$400 per month for 3 months (February - April, 2022)
- \$3,042.24 per month for 1 month (May, 2022)
- One month moratorium on plan payments (June, 2022)
- \$857.14 per month for 7 months (July, 2022 - January, 2023)
- \$400 per month for the remaining 44 months of the Plan[.]

Doc. #38 at 7. The plan also contains a provision under 11 U.S.C. § 1322(a)(2) and *In re Johnson*, 344 B.R. 104 (B.A.P. 9th Cir. 2006), indicating that attorney fees and costs approved under § 330 but remaining unpaid upon the completion of the case shall not be discharged and shall be paid directly by the debtor before and/or after entry of discharge. *Ibid*.

In contrast, the operative *Chapter 13 Plan* dated September 30, 2021, confirmed November 12, 2021, provides that Debtor will pay \$735.00 per month for 60 months with a 100% dividend to allowed, non-priority unsecured claims. Docs. #4; #16. That plan also contains a *Johnson* fee waiver. *Id*.

The reason for the decrease in the dividend to unsecured claims is the result of Debtor's post-petition marriage, in which he acquired two children and is now a household of four. Doc. #36. Debtor also changed jobs and returned to work at his previous employer. *Id*. Debtor filed *Amended Schedules I & J* based on his changed anticipated income, his wife's anticipated income, and their reasonable and necessary anticipated expenses as a household of four, which indicates they receive \$353.25 in monthly net income. *Id.*; Doc. #39. Debtor has a monthly deficit of \$46.75 per month. Over 44 months, he will be short \$2,057.00. No party in interest timely filed written opposition.

This matter will be called as scheduled to inquire about plan feasibility. If resolved, this motion may be GRANTED. If granted, the confirmation order shall include the docket control number of the motion and shall reference the plan by the date it was filed.

9. [22-11941](#)-B-13 **IN RE: HARVEY/IRENE GONZALES**
[DAB-2](#)

MOTION TO CONFIRM PLAN
3-29-2023 [\[55\]](#)

IRENE GONZALES/MV
DAVID BOONE/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.

Harvey Earl Gonzales and Irene Aguirre Gonzales (collectively
"Debtors") move for an order confirming the *First Amended Chapter 13*
Plan dated January 11, 2023. Doc. #23.

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.

The 60-month plan proposes that Debtors shall pay \$150.00 per month
for two months, and \$180.00 per month thereafter (for 58 months) with
an 8.5% dividend to allowed, non-priority unsecured claims. Doc. #23.
The additional provisions also provide that unsecured creditors shall
receive no less than \$5,581.00. *Id.* at 7. Debtors' *Amended Schedules I*
& J indicate that they receive \$182.00 in monthly net income, which is
sufficient to afford the proposed plan payment. No party in interest
timely filed written opposition.

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

10. [22-11941](#)-B-13 **IN RE: HARVEY/IRENE GONZALES**
[MHM-2](#)

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

MICHAEL MEYER/MV
DAVID BOONE/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 motion was originally heard on March 15, 2023. Doc. #47.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors and failure to confirm a chapter 13 plan. Doc. #28.

On March 7, 2023, Harvey Earl Gonzales and Irene Aguirre Gonzales (collectively "Debtors") filed opposition stating that a motion to confirm plan was filed on February 23, 2023, which will resolve the motion to dismiss. Doc. #43. The court continued this motion to March 29, 2023 to be heard in connection with the plan confirmation hearing. Docs. ##47-48. The motion to confirm plan was denied for procedural reasons, so the court further continued this motion to be heard in connection with Debtor's renewed motion to confirm plan, which is the subject of matter #9 above. Docs. #51; #59.

The court intends to grant Debtors' motion to confirm plan in matter #9 above, and therefore, Debtors have resolved Trustee's motion to dismiss. Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

11. [23-10243](#)-B-13 **IN RE: JAMES/REYNA SALAS**
[JDR-1](#)

MOTION TO CONFIRM PLAN
3-31-2023 [\[18\]](#)

REYNA SALAS/MV
JEFFREY ROWE/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.

James Blanco Salas and Reyna Q. Salas (collectively, "Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated March 31, 2023. Doc. #18.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed written opposition. Doc. #29.

Debtors replied. Doc. #33.

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)(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 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).

The 60-month plan proposes that Debtors shall pay an aggregate of \$3,948.09 through month 1, and commencing month 2 through 60, the monthly payment shall be \$3,948.09. Doc. #23. The plan proposes a 32.92% dividend to allowed, non-priority unsecured claims. Debtors' *Amended Schedules I & J* indicate receipt of \$4,009.00 in monthly net income, which is sufficient to fund the proposed plan payment. Doc. #23.

Trustee objects to plan confirmation 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. #29. As is, the plan funds in 61.51 months because it now provides for Merced County Tax Collector in Class 2 instead of as a priority creditor. *Id.* To fund in 60 months, Debtors would need to increase their plan payment to \$3,987.79 from month 1. *Id.*

In response, Debtors agree to make the increased plan payment of \$3,987.79 for months 1-60. Doc. #33.

No other parties in interest timely filed written opposition and Debtors can resolve Trustee's objection in the order confirming plan.

Accordingly, this motion will be GRANTED. The confirmation order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

12. [20-10951](#)-B-13 **IN RE: PERRY HALE AND MARGARET ALLEN**
[TCS-2](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AND
FOR APPOINTMENT OF REPRESENTATIVE AS TO DEBTOR
4-8-2023 [\[29\]](#)

MARGARET ALLEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

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.

On September 15, 2020, joint debtor Perry N. Hale ("Decedent") passed away. *Ex. B*, Doc. #32. He is survived by joint debtor Margaret Allen, formerly known as Margaret Hale ("Debtor"). Debtor seeks an order (1) appointing Debtor as the representative of Decedent; and (2) waiving the certification requirements for entry of discharge in a chapter 13 case. Doc. #29.

No party in interest timely filed written opposition. This motion will be called and proceed as scheduled.

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. ("Civ. Rule") 25(a) (Fed. R. Bankr. P. ("Rule") 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 Civ. Rule 18(a) (Rules 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Civ. Rule 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Rule 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 filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Docs. ##28-32. The court notes that both Debtor and Decedent filed certificates of post-petition debtor education on March 12, 2020 pursuant to 11 U.S.C. § 1328(g). Docs. ##8-9.

If a reorganization or individual's debt adjustment case is pending under chapter 13, Rule 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, Rule 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, the debtors filed chapter 13 bankruptcy on March 12, 2020. Doc. #1. Their *Chapter 13 Plan* dated March 12, 2020, confirmed May 12, 2020, provided for 36 monthly payments of \$169.00. Docs. #4; #17. The plan also provided for paying Class 4 creditor Toyota Financial Services \$267.00 per month in connection with its security interest in a 2013 Scion XB. The 36th month after the petition date is April 2023, so the plan appears to be completed.

On July 1, 2022, Debtor married James A. Allen and changed her name to Margaret Allen. *Ex. A*, Doc. #32. Debtor declares she was not aware the court needed to be informed of Decedent's death, or of her name change. Doc. #31. Debtor has continued to make payments under the plan. Debtor believes she is the best person qualified to represent Decedent through the duration of this case.

It appears that the plan has been completed and fully paid, so administration of this case is possible. 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.

13. [18-12454](#)-B-13 **IN RE: LOREN/STACIE AFFONSO**
[PLG-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE
REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
3-31-2023 [\[55\]](#)

STACIE AFFONSO/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

On January 10, 2022, joint debtor Loren Joseph Affonso ("Decedent") passed away. *Ex. 1*, Doc. #58. He is survived by joint debtor Stacie Marie Affonso ("Debtor"). Debtor seeks an order (1) appointing Debtor as the successor to representative of Decedent; (2) waiving the post-

petition education requirement; and (3) waiving the certification requirements for entry of discharge in a chapter 13 case. Doc. #55.

No party in interest timely filed written opposition. This motion will be called and proceed as scheduled.

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. ("Civ. Rule") 25(a) (Fed. R. Bankr. P. ("Rule") 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 Civ. Rule 18(a) (Rules 7018, 9014(c)):

- 1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Civ. Rule 25(a);
- 2) Continued administration of the case under chapter 13 pursuant to Rule 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 filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Docs. ##55-58. The court notes that neither Debtor nor Decedent filed certificates of post-petition debtor education pursuant to 11 U.S.C. § 1328(g).

If a reorganization or individual's debt adjustment case is pending under chapter 13, Rule 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, Rule 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, the debtors filed chapter 13 bankruptcy on June 19, 2018. Doc. #1. Their original *Chapter 13 Plan* dated June 19, 2018, confirmed August 18, 2018, provided for 60 monthly payments of \$3,040.00. Docs. #5; #18. The *First Modified Chapter 13 Plan* dated November 14, 2019, confirmed January 7, 2020, provided that the debtors' payments will be "as received up through and including October 2019;" then, \$4,985.53 for November 2019 (month 17), and then \$3,183.00 per month beginning December 2019 (month 18) to the end of the plan (month 60). Docs. #41; #47. The 60th month of the plan appears to be June or July 2023, so this plan is close to completion.

Debtor declares her nomination as Decedent's representative is appropriate because she is his spouse and the administrator of his estate. Doc. #57. Debtor says continuity will be maintained to the benefit of all parties and the administration of this bankruptcy estate. Debtor holds possession of Decedent's assets and obligations as such were held as community property. Debtor understands that if she is approved to serve as Decedent's representative, she will (a) accept service of pleadings mailed to Decedent; (b) appear at hearings as Decedent would have appeared; (c) provide such information to their attorney; (d) cooperate with lawful requests for information and assistance that may be placed upon Debtor by the trustee; and (e) perform such other duties as would have been performed by Decedent. *Id.*

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.

14. [22-12070](#)-B-13 **IN RE: MICHELLE ONTIVEROS**
[MHM-2](#)

MOTION TO DISMISS CASE
3-27-2023 [\[34\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/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) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors, failure to confirm a chapter 13 plan, and failure to make all payments due under the plan. Doc #34. Michelle Lynn Ontiveros ("Debtor") did not oppose.

Unless 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) and (c)(4) for unreasonable delay, failure to confirm a chapter 13 plan, and failure to make all payments due under the plan.

As of March 27, 2023, Debtor is delinquent in the amount of \$4,030.00. Doc. #36. Before this hearing, another payment in the amount of \$2,015.00 will also come due. *Id.*

Trustee has reviewed the schedules and determined that Debtor's significant assets—vehicles and real property—are over encumbered and are of no benefit to the estate. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion, is in the best interests of creditors and the estate. Doc. #34.

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

15. [22-10975](#)-B-13 **IN RE: MIRALDA GOMEZ**
[SL-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICE OF
SCOTT LYONS DEBTORS ATTORNEY(S)
4-6-2023 [\[75\]](#)

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"), counsel for Miralda Gomez ("Debtor"), requests compensation in the sum of \$10,715.10 on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330. Doc. #75. This amount consists of \$9,818.50 in fees as reasonable compensation for services rendered, and \$896.60 in reimbursement for actual, necessary expenses from May 23, 2022 through April 5, 2023. *Id.*

Debtor executed a statement of consent dated April 5, 2023 indicating that Debtor has reviewed the fee application and has no objections to the same. *Id.* § 9(7), at 5.

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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.

Debtor filed chapter 7 bankruptcy on June 10, 2022. Doc. #1. The case was converted to chapter 13 on September 1, 2022. Doc. #31. Section 3.05 of the *Chapter 13 Plan* dated September 14, 2022, confirmed January 18, 2023, provides that Debtor paid Applicant \$1,500.00 prior to the filing of the case, and subject to court approval, Applicant will be paid \$12,000.00 through the plan by filing and serving a motion in conformance with 11 U.S.C. §§ 329 & 330, and Rules 2002, 2016-17. Docs. #36; #61.

The court notes that Debtor filed the *First Modified Chapter 13 Plan* dated April 6, 2023, which is set for hearing on May 17, 2023. SL-3; Doc. #70. This new plan reiterates the same amounts as the original plan for allocation of Applicant's attorney fees. *Id.* The original and amended *Disclosure of Compensation* Form B2030 indicates Applicant was paid \$1,537.00 pre-petition, which is \$1,500.00 in fees plus a \$37.00 credit report fee. Docs. #1; #37; see also *Ex. A*, Doc. #77.

This is Applicant's first interim fee application. Applicant's firm provided 43.68 billable hours of legal services at the following rates, totaling **\$9,818.50** in fees:

Professional	Rate	Hours	Fees
Scott Lyons	\$400	1.81	\$724.00
Louis Lyons	\$350	19.63	\$6,870.50
Sylvia Gutierrez	\$100	22.24	\$2,224.00
Total Hours & Fees		43.68	\$9,818.50

Ex. B, Doc. #77. The court notes that the fee summary contained in the application contains inaccurate entries and is off by approximately 20 hours. Doc. #75 at 4. Additionally, the expense entries are itemized in the invoice as billable hours for Sylvia Gutierrez, but it is unclear how these five additional expenses billed as five hours nearly doubled her hours (22.24 to 41.40). *Ex. B* at 1-2, 6-7. Nevertheless, the sum of the fees in Applicant's invoice entries total the \$9,818.50 requested here.

Applicant also incurred **\$896.60** in expenses:

Credit report	\$37.00
Postage & Stationary	\$859.60
Total Costs	\$896.60

Ibid. These combined fees and expenses total **\$10,715.10**. After application of the \$1,537.00 in pre-petition payments, \$9,178.10 would be paid through the plan. *Ex. A, Doc. #77.* This would leave \$2,821.90 in the plan for future fee applications.

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 here included, without limitation: (1) converting the case from chapter 7 to chapter 13 so Debtor could keep his vehicle that would have been sold by chapter 7 trustee (SL-1); (2) preparing a chapter 13 plan and responding to objections (NLG-1); (3) preparing a motion to value collateral (SL-2); (4) preparing and filing a modified plan, which is set for hearing on May 17, 2023 (SL-3); and (5) preparing and filing this fee application. *Exs. A-B, Doc. #77.* The court finds these services and expenses actual, reasonable, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees and expenses. *Doc. #75.*

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$9,818.50 in fees and \$896.60 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review under § 330. After application of the \$1,537.00 pre-petition payment, the chapter 13 trustee, in the trustee's discretion, will be authorized to pay Applicant \$9,178.10 for services and expenses from May 23, 2022 through April 5, 2023.

16. [23-10377](#)-B-13 **IN RE: LISA ELLIOTT**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY AMERICREDIT FINANCIAL
SERVICES, INC.
3-13-2023 [\[14\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
CHRISTIE LEE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

On March 29, 2023, Americredit Financial Services, Inc. withdrew this objection to confirmation of the plan. Doc. #21. Accordingly, this objection will be dropped and taken off calendar pursuant to the withdrawal.

17. [21-10087](#)-B-13 **IN RE: DICKY GONZALES AND MARIA ZAMORA**
[PBB-1](#)

MOTION TO MODIFY PLAN
3-20-2023 [\[29\]](#)

MARIA ZAMORA/MV
PETER BUNTING/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.

Dicky P. Gonzales, Sr., and Maria Martha Zamora (collectively "Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated March 20, 2023. Doc. #29.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed written opposition. Doc. #36.

Debtors replied. Doc. #38.

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 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).

The 60-month plan proposes that Debtors will pay an aggregate amount of \$50,600.00 in the first 27 months, then \$1,700.00 per month for 33 months (starting May 2023). Doc. #31. The plan proposes a 35% dividend to allowed, non-priority unsecured claims. *Id.* Debtors' *Amended Schedules I & J* dated March 20, 2023 indicate receipt of \$2,249.35 in monthly net income, which is sufficient to afford the proposed plan payment.

In contrast, the operative *Chapter 13 Plan* dated January 15, 2021, confirmed April 5, 2021, provides that Debtor will pay \$2,200.00 per month for 60 months with a 100% dividend to allowed, non-priority unsecured claims. Docs. #3; #16.

Trustee objected to plan confirmation on the basis that the plan is decreasing the percentage to unsecured claims without reason. Doc. #36. However, Trustee acknowledges that this may be a typographical error because the motion indicates that there is to be no change to the unsecured creditors, and that the unsecured creditors will continue to receive a 100% dividend. *Id.*, citing Doc. #29.

In reply, Debtors concede that the 35% dividend is a typo, and that they intend on paying 100% to unsecured creditors. Doc. #38. Debtors propose addressing this typographical error in the order confirming plan. *Id.*

No other parties in interest timely filed written opposition. This matter will be called and proceed as scheduled. It appears Debtors can resolve Trustee's objection in the order confirming plan. If so, this motion will be GRANTED. The confirmation order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

18. [23-10291](#)-B-13 **IN RE: BRITTANY MULLER**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE LLC
3-15-2023 [\[15\]](#)

EXETER FINANCE LLC/MV
PETER BUNTING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
DISMISSED 3/20/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on March 20, 2023.
Doc. #24. Accordingly, this objection to confirmation of the plan will
be OVERRULED AS MOOT.

19. [23-10392](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEDALLION BANK
4-14-2023 [\[17\]](#)

MEDALLION BANK/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Continued to May 17, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Medallion Bank ("Creditor"), as serviced by Systems & Services
Technologies, Inc. ("SST"), objects to confirmation of the *Chapter 13*
Plan dated March 10, 2023 pursuant to Local Rule of Practice ("LBR")
3015-1(c)(4). Doc. #17.

Though not required, Humberto Crispin Vidales and Nancy E. Garcia
Vidales (collectively "Debtors") filed a written response. Doc. #35.

Creditor objects for three reasons. First, Creditor has a security
interest in a 2018 Big Tex 25' Goosen ("Property") in the amount of
\$13,268.71, including an arrearage in the amount of \$5,798.77. *Id.*
Creditor contends Property has a value of \$14,995.00. Creditor's claim
is listed in the plan as a Class 2A claim with a secured claim in the
amount of \$6,493.00, but no motion to value collateral has been filed

nor granted as required by 11 U.S.C. § 1325(a)(5)(B) determining the value of Creditor's claim to be anything other than \$13,268.71.

Second, since Creditor's claim is oversecured, under 11 U.S.C. § 506(b), it is entitled to the contract rate of interest and for attorney's fees. Creditor objects because Debtors have proposed an unreasonable low interest rate of 8.0% and Creditor is entitled to its contract rate of interest of 17.95%. *Id.*, citing *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

Lastly, Creditor objects because the plan fails to provide how Debtors will make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). After Debtors correct the payment amount to Creditor, Debtors will not have sufficient funds to fund the plan absent further amendment. *Id.*

In response, Debtors claim to be in the process of filing a motion to value collateral. Doc. #35. Debtors request this motion be denied, or alternatively, Debtors request an evidentiary hearing with respect to the value of the Property and the appropriate interest rate.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters.

Based on the record, the factual issues appear to include:

- (1) the value of the Property; and
- (2) the appropriate interest rate to pay Creditor on account of its claim.

This objection will be CONTINUED to May 17, 2023 to be heard in connection with Trustee's related objection to confirmation and objection to Debtors' claim of exemptions. The continued hearing will be a scheduling conference and the parties shall be prepared for the court to set an early evidentiary hearing.

20. [23-10392](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-20-2023 [\[27\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 17, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* dated March 10, 2023 pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #10. Trustee objects on all grounds, including but not limited to disposable income, because the plan fails to comply with other applicable provisions of the Bankruptcy Code as required by 11 U.S.C. § 1325(a)(1). Trustee cannot narrow the issues or recommend confirmation on grounds that the schedules, plan, and statements are incomplete or inaccurate. Trustee has not received the joint debtor's paystubs or the specially requested documents, including evidence of retirement loans, life insurance policies, and the most recent Santander auto loan statement and the auto contract. *Id.* Trustee reserves the right to further supplement this objection when Trustee has further information.

Though not required, Humberto Vidales and Nancy E. Garcia Vidales (collectively "Debtors") filed written opposition. Doc. #31. Debtors intend to file a new plan that will encompass all of the issues raised by Trustee and will make sure he receives all requested documents that are within their ability to provide. *Id.* Debtors request this motion be continued to May 17, 2023 to be heard in connection with Trustee's objection to Debtors' claim of exemptions. *Id.*

Accordingly, this objection will be CONTINUED to May 17, 2023 at 9:30 a.m. to be heard in connection with Trustee's objection to Debtors' claim of exemptions.

21. [23-10099](#)-B-13 **IN RE: ANGELA MCPHETRIDGE**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
4-21-2023 [\[46\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Lakeview Loan Servicing, LLC ("Creditor") objected to confirmation of the *First Modified Chapter 13 Plan* filed on March 23, 2023 by Angela A. McPhentridge ("Debtor"). Doc. #46.

Debtor withdrew the plan on April 21, 2023 and filed the *Second Modified Chapter 13 Plan* on that same day. Docs. #36; #40. Accordingly, Creditor's objection to confirmation of the *First Modified Chapter 13 Plan* will be OVERRULED AS MOOT.

22. [23-10099](#)-B-13 **IN RE: ANGELA MCPHETRIDGE**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
3-23-2023 [\[24\]](#)

ANGELA MCPHETRIDGE/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Debtor Angela A. McPhentridge withdrew the motion to confirm plan on April 21, 2023. Doc. #36. Accordingly, this motion will be dropped and taken off calendar pursuant to the withdrawal.

11:00 AM

1. [23-10029](#)-B-7 **IN RE: LOUIS/AMY GENARO**
[23-1020](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
3-6-2023 [[1](#)]

GENARO V. AMERICAN EXPRESS NATIONAL BANK
TIMOTHY SPRINGER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [22-10974](#)-B-7 **IN RE: FRANCISCO SAMANIEGO**
[23-1019](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
2-24-2023 [[1](#)]

FEAR V. MEZA
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Continued to June 28, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

This status conference will be CONTINUED to June 28, 2023 at 11:00 a.m. Since the deadline for the defendant to file a response to the complaint has expired under Fed. R. Bankr. P. 7012, the plaintiff is directed to seek entry of default.