



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Wednesday, June 12, 2024

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, 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 or stated below.

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

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

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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. [19-10708](#)-B-13 **IN RE: ANTONIO VENEGAS AND MARTHA JAIMES**
[MHM-2](#)

CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
11-17-2023 [[115](#)]

T. O'TOOLE/ATTY. FOR DBT.

NO RULING.

2. [23-12509](#)-B-13 **IN RE: JESUS LASALDE**
[NES-2](#)

MOTION TO DISMISS CASE
5-15-2024 [[34](#)]

JESUS LASALDE/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Jesus Jose Lasalde ("Debtor") moves for an order voluntarily
dismissing this case pursuant to 11 U.S.C. § 1307(b). Doc. #34.

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

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

11 U.S.C. § 1307 provides:

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter.

Debtors have an absolute right to dismiss under § 1307(b) provided that the case has not been previously converted. *Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 964 (9th Cir. 2021). This case has not been previously converted, so it may be dismissed. But Debtors do not have the right to dismiss *without prejudice*.

11 U.S.C. § 105(a) allows the court to issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. The court is not precluded from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement orders, rules, or prevent an abuse of process. § 105(a).

11 U.S.C. § 349(a) affords the court judicial discretion to impose a variety of consequences of dismissal. *Duran v. Rojas (In re Duran)*, 630 B.R. 797, 809 (B.A.P. 9th Cir. 2021). For “cause,” the court may “order otherwise” to impose in a dismissal a prohibition on the discharge of any debt that could have been discharged in the dismissed case or an injunction from filing future bankruptcy petitions. *Ibid.*; § 349(a).

“Cause” has not been defined, but typically § 349(a) requires a showing of egregious conduct. “Generally, only if a debtor engages in egregious behavior that demonstrates and prejudices creditors . . . will a bankruptcy court forever bar the debtor from seeking to discharge then existing debts.” *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997).

The test to determine whether there is bad faith is the “totality of the circumstances” test. *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935, 939 (B.A.P. 9th Cir. 1997), citing *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). The court must consider the following four factors:

- (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
- (2) the debtor’s history of filings and dismissals;
- (3) whether the debtor only intended to defeat state court litigation; and
- (4) whether egregious behavior is present.

Duran, 630 B.R. at 810, citing *Leavitt*, 171 F.3d at 1224; see also, *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982); *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986). The burden is on the debtor to prove that the petition was filed in good faith. *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Cal. 1991).

This case was filed on November 9, 2023. Doc. #1. It has not been previously converted. On January 9, 2024, the chapter 13 trustee filed a motion to dismiss and on January 24, 2024, withdrew the

motion. Docs. ##17, 21. Debtor filed a motion to dismiss on May 2, 2024 and on May 7, 2024, withdrew the motion. Docs. ##31, 32.

Now, Debtor seeks to voluntarily dismiss this case under § 1307(b). Doc. #34.

Nothing in the record suggests that Debtor has misrepresented facts in the petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed the petition and plan in an inequitable manner. There is also no indication that Debtor filed bankruptcy only to defeat state court litigation, or otherwise engaged in egregious behavior.

In the absence of opposition, the court is inclined to GRANT this motion, resulting in this case being DISMISSED WITHOUT PREJUDICE.

3. [20-10949](#)-B-13 **IN RE: JESSE XIONG AND MAI PHAN**
[JDR-2](#)

MOTION FOR COMPENSATION FOR JEFFREY D. ROWE, DEBTORS
ATTORNEY(S)
5-14-2024 [\[54\]](#)

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Jeffrey Rowe ("Applicant"), attorney for Jesse Xiong and Mai Phan ("Debtors"), requests interim compensation in the sum of \$6,530.00 under 11 U.S.C. §§ 330 and 331. Doc. #54. This amount consists of \$6,530.00 in fees and \$0.00 in expenses from January 24, 2020, through March 21, 2024. *Id.*

Debtors executed a statement of consent dated May 5, 2024, indicating that Debtors have read the fee application and approve the same. Doc. #56 (*Exhib. E*).

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.

Section 3.05 of the *Chapter 13 Plan* dated March 12, 2020, confirmed June 12, 2020, indicates that Applicant was paid \$1,810.00 prior to filing the case (\$1,500.00 as a retainer, plus \$310.00 for the filing fee) and additional fees of \$15,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #2, #19.

This is Applicant's second interim fee application; a prior fee application having been denied by the court for procedural reasons. Doc. #53.

Applicant's firm provided **29.8** billable hours at the following rates, totaling **\$8,030.00** in fees:

Professional	Rate	Billed	Total
Jeffrey D. Rowe	\$350	20.20	\$7,070.00
Mandy Dabb, Paralegal	\$100.00	9.60	\$960.00
Total Hours & Fees		29.8	\$8,030.00

Docs. ##54,56. Applicant did not incur any expenses during the covered period. *Id.* After the \$1,500.00 retainer is applied to the requested fee award, the remaining balance is **\$6,530.00**. *Id.*

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" 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: prepetition consultation and fact-gather; preparation of the voluntary petition, Schedules, and Form 22C; independent verification of information; amendments to petitions and/or Schedules; original plan, hearings, objections; 341 preparation and attendance; claim administration and objections; fee applications; and case administration. Docs. ##54,56.

The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$8,030.00** in fees as reasonable compensation for services rendered and **\$0.00** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. §§ 330 and 331. After the retainer is applied, the chapter 13 trustee will be authorized to pay Applicant **\$6,530.00** through the confirmed plan for services and expenses from January 24, 2020, through March 21, 2024.

4. [24-11253](#)-B-13 **IN RE: KATHERINE SCONIERS STAPHILL**
[LGT-1](#)

MOTION TO DISMISS CASE
5-10-2024 [\[9\]](#)

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED

The chapter 13 trustee withdrew this motion on June 10, 2024. Doc. #25. Accordingly, this matter will be taken off calendar pursuant to the trustee's withdrawal.

5. [23-11774](#)-B-13 **IN RE: JAMES/KAMILA FRASER**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
5-15-2024 [\[40\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), attorney for James and Kamila Fraser ("Debtors"), requests interim compensation in the sum of **\$10,779.04** under 11 U.S.C. §§ 330 and 331. Doc. #40. This amount consists of **\$10,611.50** in fees and **\$167.54** in expenses from March 14, 2023, through April 30, 2024. *Id.*

Debtors executed a statement of consent dated May 13, 2024, indicating that Debtors have read the fee application and approve the same. Doc. #42 (*Exhib. E*).

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.

Section 3.05 of the *Chapter 13 Plan* dated August 14, 2023, confirmed October 3, 2023, indicates that Applicant was paid \$3,687.00 prior to filing the case, plus \$310.00 for the filing fee, a total prepetition payment of \$4,000.00, and additional fees of \$12,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #3, #26. This is Applicant's first interim fee application. Doc. #40.

Applicant's firm provided **58.0** billable hours at the following rates, totaling **\$14,298.50** in fees:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2023)	\$360.00	23.50	\$8,388.00
Gabriel J. Waddell (2024)	\$380.00	2.60	\$988.00
Katie Waddell	\$280.00	1.20	\$336.00
Ater A. Sauer	\$380.00	1.20	\$448.00
Kayla Schlaak (2023)	\$140.00	26.60	\$3,724.00
Kayla Schlaak (2024)	\$160.00	1.80	\$288.00
Laurel Guenther	\$115.00	1.10	\$126.50
Total Hours & Fees		58	\$14,298.50

Docs. ##40,42. Applicant also incurred expenses as follows:

Photocopying	\$87.90
Postage	\$47.64
Filing Fees	\$345.00
Total	\$480.54

Id. The total award sought is After the \$1,500.00 retainer is applied to the requested fee award, the remaining balance is **\$14,779.04**. *Id.* After the \$4,000.00 prepetition retainer is applied, the remaining balance is **\$10,799.04**.

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: prepetition consultation and fact-gather; preparation of the voluntary petition, Schedules, and Form 22C; independent verification of information; amendments to petitions and/or Schedules; original plan, hearings, objections; 341 preparation and attendance; claim administration and objections; fee applications; and case administration.
Docs. ##40,42.

The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$14,298.50** in fees as reasonable compensation for services rendered and **\$480.54** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. §§ 330 and 331. After the retainer is applied, the chapter 13 trustee will be authorized to pay Applicant **\$10,799.04** through the confirmed plan for services and expenses from March 14, 2023, through April 30, 2024.

6. [24-10981](#)-B-13 **IN RE: STUART WONG**
[LGT-1](#)

MOTION TO DISMISS CASE
5-2-2024 [[14](#)]

DISMISSED 5/7/24

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on May 7, 2024.
(Doc. #18). The motion will be DENIED AS MOOT.

7. [23-12482](#)-B-13 **IN RE: DORA LEON**
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
5-10-2024 [\[33\]](#)

NEIL SCHWARTZ/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.

Neil E. Schwartz ("Applicant"), attorney for Dora Leon ("Debtor"), requests interim compensation in the sum of **\$5,401.44** under 11 U.S.C. §§ 330 and 331. Doc. #33. This amount consists of **\$5,285.00** in fees and **\$116.44** in expenses from August 29, 2023, through April 22, 2024. *Id.*

Debtor executed a statement of consent dated May 2, 2024, indicating that Debtor has read the fee application and approve the same. Doc. #33(\$9.7) .

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

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

Section 3.05 of the *Chapter 13 Plan* dated November 3, 2023, confirmed December 22, 2023, indicates that Applicant was paid \$2,187.00 prior to filing the case, and additional fees of \$15,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. ##2,13. This is Applicant's first interim fee application. Doc. #33.

Applicant's firm provided **16.7** billable hours at the following rates, totaling **\$5,285.00** in fees:

Professional	Rate	Billed	Total
Neil Schwartz, Attorney	\$350.00	13.50	\$4,725.00
"J.L.," Paralegal	\$175.00	3.20	\$560.00
Total Hours & Fees		16.7	\$5,285.00

Docs. ##33,35. Applicant also incurred expenses as follows:

Postage	\$29.44
Other-Credit Report & Counseling Courses	\$87.00
Total	\$116.44

Id. The total award sought is **\$5,401.44**. After the \$2,187.00 retainer is applied to the requested fee award, the remaining balance is **\$3,214.44**. *Id.*

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: prepetition consultation and fact-gather; preparation of the voluntary petition, Schedules, and Form 22C; independent verification of information; original plan, hearings, objections; 341 preparation and attendance; claim administration and objections; fee applications; and case administration. Docs. ##33,35. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$5,285.00** in fees as reasonable compensation for services rendered and **\$116.44** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. §§ 330 and 331. After the retainer is applied, the chapter 13 trustee will be authorized to pay Applicant **\$3,214.44** through the confirmed plan for services and expenses from August 29, 2023, through April 22, 2024.

8. [22-10387](#)-B-13 **IN RE: MATTHEW/MARGARET TORRES**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
5-3-2024 [\[92\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), attorney for Matthew and Margaret Torres ("Debtors"), requests interim compensation in the sum of **\$4,856.46** under 11 U.S.C. §§ 330 and 331. Doc. #40. This amount consists of **\$4,607.00** in fees and **\$251.46** in expenses from November 1, 2022, through March 31, 2024. *Id.*

Debtors executed a statement of consent dated May 13, 2024, indicating that Debtors have read the fee application and approve the same. Doc. #94 (*Exhib. E*).

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.

Section 3.05 of the *Chapter 13 Plan* dated March 11, 2022, confirmed July 25, 2022, indicates that Applicant was paid \$3,687.00 prior to filing the case, plus \$310.00 for the filing fee, a total prepetition payment of \$4,000.00, and additional fees of \$12,000.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #3, #52. This is Applicant's second interim fee application. Doc. #92. The court previously awarded fees

in the amount of \$11,681.50 and costs in the amount of \$94.40 on December 20, 2022. Doc. #79.

Applicant's firm provided **58.0** billable hours at the following rates, totaling **\$14,298.50** in fees:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2022)	\$345.00	6.60	\$2,277.00
Gabriel J. Waddell (2023)	\$360.00	2.80	\$1,008.00
Gabriel J. Waddell (2024)	\$380.00	0.70	\$266.00
Katie Waddell (2023)	\$260.00	0.40	\$104.00
Kayla Schlaak (2022)	\$260.00	0.40	\$700.00
Kayla Schlaak (2023)	\$140.00	0.30	\$42.00
Kayla Schlaak (2024)	\$160.00	1.00	\$160.00
Laurel Guenther (2022)	\$100.00	0.50	\$50.00
Total Hours & Fees		12.7	\$4,607.00

Docs. ##92,94. Applicant also incurred expenses as follows:

Photocopying	\$121.97
Postage	\$128.69
Other: Pacer Fees	\$0.80
Total	\$251.46

Id.

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: amendments to petitions and/or Schedules; original plan, hearings, objections; claim administration and objections; motions; fee applications; and case administration. Docs. ##92,94. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$4,607.00** in fees as reasonable compensation for services rendered. Combined with the prior fee award of \$11,681.50, the court has awarded \$16,288.50 in fees, which exceeds the \$12,000.00 to be paid through the plan by **\$4,288.50**.

Accordingly, the chapter 13 trustee will be authorized to pay Applicant **\$318.50** through the confirmed plan for services and **\$251.46** in expenses (a total of **\$569.96**) from November 1, 2022, through March 31, 2024.

This leaves the remaining **\$4,288.50** in fees incurred in excess of the maximum fee award permitted to be paid through the plan. Paragraph 1(f) of the motion states as follows:

f. Fees and Expenses to be paid by Trustee or Debtor Direct (<i>Fee paid part by trustee and debtor explain [sic] in paragraph 9(3).</i>)	Trustee to the extent available, with remaining by Debtors.
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Doc. #92. The court notes that there is no paragraph 9(3) included in the motion. However, the confirmation order and the plan both state that "debtor and debtor's attorney agree that debtor's attorney fees and costs remaining unpaid upon completion of the case shall be paid directly by the debtor to counsel for the debtor before and/or after entry of discharge." Docs. ##3,52.

Accordingly, the remaining balance of **\$4,288.50** shall be paid by the Trustee to the extent that estate funds are available to do so after all other plan distributions are complete. Provided applicant complies with the provisions of the Order Confirming Plan, Debtor shall be responsible for any remaining balance which shall be treated as a nondischargeable debt to be paid post-discharge.

9. [22-11792](#)-B-13 **IN RE: JOSEPH/SEPTEMBER MIDDLETON**
[DMG-4](#)

MOTION TO MODIFY PLAN
5-8-2024 [\[66\]](#)

SEPTEMBER MIDDLETON/MV
D. GARDNER/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.

Joseph and September Middleton (collectively "Debtors") move for an order confirming Debtors' *Third Amended Chapter 13 Plan* dated May 8, 2024. Docs. ##66,69.

No party has timely objected.

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 any party in interest, including but not limited to creditors, the U.S. Trustee, and the case 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 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 motion requests that the confirmed plan be modified as follows:

1. Plan payments will be reduced from \$3,550.00 down to \$3,000.00. Debtors will pay \$0.00 for month 1, \$3,550.00 per month for months 2-19, and \$3,000.00 in months 20-60.
2. The dividend to unsecured creditors will be reduced from 100% down to 65%.
3. The Debtors State and Federal tax liability for years 2022 and 2023, estimated to be \$20,000.00 in total, will be added to Class 5.
4. Dividends to all other creditors will be unaffected.
5. Attorney's fees paid through the plan will be unaffected.

Docs. ##66,70.

Debtors aver that this modification is necessary because Debtors failed to withhold sufficient funds from earnings to pay on-going tax liabilities and were unable to negotiate a payment plan with the IRS that would allow them to maintain the current plan. Doc. #68. Thus, it became necessary to include Debtors' priority unsecured tax obligations in the plan. Doc. #33.

No party has objected, and so, this motion is GRANTED. The 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.

10. [23-12715](#)-B-13 **IN RE: VICTOR ISLAS-ZAVALA AND LORENA GONZALEZ**
[TCS-4](#)

CONTINUED MOTION TO CONFIRM PLAN
4-19-2024 [[62](#)]

LORENA GONZALEZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [23-12831](#)-B-7 **IN RE: EMANUEL SILVA**
[24-1005](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
4-8-2024 [[1](#)]

EDMONDS V. SILVA, JR. ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Continued to July 31, 2024, at 11:00 am.

ORDER: The court will issue the order.

On May 23, 2024, the Debtor in this adversary submitted a *Status Report* in which he requested a continuance to July 31, 2024, on the grounds that the parties are engaged in settlement talks. Doc. #11. Accordingly, this matter will be CONTINUED to July 31, 2024.

2. [23-11154](#)-B-7 **IN RE: MATTHEW BOTWRIGHT**
[23-1035](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
9-14-2023 [[10](#)]

BOTWRIGHT V. UNITED STATES
DEPARTMENT OF EDUCATION ET AL
JEFFREY ROWE/ATTY. FOR PL.

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

DISPOSITION: Concluded and dropped from calendar.

No order is required.

On May 2, 2024, pursuant to the stipulation of the parties, this court entered judgement in favor of the Plaintiff and against Educational Credit Management Corporation and dismissed the claims or previously alleged claims against all other Defendants. Doc. #45. The adversary closed on May 20, 2024. *Docket generally*. Accordingly, this Status Conference is concluded and will be DROPPED from the calendar.