

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday June 16, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [21-12006](#)-A-13 **IN RE: KRYSTAL WEDEKIND**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
5-19-2022 [\[24\]](#)

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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Fear Waddell, P.C. ("Movant"), counsel for Krystal Gale Wedekind ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation and reimbursement for expenses for services rendered from May 10, 2021 through March 31, 2022. Doc. #24. Debtor's confirmed plan states \$4,687 was paid to Movant prior to the filing of the case and provides for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 13. Movant seeks total compensation and reimbursement payable through the plan of \$2,711.96. Doc. #24. A prior fee application has not been filed. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #26.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition fact gathering and filing; (2) preparing and prosecuting Debtor's first modified plan; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A-D, Doc. #26. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses, with \$2,711.96 to be paid in a manner consistent with the terms of the confirmed plan.

2. [21-12006](#)-A-13 **IN RE: KRYSTAL WEDEKIND**
[MHM-1](#)

MOTION TO DISMISS CASE
5-13-2022 [\[20\]](#)

MICHAEL MEYER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 14, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to July 14, 2022, at 9:30 a.m., to be heard with the debtor's motion to confirm the first modified chapter 13 plan.

3. [20-10509](#)-A-13 **IN RE: EDDIE CALDWELL**
[MHM-2](#)

MOTION TO DISMISS CASE
5-13-2022 [\[128\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to August 11, 2022 at 9:30 a.m.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The court permitted the debtor to file a late response to the motion. Order, Doc. #134. The matter will proceed as scheduled.

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(6)). The debtor, Eddie Caldwell ("Debtor"), is delinquent in the amount of \$18,177.32. Doc. #128. Before this hearing, additional payments in the amount of \$4,719.88 will also come due. Id.

Debtor opposes the motion on the grounds that Debtor has had a very difficult time lately and will be filing a modified plan to address the plan

delinquencies. Doc. #133. Debtor requests that the trustee's motion to dismiss be continued for 45 days to permit Debtor to do that. Id.

Based on Debtor's opposition, the court is inclined to continue this motion to dismiss to August 11, 2022 at 9:30 a.m. to permit Debtor time to file, serve and set for hearing a motion to modify his plan.

4. 22-10909-A-13 **IN RE: JASON ATHERTON AND GENZZIA DOVIGI-ATHERTON**
TCS-1

MOTION TO EXTEND AUTOMATIC STAY
6-2-2022 [10]

JASON ATHERTON/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Though not required, Carmax Business Services LLC ("Creditor") filed written opposition on June 10, 2022 (Doc. #26), and secured creditors Raymond Herrerias and Two Rock, LLC (collectively, "Secured Creditors") filed written opposition on June 14, 2022 (Doc. #30). Additional opposition may be presented at the hearing. If further opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtors Jason Aaron Atherton and Genzzia Sabrina Dovigi-Atherton (together, "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #10. Creditor and Secured Creditor oppose. Doc. ##26, 30.

Creditor requests the court take judicial notice of Debtors' motion to extend the automatic stay, Creditor's motion for relief from the automatic stay, and schedules filed in this case. Doc. #26; Exs. A-D, Doc. #27. Creditor also asks the court to take judicial notice of schedules filed in Debtors' prior bankruptcy case, Bankr. E.D. Cal. Case No. 21-10047 (the "Prior Case") and the chapter 13 trustee's motion to dismiss and supporting declaration filed in the Prior Case. Doc. #26; Exs. E-F, Doc. #27. Finally, Creditor asks the court to take judicial notice of a print inquiry allegedly pulled from the chapter 13 trustee's website concerning the Prior Case. Doc. #26; Ex, G, Doc. #27.

This court may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of a filed document but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15

(Bankr. D.S.C. 2008) (collecting cases). The court will take judicial notice of Exhibits A through F. The court does not take judicial notice of Exhibit G because Exhibit G is not a filing in the Prior Case.

Federal Rule of Evidence 201 permits the court to judicially notice a fact that is not subject to reasonable dispute, either because it "is generally known within the trial court's territorial jurisdiction" or because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed R. Evid. 201(b)(1), (2). However, Creditor has not established that Exhibit G establishes a fact that is generally known in this court's jurisdiction, nor has Creditor established that Exhibit G comes from a source whose accuracy cannot reasonably be questioned. See Federal Rule of Evidence 201(b). Accordingly, the court does not take judicial notice of Exhibit G.

Debtors commenced this bankruptcy case on May 28, 2022. Doc. #1. Debtors had a chapter 13 case pending within the preceding one-year period that was dismissed, the Prior Case. The Prior Case was filed on January 9, 2021 and dismissed on April 25, 2022 for Debtors' default with respect to a term of the confirmed plan. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtors filed this case on May 28, 2022. The automatic stay will terminate in the present case on June 27, 2022.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

In this case, the presumption that this bankruptcy case was filed not in good faith arises under 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc) because Debtors failed to perform the terms of a confirmed plan in the Prior Case. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was confirmed on April 16, 2021, the chapter 13 trustee filed a Motion to Dismiss on March 11, 2022, and the court dismissed the Prior Case based on Debtors' failure to perform the post-confirmation reporting requirements required by the confirmed plan. See Case No. 21-10047. No stay relief motions were filed in the Prior Case. Id.

It also is possible that the presumption that this bankruptcy case was filed not in good faith arises in this case under § 362(c)(3)(C)(i)(III) were the court to find no substantial change in the financial or personal affairs of Debtors.

The presumption that this bankruptcy case was filed not in good faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the

clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In support of this motion to extend the automatic stay, joint debtor Jason Atherton declares that requirements of the plan in the Prior Case became difficult to comply with because joint debtor Genzzia Dovigi-Atherton required five surgeries in the past twelve months and needed a caretaker. Decl. of Jason Atherton, Doc. #12. Debtors also state that the death of Genzzia Dovigi-Atherton's mother required Jason Atherton to miss work and provide for all necessary transportation while Genzzia Dovigi-Atherton was immobile. Id. In addition, Debtors' vehicle required multiple car repairs costing \$2,000 over the past year. Id. The vehicle is now repaired, joint debtor Jason Atherton is back to regular work, and Debtors' daughter now has a vehicle and is able to assist Debtors. Id. Debtors have filed this case to save their home and vehicle. Id. Debtors testify that they will be able to make plan payments going forward. Id. Debtors filed a proposed plan in this case on May 28, 2022. Doc. #3. Debtors' Schedule J lists monthly net income of \$3,583, all of which Debtors propose to apply to plan payments in this case. Schedule J, Doc. #1; Plan, Doc. #3.

Creditor opposes Debtors' motion on several grounds. Creditor first disputes a statement made by Debtors that Creditor is willing to release a vehicle that was repossessed pre-petition back to Debtors if Debtors' motion to extend the automatic stay is granted. Doc. #26. Creditor contends no such statement was made. Decl. of Maureen Tully, Doc. #28. Creditor also acknowledges that Creditor has filed and served a motion for relief from the automatic stay concerning said vehicle in this case, which is set for hearing on July 14, 2022 at 9:30 a.m. See Doc. #19. Creditor is not confident that Debtors will be able to complete a chapter 13 plan in this case, and Creditor argues that Debtors have missed plan payments in Debtors' prior bankruptcy cases. Doc. #26. Creditor further suggests that Debtors' Schedule J may be understated, and that it is unclear what role Debtors' daughter plays in the reorganization. Doc. #26.

Secured Creditors incorporate Creditor's opposition and also oppose the motion on the grounds that the arrears owing to Secured Creditors is greater than in the Prior Case. Specifically, Secured Creditors assert that the amount of arrears owed to Secured Creditors is approximately \$9,800 more than the amount Debtors list in Debtors' proposed plan. Doc. #30. Secured Creditors further assert that the monthly mortgage payment due under Secured Creditors' loan will increase beginning December 1, 2022 from \$2,038.75 to \$2,882.25, and Debtors do not explain how they will be able to make the ongoing loan payments, especially with the increase beginning December 1, 2022. Doc. #30.

After reviewing Creditor's and Secured Creditors' opposition, the court is inclined to GRANT Debtors' motion. The issue presented by Debtors' motion is whether Debtors have rebutted by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. That presumption arises either from the dismissal of Debtors' Prior Case for failure to perform the terms of a confirmed chapter 13 plan, see 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc), or from the court finding no substantial change in Debtors' financial or personal affairs, see 11 U.S.C. § 362(c)(3)(C)(i)(III). Although Creditor makes much of the suggestion that Debtors were delinquent in plan payments in the Prior Case at the time Debtors' Prior Case was dismissed, the Prior Case was

not dismissed for Debtors' failure to make plan payments, and Creditor has not established as a factual matter any delinquency in the Prior Case. Likewise, Secured Creditors contend that Debtors will not be able to pay in this case the current pre-petition arrears as well as the increased monthly loan payments beginning on December 1, 2022. While the issues raised by Secured Creditors likely will need to be addressed by Debtors in this case, those grounds do not alter this court's analysis that Debtors have overcome by clear and convincing evidence the presumption that their current bankruptcy petition was filed not in good faith.

Additionally, neither Creditor nor Secured Creditors sought stay relief in the Prior Case. In any event, failing to make plan payments would be a failure to perform terms of a confirmed plan and would only raise the presumption that this bankruptcy case was filed not in good faith. It is not evidence that this bankruptcy case was filed not in good faith. Further, besides the exhibits submitted in connection with the request for judicial notice, Creditor's only evidence in opposition to the motion is a declaration describing an apparent miscommunication between Creditor and Debtors. See Decl. of Maureen Tully, Doc. #28. Creditor's declaration does not establish that this case was filed not in good faith. Again, the issue here is whether the presumption that this bankruptcy case was filed not in good faith can be rebutted, and Creditor's arguments and supporting evidence do not establish that Debtors lacked good faith in filing this bankruptcy case.

The court is inclined to find that Debtors have overcome by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. In the Prior Case, Debtors failed to perform terms of the confirmed chapter 13 plan by failing to comply with the annual review provisions of the plan in the Prior Case. Debtors suffered health and financial hardships during the Prior Case, including multiple surgeries, transportation issues, and the resulting missed work. Debtors testify that their personal and financial affairs have changed since the Prior Case was dismissed and they will be able to make plan payments in this case. Debtors filed this case in order to pay creditors while retaining their home and, possibly, the vehicle currently in Creditor's possession.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtors' motion (see Doc. #13), unless terminated by further order of the court.

5. [22-10322](#)-A-13 **IN RE: JACK DE FEHR**
[MHM-2](#)

MOTION TO DISMISS CASE
5-6-2022 [\[27\]](#)

MICHAEL MEYER/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) because debtor has failed to attend the scheduled 341 meeting of creditors. Debtor did not oppose. The record shows that Debtor failed to appear at the scheduled 341 meeting of creditors.

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 by debtor that is prejudicial to creditors.

In reviewing the case, Debtor has opted to use exemptions under California Code of Civil Procedure section 704. As of right now, there is a liquidation amount of \$99,571.93, after trustee compensation. However, this liquidation amount is comprised of the value of Debtor's residence, and Debtor has not exempted his homestead despite claiming exemptions under California Code of Civil Procedure section 704. If Debtor were to amend his exemptions, there would be no non-exempt equity. Moreover, dismissal is based on Debtor's failure to appear at the scheduled 341 meeting of creditors. Because Debtor's continued failure to appear at the 341 meeting of creditors likely would result in Debtor's bankruptcy case being dismissed if his case as converted to chapter 7, the court finds that dismissal, rather than conversion, is the best interests of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
4-20-2022 [\[155\]](#)

PETER FEAR/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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Fear Waddell, P.C. ("Movant"), counsel for Tammy Lynn Abels ("Debtor"), the debtor in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of \$11,394.00 for services rendered from April 1, 2018 through April 6, 2022. Doc. #155. Debtor's confirmed plan provides for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #147, 154. One prior fee application has been approved authorizing interim compensation and reimbursement of expenses of \$13,197.13. Doc. #94. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #158.

From the initial fee application granted, Movant received \$12,000.00 through the plan from the chapter 13 trustee. Order, Doc. #154. If additional funds are available in the plan, Movant requests for the trustee to pay those additional funds as administrative expenses. Doc. #155. The Order Confirming Second Modified Plan calls for attorney's fees in excess of \$12,000 to be paid after payments to general unsecured claims to the extent funds are available. Order, Doc. #154. Any remaining attorney's fees approved greater than \$12,000 that result in the plan not funding by month 60 shall be paid directly by Debtor. Order, Doc. #154. Attorney fees are nondischargeable in the plan if certain conditions are met, and Movant is allowed to work with Debtor after completion of the plan for payment of any remaining attorney fees. Order, Doc. #154.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable

compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) preparing and prosecuting Debtor's second modified plan; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; (5) preparing for discharge and case closing; and (6) general case administration. Exs. A-D, Doc. #158. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$10,651.50 and reimbursement for expenses in the amount of \$742.50 to be paid in a manner consistent with the terms of the confirmed plan.

7. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[MHM-1](#)

MOTION TO DISMISS CASE
5-13-2022 [[44](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 14, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to July 14, 2022, at 9:30 a.m., to be heard with the debtor's motion to confirm the first modified chapter 13 plan.

8. [22-10158](#)-A-13 **IN RE: GUILLERMO/VERONICA PRADO**
[JV-1](#)

MOTION TO CONFIRM PLAN
5-3-2022 [[60](#)]

GUILLERMO PRADO/MV
JASON VOGELPOHL/ATTY. FOR DBT.
DISMISSED 5/12/22

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 on May 12, 2022. Doc. #72. The motion will be DENIED AS MOOT.

9. [21-12061](#)-A-13 **IN RE: EUGENE TOLOMEI**
[WLG-2](#)

MOTION TO CONFIRM PLAN
5-5-2022 [\[55\]](#)

EUGENE TOLOMEI/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING
DISMISSED 6/8/22

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 on June 8, 2022. Doc. #70. The motion will be DENIED AS MOOT.

10. [22-10378](#)-A-13 **IN RE: FRANCES HOLGUIN**
[SL-1](#)

MOTION TO VACATE DISMISSAL OF CASE
5-27-2022 [\[21\]](#)

FRANCES HOLGUIN/MV
SCOTT LYONS/ATTY. FOR DBT.
DISMISSED 05/12/2022

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f) (2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the

motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Frances Gonzales Holguin ("Debtor") moves the court for an order vacating the May 12, 2022 order dismissing Debtor's bankruptcy case. Mot., Doc. #21; Order, Doc. #18. Debtor moves under Federal Rule of Civil Procedure ("Rule") 60(b), incorporated to this proceeding by Federal Rule of Bankruptcy Procedure 9024. Doc. #21.

Debtor filed a voluntary chapter 13 petition on March 11, 2022. Doc. #1. Along with the petition, Debtor filed an application to pay the filing fee in installments. Doc. #4. The Order Approving Payment of Filing Fee in Installments ("Order") was entered March 11, 2022, allowing Debtor to pay the filing fee in four monthly installments of \$78. Doc. #8. Debtor mistakenly read the Order as requiring the filing fee to be paid in full by July 11, 2022, and did not realize that she was responsible making for monthly payments. Decl. of Debtor, Doc. #23. Debtor did not pay the installments as ordered, and an Order to Show Cause ("OSC") was issued demanding Debtor pay the installments or risk dismissal. Doc. #13. Debtor was aware of the OSC but is on a fixed income and was unable to gather the necessary funds prior to dismissal. Debtor's Decl., Doc. #23. Debtor's case was dismissed for failure to pay the fees on May 12, 2022. Doc. #18. Debtor has since gathered all funds necessary to pay the filing fees in full. Debtor's Decl., Doc. #23. Prior to dismissal, Debtor's chapter 13 plan had been approved by the chapter 13 trustee, though not yet confirmed. Id. Upon reinstatement of Debtor's bankruptcy case, Debtor will be able to make payments under the chapter 13 plan and will be current through June 2022. Id.

Debtor moves under Rule 60(b)(1) and (b)(6). Rule 60(b) permits the court to grant relief from a final order for, *inter alia*, mistake, inadvertence, surprise, excusable neglect, or any other reason that justifies relief. Rule 60(b)(1), (6); Doc. #21. A motion to reconsider an order is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. v. Estate of Bishop, 299 F.3d 877, 890 (9th Cir. 2000); see also Berman v. Freedom Fin. Network, LLC, 30 F.4th 849 (9th Cir. 2022) (applying the standard to Rule 60(b)).

This determination is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). The factors to consider include:

1. Danger of prejudice to the debtor;
2. Length of delay and potential impact on judicial proceedings;
3. Reason for the delay, including whether it was in the movant's control; and
4. Whether the party acted in good faith.

Id. The court is inclined to grant the motion and vacate the dismissal order based on a consideration of the factors set forth in Pioneer.

With respect to the first Pioneer factor, denying the motion to vacate the dismissal order would cause prejudice to Debtor. Although Debtor had not been in bankruptcy very long before the case was dismissed, Debtor's chapter 13 plan was set to be confirmed. Debtor's case was dismissed because Debtor was unable to put together sufficient funds to pay the filing fee. There is no indication that Debtor is financially incapable of performing under the terms of the plan.

However, dismissal of the case has resulted in the lifting of the automatic stay, thereby permitting creditors to enforce their rights and remedies under state law. Reinstating the bankruptcy case by vacating the dismissal would reimpose the automatic stay and halt any enforcement actions that may have been resumed based on the dismissal of the case. However, there is no indication that any creditor has acted in reliance on the dismissal. This factor favors vacating the dismissal order.

With respect to the second Pioneer factor, the delay between dismissal and Debtor's Rule 60(b) motion is nominal. The order dismissing Debtor's case was entered on May 12, 2022, and Debtor filed the instant motion on May 27, 2022. There would also be minimal impact on judicial proceedings, since a review of the docket reveals no outstanding motions were interrupted and there are no related adversary proceedings. This factor favors vacating the dismissal order.

With respect to the third and fourth Pioneer factors, Debtor takes full responsibility for the mistaken reading of the Order and failing to timely make filing fee installment payments. Debtor has gathered sufficient funds to pay the filing fee in full and become current on plan payments through June 2022. There is no evidence of bad faith. These factors favor granting the motion.

Accordingly, pending opposition raised at the hearing, the court will GRANT the motion. The order filed May 12, 2022 dismissing Debtor's bankruptcy case will be VACATED.

11. [20-10691](#)-A-13 **IN RE: JENNIFER SCHULTZ**
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
4-21-2022 [\[101\]](#)

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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Fear Waddell, P.C. ("Movant"), counsel for Jennifer Ellen Schultz ("Debtor"), the debtor in this chapter 13 case, requests a second interim allowance of compensation and reimbursement for expenses in the amount of \$4,535.01 for services rendered from December 15, 2020 through March 31, 2022. Doc. #101. Debtor's confirmed plan provides for \$15,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##96, 100. One prior fee application has been approved authorizing interim compensation and reimbursement of expenses of \$4,142.25. Doc. #71. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #103.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's second and third modified plan; (2) communicating with Debtor's creditors and the chapter 13 trustee; (3) preparing the fee application; and (4) general case administration. Exs. A-D, Doc. #103. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses in the amount of \$4,535.01 to be paid in a manner consistent with the terms of the confirmed plan.

12. [21-12495](#)-A-13 **IN RE: JARED/CHRISTINA HARP**
[DMG-4](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
5-23-2022 [[75](#)]

D. GARDNER/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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is

proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

D. Max Gardner, Attorney at Law ("Movant"), counsel for Jared Harp and Christina Harp (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation and reimbursement for expenses in the amount of \$6,062.76 for services rendered from August 1, 2021 through May 23, 2022. Doc. #75. In addition to the \$1,500 paid to Movant prepetition, Debtors' confirmed plan provides for \$4,500.00 in attorney's fees to be paid through the plan. Plan, Doc. ##51, 72. No prior fee application has been filed.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' first modified plan; (2) preparing and filing motion to avoid lien and supporting documents; (3) communicating with Debtors' creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Decl. of Movant, Doc. #80; Ex. A, Doc. #78. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses in the amount of \$6,062.76 to be paid in a manner consistent with the terms of the confirmed plan.

13. [21-12496](#)-A-13 **IN RE: VANESSA GARCIA AMPARANO**
[DMG-2](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
5-19-2022 [\[41\]](#)

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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

D. Max Gardner, Attorney at Law ("Movant"), counsel for Vanessa Garcia Amparano ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation and reimbursement for expenses in the amount of \$4,186.68. Doc. #41. Movant requests compensation and reimbursement for services rendered from July 1, 2021 through March 18, 2022. Decl. of D. Max Gardner, Doc. #43. In addition to the \$1,500 paid to Movant prepetition, Debtor's confirmed plan provides for \$4,500.00 in attorney's fees to be paid through the plan. Plan, Doc. ##28, 36. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #46.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) communicating with Debtor's creditors and the chapter 13 trustee; (3) preparing the fee application; and (4) general case administration. Movant's Decl., Doc. #43; Ex. A, Doc. #44. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation and reimbursement for expenses in the amount of \$4,186.68 to be paid in a manner consistent with the terms of the confirmed plan.

14. [21-12061](#)-A-13 **IN RE: EUGENE TOLOMEI**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
4-6-2022 [\[48\]](#)

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
DISMISSED 06/08/2022

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 on June 8, 2022. Doc. #70. The motion will be DENIED AS MOOT.

11:00 AM

1. [18-14542](#)-A-7 **IN RE: LARRY SELL**
[19-1025](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-15-2019 [1]

THE LEAD CAPITAL, LLC V. SELL
DERRICK COLEMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's further status report filed on June 9, 2022 (Doc. #75), the status conference will be continued to July 14, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than July 7, 2022 if this adversary proceeding has not been dismissed.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [1]

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

Pursuant to the joint status report filed on June 9, 2022 (Doc. #96), the pre-trial conference will be continued to August 11, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than August 4, 2022.

3. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [1]

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

Pursuant to the joint status report filed on June 9, 2022 (Doc. #99), the pre-trial conference will be continued to August 11, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than August 4, 2022.