



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

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

**Hearing Date:** Wednesday, August 23, 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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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. [20-13905](#)-B-13     **IN RE: CHENSUE HER AND JENNY MOUA**  
[MJA-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ARNOLD LAW  
GROUP, APC. FOR MICHAEL J. ARNOLD, DEBTORS ATTORNEY(S)  
7-14-2023     [[23](#)]

MICHAEL ARNOLD/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.

Michael J. Arnold ("Arnold") on behalf of the Arnold Law Group ("Applicant"), counsel for Chensue Her and Jenny Moua (collectively "Debtor"), comes before the court on Applicant's first Interim Application for Fees And Expenses. Doc. #23. The Application requests attorney fees in the amount of \$5,688.00 and expenses in the amount of \$312.00. *Id.* Applicant brings this request pursuant to LBR 2016-1, 11 U.S.C. § 329 and 330, and Fed. R. Bankr. P, 2002, 2006, and 2017.

This First Interim Application covers services rendered and actual, necessary expenses incurred from November 6, 2020, to July 12, 2023. *Id.* Included with the Application is a document signed by Debtor Chensue Her stating his opinion that the fees and expenses are reasonable and that he does not object to the Application. Doc. #25. No such averment was filed on behalf of the co-debtor.

No party in interest timely filed written opposition. For the reasons outline below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which 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 may be unnecessary in the absence of

opposition. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may 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.

Section 3.05 of Debtors' confirmed plan provides Applicant was paid \$1,500.00 prior to filing the case and, subject to court approval, with additional fees of \$4,500.00 to be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 & 330 and Fed. R. Bankr. P. 2002, 2016-17. The *Disclosure of Compensation of Attorney* form, B2030, indicates that Applicant agreed to accept \$6,000.00 in total for the representation, with \$1,500 received prior to filing and a balance of \$4,500 outstanding. *Id.* The court notes that the form B2030 is silent on how much of the retainer, if any, was earmarked to pay for the Debtors' filing \$313.00 filing fee.

This is Applicant's first interim fee application. Doc. #23. According to the Application, Arnold billed 15.25 hours at a rate of \$350.00 per hour, for a total fee of \$5,337.50. A legal assistant named Julie L. Cha ("Cha") billed an additional 1.75 hours at a rate of \$200.00 per hour, for a total fee of \$350.00. The total sum sought for attorneys' fees is \$5,678.50. A second attorney, Joseph M. Arnold is also listed on the summary of fees, but he apparently billed no hours.

	Professional	Hourly Rate	Hours	Total Fees
JMA	Joseph M. Arnold	\$350.00	0.00	\$0.00
MJA	Michael J. Arnold	\$350.00	15.25	\$5,337.50
JLC	Julie L. Cha	\$200.00	1.75	\$350.00
				<b>\$5,687.50</b>

The hours worked and the fees incurred were further broken down by "Task Code" with 13.76 hours (\$4,553.50) attributed to "Case Administration," 1 hour (\$350.00) attributed to "Meeting of Creditors/Court Hearings," and 2.24 hours (\$784.00) attributed to "Docket Control Number/Motions re Chapter 13 Case." The Application further itemizes the billable hours attributed to "Case Administration" in Exhibit B which accompanied the Application and which is reproduced below.

Transaction Date	Time Keeper	Docket Control Number	Hours Worked	Amount	Description of Work
11/06/2020	MJA		1.00	350.00	Office meeting with client concerning Chapter 13 process.
11/09/2020	JLC		.50	100.00	Email sent to client concerning all missing documents with descriptions.
11/24/2020	MJA		.83	290.50	Review documents provided by Debtors
11/30/2020	MJA		1.50	525.00	Calculate Chapter 13 Plan Payment
12/01/2020	MJA		2.58	903.00	Draft Bankruptcy Petition including but not limited to Schedules A-J, Form 107, Form 22C
12/20/2020	MJA		.20	70.00	Review letter from Trustee
12/23/2020	MJA		.75	262.50	Office Meeting with client to review and sign Schedules A-J, Chapter 13 Plan, 122C.
12/23/2020	MJA		.20	70.00	Review and File Chapter 13 Petition with the Court.
12/28/2020	JLC		.75	150.00	Prepare Trustee Packet with requested documents
12/28/2020	JLC		.50	100.00	Draft procedural letter to client notifying him bankruptcy case is filed.
1/4/2021	MJA		---	---	Review mail concerning Notice of Chapter 13 Case.
1/05/2021	MJA		.20	70.00	Review Notice of Mortgage Payment Change
1/26/2021	MJA		.75	262.50	Office meeting with client to prepare for first MOC hearing.
2/01/2021	MJA		1.00	350.00	Prepare for first MOC hearing. Review claims filed in the case.
2/01/2021	MJA		.40	140.00	Office meeting with client to discuss additional questions before MOC.
2/03/2021	MJA		---	---	Review Notice of Electronic Filing concerning Report of Trustee at 341 Meeting.
1/25/2019	MJA		1.00	350.00	Office meeting with client to discuss case details and objections filed.
1/28/2019	MJA		---	---	Review mail concerning Notice of Intent to Close Ch 13 Case.
2/19/2021	MJA		.20	70.00	Review and execute Order Confirming Plan
3/11/2021	MJA		.50	175.00	Review letter from Trustee
7/09/2021	MJA		.50	175.00	Review Notice of Filed Claims and compared claims in bankruptcy petition
11/16/2021	MJA		.20	70.00	Review Notice of Mortgage Payment Change
12/06/2022	MJA		.20	70.00	Review Notice of Mortgage Payment Change
<b>Total</b>			<b>13.76 hours</b>	<b>\$4,553.50</b>	

Applicant also claims to have incurred \$312.50 in Expenses, which consists of \$310.0 for the Chapter 13 filing fee and \$2.50 for "Draft 3<sup>rd</sup> procedural letter to client notifying him of [the \$ 341 Meeting of Creditors]." *Id.*; Doc. #23.

These combined fees and expenses together total the sum of **\$6000.00**, which is tidily equal to the amount that Applicant agreed to accept for representing Debtors. Doc. #1. Thus, the Application seeks both court approval to take the \$1500 retainer out of Applicant's trust immediately, with the remaining \$4,500 to be paid by the Trustee in accordance with the confirmed plan.

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

The services provided by the Applicant were detailed in the table above. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor Her reviewed the fee application and consents to payment of the requested compensation, though a similar notice of consent from Co-Debtor Moua is absent. Doc. #2.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$5,688.00 in fees and \$312.00 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the \$1,500.00 in pre-petition payments, the chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant the remaining balance of \$4,500.00 for services rendered and costs incurred between Nov. 6, 2020, and July 14, 2023.

2. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[FW-6](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH ROGER AND SANDRA WARD  
7-26-2023    [\[265\]](#)

ARMANDO NATERA/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
DISMISSED 01/03/2018

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 will submit a proposed order after hearing.

Armando Natera, Plaintiff in this adversary ("Plaintiff"), filed the instant Motion to Approve Compromise on July 26, 2023. Main Doc. #265. The compromise agreement is between Plaintiff and Defendants Roger and Sandra Ward (the "Wards"). *Id.* These parties advised the court of a potential settlement in a Status Report filed on July 6, 2023. AP Doc. #459. At the July 12, 2023, hearing on the Defendants' Motion for Summary Judgment, the court continued the summary judgment motions to allow the parties to complete settlement talks and allow Debtor time to file a Motion to Approve Settlement by July 26, 2023 to be heard on August 23, 2023. AP Doc. #463. If no such motion was filed, the parties were directed to file a Status Report 14 days before the scheduled hearing (July 27, 2023) with the Wards permitted to file a reply 7 days before the hearing. *Id.*

The motion was timely filed, and the parties submitted a Status Report on August 9, 2023, advising that they had reached a settlement "in principle" but that two sticking points remained. AP Doc. #476. First, the Wards insisted that this court approve the settlement, and accordingly, the instant motion was filed on less than 28-days' notice and opposition, if there is any, will be heard at the hearing. *Id.* Second, the settlement was conditioned on ancillary settlement agreements being executed between the Wards and certain non-parties. *Id.*

On August 16, 2023, Debtor and the Wards submitted a supplementary Status Report in the main case, stating that they had jointly agreed to strike paragraph 3.4 of the proposed settlement agreement (which conditioned the settlement on mutual releases executed by two non-parties and which had been a sticking point for the Wards). Main Doc. #267. With that issue resolved, the parties now jointly ask the court to approve the settlement. *Id.*

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. The Movant complied with this rule. While both Debtor and the Wards support the settlement agreement, the court will hear objections from any other party in interest at the hearing.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Absent from Rule 9019 is standing for the debtor to seek such approval. Typically, only the trustee may file a motion to approve a compromise or settlement.

Though 11 U.S.C. § 1303 does not expressly grant chapter 13 debtors standing to prosecute and settle claims, other courts have applied it

to allow these claims to continue. The Second Circuit has stated, "we conclude that a Chapter 13 debtor, unlike a Chapter 7 debtor, has standing to litigate causes of action that are not part of a case under title 11." Olick v. Parker & Parsley Petroleum Co., 145 F.3d 513, 515 (2d Cir. 1998)

The Second Circuit reasoned, "[t]he legislative history of § 1303, which sets out the exclusive rights of a Chapter 13 debtor, supports the holding that a Chapter 13 debtor's standing is different." Olick, 145 F.3d 513 at 516. "Both the House of Representatives and Senate floor managers of the Uniform Law on Bankruptcies, Pub.L. No. 95-598 (1978), stated that:

Section 1303 . . . specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although Section [323] is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued."

Olick, 145 F.3d 513 at 516 citing 124 Cong. Rec. H. 11,106 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards); S. 17,423 (daily ed. Oct. 5, 1978) (remarks of Sen. DeConcini).

Ninth Circuit courts have applied Olick's reasoning and agreed that chapter 13 debtors "have standing to pursue claims against others when those claims belong to the bankruptcy estate because 'the reality of a filing under Chapter 13 is that the debtors are the true representatives of the estate and should be given the broad latitude essential to control the progress of their case.'" Donato v. Metro. Life Ins. Co., 230 B.R. 418, 425 (N.D. Cal. 1999) (quoting Olick, 145 F.3d 513 at 516). The court also favorably cited the Third Circuit's reasoning that a chapter 13 debtor could continue to prosecute prepetition claims after filing because "an essential feature of a Chapter 13 case is that the debtor retains possession of and may use all the property of his estate, including his prepetition causes of action . . ." Donato, 230 B.R. 418 at 425 (citing Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1209 at n.2 (3rd Cir. 1991)).

Therefore, Debtor has standing to prosecute and settle this claim.

In determining whether approval of a proposed settlement is proper, this court is guided by the standards set forth in In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986), which direct the court to consider:

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;



- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the Wards have deny liability and, in fact, have a motion for summary judgment pending before the court; "collection" is not an issue because, in exchange for being dismissed from the adversary, the Wards will agree to release Debtor from a Judgement previously obtained against him; the litigation would become complex, require an evidentiary hearing, and moving forward would decrease the net to the parties due to the legal fees; the creditors are not affected given the underlying case is dismissed, but creditors may indeed benefit because the settlement will remove a Judgment against Debtor; and the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

3. [22-11617](#)-B-13     **IN RE: JOHNNY COELHO LOPES AND KATHLEEN LOPES**  
[SL-3](#)

MOTION TO MODIFY PLAN  
7-14-2023    [[38](#)]

KATHLEEN LOPES/MV  
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.

Johnny Coelho Lopes and Kathleen Lopes ("Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated July 14, 2023. Doc. #38. The sole modification to the original confirmed plan (which was and is a 60-month, 100% plan) is that it proposes to reduce the amount to be paid through the plan in attorney's fees from \$18,000.00 to \$15,000.00. Doc. #42. The motion and the accompanying declaration both aver that the modification has been proposed because the filed

Proofs of Claim for Debtor's general unsecured Debtors' counsel came in lower than originally scheduled and because Debtor's counsel, Scott Lyons ("Lyons"), had concluded that the remaining legal work and costs for the remainder of the case were less than initially estimated prior to filing. Doc. #40. The motion also includes Amended Schedules I and J which, when compared to the original schedules, reflect a reduction in Debtors' income from \$9,917.30 to \$9,458.49 and an increase in Debtors' monthly expenses from \$4,975.74 to \$4,535.20, for a total reduction in monthly net income from \$4,941.56 down to \$4,923.29, a net reduction of \$18.27.

No party has filed a response to the motion.

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). 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 only parties affected by this proposed modification are Debtors' counsel, who consented to a reduction in attorneys' fees owed, and Debtors, who will benefit from a reduction in the amount of attorneys' fees owed. No other party will be affected by this modification.

Accordingly, 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.

4. [23-10724](#)-B-13     **IN RE: ALMA ZAVALA**  
[MAT-1](#)

MOTION TO CONFIRM PLAN  
7-11-2023    [[28](#)]

ALMA ZAVALA/MV  
MARCUS TORIGIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING: This hearing will proceed as scheduled.

DISPOSITION: Granted or continued as set forth below.

ORDER: Order preparation determined at the hearing.

Alma Zavala ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated July 11, 2023. Doc. #28. Trustee filed an Objection on August 9, 2023. Doc. #35. No other party in interest timely filed written opposition. Debtor's reply brief is due August 16, 2023.

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 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 (other than the Chapter 13 trustee) who have not timely responded or objected are entered. Upon default, factual allegations will be taken as true as to the defaulting parties (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The First Amended Plan is a 100%-dividend plan that proposes Debtor pay \$2,241.91 a month for 60 months. The plan payment will include a post-petition monthly mortgage payment of \$1,576.00 to Shellpoint Mortgage Servicing ("Shellpoint"), the plan payment will include an additional \$365.98 arrearage dividend at 0.00% interest to cure the \$21,958.54 arrearage on Debtor's mortgage (Class 1). The plan payment will also include \$98.56 a month at 6.00% to pay off Debtor's Chrysler 300 (Class 2A). No other secured creditors are to be paid through the plan (Class 2B, 2C, 3, and 4). Debtor asserts he owes nothing for priority claims (Class 5). The plan proposes to pay a 4% dividend on nonpriority unsecured debts totally approximately \$12,344.00 (Class 7).

The Trustee's Objection raises four issues:

1. The proposed monthly plan payment is inadequate to fund the plan so that it can be completed within 60 months as required by 11 U.S.C. § 1322(a) and must be increased to at least \$2,340.38 a month.
2. The proposed plan purports to reduce the amount of attorney's fees paid prepetition from \$2,500.00 to \$1,500.00. If this is correct, then Debtor's counsel must amend the Rights and Responsibilities and Disclosure of Compensation forms to conform with the plan.
3. The liquidation analysis reflects that upon liquidation, \$6,484.20 would be paid to general unsecured creditors, but the plan only proposes to pay a 4% dividend equal to \$4,531.39. Thus, the plan fails the best interest of the creditors test.

4. As of the end of July 2023, Debtor was delinquent in plan payments in the amount of \$125.73 through July 2023.

On August 16, 2023, Debtor submitted a Reply supported by a Declaration in which she:

1. Agreed to add a proviso in the confirmation order increasing the plan payment by \$71.21, making a total plan payment of \$2,313.12 per month for 60 months.
2. Agreed to add a provision in the confirmation order to pay her student loan provider directly for her student loan debt.
3. Agreed to increasing the distribution to unsecured creditors to 5.5% or the total amount of \$6,484.20 whichever is greater.
4. Clarified that the prepetition attorney's fees she paid amounted to \$2,500.00 and not \$1,500.00 which was listed erroneously in the amended plan.

If the proposed amendments from Debtor's Reply resolve the Trustee's concerns and all delinquencies in plan payments are cured, this motion will be GRANTED. Otherwise, this matter will be continued until, and Debtor shall have 28 days in which to file an Amended Plan which comports with Trustee's requirements.

Accordingly, it may be ordered that this matter be CONTINUED until September 27, 2023, at 9:30 a.m. Trustee shall file and serve a reply, if any, by September 20, 2023. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 20, 2023. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. [18-14325](#)-B-13     **IN RE: TIMOTHY BURNETT**  
[MJA-2](#)

MOTION TO MODIFY PLAN  
7-14-2023    [[64](#)]

TIMOTHY BURNETT/MV  
MICHAEL ARNOLD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:             Continued until September 27, 2023

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

Timothy Leonard Burnett ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated July 14, 2023. Doc. #64. The confirmed plan provided unsecured creditors with a dividend of 13.33%

from monthly payments of \$761.66 per month from Month 1 through Month 60. *Id.* Debtor proposes to keep his monthly payments at \$761.66 a month for 60 months but to reduce the dividend to 10.89% to unsecured creditors. *Id.* Debtor avers that this reduction in dividend is necessary because as of the filing of the instant motion, the total owed to unsecured creditors was \$235,321.00, which is significantly higher than the \$188,185.84 anticipated at the time of filing. *Id.* Debtor further avers that the amount of his monthly payment (which is unchanged in the amended plan) represents all his disposable income.

The Trustee timely filed an objection which asserted that the amended plan has not been filed in good faith and/or the action of the Debtor in filing the petition was in bad faith. Doc. #70. The basis for this objection arises from the fact that the amended plan proposes to apply the new percentage dividend to unsecured creditors to the entirety of the 60 months of plan payments (i.e. retroactively to the commencement of the 60-month plan payment period). *Id.* Since the Trustee has been paying a dividend of 12.85% to general unsecured creditors, the proposed reduction to 10.89% would put him in the position of needing to retrieve the excess funds from those creditors. *Id.*

No other party filed an objection to the instant motion. Debtor did not timely file a Reply to Trustee's Response.

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 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, other than the 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.

Accordingly, it is ordered that this matter be CONTINUED until September 27, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection is withdrawn, the debtor shall file and serve a written response not later than September 13, 2023. The response shall specifically address each issue raised in the objection, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by September 20, 2023.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 20, 2023. If the debtor does not timely file a modified plan or a written

response, this motion will be denied on the grounds stated in the opposition without a further hearing.

6. [23-11133](#)-B-13     **IN RE: TRACY/BETSY WALTRIP**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-30-2023    [[17](#)]

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

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion on July 5, 2023. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

7. [23-11542](#)-B-13     **IN RE: LARRY WILLIAMS**  
[GMS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-25-2023    [[10](#)]

MIRNA RENTERIA/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
GREGORY SALVATO/ATTY. FOR MV.  
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 will submit a proposed order after hearing.

The Debtor in this Chapter 13 matter is Larry Donell Williams ("Debtor"). The Movant is Mirna Renteria ("Movant"), who is an unsecured creditor and plaintiff in state court litigation against Debtor. Doc. #10. Movant asks the court to lift the automatic stay "for the limited purpose of permitting her to pursue the State Court Action to judgment and appeal, if necessary, in order to liquidate her claims at issue in the State Court Action." *Id.* The State Court Action

involves both Debtor and non-debtor corporate entities (of whom Debtor was former director of HR), and Movant argues that a single trial in the nonbankruptcy forum is the most efficient use of judicial resources. *Id.* While Movant suggests that Debtor's bankruptcy case was filed in bad faith, the instant motion only seeks a lifting of the automatic stay so that the state court litigation may proceed. *Id.*

Debtor timely filed a Response, and Movant timely filed a Reply brief. Doc. 18, 28.

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 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 (except for Debtor) are entered. 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.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);

- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt."

Relief from the stay here may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. Movant has stated that she seeks only liquidation of her claim against Debtor and is not presently seeking any assets from the estate, so the interests of other creditors will not be prejudiced. Doc. #10. The state court action is a personal injury tort action, and not a matter the bankruptcy court can hear. *Id.*

In response, Debtor's chief argument appears to be that if the state court proceeding is allowed to continue, he will have to expend estate assets to pay for his own legal defense, which will limit the funds available to pay unsecured creditors. Doc. #18. However, as of this writing, Movant is the *only* unsecured creditor to have filed a proof of claim. POC #1. Furthermore, the proposed Chapter 13 plan lists a mere \$1,426.00 in nonpriority unsecured debts (Doc. 3), and Debtor's Schedule F identifies Movant as a nonpriority unsecured creditor with a claim whose value is "Unknown." Doc. #1. Interestingly, Schedule F does not identify Movant's claim as either unliquidated or disputed. *Id.*

As Schedule F represents a statement given under oath, the court wonders what effect it will have at trial whenever or in what forum it takes place if Debtor does not dispute the validity of the debt or its value even before a trial has taken place. *See generally In re Applin*, 108 B.R. 153 (E.D. Cal. Bankr.) (discussing admissibility of bankruptcy Schedules in state court proceedings). For that matter, the court wonders how the Chapter 13 trustee is supposed to evaluate the feasibility of a plan which proposes to pay \$1,426.00 to general unsecureds but which also has a creditor who has submitted a million dollar claim which the filings say is undisputed and unliquidated. In short, the debtor has not met his burden of proof under 11 U.S.C. § 362(g).

This motion will be GRANTED and the stay modified only for the limited purpose of continuing with the state court action to liquidate the claim. Relief is not granted to permit Movant to collect any judgment against estate assets or Debtor's assets without further order of the court.

8. [18-13447](#)-B-13      **IN RE: WILEY GARDNER**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,



P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)  
7-19-2023 [[108](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted

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

Gabriel J. Waddell ("Waddell") on behalf of Fear Waddell, P.C. ("Applicant"), counsel for Wiley Carl Gardner ("Debtor"), comes before the court on Applicant's Final Application for Fees And Expenses Pursuant to 11 U.S.C. § 330. Doc. #108. The Application requests attorney fees in the amount of \$8,560.00 and expenses in the amount of \$301.78, for a total application of \$8,861.78. *Id.* Applicant brings this request pursuant to LBR 2016-1, 11 U.S.C. § 329 and 330, and Fed. R. Bankr. P, 2002, 2006, and 2017.

This is both the First and Final Application brought by this Applicant, and it covers services rendered and actual, necessary expenses incurred from January 10, 2022, to July 7, 2023. Doc. #108. Included with the Application is a document signed by Debtor stating his opinion that the fees and expenses are reasonable and that he does not object to the Application. Doc. #110.

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which 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 may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may 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.

This Application contained a procedural oddity in that Applicant was not Debtor's original counsel of record, but rather was substituted for David R. Jenkins ("Jenkins"), who initially filed the case, on January 24, 2022. Doc. #73. Two days later, Debtor's Third Amended Plan was filed, and it *inter alia* proposed additional attorney's fees of \$14,000.00 to be paid to Applicant through the plan upon motion and court approval. Doc. #78. Section 7.03 (a Nonstandard Provision) also provides that any attorney's fees yet unpaid upon completion of the plan shall be nondischargeable and shall be paid directly by Debtor to Applicant thereafter pursuant to 11 U.S.C. § 1322(a)(2) and In re Johnson, 344 B.R. 104 (BAP 9<sup>th</sup> Cir. 2006). The Third Amended Plan was confirmed on March 16, 2022. Doc. #89.

Exhibits accompanying the Application include (A) a narrative summary, (B) itemized time entries by date and itemized costs, (C) itemized time entries by "Project," (D) a copy of the fee agreement between Debtor and Applicant, and (E) the Debtor's Consent statement alluded to above. Doc. #110.

The narrative explains that Applicant initially agreed to substitute in for Jenkins without charging for what was anticipated to be merely case closing work. *Id.* However, the case subsequently required Applicant to perform additional legal work including a motion to avoid a judicial lien and confirmation of a modified plan after Debtor fell behind on the prior confirmed plan and was at risk of dismissal. *Id.*

Applicant billed 10.30 hours for work relating to the Third Amended Plan for a fee of \$3,375.00. *Id.* For work pertaining to the judicial lien, Applicant billed 9.40 hours for a fee of \$3,145.00. *Id.* The Applicant is also billing 5.10 hours for work on preparing the instant application for a fee of \$1,152.00. *Id.* Finally, Applicant asserts 5.50 billable hour for work relating to obtaining Debtor's post-filing Financial Education Certificate and also for "case review" for which he seeks \$746.00 in fees. *Id.* Applicant is not seeking compensation for work relating to his substitution for Jenkins as counsel, nor for work on a demand letter for return of Debtor's vehicle from a creditor. *Id.* The only expenses sought were \$301.78 for copying, court fees, and postage. *Id.*

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

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested

compensation, though a similar notice of consent from Co-Debtor Moua is absent. Doc. #110.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$8,560.00 in attorney's fees and \$301.78 in expenses, for a total award of \$8,861.78. This request is less than the \$14,000.00 in attorney's fees which this court has previously approved in the Third Amended Chapter 13 Plan, and so, the chapter 13 trustee will be authorized, in the trustee's discretion, to pay Applicant \$8,861.78 for services rendered and costs incurred between January 10, 2022, and July 7, 2023.

9. [23-11047](#)-B-13     **IN RE: JOSE VERA AND ROSA LEON DE VERA**  
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN  
SERVICES, LLC  
6-23-2023    [\[14\]](#)

PENNYMAC LOAN SERVICES, LLC/MV  
STEPHEN LABIAK/ATTY. FOR DBT.  
CHRISTINA KHIL/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Pennymac Loan Services, LLC withdrew this Objection to Confirmation on August 4, 2023. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

10. [23-11047](#)-B-13     **IN RE: JOSE VERA AND ROSA LEON DE VERA**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
6-28-2023    [\[17\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This matter was previously set for July 28, 2023, and continued to August 23, 2023.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Jose Antonio Vera and Rosa Leon De Vera (collectively "Debtors") on May 17, 2023 under 11 U.S.C. § 1325(a)(5)(B)(ii) because the plan fails to provide for the value of property to be distributed under the plan on account of each allowed secured claim. Doc. #17. Specifically, the plan lists secured creditor PennyMac as a non-delinquent Class 4 mortgage claim. Doc. #3. However, PennyMac's Proof of Claim No. 6-1 lists pre-petition mortgage arrears of \$3,122.01. PennyMac's objection to confirmation is the subject of matter #9 above. CJK-1. Therefore, Trustee contends that Debtors misclassified PennyMac in Class 4 instead of Class 1 and the plan fails to pay the pre-petition mortgage arrears pursuant to Claim 6. Doc. #17.

On July 31, 2023, Debtor filed a First Amended Plan. Accordingly, the Trustee's Objection to the prior plan will be OVERRULED AS MOOT.

11. [22-12149](#)-B-13     **IN RE: BEVERLY TAYLOR**  
[WLG-1](#)

AMENDED MOTION TO MODIFY PLAN  
7-19-2023    [\[52\]](#)

BEVERLY TAYLOR/MV  
MICHAEL REID/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:             Continued as set forth below.

ORDER:                     The court will prepare the order.

Beverly Carol Taylor ("Debtor") moves for an order confirming the *Amended Chapter 13 Plan* dated July 19, 2023. Doc. #56. The confirmed plan called for payments of \$2,750.00 for 60 months, with a 100% dividend to nonpriority unsecured claims in a total amount of \$30,104.88. *Id.* The total value of the general unsecured claims filed by the bar date was \$20,135.14. *Id.* The plan also called for ongoing mortgage payments to PHH Mortgage Corporation ("PHH") in the amount of \$1,386.51 per month, with Debtor's arrearage of \$29,640.51 paid via a monthly dividend of \$494.01. *Id.* However, PBH subsequently filed an amended proof of claim asserting an arrearage total of \$32,041.00 (the regular monthly payment remained the same), plus \$900.00 in post-petition fees. *Id.*

On or about May 18, 2023, Debtor informed her attorney of a previously undisclosed pre-petition debt owed to PG&E in the amount of \$2,901.23, and Debtor's counsel subsequently filed a proof of claim on behalf of PG&E and a Motion to Allow a Late Filed Claim. *Id.* Debtor subsequently fell behind in plan payments, with a deficiency as of the date the instant motion was filed in the amount of \$5,350.92, which led the Trustee to file a Motion to Dismiss on June 5, 2023. *Id.*

On June 9, 2023, Debtor filed the first iteration of her motion to modify the plan which was set for hearing on July 20, 2023. Doc. #26. The court denied that motion as moot, however, upon the filing of the instant amended motion. Doc. #63. In the civil minutes issued after the July 20, 2023, hearing, the court advised Debtor that the instant motion and the accompanying documents did not comply with various requirements of the Local Rules of Practice dealing with Docket Control Numbers ("DCN"), due to Debtor incorrectly using the same DCN that had been used for the first motion to amend instead of a new DCN for what is effectively a new filing. Doc. #61. The court advised Debtor that this matter may be subject to dismissal without corrective action. *Id.* In response, Debtor filed a document entitled *Notice of Correction/Errata* which purports to cure the error by stating:

TO THE COURT AND ALL PARTIES TO THIS ACTION:

PLEASE TAKE NOTICE that Debtor, Beverly Carol Taylor, through her attorney of record Michael T. Reid, hereby provides Notice of Errata to indicate the proper docket control number for the Amended Motion to Allow Modification of Confirmed Plan and Support Documents (docket numbers 52-57) which was filed with the Court on July 19, 2023. Counsel inadvertently used the incorrect docket control number. The proper docket control number is WLG-4.

The Amended Motion proposes the following modifications to cure all deficiencies: (a) it would provide for a distribution for a mortgage arrearage in the amount of \$32,041.00 and a post-petition mortgage fee of \$900.00 to PHH; (b) it would pay the aforementioned dividend at \$494.01 for months 1-3 of the plan, \$0.00 for months 4-6 of the plan, and \$565.19 for the remaining 54 months of the plan; (c) it would pay regular mortgage payments through the plan at \$1,386.51 for months 1-5, \$0.00 for month 6, and \$1,412.19 for months 7-60; and (d) it would distribute \$2,901.23 to PG&E as a pre-petition debt. Doc. #52. The Debtor avers that under the modified plan, the unsecured creditors (including PG&E) will continue to receive a 100% dividend, and that the modified plan will cure the delinquency of \$5,350.98 by suspending months 4 and 5 of the plan but increasing the plan payment for all subsequent months. *Id.* The motion also proposes to modify the plan payment to include \$820.00 in additional compensation for Debtor's counsel. *Id.* In all, the Amended Plan, if confirmed, will increase plan payments to \$2,760.00 a month beginning June 25, 2023, and then reducing them to \$2,731.00 a

month commencing July 25, 2023, and thereafter for the duration of the plan.

On August 9, 2023, the Trustee timely filed an objection to the Amended Motion to Modify. Doc. #69. The gravamen of the objection is that it is unclear whether Debtor can fulfill the new plan requirements because Schedules I and J have not been updated. Trustee also asserts that he cannot make partial distributions on account of a post-petition monthly mortgage payment, nor can Debtor simply and unilaterally increase the ongoing mortgage payment later in the plan to cure an earlier deficiency in ongoing payments.

No other party filed an objection to the instant motion. Debtor did not file a response to Trustee's Objection.

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 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, other than the Chapter 13 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.

In light of the objection and the lack of a reply, it is ordered that this matter be CONTINUED until September 27, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection is withdrawn, the debtor shall file and serve a written response not later than September 13, 2023. The response shall specifically address each issue raised in the objection, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by September 20, 2023.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 20, 2023. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

12. [20-11356](#)-B-13      **IN RE: BENJAMIN/MELISSA REYES**  
[MHM-1](#)

OBJECTION TO CLAIM OF DEFENSE FINANCE AND ACCOUNTING

SERVICE, CLAIM NUMBER 22-1  
6-16-2023 [28]

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

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

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Proof of Claim No. 22-1 filed by Defense Finance and Accounting Service ("Claimant") in the amount of \$6,175.12 filed on May 26, 2023. Doc. #28. This Chapter 13 case was filed on April 8, 2020, and Claimant was listed as a general unsecured creditor with a claim amount on \$14,944.00. Doc. #1. The plan filed that same day provided for a 0% repayment to general unsecured creditors. The deadline for nongovernmental proofs of claim was June 17, 2020. *Id.* The 36-month plan was confirmed on August 11, 2020 (Doc. #17), and the Notice to Debtor of Completed Plan Payments was filed on April 25, 2023. Doc. #25. On May 6, 2023, just under three years after the deadline for filing proofs of claim, Claimant filed the Proof of Claim that is the subject of this Objection.

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtors, 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 sustaining of the objection. *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.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects. Trustee is a party in interest within the meaning of § 502(a). Section 704 (a)(5) (incorporated in Section 1302 (b)) requires the trustee to examine proofs of claim and object to the

allowance of any claim that is improper. *In re Thompson*, 965 F.2d 1136 (1st Cir. 1992).

Rule 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

To rebut the presumption of tardy claim's validity, § 502(b)(9) provides for disallowance of late-filed claims:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that-

(9) proof of such claim is not timely filed ...

Likewise, Federal Rule of Bankruptcy Procedure, Rule 3002(c) provides that "a proof of claim is timely filed if it is filed not later than 70 days after the first date set for the meeting of creditors called under § 341(a) of the Code." Fed. R. Bankr. Pro. 3002(c).

As the Trustee notes, the record reflects that the Proof of Claim under consideration was not timely filed. Claimant was appropriately served on at least 44 days' notice and did not file opposition.

Accordingly, Proof of Claim No. 22-1 filed by Claimant Defense Finance and Accounting Service on May 26, 2023, will be disallowed in its entirety.

13. [23-10377](#)-B-13      **IN RE: LISA ELLIOTT**  
[MHM-3](#)

MOTION TO DISMISS CASE  
7-7-2023    [\[44\]](#)

CHRISTIE LEE/ATTY. FOR DBT.  
DISMISSED 7/28/23

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 July 28, 2023. (Doc. #52). The motion will be DENIED AS MOOT.

14. [23-11385](#)-B-13     **IN RE: RACHEL DOHERTY**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-7-2023    [[9](#)]

MICHAEL MEYER/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

On July 7, 2023, the Trustee filed the instant Objection to Debtor's Claim of Exemptions. Doc. #9. On August 9, 2023, the Debtor submitted a Response stating that Debtor had submitted an Amended Schedule C on July 26, 2023. Doc. #18. The docket reflects that an Amended Schedule C was indeed filed on that date. Accordingly, this motion will be DENIED AS MOOT.

15. [23-10487](#)-B-7     **IN RE: CHERYLANNE FARLEY**  
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
RELIEF FROM CO-DEBTOR STAY  
7-17-2023    [[41](#)]

LAKEVIEW LOAN SERVICING,  
LLC/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION:        Continued to September 27, 2023 at 9:30 a.m.

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

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and termination of the co-debtor stay of § 1301 with respect to 605 Winchester Street,

Bakersfield, California 93309 ("Property"). Doc. #41. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.* Cherylanne Lee Farley ("Debtor") did not oppose. No party in interest timely filed written opposition.

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). 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.

Notwithstanding the foregoing, however, the court declines to grant the motion now and instead continues this matter. Debtor filed this case on March 14, 2023, originally under Chapter 13. Doc. #1. The instant Motion for Relief from Stay was filed by Movant on July 17, 2023. Doc. 41. While the motion was pending, Debtor converted the case to Chapter 7 August 9, 2023. Doc. #51. While the Debtor certainly gave every indication pre-conversion of her intention to surrender the property, the court cannot overlook the possibility that conversion has changed Debtor's calculus in the matter.

Additionally, as of this writing, it appears that the instant motion has not been served on the Chapter 7 trustee who was appointed afterconversion.

Pursuant to Rule 1019(1)(B), Debtor has 30 days after the entry of the order for conversion in which to file a Statement of Intentions. Fed. R. Bankr. Pro. 1019(1)(B). Accordingly, the court continues this matter to September 27, 2023, at 9:30 a.m. If Debtor files a Statement of Intention evincing a continued desire to surrender the subject property and the Chapter 7 trustee does not oppose this motion, the court will grant the motion without a hearing. If the Debtor files a Statement of Intention indicating she wishes to reaffirm the obligation (and is capable of curing any outstanding deficiency in order to do so) or the Chapter 7 trustee opposes, the court will hear arguments on whether the automatic stay should nevertheless be lifted as to the property for cause.

16. [23-11487](#)-B-13     **IN RE: TRACI BRAZIL**  
[BN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY

7-21-2023 [\[10\]](#)

TRI COUNTIES BANK/MV  
ROBERT MCWHORTER/ATTY. FOR MV.  
DISMISSED 8/10/23

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

DISPOSITION: Denied as moot.

NO ORDER REQUIRED.

An order dismissing this case was entered on August 10, 2023. (Doc. #54). The motion will be DENIED AS MOOT.

11:00 AM

1. [23-10801](#)-B-7     **IN RE: GILBERT CABRERA**  
[23-1032](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-7-2023    [8]

BUENROSTRO ET AL V. CABRERA

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

DISPOSITION:                    The order to show cause is vacated.

ORDER:                            The court will issue an order.

Vicente Buenrostro, Eliazar Gonzalez, Lourdes Gonzalez and Margarito Mendez (collectively "Plaintiffs") filed a non-dischargeability complaint on July 21, 2023. Doc. #1. A fee of \$350.00 is required at the time of filing that complaint. A *Notice of Payment Due* was served on Plaintiffs on July 23, 2023. Doc. #6.

On August 9, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Plaintiffs to appear at the hearing and show cause why the motion should not be stricken, sanctions imposed on the party filer and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #8.

The order to show cause is vacated.

2. [23-10801](#)-B-7     **IN RE: GILBERT CABRERA**  
[23-1033](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-7-2023    [8]

BUENROSTRO ET AL V. CABRERA

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

DISPOSITION:                    The order to show cause is vacated.

ORDER:                            The court will issue an order.

Vicente Buenrostro, Eliazar Gonzalez, Lourdes Gonzalez and Margarito Mendez (collectively "Plaintiffs") filed a non-dischargeability

complaint on July 21, 2023. Doc. #1. A fee of \$350.00 is required at the time of filing that complaint. A *Notice of Payment Due* was served on Plaintiffs on July 23, 2023. Doc. #6.

On August 9, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Plaintiffs to appear at the hearing and show cause why the motion should not be stricken, sanctions imposed on the party filer and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #8.

The order to show cause is vacated.

3. [19-15103](#)-B-7     **IN RE: NATHAN/AMY PERRY**  
[20-1017](#)     [CAE-3](#)

THIRD ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY  
PROCEEDING FOR FAILURE TO PROSECUTE OR OTHER SANCTIONS  
6-29-2023     [[94](#)]

RICHNER ET AL V. PERRY  
RESPONSIVE PLEADING

NO RULING.

4. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [ZCL-7](#)

MOTION TO DISMISS MICHAEL SCOTT LINCICUM  
7-19-2023     [[469](#)]

NATERA V. BARNES ET AL  
ZI LIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

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.

Michael Scott Linicum and Mitzi Linicum ("Michael," "Mitzi," or collectively "Defendants"), Defendants in this adversary, have filed the instant Motion to Dismiss Michael from this case due to his death on January 20, 2023. Doc. 469. The Defendants aver that a "Suggestion

of Death of Michael Scott Linicum under FRBP 705 and FRCP 25(a)(1)" was served on Plaintiff on or about April 3, 2023. *Id.* Defendants point to FRCP 25(a)(1) for the proposition that upon the death of a party, a motion for substitution must be made within 90 days or else the action against the decedent must be dismissed. *Id.* Citing Fed. R. Civ. Pro. 25(a)(1). The Plaintiff in this adversary, in his response, acknowledges the relevant law and does not oppose dismissal of Michael but does oppose dismissal of any other party. Doc. #474. In reply, the Defendants clarify that dismissal is only sought for Michael and not Mitzi or any other party. Doc. #478.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which 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 may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Other than the Plaintiff, no party filed a response to the Motion, and so the defaults of the above-mentioned parties in interest except the Plaintiff are entered and the matter may 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. Here, the Movant has met that burden, and the Plaintiff does not object to the dismissal of the deceased Defendant.

Accordingly, the motion is GRANTED, and Michael Scott Linicum only shall be dismissed from this adversary proceeding.

5. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [ZM-3](#)

CONTINUED MOTION FOR SUMMARY JUDGMENT  
6-14-2023     [[451](#)]

NATERA V. BARNES ET AL  
JACOB EATON/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.