

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 24, 2022
Department B – Courtroom #13
Fresno, California**



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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [21-12407](#)-B-13 **IN RE: MANUELA BETTENCOURT**
[SDS-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SILVEIRA LAW
OFFICES FOR SUSAN D. SILVEIRA, DEBTORS ATTORNEY(S)
7-25-2022 [\[61\]](#)

SUSAN SILVEIRA/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.

Susan D. Silveira of the Silveira Law Offices ("Applicant"), attorney for Manuela Bettencourt ("Debtor"), seeks interim compensation in the sum of \$13,199.32 under 11 U.S.C. §§ 330-31, and, after drawing down \$1,344.00 in pre-petition payments, requests to be paid \$11,855.32. Doc. #61. This amount consists of \$12,787.50, less \$1,000.00 already paid, resulting in \$11,787.50 in fees as reasonable compensation for services rendered, and of \$411.82, less \$344.00 already paid, for \$67.82 in reimbursement of actual, necessary expenses from September 7, 2021 through July 22, 2022. *Id.*

Debtor executed a declaration dated July 22, 2022 stating that Debtor has reviewed the application and approves the same. Doc. #63, *Ex. D.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a

plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 13 bankruptcy on October 14, 2021. Doc. #1. The *Second Amended Chapter 13 Plan* dated December 2, 2021, confirmed May 6, 2022, is the operative plan in this case. Docs. #33; #56. Section 3.05 provides that Applicant was paid \$1,000.00 prior to filing the case and, subject to court approval, an additional \$16,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Rule 2002, 2016, and 2017. *Id.* This is reflected in Applicant's *Disclosure of Compensation* dated October 14, 2021. Doc. #1. The motion indicates that Applicant was paid \$1,000.00 plus \$344.00 for the filing fee and credit report, for a total of \$1,344.00 in pre-petition payments. Doc. #61.

This is Applicant's first interim fee application. The source of funds for payment will be from the \$1,344.00 retainer with the remaining \$11,855.32 to be paid from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Applicant's firm provided 34.10 billable hours of legal services at the rate of \$375.00 per hour, totaling \$12,787.50 in fees. Doc. #63, *Ex. B*. After application of \$1,000.00 from the retainer, Applicant here requests payment for **\$11,787.50** in fees. Applicant also incurred \$411.82 in expenses and requests payment of **\$67.82** as follows:

Postage	\$67.82
Filing Fees	+ \$313.00
Credit Report	+ \$31.00
Total Expenses	= \$411.82
Pre-petition Payment	- \$344.00
Requested Expenses	= \$67.82

Id. These combined fees and expenses total \$13,199.32, but after drawing down the full \$1,344.00 retainer, **\$11,855.32** remains to be paid through the plan.

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

Applicant's services included, without limitation: (1) assisted Debtor in reviewing and analyzing her options to stop a pending lawsuit and automatic withdrawals on payday loans; (2) gathering information on Debtor's financial situation; (3) preparing and filing the voluntary petition, schedules, and required documents; (4) independently

verifying the information provided by Debtor; (5) amended the schedules and means test to address concerns of the chapter 13 trustee; (6) preparing and filing the original chapter 13 plan; (7) preparing 341 documents and attending the meeting with Debtor; (8) preparing the modified plans (no charge on re-filing) and confirming the *Second Modified Chapter 13 Plan* (SDS-1; SDS-2); (9) reviewing and analyzing proofs of claim and creditor correspondence; and (10) preparing and filing this fee application (SDS-3). Doc. #63, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. No party in interest filed opposition and Debtor consents to payment of the proposed fees. *Id.*, *Ex. D*.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$12,787.50 in fees and \$411.82 in reimbursement of expenses on an interim basis under 11 U.S.C. § 331, subject to final review under § 330. After application of Debtor's \$1,344.00 pre-petition payments (including the filing and credit report payment), the chapter 13 trustee will be authorized, in his discretion, to pay Applicant **\$11,855.32** as reasonable compensation for services rendered and reimbursement of actual, necessary expenses from September 7, 2021 through July 22, 2022.

2. [21-12613](#)-B-13 **IN RE: WILLIAM/STEPHANIE CROSS**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-18-2022 [\[47\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for William Ronald Cross, Jr., and Stephanie Kaye Cross (collectively "Debtors"), seeks interim compensation in the sum of \$15,083.87 under 11 U.S.C. §§ 330-331. Doc. #47. This amount consists of \$14,618.50 in fees as reasonable compensation for services rendered and \$465.37 for reimbursement of actual, necessary expenses from November 23, 2021 through June 30, 2022. *Id.*

Debtors executed a statement dated July 15, 2022 that they have read the application and approve the same. Doc. #49, *Ex. E*.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtors filed chapter 13 bankruptcy on November 12, 2021. Doc. #1. The *First Modified Chapter 13 Plan* dated December 8, 2021, confirmed February 2, 2022, is the operative plan in this case. Docs. #25; #42. Section 3.05 provides that Debtors' attorney was paid \$5,000.00 prior to filing the case and, subject to court approval, an additional \$20,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Rule 2002, 2016, and 2017. *Id.*

However, the motion indicates that the \$5,000.00 retainer was paid to Debtors' previous attorney, David R. Jenkins, so Applicant did not receive any of this amount. Doc. #47; *cf. Substitution of Attorney; and Order*, Doc. #16. As a result, Applicant holds \$0.00 in trust toward payment of fees. Applicant's *Disclosure of Compensation* dated December 8, 2021 reaffirms the same. Doc. #29.

This is Applicant's first interim fee application. The source of funds for payment will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Applicant's firm provided 55.70 billable hours of legal services at the following rates, totaling **\$14,618.50** in fees.

Professional	Rate	Hours	Amount
Gabriel J. Waddell (2021)	\$330	31.00	\$10,230.00
Gabriel J. Waddell (2022)	\$345	6.50	\$2,242.50
Katie Waddell (2022)	\$245	0.80	\$196.00
Kayla Schlaak (2021)	\$110	15.00	\$1,650.00
Kayla Schlaak (2022)	\$125	2.40	\$300.00
Total Hours & Fees		55.70	\$14,618.50

Doc. #49, Exs. B, C. Applicant also incurred **\$465.17** in expenses:

Photocopying	\$309.30
Postage	+ \$156.07
Total Costs	= \$465.37

Id., Ex. B. These combined fees and expenses total **\$15,083.87**.

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

Applicant's services included, without limitation: (1) substituting in as counsel (2) preparing an amended means test and supporting documentation; (3) communicating with Debtors regarding the meeting of creditors, and preparing and attending the meeting; (4) preparing, filing, and prosecuting the *First Modified Chapter 13 Plan* (FW-1) petition, the plan, and schedules; (5) researching issues pertaining to a tax claim with the IRS and communicating with Debtors and the IRS as to that claim; (6) preparing documents for the trustee, submitting them, and meeting with Debtors on Zoom to verify those documents and (7) preparing and filing this fee application (FW-2). Doc. #49, Ex. A. The court finds the services and expenses actual, reasonable, and necessary. No party in interest filed opposition and Debtor consents to payment of the proposed fees. *Id.*, Ex. E.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$14,618.50 in fees and \$465.17 in reimbursement of expenses on an interim basis, subject to final review under § 330. The chapter 13 trustee will be authorized, in his discretion, to pay Applicant \$15,083.87 as reasonable compensation for services rendered and reimbursement of actual, necessary expenses from November 23, 2021 through June 30, 2022.

3. [21-12814](#)-B-13 **IN RE: DUSTIN DUTRA**
[SL-3](#)

CONTINUED MOTION TO MODIFY PLAN
6-14-2022 [[42](#)]

DUSTIN DUTRA/MV
SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

Debtor Dustin Anthony Dutra withdrew the motion and plan on August 12, 2022. Doc. #58. Accordingly, this matter will be taken off calendar pursuant to the withdrawal.

4. [21-12734](#)-B-13 **IN RE: HAROLD FARRIS**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-20-2022 [[39](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Harold Wayne Farris ("Debtor"), seeks approval of interim compensation in the sum of \$7,208.47 under 11 U.S.C. §§ 330-331 and, after drawing down a \$3,500.00 retainer, requests to be paid \$3,708.47 under the chapter 13 plan. Doc. #39. This amount consists of \$6,864.00 in fees as reasonable compensation for services rendered and of \$344.47 for reimbursement of actual, necessary expenses from August 16, 2021 through June 30, 2022. *Id.*

Debtor executed a statement dated July 20, 2022 that Debtor has read the application and approves the same. Doc. #41, *Ex. E*.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 13 bankruptcy on November 29, 2021. Doc. #1. The *Chapter 13 Plan* dated November 29, 2021, confirmed February 3, 2022, is the operative plan in this case. Docs. #3; #22. Section 3.05 provides that Applicant was paid \$3,187.00 prior to filing the case and, subject to court approval, an additional \$8,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Rule 2002, 2016, and 2017. *Id.* This is reflected in Applicant's *Disclosure of Compensation* dated November 29, 2022. Doc. #1. The motion indicates that Applicant was paid \$3,187.00 plus the \$313.00 filing fee, for a total of \$3,500.00 in pre-petition payments. Doc. #39.

This is Applicant's first interim fee application. The source of funds for payment will be from the \$3,500.00 retainer with the remaining \$3,708.47 to be paid from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Applicant's firm provided 27.6 hours of legal services at the following rates, totaling \$6,864.00 in fees.¹ After application of \$3,500.00 from the retainer, Applicant here requests payment for **\$3,364.00** in fees:

Professional	Rate	Hours	Amount
Peter L. Fear (2021)	\$410	0.5	\$205.00
Gabriel J. Waddell (no charge)	\$0	0.2	\$0.00
Gabriel J. Waddell (2021)	\$330	9.70	\$3,201.00
Gabriel J. Waddell (2022)	\$345	6.30	\$2,173.50
Katie Waddell (2022)	\$245	0.50	\$122.50
Kayla Schlaak (2021)	\$110	9.20	\$1,012.00
Kayla Schlaak (2022)	\$125	1.20	\$150.00
Total Hours & Fees		27.60	\$6,864.00
Pre-petition payment			- \$3,500.00
Requested this Application			= \$3,364.00

Doc. #41, Exs. B, C. Applicant also incurred **\$344.47** in expenses:

Photocopying	\$3.00
Postage	+ \$5.97
Filing Fees	+ \$313.00
CourtCall Fee	+ \$22.50
Total Costs	= \$344.47

Id., Ex. B. These combined fees and expenses total **\$7,208.47**. After application of the retainer, **\$3,708.47** remains to be paid through the plan.

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

Applicant's services included, without limitation: (1) consulting with Debtor regarding bankruptcy options, preparing legal services agreement, and analyzing issues; (2) verifying facts to prepare the bankruptcy documents; (3) preparing, reviewing with Debtor, and filing all bankruptcy documents; (4) conferring with Debtor regarding meeting of creditors and appearing at the same via Zoom; (5) analyzing creditor correspondence relating to claim issues; (6) confirming the chapter 13 plan; (7) stipulating to stay relief on property that is not property of the bankruptcy estate (CJK-1); and (8) preparing and filing this fee application (FW-1). Doc. #41, Ex. A. The court finds the services and expenses actual, reasonable, and necessary. No party in interest filed opposition and Debtor consents to payment of the proposed fees. *Id.*, Ex. E.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$6,864.00 in fees and \$344.47 in reimbursement of expenses on an interim basis, subject to final review under § 330. After application of Debtor's \$3,500.00 pre-petition payment (including the \$313.00 filing fee), the chapter 13 trustee will be authorized, in his discretion, to pay Applicant **\$3,708.47** as reasonable compensation for services rendered and reimbursement of actual, necessary expenses from August 16, 2021 through June 30, 2022.

¹ The court notes that Applicant applied the \$313.00 filing to the outstanding fees, rather than expenses, in its calculations. Had it been applied to

expenses instead of fees, the total request would have resulted in \$3,677.00 in fees and \$31.47 in expenses (totaling the same \$3,708.47 requested). This misattribution is *de minimis* here since the total amount of compensation paid to Applicant remains the same.

5. [22-11035](#)-B-13 **IN RE: DONALD/STEPHANIE SALKIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-28-2022 [[27](#)]

BENNY BARCO/ATTY. FOR DBT.
\$79.00 FILING FEE PAID 8/1/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. Therefore, the *Order to Show Cause* will be vacated.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

6. [22-10849](#)-B-13 **IN RE: DAMITA NOVEL**
[TJS-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
6-22-2022 [[17](#)]

ALLY BANK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TIMOTHY SILVERMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

This objection was previously continued based on the Damita Jo Novel's ("Debtor") and Ally Bank's ("Creditor") impending stipulation to resolve the objection, and to determine the appropriate prime plus interest rate that will be paid to Creditor as required by *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) and 11 U.S.C. § 1325(a)(5)(B). Docs. #27; #29.

On August 19, 2022, the parties filed a *Stipulation Resolving Objection to Confirmation of Chapter 13 Plan* that states the secured value of the vehicle will be \$15,000.00. Doc. #31. The court approved the stipulation on August 22, 2022. Doc. #33.

Though this stipulation appears to partially resolve the objection, it does not contain any terms regarding the interest rate that will be paid on account of Creditor's claim. This matter will be called as scheduled to inquire whether the parties have agreed that Creditor will be paid the 5% interest as set forth in the proposed chapter 13 plan, or if the interest rate will be set to some other amount.

7. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[FW-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-20-2022 [\[100\]](#)

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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Kelly William Huffman and Ella Rodriguez (collectively "Debtors"), seeks compensation in the sum of \$2,725.47 on a final basis under 11 U.S.C. § 330. Doc. #100. This amount consists of \$2,640.00 in fees as reasonable compensation for services rendered and of \$85.47 for reimbursement of actual, necessary expenses from November 1, 2018 through July 7, 2022. *Id.*

Debtors executed a statement dated July 10, 2022 that they have read the application and approve the same. Doc. #102, *Ex. E*.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See

Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 13 bankruptcy on October 20, 2017. Doc. #1. The *Second Modified Chapter 13 Plan* dated April 19, 2018, confirmed June 8, 2018, is the operative plan in this case. Docs. #77; #86. Section 3.05 provides that Applicant was paid \$7,500.00 prior to filing the case and, subject to court approval, an additional \$19,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Rule 2002, 2016, and 2017. *Id.* The motion indicates that Applicant was paid \$7,500.00 plus the \$310.00 filing fee, for a total of \$7,810.00 in pre-petition payments. Doc. #100. These amounts are reflected in Applicant's *Disclosure of Compensation* dated October 10, 2017. Doc. #1.

This is Applicant's second and final fee application. Applicant was previously awarded \$17,431.50 in fees and \$585.23 in expenses on an interim basis for the period of September 29, 2016 through October 31, 2018. Doc. #91. After applying the \$7,810.00 in pre-petition payments, the court authorized Trustee to pay a total of \$10,206.73 through the chapter 13 plan. Docs. ##96-97.

The source of funds for this application will be solely from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Doc. #100. It appears that \$8,793.27 remains in the plan for payment of attorney fees. Doc. #77.

Applicant's firm provided 9.60 billable hours of legal services at the following rates, totaling **\$1,777.50** in fees, but Applicant estimates an additional 2.50 hours of services remain to be completed, which results in 12.10 billable hours totaling **\$2,640.00** in fees:

Professional	Rate	Hours	Amount
Peter L. Fear (2018)	\$375	0.5	\$187.50
Gabriel J. Waddell (2019)	\$310	1.70	\$527.00
Gabriel J. Waddell (2020)	\$320	0.10	\$32.00
Gabriel J. Waddell (2021)	\$330	0.20	\$66.00
Gabriel J. Waddell (2022)	\$345	0.80	\$276.00
Gabriel J. Waddell (2022 - estimated)	\$345	2.50	\$862.50
Katie Waddell (2019)	\$210	0.30	\$63.00
Kayla Schlaak (2018)	\$70	1.60	\$112.00
Kayla Schlaak (2019)	\$80	0.80	\$64.00
Kayla Schlaak (2022)	\$125	3.60	\$450.00
Total Hours & Fees		12.10	\$2,640.00

Doc. #102, *Exs. B, C*. Applicant also incurred **\$85.47** in expenses:

Photocopying	\$46.05
Postage	+ \$39.42
Total Costs	= \$85.47

Id., *Ex. B*. These combined fees and expenses total **\$2,725.47**.

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

Applicant's services included, without limitation: (1) analyzing correspondence from a creditor; (2) analyzing issues related to the previously confirmed chapter 13 plan and communicating with Debtors; (3) finalizing the first interim fee application (FW-8); (4) preparing discharge paperwork and preparing for case closing; and (5) preparing and filing this fee application (FW-9). Doc. #102, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. No party in interest filed opposition and Debtors have consented to payment of the proposed fees. *Id.*, *Ex. E*.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,640.00 in fees and \$85.47 in reimbursement of expenses on a final basis under 11 U.S.C. § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant \$2,725.47 in accordance with the confirmed plan for services rendered to and expenses incurred on behalf of the estate from November 1, 2018 through July 7, 2022. Additionally, the court will approve on a final basis the interim award of \$17,431.50 in fees and \$585.23 in expenses from September 29,

2016 through October 31, 2018. The total amount of compensation in this case will be \$20,742.20. After application of the \$7,810.00 in pre-petition payments, the total amount paid in this case by the trustee through the plan will be \$12,932.20.

8. [22-11185](#)-B-13 **IN RE: MARTHA WALLWORK**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY , MOTION FOR ADEQUATE PROTECTION
8-3-2022 [\[16\]](#)

CAM XI TRUST/MV
JERRY LOWE/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

Cam Xi Trust ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at 1803 Houston Ave., Clovis, CA 93611 ("Property") so that it may take all steps necessary under state and federal law to commence or complete its foreclosure sale. Doc. #16. Movant requests that the order be binding and effective under § 362(d)(4) in any other bankruptcy purporting to affect Property for a period of two years after entry of the order. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) and Cal. Civ. Code § 3924g(d).

Written opposition was not required and may be presented at the hearing. The court is inclined to DENY AS MOOT this motion because an order under § 362(d)(4) has already been entered in another bankruptcy case.

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. 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.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary

relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

Here, Movant is the loan servicer for a \$235,000 mortgage secured by Property in favor of Debtor and co-borrower Keith Wallwork. Movant indicates that the total amount owed on the loan is \$293,846.16 as of July 12, 2022. Doc. #18.

Earlier in the year, Movant filed a *Notice of Default* on January 27, 2022 and scheduled a foreclosure sale to take place on June 2, 2022. *Id.* At 12:34 a.m. on the morning of the sale, Movant's foreclosure trustee received an email from Debtor advising it of a bankruptcy purportedly affecting Property that filed by Jose L. Uribe Prieto ("Uribe-Prieto") as Case No. 22-10921 ("First Bankruptcy"). *Id.*; See Doc. #20, *Ex. C.* Debtor attached copies of Uribe-Prieto's *Schedule A/B* and *D*, which alleged that Uribe-Prieto had a \$15,100 interest in Property. *Id.*, *Ex. C.* However, Uribe-Prieto did not actually claim any interest in Property, or any real property, in the schedules. *Id.*, *Ex. D*; cf. *First Bankruptcy*, Doc. #1, *Sched. A/B, D*. Thus, it appears that Debtor submitted Uribe-Prieto schedules that had been altered to falsely claim that a bankruptcy affecting Property had been filed.

Thereafter, Movant requested relief from the automatic stay in the Uribe-Prieto bankruptcy before the Honorable Jennifer E. Niemann, which was granted on July 12, 2022 pursuant to § 362(d)(1) but continued to August 4, 2022 for supplemental briefing as to § 362(d)(4). See First Bankruptcy, Doc. #31.

On July 11, 2022, Debtor filed this bankruptcy ("Second Bankruptcy"), which forced Movant to postpone its July 12, 2022 foreclosure sale to July 28, 2022. Doc. #18. Movant subsequently sought stay relief in this Second Bankruptcy.

After filing this motion, Judge Niemann heard Movant's continued motion on relief under § 362(d)(4) and found that the First Bankruptcy was part of a scheme to delay, hinder, or defraud Movant and Movant's scheduled foreclosure sale of Property. First Bankruptcy, Docs. #37; #38. On August 9, 2022, Judge Niemann entered an order under § 362(d)(4) that is binding in any other case purporting to affect Property filed within two years of the date of entry of the order. *Id.*

Though there does appear to be evidence of a scheme to delay, hinder, or defraud creditors in the form of (a) multiple bankruptcies purporting to affect Property and (b) the purported transfer of an interest in Property without Movant's consent, relief from the automatic stay under § 362(d)(1) and (d)(4) appears to be moot. Movant already has relief from the automatic stay that is binding and effective in any bankruptcy purporting to affect Property filed within a two-year period of the August 9, 2022 order. This matter will be called and proceed as scheduled. The court is inclined to DENY AS MOOT this motion for the above reason.

9. [21-12289](#)-B-13 **IN RE: DUSTIN/MIRANDA WHEELER**
[SL-3](#)

CONTINUED MOTION TO MODIFY PLAN
6-10-2022 [[40](#)]

MIRANDA WHEELER/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 matter was previously continued from July 20, 2022. Doc. #53.

Dustin Wheeler and Miranda Wheeler ("Debtors") sought confirmation of the *First Modified Chapter 13 Plan* dated June 10, 2022 ("Plan").

Doc. #40. The Plan provides that Debtor will pay \$10,800.00 to Trustee by June 30, 2022, and then the payment will be \$2,495.00 starting in July 2022 through the end of the Plan, with a 100% dividend to allowed, non-priority unsecured claims. Doc. #45. In contrast to the *Chapter 13 Plan* dated September 27, 2021, confirmed November 12, 2022, the Plan provides for a \$1,295.00 increase in monthly plan payments while paying the same dividend to unsecured claims. *Cf.* Docs. #3; #22.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(1) because the plan fails to comply with other applicable provisions of the Bankruptcy Code. Doc. #47. Namely, the Plan proposes to reclassify Freedom Mortgage Corporation from Class 4 to Class 1 by adding the following provision:

The regular mortgage payments that the debtors mistakenly made directly to Freedom Mortgage Corporation in months 1 through 9 after the filing of the Chapter 13 bankruptcy case are hereby approved. This relates to Section 2.01 and to Section 3.07, Class 1 of Debtors' First Modified Plan, and to Section 2.01 and to Section 3.10, Class 4 of Debtors' Original Chapter 13 Plan.

Doc. #45. Trustee said that Debtors failed to provide any evidence as to the payments that have been made. Doc. #47. Without such evidence, Trustee will be unable to prepare a *Notice of Final Cure* at the end of the case unless all post-petition mortgage payments have been made. Therefore, Trustee requested that Debtors provide proof of all post-petition mortgage payments.

On July 19, 2022, Debtors responded that they had provided evidence of mortgage payments made to Freedom Mortgage in months 1 through 9 of the plan. Doc. #49.

This matter was continued so that Debtors could file a written response with admissible evidence in support of their position. Docs. #53; #54.

On August 8, 2022, Trustee withdrew his objection. Doc. #56. No other party in interest opposed.

This motion was originally 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken

as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

10. [22-10895](#)-B-13 **IN RE: LISA YOUNG**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
7-1-2022 [[12](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew the objection on August 12, 2022. Doc. #26. Accordingly, this matter will be taken off calendar pursuant to the withdrawal.

11. [22-10895](#)-B-13 **IN RE: LISA YOUNG**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP LLC.
7-7-2022 [[17](#)]

LISA YOUNG/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Lisa Renee Young ("Debtor") requests an order valuing a 2018 Honda Civic with 91,000 miles ("Vehicle") at \$22,100.00. Doc. #17. The Vehicle is the collateral of a refinanced loan secured by OneMain Financial Group, LLC ("Creditor") on March 3, 2022, which Debtor claims is a non-purchase money security interest. *Id.*

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule").

Rule 3012(b) provides that a request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 13 case. When the request is made in a chapter 13 plan, the plan must be served in the manner provided in Rule 7004. The court notes that the proposed *Chapter 13 Plan* dated May 26, 2022 is consistent with this motion and lists Creditor as a Class 2(B) creditor for claims reduced based on the value of collateral. Doc. #5.

The original plan was filed with the petition on the petition date under Local Rule of Practice ("LBR") 3015-1(c)(1), which was required to be served on the chapter 13 trustee ("Trustee") within 14 days. LBR 3015-1(c)(2). Then, LBR 3015-1(c)(3) required Trustee to serve the plan on all creditors. The docket indicates that Trustee transmitted the plan to the Bankruptcy Noticing Center ("BNC") for service on June 3, 2022 (Doc. #8), which was served on all creditors on June 5, 2022. Doc. #11. However, the BNC *Certificate of Notice* indicates that Creditor was notified by email. *Id.* Creditor did not receive a copy of the chapter 13 plan by mail.

Even if Creditor had been served the plan by mail, such service would not have complied with Rule 7004. Creditor is listed in the *Master Address List* with the following address:

Household Finance Co/OneMain Financial
Attn: Bankruptcy
Po Box 3251
Evansville, IN 47731

Doc. #3. So, even if the BNC had mailed the *Chapter 13 Plan* to Creditor, the mailing address provided in the *Master Address List* would have been insufficient for Rule 7004 service.

Rule 3012(b) is silent as to whether a determination of value by motion or claim objection requires Rule 7004 service. However, Rule 9014(b) requires contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. "Valuations pursuant to 11 U.S.C. § 506(a) and [Rule] 3012 are contested matters and do not require the filing of an adversary proceeding." *In re Well*, 2009 Bankr. LEXIS 5679, at *4 (Cal. E.D. Bankr. May 7, 2009); *see also In re Johnson*, 2020 Bankr. LEXIS 1730, at *1 (Bankr. D.D.C. July 2, 2020) (denying motion to value a motor vehicle because the debtor did not affect proper service under Rule 7004, which is required under Rule 9014); *In re Kelley*, 2020 Bankr. LEXIS 1276, at **1-2 (Bankr. D.D.C. May 11, 2020) (reasoning that a motion to redeem a vehicle under § 722, which implicated § 506(a)(2) to the extent the vehicle was secured, initiated a contested matter requiring Rule 7004 service). Electronic service under Rule 9036 is precluded here because

it "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Rule 7004 allows service in the United States by first class mail on domestic or foreign corporations "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process[.]" Rule 7004(b)(3).

Here, the *Certificate of Service* indicates that Creditor was served at the following address, which was taken from Proof of Claim No. 15:

OneMain Financial
PO Box 3251
Evansville, IN 47731-3251

Doc. #21; *cf.* Claim 15-1. Debtor did serve the correct address in Claim 15, but the proof of claim notice address is specifically for notices under Rule 2002 or objections to claims under Rule 3007(a)(2)(A). Providing notice under Rule 2002 is not sufficient when Rule 7004 service is required. *See In re Ass'n of Volleyball Prof'ls*, 256 B.R. 313, 319-20 (Bankr. C.D. Cal. 2000).

Rules 3012(b) and 9014(b) require service under Rule 7004. The Ninth Circuit has long required Rule 7004(b)(3) service to be directed to a named officer. *See In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an *office*."). (emphasis in original); *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 98 (B.A.P. 9th Cir. 2004) ("Only if the notice is 'directed to a corporation and the attention of an officer or agent as identified in Rule 7004(b)(3),' can it be considered to have been received by a person who is charged with responding to service.") quoting *Schwab v. Assocs. Commercial Corp. (In re C.V.H. Transp., Inc.)*, 254 B.R. 331, 344 (Bankr. M.D. Pa. 2000).

Therefore, this motion will be DENIED WITHOUT PREJUDICE because the service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to a named officer of Creditor.

11:00 AM

1. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[22-1001](#)

CONTINUED ORDER TO SHOW CAUSE REGARDING DISMISSAL OF
ADVERSARY PROCEEDING
6-2-2022 [[27](#)]

CARVER ET AL V. SETERUS INC. ET AL
RESPONSIVE PLEADING

NO RULING.

The court initially issued this *Order to Show Cause* ("OSC") why this adversary proceeding should not be dismissed for lack of prosecution and failure to follow court orders under Fed. R. Civ. Proc. ("Civ. Rule") 41(b) (incorporated by Fed. R. Bankr. P. ("Rule") 7041).

Debtors Gregory Thomas Carver and Karan Ann Carver (collectively "Plaintiffs") timely responded and requested entry of default for defendants Nationstar Mortgage, LLC dba Mr. Cooper ("Nationstar"), Gregory Funding, Inc. ("Gregory Funding"), and Seterus, Inc. ("Seterus"). Docs. ##30-33. The court entered the defaults of Nationstar and Gregory Funding but issued a memorandum regarding failure to properly serve Seterus. Docs. ##34-36. Since the adversary proceeding was not resolved as to Seterus, the *Entry of Default and Order re: Default Judgment Procedures* indicated that Plaintiffs need not seek entry of judgment until resolution of the adversary proceeding as to all parties under Civ. Rule 54(b), as incorporated by Rule 7054. Docs. ##35-36.

Thereafter, Plaintiffs dismissed Seterus and Does 1-10 from the adversary proceeding with prejudice. Doc. #43. This OSC was continued so that Plaintiffs could set a default prove-up hearing. Docs. #44; #46. Since the last hearing, Plaintiffs have not applied for a default judgment by scheduling a prove-up hearing.

This matter will be called and proceed as scheduled.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [WCT-1](#)

MOTION FOR SUMMARY JUDGMENT
6-23-2022 [\[397\]](#)

SUGARMAN V. IRZ CONSULTING,
LLC ET AL
TRACY AGRALL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Third-party defendant Valmont Northwest, Inc. ("Valmont") moves for summary judgment against defendant and third-party plaintiff IRZ Consulting, LLC ("IRZ"). Docs. #397; #399.

IRZ opposes and objects to Valmont's evidence. Docs. #406; ##408-09.

Valmont replied. Docs. #411.

This motion for summary judgment was filed on 42 days' notice as required by Local Rule of Practice ("LBR") 7056-1 and in conformance with Federal Rule of Bankruptcy Procedure 7056 and Federal Rule of Civil Procedure 56. This matter will be called and proceed as scheduled. The court intends to take the matter under submission and issue proposed report and recommendation for *de novo* consideration by the District Court as to Valmont's motion for summary judgment.

3. [21-11674](#)-B-7 **IN RE: JULIO ARELLANO**
[22-1010](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
4-5-2022 [\[1\]](#)

DIVERSIFIED FINANCIAL
SERVICES, LLC V. ARELLANO, SR.
PAUL PASCUZZI/ATTY. FOR PL.

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

DISPOSITION: Continued to October 26, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of *Plaintiff Diversified Financial Services, LLC Status Conference Statement* dated August 17, 2022 and the *Request for Entry of Default by Plaintiff(s)* dated August 19, 2022. Docs. #27; #29. The court entered the Defendant's default and directed Plaintiff to apply for a default judgment within 30 days. Doc. #31. This status conference will be CONTINUED to October 26, 2022 at 11:00 a.m. so that

the plaintiff may set a prove-up hearing for a default judgment. The continued status conference may be further continued to the date and time of the prove-up hearing.