



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 14, 2023
Department A – Courtroom #11
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.

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

1. [23-10102](#)-A-13 **IN RE: KERRIE GRAY**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
8-4-2023 [[84](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for Kerrie Lynn Gray ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$11,381.50 and reimbursement for expenses in the amount of \$281.61 for services rendered from March 2, 2023 through June 30, 2023. Doc. #84. Debtor's confirmed plan provides for \$12,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. #64, 77. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #86.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first and second modified plans; (2) communicating with Debtor and the chapter 13 trustee; (3) preparing the fee application; and (4) general case administration. Exs. A, B, & C, Doc. #86. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$11,381.50 and reimbursement for expenses in the amount of \$281.61 to be paid in a manner consistent with the terms of the confirmed plan.

2. [23-11308](#)-A-13 **IN RE: TINA MARQUEZ**
[JDM-1](#)

MOTION TO CONFIRM PLAN
7-21-2023 [\[19\]](#)

TINA MARQUEZ/MV
JAMES MILLER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the chapter 13 plan on September 1, 2023. Doc. #28.

3. [23-11112](#)-A-13 **IN RE: ADANAN/HUDA BATH**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
7-26-2023 [\[17\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
DISMISSED 9/5/2023

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 entered on September 5, 2023. Doc. #29.
Therefore, this motion will be DENIED AS MOOT.

4. [19-10615](#)-A-13 **IN RE: SERGIO/JUANA RIOS**
[PBB-1](#)

MOTION TO MODIFY PLAN
8-10-2023 [\[44\]](#)

JUANA RIOS/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 19, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #53. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than September 28, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by October 5, 2023.

If the debtors elect 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 October 5, 2023. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

5. [18-14316](#)-A-13 **IN RE: ALLISON HOPKINS**
[FW-3](#)

CONTINUED MOTION TO AVOID LIEN OF HUNG DUONG
6-23-2023 [\[49\]](#)

ALLISON HOPKINS/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
8-14-2023 [\[49\]](#)

DAYANA GONZALEZ DELGADO/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

D. Max Gardner, Attorney at Law ("Movant"), counsel for Dayana Gonzalez Delgado ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$4,437.00 and reimbursement for expenses in the amount of \$55.30 for services rendered from November 10, 2022 through August 14, 2023. Doc. #49. Debtor's confirmed plan provides, in addition to \$1,800.00 paid prior to filing the case, for \$4,700.00 in attorney's fees to be paid through the plan. Plan, Doc. ##9, 40. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #54.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing schedules and Debtor's chapter 13 plan; (2) assisting Debtor with plan confirmation and resolving objections; (3) preparing the fee application; and (4) general case administration. Decl. of D. Max Gardner, Doc. #51. Ex. A, Doc. #52. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$4,437.00 and reimbursement for expenses in the amount of \$55.30 to be paid in a manner consistent with the terms of the confirmed plan.

7. [23-11520](#)-A-13 **IN RE: THEDFORD JONES**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-24-2023 [\[50\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

NO RULING.

8. [23-11520](#)-A-13 **IN RE: THEDFORD JONES**
[SAH-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY DENISE BALESTIER
8-25-2023 [\[55\]](#)

DENISE BALESTIER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
SUSAN HEMB/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While not required, the debtor filed written opposition to the objection to confirmation of plan. Doc. ##63, 64. The court intends to overrule the objection. At the hearing, the court will consider any additional 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.

The debtor filed his chapter 13 plan ("Plan") on July 14, 2023. Doc. #3. Denise Balestier ("Creditor") objects to confirmation of the Plan on the grounds that the Plan: (1) does not provide for payment of Creditor's priority claim for an equalization payment in the amount of \$403,707.80, including interest; and (2) has been offered in bad faith because it proposes to pay an additional \$50,000.00 to the debtor's attorney, Gabriel Waddell, at the rate of \$5,039.36 per month until paid in full but proposes to pay 0% to unsecured creditors for the entire 60 months of the Plan. Doc. #55.

TREATMENT OF CREDITOR'S CLAIM

Federal Rule of Bankruptcy Procedure 3001(f) provides 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." 11 U.S.C. § 502(a) states

that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects.

Creditor filed her proof of claim for unpaid equalization payment on July 18, 2023. Claim 1. On August 21, 2023, the debtor filed an objection to the priority nature of Creditor's proof of claim for the unpaid equalization payment. Doc. #40. The debtor asserts that Creditor's claim for the unpaid equalization payment should be treated as a general unsecured claim only. Id.

Section 3.12 of the Plan provides for priority claims in the amount of \$252,361.87. Plan, Doc. #3. Because the debtor has filed an objection to the priority designation of Claim 1 in the amount of \$406,090.68, Creditor's objection to confirmation of the Plan should be overruled. Claim 1; Doc. #55.

BAD FAITH

11 U.S.C. § 1325(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. "Although not defined under the [Bankruptcy] Code, 'good faith' is generally interpreted to mean 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Mann Farms, Inc., 917 F.2d 1210, 1214 (9th Cir. 1990). A finding of good faith "requires the court to consider the totality of the circumstances." Id. "A good faith test . . . should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13." In re Chinichian, 784 F.2d 1440, 1444 (9th Cir. 1986). The debtor, as the plan proponent, has the burden of proving good faith by a preponderance of the evidence. Meyer v. Lepe (In re Lepe), 470 B.R. 851, 863 (B.A.P. 9th Cir. 2012).

Creditor contends that the Plan has been offered in bad faith because it proposes to pay an additional \$50,000.00 to the debtor's attorney at the rate of \$5,039.36 per month until paid in full but proposes to pay 0% to unsecured creditors for the entire 60 months of the Plan. Doc. #55.

The debtor responds to Creditor's objection asserting that the amount reserved for potential attorney's fees is based on the significant anticipated litigation made necessary by Creditor's erroneous claim of priority status for the equalization payment. Doc. #63. Further, the proposed Plan is proposing to pay significant priority debts, including Creditor's legitimate domestic support claim, see Claim 2, and the debtor is not required under the liquidation analysis to pay any further amount to unsecured creditors. Id.; Plan, Doc. #3.

With respect to the priority nature of the equalization payment, "[i]n determining whether an obligation is a [domestic support obligation] entitled to priority under § 507(a), the court looks to the interpretation of [domestic support obligation] discussed in cases relating to the dischargeability of support under former § 523(a)(5)." In re Nelson, 451 B.R. 918, 921 (Bankr. D. Ore. 2011). Whether an obligation is in the nature of support, and thus qualifies as support under bankruptcy law, is a question of federal law. In re Sternberg, 85 F.3d 1400, 1405 (9th Cir. 1996), rev'd on other grounds, In re Bammer, 131 F.3d 788 (9th Cir. 1997). In determining whether an obligation is in the nature of support, "the court must look beyond the language of the decree to the intent of the parties and to the substance of the obligation." Shaver v. Shaver, 736 F.2d 1314, 1316 (9th Cir. 1984). Under Ninth Circuit authority:

When the obligation is created by stipulated dissolution judgment, "the intent of the parties at the time the settlement agreement is

executed is dispositive.” Sternberg, 85 F.3d at 1405. Factors to be considered in determining the intent of the parties include “whether the recipient spouse actually needed spousal support at the time of the divorce[,]” which required looking at whether there was an “imbalance in the relative income of the parties” at the time of the divorce. Id. Other considerations are whether the obligation terminates on the death or remarriage of the recipient spouse, and whether payments are made directly to the spouse in installments over a substantial period of time. Id.; Shaver, 736 F.2d at 1316-1317. The labels the parties used for the payments may also provide evidence of the parties’ intent. Sternberg, 85 F.3d at 1405.

Nelson, 451 B.R. at 921-22.

Thus, it appears that resolution of the debtor’s objection to Creditor’s assertion of priority status for the equalization claim is a factual dispute that likely will involve a significant amount of discovery and attorney’s fees. Consequently, it does not appear to the court that the attorney’s fees reserved for in the Plan in this case are unreasonable for purposes of confirming the Plan or that, by reserving such fees in the Plan that the Plan is not proposed in good faith. The court further notes the debtor’s attorney will need to obtain court approval prior to the attorney’s fees and costs being paid through the Plan, so the amount of attorney’s fees reserved will not necessarily be the amount paid to the debtor’s counsel. Plan, Doc. #3.

Based on the evidence before the court and considering the totality of the circumstances, it appears that the Plan has been proposed in good faith as required by 11 U.S.C. § 1325(a) (3).

CONCLUSION

Accordingly, pending any additional opposition at hearing, this court is inclined to OVERRULE this objection.

9. [22-11124](#)-A-13 **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
7-7-2023 [[80](#)]

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

10. [23-11524](#)-A-13 **IN RE: MARIA LOPEZ**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEB LOAN TRUST IV, U.S. BANK
TRUST NATIONAL ASSOCIATION
8-29-2023 [\[28\]](#)

MEB LOAN TRUST IV, U.S. BANK TRUST NATIONAL ASSOCIATION/MV
JAMES CANALEZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on September 11, 2023 (JBC-2, Doc. #34), with a motion to confirm the modified plan set for hearing on October 19, 2023 at 9:30 a.m. Doc. ##36-40.

11. [18-12130](#)-A-13 **IN RE: FERNANDO/MARY ROBERTO**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
8-15-2023 [\[65\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1. Doc. #65. On July 13, 2023, Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f) on Select Portfolio Servicing,

Inc. as servicing agent for U.S. Bank Trust National Association, as Trustee, for ABS Loan Trust VI ("Creditor"). Decl. of Trustee, Doc. #67. Rule 3002.1(g) requires that within 21 days after service of the notice under Rule 3002.1(f), the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5). On August 3, 2023, Creditor filed a response to notice stating that the total post-petition payments remaining unpaid equal \$1,738.93, which is the unpaid mortgage payments starting with the payment that first became due on May 25, 2023, totaling \$2,545.42 less the balance in the suspense account of \$806.49. Trustee Decl., Doc. #67.

Rule 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee timely served this motion on August 15, 2023. Doc. ##65-69.

Trustee states that the Notices of Mortgage Payment Change filed in this bankruptcy case show that the payments due between June 25, 2018 and May 25, 2023, total \$46,358.97. Trustee Decl., Doc. #67. According to Trustee's disbursement ledger and declaration, Trustee has paid a sum of \$46,358.97 towards the post-petition mortgage payments of Creditor. Trustee Decl., Doc. #67; See Ex. A, Doc. #68. Therefore, the record shows that the debtors have cured the default on the loan with Creditor and are current on mortgage payments through May 2023.

Accordingly, this motion is GRANTED.

12. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[NES-5](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
8-4-2023 [[113](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the motion and supporting papers do not comply with LBR 9004-2(b)(5)(A), which provides that "[t]he title of every document shall briefly describe the character of the paper, identify the filing party, state the relief sought, and, if applicable, describe the document to which it relates . . . (for example: 'Debtor's Response to Creditor Tom Swift's October 1, 1979 Motion For Relief From Stay')." LBR 9004-2(b)(5)(A). This motion is titled "Interim Application for Payment of Fees and/or Expenses Pursuant to 11 U.S.C. § 331 or § 330", while the cover sheet index for the exhibits filed in support of this motion is titled "Exhibits in Support of Final Application for Payment of Fees and/or Expenses Pursuant to 11 U.S.C. § 331." The court will allow interim compensation based on the motion and supporting documents rather than final compensation as indicated by the exhibit cover sheet. In the future, counsel for the moving party should ensure that the title of every document is accurate and consistent.

Neil E. Schwartz ("Movant"), counsel for Kimberly Yonemitsu-Todd ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$12,810.00 and reimbursement for expenses in the amount of \$211.50 for services rendered from February 16, 2023 through July 21, 2023. Doc. #113. Debtor's confirmed modified plan provides, in addition to \$3,000.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. #89, 110. A prior fee application (NES-3) was denied without prejudice. See Doc. #70-79, 101-103. Debtor consents to the amount requested in Movant's application. Doc. #113.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first, second, and third modified plans; (2) resolving plan and claim objections; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Ex. B, Doc. #115. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$12,810.00 and reimbursement for expenses in the amount of \$211.50 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-1-2023 [\[57\]](#)

ALLY BANK LEASE TRUST/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done with respect to the award of attorneys' fees.

The movant, Ally Bank Lease Trust - Assignor to Vehicle Asset Universal Leasing Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) with respect to a 2017 Mitsubishi Outlander SE Sport Utility 4D (the "Vehicle"). Doc. #57.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors are in default under the terms of a lease agreement ("Lease Agreement") with Movant that matured on July 17, 2021. Tangen Decl., Doc. #59; Ex. A, Doc. #60. Movant has produced evidence that the debtors made their last payment on June 22, 2021 but failed to turn over the Vehicle after their final payment was made. Tangen Decl., Doc. #59. The value of the Vehicle is \$15,185.00. Id; See Ex. D, Doc. #60.

Movant also requests attorneys' fees as may be reasonable pursuant to applicable provisions of the Lease Agreement. The court will not award attorneys' fees because Movant has not provided evidence of the amount of attorneys' fees to be awarded. This determination is without prejudice to Movant seeking such fees at a later time.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to

use the proceeds from its disposition to satisfy its claim. The motion is denied with respect to the request for attorneys' fees. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to turn over the Vehicle to Movant after the maturity date of the Lease Agreement and the Vehicle is a depreciating asset.

14. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-9-2023 [\[17\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on September 13, 2023. Doc. #30.

15. [23-10549](#)-A-13 **IN RE: YESENIA MADRIGAL**
[SL-5](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
8-14-2023 [\[74\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Scott Lyons, Attorney at Law ("Movant"), counsel for Yesenia Samantha Madrigal ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$12,916.50 and reimbursement for expenses in the amount of \$835.46 for services rendered from March 15, 2023 through August 14, 2023. Doc. #74. Debtor's confirmed plan provides, in addition to \$1,987.00 paid prior to filing the case, for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##14, 70. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #74.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's plan; (2) filing and prosecuting a motion to extend the automatic stay; (3) preparing for and attending 341 meeting of creditors; (4) communicating with Debtor's creditors and the chapter 13 trustee; (5) reviewing proof of claim by creditor; (6) preparing fee application; and (7) general case administration. Exs. A and B, Doc. #76. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$12,916.50 and reimbursement for expenses in the amount of \$835.46 to be paid in a manner consistent with the terms of the confirmed plan.

16. [23-10595](#)-A-13 **IN RE: HERNAN CORTEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-4-2023 [\[40\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

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

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

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(6)). Doc. #40. The debtor is delinquent in the amount of \$4,636.68. Id. Before this hearing, another payment in the amount of \$2,284.17 will also come due. Id. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and under 11 U.S.C. § 1307(c)(6) for the debtor's failure to make all payments due under the plan.

A review of the debtor's Schedules A/B, C and D shows that the debtor has minimal non-exempt equity that may be available for the benefit of unsecured creditors. Doc. #15. Therefore, the court determines that dismissal, rather than conversion, is in the best interest of creditors of the estate.

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

11:00 AM

1. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2021 [\[1\]](#)

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 5, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The plaintiff has filed a motion to compel the defendant's responses to discovery and set the motion for hearing on October 5, 2023 at 11:00 a.m. Doc. ##62-68. Accordingly, the pre-trial conference will be continued to October 5, 2023 at 11:00 a.m. No pre-trial statements are required to be filed by either party at this time.

2. [23-10963](#)-A-7 **IN RE: JESUS GUERRA**
[23-1026](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-17-2023 [\[1\]](#)

GUERRA V. COMMUNITY IMPROVEMENT CAPITAL, L.L.C.
HENRY NUNEZ/ATTY. FOR PL.
DISMISSED 8/30/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing this case was entered on August 30, 2023. Doc. #15. Therefore, this status conference will be DROPPED AS MOOT.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
5-26-2021 [[1](#)]

U.S. TRUSTEE V. NICOLE
JUSTIN VALENCIA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A judgment in favor of the plaintiff was entered on August 25, 2023. Doc. #108. Accordingly, this status conference is dropped from calendar. This adversary proceeding may be administratively closed when appropriate.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1029](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
7-12-2023 [[1](#)]

NICOLE V. AAA INSURANCE ET AL
RESPONSIVE PLEADING

NO RULING.