



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: September 18, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [24-11900](#)-B-13 **IN RE: RICHARD/JANICE TOGNOTTI**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
8-26-2024 [\[16\]](#)

PETER SAUER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn.

No order is required.

On August 28, 2024, the Trustee withdrew this Objection to Confirmation. Doc. #19. Accordingly, this matter is WITHDRAWN.

2. [24-11607](#)-B-13 **IN RE: MARY TRUJILLO**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G.
TSANG
7-29-2024 [\[28\]](#)

LILIAN TSANG/MV
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Objection sustained.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the Chapter 13 Plan filed by Mary Trujillo ("Debtor") on June 24, 2024, on the following basis:

1. Trustee has not yet concluded the 341 Meeting of Creditors because Debtor failed to appear. Debtor also failed to timely provide valid identification, copies of her Social Security Card, her 2023 tax returns, and her Social Security statements. The continued meeting is set for August 20, 2024, after which Trustee may bring additional objections.

Doc. #28. The docket reflects that the Debtor did not attend the August 20, 2024, 341 meeting, but she did appear at the continued 341 meeting which was conducted on September 3, 2024. *Docket generally.* On September 6, 2024, the Trustee supplemented the Objection, stating that Debtor and Debtor's counsel appeared at the continued meeting of creditors conducted on September 3, 2024, and

that meeting was concluded. Doc. #37. However, the Trustee raised the following additional objections:

1. Section 3.05 of the plan states that \$1,687.00 was paid to Debtor's counsel prepetition and \$2,313.00 are to be paid through the plan. Per Local Rule 2016-1(c)(3): "Attorneys who claim fees under subdivision(c) shall not seek, nor accept, a retainer greater than the sum of (A) 25% of the fee specified in subdivision (c)(1), as increased by subdivision (c)(7); and (B) the amount of costs in subdivision (c)(2), as increased by subdivision (c)(7). Absent compliance with California Rule of Professional Conduct 1.15(b), any retainer received shall be deposited in the attorney's trust account." Debtor's Counsel took more than 25% of the total fees prior to filing.

Id. On September 12, 2024, counsel for Debtor filed a Response. Doc. #41

The issue is the amount of the fee that can be taken "up front" in a chapter 13 case where debtor's counsel accepts less than the presumptive "flat fee" of \$8,500.00 for a non-business case. Debtor's counsel here, for a variety of reasons, accepted a total flat fee of \$4,000 and has been paid \$1687. Trustee objects because \$1687 is \$687 more than 25% of the total flat fee accepted by counsel for this case under LBR 2016-1 (c)(3).

Debtor's counsel contends that LBR-2016-1(c) references one flat fee for a non-business case: \$8500. Thus, counsel contends as long only 25% is charged "up front," and that figure is less than \$2125 then the initial payment is within the rule. Doc. #41. The argument is logical. But in the context of the entire rule, it is incorrect.

First, LBR 2016-1 (c) provides that counsel may accept "a" flat fee not "the flat fee authorized." Second, 2016-1 (c)(1)(A)(i) provides in part counsel can accept a lesser amount as a flat fee "provided that the flat fee otherwise complies with subdivision (c)." Counsel has the option to agree in writing to increase the flat fee under that subdivision, giving counsel an alternative. *Id.* Third, reading the entire rule in context leads one to conclude that the 25% of the flat fee specified as the maximum "retainer" specified in (c)(1) includes fees less than the permissible \$8500 flat fee.

Though the court believes it unlikely, an alternative interpretation of LBR-2016-1(c) could result in an attorney (not current counsel) agreeing to accept representation for only \$2125 and such fee would escape scrutiny. That illogical result conflicts with the purpose of LBR 2016-1.

That said, the court will inquire whether counsel and the Trustee can agree that alternatives to repayment of \$687 are available (i.e., suspending counsel's Trustee payments until the over payment is reached; modifying the confirmation order; counsel applying for a higher fee under LBR 2016-1). The court will also inquire if, failing that, the matter should be continued.

3. [24-11312](#)-B-13 **IN RE: ADAM GEORGE**
[LGT-1](#)

MOTION TO DISMISS CASE
8-14-2024 [\[21\]](#)

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

DISPOSITION: Granted.

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

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Adam George ("Debtor") that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) Debtor's failure to commence making plan payments. Doc. #21. Debtor did not oppose.

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

The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Debtor has:

- Failed to appear and testify at the initial 341 Meeting of Creditors on July 02, 2024, and the continued 341 Meeting of Creditors on August 06, 2024, and August 20, 2024. [11 U.S.C § 341] and/or F.R.B.P 4002.
- Failed to provide the required documents to the Trustee.
- Failed to file a complete plan. The plan was filed blank. Debtor indicated no amount for plan payment. Plan has not been signed by Debtor.

- Failed to accurately file schedules and/or statements. [11 U.S.C § 521] and/or F.R.B.P 1007.
- Failed to file tax returns for the years 2020 and 2023. [11 U.S.C § 1307(e).]
- Filed inaccurate and/or incomplete schedules.

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.

Due to Debtor's filing of inaccurate and/or incomplete schedules, the Trustee cannot determine liquidation in this case.

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

4. [24-11629](#)-B-13 **IN RE: GUSTAVO/LINDA LEAL**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G.
TSANG
7-19-2024 [\[14\]](#)

LILIAN TSANG/MV
JOEL WINTER/ATTY. FOR DBT.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Sustained.

ORDER: The court will prepare the order.

Hearing in this matter was originally set for August 14, 2024. Doc. #20.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the Chapter 13 Plan filed by Gustavo and Linda Leal (collectively "Debtors") on June 13, 2024, on the following basis:

1. Trustee has not yet concluded the 341 Meeting of Creditors because Debtor failed to appear. Debtor also failed to timely provide valid identification, copies of their Social Security Cards, their 2023 tax returns, and their pay advices. The

continued meeting is set for August 6, 2024, after which Trustee may bring additional objections.

Doc. #14. On August 9, 2024, the Trustee supplemented her objection, raising the following additional objections:

2. While Debtors and Debtors' counsel have filed a Rights & Responsibilities statement indicating that attorneys' fees would be paid pursuant to LBR 2016-1(c) or Plan Section 3.05 and 3.06, no box has been checked in Section 3.05 and no dividend was provided for in Section 3.06. As no election was indicated, Debtor's counsel must file a motion for allowance of fees.
3. The Plan is not feasible. Schedule E/F states that there are no priority unsecured claims, but the plan provides for priority claims in the amount of \$12,612.51. Also, Debtor's Schedule D lists secured claims for two secured creditors not provided for in the plan.
4. The Plan provides for a 70% distribution to general unsecured creditors, but based on the Debtors' projected disposable income, the dividend should be 91%.
5. Debtors have failed to file a credit counseling certificate.

Doc. #18.

The court continued this objection to September 18, 2024. Docs. ##20-21. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

5. [19-14040](#)-B-13 **IN RE: EARL/JOSIE BOYD**
[FW-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
8-6-2024 [\[88\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), attorney for Earl and Josie Boyd ("Debtor"), requests final compensation in the sum of **\$3,394.76**

under 11 U.S.C. § 330. Doc. #88. This amount consists of **\$3,162.50** in fees and **\$232.26** in expenses from July 1, 2022, through July 31, 2024. *Id.* Applicant also requests that the fees and costs previously approved on an interim basis be approved on a final basis. *Id.*

Debtors executed a statement of consent dated August 2, 2024, indicating that Debtors has read the fee application and approve the same. Doc. #90 (Exhib. E). The statement of consent includes language acknowledging that any fees approved by the court but not paid through the plan will be nondischargeable and that Debtors met with Gabriel Waddell ("Waddell") to discuss what fees were anticipated to be paid through the plan and what fees were anticipated to be payable following discharge. *Id.* A Declaration by Waddell was also filed attesting to that conversation regarding fees that were beyond what the plan provided for being nondischargeable and owed post-discharge. Doc. #91.

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

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

Section 3.05 of the *Chapter 13 Plan* dated September 25, 2019, confirmed January 7, 2020, indicates that Applicant was paid \$3,190.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 would be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Doc. ##2, 43.

This is Applicant's third and final fee application. Doc. #88. Applicant was previously awarded \$4,192.00 in fees and \$386.00 in expenses on July 29, 2020, and \$7,864.50 in fees and \$251.46 in expenses on August 31, 2022. Docs. ##52,80-81.

In this application, Applicant's firm provided 11.70 billable hours at the following rates, totaling **\$3,162.50** in fees:

Professional	Rate	Billed	Total
Gabriel Waddell (2022)	\$345.00	2.00	\$483.00
Gabriel Waddell (2023)	\$360.00	0.80	\$288.00
Gabriel Waddell (2024)	\$380.00	1.20	\$456.00
Gabriel Waddell (2024, estimated)	\$380.00	3.50	\$1,330.00
Kayla Schlaak (2022)	\$125.00	1.50	\$187.50
Kayla Schlaak (2023)	\$140.00	0.10	\$14.00
Kayla Schlaak (2024)	\$160.00	2.40	\$384.00
Laura Guenthie (2023)	\$115.00	0.20	\$20.00
Total		11.7	\$3,162.50

Doc. #90. Applicant also incurred **\$232.26** in expenses:

Photocopying	\$108.50
Postage	\$123.66
Total Expenses	\$232.16

Id. These combined fees and expenses total **\$3,394.76**.

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

Applicant's services here included, without limitation: Claim administration and claims objections; original plan, hearings, objections; fee application; discharge and case closing; and case administration. Doc. #90. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #90.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$3,162.50** in fees as reasonable compensation for services rendered and **\$232.26** basis under 11 U.S.C. § 330. The chapter 13 trustee will be authorized to pay Applicant **\$3,394.76** through the confirmed plan for services and expenses from July 1, 2022, through July 31, 2024.

Additionally, the court will approve on a final basis the compensation awarded on an interim basis on July 29, 2020, and on August 31, 2022. The total fees paid to Applicant in this case will be **\$16,099.72**. The Trustee is authorized to pay fees from funds on hand up to the maximum amount allowed under the plan. Any remaining unpaid fees will be payable by Debtors post-discharge and will be nondischargeable.

6. [23-10646](#)-B-13 **IN RE: DANNY/ROSEMARY MEDEIROS**
[JDR-2](#)

MOTION TO MODIFY PLAN
8-1-2024 [\[48\]](#)

ROSEMARY MEDEIROS/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Danny and Rosemary Medeiros (collectively "Debtors") move for an order confirming Debtors' *Second Modified Chapter 13 Plan* dated August 1, 2024. Doc. #48,52.

No party has timely objected.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The motion requests that the confirmed plan be modified as follows:

1. Debtors have paid an aggregate sum of \$23,880.70 during months 1 through 16. Plan payments will increase from \$1,701.77 to \$2,060.00 beginning in month 17 through month 60.
2. The plan will continue to pay a 100% dividend to unsecured creditors.

Compare Doc. #3 and #52.

Debtors declare that this modification is necessary because of they fell behind in plan payments due to unexpected and extraordinary medical expenses. Doc. #51. The Debtors' *Amended Schedule I & J* dated July 2, 2024, reflects a monthly net income of \$3,459.00, up from \$2,985.00 which was their monthly net income as calculated in their petition documents. Doc. #1,36.

No party has objected, and so, this motion is GRANTED. The order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

7. [24-11964](#)-B-13 **IN RE: AMANDA QUIZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
8-27-2024 [\[16\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 23, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Amanda Quiz ("Debtors") on July 16, 2024, on the following basis:

1. The plan is not feasible. The plan provides for the claim of Employment Development Department ("EDD") as a Class 2 claim and proposes to pay the value of the collateral securing that claim. However, the court has not yet entered an order setting the value of that claim.

Doc. #16. On September 26, 2024, Debtor filed a *Motion to Avoid* the lien of EDD completely, and hearing on that motion is set for October 9, 2024. Doc. ## 19-20.

This objection will be CONTINUED to October 23, 2024, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the Objection not later than **14 days before the hearing**. 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. Any reply shall be served no later than **7 days before the hearing**.

If the Debtors elect to withdraw the 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 **7 days before the hearing**. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

8. [19-10372](#)-B-13 **IN RE: JERUSALEN GUERRERO**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-7-2024 [\[50\]](#)

MIDFIRST BANK/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 8/26/24

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

DISPOSITION: Granted in part and denied as moot in part.

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

MidFirst Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a property located at 1828 Estes Ave, Corcoran, California ("Property"). Doc. #50. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Jerusalem Guerrero ("Debtor") did not oppose and no other party in interest timely filed written opposition. This motion will be GRANTED IN PART AND DENIED IN PART.

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 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The Debtor's discharge was entered on August 26, 2024. Doc. #57. Therefore, the automatic stay terminated with respect to the Debtor on August 26, 2024. This motion will be DENIED AS MOOT IN PART as to the Debtor's interest and will be GRANTED IN PART for cause shown as to the estate's interest. The case has not yet been closed though the Trustee has been discharged. It seems closing of the case is now a mere administrative step.

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 Debtor has failed to make at least 3 complete post-petition mortgage payments. The Movant has produced evidence that Debtor is delinquent at least \$2,493.69 and the entire balance of \$85,531.37 is due. Doc. #53. The Debtor is delinquent for May 2024 through July 2024 according to Movant's evidence. It also appears that Movant responded to Trustee's Notice of Final Cure Payment then stating the Debtor was delinquent. No timely motion has been prosecuted under Fed. R. Bankr. Proc. 3002.1(h)

Accordingly, the motion will be GRANTED IN PART as to the estate's interest pursuant to § 362(d)(1) and DENIED AS MOOT IN PART as to the Debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be ordered waived because the Movant not established a reason for the waiver.

9. [23-12478](#)-B-13 **IN RE: ZACARE BURRIS AND AMY RABAGO-BURRIS**
[SLL-3](#)

CONTINUED MOTION TO MODIFY PLAN
7-1-2024 [[81](#)]

AMY RABAGO-BURRIS/MV
STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Objection sustained and motion denied.

ORDER: The court will prepare the order.

This matter was originally heard on August 14, 2024. Doc. ##94-95.

Zacare Burris and Amy Rabago-Burris (collectively "Debtors") moved for an order confirming the Third Modified Chapter 13 Plan dated July 1, 2024. Doc. #85. The current plan was filed on February 1, 2024, and was confirmed on March 25, 2024. Docs. ##43,71.

Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the modified plan on the following basis:

1. The modified plan proposes to pay 77.59% to general unsecured claims totaling approximately \$34,556.40, but a review of filed claims indicate general unsecured claims of \$64,428.78.
2. The plan proposes to pay the balance of prepetition arrears in the amount of \$4,042.77 through a dividend of \$70.92 in months 8 through 60, for a total of \$3,758.76. The arrearage must increase to \$76.27 in months 8 through 60 for

feasibility.

3. Debtors have failed to file the attachment to their Amended Schedule I which outlines Debtors' business income and expenses.
4. The proposed plan does not address the Debtors' delinquency of \$10,812.00 under the terms of their confirmed plan and does not bring the case current.

Doc. #87. On August 8, 2024, Debtors filed a Response stating:

1. Whatever the total amount of unsecured nonpriority debt is to be provided for in the plan, the confirmation order shall provide that no less than \$26,896.88 (an amount equal to the 77.69% of the previously estimated \$34,556.40 provided for in the plan). In other words, Debtors propose to pay the same amount to general unsecureds with only the percentage distribution changing as appropriate.
2. Debtors agree to the Trustee's requirement that the prepetition arrearage be increased to \$75.27 in months 8 through 60.
3. Debtors filed an Amended Schedule I & J on August 8, 2024, which appears to outline Debtors' business income and expenses.

The Debtors argued that the modified plan, if approved, would cure the current delinquency objected to by Trustee. However, the court noted a serious ambiguity in the Response: In different sections, the Debtors say that general unsecured creditors will receive either no less than \$26,896.88 or no less than \$34,556.40. From the context, the court believes this was a drafting error by Debtors' counsel, but the court cannot say conclusively from the Response how much Debtors propose to pay to unsecured creditors.

The court continued this matter to September 18, 2024, directing Debtors to file a supplemental response no later than fourteen days before the hearing date. Both Debtors and the Trustee have timely filed supplemental responses. Doc. ##97,99. They appear to agree on all issues raised in the initial objection except the treatment of nonpriority unsecured creditors.

The Debtors position is that, under the currently operative plan, Debtors would pay a 77.59% dividend to general unsecured claims, estimated at that time to total \$34,665.40, for total dividend of \$26,896.88. Doc. #43.

The Trustee objected on the grounds that the actual amount of the approved unsecured claims was \$64,428.78, and that a 77.59% of \$64,428.78 equals a total dividend of \$49,990.29. Doc. #99.

The Debtors concede the increase in the total sum owed for general unsecured claims but argue that the proposed plan still calls for a total distribution to unsecured creditors in the amount of \$26,896.88. Doc. #97. Debtors argue that this mathematical discrepancy can be resolved by language added to the confirmation

order clarifying that the unsecured creditors would receive no less than \$26,895.88 without identifying a percentage distribution. *Id.*

The Trustee disagrees, arguing that the Amended Plan effectively calls for a reduction in the amount to be paid to general unsecured creditors, and such a "negative treatment" requires the filing of a new modified plan. Doc. #99.

The court agrees with the Trustee's position on this matter. It is improper to "correct" the percentage distribution to unsecured creditors by way of language in a confirmation order. The alteration Debtors propose represents a significant change in the treatment of unsecured creditors under the operative plan, and affected creditors are entitled to know what treatment they are to receive from the plan itself so that they can object rather than learning it from a confirmation order issued long after the response time has run.

In addition, while the Trustee and Debtors appear to have resolved most of the disputes raised in the Trustee's original Opposition, Trustee notes that Debtors have not made any payments since April 2024, and even under the terms of the modified plan, they are still delinquent by \$5,740.00 through August 2024. Doc. #99.

This matter will proceed as scheduled, and the court will hear from all parties. The court is inclined to SUSTAIN the Objection and DENY the motion for confirmation.

10. [23-12585](#)-B-13 **IN RE: RONALD BARHAM**
[JDD-3](#)

CONTINUED MOTION TO CONFIRM PLAN
6-6-2024 [\[65\]](#)

RONALD BARHAM/MV
JONATHAN DOAN/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN,

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

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

This matter was originally heard on July 17, 2024, and subsequently continued to August 14, 2024, and then to September 18, 2024. Doc. ## 73, 79.

Ronald Barham ("Debtor") moves for an order confirming the *Fourth Modified Chapter 13 Plan* dated May 31, 2024. Doc. ##51,64. No plan has been confirmed so far. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan for the following reason(s):

1. The plan calls for payments for more than five years. Trustee calculates that the monthly payment will need to increase to

\$8,324.00 for months 7-60 so the plan is feasible. Debtor's Schedule J does not support such an increase.

2. Debtor has failed to file his 2021-2022 federal taxes. He has also failed to file his 2021-2022 California Franchise Tax returns.

Doc. #69. On July 29, 2024, Debtor filed a Declaration agreeing to an increase in plan payments of \$8,324.00 for months 7-60. Doc. #77. The Declaration also averred that all tax returns alluded to in the Objection have been filed with returns submitted to the Trustee. *Id.* On August 21, 2024, the Trustee withdrew the Objection. Doc. #85. The *Fourth Modified Chapter 13 Plan* proposes the following terms (as modified by the July 29 Declaration):

1. Plan payments will be \$2,556.00 per month for months 1-3, \$7,200.00 for month 4, \$8,000.00 per month for months 5-6, and \$8,324.00 for months 7-60.
2. Outstanding Attorney's fees in the amount of \$6,375.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
 - a. DLL Finance (Class 1, for a 2021 Branson tractor). Arrearage of \$6,907.00 to be paid at \$115.12 per month at 0% interest. Ongoing post-petition dividend of \$512.90 per month.
 - b. United Wholesale Mortgage (Class 1, mortgage). Arrearage of \$72,2562.84 to be paid at \$1,204.21 per month at 0% interest. Ongoing post-petition dividend of \$3,172.08 per month.
 - c. Mercedes Benz Financial (Class 2A, PMSI, 2021 Mercedes). Vehicle valued at \$38,041.00 at 10.50%. \$817.65 per month.
 - d. Mariposa County Tax collector (Class 2A, Tax lien on home). \$4,041.44 at 0.00%. \$67.36 per month.
 - e. Synchb/cfMoto (Class 2A, Non-PMSI, two vehicles on car loan). \$21,523.00 at 0%. \$358.72 per month.
4. Class 5 Priority unsecured claims to be paid in the amount of \$36,696.00.
5. A dividend of 100% to unsecured creditors.

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 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.

Other than the Trustee, no party in interest has opposed, and the defaults of all non-responding parties are entered. With the withdrawal of the Trustee's Objection, there is no opposition to confirmation. This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed. The confirmation order shall also reference the July 29 Declaration and the ongoing monthly payment as set forth therein.

11. [24-11786](#)-B-13 **IN RE: OSCAR/NATALIE VILLAGOMEZ LEMUS**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
8-9-2024 [\[18\]](#)

NATALIE VILLAGOMEZ LEMUS/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 in conformance with the ruling below.

Oscar Lemus ("Mr. Lemus") and Natalie Villagomez Lemus (collectively "Debtors") move for an order valuing a 2018 Honda Civic ("Vehicle") at \$12,149.00 under 11 U.S.C. § 506(a). Doc. #18 et sea. Vehicle is encumbered by a purchase money security interest in favor of Capital One Auto Finance ("Creditor"). *Id.*; cf. Proof of Claim No. 5-1.

Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor's CEO/CFO at Creditor's headquarters addressed "Attn: Officer Authorized to receive Legal Notice" and at the address listed in Creditor's proof of claim on June 22, 2023. Doc. #22.

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

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

11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a)(1), which applies to all debtors under this title, states:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a)(2) states:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

Here, Mr. Lemus declares that Debtors obtained the Vehicle through a purchase money loan on September 21, 2021. Doc. #20. Debtors subsequently refinanced the car loan through Creditor on February 7, 2023. *Id.*; cf. Proof of Claim No. 5-1. The Debtors filed their petition on June 28, 2024. Doc. #1. While Creditor obtained a lien on the title to the Vehicle, the loan was not a purchase money interest loan. Thus, the elements of § 1325(a)(*) are not met and § 506 is applicable.

Mr. Lemus declares Vehicle has a replacement value of \$12,149.00. Doc. #20. Debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$12,149.00 The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

11:00 AM

1. [19-15103](#)-B-7 **IN RE: NATHAN/AMY PERRY**
[20-1017](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
3-15-2020 [[1](#)]

RICHNER ET AL V. PERRY
RICHARD FREEMAN/ATTY. FOR PL.

NO RULING.