



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Wednesday, November 9, 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. [22-11303](#)-B-13     **IN RE: NICOLE GUERRA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-14-2022    [\[24\]](#)

JERRY LOWE/ATTY. FOR DBT.  
\$32.00 FILING FEE PAID 10/17/2022

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 \$32.00 filing fee was paid in its entirety on October 17, 2022. Therefore, the *Order to Show Cause* will be vacated.

2. [21-12814](#)-B-13     **IN RE: DUSTIN DUTRA**  
[SL-5](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)  
10-7-2022    [\[76\]](#)

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.

Scott Lyons ("Applicant"), attorney for Dustin Anthony Dutra ("Debtor"), seeks interim compensation in the sum of \$4,349.50 under 11 U.S.C. §§ 330-31. Doc. #76. This amount is solely for fees as reasonable compensation with no reimbursement for actual, necessary expenses from April 6, 2022 through October 5, 2022. *Id.*

Debtor executed a statement dated October 6, 2022 indicating that Debtor has reviewed the fee application and has no objections. *Id.*, § 9(7).

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 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 December 17, 2021. Doc. #1. The *Third Modified Chapter 13 Plan* dated August 16, 2022, confirmed October 14, 2022, is the operative plan in this case. Docs. #65; #80. Section 3.05 provides that Applicant was paid \$1,463.00 prior to filing the case and, subject to court approval, an additional \$10,537.00 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. Doc. #65. The *Disclosure of Compensation Form*, 2030, indicates that Applicant was paid \$1,500.00 pre-petition, which consists of the \$1,463.00 retainer plus \$37.00 for a credit report. Doc. #1.

This is Applicant's second fee application. On May 25, 2022, the court awarded \$6,940.50 in fees and \$745.84 in costs, for a total of \$7,686.34 for services rendered to and costs incurred for the estate from February 24, 2020 through April 5, 2020. Docs. #37; #39. After application of the \$1,500.00 pre-petition payment, the outstanding balance of \$6,186.34 remained to be paid through the plan. *Id.* Assuming that balance has been paid, \$4,350.66 would remain in the plan for payment of Applicant's remaining fees in this case.

Applicant's firm provided 24.52 billable hours of legal services at the following rates, totaling **\$4,349.50** in fees:

Professional	Rate	Hours	Fees
Scott Lyons	\$400	0.65	\$260.00
Louis Lyons	\$350	6.81	\$2,383.50
Sylvia Gutierrez	\$100	17.06	\$1,706.00
Total Hours & Fees		24.52	\$4,349.50

Docs. #76; #78, *Ex. B*. Applicant did not incur any expenses, so the total amount requested in this application is **\$4,349.50**.

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) finalizing the first interim fee application (SL-2); (2) preparing and filing the *Second Modified Plan* (SL-3), which was ultimately withdrawn due to a change in Debtor's financial circumstances; (3) preparing the *Third Modified Chapter 13 Plan* and prosecuting a motion to modify plan (SL-4); and (4) preparing and filing this fee application (SL-5). Doc. #78, Ex. A. As noted above, Debtor has consented to payment of the requested fees. Doc. #76, § 9(7). The court finds the services and expenses actual, reasonable, and necessary.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,349.50 in fees and \$0.00 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,349.50 in accordance with the chapter 13 plan for services rendered and expenses incurred from April 6, 2022 through October 5, 2022.

The court notes that any additional fee requests by Applicant will require another modified chapter 13 plan.

3. [22-11341](#)-B-13     **IN RE: ALEJANDRO/JULIA ZAMORA**  
[JDR-3](#)

OBJECTION TO CLAIM OF QUANTUM3 GROUP LLC, CLAIM NUMBER 14  
10-6-2022     [[33](#)]

JULIA ZAMORA/MV  
JEFFREY ROWE/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Debtors Alejandro Orozco Zamora and Julia Cerda Zamora withdrew this objection to claim on November 4, 2022. Doc. #50. Accordingly, this objection will be dropped and taken off calendar pursuant to the withdrawal.

4. [22-11559](#)-B-13      **IN RE: MISAEL DELGADO AND VERONICA ZAMUDIO**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
10-3-2022    [\[29\]](#)

MICHAEL MEYER/MV  
ARASTO FARSAD/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Misael Cordero Delgado's and Veronica Rivas Zamudio's (collectively "Debtors") claim of exemptions in a Bank of America business checking account in the amount of \$7,484.00 and a Chase checking account in the amount of \$11,474.00, both exempted in their full amounts under Cal. Code Civ. Proc. ("CCP") § 704.225. Doc. #29.

Debtors timely opposed the objection. Doc. #41.

This matter will be called and proceed as scheduled. The court is inclined to SUSTAIN the objection because Debtors have not provided any evidence that the exempt bank accounts are necessary for the support of themselves or their dependents.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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).

CCP § 704.225 provides: "[m]oney in a judgment debtor's deposit account . . . is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor[.]" Since California has opted out of the federal exemptions, the burden of proof under California law is on the judgment debtor claiming the exemption. CCP §§ 703.130, 703.580(b); *see also Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (B.A.P. 9th Cir. 2016); *In*

*re Tallerico*, 532 B.R. 774, 788-90 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

Here, Debtors' *Schedule I* indicates that a joint debtor owns and operates Chuy's Trailer Repair and receives a monthly income of \$5,082.62 per month. Doc. #15. The other joint debtor does not work outside of the home. *Schedule I* does not include any portion of the bank accounts as income. Meanwhile, *Schedule J* indicates that Debtors have four dependents and monthly net income of \$185.62 per month.

Trustee objects because Debtors have failed to prove by a preponderance of the evidence that the funds in the bank accounts are necessary for the support of Debtors and Debtors' dependents. Doc. #29.

In response, Debtors claim that they have appropriately used CCP § 704.225 to exempt a combined total of \$18,958.00. Doc. #41. Debtors claim that under CCP § 704.225, a family living paycheck to paycheck could likely exempt an entire account balance, but they acknowledge that such policy has not been tested in court. Although Debtors do not live "paycheck to paycheck" because they are not W-2 employees with consistent and predictable income, they do run a truck and trailer repair business that is a difficult business with inconsistent, unpredictable monthly income. *Id.* This, Debtors claim, is not so dissimilar from living paycheck to paycheck. Since Debtors have four young daughters in school, they rely on having between \$10,000-15,000 as their financial cushion to support their family through the frequent slow and unpredictable business periods. *Id.*

Since Debtors' monthly expenses total just under \$5,000 per month, this \$10,000-\$15,000 cushion protects them from huge financial difficulties when there are multiple months of insufficient income in a row. *Id.*

Therefore, Debtors ask the court to overrule the Trustee's objection or, in the alternative, to allow them to exempt their Chase account while deeming the Bank of America account unexempt. *Id.* As evidence, Debtors include copies of their *Schedules C, I, and J*, including a profit and loss statement for their business. Doc. #42. However, Debtors have not included any evidence, such as a declaration, in support of their opposition. The schedules do not establish the facts alleged in the opposition. The profit and loss statement has not been authenticated and no foundational evidence has been presented. Thus, the documents are largely irrelevant to the claims made in opposition.

Based on the current record, Debtors have not yet met their burden that they are entitled to claim an exemption in the bank accounts under CCP § 704.225. No substantiating evidence was included with their opposition to this objection.

This matter will be called and proceed as scheduled. The court is inclined to SUSTAIN the objection.

5. [22-11569](#)-B-13     **IN RE: KENNETH MYERS**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
10-3-2022    [\[16\]](#)

MICHAEL MEYER/MV  
DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION:        Sustained.

ORDER:                The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Kenneth J. Myers' ("Debtor") claim of exemptions in the following assets: (1) real property located at 10708 N. Merced Avenue, Delhi, CA, in Merced County, exempted in the amount of \$350,000.00 under Cal. Code Civ. Proc. ("CCP") § 704.730; (2) household goods and furnishings exempted in the amount of \$100,000 under CCP § 704.050; and (3) a counter claim in an unknown amount exempted under CCP § 704.140. Doc. #16.

Debtor did not oppose and no other parties in interest timely filed written opposition. This objection will be SUSTAINED.

This objection 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 sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting 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 objecting party has done here.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later.

Here, Debtor filed chapter 13 bankruptcy on September 9, 2022. Doc. #1. Debtor filed bankruptcy schedules, including *Schedule C*, on September 26, 2022. Docs. #11. Trustee timely filed this objection on



October 3, 2022 within 30 days of the amendment. However, the 341 Meeting of Creditors has been continued to November 15, 2022.

First, Debtor claimed a \$350,000.00 exemption in Property pursuant to CCP § 704.730, which provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00, and the maximum countywide median sale price for a single-family home exemption to \$625,200.00 based on the change in the annual Consumer Price Index (4.2%).

Trustee objects because Debtor has not established, by a preponderance of the evidence, that the countywide median sale price for a single-family home in Merced County in 2021 was at least \$350,000.00.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies." Since Debtor is asserting a homestead exemption exceeding the \$312,600.00 minimum, Debtor bears the burden of proof on showing that the claimed exemption is within the countywide median sales price for single-family homes in Merced County in the 2021 calendar year (the calendar year preceding the 2022 calendar year in which Debtor filed this bankruptcy).

Debtor did not file opposition to this objection and Debtor's default is entered. Debtor has not established entitlement to an exception exceeding \$312,600.00. Therefore, Trustee's objection will be sustained as to this exemption. Debtor's homestead exemption in Property will be limited to \$312,600.00.

Second, the value of Debtor's household goods and furnishings total \$100,000. Doc. #11, *Sched. A/B*. Debtor claimed an exemption in the amount of \$100,000.00 under CCP § 704.020. *Id.*, *Sched. C*.

CCP § 704.020 provides:

(a) Household furnishings, appliances, provisions, wearing apparel, and other personal effects are exempted in the following cases:

(1) If ordinary and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence . . .

(b) In determining whether an item of property is "ordinarily and reasonably necessary" under subdivision (a), the court shall take into account both of the following:

(1) The extent to which the particular type of item is ordinarily found in a household.

(2) Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

(c) If an item of property for which an exemption is claimed pursuant to this section is an item of the type ordinarily found in a household but is determined not to be exempt because the item has extraordinary value compared to the value of items of the same type found in other households, the proceeds obtained at an execution sale of the item are exempt in the amount determined by the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary . . .

CCP § 704.020. In deciding whether household goods and furnishings of the debtor are reasonably necessary, the court may consider the lifestyle that the debtor has become accustomed to. *In re Lucas*, 77 B.R. 242, 245 (B.A.P. 9th Cir. 1987), citing *Independence Bank v. Heller*, 275 Cal. App. 2d 84, 87, 89 (Cal. App. 2d Dist. 1969 (finding that the statute does not exempt purely "ornamental things" that serve no useful purpose, but the aesthetic value of an item can serve as its useful purpose)). However, the exemption statute is intended to prevent the debtor from exempting luxury items. *In re Frazier*, 104 B.R. 255, 260 (Bankr. N.D. Cal. 1989).

Here, Trustee disputes the whether the entire \$100,000 exemption for household goods and furnishings and other assets are ordinarily and reasonably necessary to Debtor. Doc. #16. Since Debtor failed to provide a breakdown of each item and its value that makes up \$100,000 in assets, it is impossible to determine whether each item is of extraordinary value when compared to the value of the same type of items found in other households.

Since Debtor did not file opposition, Debtor's default was entered, and Debtor has the burden of proof as the exemption claimant, the court finds that Debtor has not established entitlement to a \$100,000.00 household goods and furnishings exemption under CCP 704.020. Trustee's objection will be sustained as to this exemption.

Debtor may file an itemized *Amended Schedule C* if he seeks to exempt any household goods and furnishings.

Third, Debtor listed a "counterclaim against Farmers & Merchants Bank of Central California for breach of contract, promissory fraud, and intentional infliction of emotional distress, unknown value."

Doc. #11, *Sched. A/B*. The counterclaim is exempted under CCP 704.140 in the amount of "100% of the fair market value, up to any statutory limit."

CCP 704.140 allows for an exemption of ". . . an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." CCP 704.140(b). Debtor must satisfy two prongs for this objection: "First, the funds sought to be exempted must arise as a result of 'personal injury.' Second, the funds are only exempt 'to the extent necessary for the support' of the [d]ebtor." *Sylvester v. Hafif (In re Sylvester)*, 220 B.R. 89, 91 (B.A.P. 9th Cir. 1998).

Trustee says that whether an action "arises out of personal injury" is not defined by California Law. Doc. #16. One court reasoned:

However, this section is part of a larger piece of legislation enacted in 1982 to revise the state law governing the enforcement of judgments. The California Law Revision Commission, in proposing this legislation, noted that the then existing law provided exemptions for insurance benefits for personal injury or death but did not exempt settlements or awards for the personal injury of a judgment debtor. The Commission suggested that the existing law should be amended to exempt settlement or damage awards as it exempted insurance benefits.

Thus, the legislative history indicates that the intent behind this legislation was to afford the same exemption to personal injury claimants who obtain awards through litigation or settlement as those who claim an exemption for insurance benefits under former sections 690.9-690.11. The former sections allow exemption only for health, disability, or life insurance benefits received when the beneficiary is physically injured or dies. There is no indication that § 704.140, which directly tracks the preceding sections relating to health, disability, and life insurance and which was enacted in the precise form suggested by the Commission, was intended to be read more broadly than its predecessor sections in this regard.

*Haaland v. Corporate Management*, 172 B.R. 74, 77 (S.D. Cal. 1989).

On this basis, Trustee objects because Debtor's counterclaim does not "arise out of personal injury" but instead arises out of breach of

contract and fraud. However, the *Sylvester* court found that a claim for emotional distress is a claim arising from personal injury for the purposes of CCP § 704.140(b), but the entire settlement proceeds were not fully exempt because it included multiple claims, including emotional distress. *Sylvester*, 220 B.R. at 92.

Since Debtor did not oppose and has the burden of proof, Debtor's exemption in the counterclaim with multiple causes of action cannot be exempted under CCP § 704.140, and Trustee's objection will be sustained on this exemption

In conclusion, Trustee's objection will be SUSTAINED in its entirety for the foregoing reasons. Debtor's homestead exemption under CCP § 704.730 will be limited to \$312,600.00 only. Debtor's entire exemption in household goods and furnishing under CCP 704.020 will be disallowed in its entirety because Debtor has not itemized any of the household goods and furnishings and has not established entitlement to exempt the property as being reasonably necessary or lacking extraordinary value. Lastly, Debtor's exemption in the counterclaim under CCP § 704.140 will be disallowed in its entirety because Debtor has not established that the action arises in any way out of personal injury.

6. [22-10975](#)-B-13     **IN RE: MIRALDA GOMEZ**  
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN  
SERVICING, LLC  
10-25-2022    [\[44\]](#)

SPECIALIZED LOAN SERVICING, LLC/MV  
SCOTT LYONS/ATTY. FOR DBT.  
NICHOLE GLOWIN/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.

Specialized Loan Servicing, LLC ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed September 14, 2022 by Miralda Gomez ("Debtor") pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4).<sup>1</sup> Doc. #44. Creditor objects because the plan understates the amount of Creditor's pre-petition arrears and does not promptly cure such arrears as required by 11 U.S.C. § 1322(b)(5).

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under

the plan. Doc. #36. Creditor's Proof of Claim 18 filed October 31, 2022 states a claimed arrearage of \$1,159.96. This claim is classified in Class 4 - paid directly by Debtor. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan § 3.11. Debtor may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Creditor will have stay relief. If the plan is modified, then this objection may be moot.

Therefore, this objection will be OVERRULED.

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<sup>1</sup> Creditor timely objected to plan confirmation within seven days of concluded 341 Meeting of Creditors on October 18, 2022.

7. [21-12181](#)-B-13     **IN RE: STEVE/LEONOR MARTINEZ**  
[MCCU-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-4-2022    [[25](#)]

MATADORS COMMUNITY CREDIT UNION/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
ALANA ANAYA/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Movant Matadors Community Credit Union withdrew this motion on October 6, 2022. Doc. #31. Accordingly, this motion for relief from the automatic stay will be dropped and taken off calendar pursuant to the withdrawal.

8. [21-12394](#)-B-13     **IN RE: FELIX/RAMONA LEDESMA**  
[SL-4](#)

MOTION TO MODIFY PLAN  
10-3-2022    [\[70\]](#)

RAMONA LEDESMA/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.

Felix Ledesma and Ramona Ledesma (collectively "Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated October 3, 2022. Doc. #70. The plan proposes that Debtors shall pay no less than \$10,786.71 to the chapter 13 trustee by September 25, 2022, and starting Month 12 through Month 60, Debtors' plan payment shall be \$800.00 per month with a 100% dividend to allowed, unsecured claims. Doc. #75. Debtors' *Amended Schedules I and J* indicate that they receive \$802.95 in monthly net income. Doc. #81.

In contrast to the *Chapter 13 Plan* dated October 14, 2021, confirmed December 22, 2021, and modified by *ex parte* application on July 26, 2022, Debtors were required to pay \$800.00 per month for 60 months with a 100% dividend to allowed unsecured claims. Docs. #7, 34; #69. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

9. [21-12394](#)-B-13     **IN RE: FELIX/RAMONA LEDESMA**  
[SL-5](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)  
10-3-2022    [[77](#)]

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.

Scott Lyons ("Applicant"), attorney for Felix Ledesma and Ramona Ledesma (collectively "Debtors"), seeks interim compensation in the sum of \$7,407.71 under 11 U.S.C. §§ 330-31. Doc. #77. This amount consists of \$6,837.33 in fees as reasonable compensation for services rendered and \$570.38 in reimbursement for actual, necessary expenses from February 2, 2022 through September 30, 2022. *Id.*

Debtors executed a statement dated October 3, 2022 indicating that they have reviewed the fee application and have no objections. *Id.*, § 9(7).

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 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 October 13, 2021. Doc. #1. Debtors have proposed the *First Modified Chapter 13 Plan*, which is set for confirmation hearing in matter #8 above. Doc. #75; SL-4. No party opposed that plan, so the court intends to grant the motion, which will make it the operative plan in this case. Section 3.05 provides

that Applicant was paid \$1,537.00 prior to filing the case and, subject to court approval, an additional \$19,500.00 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. Doc. #75. The *Disclosure of Compensation* Form 2030 indicates that Applicant was paid \$1,224.00 pre-petition plus the \$313.00 filing fee, for a total of \$1,537.00. Doc. #1.

This is Applicant's second fee application. On March 10, 2022, the court awarded \$10,267.50 in fees and \$637.32 in costs, for a total of \$10,904.82 for services rendered to and costs incurred for the estate from July 14, 2021 through February 1, 2022. Docs. ##43-44. After application of the \$1,537.00 in total pre-petition payments, the outstanding balance of \$9,367.82 remained to be paid through the plan. *Id.* Assuming those payments have been made, \$10,132.18 would remain in the plan for payment of Applicant's fees.

Applicant's firm provided 24.61 billable hours of legal services at the following rates, totaling **\$6,837.33** in fees:

Professional	Rate	Hours	Rate x Hours	Requested
Scott Lyons	\$400	1.93	\$772.00	\$765.50
Louis Lyons	\$350	15.22	\$5,327.00	\$5,325.83
Sylvia Gutierrez	\$100	7.46	\$746.00	\$746.00
<b>Total Hours &amp; Fees</b>		<b>24.61</b>	<b>\$6,845.00</b>	<b>\$6,837.33</b>

Doc. #79, *Ex. B.* This discrepancy appears to derive from a \$6.50 discrepancy for Scott Lyons and a \$1.17 discrepancy for Louis Lyons. These are identified in the time records:

1. Louis Lyons charged \$145.83 on July 25, 2022 for 0.42 hours preparing an *ex parte* motion to modify the order confirming plan due to Claim 6-1. *Id.*, at 6. At his usual rate of \$350 per hour, the fees charged equal \$147.00, rather than \$145.83, thus resulting in a difference of \$1.17. It is unclear what caused this discrepancy.

2. Scott Lyons charged \$45.50 on July 25, 2022 for 0.13 hours reviewing and signing the *ex parte* motion to modify order. *Id.* At his usual rate of \$400 per hour, the fees charged equal \$52.00, rather than \$45.50, thus resulting in a difference of \$6.50. It appears instead that these hours were billed at a rate of \$350 per hour – Louis Lyons' hourly rate – instead of \$400 per hour.

These discrepancies are *de minimis* here and the court will allow the compensation as prayed. Applicant also incurred **\$570.38** in expenses solely for postage. *Id.* These combined requested fees and expenses total **\$7,407.71**.



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) finalizing the first interim fee application (SL-1); (2) objecting to the claim of Wilmington Savings Fund, FSB (SL-2); (3) stipulating to a minor modification of the chapter 13 plan (SL-3); (4) preparing and filing the *First Modified Chapter 13 Plan* (SL-4); and (5) preparing and filing this fee application (SL-5). Doc. #79, *Ex. A*. As noted above, Debtors have consented to payment of the requested fees. Doc. #77, § 9(7). The court finds the services and expenses actual, reasonable, and necessary.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$6,837.33 in fees and \$570.38 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$7,407.71 in accordance with the chapter 13 plan after it has been confirmed for services rendered and expenses incurred from February 2, 2022 through September 30, 2022.

10. [22-11595](#)-B-13      **IN RE: DEANDRE SUTTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-20-2022    [\[16\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.  
\$79.00 FILING FEE PAID 10/31/2022

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 \$79.00 filing fee was paid in its entirety on October 31, 2022. Therefore, the *Order to Show Cause* will be vacated.

11. [19-12096](#)-B-13      **IN RE: JUAN ALAMILLA AND PATRICIA DELGADILLO**  
[SL-1](#)                              **ALAMILLA**

MOTION TO MODIFY PLAN  
9-28-2022    [\[49\]](#)

PATRICIA DELGADILLO ALAMILLA/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

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

ORDER:              The court will issue an order.

Juan Jose Alamilla and Patricia Delgadillo Alamilla (collectively "Debtors") move for an order confirming the *First Modified Chapter 13 Plan* dated September 28, 2022. Doc. #49. The plan proposes that Debtors shall make payments totaling no less than \$37,900.01 to the chapter 13 trustee by September 25, 2022, and starting in October 2022, the plan payment shall increase to \$3,540.00 per month for the remainder of their 60-month plan with a 100% dividend to allowed, non-priority unsecured claims. Doc. #51. Additionally, the plan removes Gregory Funding, LLC ("Gregory Funding") from Class 4. *Id.* Debtors' *Amended Schedules I and J* indicate that they receive \$4,419.28 in monthly net income.

In contrast, the operative *Chapter 13 Plan* dated May 29, 2019, confirmed July 23, 2022, requires Debtors to make 60 monthly payments of \$980.00 per month, plus payments of \$2,115.21 per month to Class 4 creditor Gregory Funding, and a 100% dividend to unsecured creditors. Docs. #10; #20. The order confirming plan clarifies that the chapter 7 liquidation test requires priority and general unsecured creditors to receive a combined total of \$76,431.49 with interest at the federal judgment interest rate of 2.37%. Doc. #20.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation under 11 U.S.C. § 1322(a) because the plan reclassifies Gregory Funding from Class 4 to Class 1. Doc. #58. The monthly plan payment increase starts in Month 41 (October 2022) to accommodate the regular mortgage payment and arrears owed to the Class 1 creditor in Months 40-60. But the total funds on hand in Month 40, September 2022, is \$303.83, which is insufficient to pay the ongoing mortgage payment and arrears for month 40.

Ajax Mortgage Loan Trust 2019-C, Mortgage-Backed Securities, Series 2019-C by U.S. Bank National Association, as Indentured Trustee ("Creditor") also timely filed an objection. Doc. #60. Creditor claims that: (i) Debtors have not shown that their circumstances underwent an adverse change; (ii) Debtors should not be allowed to "undo" the stipulation by which the original plan was confirmed, which allowed

Creditor to obtain stay relief for a post-petition default; and (iii) Debtors should not be allowed to cram post-petition arrears back into the plan by increasing the arrears in an effort to re-impose an already-terminated stay. *Id.*

This motion will be CONTINUED to December 14, 2022 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's and Creditor's oppositions to confirmation are both withdrawn, the Debtors shall file and serve a written response not later than November 30, 2022. The response shall specifically address each issue raised in the objections to confirmation, state whether the issues are disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee and Creditor shall file and serve a reply, if any, by December 7, 2022.

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 December 7, 2022. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the objections without a further hearing.

12. [22-10699](#)-B-13      **IN RE: JESUS GUERRA**

CONTINUED CONFIRMATION HEARING RE: AMENDED/MODIFIED PLAN  
7-26-2022    [\[59\]](#)

HENRY NUNEZ/ATTY. FOR DBT.

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

DISPOSITION:      Denied as moot.

ORDER:              The court will issue an order.

On June 22, 2022, the plan confirmation hearing under Local Rule of Practice ("LBR") 3015-1(c)(4) for the original *Chapter 13 Plan* dated May 6, 2022 was continued approximately 45 days by stipulation between Jesus Lopez Guerra ("Debtor") and State Court Receiver Mark S. Adams ("Receiver"). Docs. ##43-44. Thereafter, Debtor and Receiver stipulated to further continue the confirmation hearing to November 9, 2022. Docs. ##65-66.

Post-continuance, Debtor filed the *First Modified Chapter 13 Plan* on July 26, 2022, the *Second Modified Chapter 13 Plan* on September 1, 2022, the *Third Modified Chapter 13 Plan* on September 19, 2022, and two versions of the *Fourth Modified Chapter 13 Plan* on October 11, 2022. Docs. #59; #80; #86 ##97-98.

Therefore, this LBR 3015-1(c) confirmation hearing is moot because Debtor has filed multiple modified plans. The procedure specified in LBR 3015-1(d)(1) is applicable and Debtor is required to file, serve, and set for hearing a motion to confirm plan.

Pursuant to LBR 3015-1(d)(1), Debtor filed a motion to confirm the *Fourth Modified Chapter 13 Plan* on October 20, 2022, which is set for hearing on November 30, 2022. Doc. #115; HDN-1.

Accordingly, this motion to confirm plan will be DENIED AS MOOT.

11:00 AM

1. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[TAT-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-12-2020    [\[76\]](#)

SANDRA WARD/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
THOMAS TRAPANI/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:               Submitted.

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

This matter will be called as scheduled for limited argument. The court is in receipt of the parties' augmentations to the record. The court intends to take the motion under submission and subsequently issue a ruling.

2. [22-11127](#)-B-7     **IN RE: SCOTT FINSTEIN**  
[22-1017](#)     [KR-1](#)

MOTION TO STRIKE  
10-11-2022    [\[8\]](#)

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURG V.  
KAREL ROCHA/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:               Granted; Debtor to file conforming Amended Answer  
within 14 days of entry of this order.

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

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA  
("Plaintiff") moves for an order striking debtor Scott Allen  
Finstein's ("Defendant") Answer. Doc. #8. Debtor did not oppose.

This matter will be called and proceed as scheduled because Debtor is not represented by counsel. The court is inclined to GRANT this motion and STRIKE Debtor's Answer.

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 Defendant 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, Defendant's default is 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).

As a preliminary matter, the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the movant to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Doc. #9. Typically, this motion would be denied without prejudice without a hearing as a result of this deficiency. However, Debtor's Answer, on its face, does not comply with the Federal Rules Civil Procedure ("Civ. Rule"), as incorporated by the Federal Rules of Bankruptcy Procedure ("Rules"). Doc. #7. To avoid unduly delaying this adversary proceeding by requiring Plaintiff to refile the motion, the court will *sua sponte* suspend LBR 9014-1(d)(3)(B)(iii) in this instance only under LBR 1001-1(f). Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.<sup>2</sup>

Civ. Rule 8(b), as incorporated by Rule 7008, requires a responsive pleading to: (A) state in short and plain terms the party's defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party. Here, Defendant's Answer is essentially a letter in which he claims to be 100% "collection proof", so suing him is a waste of time and effort. Doc. #7. Defendant did not state in short and plain terms any defenses to Plaintiff's claims against him, nor did Defendant admit or deny any of Plaintiff's asserted allegations.

Under Civ. Rule 12(f), the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter on motion by a party either before responding to the pleading, or within 21 days after being served with the pleading if a response is not required.

Accordingly, the court will STRIKE Defendant's Answer because it does not comply with the rules of pleading under Civ. Rule 8(b). Defendant shall file an amended, conforming answer to the complaint not later

than 14 days after entry of this order. If Defendant does not timely file an amended answer, Plaintiff may seek entry of default.

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<sup>2</sup> See LBR, United States Bankruptcy Court, Eastern District of California, <https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRulesSeptember2022.pdf> (Eff. Sept. 2, 2022).

3. [21-11674](#)-B-7     **IN RE: JULIO ARELLANO**  
[22-1010](#)     [CAE-2](#)

ORDER TO SHOW CAUSE  
10-5-2022     [[43](#)]

DIVERSIFIED FINANCIAL  
SERVICES, LLC V. ARELLANO, SR.  
RESPONSIVE PLEADING

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

DISPOSITION:     The OSC will be vacated.

ORDER:     The court will issue an order.

Plaintiff Diversified Financial Services, LLC filed a Corporate Ownership Statement on October 11, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #45. Accordingly, the OSC will be VACATED.

4. [22-11127](#)-B-7     **IN RE: SCOTT FINSTEIN**  
[22-1017](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-19-2022     [[1](#)]

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURG V.  
KAREL ROCHA/ATTY. FOR PL.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Continued to December 20, 2022 at 11:30 a.m.

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

The court intends to strike the defendant's answer to the complaint in matter #2 above. See KR-1. The defendant will be given 14 days to file

an amended answer, at which point the plaintiff may request entry of the defendant's default if no such answer has been filed. This status conference will be CONTINUED to December 20, 2022 at 11:30 a.m. to await either the defendant's amended answer or the plaintiff's request for entry of default.