



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday November 16, 2023
Department A – Courtroom #11
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-11903](#)-A-13 **IN RE: ABEL/CRYSTAL SANCHEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
10-18-2023 [[24](#)]

JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

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

MOTION TO CONFIRM PLAN
10-19-2023 [[49](#)]

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

NO RULING.

3. [23-11308](#)-A-13 **IN RE: TINA MARQUEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
10-12-2023 [[45](#)]

MICHAEL MEYER/MV
JAMES MILLER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

CONTINUED MOTION TO CONFIRM PLAN
9-7-2023 [\[32\]](#)

JOASH KEMEI/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee timely opposed this motion but withdrew his opposition. Doc. ##47, 48. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form (Doc. #37) filed in connection with the motion. Instead of using a copy of the Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached a pacer generated list of names and addresses served. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served. That list can be generated by using the following link on the court's website:
<https://www.caeb.uscourts.gov/RequestForSpecialNotice>.

As a further informative matter, the movant incorrectly completed Sections 6 and 7 of the court's mandatory Certificate of Service form. Doc. #37. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes applicable for 6B(2)(a) and attached documents for those subsections only. The declarant also attached a copy of the Clerk's Electronic Service Matrix as attachment 6B1 but failed to check box 6B1. In Section 7, the declarant checked that service was accomplished by Rule 7004 Service under § 6A(1) in addition to § 6B(1)(a), § 6B(2)(a) and § 6B(2)(b). If service was completed by 6B(1) and 6B(2) only as indicated in Section 6 and the supporting attachment, then box 6A(1) should not have been checked in Section 7.

This motion is 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.

5. [18-14316](#)-A-13 **IN RE: ALLISON HOPKINS**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-18-2023 [\[76\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. Doc. #79. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes applicable for 6B(1) and 6B(3). The declarant provided attachments for 6B(1) and 6B(3) in addition to a copy of the Court's matrix of creditors who have filed a Request for Special Notice applicable for 6B(2)(b). Since the declarant attached a request for special notice list, the declarant also should have checked box 6B(2)(b) in Section 6.

Fear Waddell, P.C. ("Movant"), counsel for Allison Marie Hopkins ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$13,017.50 and reimbursement for expenses in the amount of \$386.19 for services rendered from October 1, 2021 through October 10, 2023. Doc. #76. Debtor's confirmed plan provides, in addition to \$2,690.00 paid prior to filing the case, for \$20,000.00 in attorney's fees. Plan, Doc. ##2, 15. Two prior fee applications have been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the aggregate amount of \$6,692.00 and reimbursement for expenses in the aggregate amount of \$489.18. Orders, Doc. ##24, 45. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #78.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary

expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) claim administration and objections; (2) original plan, hearings, and objections; (3) preparing motion to avoid lien of Hung Duong; (4) preparing reply brief to opposition to avoid lien of Hung Duong; and (5) preparing for discharge and case closing. Doc. #76; Exs. A, B & C, Doc. #78. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to the compensation requested by this motion in the amount of \$13,017.50 and the reimbursement for expenses in the amount of \$386.19, to be paid in a manner consistent with the terms of the confirmed plan.

6. [19-13821](#)-A-13 **IN RE: CHRISTINA HALL**
[TCS-4](#)

MOTION TO MODIFY PLAN
10-12-2023 [\[27\]](#)

CHRISTINA HALL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a third modified plan on November 6, 2023 (TCS-6, Doc. #59), with a motion to confirm the modified plan set for hearing on December 14, 2023, at 9:30 a.m. Doc. ##57-63.

7. [23-12122](#)-A-13 **IN RE: KAYLA GARZA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-10-2023 [\[16\]](#)

MICHAEL MEYER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on November 14, 2023, amending the claimed exemption in the homestead. Doc. #27.

8. [23-11733](#)-A-13 **IN RE: GORDON/LESLIE SMITH**
[MHM-3](#)

MOTION TO DISMISS CASE
10-4-2023 [\[38\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Although the pro se debtors did not file timely written opposition, the debtors did file amended schedules prior to the response deadline adequately addressing the deficiencies in their schedules that provided the grounds for the motion to dismiss. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of all non-responding parties in interest, other than the debtors, are entered. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. Doc. #38. Specifically, Trustee asks the court to dismiss this case pursuant to 11 U.S.C. § 521 for the debtors' failure to file complete and accurate Schedules A/B and H. Id. The debtors did not oppose the motion. However, on October 17, 2023, the debtors filed amended Schedules A/B and H, which adequately addressed the deficiencies that provided the grounds for the motion to dismiss. Doc. ##42, 43.

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). The debtors filed amended Schedules A/B and H on October 17, 2023, which adequately addressed the deficiencies that provided the grounds for the motion to dismiss. Doc. ##42, 43. Although there has been some delay by the debtors in filing accurate and/or complete schedules, the debtors have adequately addressed those deficiencies and court does not find cause for dismissal at this time.

Accordingly, this motion will be DENIED.

CONTINUED MOTION TO DISMISS CASE
9-8-2023 [\[26\]](#)

MICHAEL MEYER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 17, 2023, the pro se debtor filed an ex parte application to continue the hearing to permit the debtor to hire a lawyer. Doc. #33. This motion was originally heard on October 19, 2023, and continued to November 16, 2023, at 9:30 a.m. to allow the pro se debtor, who was previously sick with Covid, time to hire a lawyer and file an opposition to this motion. Civil Minutes, Doc. #36; Order, Doc. #38. No opposition has been filed. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Doc. #26. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) provide Trustee with all of the documentation required by 11 U.S.C. § 521 and the local rules; (2) file the correct form for the chapter 13 plan required by the local rules; (3) file complete and accurate Petition, Schedules, Chapter 13 Plan, Statement of Financial Affairs, Official Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period pursuant to 11 U.S.C § 521 and/or Federal Rule of Bankruptcy Procedure 1007; and (4) make all plan payments due under the plan. Id. As of September 8, 2023, plan payments are delinquent in the amount of \$378.34, with additional plan payments of \$800.00 due on September 25, 2023 and October 25, 2023. Id.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to provide Trustee with requested documents, failed to file complete and accurate Petition, Schedules, Chapter 13 Plan, Statement of Financial Affairs, Official Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, and failed to cure plan payment delinquencies.

A review of the debtor's Schedules A/B, C and D shows that the debtor's significant asset, a vehicle, is encumbered and fully exempt. Because there appears to be no non-exempt equity in the debtor's assets to be realized for the benefit of the estate, dismissal, rather than conversion, is in the best interests of creditors and the estate.

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

10. [23-10943](#)-A-13 **IN RE: DE QIANG/AMY FENG**
[WLG-2](#)

MOTION TO CONFIRM PLAN
9-28-2023 [[65](#)]

AMY FENG/MV
MICHAEL REID/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

This motion is 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.

11. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[MHM-2](#)

MOTION TO DISMISS CASE
10-5-2023 [\[84\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 14, 2023, at 9:30 a.m.

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

The debtors timely filed written opposition on November 2, 2023. Doc. #97. The court is inclined to continue the trustee's motion to dismiss to December 14, 2023, at 9:30 a.m., to be heard in connection with the debtors' motion to confirm plan (FW-5) also set for hearing on that date and time.

12. [21-10565](#)-A-13 **IN RE: JASON/GENIFER OWENS**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-12-2023 [\[33\]](#)

CLICK N' CLOSE, INC./MV
BENNY BARCO/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 13, 2023. Doc. #42.

13. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[MHM-2](#)

MOTION TO DISMISS CASE
10-4-2023 [[144](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 14, 2023. Doc. #150.

14. [23-11075](#)-A-13 **IN RE: TERELL WAGGONER**
[MHM-1](#)

MOTION TO DISMISS CASE
10-5-2023 [[24](#)]

ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 13, 2023, the debtor filed a notice of non-opposition. Doc. #28. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(6)). Doc. #24. The debtor is delinquent in the

amount of \$1,644.00. Id. Before this hearing, another payment in the amount of \$822.00 also will come due. Id.

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

A review of the debtor's Schedules A/B, C and D shows that there appears to be a minimal amount of non-exempt equity in the debtor's assets to be realized for the benefit of the estate. Am. Schedules A/B, C & D, Doc. #19. Because there appears to be a minimal amount of non-exempt equity in the debtor's assets to be realized for the benefit of the estate, dismissal, rather than conversion, is in the best interests of creditors and the estate. The debtor has no opposition to dismissal of this bankruptcy case.

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

15. [20-10488](#)-A-13 **IN RE: EDWIN/MARIZEN PROTACIO**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-17-2023 [\[62\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. Doc. #65. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036

Service and checked boxes applicable for 6B(1) and 6B(3). The declarant provided attachments for 6B(1) and 6B(3) in addition to a copy of the Court's matrix of creditors who have filed a Request for Special Notice applicable for 6B(2)(b). Since the declarant attached a request for special notice list, the declarant should have also checked box 6B(2)(b) in Section 6.

Fear Waddell, P.C. ("Movant"), counsel for Edwin Protacio and Marizen Protacio (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$6,672.50 and reimbursement for expenses in the amount of \$188.47 for services rendered from December 24, 2021 through September 30, 2023. Doc. #62. Debtors' confirmed plan provides, in addition to \$2,000.00 paid prior to filing the case to Debtors' previous attorney, for \$16,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. #56, 61. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Ex. E, Doc. #64.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtors' first and second modified plans; (2) reviewing and analyzing issues related to notice of default; (3) communicating with the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A, B & C, Doc. #64. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$6,672.50 and reimbursement for expenses in the amount of \$188.47 to be paid in a manner consistent with the terms of the confirmed plan.

16. [23-11988](#)-A-13 **IN RE: IRMA CONCILION**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-19-2023 [\[19\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This objection to confirmation was withdrawn by the trustee on October 30, 2023. Doc. #24.

17. [23-11988](#)-A-13 **IN RE: IRMA CONCILION**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TD BANK, N.A.
10-3-2023 [\[13\]](#)

TD BANK, N.A./MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This objection to confirmation was resolved by stipulation. Order, Doc. #29.

18. [18-11292](#)-A-13 **IN RE: ANGEL PEREZ**
[MHM-4](#)

MOTION TO DISMISS CASE
10-13-2023 [\[191\]](#)

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

NO RULING.

19. [23-11393](#)-A-13 **IN RE: DAVID GONZALEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
9-26-2023 [\[25\]](#)

MICHAEL MEYER/MV
T. O'TOOLE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On September 26, 2023, the chapter 13 trustee ("Trustee") moved to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors because the debtor had failed to confirm a plan (11 U.S.C. § 1307(c)). Doc. #25. The debtor responded on October 12, 2023, stating that the debtor filed and served a motion to confirm the debtor's first modified plan on September 27, 2023 and set that motion for hearing on November 16, 2023. Doc. ##29-34. That motion has been granted by final ruling, matter #20 below.

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). It appears that confirmation of the debtor's first modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c) and (c)(1).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

20. [23-11393](#)-A-13 **IN RE: DAVID GONZALEZ**
[TMO-1](#)

MOTION TO CONFIRM PLAN
9-27-2023 [\[29\]](#)

DAVID GONZALEZ/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee timely opposed this motion but withdrew his opposition. Doc. ##42, 43. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is 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.

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
10-5-2023 [\[62\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Stephen L. Labiak ("Movant"), counsel for Gloria Garcia ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$10,405.03 and reimbursement for expenses in the amount of \$107.97 for services rendered from July 7, 2022 through September 28, 2023. Doc. #62. Debtor's confirmed plan provides, in addition to \$487.00 paid prior to filing the case, for \$10,513.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##35, 48. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #62.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first and second modified plans; (2) reviewing the IRS's claim; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Decl. of Stephen Labiak, Doc. #65; Exs. A, B & C, Doc. #67. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$10,405.03 and reimbursement for expenses in the amount of \$107.97 to be paid in a manner consistent with the terms of the confirmed plan.

22. [22-12098](#)-A-13 **IN RE: CURTIS HEMMAN**
[MHM-3](#)

MOTION TO DISMISS CASE
10-4-2023 [\[36\]](#)

PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 13, 2023. Doc. #42.

23. [23-11198](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[TCS-1](#)

MOTION TO CONFIRM PLAN
10-4-2023 [\[34\]](#)

NANCY ALVA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 21, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #41. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than November 30, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by December 7, 2023.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than December 7, 2023. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

MOTION TO EXTEND AUTOMATIC STAY
10-31-2023 [\[11\]](#)

BRANDEE LEONARD/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor Brandee D. Leonard ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 22-11572 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on September 9, 2022 and dismissed on October 13, 2023. Decl. of Brandee D. Leonard, Doc. #13. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on October 26, 2023. Petition, Doc. #1. The automatic stay will terminate in the present case on November 25, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence

presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. Debtor failed to perform the terms of a confirmed plan in the Prior Case. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was confirmed on December 27, 2022, the chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on June 5, 2023, and the court dismissed the Prior Case upon Trustee's declaration that Debtor failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Case No. 22-11572, Doc. ##54, 56, 59. Debtor acknowledges that the Prior Case was dismissed for Debtor's failure to timely make plan payments. Leonard Decl., Doc. #13.

In support of this motion to extend the automatic stay, Debtor declares that the plan payments in the Prior Case were not made because Debtor got behind on her plan payments and tried to sell her residence to cure the delinquency. Leonard Decl., Doc. #13. However, the sale of Debtor's residence failed, and Debtor was too far behind on her plan payments to catch up. Id. In the Prior Case, Debtor's income was from employment as a care provider and renting out rooms in her home. Id. Debtor's current income has more than doubled since the Prior Case, as Debtor is now working as an in-home care provider and cashier at Whataburger in addition to renting out rooms in her home. Id. Debtor also states that she has the income ability to maintain plan payments, pay her secured creditors, pay the arrearage on her home, pay ongoing mortgage payments, and pay her attorney's fees. Id. Debtor is confident that a chapter 13 plan will be confirmed in this case. Id. Debtor filed a proposed plan on October 26, 2023 that will pay 100% to unsecured creditors. Plan, Doc. #3. Debtor's Schedules I and J filed in this case list monthly income of \$6,585.27 and expenses of \$2,327.05, resulting in monthly net income of \$4,258.22 of which Debtor proposes to apply \$2,833.00 to plan payments in this case. Schedules I and J, Doc. #1; Plan, Doc. #3.

The court is inclined to find that Debtor's failure to cure her plan payment delinquencies in the Prior Case because of a failed sale of Debtor's residence rebuts the presumption of bad faith that arose from the failure to perform the terms of a confirmed plan in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Moreover, the court recognizes that Debtor's increased monthly income represents a substantial change in financial affairs since the dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtor's motion (see Doc. #12), unless terminated by further order of the court.

MOTION TO EXTEND AUTOMATIC STAY
11-7-2023 [\[14\]](#)

DELILA RUCH/MV
PETER BUNTING/ATTY. FOR DBT.
OST 11/7/23

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

On November 7, 2023, the court granted the debtor's ex parte application for an order shortening time to hear the debtor's motion to extend the automatic stay. Order, Doc. #20. This motion was set for hearing on November 16, 2023, at 9:30 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor Delila Ann Ruch ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor commenced this bankruptcy case on October 17, 2023. Doc. #1. Debtor had a chapter 13 case, see Case No. 23-10693, pending within the preceding one-year period that was dismissed (the "Prior Case"). The Prior Case was filed on April 4, 2023 and dismissed on July 27, 2023 for Debtor's failure to: (1) appear at the 341 meeting; (2) provide the chapter 13 trustee with all required documentation; and (3) commence making timely plan payments. See Case No. 23-10693, Doc. #25; Order, Doc. #32. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on October 17, 2023. The automatic stay will terminate in the present case on November 16, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no

other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

In this case, the presumption of bad faith arises because Debtor failed to timely file documents in the Prior Case. A review of the court's docket in the Prior Case disclosed that a chapter 13 plan was not confirmed, the chapter 13 trustee ("Trustee") filed a motion to dismiss on July 27, 2023, and the court dismissed the Prior Case based on unreasonable delay because of Debtor's failure to: (1) appear at the continued 341 meeting; (2) provide Trustee with all required documentation; and (3) make all payments due under the plan. See Case No. 23-10693. Debtor acknowledges that the Prior Case was dismissed for unreasonable delay and for Debtor's failure to provide Trustee all required documents prior to Debtor's 341 meeting of creditors. Decl. of Delila Ann Ruch, Doc. #16.

In support of this motion to extend the automatic stay, Debtor declares that while she did not provide all documents requested by Trustee prior to her meeting of creditors in the Prior Case, Debtor has a new attorney and filed this case to stop the foreclosure sale of her residence. Ruch Decl., Doc. #16. Debtor asserts she paid all the fees due at the time of filing in this case, filed the necessary schedules and chapter 13 plan, and provided her new attorney with all documents required by the chapter 13 trustee. Id. Debtor is informed and believes her attorney in this case will provide all the documents requested by the chapter 13 trustee. Id. Debtor filed a proposed plan in this case on October 11, 2023 that Debtor believes she can complete. Plan, Doc. #3; Ruch Decl., Doc. #16. Debtor's Schedule J lists a monthly net income of \$1,453.02, and Debtor proposes to apply \$570.00 to plan payments in this case. Schedule J, Doc. #1; Plan, Doc. #3.

The court is inclined to find that Debtor's actions in this case rebut the presumption of bad faith that arose from Debtor's failure to timely file documents in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Further, there is reason to conclude that this case will result in a confirmed plan that will be fully performed.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtor's motion (see Doc. #15), unless terminated by further order of the court.

CONTINUED MOTION TO DISMISS CASE
9-26-2023 [\[61\]](#)

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On September 26, 2023, the chapter 13 trustee ("Trustee") moved to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors because the debtors had failed to confirm a plan (11 U.S.C. § 1307(c)). Doc. #61. The debtors responded on October 9, 2023, stating that the debtors filed and served a motion to confirm the debtors' third modified plan (see Doc. ##65-71) on September 28, 2023 and set that motion for hearing on November 16, 2023. Doc. #72. That motion has been granted by final ruling, matter #10 above.

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). It appears that confirmation of the debtors' third modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c) and (c)(1).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.