



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, November 16, 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. [22-11408](#)-B-13 IN RE: SARAH ALVARADO
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
10-14-2022 [[20](#)]

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 Sarah Grace Alvarado ("Debtor"), seeks interim compensation in the sum of \$10,221.30 under 11 U.S.C. §§ 330-31. Doc. #20. This amount consists of \$9,913.50 in fees as reasonable compensation for services rendered and \$307.80 in reimbursement for actual, necessary expenses from January 21, 2021 through October 13, 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 August 17, 2022. The *Chapter 13 Plan* dated August 18, 2022, confirmed October 17, 2022, is the operative plan in this case. Docs. #9; #24. Section 3.05 provides that Applicant was paid \$1,400.00 prior to filing the case and, subject to court approval, an additional \$12,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329, 330, and Rule 2002, 2016, and 2017. Doc. #9. The *Disclosure of Compensation Form 2030* indicates that Applicant was paid \$1,437.00, which includes a \$37.00 credit report fee. Doc. #1.

This is Applicant's first interim fee application. Doc. #20. Applicant's firm provided 67.43 billable hours of legal services at the following rates, totaling **\$9,913.50** in fees:

Professional	Rate	Hours	Fees	Requested
Scott Lyons	\$400	1.00	\$400.00	\$400.00
Louis Lyons	\$350	11.91	\$4,168.50	\$4,143.50
Louis Lyons (no charge)	\$0	0.82	\$0.00	\$0.00
Sylvia Gutierrez	\$100	40.92	\$4,092.00	\$4,092.00
Delores Rodriguez	\$100	12.78	\$1,278.00	\$1,278.00
Total Hours & Fees		67.43	\$9,938.50	\$9,913.50

Id.; Doc. #22, *Ex. B*. The \$25.00 discrepancy in fees appears to be caused by Applicant's billing of \$150.00 for 0.5 hours of work performed by Louis Lyons on August 12, 2022. *Id.* at 6. At Mr. Lyons usual rate of \$350 per hour, Applicant could have billed for \$175, rather than \$150. This discrepancy is *de minimis* and Applicant's requested fees will be approved as prayed. Applicant also incurred **\$307.80** in expenses as follows:

Credit Report Fee	\$37.00
Postage-Amendments	\$13.20
Postage-Fee Application	\$257.60
Total Costs	\$307.80

Id. These combined fees and expenses total **\$10,221.30**.

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) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) preparing and filing the petition, schedules, and chapter 13 plan; (3) confirming

the chapter 13 plan; and (4) preparing and filing this fee application (SL-1). Doc. #22, Ex. A. As noted above, Debtor has consented to payment of the requested fees. Doc. #20, § 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 \$9,913.50 in fees and \$307.80 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. After application of the \$1,437.00 in prepetition payments, the chapter 13 trustee will be authorized, in his discretion, to pay Applicant \$8,784.30 in accordance with the chapter 13 plan for services rendered and expenses incurred from January 21, 2021 through October 13, 2022.

2. [22-11709](#)-B-13 **IN RE: RICHARD GASTON**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-19-2022 [[19](#)]

MICHAEL MEYER/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Richard D. Gaston's ("Debtor") claim of exemptions in household goods and furnishings and clothing in the amounts of \$15,000.00 and \$8,000.00, respectively, under Cal. Code Civ. Proc. ("CCP") § 703.140(b)(3). Doc. #19. Trustee objects because Debtor has failed to demonstrate that the entire value of clothing and household goods and furnishings are ordinarily and reasonably necessary. Debtor failed to itemize each good exempted, so it is impossible to determine if the value of each item exceeds the \$800.00 statutory limit.

Debtor did not oppose but did file an *Amended Schedule C* on November 1, 2022. Doc. #26, *Am. Sched. C*. Debtor specifically itemized the exemptions, which moots Trustee's objection.

Therefore, this objection will be OVERRULED AS MOOT.

3. [22-11410](#)-B-13 **IN RE: HOWARD/KIM CRAUSBY**
[DAB-1](#)

AMENDED MOTION TO CONFIRM PLAN
10-18-2022 [\[43\]](#)

KIM CRAUSBY/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Howard Franke Crausby and Kim Renee Crausby (collectively "Debtors") seek confirmation of the *Third Amended Chapter 13 Plan* dated October 10, 2022. Docs. #38; #43.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9014-1(d)(3)(B)(iii) 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.

Here, neither the original nor the amended notices contained the required language directing respondents to the pre-hearing dispositions on the court's website. Docs. #37; #44.

Second, LBR 3015-1(d)(3) requires all other proposed modified plans and the motion to modify the plan, as well as all other supporting documents, to be served on (1) the UST; (2) the Chapter 13 Trustee; (3) indentured trustees; (4) the debtor(s) and counsel; and (5) all creditors who have filed proofs of claim and creditors who are still permitted to file a proof of claim due to a court-ordered extension.

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR

7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here, Debtors' certificates of service do not use newly required Form EDC 007-005 and do not attach the Clerk's Matrices of Creditors, which are available on the court's website and are obligatory in plan confirmation proceedings beginning in November 2022. Docs. #40; #44.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

4. [22-10122](#)-B-13 **IN RE: MANNY/ERLINDA MENDEZ**
[RSW-1](#)

MOTION TO SELL
10-26-2022 [\[24\]](#)

ERLINDA MENDEZ/MV
ROBERT WILLIAMS/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 Moving Party shall submit a proposed order after hearing.

Manny Medina Mendez and Erlinda Garcia Mendez (collectively "Debtors") seek authorization to sell the estate's interest in real property located at 2345 Alta Vista Drive, Bakersfield, CA 93305 ("Property") to Erica Valencia ("Proposed Buyer") for \$325,000.00, subject to higher and better bids at the hearing. Doc. #24.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(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.

As a preliminary matter, the certificate of service filed with this motion does not comply with the local rules. Doc. #27. LBR 7005-1

requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here, Debtors' certificate of service does not use newly required Form EDC 007-005 and does not attach the Clerk's Matrices of Creditors, which are available on the court's website and are obligatory in contested matters beginning in November 2022. Doc. #27. Since this motion was filed before enforcement of the new certificate of service rules, this procedural deficiency will be overlooked in this instance only. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Proposed Buyer. Nothing in the record suggests that Proposed Buyer is an insider with respect to the Debtors. Proposed Buyer is neither listed in the schedules nor the master address list. Docs. #1; #4. Further, joint debtor Erlinda Mendez's declaration states that this is an arms-length transaction in that the offer was presented to Debtor's real estate agent from the buyer's real estate agent. Doc. #26. Further, Debtors acknowledge that the sale will be subject to higher and better bids at the hearing, but believe that the \$325,000.00 proposed sale price is a fair and reasonable price. *Id.*

Property is not listed individually in the schedules; rather, it is collectively listed with 2401 & 2407 Alta Vista Drive, Bakersfield, CA 93305 (collectively "Related Properties") with a combined value of \$1,000,000.00. Doc. #1, *Sched. A/B*. The schedules include a note that Property - 2345 - is also Debtors' residence. *Id.* Debtors collectively exempted Property and the Related Properties in the amount of \$300,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Id.*, *Sched. C*. Consistent with the schedules, Joint debtor Erlinda Mendez declares Property and the Related Properties are not secured by any mortgages, but they are subject to multiple tax liens in favor of the California Employment Development Department ("EDD"), the Franchise Tax Board ("FTB"), and the Kern County Tax Collector ("KCTC"), as well as a judgment lien in favor of Commercial Trade Bureau of California ("CTBC"), which will be paid in full from escrow with the remaining amounts remitted to the chapter 13 trustee. *Id.*, *Sched. D*; Doc. #26. Based on this representation, it does not appear that Debtors are claiming an entitlement to any portion of their \$300,000.00 exemption under CCP § 704.730. However, since Debtors claim that Property specifically is their residence and not either of the Related Properties, it does not appear that they would be entitled to exempt the Related Properties. The court will inquire at the hearing about Debtors' claimed exemption.

The motion states that costs of escrow and realtors' commissions will be split 50/50, but no information about estimated costs of sale, including commissions, is included. Doc. #24. Though no proposed closing statement was included, an estimated sale based on the schedules could be illustrated as follows:

Sale price		\$325,000.00
EDD Statutory Lien (03/12/2010)	-	\$17,943.25
EDD Statutory Lien (06/21/2010)	-	\$27,949.73
EDD Statutory Lien (10/04/2021)	-	\$2,654.78
EDD Statutory Lien (11/17/2010)	-	\$1,786.14
EDD Statutory Lien (12/19/2011)	-	\$21,338.40
EDD Statutory Lien (06/05/2015)	-	\$22,579.58
FTB Statutory Lien (03/05/2019)	-	\$8,250.34
FTB Statutory Lien (08/31/2021)	-	\$28,282.50
CTBC Judgment Lien (01/21/2020)	-	\$7,645.01
KCTC Statutory Lien (date unknown)	-	\$81,152.70
KCTC Statutory Lien (date unknown)	-	\$44,674.70
KCTC Statutory Lien (date unknown)	-	\$24,043.35
Costs of Sale	-	?
Broker Commissions (est. 6%)	-	\$19,500.00
Net proceeds	≤	\$17,199.52

Doc. #1, *Sched. D*. If Debtors waive entitlement to their \$300,000.00 exemption under CCP § 704.730, then less than \$17,199.52 in net proceeds will remain to be remitted to the chapter 13 trustee. If costs of sale exceed this amount, then nothing will remain for the estate.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Debtor's business judgment, and proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best results. There is no opposition to the sale. It appears that the sale will pay off all of the statutory and judgment liens encumbering Property and the Related Properties and also provided funds to the estate to be paid to unsecured claims. Debtors' business judgment appears to be reasonable and will be given deference.

This matter will be called as scheduled to inquire whether Debtors claim an entitlement to sale proceeds under their \$300,000.00 exemption pursuant to CCP § 704.730. In the absence of opposition at the hearing, this motion will be GRANTED and proceed for higher and better bids. If opposition is presented, this matter will be continued and proceed as a scheduling conference.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the property; it is being sold "as-is, where-is."

5. [19-12843](#)-B-13 **IN RE: DONNIE EASON**
[FW-3](#)

MOTION TO MODIFY PLAN
9-30-2022 [[65](#)]

DONNIE EASON/MV
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.

Donnie L. Eason ("Debtor") seeks confirmation of the *Second Modified Chapter 13 Plan* dated September 30, 2022. Doc. #65. The 57-month, 0% plan proposes that Debtor shall pay (a) \$2,300.00 per month for 35 months (August 2019 - June 2022) followed by a three-month moratorium on payments (July - September 2022), (b) \$9,200.00 per month for one month (October 2022), and (c) \$2,300.00 per month for the remaining 18 months. Doc. #67. Debtor's *Amended Schedules I and J* filed September 30, 2022 indicate that Debtor receives \$2,415.82 in monthly net income. Doc. #70.

In contrast, the operative *Chapter 13 Plan* dated July 1, 2019, confirmed September 16, 2019, provides that Debtor shall make 36 monthly payments of \$2,300.00 per month with a 0% dividend to allowed, non-priority unsecured claims. Docs. #3; #22.

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

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.

6. [19-12843](#)-B-13 **IN RE: DONNIE EASON**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
8-3-2022 [[39](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL/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 matter was originally heard on August 31, 2022. Doc. #55.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors and (c)(6) for material default by the debtor with respect to a term of a confirmed plan. Doc. #39.

Trustee said that the confirmed plan's 36-month term completed in July 2022. However, the proposed payments were insufficient to fund the case by month 36 and as of August 3, 2022, payments are delinquent in the amount of \$2,218.92. Doc. #41. The plan states, "[i]f necessary to complete the plan, monthly payments may continue for an additional 6 months, but in no event shall monthly payments continue for more than 60 months." Doc. #3, Section 2.03. But based on Trustee's calculations, even if Debtor continues making regular payments through month 42, there will not be sufficient funds to pay off the case. Doc. #41.

Donnie L. Eason ("Debtor") timely filed opposition. Docs. ##51-52. Debtor filed a modified plan, which Debtor believes will cure the deficiencies raised by Trustee. FW-2. Trustee objected to Debtor's motion to modify plan, causing it to be continued to October 26, 2022 so that Debtor could either file and serve a written response or set a confirmable modified plan for hearing. Doc. #57; #61; #63. Debtor supplemented the opposition on September 21, 2022 indicating that a new plan would need to be filed.

On September 30, 2022, Debtor withdrew the *First Modified Chapter 13 Plan* and filed, served, and set for hearing a motion to confirm the *Second Modified Chapter 13 Plan* dated September 30, 2022, which is the subject of matter #5 above. FW-3.

The court intends to grant the motion to modify plan in matter #5 above. Confirmation of that plan resolves Trustee's objection. Accordingly, Trustee's motion to dismiss will be DENIED AS MOOT because Debtor confirmed a modified plan and cured the alleged material default.

7. [22-11354](#)-B-13 **IN RE: CARLOS AVILA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
10-17-2022 [\[34\]](#)

JAMES PIXTON/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Carlos Marcus Avila's ("Debtor") *Chapter 13 Plan* dated August 24, 2022 pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Doc. #34. Trustee objects because:

1. The plan as proposed is not confirmable because no priority claims are estimated to be paid and the unsecured non-priority claims of \$20,020.00 are to be paid a 0% dividend;
2. The plan impermissibly modifies the claim of a creditor secured only by a security interest in real property that is the Debtor's personal residence in violation of 11 U.S.C. § 1322(b)(2);
3. The Plan does not provide for all of Debtor's projected disposable income to be applied to make payments under the plan as required by 11 U.S.C. § 1325(b).

Id.

Debtor did not file written opposition but was not required to do so. On November 9, 2022, Debtor requested additional time to file and serve an amended plan not later than November 14, 2022. Doc. #37.

Typically, the court would continue this matter so that Debtor could file a written response or file a modified plan. However, PHH Mortgage Corporation also objected to confirmation of Debtor's plan in matter #8 below. RAS-1. After continuing the hearing on that objection so that Debtor could either file a written response or a confirmable modified plan, Debtor filed neither a written response nor a modified plan. As a result, the court issued a pre-hearing disposition

sustaining that objection. Since PHH Mortgage Corporation's objection will be sustained, Trustee's objection will be OVERRULED AS MOOT.

8. [22-11354](#)-B-13 **IN RE: CARLOS AVILA**
[RAS-1](#)

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY PHH
MORTGAGE CORPORATION
9-28-2022 [[24](#)]

PHH MORTGAGE CORPORATION/MV
JAMES PIXTON/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

PHH Mortgage Corporation ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed August 24, 2022 by Carlos Marcus Avila ("Debtor") pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4).¹ Docs. #22; #24. Creditor objects because: (i) the plan attempts to modify the rights of a secured creditor whose interest is secured by an interest in Debtor's principal resident in violation of 11 U.S.C. § 1322(b)(2); and (ii) the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). *Id.*

This objection was previously continued to November 16, 2022 so that Debtor could either: (a) file and serve a written response to Creditor's objection not later than November 2, 2022 or file a confirmable modified plan not later than November 9, 2022, or the objection would be sustained on the grounds stated in the objection without a further hearing. Docs. #29; #31. Here, Debtor neither filed a written response nor a modified plan by the requisite deadlines. However, on November 9, 2022, Debtor requested an extension of time to file and serve an amended plan. Doc. #37. According to the docket, Debtor's attorney James A. Pixton was contacted on November 10, 2022 regarding failure to submit a proposed order or notice of hearing on the motion for an extension of time. Docket generally.

Since Debtor did not file a written response by November 2, 2022 or a confirmable modified plan by November 9, 2022, Creditor's objection will be SUSTAINED because the plan impermissibly modifies Creditor's claim that is secured by an interest in Debtor's principal residence in violation of 11 U.S.C. § 1322(b)(2).

¹ Creditor timely objection to plan confirmation on September 27, 2022 but that objection was not set for hearing. Doc. #21. The next day, Creditor filed this amended objection. Doc. #24.

9. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[TCS-8](#)

MOTION TO VACATE DISMISSAL OF CASE
11-2-2022 [[227](#)]

LORENA GONZALEZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED: 10/21/2022

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.

Victor Islas and Lorena Gonzalez (collectively "Debtors") move for an order vacating the order (Doc. #224) dismissing this case on October 21, 2022 under Civ. Rule 60 (Rule 9024).² Doc. #227.

This matter will be called and proceed as scheduled.

This motion was set for hearing on less than 28 days' notice pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Written opposition was not required and may be presented at the hearing. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtors filed chapter 13 bankruptcy on October 30, 2017. Doc. #1. Debtors' *First Amended Chapter 13 Plan* dated March 15, 2018 was confirmed on May 17, 2018. Docs. #77; #82. Debtors were originally represented by Thomas O. Gillis, who was suspended from the practice of law beginning January 31, 2020. Doc. #96. After Debtors' current counsel substituted in place of Mr. Gillis, the *Fourth Modified Chapter 13 Plan* dated April 29, 2020 was confirmed on July 10, 2020. Docs. #161; #195.

Meanwhile, Debtors sought disgorgement of Mr. Gillis' fees. TCS-4. This proceeding was ultimately transferred to a miscellaneous proceeding before the Honorable Ronald H. Sargis on June 24, 2020, Case No. 20-00202. Docs. ##189-90. On July 17, 2020, Judge Sargis

determined that Mr. Gillis was entitled to receive \$3,200.00 of the \$4,000.00 in fees paid to him under the "no look" fee of LBR 2016-1 (c), and Mr. Gillis shall immediately disgorge \$800.00 to the Clerk of the Bankruptcy Court. Case No. 20-00202, Docs. #216; #222.

Thereafter, Debtors confirmed the *Fifth Modified Chapter 13 Plan* dated December 28, 2021 on February 10, 2022, which extended the duration of the plan to 72 months due to material financial hardship caused by the COVID-19 pandemic under the COVID-19 Bankruptcy Relief Extension Act ("CBREA") and 11 U.S.C. § 1329(d). Docs. #204; ##212-13.

On September 8, 2022, chapter 13 trustee Michael H. Meyer ("Trustee") filed a *Notice of Default and Intent to Dismiss* ("Default Notice"), which indicated that payments were delinquent in the amount of \$1,690.62 through August 2022. Doc. #220. The Default Notice provided three options for curing the delinquency:

- (1) The current delinquency amount of \$1,690.62 could be cured if that amount was paid and received by Trustee on or before September 30, 2022, or if not paid by that date, then by paying the sum of the \$1,690.62 delinquency plus the September 2022 payment of \$1,690.62, for a total of \$3,381.24 to be received by Trustee not later than October 18, 2022, or the case would be dismissed on Trustee's declaration;
- (2) File a modified plan that cured the default within 30 days of the Default Notice (which is October 8, 2022); or
- (3) If Debtors believe there is no default in plan payments, then Debtors shall file, serve, and set for hearing on at least 14 days' notice an objection to the Default Notice within 28 days (October 6, 2022).

On October 19, 2022, Trustee's employee, Kim Ashworth, filed a declaration stating that the delinquency had not been cured by the deadlines set forth in the Default Notice, and Debtors had neither filed a modified plan to cure the delinquency, nor contested the Default Notice. Doc. #222. The court subsequently dismissed the case on October 21, 2022. Doc. #224.

Debtors now move to vacate the order dismissing this case because they were 59 months into their 72-month plan, and they recently moved and did not realize that their case was facing dismissal. Doc. #227. Debtors claim that the full amount needed to complete the case has been deposited in their attorney's trust account, but it is unclear whether this full amount consists of all plan payments through month 72, or merely the payments due through month 60. The motion and supporting declarations seem to assume that had just one month remaining on a 60-month plan, but the operative plan in this case provides for 72 months of payments under CBREA.

Rule 9024 incorporates Civ. Rule 60(b) and permits the court to grant relief from a final judgment, order, or proceeding based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Civ. Rule 59(b); (3) fraud, misrepresentation, or misconduct; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Civ. Rule 60(b). Such request must be made "within a reasonable time" generally, and within one year when requested under Civ. Rule 60(b)(1), (2), or (3). Civ. Rule 60(c). Here, the case was dismissed on October 21, 2022 and this motion was filed 12 days later on November 2, 2022.

Debtors seek relief under subsection (b)(1) and (b)(6): mistake, inadvertence, surprise, or excusable neglect, and/or any other reason that justifies relief. Doc. #227. Joint debtor Lorenz Gonzalez declares that Debtors' final payment was due on October 25, 2022, but the case was dismissed prior to paying that final payment. Doc. #229. But as noted above, it appears that Debtors had a 72-month plan, not a 60-month plan. Debtors claim that they have paid their final plan payment to their attorney and it is currently being held in a trust account to be submitted to Trustee if this motion is granted. On this basis, Debtors say that vacating the dismissal will permit them to complete their plan in month 60. *Id.*

Additionally, Ms. Gonzalez declares that English is not Debtors' first language, and it has been very challenging to succeed in this bankruptcy case with the suspension of Mr. Gillis, their former attorney. *Id.* Debtors have tried very hard to succeed and want the opportunity to finish their case. Thus far, Debtors have tendered \$85,321.00 to the Trustee over 59 months of plan payments. The declaration is silent as to the motion's claim that Debtors recently moved.

Debtors' attorney, Nancy D. Klepac, declares that "the remaining balance" has been deposited into the attorney trust account and will be submitted to the Trustee if this case is vacated. Doc. #230.

Vacatur is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Courts are permitted, where appropriate, to relieve a party or its legal representative from a judgment, order, or proceeding due to a party's "inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993). This determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Id.*, at 395. The factors to consider include:

1. Danger of prejudice to the debtor;
2. Length of delay and potential impact on judicial proceedings;

3. Reason for the delay, including whether it was in the movant's control; and
4. Whether the party acted in good faith.

1. Danger of prejudice to the debtor: The motion implies that Debtors would be prejudiced by dismissal because they are one month away from completing their chapter 13 plan and Debtors recently moved, so they did not realize that their case was dismissed or would soon be dismissed. However, Debtors have a 72-month plan under CBREA, so they appear to have at least 13 months remaining on the plan. Further, no evidence has been presented that Debtors recently moved. Debtors' and Debtors' counsel's declarations make no mention of any recent move. This factor could potentially weigh towards granting the motion if Debtors' claims are true, but it appears to be neutral due to lack of evidence.

2. Length of delay and potential impact on judicial proceedings: Debtor filed this motion 12 days after the case was dismissed. The request appears to have been made within a reasonable time. This factor favors granting the motion.

3. Reason for delay, including whether it was in the movant's control: The motion claims that Debtors recently moved, so they did not know about the impending dismissal in time to cure the delinquency. However, the details of this recent move are omitted from the supporting declarations, so there is no evidence that Debtors did not receive the Default Notice.

Other than the claim that Debtors recently moved in the motion, it does not explain the effect of that move. Did Debtors receive the Default Notice? Debtors have not elaborated on why they did not attempt to cure the delinquency or modify the plan before dismissal. In the absence of more evidence, this factor weighs against granting the motion and allowing the dismissal to stand.

4. Whether the party acted in good faith: Nothing in the record suggests that Debtors have acted in bad faith. This factor is neutral, or slightly favors granting the motion.

Though the *Pioneer* factors may slightly favor granting the motion, no admissible evidence has been provided. Debtors have not explained the reason for not acting sooner, nor whether such lack of action is excusable.

Debtor also seeks to vacate the dismissal under Civ. Rule 60(b)(6). This provision permits the court "on just terms" to relieve a party from a final judgment for "any other reason justifies relief." This relief is unavailable to Debtors here. The long-standing rule in this circuit is that "clause (6) [of Civ. Rule 60(b)] and the preceding clauses are mutually exclusive; a motion brought under clause (6) must be from some other reason other than the five reasons preceding it under the Rule." *Lyon v. Augusta S.P.A.*, 252 F.3d 1078, 1098 (9th Cir.

2001) (citations omitted). Debtors seek relief for alleged mistake or inadvertence and cannot have it both ways.

Additionally, Debtors have not established an extraordinary circumstance justifying relief under Civ. Rule 60(b)(6). This "catch-all" provision is available where "petitioner's allegations set up an extraordinary situation which cannot fairly or logically be classified as mere neglect on his part." *United States ex rel. Familian Nw. v. RG & B Contractors, Inc.*, 21 F.3d 952, 956 (9th Cir. 1994), quoting *Klapprott v. U.S.*, 335 U.S. 601, 613 (1949). Debtors mistakenly failed to cure the default before it was dismissed or failed to modify the plan before the deadline to do so. This does not evidence an extraordinary circumstance even if Civ. Rule 60(b)(6) was available.

This matter will be called and proceed as scheduled.

² Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civ. Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

10. [22-11559](#)-B-13 **IN RE: MISAEEL DELGADO AND VERONICA ZAMUDIO**
[AF-1](#)

MOTION TO CONFIRM PLAN
9-27-2022 [[20](#)]

VERONICA ZAMUDIO/MV
ARASTO FARASAD/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Misael Cordero Delgado and Veronica Rivas Zamudio (collectively "Debtors") move for an order confirming the *Chapter 13 Plan* dated September 27, 2022. Doc. #23.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation because the plan fails to comply with other applicable provisions of this title. Doc. #44. Namely, Trustee has not yet concluded the § 341 meeting of creditors. Debtors failed to appear at the 341 meeting scheduled for October 25, 2022, so it was continued to November 29, 2022. Trustee may have further objections to the plan based on the outcome of that meeting and Trustee will supplement this

objection when he becomes aware of further issues regarding confirmation.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Debtors filed an *ex parte* motion to extend the time to file schedules, statements, and other documents. Doc. #10. That motion was granted on September 19, 2022. Doc. #12. The DCN for that motion was AF-1.

On September 27, 2022, Debtor filed this motion to confirm the proposed chapter 13 plan. Doc. #20. The DCN for this motion is also AF-1, and therefore it does not comply with the local rules. Each new motion requires a different, unused DCN. Debtor should have used AF-2, or any other unused iteration of the "AF" DCN.

Second, LBR 3015-1(d)(3) requires all other proposed modified plans and the motion to modify the plan, as well as all other supporting documents, to be served on (1) the UST; (2) the Chapter 13 Trustee; (3) indentured trustees; (4) the debtor(s) and counsel; and (5) all creditors who have filed proofs of claim and creditors who are still permitted to file a proof of claim due to a court-ordered extension.

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here, Debtors' certificate of service does not use newly required Form EDC 007-005 and does not attach the Clerk's Matrices of Creditors, which are available on the court's website and are obligatory in plan confirmation proceedings beginning in November 2022. Doc. #24.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

11. [22-11669](#)-B-13 **IN RE: ALBERTO ARAIZA**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN CONSUMER LOAN, INC.
10-13-2022 [\[13\]](#)

ALBERTO ARAIZA/MV
PETER BUNTING/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.

Alberto Longoria Araiza ("Debtor") requests an order valuing a 2006 Toyota Tacoma Access Cab with 190,000 miles ("Vehicle") at \$9,659.00. Doc. #13. The Vehicle is the collateral of a loan incurred in May of 2021 in favor OneMain Consumer Loan, Inc. ("Creditor"), which Debtor claims is a non-purchase money security interest.³ *Id. Cf.* Proof of Claim No. 2.

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

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

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

Here, Debtor declares that the Vehicle is secured by a non-purchase money security interest loan that was incurred in May of 2021. Doc. #15. According to the Attachment to Creditor's Claim 2, the loan was incurred on May 27, 2021 and it appears that Debtor obtained the Vehicle on or about July 22, 2017. See *Attach.* to Claim 2. Thus, the elements of § 1325(a) (*) are not met and § 506 is applicable.

11 U.S.C. § 506(a) (1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a) (2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Debtor declares that the replacement value of Vehicle was \$9,659.00 on the petition date. Doc. #15. This valuation is reflected in Debtor's *Schedule A/B* (Doc. #1) and Debtor's proposed *Chapter 13 Plan* dated September 28, 2022 (Doc. #3), which was sent to Creditor on October 8, 2022 and includes Creditor's claim as a Class 2(B) claim reduced based on the value of the collateral. Doc. #12. In contrast, Creditor estimates the value of Property in Claim 2 to be \$12,100.00. Claim 2.

Debtor is competent to testify as to the replacement value of the Vehicle as its owner. Fed. R. Evid. 701. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$9,659.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

³ Debtor complied with Fed. R. Bankr. P. 7004(b) (3) by serving CT Corporation System, Creditor's registered agent for service of process, via regular U.S. mail on October 13, 2022. Doc. #17.

12. [21-12289](#)-B-13 **IN RE: DUSTIN/MIRANDA WHEELER**
[SL-4](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
10-10-2022 [[60](#)]

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 Wheeler and Miranda Wheeler (collectively "Debtors"), seeks interim compensation in the sum of \$6,101.00 under 11 U.S.C. §§ 330-31. Doc. #60. This amount consists solely of \$6,101.00 in fees as reasonable compensation for services rendered and \$0.00 in reimbursement for actual, necessary expenses from December 10, 2021 through September 30, 2022. *Id.*

Debtors executed a statement dated October 10, 2022 indicating that they have reviewed the fee application and have no objections. *Id.* at § 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 September 27, 2021. Doc. #1. The *First Modified Chapter 13 Plan* dated June 10, 2022, confirmed August 29, 2022, is the operative plan in this case. Docs. #45; #59. Section 3.05 indicates that Applicant was paid \$1,497.00 prior to filing the case and, subject to court approval, additional fees of

\$13,577.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #45. The application indicates that Applicant was paid \$1,810.00 pre-petition, which consists of \$1,407.00 as a retainer, \$313.00 for the filing fee, and \$90.00 for credit report fees. Doc. #60.

This is Applicant's second interim fee application. On December 20, 2021, the court approved payment to Applicant in the amounts of \$8,381.67 in fees and \$873.86 in costs, for a total of \$9,255.53. Docs. #29; #31. After payment of the \$1,810.00 in prepetition payments, the chapter 13 trustee was authorized to pay Applicant \$7,445.53 in accordance with the chapter 13 plan. Doc. #31. Thus, under the current plan, there are \$6,131.47 in funds remaining for payment of professional fees.

Applicant's firm provided 30.76 billable hours of legal services at the following rates, totaling **\$6,101.00** in fees:

Professional	Rate	Hours	Fees
Scott Lyons	\$400	1.50	\$600.00
Louis Lyons	\$350	10.30	\$3,605.00
Sylvia Gutierrez	\$100	18.96	\$1,896.00
Total Hours & Fees		30.76	\$6,101.00

Doc. #62, *Ex. B*. Applicant did not incur any expenses, so the total amount requested in this application is \$6,101.00.

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 Applicant's first interim fee application (SL-2); (2) filing personal financial management course certificates for the Debtors and amended schedules; and (3) preparing, filing, and prosecuting a motion to confirm plan, including responding to the trustee's objections (SL-3). Doc. #62, *Ex. A*. As noted above, Debtors have consented to payment of the requested fees. Doc. #60, § 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 \$6,101.00 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 will

be authorized, in his discretion, to pay Applicant \$6,101.00 in accordance with the chapter 13 plan for services rendered and expenses incurred from December 10, 2021 through September 30, 2022.

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

11:00 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[21-1039](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-27-2022 [[58](#)]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP V. SLOAN ET
KURT VOTE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court recently granted leave for Sandton Credit Solutions Master Fund IV, LP ("Plaintiff") to file an Amended Complaint and ordered William Brett Sloan and Stephen William Sloan (collectively "Defendants") to file a response to the Amended Complaint within 20 days of its filing. Doc. #57. Plaintiff filed its Amended Complaint on October 27, 2022, so Defendants have until November 16, 2022 to file a response. Doc. #58. Accordingly, this status conference will be CONTINUED to December 14, 2022 at 11:00 a.m. Plaintiff shall file a joint or unilateral status conference statement not later than seven days before the date of the continued status conference.

2. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
12-23-2020 [[92](#)]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* dated November 14, 2022. Doc. #366. Since the parties have agreed to global mediation that is presently scheduled to occur on November 23, 2022

before the Honorable Meredith Jury (Ret.), the parties request continuance of the status conferences and pre-trial conferences to December 14, 2022. *Id.* Accordingly, this pre-trial conference will be CONTINUED to December 14, 2022 at 11:00 a.m. The plaintiff shall file a joint or unilateral status report not later than December 7, 2022.

3. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED THIRD-PARTY COMPLAINT BY RICHARD BARNES, PARKER FORECLOSURE SERVICES, LLC AGAINST WFG NATIONAL TITLE INSURANCE COMPANY
8-5-2022 [[327](#)]

NATERA V. BARNES ET AL
WILLIAM WINFIELD/ATTY. FOR PL.

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

DISPOSITION: Continued to December 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* dated November 14, 2022. Doc. #366. Since the parties have agreed to global mediation that is presently scheduled to occur on November 23, 2022 before the Honorable Meredith Jury (Ret.), the parties request continuance of the status conferences and pre-trial conferences to December 14, 2022. *Id.* Accordingly, this status conference will be CONTINUED to December 14, 2022 at 11:00 a.m. The plaintiff shall file a joint or unilateral status report not later than December 7, 2022.

4. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [FW-6](#)

CONTINUED SCHEDULING CONFERENCE RE: MOTION FOR SUMMARY ADJUDICATION
9-14-2021 [[138](#)]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* dated November 14, 2022. Doc. #366. Since the parties have agreed to global mediation that is presently scheduled to occur on November 23, 2022 before the Honorable Meredith Jury (Ret.), the parties request continuance of the status conference and pre-trial conferences to December 14, 2022. *Id.* Accordingly, this scheduling conference will be CONTINUED to December 14, 2022 at 11:00 a.m. The plaintiff shall file a joint or unilateral status report not later than December 7, 2022.

5. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[20-1035](#) [TAT-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION FOR SUMMARY JUDGMENT
9-1-2021 [[124](#)]

NATERA V. BARNES ET AL
THOMAS TRAPANI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' *Joint Status Report* dated November 14, 2022. Doc. #366. Since the parties have agreed to global mediation that is presently scheduled to occur on November 23, 2022 before the Honorable Meredith Jury (Ret.), the parties request continuance of the status conference and pre-trial conferences to December 14, 2022. *Id.* Accordingly, this status conference will be CONTINUED to December 14, 2022 at 11:00 a.m. The plaintiff shall file a joint or unilateral status report not later than December 7, 2022.

6. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[22-1001](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
1-6-2022 [[1](#)]

CARVER ET AL V. SETERUS INC. ET AL
NANCY KLEPAC/ATTY. FOR PL.

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

DISPOSITION: Continued to December 14, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of (a) Defendant Gregory Funding, LLC's ("Gregory Funding") status report and (b) Defendant Nationstar Mortgage, LLC's ("Nationstar Mortgage" or collectively "Defendants") Answer to the Complaint. Docs. #78; #80. The defendants have been engaged in discussions regarding a possible settlement and are hopeful that a resolution will be reached before the date of this status conference. Since Defendant Gregory Funding has until November 21, 2022 to file an Answer, it requests this status conference to be continued approximately 30 days to allow the parties to finalize a resolution for the case. Doc. #78.

Accordingly, this status conference will be CONTINUED to December 14, 2022 at 11:00 a.m. The parties shall file joint or unilateral status conference statements not later than seven days before the continued hearing.

Additionally, neither Defendant Gregory Funding nor Defendant Nationstar Mortgage have filed Corporate Ownership Statements as required by Federal Rule of Bankruptcy Procedure, Rule 7007.1. The court will issue an *Order to Show Cause* why their pleadings should not be stricken and/or sanctions issued for failure to comply with Rule 7007.1.

7. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1007](#) [CAE-1](#)

CONTINUED FURTHER STATUS CONFERENCE RE: COMPLAINT
1-7-2019 [[1](#)]

SUGARMAN V. BOARDMAN TREE FARM, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: February 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Per chapter 11 trustee Randy Sugarman's ("Plaintiff") status report dated October 19, 2022 in the related consolidated proceeding, Adv. Proc. No. 19-1033, there is no need to schedule a further status report until at least September 15, 2023. Adv. Proc. No. 19-1033, Doc. #500. Accordingly, this further status conference will be CONTINUED to February 15, 2023 at 11:00 a.m. Plaintiff shall file a joint or unilateral status report not later than seven days before the continued status conference.

8. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1007](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [[136](#)]

SUGARMAN V. BOARDMAN TREE FARM, LLC ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant Boardman Tree Farm, LLC filed a Corporate Ownership Statement on November 1, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #151. Accordingly, the OSC will be VACATED.

9. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1007](#) [CAE-3](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [[138](#)]

SUGARMAN V. BOARDMAN TREE FARM, LLC ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant IRZ Consulting, LLC filed a Corporate Ownership Statement on October 21, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #142. Accordingly, the OSC will be VACATED.

10. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1007](#) [CAE-4](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [[140](#)]

SUGARMAN V. BOARDMAN TREE FARM, LLC ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant Sineco Construction, LLC ("Sineco") did not file a Corporate Ownership Statement in this adversary proceeding. However, Sineco did file a Corporate Ownership Statement as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC") in the related proceeding entitled *IRZ Consulting LLC v. Tevelde et al.*, Adv. Proc. No. 19-01037, Doc. #148. The court may take judicial notice of all documents and other pleadings filed in this adversary proceeding, the underlying bankruptcy case, in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the Corporate Ownership Statement filed in Adv. Proc. No. 19-01037, but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008). Accordingly, the OSC will be VACATED.

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

CONTINUED FURTHER STATUS CONFERENCE RE: THIRD-PARTY
COMPLAINT
2-24-2021 [[163](#)]

SUGARMAN V. IRZ CONSULTING,
LLC ET AL
KYLE SCIUCHETTI/ATTY. FOR PL.

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

DISPOSITION: February 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Per the *Plaintiff's Status Report* dated October 19, 2022, there is no need to schedule a further status conference in this case until at least September 15, 2023. Doc. #500. Accordingly, this further status

conference will be CONTINUED to February 15, 2023 at 11:00 a.m. Plaintiff shall file a joint or unilateral status report not later than seven days before the continued status conference.

12. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#)

MOTION FOR ORDER ESTABLISHING GOOD FAITH SETTLEMENT
10-18-2022 [\[492\]](#)

SUGARMAN V. IRZ CONSULTING, LLC ET AL
MICHAEL DIAS/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Defendant George Chadwick dba George Chadwick Consulting ("Chadwick") moves for an order (a) establishing that Chadwick settled the adversary proceeding in good faith with chapter 11 trustee Randy Sugarman ("Plaintiff"), and (b) barring cross-complaints against Chadwick. Doc. #492.

Third Party Plaintiff IRZ Consulting, LLC opposed. Doc. #537.

Chadwick replied. Doc. #548.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, the motion and supporting documents entirely omit the use of a DCN. Docs. ##492-99. This is incorrect. Each new matter filed with the court requires all pleadings in that matter to be linked together with a unique DCN. For example, Chadwick could have used DCN MAD-1, the initials of Chadwick's attorney, Michael A. Dias, or DLF-2 (since DLF-1 was used for Chadwick's motion to dismiss filed April 27, 2021), the

initials of Dias Law Firm, Inc., or any other unused iteration of any DCN.

Second, LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here, Chadwick's certificate of service does not use newly required Form EDC 007-005 and does not attach the Clerk's Matrices of Creditors, which are available on the court's website and are obligatory in adversary proceedings beginning November 1, 2022.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

13. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-30-2022 [[533](#)]

SUGARMAN V. IRZ CONSULTING, LLC ET AL
JOHN MACCONAGHY/ATTY. FOR PL.

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

DISPOSITION: February 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Per the *Plaintiff's Status Report* dated October 19, 2022, there is no need to schedule a further status conference in this case until at least September 15, 2023. Doc. #500. Accordingly, this status conference will be CONTINUED to February 15, 2023 at 11:00 a.m. Plaintiff shall file a joint or unilateral status report not later than seven days before the continued status conference.

14. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [\[502\]](#)

SUGARMAN V. IRZ CONSULTING, LLC ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant and Third Party Plaintiff IRZ Consulting, LLC filed a Corporate Ownership Statement on October 21, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #512. Accordingly, the OSC will be VACATED.

15. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [CAE-3](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [\[504\]](#)

SUGARMAN V. IRZ CONSULTING, LLC ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Third Party Defendant Valmont Northwest, Inc. filed a Corporate Ownership Statement on October 24, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #518. Accordingly, the OSC will be VACATED.

16. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [CAE-4](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [\[506\]](#)

SUGARMAN V. IRZ CONSULTING, LLC ET AL
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.

Third Party Defendant Nucor Building Systems Utah LLC filed a
Corporate Ownership Statement on November 3, 2022 as required by Fed.
R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #542.
Accordingly, the OSC will be VACATED.

17. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [CAE-5](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [\[508\]](#)

SUGARMAN V. IRZ CONSULTING, LLC ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Third Party Defendant Maas Energy Works, Inc. filed a Corporate
Ownership Statement on November 1, 2022 as required by Fed. R. Bankr.
P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #535. Accordingly,
the OSC will be VACATED.

18. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [MBB-7](#)

MOTION FOR ORDER ESTABLISHING "GOOD FAITH" SETTLEMENT
AND BARRING CROSS-COMPLAINTS AGAINST SETTLING DEFENDANT
10-3-2022 [[451](#)]

SUGARMAN V. IRZ CONSULTING, LLC ET AL
MICHAEL BROWN/ATTY. FOR MV.

NO RULING.

Third Party Defendant U.S. Farm Systems aka Valmetal Tulare ("U.S. Farm") moves for an order (a) establishing that U.S. Farm settled the adversary proceeding in good faith with chapter 11 trustee Randy Sugarman ("Plaintiff"), and (b) barring cross-complaints against U.S. Farm. Doc. #451.

Third Party Plaintiff IRZ Consulting, LLC ("IRZ") timely filed written opposition. Doc. #539.

U.S. Farm replied. Doc. #545.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. Because this motion, if granted, will be dispositive as to U.S. Farm's non-involvement in this case, the court intends to take the matter under submission and subsequently issue a proposed report and recommendation for *de novo* consideration by the District Court. The court will issue an order.

19. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1037](#) [CAE-1](#)

CONTINUED FURTHER STATUS CONFERENCE RE: NOTICE OF REMOVAL
7-23-2018 [[1](#)]

IRZ CONSULTING LLC V. TEVELDE ET AL
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: February 15, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

Per chapter 11 trustee Randy Sugarman's ("Plaintiff") status report dated October 19, 2022 in the consolidated proceeding, Adv. Proc. No. 19-1033, there is no need to schedule a further status report until at least September 15, 2023. Adv. Proc. No. 19-1033, Doc. #500.

Accordingly, this status conference will be CONTINUED to February 15, 2023 at 11:00 a.m. Plaintiff shall file a joint or unilateral status report not later than seven days before the continued status conference.

20. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1037](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [[131](#)]

IRZ CONSULTING LLC V. TEVELDE ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Plaintiff IRZ Consulting, LLC filed a Corporate Ownership Statement on October 21, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #137. Accordingly, the OSC will be VACATED.

21. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1037](#) [CAE-3](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [[133](#)]

IRZ CONSULTING LLC V. TEVELDE ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant Boardman Tree Farm, LLC filed a Corporate Ownership Statement on November 1, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #146. Accordingly, the OSC will be VACATED.

22. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1037](#) [CAE-4](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE OWNERSHIP
STATEMENT
10-19-2022 [[135](#)]

IRZ CONSULTING LLC V. TEVELDE ET AL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Defendant Sineco Construction, LLC filed a Corporate Ownership Statement on November 3, 2022 as required by Fed. R. Bankr. P. 7007.1 and the *Order to Show Cause* ("OSC"). Doc. #148. Accordingly, the OSC will be VACATED.

23. [21-10753](#)-B-7 **IN RE: GUSTAVO DEL TORO**
[21-1027](#) [FRB-1](#)

MOTION IN LIMINE NO. 1
10-13-2022 [[47](#)]

PRODUCERS LIVESTOCK MARKETING
ASSOCIATION V. DEL TORO
MICHAEL GOMEZ/ATTY. FOR MV.

NO RULING.

Producers Livestock Marketing Association, a Utah Corporation ("Plaintiff") move for an order, in limine, to admit documentary evidence produced by Harry Habib ("Habib") to Plaintiff during discovery. Doc. #47.

This motion will be called as scheduled. The court is inclined to GRANT the motion.

Plaintiff set this motion in limine for hearing on November 16, 2022 pursuant to the court's *Order Setting Trial, Alternate Direct Testimony Procedure, and Other Deadlines* ("Trial Setting Order") on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Docs. #44; #47. The failure of debtor Gustavo Del Toro ("Defendant") or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken

as true (except those relating to 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.

As a preliminary matter, the motion does not comply with the local rules. First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Plaintiff and Defendant stipulated to extend the close of fact discovery and sought approval of the same on January 7, 2022. Docs. ##23-24. The court approved the stipulation on January 11, 2022. Doc. #26. The DCN for that motion was FRB-1.

On October 13, 2022, Plaintiff filed this motion in limine. Doc. #47. The DCN for this motion is also FRB-1, and therefore it does not comply with the local rules. This is incorrect. Each new matter requires a unique, unused DCN. For example, Plaintiff could have used DCN FRB-3 or any other unused iteration of the "FRB" DCN.

Second, LBR 9004-2(c)(1) requires declarations, exhibits, and other specified pleadings to be filed as separate documents. Here, the *Declaration of Michael J. Gomez in Support of Producers Livestock Marketing Association's Motion in Limine No. 1* included attached exhibit pages. Doc. #50. This is incorrect. These exhibit documents should have been filed separately.

Additionally, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibit pages are consecutively numbered, but they are erroneously attached to a declaration and do not have any exhibit index.

Typically, these procedural deficiencies would result in the motion being denied without prejudice without further hearing. However, since this motion in limine was set for hearing pursuant to the Trial Setting Order and trial is scheduled for December 9, 2022, denying this motion for these defects would cause unnecessary and undue delay in resolving any motions in limine before the trial. Accordingly, the

court will *sua sponte* overlook these procedural deficiencies in this instance only under LBR 1001-1(f). Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

Prior to the filing of Defendant's bankruptcy and Plaintiff's adversary proceeding, the parties were engaged in litigation in state court in a lawsuit entitled *Pacific Gold Milk Producers, Inc. v. Harry Habib, et al*, San Joaquin Superior Court Case No. STK-CV-VCC-2019-4374. Doc. #50, Ex. 1. The parties conducted discovery and Habib provided discovery responses that included (a) verified responses and documents (Trial Exhibit PX39, P000379) and (b) documents including an Agricultural Financing Statement and Security Agreement dated February 14, 2017 between Habib and Defendant (Trial Exhibit PX40, P001746 - P 001759). *Id.*, Ex. 2.

On March 9, 2021, Habib died. As evidence, Plaintiff includes a copy of Habib's death certificate. *Id.*, Ex. 3.

Plaintiff wishes to admit these documents into evidence, but Defendant is unwilling to stipulate (a) that Habib is, in fact, dead, or (b) to the authenticity and admissibility of the Habib documents. Doc. #50. Therefore, Plaintiff filed this motion.

"Although the Federal Rules of Evidence do not explicitly authorize in limine rulings, the practice has developed pursuant to the district court's inherent authority to manage the course of trials." *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984).

To be admissible, documentary evidence must be (a) authenticated and (b) relevant. Fed. R. Evid. 901, 402, 104(a) and (b); *U.S. v. Edwards*, 631 F.2d 1049, 1051 (2d Cir. 1980). Hearsay is not admissible unless an exception applies. Fed. R. Evid. 802. One such possible exception to the hearsay rule is where the declarant is "unavailable" to testify because of death. Fed. R. Evid. 103(d) and 104(c) allow the court to hear and determine the admissibility of evidence. *Williams v. Board of Regents of University System of Georgia*, 629 F.2d 993, 999-1001 (5th Cir. 1980).

Here, Plaintiff has produced evidence that Habib is unavailable to testify because Habib is dead. Under Fed. R. Evid. 804(a)(4), Habib is unavailable to testify at trial as to documents produced in discovery. Therefore, the documents are excepted from the exclusionary hearsay rule and may be admitted here. Defendant did not timely file any written opposition.

Accordingly, this matter will proceed as scheduled. The court is inclined to GRANT the motion.

24. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[22-1015](#)

CONTINUED SCHEDULING CONFERENCE RE: FIRST AMENDED COMPLAINT
8-24-2022 [8]

SALVEN V. BLAIN ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

This scheduling conference was previously continued to November 16, 2022. Docs. ##18-19. Per the order continuing, the parties were required to file and serve initial disclosures under Fed. R. Bankr. P. 7026(d)(1) not later than November 7, 2022. Doc. #19. No such initial disclosures have been filed. This matter will be called and proceed as scheduled to inquire the reason for the outstanding initial disclosures.