



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, November 29, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [19-10708](#)-B-13 IN RE: ANTONIO/MARTHA AVILES
[PFT-1](#)

MOTION TO APPROVE CHAPTER 7 TRUSTEE COMMISSION
10-20-2023 [[99](#)]

PETER FEAR/MV
T. O'TOOLE/ATTY. FOR DBT.
DISMISSED 11/15/23

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

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

DISPOSITION: Continued to January 10, 2024, at 9:30.

ORDER: The court will enter the order.

Peter L. Fear ("Trustee") brings this *Motion to Approve Chapter 7 Trustee Commission Pursuant to 11 U.S.C. § 326*. Doc. #99. The instant motion was filed on October 20, 2023. *Id.* Before the response deadline had run, the debtors, Antonio and Martha Aviles ("Debtors") filed a motion to dismiss the underlying Chapter 13 bankruptcy case which the court subsequently granted. Docs. ##107, 109. That same day, Trustee filed a motion to vacate the dismissal (Doc. #111), which the court subsequently granted Doc. #113.

Accordingly, this matter is hereby CONTINUED to January 10, 2024. Debtors and any other parties in interest shall have until **fourteen (14) days** prior to the hearing date in which to file any response to the motion. In the absence of any response, the court may grant this motion.

2. [19-10708](#)-B-13 **IN RE: ANTONIO/MARTHA AVILES**
[TMO-2](#)

MOTION TO MODIFY PLAN
10-16-2023 [\[92\]](#)

MARTHA AVILES/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.
DISMISSED 11/15/23

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

DISPOSITION: Continued to January 10, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

On October 16, 2023, Antonio and Martha Aviles ("Debtors") filed a First Modified Chapter 13 Plan (Doc. #95) and a Motion to Confirm same. Doc. #92. On October 25, 2023, Michael H. Myer ("Trustee") filed an Objection to the First Amended Plan, asserting the following grounds:

1. The plan provides for payments to creditors for a period longer than 5 years in contravention of 11 U.S.C. §1322(d).
2. Debtors will not be able to make all payments under the plan and comply with the plan's requirements as required by 11 U.S.C. §1325(a)(6).

Doc. #105.

On November 15, 2023, Debtors filed a motion to dismiss the underlying Chapter 13 bankruptcy case which the court subsequently and improvidently granted. Docs. ##107, 109. That same day, Peter L. Fear, the Debtors' former Chapter 7 Trustee, filed a motion to vacate the dismissal (Doc. #111), which the court subsequently granted (Doc. #113).

This motion will be CONTINUED to January 10, 2024, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response to the objection not later than fourteen (14) days before the hearing. The response shall specifically address each issue raised in Trustee's 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, at least seven (7) days before hearing.

If Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than seven (7) days before the hearing. If Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

3. [21-12613](#)-B-13 **IN RE: WILLIAM/STEPHANIE CROSS**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
11-1-2023 [\[81\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Fear Waddell P.C. ("Applicant"), counsel for debtors William Ronald Cross, Jr. and Stephanie Kaye Cross ("Debtors"), requests interim compensation in the sum of \$9,313.50 in fees and \$384.23 in expenses pursuant to 11 U.S.C. § 330. Doc. #81. This amount covers fees and expenses incurred between July 1, 2022, to September 30, 2023. *Id.* This is Applicant's second fee application. *Id.*

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

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

Applicant's firm provided 32.90 billable hours at the following rates, totaling **\$9,313.50.00** in fees:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2022)	\$345.00	6.60	\$2,277.00
Gabriel J. Waddell (2023)	\$30.00	15.60	\$5,616.00
Kayla Schlaak (2022)	\$125.00	4.30	\$537.00
Kayla Schlaak (2023)	\$140.00	6.00	\$840.00
Laurel Guenther (2023)	\$100.00	.20	\$20.00
Laurel Guenther (2022)	\$115.00	0.20	\$23.00
Total		32.9	\$9,313.00

Docs. ##81,83. Applicant incurred **\$384.23** in expenses:

Copying	\$244.92
Court Fees	\$0.00
Postage	\$138.01
Other: Pacer fees	\$1.30
Total Expenses	\$384.23

Id. These combined fees and expenses total **\$9,697.23**. *Id.*

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

Applicant's services here included, without limitation: (1) claim administration and claim objections, (2) work on the 2nd amended plan and the objections to it, (3) fee/employment applications, and (4) case administration. Doc. #83. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #83, *Exhibit E*.

Accordingly, this motion will be GRANTED on an interim basis. Applicant shall be awarded **\$ 9,697.23** in fees as reasonable compensation for services rendered and costs incurred, subject to final review under § 330. The chapter 13 trustee will be authorized to pay Applicant **\$9,697.23** through the confirmed plan for services and expenses from July 1, 2022, through September 30, 2023.

4. [22-11813](#)-B-13 **IN RE: STEVEN/LAURA BALLARD**
[SLL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN LABIAK, DEBTORS
ATTORNEY(S)
10-30-2023 [\[48\]](#)

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.

Stephen L. Labiak ("Applicant"), counsel for debtors Steven and Laura Ballard ("Debtors"), requests interim compensation in the sum of \$5,471.08 in fees and \$22.92 in expenses pursuant to 11 U.S.C. § 330. Doc. #48. This amount covers fees and expenses incurred from October 12, 2022, to October 12, 2023. *Id.* This is Applicant's second fee application. *Id.*

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

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

Applicant's firm provided 18.80 billable hours at the following rates, totaling **\$6,180.00** in fees:

Professional	Rate	Billed	Total
Stephen L. Labiak	\$350.00	16.80	\$5,880.00
Linda Fellner	\$150.00	2.0	\$300.00
Total		18.8	\$6,180.00

Docs. ##81,83. Applicant incurred **\$384.23** in expenses:

Copying	\$0.00
Court Fees	\$0.00
Postage	\$22.92
Total Expenses	\$22.92

Id. These combined fees and expenses total more than **\$5,493.00**. *Id.* However, counsel has stated that this request reflects what is left under the Plan to pay counsel. (Doc. #50)

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

Applicant's services here included, without limitation: (1) prepetition consultation and fact gathering, (2) preparation of the voluntary petition, schedules and Form 22C, (3) independent verification of information, (4) amendments to petitions and/or schedules, (5) original plan, hearings, objections, (6) drafting the 1st modified plan, (7) claim administration and claims objections, (8) drafting fee applications, and (9) case administration. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Docs. ##48, 51.

Accordingly, this motion will be GRANTED on an interim basis. Applicant shall be awarded **\$5,493.00** in fees as reasonable compensation for services rendered and costs incurred, subject to final review under § 330. The chapter 13 trustee will be authorized to pay Applicant **\$5,493.00** through the confirmed plan for services and expenses from October 12, 2022, through October 12, 2023.

5. [23-11116](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
8-29-2023 [\[60\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied or Granted depending on the disposition
 of Item #6, below.

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

On August 29, 2023, Michael H. Meyer filed this *Motion to Dismiss Case* because the court had previously sustained two objections to the original Chapter 13 Plan of Humberto and Nancy Vidales ("Debtors"), and Debtors' failure to timely file an amended plan was prejudicial to creditors. (see Docs. ##3, 53, 54, 60).

On September 13, 2023, Debtors filed an *Amended Plan*. Doc. #69. This plan also drew opposition from the Trustee, but the Debtors claim to have resolved Trustee's objections. Docs. ##76, 78. On October 27, 2023, this court continued the hearing on the instant *Motion to Dismiss* to November 29, 2023, to be heard in conjunction with a confirmation hearing on the *Amended Plan*. Doc. #90; See *Item #6, below*.

Unless the Trustee withdraws this *Motion to Dismiss* prior to the hearing date, this matter will proceed as scheduled. If the court confirms the *Amended Plan*, this *Motion to Dismiss* will be DENIED as moot. However, if the court denies Debtors' *Motion for Confirmation*, the court will consider the instant matter and may grant this motion.

6. [23-11116](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[TCS-6](#)

CONTINUED MOTION TO CONFIRM PLAN
9-13-2023 [\[64\]](#)

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

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.

Humberto and Nancy Vidales ("Debtors") seek an order confirming the *First Modified Chapter 13 Plan* dated September 13, 2023. Docs. ##64, 69. No plan has been confirmed so far. The 60-month plan proposes the following terms:

1. Debtor's plan payment shall be \$3,700.00 per month for months 1-4 and \$5,165.00 per month for months 5-60.
2. Outstanding Attorney's fees in the amount of \$4,000.00 to be paid through the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
 - a. Wells Fargo Home Mortgage (Class 1) to receive a \$1,320.40 monthly dividend for post-petition mortgage payments and a \$300.00 monthly dividend for an arrearage in the amount of \$7,346.61 on the debt secured by Debtors' homestead.
 - b. Santander Consumer USA (Class 2A) to receive a \$807.53 monthly dividend for a 2018 Dodge Ram 3500 which is a PMSI 910 vehicle.
 - c. LVNV Funding (Class 2B) to receive a \$722.29 dividend for a 2019 GMC Sierra crew cab truck.
 - d. Medallion Bank (Class 2B) to receive a \$152.07 dividend for a 2018 Gooseneck Trailer Beg Tex.
 - e. West America Bank (Class 2B) to receive a \$323.59 dividend for a 2017 Ford Explorer.
4. A dividend of 4% to unsecured creditors.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be

resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

On October 10, 2023, Michael H. Meyer ("Trustee") filed an *Opposition* to the instant motion, based on (1) Debtors' failure to provide a Class 1 Checklist for Wells Fargo, (2) Debtors' failure to file, serve, and set a motion to value the collateral of Medallion Bank, and (3) a lack of entry (at that time) of orders on Debtors' motion to value collateral of LVNV Funding and West America Bank. Doc. #76.

On October 11, 2023, Debtors filed a *Reply* asserting that they have addressed all the matters raised by the Trustee's Objection and that all the requirements for confirmation have been met.

Unless the Trustee withdraws his *Objection* prior to the hearing date, this matter will proceed as scheduled, and the Trustee will have opportunity to confirm that his objections have been resolved. If the Trustee withdraws the *Objection* either beforehand or at the hearing, the court intends to GRANT this motion.

7. [22-11721](#)-B-13 **IN RE: INTHANONG CHOUNRAMANY**
[PLG-3](#)

MOTION TO MODIFY PLAN
10-16-2023 [\[41\]](#)

INTHANONG CHOUNRAMANY/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The moving party shall submit the order signed by the Chapter 13 Trustee.

Inthanong Chounramany ("Debtor") moves for an order confirming Debtor's *Second Amended Chapter 13 Plan* dated October 16, 2023. Doc. #41.

No party has timely objected.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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

1. Plan payments will be as received through September 2023 (month 11), \$0.00 for October 2023 (month 12), and then \$1,854.00 per month for months 13-16.
2. The dividend to unsecured creditors will remain at 100%.
3. Administrative expenses will be reduced to \$0.00 for October 2023 and will increase to \$400.00 per month for the duration of the plan or until paid in full.
4. The monthly dividend to Regional acceptance Corporation (Class 2(A)) will be \$0.00 for October 2022 and then increase to \$552.76 per month for the duration of the plan or until paid in full.
5. The plan is otherwise unchanged.

Doc. #43.

Debtor avers that this modification is necessary because of expenses incurred due to his obligation to care for his mother who is suffering from dementia and other health issues. Doc. #44. This is confirmed by Debtors' *Amended Schedule I & J*, which reflects a monthly net income of \$2,636.29, down from \$3,195.59 which was Debtor's monthly net income as calculated in the petition documents. Docs. #1, 39. Debtor's net monthly income is adequate to pay the required plan payment as modified.

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

8. [23-11047](#)-B-13 **IN RE: JOSE VERA AND ROSA LEON DE VERA**
[SLL-2](#)

CONTINUED MOTION TO CONFIRM PLAN
9-11-2023 [\[49\]](#)

ROSA LEON DE VERA/MV
STEPHEN LABIAK/ATTY. FOR DBT.
PLAN WITHDRAWN

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

DISPOSITION: Withdrawn

No order required.

On November 2, 2023, Jose Antonio Vera and Rosa Leon de Vera ("Debtors") withdraw their *Second Modified Chapter 13 Plan* (Doc. 65). Accordingly, the instant *Motion to Confirm Plan* is WITHDRAWN.

9. [23-10654](#)-B-13 **IN RE: JEREMY BONILLA**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
10-25-2023 [\[22\]](#)

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, Attorney at Law ("Applicant"), counsel for debtor Jeremy Belisco Bonilla ("Debtor"), requests interim compensation in the sum of \$6,472.00 in fees and \$599.15 in expenses pursuant to 11 U.S.C. § 330. Doc. #81. This amount covers fees and expenses incurred between February 13, 2023 and October 25, 2023. *Id.* This is Applicant's second fee application. *Id.*

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

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

Applicant's firm provided 32.90 billable hours at the following rates, totaling **\$6,472.00** in fees:

Professional	Rate	Billed	Total
Scott Lyons	\$400.00	0.34	\$136.00
Louis Lyons	\$350.00	11.47	\$3,402.00
Sylvia Gutierrez, Legal Secretary	\$100.00	19.56	\$2,934.00
Total		31.37	\$6,472.00

Docs. ##22,24. Applicant incurred **\$384.23** in expenses:

Postage, Reproduction and Stationery	\$249.15
Filing Fees	\$313.00
Other: Creditor Reports, Court Call Fee	\$37.00
Total Expenses	\$599.15

Id. These combined fees and expenses total **\$7,071.15**. *Id.*

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

Applicant's services here included, without limitation: (1) claim administration and claim objections, (2) work on the 2nd amended plan and the objections to it, (3) fee/employment applications, and (4) case administration. Doc. #83. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #83, *Exhibit E*.

Accordingly, this motion will be GRANTED on an interim basis. Applicant shall be awarded **\$ \$7,071.15** in fees as reasonable compensation for services rendered and costs incurred, subject to final review under § 330. The chapter 13 trustee will be authorized to pay Applicant **\$7,071.15** through the confirmed plan for services and expenses from February 13, 2023, to October 25, 2023.

10. [23-12154](#)-B-13 **IN RE: BRIAN PHIPPS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2023 [[12](#)]

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will prepare the order.

Trustee Michael H. Meyer ("Trustee") comes before the court on this *Objection to Confirmation*. (Doc. #12). The sole basis for the objection presented was that Brian Phipps ("Debtor") failed to properly calculate his Form 122C-1 Statement of Monthly Income according to the paystubs which Debtor submitted to trustee. *Id.*

On November 15, 2023, Debtor filed an amended Form 122C-1 which purports to "accurately reflect Debtors income." Doc. #15. Accordingly, the Trustee's Objection is OVERRULED as moot.

11. [22-10857](#)-B-13 **IN RE: TEEBE KINFE**
[SLL-3](#)

MOTION TO MODIFY PLAN
10-16-2023 [\[50\]](#)

TEEBE KINFE/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Teebe Kinfе ("Debtor") moves for an order confirming Debtors' *Second Amended Chapter 13 Plan* dated October 16, 2023. Doc. #50.

No party has timely objected.

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

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

1. Under the confirmed plan, Debtor was to pay \$2,735.00 per month for 60 months. Under the proposed modified plan, Debtor will pay an aggregate of \$32,850.00 for months 1-16 of the plan and will pay \$3,013.00 per month beginning in month 17 and continuing to plan completion.
2. Under the confirmed plan, Debtor was to pay attorney's fees in the amount of \$11,500.00 through the plan. Under the proposed modified plan, Debtor asserts an outstanding attorney fee obligation of \$8,500.00, for which Debtor proposes to pay a monthly dividend of \$193.19 through the plan beginning in month 17 and continuing to plan completion.
3. Under the confirmed plan, Debtor was to pay Real Time Resolutions (Class 2(A)) a dividend of \$2,333.33 per month. Under the proposed modified plan, Debtor will increase this dividend to \$2,592.79 beginning in month 17 and continuing to plan completion.

4. The terms of the plan are otherwise unchanged.

Docs. ##3, 52.

While Debtor does not declare with specificity why this modification is necessary, the docket reflects that a *Motion to Dismiss for Failure to Make Plan Payments* was filed by the Trustee on August 4, 2023. Doc. #33. It appears that the proposed modification is intended to cure the deficiency in plan payments. Debtor has also filed an *Amended Schedule I & J*, which indicates that Debtor's monthly net income is sufficient to cover the increased plan payment. Doc. #56.

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

12. [23-11268](#)-B-13 **IN RE: MELISSA JOHNSON**
[DAB-2](#)

CONTINUED MOTION TO CONFIRM PLAN
9-13-2023 [\[31\]](#)

MELISSA JOHNSON/MV
DAVID BOONE/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.

This motion was originally heard on October 25, 2023. Doc. #31.

Melissa Johnson ("Debtor") moved for an order confirming the *First Modified Chapter 13 Plan* dated September 7, 2023. Doc. #29.

Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. §§ 1322(a) and 1325(a)(6) because the plan proposed to pay the claim of Creditor Technology Credit Union under Class 4 of the plan, but the claim in question should be listed under Class 2 because the claim matures during the life of the plan and is currently in default. Doc. #36.

Creditor Lakeview Loan Servicing, LC by LoanCare ("Lakeview") also timely objected to confirmation on the grounds that the plan erroneously lists Lakeview's lien in Class 4 when it should be treated in Class 1. Doc. #38.

The court continued this motion to November 29, 2023. Doc. #41. Debtor was directed to file and serve a written response to Trustee's objection not later than fourteen (14) days before the hearing date or to file a confirmable, modified plan in lieu of a

response no later than seven (7) days before the hearing date, or the objection would be sustained, and the motion denied on the grounds stated in the objections without further hearing. *Id.*

Debtor neither filed a written response to the objections nor a modified plan. Therefore, the objections will be SUSTAINED on the grounds stated therein, and this motion will be DENIED WITHOUT PREJUDICE.

13. [23-12278](#)-B-13 **IN RE: MATTHEW QUALLS**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-27-2023 [\[14\]](#)

MICHAEL MEYER/MV
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will prepare the order.

Trustee Michael H. Meyer ("Trustee") comes before the court on this *Objection to Debtor's Claim of Exemptions*. (Doc. #12). Specifically, Trustee objects to six claimed exemptions for payments on credit card accounts which Trustee argues were improper because the transfers were voluntary transfers by Debtor that are not subject to exemption pursuant to 11 U.S.C. § 522(g).

On November 15, 2023, Debtor filed his response noting that Debtor had filed an Amended Schedule C on November 7, 2023, and that the instant *Objection* was therefore moot. Docs. ##18, 27. The court agrees.

Accordingly, the Trustee's Objection is OVERRULED as moot.

11:00 AM

1. [23-10801](#)-B-7 **IN RE: GILBERT CABRERA**
[23-1032](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-21-2023 [[1](#)]

BUENROSTRO ET AL V. CABRERA
JOSEPH WEST/ATTY. FOR PL.

NO RULING.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[19-1033](#) [WJH-1](#)

MOTION TO EXTEND DISCOVERY CUT-OFF DATES
10-26-2023 [[682](#)]

SUGARMAN V. IRZ CONSULTING,
LLC ET AL
JOHN MACCONAGHY/ATTY. FOR MV.
RESPONSIVE PLEADING

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

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

DISPOSITION: Granted.

ORDER: The moving party shall submit an order conforming with the ruling.

Randy Sugarman, Chapter 11 Trustee ("Plaintiff") moves the court for an amendment to the Amended Joint Discovery Plan (Doc. 448) and the Order approving same (Doc. #450). Doc. #682. Plaintiff wishes to extend the deadlines as follows:

1. The deadline for fact discovery is to be extended to May 31, 2024.
2. The deadlines for expert and rebuttal expert disclosures are to be extended to July 17, 2024, and August 16, 2024, respectively.
3. The expert discovery deadline is to be extended to October 17, 2024.

Id. According to the exhibits accompanying the instant motion, all parties agreed to stipulate to the requested extensions except for Dari-Tech, Inc. ("Dari-Tech"). Except for Dari-Tech, no party has responded in opposition to the motion to extend discovery deadlines, while Defendant IRZ Consulting, LLC ("IRZ") has joined in the instant motion. Doc. #690.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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).

Except for Dari-Tech, the defaults of all parties in interest will be entered.

Civil Rule 16 (b) (4) (Fed. R. Bankr. Proc. 7016) permits modification of a scheduling order only for good cause and with the judge's consent. Cause has been presented by Sugarman here as limited additional time is needed to complete certain discovery that was largely postponed as the parties attempted at least two mediations. Notably, no party has opposed the motion except Dari-Tech which is evidence that most parties believe a schedule change is needed. Though not controlling, it does show a lack of prejudice.

The Advisory Committee's Comments to the 1983 amendments to Rule 16 (b) state that the dates in a scheduling order can be changed if the dates "cannot reasonably be met despite the diligence of the party seeking the extension." In the Ninth Circuit, this is interpreted to mean the "good cause standard [of Rule 16 (b) (4)] primarily considers the diligence of the party seeking the extension." *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992).

Dari-Tech presents four arguments for denying the motion to extend discovery deadlines. Doc. #688. First, Dari-Tech argues that the instant motion fails to explain why a significant amount of the requested discovery was not already undertaken. *Id.* Second, Dari-Tech argues that the proposed extension is "open-ended" as to what discovery is to be taken. *Id.* Third, Dari-Tech avers that the testimony of IRZ's principals absolved Dari-Tech of liability and so participating in further discovery is not in its best interest. *Id.* Finally, Dari-Tech argues that "prolonging discovery is needlessly expensive for the minor players in this drama." *Id.*

The court is not persuaded by any of the arguments presented by Dari-Tech. First, as the parties note, a significant amount of the time allotted for discovery under the existing Discovery Plan was eaten up during extensive (and apparently mostly fruitless) dispute resolution efforts. Second, the court disagrees with Dari-Tech's characterization of the proposed extension as "open-ended." The requested time extensions provide specific cut-off dates and are targeted towards factual discovery, expert disclosures, and expert discovery. Doc. #682. Furthermore, Plaintiff has represented to the court that, while plaintiff cannot speak for other parties to this litigation, Plaintiff only desires an extension for (1) a deposition of Josh Rowell, an IRZ employee who worked on the project in

question and whose deposition was set to be taken before being canceled at the last minute so the time could be used for another mediation; (2) a 30(b)(6) deposition of IRZ on limited issues; and a Rule 30(b)(6) deposition of Lindsay Corporation. Doc. #692.

As IRZ notes, the outstanding discovery does not necessarily implicate Dari-Tech and does not implicate Dari-Tech at all to the extent that it seeks discovery from other parties who have consented to the extension. Doc. #690. IRZ also disagrees with Dari-Tech's assertion that it has been "absolved" of any liability by prior testimony from IRZ's principals. *Id.* Such assertions fall into the realm of disputed issues of material fact and are matters more properly resolved in another forum rather than as a basis for foreclosing discovery. Finally, as IRZ notes, Dari-Tech's concerns about discovery expense is belied by statements made by Dari-Tech counsel to the effect that Dari-Tech is ready to "try the case tomorrow." See Doc. #686, *Exhibit H*. If that is the case, then Dari-Tech has no obligation to participate in future discovery efforts that every other party agrees to be necessary. Finally, the court fails to see how the extension can prejudice any party as no trial date has even been set.

Dari-Tech's opposition does not point to any lack of diligence on the part of Sugarman or his counsel. Though Dari-Tech questions why certain discovery was not completed before, that does not mean Sugarman, or the other parties have not been diligent. The court is convinced that on this record, there is no lack of diligence.

The court has been informed by counsel for Dari-Tech that Dari-Tech accepted the Tentative Ruling of the initial pre-disposition posting and is not requesting oral argument.

For the foregoing reasons, the opposition of Dari-Tech will be overruled and this motion will be GRANTED.

3. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[23-1040](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-3-2023 [\[1\]](#)

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

NO RULING.

4. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[23-1041](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
10-4-2023 [\[1\]](#)

SALVEN V. MECHANICS BANK
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

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

DISPOSITION: Continued to January 10, 2024 at 11:00 a.m.

ORDER: The court will enter the order.

On November 27, 2023, James Salven ("Trustee" and "Plaintiff" in this adversary) filed a *Motion for Judgment on the Pleadings* (Doc. #9) which is set for hearing on January 10, 2024, at 11:00 a.m. Accordingly, it is hereby ordered that this matter will be continued to that date and time to be heard in conjunction with the Trustee's motion.

Also, the court notes that Mechanics Bank has thus far not filed its Statement of Corporate Ownership as required by Bankruptcy Rule 7007.1 Mechanics Bank is directed to do so before the January 10 hearing date.