



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, November 30, 2022
Department B – Courtroom #13
Fresno, California**

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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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. [20-10508](#)-B-13 **IN RE: JAMES/VERONICA HOLT**
[TCS-2](#)

MOTION TO APPROVE LOAN MODIFICATION
10-27-2022 [\[42\]](#)

VERONICA HOLT/MV
TIMOTHY SPRINGER/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.

James Lawrence Holt and Veronica Marie Holt (collectively "Debtors") request an order for authorization to enter into a loan modification agreement with Lakeview Loan Servicing, LLC by LoanCare, LLC ("Creditor") to refinance the deed of trust encumbering Debtors' residence at 499 Mendocino St., Tulare, CA 93274 ("Property"). Doc. #42. Debtor wishes to refinance the mortgage to capitalize the arrearage owed to Creditor on the Property.

No party in interest timely filed written opposition.

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.

LBR 3015-1(h)(1)(C) allows a debtor, *ex parte* and with court approval, to refinance existing debts encumbering the debtor's residence if the written consent of the chapter 13 trustee is filed with or as part of the motion. The trustee's approval is certification to the court that:

(i) all chapter 13 plan payments are current; (ii) the chapter 13 plan is not in default; (iii) the debtor has demonstrated an ability to pay all future plan payments, projected living expenses, and the refinanced debt; (iv) the new debt is a single loan incurred only to refinance existing debt encumbering the debtor's residence; (v) the only security for the new debt is the debtor's existing residence; (vi) all creditors with liens and security interests encumbering the debtor's residence will be paid in full from the proceeds of the new debt and in a manner consistent with the plan; and (vii) the monthly payment will not exceed the greater of the debtor's current monthly payments on the existing debt, or \$2,500.

If the trustee will not give consent, or if a debtor wishes to incur new debt on terms and conditions not authorized by subsection (h)(1)(C), the debtor may still seek court approval under LBR 3015-1(h)(1)(E) by filing and serving a motion on the notice required by Rule 2002 and LBR 9014-1.

Here, the modification agreement capitalizes \$10,953.33 in arrears into a new principal balance of \$180,436.87 to be paid in monthly payments of \$996.38 with 5.250% interest over 30 years. Doc. #45, *Ex. A*. Per Creditor's Proof of Claim No. 15, Debtors' interest rate was 4.750% and monthly payment was \$1,177.55 plus the escrow payment. Claim 15, *Exs. A, B*. The escrow payment was \$213.52 per month until March 2020, when it increased to \$421.31. *Id.*, *Ex. A*.

Joint debtor James Holt declares that no equity will be taken out of Property as a result of the loan modification. Doc. #44. The payments will be made to Creditor pursuant to the confirmed chapter 13 plan, which provides for Creditor to be paid \$1,391.00 per month by Debtors directly as a Class 4 creditor. Docs. #2; #36. However, Debtors' *Amended Schedules I and J* indicate that Debtors will be paying \$1,298.00 per month to Creditor, which suggests that the escrow payment will be approximately \$301.62 per month. Doc. #41. Debtor further declares that (i) Debtors are current on all chapter 13 plan payments; (ii) the chapter 13 plan is not in default; (iii) the amended schedules indicate that Debtors have the ability to pay all plan payments, living expenses, and the refinanced debt; (iv) the new debt is a single loan; (v) the only security will be Property, (vi) the only party with a security interest – Creditor – will have its encumbrance consolidated into the new debt; (vii) the monthly payment will not exceed \$2,000. Doc. #44.

No party in interest timely filed written opposition. Debtors have established all of the elements of LBR 3015-1(h)(1)(C). Accordingly, this motion will be GRANTED. The order approving the loan modification shall provide that Debtors are authorized, *but not required*, to enter into a loan modification agreement with Creditor and that any change in direct payments or other payments under the plan shall be the subject of a plan modification motion.

2. [21-12008](#)-B-13 **IN RE: CELESTE MURILLO**
[JNV-5](#)

CONTINUED MOTION TO MODIFY PLAN
9-1-2022 [\[64\]](#)

CELESTE MURILLO/MV
JASON VOGELPOHL/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Debtor Celeste Lucia Murillo withdrew this motion to modify plan on November 8, 2022. Doc. #76. Accordingly, the hearing on this motion will be taken off calendar pursuant to the debtor's withdrawal.

3. [22-11721](#)-B-13 **IN RE: INTHANONG CHOUNRAMANY**
[PLG-1](#)

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE
CORPORATION
10-20-2022 [\[9\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Inthanong Chounramany ("Debtor") requests an order valuing a 2017 Honda Civic ("Vehicle") at 15,104.00. Doc. #9. The Vehicle is the collateral of Regional Acceptance Corporation ("Creditor"), and was purchased in March 2020, which is more than 910 days preceding the petition date.¹

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) & *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

First, Debtor's declaration (Doc. #11) does not opine on the relevant valuation standard. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "private party value." Other valuation standards are not specific enough. Also, Debtor is not an expert entitled to rely on Kelley Blue Book in formulating the basis of his opinion of value. Fed. R. Evid. 701-02.

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 "private party value of the Vehicle in its present very good condition is \$15,104.00." Doc. #11 (emphasis in original). This valuation is based off of an estimate provided by Kelley Blue Book using an algorithm. Cf. Doc. #12, Ex. 1. Nowhere in the declaration does Debtor provide an opinion as to Vehicle's "replacement value" on the petition date. Debtor does discuss the age, condition, mileage, and necessary repairs of Vehicle, which are relevant. However, Debtor concludes by basing the "private party" valuation on Kelley Blue Book, which is not the appropriate standard under § 506(a)(2).

Debtor has not been established as an expert and cannot rely solely on Kelley Bluebook as a reliable method of valuing Vehicle. Fed. R. Evid. 702; see also *In re DaRosa*, 442 B.R. 172, 175 (Bankr. D. Mass. 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [the debtor] used Kelley trade-in listings as the starting point of his analysis, his opinion will not be taken as convincing evidence of replacement value.").

Debtor is competent to testify as to the replacement of the Vehicle as its owner. In the absence of contrary evidence, Debtor's opinion of replacement value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). But Debtor has not yet provided any evidence of replacement value. The court is looking for a declaration that unequivocally states Debtor's opinion of Vehicle's **replacement value**.

For this reason, this motion will be DENIED WITHOUT PREJUDICE.

Second, though not presently a reason for denial, Debtor is advised that General Order 22-04 will make LBR 7005-1 effective as of November 1, 2022. See Gen. Order 22-04 (Oct. 6, 2022).

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).

Debtor's certificate of service did not use Form EDC 007-05 or include an Official Matrix from the Clerk of the Court, Debtor was not required to do so because Gen. Order 22-04 was not effective at the time this motion was filed. Doc. #13. However, Debtor will be required to comply with LBR 7005-1 on the next attempt at filing this motion.

¹Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving on October 20, 2022: Bill Jones, Creditor's CEO, and Corporate Service Company dba CSC-Lawyers Incorporating Service, Creditor's registered agent for service of process. Doc. #13.

4. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-20-2022 [[185](#)]

PETER FEAR/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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Dominic Ignacio Burriel ("Debtor"), seeks compensation in the sum of \$6,013.01 on a final basis under 11 U.S.C. § 330. Doc. #185. This amount consists of \$5,854.50 in fees as reasonable compensation for services rendered and of \$158.51 for reimbursement of actual, necessary expenses from February 1, 2019 through September 15, 2022. *Id.*

Debtor executed a statement dated October 19, 2022 indicating that Debtor has read the fee application and approves the same. Doc. #188, *Ex. E*. Further, Debtor understands that the fees reserved in the plan are insufficient to cover the amount of fees incurred by Applicant. Rather than raising the plan payments to cover those additional fees,

Debtor has agreed Applicant will refund \$2,631.57 to the chapter 13 trustee to allow the plan to fund, and that this amount will be included in the fees that Debtor will pay following discharge.

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.

Debtor filed chapter 13 bankruptcy on January 25, 2018. Doc. #1. The *Second Modified Chapter 13 Plan* dated September 13, 2018, confirmed November 5, 2018, is the operative plan in this case. Docs. #131; #160. Section 3.05 of the confirmed plan provides that Debtor paid Applicant \$10,000.00 prior to the filing of the case, and subject to court approval, Applicant will be paid \$15,280.00 through the chapter 13 plan by filing and serving a motion in conformance with 11 U.S.C. §§ 329 & 330, and Fed. R. Bankr. P. 2002, 2016, & 2017. Doc. #131. The *Disclosure of Compensation* Form B2030 provides that Applicant was paid \$10,000.00 plus a \$310.00 filing fee.

This is Applicant's second and final fee application. On March 28, 2019, the court awarded Applicant \$25,644.00 in fees and \$698.18 in expenses, totaling \$26,342.18 for services and expenses from December 22, 2017 through January 31, 2019, on an interim basis under § 331, subject to final review under § 330. Docs. ##169-70. After application of the \$10,310.00 paid pre-petition, approximately \$16,032.18 will remain to be paid through the chapter 13 plan. However, only \$15,280.00 was available in the plan for attorney's fees, so it appears that a certain portion of those fees were to be paid by Debtor outside of the plan. Though the application requests payment by Trustee to the extent payable with the remaining balance to be paid by Debtor, it appears that the entire portion of fees, plus a certain refunded amount from the first application, will be paid entirely by Debtor. Doc. #185.

Applicant's firm provided 21.40 billable hours of legal services at the following rates, totaling **\$5,854.50** in fees:

Professional	Rate	Hours	Amount
Peter L. Fear (2019)	\$390	2.5	\$975.00
Gabriel J. Waddell (2019)	\$310	7.60	\$2,356.00
Gabriel J. Waddell (2020)	\$320	0.10	\$32.00
Gabriel J. Waddell (2021)	\$330	0.40	\$132.00
Gabriel J. Waddell (2022)	\$345	2.40	\$828.00
Gabriel J. Waddell (est. future)	\$345	2.50	\$862.50
Katie Waddell (2019)	\$210	0.20	\$42.00
Kayla Schlaak (2019)	\$80	1.80	\$144.00
Kayla Schlaak (2021)	\$110	0.30	\$33.00
Kayla Schlaak (2022)	\$125	3.60	\$450.00
Total Hours & Fees		21.40	\$5,854.50

Id.; Doc. #188, *Exs. B, C*. Applicant also incurred **\$158.51** in expenses:

Photocopying	\$91.50
Postage	\$67.01
Total Costs	\$158.51

Id. These combined fees and expenses total **\$6,013.01**.

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 included, without limitation: (1) analyzing creditor communications re: claims in the case; (2) communicating with Debtor re: plan issues and conducting case reviews to analyze plan funding and related case issues; (3) opposing a motion to dismiss on the basis that there was no default in plan terms as alleged by trustee and communicating with Debtor and the trustee regarding the same (MHM-6); (4) finalizing the first interim fee application (FW-4); (5) preparing discharge and case closing paperwork and a demand letter for the pink slips for two of the vehicles being paid through the plan; and (6) preparing and filing this fee application (FW-5). Doc. #188, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. *Id.*, *Ex. E*.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$5,854.50 in fees and \$158.51 in expenses on a final basis under 11 U.S.C. § 330. The chapter 13 trustee, in the trustee's discretion and to the extent possible as provided in the plan, and Debtor, will be authorized to pay Applicant up to \$6,013.01 for services rendered to and expenses incurred for the estate from February 1, 2019 through September 15, 2022. Further, the court will approve on a final basis the March 28, 2019 interim compensation award of \$26,342.18 for fees and expenses from December 22, 2017 through January 31, 2019. The total fees paid to Applicant in this case will be \$32,355.19.

5. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[PK-5](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
10-31-2022 [\[115\]](#)

PATRICK KAVANAGH/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.

Patrick Kavanagh ("Applicant"), attorney for Jamie Rangel Sanchez and Leonor Laura Sanchez (collectively "Debtors"), requests final compensation under 11 U.S.C. § 330 in the amount of \$1,000.00. Doc. #115. This amount consists solely of \$1,000.00 in fees and \$0.00 in expenses rendered to the estate from January 19, 2021 through case closing. *Id.*

Debtors signed a statement dated November 1, 2022 indicating that they have read the fee application and approve the same. Doc. #120.

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.

Debtors filed chapter 13 bankruptcy on October 20, 2017. Doc. #1. The *First Modified Chapter 13 Plan* dated April 23, 2018, confirmed June 12, 2018, is the operative plan in this case. Docs. #77; #87. Section 3.05 of the plan provides that Applicant was paid \$947.00 prior to filing the case, and subject to court approval, additional fees of \$7,053.00 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, & 2017. Doc. #77. The order confirming plan indicates that Applicant agreed to be paid pro rata with all unsecured creditors. Doc. #87. The *Disclosure of Compensation* Form B2030 provides that Applicant was paid \$947.00 plus a \$310.00 filing fee, totaling \$1,257.00 in pre-petition payments.

This is Applicant's second and final fee application. On August 18, 2021, the court awarded \$7,000.00 in fees and \$0.00 in expenses to Applicant on an interim basis for services rendered from January 21, 2016 through January 18, 2021. Doc. #107. After application of the \$947.00 pre-petition retainer, the trustee was authorized to pay Applicant \$6,053.00 through the chapter 13 plan. Doc. #109.

Applicant's firm provided 2.3 billable hours of legal services at a rate of \$300.00 per hour, and anticipates an additional 2.0 billable hours at the same rate to close out the case, for a total of **\$1,290.00** in fees. Doc. #117, *Exs. B, C*. However, Applicant has waived all fees in excess of **\$1,000.00**, and has not requested any expenses.

Applicant's services included, without limitation: (1) finalizing the first interim fee application (PK-4), (2) completing case closing paperwork, (3) recovering title for one vehicle that was paid through the chapter 13 plan; and (4) preparing and filing this fee application (PK-5). Doc. #117, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #120.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,000.00 in fees and \$0.00 in expenses on a final basis under 11 U.S.C. § 330. The chapter 13 trustee, in the trustee's discretion, will be authorized to pay Applicant up to \$1,000.00 for services rendered to the estate from January 19, 2021 through case closing. Further, the court will approve on a final basis the August 18, 2021 interim compensation award of \$7,000.00 for fees (including the \$947.00 retainer) from January 21, 2016 through January 18, 2021. The

total fees paid to Applicant in this case will be \$8,000.00 (not including the \$310.00 filing fee).

6. [20-11186](#)-B-13 **IN RE: JOSE RECILLAS**
[TCS-2](#)

CONTINUED MOTION TO MODIFY PLAN
9-8-2022 [[37](#)]

JOSE RECILLAS/MV
TIMOTHY SPRINGER/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 26, 2022. Doc. #47.

Jose C. Recillas ("Debtor") moved for an order confirming the *Second Modified Chapter 13 Plan* dated September 8, 2022. Doc. #37. The 60-month plan proposes that Debtor's aggregate payment for months 1-29 is \$38,565.00, and beginning Month 30, Debtor shall pay \$970.00 per month with a 0% dividend to allowed, non-priority unsecured claims. Doc. #41. Debtor's *Amended Schedules I and J* indicate that Debtor receives \$970.00 in monthly net income, which is sufficient to fund the proposed plan. Doc. #44.

In contrast, the *First Modified Chapter 13 Plan* dated August 25, 2020, confirmed October 2, 2020, provides that Debtor shall pay \$899.00 per month for 1 month, \$1,357.00 per month for 1 month, and \$1,509.00 per month for 58 months with a 100% dividend to allowed, non-priority unsecured claims with a 0% dividend to allowed, non-priority unsecured claims. Docs. #25; #29.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to confirmation under 11 U.S.C. § 1322(a) because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary for the execution of the plan. Doc. #45. Trustee said that the plan increases the monthly dividend to Class 2 creditor Blue Federal Credit Union from \$270.78 to \$327.02, decreases the monthly dividend to Class 2 creditor Golden One Credit Union from \$531.20 to \$506.17, and reclassifies creditor Santander Consumer from Class 2 to Class 4, but the plan fails to state when any of these changes are to occur. *Id.*

At the October 26, 2022 hearing, the court continued the motion to November 30, 2022 and directed Debtor to: (a) file and serve a written

response to Trustee's objection not later than November 16, 2022, or (b) file a confirmable modified plan not later than November 23, 2022, or the motion would be denied on the grounds stated in Trustee's objection without a further hearing. Docs. ##47-48. Debtor neither filed a written response nor a modified plan.

Accordingly, Trustee's objection will be SUSTAINED, and Debtor's motion will be DENIED WITHOUT PREJUDICE because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary to execute the plan.

7. [22-10699](#)-B-13 **IN RE: JESUS GUERRA**
[HDN-1](#)

MOTION TO CONFIRM PLAN
10-20-2022 [\[115\]](#)

JESUS GUERRA/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Jesus Lopez Guerra ("Debtor") moves for an order confirming the *Fourth Modified Chapter 13 Plan* dated October 11, 2022. Doc. #115. The plan provides that Debtor shall make 60 monthly payments of \$1,050.00 to the trustee with a 100% dividend to allowed, non-priority unsecured claims. Doc. #98. Additionally, Debtor will pay \$1,014.17 per month to Wells Fargo Bank, N.A. as a Class 4 claim. *Id.* Debtor's *Amended Schedules I and J* dated October 11, 2022 indicate that Debtor receives \$1,050.20 in monthly net income, which includes a \$1,100.00 payment for a rental or home ownership expense for Debtor's residence. Doc. #95. Thus, Debtor appears to have sufficient net income to afford the proposed plan payment.

However, chapter 13 trustee Michael H. Meyer ("Trustee") and state court receiver Mark S. Adams ("Receiver") timely filed written opposition. Docs. #135; #137; #150. Super priority secured creditor Community Improvement Capital, LLC ("CIC"), timely filed a joinder to Trustee's objection. Doc. #147.

Debtor responded to the objections. Doc. #157.

This matter will be called and proceed as scheduled. The court is inclined to DENY this motion for the reasons stated below.

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 U.S. Trustee, or any other party in interest except Trustee, Receiver, and CIC 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 except Trustee, Receiver, and CIC 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).

Particularity

As a procedural matter, the motion does not comply with Federal Rule of Bankruptcy Procedure ("Rule") 9013 and does not state the factual and legal grounds with particularity upon which the requested relief is sought. Doc. #115.

Rule 9013 requires a request for an order to be by written motion, unless made during a hearing. *"The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought."* Rule 9013 (emphasis added).

The particularity requirement is restated in LBR 9014-1(d)(3)(A):

The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and *shall state with particularity the factual and legal grounds therefor*. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

However, the motion states only:

1. Debtor moves for an order confirming the plan;
2. The plan proposes to pay 100% to unsecured creditors, plus chapter 13 trustee fees and attorney fees for Debtor's attorney; and
3. The plan meets the requirements of § 1325 and is proposed in good faith.

Doc. #115. This is insufficient. Though Debtor did include a citation to the statute, any factual bases for granting this motion and analysis are omitted. Debtor does include slightly more detail in the memorandum of points and authorities (Doc. #117) by quoting § 1325, restating the above points, and adding that the distribution to

unsecured creditors is equal to, or more than, the amount they would receive in a chapter 7 liquidation. However, these are legal conclusions without any factual bases, and even if supported by facts, these arguments should have been included in the motion under Rule 9013 and LBR 9014-1(d)(3)(A). The court notes that LBR 9014-1(d)(4) permits a motion and memorandum of points and authorities to be filed together as a single document provided that the document does not exceed six (6) pages in length, including the caption page.

Trustee's Objection

Trustee objects to confirmation because: (1) the plan fails to provide for all or such portion of Debtor's future earnings or other income to the supervision and control of the Trustee as is necessary to execute the plan as required by 11 U.S.C. § 1322(a); and (2) Debtor will not be able to make all payments under the plan and comply with the plan as required by § 1325(a)(6). Doc. #137.

First, Trustee says that the plan payment is insufficient to pay the monthly dividends because the plan is short \$66.38 per month. However, if the attorney's fee dividend is reduced in the order confirming plan to \$138.60 per month effective month 1, then the plan will fund as proposed. *Id.*

Second, Trustee indicates that the plan increases the payment to \$1,050.00 per month without a start date, and therefore is effective in month 1. This would result in payments being delinquent \$4,260.00 through October 2022. *Id.*

CIC's Joinder

CIC, as a super-priority creditor secured by an interest in Debtor's real property located at 209 S. O. Street, Madera, CA 93637 ("Property"), joins Trustee's objection. Doc. #147.

First, CIC requests the court take judicial notice of the Debtor's schedules and proposed chapter 13 plan filed in this case. *Id.* The court may take judicial notice of all documents and other pleadings filed in this adversary proceeding, the underlying bankruptcy case, filings 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 requested documents, as well as all pleadings filed in this bankruptcy case, 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).

Second, CIC argues that the plan has not been proposed in good faith because Debtor's *Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period for 3 Years*, Form 122C-1 (Doc. #11) indicates that Debtor's disposable income is not determined under § 1325(b)(2), and therefore Debtor has failed to commit the \$2,804.00 disposable income over the course of the plan. Instead, Debtor has only proposed \$1,050.00 in monthly plan payments. *Id.*

Additionally, Debtor's *Amended Schedule I* indicates that Debtor receives \$500.00 in 8b as additional income as a payment from "Interests and dividends," but Debtor has also claimed the \$500.00 a second time under 8h for "Other monthly income - Rental Income." *Id.*, citing Doc. #95. Meanwhile, Debtor's declaration in opposition to CIC's motion for relief from stay indicates that Debtor receives \$570.00 in additional income, consisting of rental income of \$500.00 from renting out a room in his house as well as assistance from Debtor's adult son, presumably in the amount of \$70.00. Doc. #100. Since Debtor has provided no evidence of (a) receipt of support payments, (b) that he will be able to rent out a room in his house, or (c) that he even intends to market the rental unit in Property, Debtor has not adequately proven that the plan is feasible.

Further, CIC notes that the declaration in opposition to CIC's motion for relief from the automatic stay provided by Debtor's son, Julio Lopez (Doc. #129), provides no evidence of his ability to contribute any amount to Debtor's plan in a meaningful way, and those declarations are moot as having previously been stricken in their entirety.

Third, CIC objects because the \$832.65 listed as the monthly dividend to pay CIC is less than the \$30,000.00 owed at a 15% interest rate. Doc. #147. CIC claims this amount is less than \$30,000.00 and does not provide for interest at all pursuant to the terms of the note underlying CIC's claim. Assuming *arguendo*, that the court denies CIC's motion for relief from stay that is scheduled for a continued hearing on December 14, 2022, the plan should provide for CIC's claim at a minimum of \$1,039.96 per month over 36 months. Since this amount is almost as much as the \$1,050 proposed plan payment, the plan is not feasible.

The plan provides that CIC will be paid \$832.65 per month. Doc. #98. If paid over 60 months, CIC could be paid \$49,959.00. *Id.* Additional provision 7 of the plan provides an option for Debtor to refinance the Property to pay CIC in full on or before the 36-month mark. Therefore, it appears that Debtor does intend to pay Creditor its \$30,000.00 claim at 15% interest, either through continued payments over 60 months, or in full at or around 36 months by refinancing Property. Further, § 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan.

Fourth, CIC objects because the plan fails to account for the attorney's fees provision in CIC's deed of trust at paragraph 10.

Fifth, CIC objects because the Franchise Tax Board priority claim in the amount of \$454.30 needs to be paid in full through the plan.

Receiver's Objection

Receiver's objection incorporates Trustee's objection. Doc. #150. Additionally, Receiver adds that the plan does not account for any payment to Receiver for his fees and costs incurred in the state court receivership action, which have continued to accrue. Receiver believes that this motion should be continued for not less than 60 days to determine the outcome of the state court receivership action and whether further remediation of the Property becomes necessary. *Id.*

Debtor's Response

In response to Trustee's opposition, Debtor agrees to reduce the attorney fees dividend to \$138.60 per month effective in month 1 in the order confirming plan. Doc. #157. Additionally, Debtor claims that the plan will be current as of the confirmation date. If Debtor becomes current by the date of the hearing, Debtor will have resolved Trustee's objection.

DISCUSSION

Even though Debtor claims now that the plan will be current as of the confirmation date and that Debtor's counsel agrees to reduce the fee dividend, that does not solve the problem of proof here. Debtor's declaration is signed using the "/s/" electronic signature. But as the court has stated before, based on the representations of Debtor and counsel, Debtor does not understand English, has mental competence issues, and does not really understand Spanish. See Civ. Mins (Oct. 26, 2022), Doc. #131; Order, Doc. #133 (striking Debtor's declaration because it did not contain a certification from a certified interpreter). Since there is no proof a certified interpreter has interpreted this declaration for Debtor, it will be stricken and thus not considered.

Independently, Debtor's declaration begins by identifying the declarant as "Saul P. Ibarra." Doc. #118. Mr. Ibarra is not Debtor. This further supports the court's ruling striking the declaration. It cannot be determined with certainty that the facts stated in the declaration are even true as to Debtor.

Attorney Henry Nunez's declaration does nothing to solve these problems. Doc. #119. Based on Trustee's objection, Debtor has not made all payments proposed under the plan. So, the declaration is not correct. Debtor acknowledges this in his reply to the opposition. Doc. #157. Further, as with the motion and points and authorities, the declaration states simply what the plan provides and contains legal conclusions that the terms of the plan are not forbidden by law and the plan has been filed in good faith. Right now, there is no evidence of either.

Also, there is no competent evidence supporting the income sources Debtor apparently depends on to pay the Plan payments. Specifically, the rental of a portion of Debtor's residence and the monthly payment to be made by a family member are not addressed.

Debtor has the burden of proving all elements of confirmation. *In re Warren*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988); *In re Wolff*, 22 B.R. 510, 512 (9th Cir. 1982). No competent evidence has been presented to the court supporting the elements of confirmation.

For these reasons alone, Debtor's motion for confirmation of the *Fourth Modified Chapter 13 Plan* should be DENIED. Given this disposition, the court will not further discuss the other grounds of objection raised by CIC or Receiver.

11:00 AM

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

ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE ORDERED
11-2-2022 [[71](#)]

RICHNER ET AL V. PERRY

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's
findings and conclusions.

ORDER: The court will issue an order.

On October 26, 2022, the court held a further status conference in the above adversary proceeding. Doc. #69. Neither party nor their counsel appeared. This is the fourth time that the Plaintiffs have failed to comply with court orders requiring them file a status report. *Id.*

On November 2, 2022, the court issued this order to show cause, requiring Plaintiffs and Plaintiff's counsel file and serve a written response not later than November 16, 2022. Doc. #71. Plaintiffs' counsel filed a written response on November 20, 2022. Doc. #74. This order to show cause will be called and proceed as scheduled.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[22-1007](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-1-2022 [[1](#)]

SLOAN V. SLOAN
PETER SAUER/ATTY. FOR PL.
DEBTOR DISMISSED 10/27/2022

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

DISPOSITION: Concluded and removed from calendar.

ORDER: The court will issue an order.

The parties stipulated to dismiss this adversary proceeding on October 26, 2022, the parties filed a stipulation dismissing the adversary proceeding, which the court approved on October 27, 2022. Docs. ##43-44. Accordingly, this status conference is concluded and will be dropped and removed from calendar.

3. [22-11907](#)-B-11 **IN RE: FREON LOGISTICS**
[DW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-23-2022 [\[93\]](#)

TBK BANK, SSB/MV
LEONARD WELSH/ATTY. FOR DBT.
RACHEL STOIAN/ATTY. FOR MV.
OST 11/25/22

NO RULING.

Secured creditor TBK Bank, SSB ("Creditor") seeks relief from the automatic stay with respect to certain equipment comprised of a total of 146 trucks and trailers used in Debtor's business ("Equipment") pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). Doc. #93. Creditor also requests waiver of the 14-day stay of any stay relief order under Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED provided that Movant has complied with the order shortening time ("OST") by serving all required parties in interest.

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

As a preliminary matter, the motion does not appear to procedurally comply with the local rules because Creditor did not file a notice of hearing or a certificate of service.

First, LBR 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service.

LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. When a motion is filed on fewer than 28 days' notice, LBR 9014-1(f)(3) states that no party in interest shall be required to file written opposition to the motion. Opposition, if any,

shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit additional briefing and evidence.

Further, 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 prehearing dispositions prior to the hearing. Since this motion was set for hearing by the OST, the court may consider overlooking this deficiency if Debtor does not oppose.

Second, LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed with the court, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e) (1), (e) (2). LBR 9014-1(e) (3) requires each proof of service to be filed separately, bear the Docket Control Number of the matter to which it relates, and identify the title of the pleadings and documents served. As of this writing, no certificate of service has been filed. If Creditor files a certificate of service in accordance with LBR 9014-1(e) and 7005-1, the court may overlook this procedural deficiency in this instance.

Between March 29, 2018 and October 7, 2022, Creditor and Debtor entered into twelve loan and security agreements under which Creditor lent Debtor money secured by the Equipment. Copies of the loan agreements are included as exhibits. See Docs. ##95-99, Exs. A, B. The loans can be summarized as follows:

Account No.	Date	Principal	Interest, Charges, & Fees	PPP	Total
*****8029	03/29/18	-	-	-	-
*****0613	08/26/19	\$378,884.83	\$3,674.55	\$16,670.93	\$399,230.31
*****1417	02/28/20	\$365,282.95	\$5,741.54	\$20,455.85	\$391,480.34
*****1689	05/07/20	\$390,027.56	\$3,181.97	\$24,181.71	\$417,391.24
*****4692	12/23/20	\$169,942.55	\$1,496.32	\$8,837.01	\$180,275.88
*****5308	01/25/21	\$514,575.41	\$3,252.82	\$27,787.07	\$545,615.30
*****6506	02/10/21	\$162,661.77	\$1,080.20	\$9,109.06	\$172,851.03
*****2344	05/26/22	\$945,519.08	\$12,060.84	\$81,314.64	\$1,038,894.56
*****3616	06/28/22	\$2,580,435.64	\$34,917.82	\$227,078.34	\$2,842,431.80
*****4328	08/30/22	\$2,893,622.00	\$49,198.79	\$266,213.22	\$3,209,034.01
*****4440	09/08/22	\$1,503,800.00	\$19,674.71	\$141,357.20	\$1,664,831.91
*****4778	10/07/22	\$1,361,950.00	\$9,184.07	\$130,747.20	\$1,501,881.27
Totals		\$11,266,701.79	\$143,463.63	\$953,752.23	\$12,363,917.65

Id., *Ex. A*. The obligations under each loan agreement are cross-collateralized such that the collateral for each agreement is collateral for all other agreements. In sum, Debtor owes Creditor approximately \$12,363,917.65 on account of the loan agreements. Creditor will continue to incur additional costs associated with locating, securing, recovering, and storing the Equipment.

Dirk B. Copple, the Executive Vice President of Triumph Commercial Finance, a subsidiary of Creditor, declares that Creditor has recovered approximately 75 of the 146 trucks and trailers comprising the Equipment, which were located in various states across the country - from California to New Jersey. Doc. #94. Mr. Copple further states that he has been informed that Debtor did not have the funds necessary to secure and recover the equipment, so it has been stranded throughout the country. *Id.*

Additionally, Mr. Copple says that he was advised by Debtor's counsel that Debtor could not afford to insure the Equipment against property damage or loss. *Id.* Since the Equipment has been stranded at truck stops and on the side of roads, the Equipment is exposed to the risk of theft, either in whole or for their parts.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court intends to find that "cause" exists to lift the automatic stay with respect to the Equipment because the Equipment is uninsured and Debtor has failed to make one pre-petition payment across eight of the loans totaling \$365,369.28, and one post-petition payment across five of the loans totaling \$279,006.50. Docs. #94; #102. Further, Debtor owes Movant a total of \$12,363,917.65.

Since cause exists to lift the stay, the relief requested under 11 U.S.C. § 362(d)(2) is moot. However, Creditor speculates that Debtor does not have any equity in the Equipment because they are encumbered both by Creditor's liens and other blanket liens in favor of unnamed creditors. Creditor has not provided any evidence supporting this contention.

This matter will be called and proceed as scheduled. If Debtor appears at the hearing and opposes the relief requested by Creditor, the court may order adequate protection, continue the hearing, and set a briefing schedule unless there is no need to develop the record

further. If opposition is not presented at the hearing, this motion may be GRANTED.

If granted, the court will order the 14-day stay of Rule 4001(a)(3) waived because the Equipment is uninsured and consists of stranded vehicles at risk of value diminution, so Creditor is not adequately protected.