

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, December 8, 2021  
Place: Department B - 510 19th Street  
Bakersfield, California

**ALL APPEARANCES MUST BE TELEPHONIC**  
**(Please see the court's website for instructions.)**

*Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.*

*At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

**9:00 AM**

1. [21-12333](#)-B-13     **IN RE: QUINMARLO/BRITTANY QUINCE**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
11-8-2021    [[14](#)]

NEIL SCHWARTZ/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 7 trustee Michael H. Meyer ("Trustee") objects to Quinmarlo Charquay Quince's and Brittany Diane Quince's ("Debtors") chapter 13 plan confirmation. Doc. #14. Trustee raises three objections: (1) the plan fails to provide for the full payment of claims entitled to priority under § 507 (11 U.S.C. § 1322(a)); (2) the Debtors will not be able to make all payments under the plan and comply with the plan (11 U.S.C. § 1325(a)(6)); and (3) the Debtors have not paid all domestic support obligations (11 U.S.C. § 1325(a)(8)).

The court pre-disposed Trustee's related motion to dismiss and granted it in matter #2 below. MHM-2. Accordingly, this objection will be OVERRULED AS MOOT because the case has been dismissed.

2. [21-12333](#)-B-13     **IN RE: QUINMARLO/BRITTANY QUINCE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-10-2021    [\[17\]](#)

MICHAEL MEYER/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

ORDER:             The court will issue the order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make on-going support payments and arrears payments as required under the plan. Doc. #17. Pursuant to 11 U.S.C. § 1325(a)(8), the plan cannot be confirmed.

Quinmarlo Charquay Quince and Brittany Diane Quince ("Debtors") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, 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.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915

(B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1325(a)(8) for failing to make on-going support payments and arrears payments due under the plan.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors. Debtors' plan is not confirmable because there are outstanding domestic support obligations in the amount of \$1,204.00. Doc. #19. Debtors did not oppose.

The court has reviewed the schedules and determined that there are no non-exempt, unencumbered assets that could be liquidated for the benefit of unsecured claims. Doc. #1, *Scheds. A/B, C, D*. Debtors' vehicle is scheduled with a value of \$12,500 and the remaining personal property is scheduled with a value of \$18,895. The vehicle is fully encumbered, and Debtors claimed exemptions of \$18,895, so there are no assets that the estate could liquidate. Dismissal, rather than conversion, serves the interests of creditors and the estate.

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

3. [21-11939](#)-B-13     **IN RE: PARGAT DHALIWAL**  
[CZD-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-19-2021    [\[35\]](#)

BMO HARRIS BANK N.A./MV  
D. GARDNER/ATTY. FOR DBT.  
CASEY DONOYAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continued to January 5, 2022 at 9:00 a.m. or  
   thereafter.

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

BMO Harris Bank, N.A. ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (2) to permit Movant to exercise its rights and remedies against the following estate assets (collectively "Property" or "Volvos"):

1.     2016 Volvo VNL-Series: VNL64T/780 SLRP 189" BBC CONV CAB SBA TRACTOR 6X4 ("2016 Volvo"); and
2.     2018 Volvo VNL-Series: VNL64T/780 SLR 189" BBC CONV CAB SBA TRACTOR 6X4 ("2018 Volvo").

Doc. #35. Movant also requests waiver of the 14-day stay described in Fed. R. Bankr. P. 4001(a)(3).

The court will CONTINUE this matter to January 5, 2022 at 9:00 a.m. or thereafter to be tracked with Debtor's related motion to value collateral in matter #5 below. See DMG-3. The automatic stay will be ordered continued in effect for cause beyond 60 days pending the resolution of a final hearing pursuant to 11 U.S.C. § 362(e)(2)(B).

At the last hearing, Pargat Singh Dhaliwal ("Debtor") opposed.<sup>1</sup> Doc. #59. The matter was continued. Doc. #62. The court issued an adequate protection order requiring Debtor to provide sufficient proof of insurance for the Property that lists Movant as a loss payee. *Id.* The order also provided the automatic stay shall remain in effect with respect to Property pending the conclusion of the final ruling on the motion. *Id.* If Debtor fails to comply with the adequate protection order, Movant is permitted to submit a declaration setting forth the deficiency and a proposed order granting relief as prayed. *Id.*

Since then, Debtor timely filed written opposition; Movant replied and submitted an evidentiary objection. Docs. #78; ##81-82. Property is apparently currently insured. Doc. #74, *Ex. 1*.

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.

Movant financed the purchase of Property, along with a third Volvo ("2017 Volvo"), pursuant to multiple written loan and security agreements. Docs. #39; #40, *Exs. 1, 5*. Debtor agreed that he (1) would maintain insurance for the actual cash value of Property for the life of the agreement and (2) would not sell, lend, encumber, pledge, transfer, secrete, or dispose of the Property without Movant's prior written consent. *Id.*

Debtor defaulted on those agreements in 2020 and subsequently filed bankruptcy on August 5, 2021. Doc. #1. As of the petition date, the balances due and values for both Volvos were:

- (a) \$20,760.10 for the 2016 Volvo, scheduled at \$15,000; and
- (b) \$71,296.14 for the 2018 Volvo, scheduled at \$29,500.

Doc. #39, ¶¶ 12, 26; *cf.* Doc. #21, *Sched. A/B*. Debtor's motion to value collateral seeks to value the 2016 Volvo at \$14,050 and the 2018 Volvo at \$34,000. See Doc. #54. In Movant's opposition to that motion,

Movant argues that the 2016 Volvo is worth \$65,275 and the 2018 Volvo is worth \$104,950. Doc. #65.

§ 362(d) (1)

Bryan J. Schrepel, Movant's Litigation Specialist, declares that Debtor breached the agreement by leasing or assigning his interests in the 2016 Volvo to PSD Transport, Inc. ("PSD"), and the 2018 Volvo to Gallop Transport ("Gallop"), which is owned by Debtor's friend, Gurmail Singh. Doc. #39, ¶¶ 15, 29. However, PSD is 100% owned by Debtor. Doc. #30, *Sched. A/B*, ¶ 19. Movant's other argument was that Debtor had not previously provided proof of insurance listing Movant as an additional insured or a loss payee, which necessitated the November 17, 2021 adequate protection order. Doc. #62.

Debtor's response states that proof of insurance was provided to Movant's counsel, so cause does not exist to lift the automatic stay under § 362(d) (1). Doc. #78; see also Doc. #74, *Ex 1*. Debtor declares he is rescinding the lease of the 2018 Volvo to Gallop Transport, who will agree to the release. Doc. #79.

§ 362(d) (2)

As to § 362(d) (2) relief, Debtor references the contrary values proposed in Movant's opposition (Doc. #65) to Debtor's valuation motion and argues that "Movant 'can't have it both ways.'" Doc. #78. If these other values are used, then Debtor will have an equity interest in both trucks and the request for § 362(d) (2) relief fails. Debtor disputes these valuations and simultaneously argues that § 362(d) (2) relief still fails using Debtor's values because Property is necessary for a reorganization and both trucks will be used to make chapter 13 plan payments. Debtor has asked for an evidentiary hearing on the motion to value collateral. Doc. #86.

Movant replied, first objecting to Debtor's declaration as inadmissible hearsay under Fed. R. Evid. 802 regarding whether Gallop Transport will agree to release the lease of the 2016 Volvo. This statement is based on an out-of-court representation from Gallop Transport. Doc. #82. Movant's objection will be SUSTAINED as to Gallop Transport's assent to the lease rescission but OVERRULED as to whether Debtor is rescinding the lease.

Second, Movant argues the motion should be granted because its security interest is not adequately protected. Doc. #81. Since Property is declining in value as result of ongoing use, there is no equity cushion, and Debtor has not made any adequate protection payments since August 5, 2021. Doc. #81. Movant says the combined amount owed by Debtor is \$172,366.59, but Property is only worth \$170,225. Movant's new \$172,366.59 figure includes the 2017 Volvo that is totaled, valued at \$0, and is not the subject of this motion. Movant seeks § 362(d) (2) relief by using the vehicles' collective

values and balances, which appears to be the result of cross-collateralization in the underlying contracts.

Movant argues that the burden is on Debtor to establish that the collateral is necessary to an effective reorganization, which Debtor has failed to do despite the lease rescission. *Id.*, citing *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 375 (1988). And if the lease rescission is successful, Gallop Transport presumably will have a damage claim that will render Debtor's chapter 13 plan even more infeasible.

This matter will be called as scheduled. The court is inclined to CONTINUE this motion to January 5, 2021 at 9:00 a.m. or thereafter pending resolution of the motion to value collateral in matter #5 below, since this motion will turn on the value of the vehicles. The court will also order the automatic stay continued in effect under 11 U.S.C. § 362(e)(2)(B). Good cause exists because Debtor's motion to value collateral is pending, and Debtor has a reorganization in prospect.

Further, the valuation issue is disputed, and the property is insured. The court is cognizant of the potential declining property value from use, but Movant will need to inspect the property and testify as to condition (as will the Debtor) before the court can make that factual finding. Also, Movant has not consented to the court finding facts on the submissions alone. So, both parties request an evidentiary hearing necessitating the continuance.

Finally, this motion was originally filed and served under the procedure in LBR 9014-1(f)(2). So, the time constraints of § 362(e) are inapplicable. LBR 4001-1(a).

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<sup>1</sup> The motion was set for hearing on November 10, 2021 pursuant to LBR 9014-1(f)(2). Doc. #59. Written opposition was not required. Doc. #36.

4. [21-11939](#)-B-13     **IN RE: PARGAT DHALIWAL**  
[DMG-2](#)

MOTION TO CONFIRM PLAN  
11-3-2021    [[48](#)]

PARGAT DHALIWAL/MV  
D. GARDNER/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.

Pargat Singh Dhaliwal ("Debtor") seeks confirmation of the First Modified Chapter 13 Plan. Doc. #48.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects for the following reasons:

1. The plan fails to comply with applicable provisions of the Bankruptcy Code (11 U.S.C. § 1325(a)(1));
2. The plan fails to provide for submission of such portion of Debtor's income to Trustee to execute the plan (§ 1322(a));
3. The plan fails to meet liquidation requirements (§ 1325(a)(4));
4. Debtor will not be able to make all payments under the plan and comply with the plan (§ 1325(a)(6));
5. The plan fails to provide for the value of property to be distributed under the plan on account of each allowed claim (§ 1325(a)(5)(B)(ii)); and
6. Debtor has failed to provide proof of insurance (LBR 3015-1(b)(3)). Doc. #63.

BMO Harris Bank ("BMO") timely objects because:

1. The plan was not proposed in good faith (§ 1325(a)(3));
2. The plan fails to provide for the value of BMO's collateral to be paid under the plan on account BMO's claim (§ 1325(a)(5)(B)(ii)); and
3. The plan is not feasible (§ 1325(a)(6)). Doc. #76.

In response, Debtor resolves some of the objections, contests others as not supported by evidence, and acknowledges the necessity of filing a modified plan. Doc. #84. As result, Debtor argues the contested objections are moot. Debtor says he will either withdraw this motion or accept denial of plan confirmation. Based on Debtor's representation that he must file a modified plan, this motion will be DENIED AS MOOT.



5. [21-11939](#)-B-13     **IN RE: PARGAT DHALIWAL**  
[DMG-3](#)

MOTION TO VALUE COLLATERAL OF BMO HARRIS BANK, NA  
11-9-2021    [\[54\]](#)

PARGAT DHALIWAL/MV  
D. GARDNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as a scheduling  
conference.

DISPOSITION:                Continued; date to be determined at the hearing.

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

Pargat Singh Dhaliwal ("Debtor") seeks an order valuing the following  
collateral (collectively "Property"):

1.     2016 Volvo VNL-Series: VNL64T/780 SLRP 189" BBC CONV CAB SBA  
TRACTOR 6X4 ("2016 Volvo") at \$14,050.00;
2.     2017 CONV CAB SBA TRACTOR SX4 ("2017 Volvo") at \$0.00; and
3.     2018 Volvo VNL-Series: VNL64T/780 SLR 189" BBC CONV CAB SBA  
TRACTOR 6x4 ("2018 Volvo") at \$34,000.00.

Doc. #54. Property is encumbered by three separate purchase money  
security interests in favor of BMO Harris Bank ("Creditor") in the  
amounts of: (1) \$20,760.10 [Claim No. 4-1]; (2) \$80,310.35 [Claim No.  
3-1]; and (3) \$71,296.14 [Claim No. 5-1].

Creditor timely opposes (Doc. #65), objects to Debtor's declaration  
(Doc. #69), and submits a statement of disputed facts (Doc. #68).  
Creditor contends that the appropriate replacement values are  
\$65,275.00 for the 2016 Volvo and \$104,950.00 for the 2018 Volvo.  
Doc. #70. Creditor does not oppose the valuation of \$0.00 for the 2017  
Volvo because it was declared a total loss following a traffic  
accident. Doc. #65.

Debtor replies, requesting an evidentiary hearing. Doc. #86.

The hearing was filed on 28 days' notice pursuant to Local Rule of  
Practice ("LBR") 9014-1(f)(1) and will proceed as a scheduling  
conference. The matter will be CONTINUED to a date determined at the  
hearing.

This matter is deemed to be a contested matter. Pursuant to Federal  
Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery

apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include:

1. The replacement values of the 2016 Volvo and 2018 Volvo.
2. Whether the bankruptcy estate's interest in the Property is impeded due to leasing the 2016 Volvo to Debtor's business, PSD Transport, Inc., and the 2018 Volvo to Gallop Transport.<sup>2</sup>

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<sup>2</sup> In the related motion for relief from the automatic stay in matter #3 above (CZD-1), Debtor claims to be rescinding the lease of the 2018 Volvo in favor of Gallop Transport.

6. [21-11939](#)-B-13     **IN RE: PARGAT DHALIWAL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
10-28-2021    [\[44\]](#)

MICHAEL MEYER/MV  
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:               Denied as moot.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to file and set a plan for hearing with notice to creditors. Doc. #44.

Pargat Singh Dhaliwal ("Debtor") did not oppose. Debtor filed an amended plan on November 3, 2021, which is the subject of matter #4 above (DMG-2). Doc. #50. Though Debtor has acknowledged that the plan will need to be refiled, doing so will first require a resolution to the motion to value collateral in matter #5 above (DMG-3). Accordingly, since Debtor filed an amended plan, this motion appears to be moot.

This matter will proceed as scheduled. The motion may be DENIED AS MOOT. The court may set a bar date by which a chapter 13 plan must be confirmed, or the case will be dismissed on Trustee's declaration.

7. [21-11443](#)-B-13     **IN RE: CARLOS DELGADILLO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
11-9-2021    [\[39\]](#)

MICHAEL MEYER/MV  
JASON VOGELPOHL/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and failure to set a plan for hearing with notice to creditors. Doc. #39.

Carlos Alejandro Delgadillo timely opposed, stating that the case should not be dismissed because he filed his chapter 13 bankruptcy petition in good faith. Doc. #46. Debtor has a new motion to confirm chapter 13 plan scheduled for January 5, 2021, which he expects will resolve all issues raised by Trustee. Debtor intends to file a certificate of service for that motion not later than November 22, 2021. No such certificate of service has been filed as of the date of this writing.

Trustee withdrew the motion to dismiss on December 2, 2021. Doc. #47. Accordingly, this motion will be DROPPED FROM CALENDAR.

8. [20-10445](#)-B-13     **IN RE: GERARDO/BRITTANY MEDEL**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
10-12-2021    [\[48\]](#)

BRITTANY MEDEL/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to January 5, 2022 at 9:00 a.m.

ORDER:             The court will issue an order.

Gerardo Luis Medel and Brittany Anne Medel ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #48. Debtors wish to extend the duration of their plan from 60 to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects under 11 U.S.C. § 1322(a) because the plan fails to provide for submission of all or such portion of Debtors' future earnings to the supervision and control of Trustee to execute the plan. Doc. #54. Trustee also notes that Debtors' additional provisions contain an error with respect to the amount of arrears paid to Class 1 secured creditor US Bank, N.A.

The court will CONTINUE this motion to January 5, 2022 at 9:00 a.m.

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

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the enactment of the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, Debtors faced material financial hardship directly or indirectly caused by the COVID-19 pandemic. Joint debtor Gerardo Medel declares that Debtors need to modify their plan because they fell behind on plan payments. Doc. #50. Mr. Medel states that his wife, Brittany Medel, had her work hours reduced from 40 hours per week to 24-32 hours per week. *Id.*, ¶ 4. Ms. Medel was informed on or about October 8, 2021 that she could possibly lose her job if she is not fully vaccinated against COVID-19. Mr. Medel declares that she cannot take vaccinations because they make her extremely ill and could possibly cause her to die. *Ibid.*

Moreover, both Debtors were exposed to COVID-19 in April 2021 and were required to quarantine for 14 days, reducing their income during this time. *Id.*, ¶ 5. Three of their five children also had to quarantine in June 2021 after becoming ill. The school's policy is to require a 10-day quarantine for any student who does not feel good, coughs, sneezes, or has an elevated temperature. *Ibid.* This required Ms. Medel

to miss two additional weeks of work, reducing Debtors' income further.

Lastly, Debtors' expenses increased because they had to pay for additional doctors' visits. *Id.*, ¶ 6. Because everyone was quarantining at home, Debtors' expenses for groceries and PG&E also increased. *Ibid.* Mr. Gerardo believes that Debtors can afford the new plan payment because he has returned to normal work hours and Ms. Medel is working her maximum of 32 hours per week. *Id.*, ¶ 6.

Debtors' previous plan (Doc. #2) was confirmed on August 11, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #40. Debtors satisfy the requirements to extend their plan beyond 60 months under § 1329(d).

However, Trustee objects because the plan fails to provide for all of Debtors' net monthly income to the Trustee and the additional provisions contain a clerical error. Doc. #54. First, Debtors' *Schedules I* and *J* were filed with the petition and have not been amended, so they do not reflect the variations in Debtors' income and expenses as described in Mr. Medel's declaration. The original schedules indicate that Debtors' have a monthly net income of \$2,775.41. Doc. #1, *Sched. J*, ¶ 23c. Conversely, Debtors' 0% First Modified Plan provides for monthly payments of \$2,656.00. Doc. #52, §§ 2.01, 7.01. Debtors filed amended schedules on December 3, 2021, which state that Debtors' monthly net income is \$2,651.07. Doc. #56, *Am. Sched. J*, ¶ 23c.

Second, Trustee notes a clerical error in Paragraph 7.04 of the additional provisions, which states that Class 1 secured creditor U.S. Bank, N.A. shall be paid \$3,562.80 for real estate arrears through October 2021, but the actual amount paid is \$3,652.80. Doc. #54. This error could be resolved in an order confirming plan.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtors shall file and serve a written response not later than December 22, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by December 29, 2021.

If the Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing not later than December 29, 2021. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

9. [19-15053](#)-B-13     **IN RE: YASMIN APRESA**  
[RSW-6](#)

MOTION TO MODIFY PLAN  
11-2-2021    [\[82\]](#)

YASMIN APRESA/MV  
ROBERT WILLIAMS/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.

Yasmin Araceli Apresa ("Debtor") seeks confirmation of her Fourth Modified Chapter 13 Plan. Doc. #82. Debtor wishes to retain the 84-month duration of her previous plan under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

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 Systems, 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 previously satisfied the requirements of § 1329(d) to extend the plan to not more than 7 years after the first payment was due. Doc. #76. The Third Modified Plan was confirmed on September 13, 2021. Docs. #77. The First and Second Modified Plans were confirmed on September 18, 2020 and January 8, 2021, respectively. Docs. #53; #65. All of these plans provide for an 84-month plan term under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. Docs #48; #60. Before that, Debtor's original plan was confirmed on March 17, 2020. Doc. #39. Accordingly, Debtor satisfies the requirements to keep the 84-month duration under § 1329(d).

No party in interest timely filed written opposition. Accordingly, 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.

10. [19-13072](#)-B-13      **IN RE: GARY/SANDRA BOZARTH**  
[DMG-3](#)

MOTION TO SELL  
11-15-2021    [\[57\]](#)

SANDRA BOZARTH/MV

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:              Granted.

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

Gary Michael Bozarth and Sandra Marie Bozarth ("Debtors") seek authorization to sell the estate's interest in residential real property located at 9407 Red Pine Drive, Shafter, CA 93263 ("Property") for \$389,000.00 to Anmol Dhillon ("Proposed Buyer") under 11 U.S.C. § 363(b), subject to higher and better bids at the hearing.

Debtors ask to pay all costs, taxes, commissions, and consensual liens directly from escrow. As result, this motion affects the interests of the real estate brokers. Under Civil Rule 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by Debtors here as to the real estate brokers. Though compensation is separate from the sale, it is economical to handle this motion in this manner.

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 and commence the sale subject to higher and better bids.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 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.

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 gives the debtor all rights and powers of a trustee under § 363(b). 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).

The property to be sold is the estate's interest in Property. Debtors filed chapter 13 bankruptcy on July 19, 2019 and listed Property in the original and amended schedules with a value of \$280,000.00. Doc. #1; Doc. #16, *Am. Sched. A/B*. Debtors claimed a \$21,977.00 exemption in Property pursuant to Cal. Civ. Proc. Code § 704.730. *Id.*, *Am. Sched. C*. Property is subject to a deed of trust in favor of Penny Mac in the amount of \$258,023.00. Doc. #1, *Sched. D*. Penny Mac filed Proof of Claim No. 35-1 in the amount of \$261,710.62 on September 23, 2019, which was itemized by amendment in the same amount by Claim No. 35-2 on April 8, 2020. See Claim #35. Joint debtor Sandra Bozarth indicates that the current payoff amount to Penny Mac is approximately \$240,000. Doc. #59.

Debtors' chapter 13 plan was confirmed on October 22, 2019 and provides for 100% payment to unsecured creditors. Doc. #28. Debtors wish to sell Property to fully fund and payoff the chapter 13 plan in full. Doc. #57. Ms. Bozarth estimates that approximately \$73,355.75 is needed to pay off the plan. Doc. #59.

Debtors received an offer to purchase Property for \$389,000 from Proposed Buyer. *Id.* The purchase and sale contract is included with the motion as an exhibit. Doc. #60, *Ex. A*. The sale of Property to Proposed Buyer can be illustrated as follows:

Sale price	\$389,000.00
Estimated commission (6%)	- \$23,340.00
Estimated costs of sale	- ?
Estimated taxes	- ?
Penny Mac deed of trust (approx.)	- \$240,000.00
Debtors' exemption	- \$21,977.00
<b>Estimated net sale proceeds</b>	<b>≤ \$103,683.00</b>
Chapter 13 plan payoff	- \$73,335.75
Net proceeds to the Debtors	≤ \$30,347.25

Assuming that costs of sale and taxes are less than a combined \$30,347.25, this sale should provide sufficient net proceeds to pay off the chapter 13 plan in full, with any excess returned to the Debtors.

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, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 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., Inc.*, 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 Prod. 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. There is no indication that Proposed Buyer is an insider with respect to Debtors or the estate. Proposed Buyers are neither listed in the schedules nor the master address list and do not appear to be creditors, co-debtors, or other parties in interest in this case, other than their involvement in this sale. Docs. #1; #4. Joint debtor Sandra Bozarth declares that this is an arm's length transaction. Doc. #59.

The sale of Property appears to be in the best interests of the estate because it will pay off the secured creditor and provide enough liquidity to the estate to pay a 100% distribution to allowed unsecured claims. The sale subject to higher and better bids will maximize estate recovery and yield the best possible price. The sale appears to be supported by a valid business judgment, proposed in good, and for a fair and reasonable price. Debtors' business judgment appears to be reasonable and will be given deference.

In connection with this sale, Debtors ask to pay broker commission of six percent (6%) to be split equally between the buyer's and seller's brokers. If Property is sold at the proposed sale price, the 6% commission would be \$23,340, which is \$11,670 to each broker. According to the residential purchase agreement, Proposed Buyer is represented by Jaz Dhillon of Dhillon Real Estate Group, Werx Realty Group, Inc., and Debtors are represented by Ali Daredia of Century 21 Jordan-Link & Co. *Cal. Residential Purchase Agreement*, Doc. #60, at 10. The court will allow the compensation to be paid as prayed.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. All encumbrances will be paid through escrow.

Any party wishing to overbid must appear at the hearing.

11. [19-10376](#)-B-13     **IN RE: CHRISTINA MARTINEZ**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
10-12-2021    [\[49\]](#)

CHRISTINA MARTINEZ/MV  
ROBERT WILLIAMS/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.

Christina Martinez ("Debtor") seeks confirmation of her Second Modified Chapter 13 Plan. Doc. #49. Debtor wishes to extend the duration of the plan from 60 to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects under 11 U.S.C. §§ 1325(a)(4) and (6) because the plan fails to satisfy the liquidation requirements and Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #58. Trustee also notes that Debtor's additional provisions contain an error with respect to the amount of arrears paid to Class 2 secured creditor TD Auto Finance/Jefferson Capital Systems LLC. *Id.*

This motion will be DENIED WITHOUT PREJUDICE.

The court notes that Debtor satisfies the prior plan confirmation requirement because the First Modified Plan was confirmed on April 15, 2020. Doc. #45. However, no evidence of material financial hardship due to the COVID-19 pandemic is presented. Debtor filed two copies of the *Declaration of Robert S. Williams*, rather than a declaration from the Debtor as intended. Docs. ##51-52. Debtor's declaration is referenced in the motion and included in the certificate of service, but no such declaration is before this court. Docs. #49; #54.

Trustee objects because the plan does not satisfy the liquidation requirement and Debtors will not be able to make all payments under the plan.

First, the order confirming the previous plan states:

The Chapter 7 Liquidation Test requires that priority and general unsecured creditors receive a combined total of \$1,498.50. This plan currently meets liquidation. However, in order for this plan to remain in compliance after all the claims have been filed, this plan shall not pay less than

what liquidation requires with interest thereon at the federal judgment interest rate.

Doc. #45. As with the operative plan, the proposed plan provides for a 0% distribution to unsecured creditors. Doc. #53. Debtors must therefore pay at least \$1,498.50 to unsecured creditors to ensure that creditors are paid on account of their claims in at least the amount they would be paid if this were a chapter 7 liquidation.

Second, Trustee says that Debtors will be unable to make all payments for three reasons: (i) when including the liquidation requirement into the plan, it would take 58 months to fund beginning October 2021, but there are only 53 months remaining under the plan term. (ii) To fund in 53 months, Debtor will need to increase the plan payment to \$1,085, but Debtor's monthly net income is \$1,040.32. (iii) Lastly, Section 7.05 of the plan states that class 2 secured creditor TD Auto Finance/Jefferson Capital Systems shall be paid \$9,535.42 through September 2021. Doc. #53. Trustee says this figure is actually the balance due to that creditor as of September 2021, not the amount paid, which is \$6,147.72. This error cannot be corrected in an order confirming plan because it would negatively impact creditors.

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

12. [21-11799](#)-B-13     **IN RE: VIRGIL CRUSE AND LISA GAVIN-CRUSE**  
[DMG-3](#)

MOTION TO CONFIRM PLAN  
11-3-2021    [\[46\]](#)

LISA GAVIN-CRUSE/MV  
D. GARDNER/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.

Virgil Ray Cruse and Lisa Ann Gavin Cruse ("Debtors") seek confirmation of their Second Amended Chapter 13 Plan. Doc. #46. No parties oppose.

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.

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.

10:00 AM

1. [20-13420](#)-B-7     **IN RE: CHRISTOPHER MARTENS**  
[DMG-6](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
11-17-2021    [\[102\]](#)

JEFFREY VETTER/MV  
PETER FEAR/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authority to pay certain administrative expenses on behalf of the estate: (a) \$2,956.71 to Trustee Insurance Agency ("TIA"), and (b) \$8,339.00 to the Internal Revenue Service ("IRS"). Doc. #102.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served on at least 21 days' notice pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of certain administrative expenses shall be allowed, other than those specified in § 502(f), including the actual, necessary costs and expenses of preserving the estate and taxes. §§ 503(b)(1)(A) and (B).

Under 28 U.S.C. § 960(b), the trustee is required to pay bankruptcy estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Christopher Robert Martens ("Debtor") filed chapter 7 bankruptcy on October 28, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on December 4, 2020. Doc. #2.

Trustee was authorized to sell Debtor's real property at 1751 Meadow Vale Dr., South Lake Tahoe, CA 96150 on February 25, 2021. Doc. #64. This sale required Trustee to maintain real property insurance, which was obtained from TIA in the amount of \$2,956.71. Doc. #105, *Ex. A* (indicating \$2,596.71 due as of March 1, 2021).

Trustee moved to employ Ratzlaff Tamberi & Wong ("Accountant") on February 10, 2021, which was approved by this court on February 11, 2021. Docs. #57; #61. Accountant has advised Trustee that the estate has tax liability of \$8,339.00 due to the IRS for the final tax return for the period ending October 31, 2021. Doc. #105, *Ex. B*. However, the estate will also receive a refund of \$7,006.00 from the Franchise Tax Board. *Ibid*.

The administrative expenses here are necessary to maintain and administer property of the estate. Doc. #102. Trustee believes that it is in the best interest of the estate and creditors to pay the expenses prior to the close of the case to avoid further cost and delay that could be detrimental to the estate. Doc. #104. Trustee declares that there are sufficient funds on hand to pay these expenses, and funds will still be available for distribution to general unsecured creditors after the payment of these administrative expenses and payment of Trustee and professional expenses to be sought later. *Id*. The professional expenses are the subjects of matters ##2-3 below. DMG-7; RTW-2.

This matter will be called as scheduled to inquire whether any parties in interest oppose payments to TIA and IRS. In the absence of opposition, this motion will be GRANTED.

2. [20-13420](#)-B-7     **IN RE: CHRISTOPHER MARTENS**  
[DMG-7](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES  
ATTORNEY(S)  
11-17-2021     [\[108\]](#)

PETER FEAR/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 will submit a proposed order after hearing.

D. Max Gardner ("Applicant"), counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests compensation of \$11,056.70. Doc. #108. This amount consists of \$10,757.00 in fees as reasonable compensation and \$299.70 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from November 1, 2020 through December 8, 2021. *Id.*

Written opposition was not required and may be presented at the hearing. The court notes that no written consent from the Trustee is included with the motion. This matter will be called as scheduled to inquire whether Trustee opposes the fee application. In the absence of opposition, this motion may be GRANTED.

This motion was filed and served on at least 21 days' notice pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(6) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Christopher Robert Martens ("Debtor") filed chapter 7 bankruptcy on October 28, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on December 4, 2020. Doc. #2. Trustee moved to employ Applicant on December 1, 2020 pursuant to 11 U.S.C. §§ 327, 329-331. DMG-1. The court approved the employment December 9, 2020, effective on October 30, 2020. Doc. #26. Applicant here requests fees beginning November 1, 2020. Applicant's services were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Rule 2014(a) for employment orders.

Applicant performed 34.70 billable hours of legal services at a rate of \$310 per hour, totaling **\$10,757.00**.<sup>3</sup> Applicant also requests reimbursement of **\$299.70** for the following expenses:

Postage	\$119.70
Photocopies	+ \$90.00
CourtCall	+ \$90.00
<b>Total Costs</b>	<b>= \$299.70</b>

Doc. #108, ¶ 9. These combined fees and expenses total **\$11,056.70**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) obtaining authorization to employ a real estate broker (DMG-2); (3) liquidating real and personal property for the benefit of the estate (DMG-3, DMG-5); (4) responding to communications from creditor representatives concerning Debtor's assets and their value; (5) extending the deadline to file a complaint objecting to Debtor's discharge (DMG-4); (6) appearing in a family law matter concerning the Trustee's involvement with Debtor's employment with his law corporation; and (7) seeking authorization to pay administrative expenses in matter #1 above (DMG-7). Docs. #110; #111, *Ex. A*. The court finds the services and expenses reasonable, actual, and necessary. But, as noted above, no written consent from Trustee was provided with this motion.

This matter will be called as scheduled to inquire whether any party in interest opposes this motion, and whether the Trustee consents to payment of the requested fees and expenses. If Trustee consents to payment, this motion may be GRANTED, and Applicant shall be awarded \$10,757.00 in fees and \$299.70 in expenses. The court will also verify that this is a final fee application under 11 U.S.C. §§ 330.<sup>4</sup> If Trustee consents, Trustee will be authorized, in his discretion, to pay Applicant \$11,056.70 for services rendered to and costs incurred for the benefit of the estate from November 1, 2020 through December 8, 2021.

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<sup>3</sup> The court notes two discrepancies in the moving papers. First, the motion requests \$10,757 for Applicant, but the subsequent line says that \$10,157 is requested. Doc. #108, ¶ 8. Meanwhile, the declaration says that Applicant is seeking \$10,767. Doc. #110, ¶ 3. The exhibit and notice indicate Applicant is actually requesting \$10,757, which is the correct amount based on the number of hours worked at Applicant's hourly rate. Docs. #109; #111, *Ex. A*.

<sup>4</sup> The motion is captioned as a final fee application, but the last paragraph says that it is an interim application. Doc. #108, ¶ 15. In contrast, the declaration says that it is a final application. Doc. #110, ¶ 3.



3. [20-13420](#)-B-7     **IN RE: CHRISTOPHER MARTENS**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
11-5-2021     [[94](#)]

RATZLAFF TAMBERI & WONG/MV  
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.

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm employed by chapter 7 trustee Jeffrey M. Vetter ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the amount of \$2,180.48. Doc. #94. This amount consists of \$2,092.50 in fees as reasonable compensation and \$87.98 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from February 11, 2021 through October 29, 2021. *Id.*

Trustee has reviewed the application and supporting documentation and consents to the proposed payment. Doc. #97.

No party in interest timely filed written opposition to this motion. 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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the 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.

Christopher Robert Martens ("Debtor") filed chapter 7 bankruptcy on October 28, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a)

meeting of creditors on December 4, 2020. Doc. #2. Trustee moved to employ Applicant on February 10, 2021 under 11 U.S.C. §§ 327, 330, and 331, which was approved, effective January 10, 2021. Docs. #57; #61. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate.

Applicant provided 9.3 billable hours of accounting services at a rate of \$225.00 per hour, totaling **\$2,092.50**. Doc. #98, *Ex. A*. Applicant also incurred **\$87.98** in expenses for postage. *Ibid.* These combined fees and expenses total **\$2,180.48**.

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."

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (RTW-1); (2) reviewing documents filed in the bankruptcy case; (3) determining tax basis of real property in relation to a possible sale; (4) preparing tax forms for escrow company; (5) processing, finalizing, and transmitting tax returns for the period ending October 31, 2021; and (6) preparing and filing final fee application (JES-2). *Id.*, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #97.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,092.50 in fees and \$87.98 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in his discretion, to pay Applicant \$2,180.48 for services rendered to and costs incurred for the benefit of the estate from February 11, 2021 through October 29, 2021.

4. [19-12674](#)-B-7     **IN RE: ADRIAN PEREZ**  
[JMV-2](#)

MOTION FOR COMPENSATION FOR JEFFREY M VETTER, CHAPTER 7  
TRUSTEE(S)  
11-8-2021     [[147](#)]

JEFFREY VETTER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests statutory compensation of \$10,173.76 under 11 U.S.C. §§ 326, 330. Doc. #147. This amount consists of \$10,036.84 as statutory fees for services rendered to the estate and \$136.92 in expenses for actual, necessary services for the benefit of the estate from June 21, 2019 through November 8, 2021.

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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the 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.

First, the *Notice of Hearing* (Doc. #148) does not procedurally comply with the local rules. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice states that opposition must be "served on the parties identified attached hereto," but the names and addresses

of such parties are not included. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters.

Adrian Perez ("Debtor") filed chapter 7 bankruptcy on June 21, 2019. Doc. #1. That same day, Trustee was appointed as interim trustee. Doc. #2. Trustee became permanent trustee at the first § 341(a) meeting of creditors on August 9, 2019. See docket generally. Trustee administered the estate, filed the final report on December 2, 2021, and now seeks final compensation. Doc. #153.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$4,286.84 (4.5%) of the next \$85,736.80.

Doc. #150, *Ex. A*. These percentages comply with the restrictions imposed by § 326(a) and total **\$10,036.84**. The total disbursements were \$135,736.80. Trustee also requests reimbursement for **\$136.92** in expenses:

Copies (330 @ \$0.17)	\$56.10
Postage	+ \$40.82
Notary	+ \$40.00
<b>Total Costs</b>	<b>= \$136.92</b>

*Id.* These combined fees and expenses total **\$10,173.76**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) selling real property; (3) objecting to a claim exemption; (4) reviewing and reconciling financial records; and (5) preparing the final report. Doc. #150, *Ex. A*. The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$10,173.76 as final compensation pursuant to §§ 326, 330.

5. [21-12484](#)-B-7      **IN RE: RICARDO OLIVAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-8-2021    [\[17\]](#)

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the filing fee of \$338.00 was paid in full on November 24, 2021. Accordingly, the Order to Show Cause will be vacated.

6. [21-12598](#)-B-7      **IN RE: YINGCHUN LOU**  
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-22-2021    [\[13\]](#)

THE GOLDEN 1 CREDIT UNION/MV  
SAM WU/ATTY. FOR DBT.  
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the

court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing. The notice must also notify respondents that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Also, Movant used an outdated Relief from Stay Information Sheet, EDC 3-468 (Rev. 6/8/05). The proper Information Sheet is EDC 3-468 (Rev. 2/18).

Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

11:00 AM

1. [21-11799](#)-B-13     **IN RE: VIRGIL CRUSE AND LISA GAVIN-CRUSE**  
[21-1041](#)

STATUS CONFERENCE RE: COMPLAINT  
10-4-2021    [[1](#)]

ONEMAIN FINANCIAL GROUP, LLC  
V. CRUSE ET AL  
DONALD DUNNING/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of the status conference statement filed by Plaintiff OneMain Financial Group, LLC on December 2, 2021. Doc. #9.

This status conference will proceed as a scheduling conference. The parties shall be prepared to discuss trial dates and scheduling deadlines.

11:30 AM

1. [21-11985](#)-B-7     **IN RE: BRIAN HARROLD**

PRO SE REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE  
11-22-2021     [\[15\]](#)

RAJ WADHWANI/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

NO ORDER REQUIRED.

Debtor's counsel shall notify the debtor that no appearance is necessary.

This Reaffirmation Agreement was filed on November 22, 2021 (Doc. #15) without the signature of Debtor's attorney. An amended Reaffirmation Agreement was filed on November 29, 2021 (Doc. #21) and it was signed by the Debtor's attorney with the appropriate attestations. The form of the Reaffirmation Agreement complies with 11 U.S.C. §§ 524(c) and (k). Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement. Accordingly, the hearing will be DROPPED from calendar.