



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 14, 2023
Department A – Courtroom #11
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-11903](#)-A-13 **IN RE: ABEL/CRYSTAL SANCHEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-16-2023 [\[32\]](#)

JERRY LOWE/ATTY. FOR DBT.

NO RULING.

As a procedural matter, the opposition filed by the debtors does not comply with Local Rule of Practice ("LBR") 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three days after the pleading is filed with the court. Here, there is no certificate of service filed with the court showing when the opposition was served.

As a further procedural matter, the opposition filed by the debtors does not comply with LBR 9014-1(f)(1)(B) because the opposition was not filed with the court at least fourteen (14) days preceding the date of the hearing. The opposition was filed on December 1, 2023, which was thirteen (13) days before hearing and is untimely.

LBR 9014-1(f)(1)(B) requires a party to show good cause before the court will consider an untimely filed opposition. Because the debtors' opposition did not address whether good cause exists to permit this court to consider their late-filed response, the court will give the debtors the opportunity to address this issue at the hearing prior to determining whether to consider the debtors' opposition.

2. [21-12006](#)-A-13 **IN RE: KRYSTAL WEDEKIND**
[MHM-2](#)

MOTION TO DISMISS CASE
11-3-2023 [\[58\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 11, 2024, at 9:30 a.m.

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

The debtor timely filed written opposition on November 29, 2023. Doc. #70. The court is inclined to continue the trustee's motion to dismiss to January 11, 2024, at 9:30 a.m., to be heard in connection with the debtor's motion to confirm second modified plan (FW-4) also set for hearing on that date and time. Doc. ##62-65, 67-69.

3. [23-12314](#)-A-13 **IN RE: DELILA RUCH**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-15-2023 [\[22\]](#)

PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The trustee withdrew his objection to confirmation on December 1, 2023.
Doc. #33.

4. [19-13821](#)-A-13 **IN RE: CHRISTINA HALL**
[TCS-5](#)

MOTION TO MODIFY PLAN
10-27-2023 [\[46\]](#)

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

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtor has filed and set for hearing a motion for confirmation of third modified plan (TCS-6), item number 6 below. Docs. ##57-63. Therefore, this motion will be DROPPED AS MOOT.

5. [19-13821](#)-A-13 **IN RE: CHRISTINA HALL**
[TCS-5](#)

AMENDED MOTION TO INCUR DEBT
11-24-2023 [\[68\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

As a procedural matter, this motion should not have been filed as an amended motion to a motion to incur debt that was previously granted by court order. Rather, this motion should have been filed as a new motion to incur debt.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c) because the Docket Control Number for this motion (TCS-5) is the same Docket Control Number used for a motion to modify the plan. See Doc. ##46, 68. This motion should have its own Docket Control Number.

Christina Hall ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to incur new debt. Doc. #68. Debtor states she needs to purchase a new vehicle because her current vehicle was totaled after a car accident that occurred on July 20, 2023. Decl. of Christina Hall, Doc. #70. Debtor needs a vehicle to drive to work because Debtor lives in Clovis and works in Fresno and also needs to travel to different training locations throughout the Central Valley. Id. Debtor is looking for a Ford Escape or a Jeep Compass or another similar vehicle totaling around \$20,000.00 after a downpayment. Id.

Debtor will be receiving \$13,585.55 from her insurance company after her deductible, which will be paid directly to the chapter 13 trustee to pay off the lien on Debtor's current vehicle. Hall Decl., Doc. #37. Debtor will use any surplus amounts from her insurance payment as a downpayment on the purchase of a replacement vehicle. Id. Debtor seeks to purchase a vehicle through Enterprise with a maximum interest rate of 24.99%. Doc. #70.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. Debtor filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new debt. See Doc. #56. The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of Debtor. The only security for the new debt will be the motor vehicle to be purchased by Debtor.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtor is authorized, but not required, to purchase a vehicle in a manner consistent with the motion.

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

MOTION TO MODIFY PLAN
11-6-2023 [\[57\]](#)

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

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

DISPOSITION: Continued to January 11, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #64. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than December 28, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by January 4, 2024.

If the debtor elects 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 January 4, 2024. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

7. [23-10626](#)-A-13 **IN RE: DEREK WHITFIELD**
[SL-1](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
11-15-2023 [\[32\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Scott Lyons, Attorney at Law ("Movant"), counsel for Derek Raymond Whitfield ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$6,018.50 and reimbursement for expenses in the amount of \$506.76 for services rendered from March 23, 2023 through November 14, 2023. Doc. #32. Debtor's confirmed plan provides, in addition to \$1,650.00 paid prior to filing the case, for \$12,500.00 in attorney's fees to be paid through the plan. Plan, Doc. ##10, 16. No prior fee application has been filed.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing voluntary petition and related schedules and documents; (2) preparing and prosecuting Debtor's plan; (3) preparing for and attending 341 meeting of creditors; (4) addressing motion to dismiss; (5) communicating with Debtor's creditors and the chapter 13 trustee; (6) preparing fee application; and (7) general case administration. Exs. A and B, Doc. #34. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$6,018.50 and reimbursement for expenses in the amount of \$506.76 to be paid in a manner consistent with the terms of the confirmed plan.

8. [23-12226](#)-A-13 **IN RE: CARI THORNTON**
[MHM-1](#)

MOTION TO DISMISS CASE
11-14-2023 [\[18\]](#)

JOEL WINTER/ATTY. FOR DBT.

NO RULING.

MOTION TO DISMISS CASE
11-16-2023 [\[54\]](#)

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1), (c)(3) and (c)(4) for unreasonable delay by the debtors that is prejudicial to creditors because the debtors have failed to set a modified plan for hearing with notice to creditors and because the debtors have failed to make all payments due under the plan. The debtors are delinquent in the amount of \$222.00. Doc. #54. Before this hearing, another payment in the amount of \$221.00 will also come due. The debtors did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors for failing to set a hearing to confirm the debtors' modified plan and under 11 U.S.C. § 1307(c)(4) for the failure of the debtors to timely make payments due under the plan.

A review of the debtors' Schedules A/B, C and D shows that there is little equity in the debtors' assets after claimed exemptions. Doc. ##15, 34, 42. Because there is no equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

10. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-20-2023 [[52](#)]

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. The case shall remain pending.

11. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[MHM-2](#)

MOTION TO CONFIRM PLAN
11-30-2023 [[55](#)]

MARSHA MENDOZA/MV
MARSHA MENDOZA/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion is dated November 27, 2023, with a hearing date set for December 14, 2023. Local Rule of Practice ("LBR") 3015-1(d)(1) requires at least 35 days' notice of a hearing on a motion to confirm a chapter 13 plan. Because less than 35 days' notice of this hearing was provided, service of the motion does not comply with LBR 3015-1(d)(1).

12. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
8-29-2023 [[38](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On August 29, 2023, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor has failed to confirm a chapter 13 plan. Doc. #38. The debtor's chapter 13 bankruptcy case was filed on May 2, 2023. Doc. #1.

On October 23, 2023, the debtor filed and served a motion to confirm the debtor's third amended plan and set that motion for hearing on November 30, 2023. Doc. ##71-75. The court proposes to grant that motion pursuant to a tentative ruling, matter #13 below.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). Because confirmation of the debtor's third amended plan satisfies all outstanding grounds for Trustee's motion to dismiss, there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1), and the motion to dismiss is denied.

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

13. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[SDS-3](#)

CONTINUED MOTION TO CONFIRM PLAN
10-23-2023 [\[71\]](#)

SONIA LOPEZ/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 3015-1(d)(2). Secured creditor Brilena. Inc. as to an undivided 31.2500% interest, Michael Bumbaca and Adele Bumbaca Husband and Wife as Joint Tenants as to an undivided 43.7500% interest, First Regional Bank, as Custodian FBO Robert Pastor IRA Acct. No. 051236, as to an undivided 25.000% interest, (collectively, "Secured Creditor") timely opposed this motion. See Opp'n, Doc. #82. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. The matter will proceed as scheduled. The hearing on the motion was continued from the initial hearing held on November 30, 2023 to permit the debtor to file amended

Schedules I and J that would support a finding of feasibility of the proposed plan. Doc. #87.

Sonia Lopez ("Debtor"), the chapter 13 debtor, moves the court to confirm Debtor's third amended chapter 13 plan ("Plan"). Doc. #71. Secured Creditor objects to confirmation because the Plan proposes to sell or refinance the property that is subject to Secured Creditor's lien within 18 months but does not provide for any interim payments or interest on the claim. Doc. #82. On September 21, 2023, Debtor filed an adversary proceeding against Secured Creditor and others that, among other things, objects to Secured Creditor's claim. Adv. Proc. No. 23-1039, Doc. #1. Because Debtor has objected to Secured Creditor's claim and that objection to claim remains pending, the Plan does not need to provide for the arrears on Secured Creditor's claim. Accordingly, Secured Creditor's objection to confirmation on this ground is overruled.

Secured Creditor also objects to confirmation on the basis that Debtor's filed Schedules I and J do not show that Debtor can make the proposed Plan payments. Doc. #82.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

The proposed Plan provides for monthly plan payments ranging from \$1,761.00 to \$2,392.00. Doc. #74. On November 30, 2023, Debtor filed amended Schedules I and J that show a net income of \$2,392.00 per month. Doc. #88. Based on the currently filed Schedules I and J, the court finds that Debtor has met her burden of proof to show that Debtor will be able to make the proposed plan payments. Accordingly, Secured Creditor's objection to confirmation on this ground is overruled.

Based on Debtor's pending adversary proceeding that includes an objection to Secured Creditor's claim and Debtor's amended Schedules I and J filed on November 30, 2023, the motion to confirm Debtor's Plan 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.

14. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[FW-5](#)

MOTION TO MODIFY PLAN
11-2-2023 [\[90\]](#)

TONI LACSINA/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 11, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice 3015-1(d)(2). The chapter 13

trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #100. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than December 28, 2023. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by January 4, 2024.

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 January 4, 2024. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

15. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[MHM-2](#)

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

GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 11, 2024, at 9:30 a.m.

ORDER: The court will issue an order.

This motion to dismiss was previously continued from its original hearing date of November 16, 2023 to be heard on December 14, 2023 in connection with the debtors' motion to confirm plan (FW-5) set for hearing on December 14, 2023. The court is continuing the hearing on the debtors' motion to confirm plan to January 11, 2024, at 9:30 a.m. due to the opposition to the motion to confirm filed by the chapter 13 trustee. See matter #14 above. Because confirmation of the modified plan will resolve this motion to dismiss, the motion to dismiss is continued to January 11, 2024, at 9:30 a.m.

16. [22-12053](#)-A-13 **IN RE: NICHOLAS/MISTY CARRILLO**
[PBB-4](#)

MOTION TO MODIFY PLAN
11-2-2023 [\[68\]](#)

MISTY CARRILLO/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

17. [23-12265](#)-A-13 **IN RE: GILBERTO CHAVIRA AND ALMA BARBA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-15-2023 [\[22\]](#)

FLOR DE MARIA TATAJE/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtors filed a modified plan on November 29, 2023 (FAT-1, Doc. #28), with a motion to confirm the modified plan set for hearing on January 11, 2024 at 9:30 a.m. Doc. ##28-32.

18. [22-10973](#)-A-13 **IN RE: DANIEL NAKAHIRA**
[PLG-4](#)

MOTION TO MODIFY PLAN
11-3-2023 [\[79\]](#)

DANIEL NAKAHIRA/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The

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

As an informative matter, the movant incorrectly completed Sections 6 and 7 of the court's mandatory Certificate of Service form. Doc. #84. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes applicable for 6B(2)(a) and attached documents for those subsections only. The declarant also attached a copy of the Clerk's Electronic Service Matrix as attachment 6B1 but failed to check box 6B1. In Section 7, the declarant checked that service was accomplished by Rule 7004 Service under § 6A(1) in addition to § 6B(1)(a), § 6B(2)(a) and § 6B(2)(b). If service was completed by 6B(1) and 6B(2) only as indicated in Section 6 and the supporting attachment, then box 6A(1) should not have been checked in Section 7.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

19. [23-12081](#)-A-13 **IN RE: ROBERT/ANNA ODAY**
[NMB-1](#)

CONTINUED RE: OBJECTION TO CONFIRMATION OF PLAN BY BRUCE PERSSON
11-7-2023 [\[23\]](#)

BRUCE PERSSON/MV
STEPHEN LABIAK/ATTY. FOR DBT.
NANETTE BEAUMONT/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection to confirmation was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). Although not required, the debtors filed a written response. Doc. #28. The initial hearing on the objection to confirmation was continued to permit the objecting creditor with the opportunity to review the debtors' amended Schedules I and J that were filed on November 30, 2023 (Doc. #35) and support the increased plan payments proposed by the debtors in their written response. The matter will proceed as scheduled.

As a procedural matter, the certificate of service filed in connection with this objection to confirmation does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel for the objecting creditor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

The debtors filed their chapter 13 plan ("Plan") on September 19, 2023. Doc. #4. Bruce Persson ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$210,590.19 default on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are provided for fully. Doc. #23.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed his proof of claim on October 23, 2023. Claim 3.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #4. The Plan fails to account for Creditor's claim. Claim 3; Doc. #4.

The debtors respond to Creditors' objection stating that the debtors are willing to stipulate to an increased monthly dividend to Creditor from \$3,300.00 per month to \$3,509.84 per month and increase the plan payment to \$4,626.18 per month to resolve this plan objection. Doc. #28.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Based on the debtors' Amended Schedules I and J filed on November 30, 2023 (Doc. #35), the court finds that the debtors have met their burden of proof to show that the debtors will be able to make the proposed increased plan payments.

Accordingly, based on the proposed increased plan payments that will be included in the order confirming plan, the objection will be OVERRULED.

1. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[23-1022](#) [TCS-20](#)

MOTION TO WITHDRAW ADMISSIONS UNDER RULE F.R.B.P. 7036
11-16-2023 [[65](#)]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC
NANCY KLEPAC/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Motion denied; discovery sanctions awarded in the amount of \$2,520.00 against counsel for the plaintiffs.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Defendant Nationstar Mortgage, LLC ("Defendant") timely filed and served written opposition on November 21, 2023. Doc. #69. The plaintiffs have not replied to Defendant's opposition. This matter will proceed as scheduled.

As a procedural matter, the exhibits filed by Defendant in connection with its opposition do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The declaration of Jared Bissell was filed as a single document that included supporting exhibits. E.g., Doc. #70. In addition to being filed as a separate document, the exhibits in support of the opposition should have been filed with an exhibit index and been properly numbered as required by LBR 9004-2(d)(2) and (d)(3).

As a further procedural matter, the proofs of service (Doc. ##69, 70) should have been filed as a separate document and not attached to the back of the opposition and supporting declaration. See LBR 9004-2(e)(1). The proofs of service filed by Defendant also do not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

The court encourages counsel for Defendant to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice or opposition stricken for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Dimas Coelho and Rosa Coelho (together, "Plaintiffs") are chapter 12 debtors and the plaintiffs in this adversary proceeding. Plaintiffs move to withdraw Plaintiffs' admissions that are deemed admitted under Federal Rule of Civil Procedure ("Civil Rule") 36(b), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7036.

A matter is admitted unless within 30 days after being served with a request for admission, the party to whom the request is directed serves on the requesting party a written answer or objection. Fed. R. Civ. P. 36(a)(3). A

party who fails to respond within 30 days and later tries to withdraw its deemed admissions "must make a strong showing". 999 v. C.I.T. Corp., 776 F.2d 866, 869 (9th Cir. 1985) To determine whether a party may be permitted to withdraw or amend an admission, the court must determine whether the party satisfies two prongs: "First, the withdrawal will aid in presenting the merits of the case. Second, no substantial prejudice to the party who requested the admission will result from allowing the admission to be withdrawn or amended." Fed. R. Civ. P. 36(b); Conlon v. U.S., 474 F.3d 616, 625 (9th Cir. 2007).

On September 29, 2023, Defendant served Requests for Admission ("RFA") on Plaintiffs. Doc. #65. Plaintiffs failed to respond to the RFA and, on November 2, 2023, Defendant filed a Notice of Matters Deemed Admitted Pursuant to Fed. R. Civ. P. 36(a)(3) ("RFA Notice"). Doc. #63. On November 16, 2023, Plaintiffs filed this motion seeking to have Plaintiffs' deemed admissions to the RFA withdrawn on three grounds: (1) Plaintiffs are unaware of receiving the RFA by mail and Plaintiffs' counsel did not agree to accept discovery requests by email; (2) allowing the RFA to be deemed admitted would prevent this court from deciding this adversary proceeding on the merits; and (3) there has been no detrimental reliance by Defendant on the deemed admissions. Doc. #65.

Defendant opposes the motion on three grounds. First, Defendant asserts that the motion is untimely because the motion was filed and set for hearing after the deadline required by this court's Scheduling Order. Doc. #39; Doc. #69. Second, Defendant would be prejudiced by a withdrawal of the deemed admissions. Doc. #69. Third, the court should award Defendant sanctions in the amount of \$2,940.00 for having to respond to this motion. Id. Plaintiffs did not file any response to Defendant's opposition to the motion.

Based on the following analysis, the court is inclined to deny Plaintiffs' motion and impose discovery sanctions against counsel for Plaintiffs in the amount of \$2,520.00.

Pursuant to the Scheduling Order, fact discovery was to be completed no later than November 15, 2023. Doc. #39. The Scheduling Order also required that any disputes relative to discovery must have been raised by an appropriate timely motion before the discovery deadline. Id. Plaintiffs filed the present motion one day after the close of fact discovery, which the court does not consider timely. The court also emphasized in the Scheduling Order the duty imposed by Civil Rule 37(a)(1) to certify good faith efforts to resolve the dispute without court action. Doc. #39. Plaintiffs provide no evidence with the motion showing any attempt to resolve this discovery dispute without court action. Doc. ##65, 67. Defendant asserts in its opposition that Plaintiffs' counsel did not reach out to Defendant's counsel regarding any kind of extension of the fact discovery deadline or reopening discovery after it closed on November 15, 2023. Doc. #69; Decl. of Jared D. Bissell, Doc. #70. The failure of Plaintiffs to comply with both aspects of the Scheduling Order warrant denial of the motion. However, the court will consider the motion on the merits, which also warrant denial.

Plaintiffs first seek to have their deemed admissions withdrawn on the basis that Plaintiffs did not timely respond to the RFA because Plaintiffs did not receive the RFA. Plaintiffs assert that they were unaware of receiving the RFA by mail and Plaintiffs' counsel did not agree to accept service of the RFA by email. Doc. #65; Decl. of Nancy Klepac, Doc. #67.

Here, the RFA Notice includes a proof of service showing that the RFA was served on counsel for Plaintiffs by mail at the same address listed at the top of Plaintiffs' motion papers. Compare Doc. #63 with Doc. ##65-68. Mail that is properly stamped, addressed, and deposited is presumed to be received by the

addressee. Moody v. Bucknum (In re Bucknum), 951 F.2d 204, 207 (9th Cir. 1991). The movant can rebut this presumption with clear and convincing evidence. Id. But, the movant must provide something more than a declaration alleging non-receipt. Herndon v. De la Cruz (In re De la Cruz), 176 B.R. 19, 22 (B.A.P. 9th Cir. 1994). Here, Plaintiffs provide no evidence, let alone clear and convincing evidence, rebutting the presumption that the RFA mailed to counsel for Plaintiffs was received by counsel for Plaintiffs.

With respect to service by email, Defendant asserts Plaintiffs served their discovery on Defendant solely by email, and Plaintiffs had previously accepted service of Defendant's Civil Rule 26 disclosure, which shows Plaintiffs consented to electronic service. Doc. #69; Bissell Decl., Doc. #70. Plaintiffs have not responded to Defendant's opposition. Defendant's evidence that Plaintiffs served their discovery on Defendant solely by email and Plaintiffs had previously accepted service of Defendant's Civil Rule 26 disclosure by email shows Plaintiffs consented to electronic service, and such evidence rebuts Plaintiffs' assertion that counsel for Plaintiffs did not consent to service of discovery requests by email. Consequently, the court finds that counsel for Plaintiffs agreed to receive service of the RFA by email.

Plaintiffs next seek to have their deemed admissions withdrawn on the basis that allowing the admissions to remain deemed admitted would prevent this adversary proceeding from being determined on its merits. Doc. #65. However, Plaintiffs have not explained in detail how setting aside Plaintiffs' deemed admissions to the 40 requests for admission in the RFA will aid Plaintiffs in presenting the merits of this adversary proceeding. Based on this failure, the court finds that Plaintiffs have not made the strong showing necessary required by the caselaw for this court to grant their motion.

Finally, Plaintiffs contend that there has been no detrimental reliance by Defendant on the deemed admissions that would prejudice Defendant if this court grants Plaintiffs' request to withdraw the deemed admissions. Doc. #65. Defendant, on the other hand, asserts that Plaintiffs' failure to respond to the RFA caused counsel for Defendant to forego deposing Plaintiffs prior to the close of fact discovery on November 15, 2023 and has led Defendant to start the process of filing and serving a Motion for Summary Judgment. Doc. #69; Bissell Decl., Doc. #70. Reliance on deemed admissions in preparing a summary motion does not, by itself, constitute sufficient prejudice to justify denial of a motion to withdraw admission. Conlon v. U.S., 474 F.3d 616, 623-624 (9th Cir. 2007). However, a "plaintiffs' trial preparation is materially prejudiced when the defendants initially admitted liability, lured the plaintiffs into a false sense that the liability issue was settled, caused the plaintiffs to cancel scheduled depositions, and then recanted the admissions." Hadley v. United States, 45 F.3d 1345, 1348 (9th Cir. 1995) (quoting Rico v. S.S. Zoe Colocotroni, 628 F. 2d 652 (1st Cir. 1980)). Here, because the deadline for fact discovery has closed and Defendant can no longer depose Plaintiffs, the court finds that Defendant will suffer substantial prejudice if the motion is granted and the admissions to the RFA is deemed withdrawn.

Defendant asks the court to impose sanctions in the amount of \$2,940.00 in attorney's fees for having to respond to Plaintiffs' motion. Doc. #69. The courts have very broad discretion to use sanctions where necessary. Martin Family Trust v. NECO/Nostalgia Enters. Co., 186 F.R.D. 601, 602-03 (E.D. Cal. 1999). Pursuant to the Scheduling Order, failure to comply with the Scheduling Order may result in additional just orders including those authorized by Civil Rules 16(f) and 37(b) (2) (A) (ii)-(vii), incorporated into this adversary proceeding by Bankruptcy Rules 7016. 7037, 9014(c). Doc. #39.

Here, Plaintiffs failed to obey the court's Scheduling Order by filing this current motion after the discovery cutoff date. In addition, there is no evidence that counsel for Plaintiffs tried to meet and confer with counsel for Defendant prior to filing this motion as required by the Scheduling Order. Finally, as discussed above, the court finds that Plaintiffs' motion should be denied on all grounds. Based on the evidence before the court, counsel for Defendant spent 5 hours preparing the opposition and supporting declaration at a billing rate of \$420 per hour and will spend an additional 2 hours preparing for and attending the hearing on this motion. Bissell Decl. at ¶ 25, Doc. #70. Based on the lack of a reply and the issuance of this pre-hearing disposition, the court will award discovery sanctions for attorneys' fees in the amount of \$2,520.00, comprised of 6 hours of attorney time at the rate of \$420.00 per hour.

Accordingly, Plaintiffs' motion to withdraw admissions deemed admitted is DENIED, and the admissions are deemed admitted pursuant to Civil Rule 36(a)(3). In addition, \$2,520.00 in discovery sanctions are imposed against counsel for Plaintiffs and are to be paid to Defendant.

2. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.