

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, December 15, 2021
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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.

9:30 AM

1. [21-12008](#)-B-13 IN RE: CELESTE MURILLO
[JV-2](#)

MOTION TO CONFIRM PLAN
10-27-2021 [\[25\]](#)

CELESTE MURILLO/MV
JASON VOGELPOHL/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.

Celeste Lucia Murillo ("Debtor") seeks confirmation of the Second Amended Chapter 13 Plan. Doc. #25.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed confirmation under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #29. Trustee notes that Debtor's operative schedules were filed with the petition on August 17, 2021. *Id.* These schedules indicate that Debtor's monthly net income is \$1,055.72. Doc. #1, *Sched. J*. In contrast, the plan proposes monthly payments of: (a) \$899 for 1 month; (b) \$1357 for 1 month; and (c) \$1509 for 58 months. Doc. #23. Thus, the plan does not appear to be feasible on its face.

However, the motion will be denied because it does not procedurally comply with the Local Rules of Practice ("LBR"). The *Notice of Hearing* (Doc. #26) did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

For the above reason, this motion will DENIED WITHOUT PREJUDICE.

2. [16-14310](#)-B-13 **IN RE: AMELIA RODRIGUEZ CARRILLO**
[RS-2](#)

OBJECTION TO CLAIM OF BENEFICIAL STATE BANK, CLAIM NUMBER
2-1
11-5-2021 [[63](#)]

AMELIA RODRIGUEZ CARRILLO/MV
RICHARD STURDEVANT/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

Amelia Rodriguez Carrillo ("Debtor") objects to Proof of Claim No. 2-1 filed by Beneficial State Bank in the amount of \$15,555.46 on May 31, 2017.¹ Doc. #63. Since the deadline for non-governmental entities to file proofs of claim was April 10, 2017, Debtor seeks to disallow the claim.

Chapter 13 trustee Michael H. Meyer ("Trustee") filed limited opposition to the objection. Doc. #66. Since the proof of claim deadline was May 31, 2017 and Debtor objected November 5, 2021, Trustee has already paid Beneficial State Bank \$8,018.80 in accordance with the claim. *Id.* As result, Trustee states that the claim cannot be disallowed in its entirety because Trustee would then be required to recover the \$8,018.80 already paid. So, Trustee asks to only disallow the claim in the amount of \$7,536.66 but allowed in the amount of \$8,018.80.

Debtor replied, offering to amend the objection to allow the claim in the amount of \$8,018.80 but disallow the claim in the amount of \$7,536.00. Doc. #68.

However, this objection will be overruled for procedural reasons because it does not procedurally comply with the Local Rules of Practice ("LBR"). The *Notice of Hearing* did not contain the language required under LBR 9014-1(d). Doc. #64. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and that (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

¹ Beneficial State Bank was properly served pursuant to Federal Rule of Bankruptcy Procedure 7004(h) by serving Richard H. Harvey, Jr., the secretary of Beneficial State Bank, by certified mail on November 5, 2021. Doc. #65.

3. [20-10216](#)-B-13 **IN RE: MARIA GONZALEZ**

MOTION FOR COMPENSATION FOR SUSAN J. SALEHI, DEBTORS
ATTORNEY(S)
11-20-2021 [\[39\]](#)

SUSAN SALEHI/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Susan J. Salehi ("Applicant"), attorney for Maria Rivas Gonzalez ("Debtor"), seeks supplemental compensation of \$2,520.00 under Local Rule of Practice ("LBR") 2016-1(c)(3) for legal services rendered for substantial and unanticipated post-confirmation work. Doc. #39.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Here, the motion omits a DCN. Doc. #39. Though the captions for the notice, exhibit, and certificate of service use DCN SJS-2, only the certificate of service is docketed with that DCN. As result, all pleadings are not linked together using a single DCN. Applicant should use a different DCN in the next attempt because SJS-2 was used for the certificate of service.

Second, the notice of hearing contains the wrong notice language. LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Here, the motion was filed and served on November 20, 2021 and set for hearing on December 15, 2021. Docs. ##39-42. November 20, 2021 is **twenty-five (25)** days before December 15, 2021. The *Notice of Hearing* states that written opposition was required, must be filed at least 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the objection. Doc. #40. This is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have followed the procedure under LBR 9014-1(f)(2) by stating that opposition was not required and may be presented at the hearing.

Third, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, the exhibit was filed separately and consecutively numbered, but it omits the use of an exhibit index.

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

4. [21-12324](#)-B-13 **IN RE: JOSE HERRERA**
[RS-1](#)

MOTION TO CONFIRM PLAN
11-5-2021 [[15](#)]

JOSE HERRERA/MV
RICHARD STURDEVANT/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jose Gonzalez Herrera ("Debtor") seeks confirmation of the original chapter 13 plan. Doc. #15.

This motion will be DENIED WITHOUT PREJUDICE for failing to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and Local Rules of Practice ("LBR").

The U.S. Department of Agriculture ("USDA") Rural Development Agency ("RDA") was not properly served or notified as required by LBR 3015-1(d)(1) and Rule 2002(a)(9). Doc. #16. The RDA is a secured creditor listed in Class 1, so a debt is owed to the United States. Doc. #13. The RDA must be served in accordance with Rule 2002(j)(4).

LBR 3015-1(d)(1) applies to modified plans proposed prior to confirmation pursuant to 11 U.S.C. § 1323 and requires the debtor to file and serve the modified plan together with a motion to confirm it. Notice of the motion shall comply with Rule 2002(a)(9) and LBR 9014-1(f)(1).

The *Certificate of Service* indicates that Debtor served the USDA RDA at the following address:

USDA Rural Development
Attn Bankruptcy Dept
Po Box 66879
St Louis MO 63166-6879

Doc. #19.

Rule 2002(j)(4) requires the debtor to mail copies of the notice to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted. Rule 2002(j)(4).

For cases assigned to the Modesto and Fresno divisions, the address for the U.S. Attorney shall include, in parentheses, the name of the federal agency as follows:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721

LBR 2002-1(a)(2).

Certain federal and state agencies specify particular addresses to which notice of bankruptcy proceedings shall be directed. This list is maintained by the Clerk of the Bankruptcy Court and can be located on the court's website. See *Roster of Governmental Agencies*, Form EDC 2-785.² RDA is not on this address list, but the USDA Farm Service Agency, a different USDA agency, has an address at 430 G Street, #4161, Davis, CA 95616-4161.

After investigating whether the PO Box address used by Debtor, it appears that the address used is for RDA's Customer Service Center for "borrower inquiries."³ This does not appear to be sufficient to satisfy the due process requirement of adequate notice to RDA. *In re Ass'n of Volleyball Prof'ls*, 256 B.R. 313, 320 (Bankr. C.D. Cal. 2000), citing *Boykin v. Marriott Int'l, Inc. (In re Boykin)*, 246 B.R. 825, 828-29 (Bankr. E.D. Va. 2000).

RDA has a California state office,⁴ with an Acting State Director:

Patty Gerald, Acting State Director
430 G Street, #4169
Davis, CA 95616-4169

The RDA state office address appears to be located in the same building as the Farm Service Agency. According to the same contact page, there is also a local office in Fresno:

Fresno Office
4625 W. Jennifer St., Suite 126
Fresno, CA 93722

Id. Additionally, RDA is part of the USDA. Thomas J. Vilsack is the current Secretary of Agriculture.⁵ The USDA headquarters mailing address is:

U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

USDA "Contact Us."⁶

So, service was not properly effectuated for the motion, plan, and notice on the USDA and RDA as required by LBR 3015-1(d)(1), Rule 2002(a)(9), and (j)(4). Not all of these addresses need to be served, but Debtor should serve the Acting State Director for RDA, the Secretary of Agriculture for USDA, and the United States Attorney for this district.

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

² *Roster of Governmental Agencies*, Form EDC 2-785 (Rev. Dec. 7, 2020), <http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf> (Dec. 12, 2021).

³ Customer Service Center, Rural Development Agency, U.S. Dept. of Agriculture, <https://www.rd.usda.gov/about-rd/offices/customer-service-center> (Dec. 12, 2021).

⁴ California State Office, Rural Development Agency, U.S. Dept of Agriculture, <https://www.rd.usda.gov/contactpage/california-contacts> (Dec. 12, 2021).

⁵ Secretary of Agriculture Tom Vilsack, U.S. Dept. of Agriculture, <https://www.usda.gov/our-agency/about-usda/our-secretary> (Dec. 12, 2021).

⁶ Contact Us, U.S. Dept. of Agriculture, <https://www.usda.gov/contact-us> (Dec. 12, 2021).

5. [21-12030](#)-B-13 **IN RE: JOSE ARREGUIN**
[AF-2](#)

MOTION TO CONFIRM PLAN
10-29-2021 [\[29\]](#)

JOSE ARREGUIN/MV
ARASTO FARSAD/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Jose R. Arreguin ("Debtor") seeks confirmation of the First Amended Chapter 13 Plan. Doc. #29.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed under 11 U.S.C. § 1325(a)(1) because the plan fails to comply with other applicable provisions of the Bankruptcy Code. Doc. #41. Trustee notes that Debtor entered into a *Joint Stipulation* with secured creditors Mid-Valley Services and Sandra L. Duncan, the approval of which is the subject of matter #6 below. AF-3.

Per that stipulation, Debtor is to pay the defaulted property taxes through the plan and keep them current, but the plan does not provide for payment of the defaulted property taxes. Trustee is unaware whether the tax obligation has been paid or is being paid by Mid-Valley Services as the lender, or if the proposed plan fails to include treatment of the tax assessor.

Debtor filed a responsive declaration on December 12, 2021. Doc. #43. Debtor states that he went to the Fresno County Tax Collector's ("Collector") office to pay the new tax bill that was due December 10, 2021. However, there was confusion in the Collector's office at the time and Debtor paid the delinquent amount, the receipt for which is attached as an exhibit. Doc. #44, *Ex. A*. By paying this delinquency, Debtor is now current on property taxes pre-petition, but the December 10, 2021 property tax bill is now due. *Id.*, *Ex B*. Debtor intends to reach out to Trustee to determine how to handle this tax bill. Doc. #43. Debtor prefers to pay property taxes directly and in a timely matter to avoid confusion or delinquency. Debtor asks Trustee to withdraw the opposition to allow this plan to be confirmed.

This matter will be called as scheduled to inquire about the parties' respective positions.

6. [21-12030](#)-B-13 **IN RE: JOSE ARREGUIN**
[AF-3](#)

MOTION FOR ORDER APPROVING JOINT STIPULATION FOR PLAN
TREATMENT OF SECURED CLAIM OF MID-VALLEY SERVICES, INC. AND
SANDRA L. DUNCAN
11-2-2021 [\[34\]](#)

JOSE ARREGUIN/MV
ARASTO FARSAD/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 with the stipulation
attached as an exhibit.

Jose R. Arreguin ("Debtor"), and Mid-Valley Services, Inc. and Sandra L. Duncan ("Secured Creditors") stipulated to plan treatment for Secured Creditors' claim as the first lienholder against Debtor's real property located at 33207 W. El Progreso, Cantua Creek, CA 93608 ("Property"). Doc. #36. Debtor moves to approve that stipulation. Doc. #34.

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

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

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Though 11 U.S.C. § 1303 does not expressly grant chapter 13 debtors standing to prosecute and settle claims,

other courts have applied it to allow these claims to continue. The Second Circuit has stated, "we conclude that a Chapter 13 debtor, unlike a Chapter 7 debtor, has standing to litigate causes of action that are not part of a case under title 11." *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513, 515 (2d Cir. 1998)

The Second Circuit reasoned, "[t]he legislative history of § 1303, which sets out the exclusive rights of a Chapter 13 debtor, supports the holding that a Chapter 13 debtor's standing is different." *Olick*, 145 F.3d 513 at 516.

Ninth Circuit courts have applied *Olick's* reasoning and agreed that chapter 13 debtors "have standing to pursue claims against others when those claims belong to the bankruptcy estate because 'the reality of a filing under Chapter 13 is that the debtors are the true representatives of the estate and should be given the broad latitude essential to control the progress of their case.'" *Donato v. Metro. Life Ins. Co.*, 230 B.R. 418, 425 (N.D. Cal. 1999) (quoting *Olick*, 145 F.3d 513 at 516). The court also favorably cited the Third Circuit's reasoning that a chapter 13 debtor could continue to prosecute prepetition claims after filing because "an essential feature of a Chapter 13 case is that the debtor retains possession of and may use all the property of his estate, including his prepetition causes of action" *Donato*, 230 B.R. 418 at 425 (citing *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1209 at n.2 (3rd Cir. 1991)).

Here, the stipulation provides that:

- (a) Debtor will pay the defaulted property taxes through the plan and keep them current;
- (b) Debtor will provide and maintain proof of insurance and list Secured Creditors as additional insured parties;
- (c) Debtor will pay Secured Creditors claim in full during the chapter 13 bankruptcy (within 60 months);
- (d) The fixed interest rate shall be 6%; and
- (e) If the chapter 13 case is dismissed for any reason, Secured creditors will have § 362(d)(4) relief (*in rem* as to the Property).

Doc. #36.

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), a movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest

in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* A movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Debtor has four previous bankruptcy filings, three of which were filed since 2016.⁷ So, if this case were to be dismissed, Secured Creditors may be able to obtain § 362(d)(4) relief if a subsequent bankruptcy were to be filed.

The court concludes that the *Woodson* factors balance in favor of approving the joint stipulation. That is: (1) the probability of success on both the plan confirmation objection and a potential § 362(d)(4) relief claim is never assured but Secured Creditors would have a strong argument in favor of their position. (2) The difficulties in collection are inapplicable here, but approval of the stipulation would result in lower litigation expenses for Debtor and Secured Creditors because they will no longer need to litigate plan confirmation or stay relief if the case is dismissed with a subsequent filing. (3) The litigation would not be very complex, but legal fees for both parties would still increase. (4) The paramount interests of Secured Creditors favor the compromise.

Accordingly, the compromise pursuant to Fed. R. Bankr. P. 9019 is a reasonable exercise of Debtor's business judgment. The court concludes the compromise to be in the best interests of the estate. The court may give weight to the opinions of the parties and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. This motion will be GRANTED.

⁷ Debtor's prior cases consist of three chapter 13 cases and one chapter 7 case: (1) Case No. 20-12291-A-13 was filed July 8, 2020 and dismissed on June 16, 2021 for failure to make chapter 13 plan payments; (2) Case No. 18-10851-A-13 was filed on March 9, 2018 and dismissed on March 27, 2018 for failure to make chapter 13 plan payments; (3) Case No. 16-10651-A-7 was filed on March 3, 2016. Debtor received a chapter 7 discharge on July 18, 2016; and (4) Case No. 98-11935-A-13 was filed on March 3, 1998. Debtor received a chapter 13 discharge on July 11, 2001.

7. [19-10641](#)-B-13 **IN RE: MARTIN FLORES**
[PBB-2](#)

CONTINUED MOTION TO MODIFY PLAN
9-24-2021 [[73](#)]

MARTIN FLORES/MV
PETER BUNTING/ATTY. FOR DBT.
PLAN WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor Martin Flores withdrew the Second Modified Chapter 13 Plan on November 30, 2021. Doc. #87. Accordingly, this motion will be DROPPED FROM CALENDAR.

8. [19-10752](#)-B-13 **IN RE: STEVEN CHAVEZ**
[SFR-6](#)

MOTION FOR COMPENSATION FOR SHARLENE F. ROBERTS-CAUDLE,
DEBTORS ATTORNEY(S)
11-5-2021 [[136](#)]

SHARLENE ROBERTS-CAUDLE/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.

Sharlene F. Roberts-Caudle ("Applicant"), attorney for Steven Chavez ("Debtor"), requests interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$12,310.00. Doc. #136. This amount consists of \$12,000.00 in fees as reasonable compensation for services rendered

and \$310.00 in reimbursement for actual, necessary expenses incurred for the benefit of estate from February 20, 2019 through November 4, 2021. *Id.*

Debtor signed a statement of consent on November 22, 2021 indicating that they have read the fee application and approve the same. Doc. #140.

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

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

The Second Modified Chapter 13 Plan is the operative plan in this case. Docs. #70; #112. Section 3.05 indicates that Applicant was paid \$3,050.00 prior to filing the case and, subject to court approval, additional fees of \$9,260.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #70.

This is Applicant's first fee application. Applicant received a \$3,050.00 retainer and now requests approval for that sum and \$9,260.00 to be paid by the chapter 13 trustee in accordance with the confirmed plan. Doc. #136.

Applicant's office provided 45.70 billable hours at a rate of \$325 per hour, totaling \$14,852.50 in fees. *Id.*, ¶ 7. However, Applicant has limited this request for fees to **\$12,000.00**. *Id.*, ¶ 5. Applicant also advanced **\$310.00** in costs for postage. *Id.*, ¶ 6. These combined fees and expenses total **\$12,310.00**.

11 U.S.C. § 330(a)(1)(A) & (B) permit 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: (1) updating the petition and schedules from a previous filing with new business information; (2) preparing and prosecuting a motion to extend the automatic stay (SFR-1); (3) drafting the original (SFR-2), first (SFR-3), second (SFR-4), and third modified plans (SFR-5), and successfully prosecuting confirmation of the second modified plan; (4) preparing and filing this fee application. Doc. #138, *Exs. A, B, C*. The court finds these services and expenses actual, reasonable, and necessary.

No party in interest timely filed written opposition. As noted above, Debtor consented to the application. Accordingly, this motion will be GRANTED. Applicant will be awarded \$12,000.00 in fees and \$310.00 for costs on an interim basis under § 331, subject to final review pursuant to § 330. After application of the \$3,050.00 retainer, the chapter 13 trustee will be authorized, in his discretion, to pay Applicant \$9,260.00 for services rendered and expenses incurred for the benefit of the estate from February 20, 2019 through November 4, 2021.

9. [19-11859](#)-B-13 **IN RE: JOSHUA BOVARD**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
11-15-2021 [\[72\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), attorney for Joshua Russell Bovard ("Debtor"), requests interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$6,403.25. Doc. #72. This amount consists of \$6,174.00 in fees as reasonable compensation for services rendered and \$229.25 in reimbursement for actual, necessary expenses incurred for the benefit of the estate from January 1, 2020 through October 31, 2021. *Id.*

Debtor signed a statement of consent on November 8, 2021 indicating that he had read the fee application and approves the same. Doc. #74, *Ex. E*.

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

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

The Second Modified Chapter 13 Plan is the operative plan in this case. Docs. #54; #71. Section 3.05 indicates that Applicant was paid \$1,500.00 prior to filing the case and, subject to court approval, additional fees of \$26,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #70. Additionally, Applicant indicates in that his firm was also paid the \$310.00 filing fee with the retainer. Doc. #72.

This is Applicant's second fee application. The court previously awarded \$13,134.50 in fees and \$458.39 in costs, totaling \$13592.89, for services rendered and expenses incurred from July 22, 2016 through December 31, 2019. Doc. #44. Applicant now requests \$7,440.85 pursuant to § 331. Doc. #79. The source of funds for payment of the fees will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Doc. #72. Applicant declares that there are \$12,407.11 remaining in the plan for attorney fees, so payment of this fee application will not affect plan feasibility. *Id.*, § 8(3)(a).

Applicant's office provided 20.70 hours of legal services, but billed 20.60 hours, totaling **\$6,174.00** as follows:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2020)	\$320	17.30	\$5,536.00
Gabriel J. Waddell (2021)	\$330	1.20	\$396.00
Katie Waddell (2020)	\$220	0.20	\$44.00
Kayla Schlaak (2020)	\$100	1.10	\$110.00
Kayla Schlaak (2021)	\$110	0.80	\$88.00
Total Hours & Fees		20.60	\$6,174.00

Doc. #74, Exs. B, C; Doc. #72, ¶¶ 5-6. Applicant also advanced **\$229.25** in expenses:

Photocopying	\$143.30
Postage	+ \$63.45
CourtCall Fees	+ \$22.50
Total Expenses	= \$229.25

Id., ¶ 7. These combined fees and expenses total **\$6,403.25**.

11 U.S.C. § 330(a)(1)(A) & (B) permit 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: (1) finalizing the initial fee application (FW-2); (2) communicating with the Debtor and trustee regarding the First and Second Modified Plans; (2) communicating with Debtor regarding a notice of default; and (3) preparing and confirming the Second Modified Chapter 13 Plans (FW-3); and (4) preparing and filing this fee application. Doc. #74, Ex. A.

No party in interest timely filed written opposition. As noted above, Debtor consented to the application. Accordingly, this motion will be GRANTED. Applicant will be awarded \$6,174.00 in fees and \$299.25 for costs on an interim basis under § 331, subject to final review pursuant to § 330. The chapter 13 trustee will be authorized, in his discretion, to pay Applicant \$6,403.25 for services rendered and expenses incurred for the benefit of the estate from January 1, 2020 through October 31, 2021.

10. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[PLG-3](#)

MOTION TO MODIFY PLAN
11-4-2021 [\[140\]](#)

ALVINA FISCHER/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Alvina Eileen Fischer ("Debtor") seeks confirmation of the Second Modified Chapter 13 Plan. Doc. #140. 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 objected because the attorney fees dividend is decreasing from \$30.16 to \$17.00, and the Class 1 arrears dividend is decreasing from \$941.63 to \$390.54, but start dates are not provided either. Doc. #146. As is, the plan would be overpaid. Trustee says that both issues can be corrected in the order confirming plan by stating that the dividend changes shall begin in month 41. *Id.*

In reply, Debtor is amenable to correcting the dividend start dates in the order confirming plan. Doc. #148.

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, Debtor faced material financial hardship directly or indirectly caused by the COVID-19 pandemic. Debtor declares that she was unable to work at H&R Block during this tax season because only one senior tech was allowed to work at a time, and she does not hold that position. Doc. #142. As result, Debtor lost this expected stream of income. Additionally, due to closures, Debtor was unable to perform rideshare services for Lyft. *Id.* Debtor supplemented her income by working full time for the census, but that job recently ended. Further, because Debtor was at home fulltime, her household expenses increased.

Debtor's previous plan (Doc. #113) was confirmed on August 20, 2019, which is before the COVID-19 Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #127. Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

This matter will be called as scheduled. It appears that Debtor has resolved Trustee's objection. The court is inclined to GRANT this motion with the proposed changes. Any order confirming the plan shall be approved by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

11. [17-13771](#)-B-13 **IN RE: GABRIELLE ARCHER**
[PBB-1](#)

MOTION TO MODIFY PLAN
10-28-2021 [\[25\]](#)

GABRIELLE ARCHER/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.

Gabrielle Ann Archer ("Debtor") seeks confirmation of the First Modified Chapter 13 Plan. Doc. #25. Debtor wishes to decrease the duration of the plan from 60 months to 48 months. Doc. #30.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

12. [21-12079](#)-B-13 **IN RE: CURTIS/CHARTOTTE ALLEN**
[MHM-1](#)

MOTION TO DISMISS CASE
11-16-2021 [\[24\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

The chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Doc. # 24. Debtor is delinquent in the amount of \$3,120.00. Doc. #26. Before this hearing, another payment in that same amount will also come due. *Id.* 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. § 1307(c)(4) for failing to timely make payments due under the plan.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors. Debtors are delinquent in the amount of \$3,120.00, with another payment due before this hearing. 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. #13, *Scheds. A/B, C, D*. Debtors' real property and vehicle are fully encumbered and exempted. Debtors' remaining personal property is fully exempted other than approximately \$538.25. After liquidation expenses, *de minimis* equity will remain for the benefit of unsecured claims. Dismissal, rather than conversion, serves the interests of creditors.

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

13. [18-13887](#)-B-13 **IN RE: GREG/MARY JENNINGS**
[SAH-6](#)

MOTION TO MODIFY PLAN
11-2-2021 [\[94\]](#)

MARY JENNINGS/MV
SUSAN HEMB/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Greg W. Jennings and Mary L. Jennings ("Debtors") seek confirmation of their Second Modified Chapter 13 Plan. Doc. #96.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected because the plan makes improper modifications to plan language and nonstandard provisions. Doc. #102.

First, Trustee cites Section 1.03 of the plan, which provides that no alterations of the plan form are permitted except in the designated spaces. Doc. #96. Nonstandard provisions will be given no effect unless it is included in Section 7.

Here, Section 3.05 includes added language at the end of the paragraph regarding additional fees in the total amount of \$1,562.68. Under Section 1.03, the added language will have no effect. Trustee says this error can be corrected in the order confirming plan by striking the \$2,500.00 additional fees in Section 3.05 and replacing that figure with \$4,062.68, which is the sum of the original \$2,500.00 and the desired additional fees of \$1,562.68. Doc. #102.

Second, Section 7 states that the plan payments shall be \$1,718.04 for months 38 through 60 and Debtors have paid a cumulative total of \$65,039.87. Doc. #96. Trustee objects because no month was provided through which this amount was paid. Doc. #139. The order confirming plan can correct this by striking this language in the additional provisions and replacing it with the following language: "The plan payments shall be \$1,718.04 for months 38 through 60. Debtors have paid a cumulative total of \$65,039.87 through Month 37."

Debtor did not reply.

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).

This matter will be called as scheduled. If Debtor is amenable to Trustee's proposed changes, then this motion may be GRANTED. Any order confirming the plan shall be approved by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

14. [21-12289](#)-B-13 **IN RE: DUSTIN/MIRANDA WHEELER**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
11-17-2021 [\[25\]](#)

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

Scott Lyons ("Applicant"), attorney for Dustin Wheeler and Miranda Wheeler ("Debtors"), requests interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$9,265.58 under 11 U.S.C. §§ 330, 331. Doc. #25. This amount consists of \$8,391.72 for reasonable compensation for services rendered and \$873.86 as reimbursement for actual, necessary expenses incurred from November 2, 2020 through November 15, 2021. *Id.*

Debtors signed a statement of consent on November 16, 2021 indicating that they had read the fee application and approve the same. *Id.*, ¶ 9(7).

No party in interest timely filed written opposition, but there were errors in the fee summary and time records. This matter will be called as scheduled. The motion will be GRANTED IN PART.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered 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).

As a preliminary matter, the *Notice of Hearing* (Doc. #26) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. It states that written opposition "shall be filed with the clerk of the bankruptcy courthouse and served upon the Debtor(s) and their attorney of record, the Chapter 13 Trustee, the United States

Trustee, and any parties requesting special notice[,]" but the addresses of these parties are not provided. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

The original Chapter 13 Plan is the operative plan in this case. Docs. #3; #22. Section 3.05 indicates that Applicant was paid \$1,497.00 prior to filing the case and, subject to court approval, additional fees of \$13,577.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #3. The application indicates that Applicant was paid \$1,810.00 pre-petition. Doc. #25, ¶ 2(b)(1). This amount consists of \$1,407.00 as a retainer, \$313.00 for the filing fee, and \$90.00 for credit report fees. Doc. #27, Ex. A.

This is Applicant's first fee application. Applicant requests \$9,265.58 pursuant to § 331. The source of funds for payment of the fees will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. After application of the \$1,810.00 retainer, Applicant would be paid \$7,455.58 by the trustee. However, there is an error in the fee summary and the exhibits, so the requested fees will be reduced accordingly.

Applicant's office performed 54.75 (54 hours and 45 minutes) billable hours of legal services totaling \$8,391.72 in fees as follows:

Professional	Rate	Hours	Billed	Claimed Total	Actual Total
Scott Lyons	\$400.00	2.716 $\bar{6}$	2.216 $\bar{6}$	\$897.08	\$886.67
Louis Lyons	\$350.00	9.2	9.166 $\bar{6}$	\$3,208.33	\$3,208.33
Sylvia Gutierrez	\$100.00	42.866 $\bar{6}$	42.866 $\bar{6}$	\$4,286.31	\$4,286.67
Total Fees & Hours		54.75	54.25	\$8,391.72	\$8,381.67

Doc. #25, ¶ 7; cf. Doc. #27, Ex. B.

The error is primarily derived from 0.25 billable hours billed by Scott Lyons on September 8, 2021 for "Meast (sic) Test Supervision and Review" in which Mr. Lyons billed \$177.08 rather than \$166.67. The arithmetic for Sylvia Gutierrez's fees was also wrong. The court will reduce the fees to **\$8,381.67**.

Applicant is urged to submit accurate fee summaries, double check time sheet entries, and consider submitting time sheets in decimal hour format, rather than raw minutes. **Future inaccurate fee summaries shall result in denial with no further attempts by the court to piece together the requested amounts from erroneous time records.**

Applicant also requests **\$873.86** in expenses as follows:

Postage	\$448.36
Filing fees	+ \$313.00
Credit reports and CourtCall	+ \$112.50
Total Expenses	= \$873.86

Doc. #25, ¶ 6. These combined fees and expenses total **\$9,255.53**.

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

Applicant's services included, without limitation: (1) pre-petition consulting with Debtor and fact gathering; (2) preparing and filing the petition, schedules, plan, and other forms; (3) confirming the original chapter 13 plan; (4) preparing for and appearing at the 341 meeting of creditors; (5) claims administration; and (6) preparing this fee application. *Id.* The court finds the services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition. As noted above, Debtors consented to the application. Accordingly, this motion will be GRANTED. Applicant will be awarded \$9,255.53, consisting of reduced fees of \$8,381.67 and \$873.86 in costs, on an interim basis under § 331, subject to final review pursuant to § 330. After application of the \$1,810.00 paid by Debtors pre-filing, the chapter 13 trustee is authorized, in its discretion, to pay Applicant \$7,445.53 in accordance with the confirmed chapter 13 plan for services rendered and expenses incurred from November 2, 2020 through November 15, 2021.

15. [21-12392](#)-B-13 **IN RE: REGINALD KERNEY**
[PBB-1](#)

MOTION TO CONFIRM PLAN
11-9-2021 [\[27\]](#)

REGINALD KERNEY/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.

Reginald Deshaun Kerney ("Debtor") seeks confirmation of the First Modified Chapter 13 Plan. Doc. #27.

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.

16. [21-12394](#)-B-13 **IN RE: FELIX/RAMONA LEDESMA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
11-19-2021 [\[17\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to the confirmation of Felix Ledesma's and Ramona Ledesma's ("Debtors") plan under 11 U.S.C. § 1325(b) because the Debtors' plan did not provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the plan. Doc. #17.

The parties filed a joint stipulation to resolve Trustee's objections on December 3, 2021. Doc. #30. As part of that stipulation, Trustee withdrew his objection. Accordingly, this objection will be DROPPED FROM CALENDAR.

17. [18-11697](#)-B-13 **IN RE: JOSE MUNOZ JR. AND DEBORAH MUNOZ**
[SLL-6](#)

MOTION TO AVOID LIEN OF EGC FINANCIAL, LLC
11-11-2021 [\[84\]](#)

DEBORAH MUNOZ/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Jose J. Munoz Jr. and Deborah V. Munoz ("Debtors") seek to avoid a
judicial lien in favor of Merchants Financial Guardian, Inc.
("Creditor") in the sum of \$9,674.47 and encumbering residential real
property located at 3221 West Delaware Ct., Visalia, CA 93291
("Property").⁸ Doc. #19.

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

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish
four elements: (1) there must be an exemption to which the debtor
would be entitled under § 522(b); (2) the property must be listed on
the debtor's schedules as exempt; (3) the lien must impair the
exemption; and (4) the lien must be either a judicial lien or a non-
possessory, non-purchase money security interest in personal property
listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re*
Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re*

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Deborah Munoz in favor of Creditor in the sum of \$7,137.30 on March 6, 2013. Doc. #87, *Ex. C*. The abstract of judgment was issued on March 28, 2013 and recorded in Tulare County on May 3, 2013. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #86. The schedules estimate that lien was approximately \$10,843.97 on the petition date. Doc. #82, *Am. Sched. D*.

As of the petition date, Property had an approximate value of \$300,000. Docs. #1, *Sched. A/B*; #86. The only unavoidable lien encumbering Property is a deed of trust in favor of Select Portfolio Servicing in the amount of \$370,809.10. Doc. #82, *Am. Sched. D*. Debtors claimed a "wildcard" exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000.00. *Id.*, *Am. Sched. C*. Property's encumbrances can be illustrated as follows:

Fair market Value of Property		\$300,000.00
Total amount of unavoidable liens	-	\$370,809.10
Wildcard exemption	-	\$1,000.00
Remaining equity for judicial liens	=	(\$71,809.10)
Creditor's judicial lien	-	\$10,843.97
Extent Debtor's exemption impaired	=	(\$82,653.07)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

No party in interest timely filed written opposition. Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

⁸ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Eric M. Perlman, Creditor's Manager, and registered agent for service of process, by mail at Creditor's mailing address on November 11, 2021. Doc. #88.

18. [21-12297](#)-B-13 **IN RE: ISAAC/WANDA SANTOS**
[MHM-1](#)

MOTION TO DISMISS CASE
11-8-2021 [\[25\]](#)

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The chapter 13 trustee, Michael H. Meyer, withdrew this motion on December 6, 2021. Doc. #44. Accordingly, this matter will be DROPPED FROM CALENDAR.

19. [21-11699](#)-B-13 **IN RE: MARK ROKKE**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
11-9-2021 [\[26\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Scott Lyons ("Applicant"), attorney for Mark David Rokke ("Debtor"), requests interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$6,885.12 under 11 U.S.C. §§ 330, 331. Doc. #26. This amount consists of \$6,424.14 for reasonable compensation for services rendered and \$460.98 as reimbursement for actual, necessary expenses incurred from June 23, 2020 through October 26, 2021. *Id.*

Debtor signed a statement of consent on October 29, 2021 indicating that he had read the fee application and approves the same.

No party in interest timely filed written opposition, but there were errors in the fee summary and time records. The motion will be GRANTED.

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

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

As a preliminary matter, the *Notice of Hearing* (Doc. #26) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. It states that written opposition "shall be filed with the clerk of the bankruptcy courthouse and served upon the Debtor(s) and their attorney of record, the Chapter 13 Trustee, the United States Trustee, and any parties requesting special notice[,] " but the addresses of these parties are not provided. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

The original Chapter 13 Plan is the operative plan in this case. Docs. #4; #17. Section 3.05 indicates that Applicant was paid \$1,960.00 prior to filing the case and, subject to court approval, additional fees of \$10,040.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #4. Applicant received a total of \$2,310.00 pre-petition, which consists of a retainer of \$1,960.00, filing fees of \$313.00, and credit report fees of \$37.00. Doc. #28, *Ex. A*.

This is Applicant's first interim fee application, notwithstanding a previous motion that was denied for procedural reasons. Applicant requests \$6,885.12 pursuant to § 331. Doc. #26. The source of funds for payment of the fees will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan. Doc. #72. Applicant declares that there are sufficient funds remaining in the plan for attorney fees, so payment of this fee application will not affect plan feasibility. *Id.*, § 8(3).

The fee summary is incorrect and there are errors in the time records. The fee summary states that Applicant's office provided 43.8666̄ (43 hours and 52 minutes) billable hours of legal services totaling \$6,424.14 in fees as follows:

Professional	Rate	Claimed Hours	Billed Hours	Claimed Amount	If hours were correct
Scott Lyons	\$400.00	0.5	0.00	\$0.00	\$0.00
Louis Lyons	\$350.00	7.8	7.8	\$2,730.00	\$2,730.00
Sylvia Gutierrez	\$100.00	35.566 $\bar{6}$	35.566 $\bar{6}$	\$3,694.14	\$3,566.67
Hours & Fees		43.866 $\bar{6}$	43.366 $\bar{6}$	\$6,424.14	\$6,286.67

Doc. #26, ¶ 7; cf. Doc. #28, Ex. B.

The error appears to be derived from an entry from January 26, 2021 in which Sylvia Gutierrez billed \$192.50 for 0.55 hours, which would be at the \$350.00 rate. The entry states "Client met with attorney to go over income."

Should this have instead been billed to Louis Lyons? If so, Mr. Lyons billed hours would increase by 0.55 hours, giving him total fees of \$2,922.50 rather than \$2,730.00. Meanwhile, Sylvia Gutierrez's hours would decrease from 35.566 $\bar{6}$ to 35.016 $\bar{6}$. This would reduce her fees to approximately \$3,501.67. Using these numbers, the fees would total \$6,424.17, which gets very close to the fees requested in this application. The remaining \$0.03 cent discrepancy is explained by rounding issues because Applicant submitted time logs in minutes rather than hours. The court will allow the requested fees of **\$6,424.14** in this instance.

Applicant is urged to submit accurate fee summaries, double check time sheet entries, and consider submitting time sheets in decimal hour format, rather than raw minutes. **Future inaccurate fee summaries shall result in denial with no further attempts by the court to piece together the requested amounts from erroneous time records.**

Applicant also requests **\$460.98** in expenses as follows:

Postage	\$110.98
Filing fees	+ \$313.00
Credit Reports	+ \$37.00
Total Costs	= \$460.98

Doc. #6, ¶ 6. Combined, the total amount of fees and expenses requested is **\$6,885.12**.

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

Applicant's services included, without limitation: (1) pre-petition consulting with Debtor and fact gathering; (2) preparing and filing

the petition, schedules, plan, and other forms; (3) confirming the original chapter 13 plan; (4) preparing for and appearing at the 341 meeting of creditors; (5) claims administration; and (6) preparing this fee application. *Id.* The court finds the services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition. As noted above, Debtor consented to the application. Accordingly, this motion will be GRANTED. Applicant will be awarded \$6,885.12, consisting of \$6,424.14 in fees and \$460.98 in costs, on an interim basis under § 331, subject to final review pursuant to § 330. After application of the \$2,310.00 paid by Debtor pre-filing, the chapter 13 trustee is authorized, in its discretion, to pay Applicant \$5,036.10 in accordance with the confirmed chapter 13 plan for services rendered and expenses incurred from June 23, 2020 through October 26, 2021.

11:00 AM

1. [20-10024](#)-B-7 **IN RE: SUKHJINDER SINGH**
[20-1036](#) [JRL-2](#)

MOTION BY JERRY R. LOWE TO WITHDRAW AS ATTORNEY
11-2-2021 [\[78\]](#)

SALVEN V. SINGH ET AL

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jerry R. Lowe ("Counsel"), attorney for defendants Sukhjinder Singh, Manjinder Singh, Lakhvir Singh, and Balwinder Kaur (collectively "Defendants"), seeks to withdraw as attorney for Defendants. Doc. #78.

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

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

An *Ex Parte Motion to Extend Fact Discovery Schedule* (Doc. #40) was previously filed by Defendants on January 12, 2021 and granted on January 14, 2021 (Doc. #41). The DCN for that motion was JRL-2. This motion also has a DCN of JRL-2 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, 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. The *Notice of Hearing* (Doc. #79) here states that opposition shall be "served with the court by the responding party[,]" but omits the names and addresses to whom opposition must be sent.

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

2. [21-10124](#)-B-13 **IN RE: KIRK/JAYCEE KILLIAN**
[21-1005](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
2-9-2021 [[1](#)]

U.S. TRUSTEE V. KILLIAN ET AL
JUSTIN VALENCIA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The parties' stipulation to resolve this adversary proceeding was approved on September 7, 2021. Docs. ##27-28. Judgment was entered on September 14, 2021 in favor of plaintiff United States Trustee and against defendants Kirk P. Killian and Jaycee M. Killian. Doc. #29. That same day, Defendants filed a declaration and exhibit evidencing receipt of reimbursement from Defendants' counsel. Docs. ##31-32. The adversary proceeding was subsequently closed on October 4, 2021. Accordingly, this pre-trial conference will be DROPPED FROM CALENDAR because judgment has been entered and the case has closed.

3. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**
[20-1068](#)

MOTION TO SET ASIDE JUDGMENT AND DEFAULT
10-14-2021 [[87](#)]

U.S. TRUSTEE V. KHAN
MOHOMMAD KHAN/ATTY. FOR MV.

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

DISPOSITION: Denied with prejudice.

ORDER: The court will issue an order.

Mohammad Khan, also known as Mohommad Khan in other pleadings ("Defendant"), moves to set aside the judgment and entry of default against him. Doc. #87.

Tracy Hope Davis, United States Trustee for Region 17 ("Plaintiff"), opposed. Doc. #90. The court notes that Plaintiff's opposition was one day late, but Plaintiff was not properly served at the correct address. Doc. #89. That reason alone is sufficient for denial.

As noted by Plaintiff, the motion fails to demonstrate why the *Order Granting Plaintiff's Motion for Default Judgment* (Doc. #70) and *Judgment* (Doc. #71) should be vacated. The motion does not meet the standards for relief under Fed. R. Civ. P. 59(e) or 60, as applicable under Fed. R. Bankr. P. 9023 and 9024.

Defendant previously filed a similar motion on July 20, 2021. Doc. #77. The court dispensed with Defendant's claims and denied that motion on September 29, 2021. Docs. ##82-83. *Res judicata* and "law of the case" applies.

This motion will be DENIED WITH PREJUDICE.

4. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
[20-1060](#) CALIFORNIA LOCAL HEALTH CARE DISTRICT**

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-19-2020 [\[1\]](#)

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOC V.
RILEY WALTER/ATTY. FOR PL.
DISMISSED 7/22/21, CLOSED 8/9/21

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The parties stipulated to dismiss this adversary proceeding with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) (incorporated under Federal Rule of Bankruptcy Procedure 7041) on July 21, 2021. Docs. #34; #36. The adversary proceeding was closed on August 9, 2021. Accordingly, this pre-trial conference will be DROPPED FROM CALENDAR because the case has been dismissed and closed.

5. [20-11296](#)-B-7 **IN RE: KYLE/DEANNA MAURIN**
[20-1044](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
7-10-2020 [[1](#)]

KAPITUS SERVICING, INC. V.
MAURIN
MICHAEL MYERS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 26, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

The parties stipulated to modify the scheduling order to continue the pre-trial conference and extend the deadlines for filing pre-trial statements. Doc. #69. The court approved the stipulation on December 7, 2021 and the pre-trial conference was continued to January 26, 2022 at 11:00 a.m. Accordingly, the pre-trial conference is CONTINUED.

6. [20-12729](#)-B-7 **IN RE: CHUCK/NICOLE COZZITORTO**
[FW-1](#)

MOTION TO AVOID LIEN OF SAN JOAQUIN VALLEY HAY GROWERS
ASSOCIATION AND/OR MOTION TO AVOID LIEN OF QUALITY MILK
SERVICE INC.
5-5-2021 [[35](#)]

NICOLE COZZITORTO/MV
PETER FEAR/ATTY. FOR DBT.

NO RULING.