



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 21, 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. [23-10102](#)-A-13 **IN RE: KERRIE GRAY**
[FW-5](#)

MOTION TO MODIFY PLAN
11-3-2023 [\[94\]](#)

KERRIE GRAY/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 1, 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 pursuant to 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. #102. 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 January 11, 2024. 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 18, 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 18, 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.

2. [23-11409](#)-A-13 **IN RE: RICHARD DAY AND NANCY CAMPBELL-DAY**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
11-16-2023 [\[27\]](#)

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 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 ("Movant"), counsel for Richard Max Day and Nancy Ruth Campbell-Day (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$6,108.50 and reimbursement for expenses in the amount of \$904.33 for services rendered from April 12, 2023 through November 16, 2023. Doc. #29. Debtors' confirmed plan provides, in addition to \$1,374.00 paid prior to filing the case, for \$13,626.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. #19, 24. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Doc. #27.

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) fact gathering and filing chapter 13 case; (2) preparing petition, schedules, and related forms; (3) attending meeting of creditors; (4) preparing and prosecuting Debtors' first modified plan; (5) preparing the fee application; and (6) general case administration. Exs. A & B, Doc. #29. 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 \$6,108.50 and reimbursement for expenses in the amount of \$904.33 to be paid in a manner consistent with the terms of the confirmed plan.

3. [23-11411](#)-A-13 **IN RE: JASON/DANIELLE PETERSON**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
11-17-2023 [\[32\]](#)

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 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 ("Movant"), counsel for Jason Andrew Peterson and Danielle Lynn Peterson (collectively, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$5,871.00 and reimbursement for expenses in the amount of \$946.39 for services rendered from May 17, 2023 through November 16, 2023. Doc. #32. Debtors' confirmed plan provides, in addition to \$1,687.00 paid prior to filing the case, for \$13,313.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##23, 29. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Doc. #32.

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) fact gathering and filing chapter 13 case; (2) preparing petition, schedules, and related forms; (3) attending meeting of creditors; (4) preparing and prosecuting Debtors' first modified plan; (5) preparing the fee application; and (6) general case administration. Exs. A & B, Doc. #35. 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 \$5,871.00 and reimbursement for expenses in the amount of \$946.39 to be paid in a manner consistent with the terms of the confirmed plan.

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-7-2023 [\[17\]](#)

DAVID BOONE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Guadalupe Sierra-Osorio and Antonioette Margarita Sierra (together, "Debtors") filed their chapter 13 plan (the "Plan") on October 18, 2023. Doc. #3. Michael Meyer, chapter 13 trustee ("Trustee"), objects to confirmation of the Plan on the grounds that the Plan: (1) has not been proposed in good faith; and (2) provides for the payment of attorneys' fees in excess of the fixed compensation allowed in LBR 2016-1(c). Doc. #17.

Trustee asserts that the Plan has not been proposed in good faith because Debtors are below median income debtors and propose to pay for three vehicles in Class 2 and pay 0% to general unsecured creditors. Doc. #17. Section 1325(b)(1)(B) provides that if a trustee objects to confirmation of a chapter 13 plan, the court may not confirm the plan unless all of the debtor's "projected disposable income" to be received during the term of the plan will be applied to make payments to unsecured creditors. 11 U.S.C. § 1325(b)(1)(B). Here, because Debtors have an income that is below the median, Debtors "must prove on a case-by-case basis that each claimed expense is reasonably necessary. See [11 U.S.C.] §§ 1325(b)(2) and (3)." Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 71 n.5. Debtors, who have the burden of proof on all elements of plan confirmation, have not established that the retention of all three vehicles are reasonably necessary for Debtors' maintenance or support. Based on the evidence before the court, Trustee's objection to confirmation on this ground will be sustained.

LBR 2016-1(c) governs the requirements for a chapter 13 debtor's attorney to request "no-look" fees. One of those requirements is that the attorney "must file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*." LBR 2016-1(c)(2). A review of the docket shows that Debtors' counsel has not filed the required Form EDC 3-096. Based on the evidence before the court, Trustee's objection to confirmation on this ground will be sustained.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY LLC
11-15-2023 [\[12\]](#)

FORD MOTOR CREDIT COMPANY LLC/MV
DAVID BOONE/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Guadalupe Sierra-Osorio and Antonioette Margarita Sierra (together, "Debtors") filed their chapter 13 plan (the "Plan") on October 18, 2023. Doc. #3. Ford Motor Credit Company LLC ("Creditor") objects to confirmation of the Plan on the grounds that the Plan: (1) does not provide for adequate pre-confirmation protection payments; (2) undervalues Creditor's collateral; and (3) does not provide for an appropriate interest rate on Creditor's secured claim. Doc. #12.

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 § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on November 15, 2023. Claim #4.

Creditor provided evidence of the Retail Installment Sale Contract (Ex. B, Doc. #15), which shows that Creditor's secured claim is attributable to the purchase of such property by Debtors. Therefore, Creditor is entitled to pre-confirmation adequate protection payment under § 1326(a)(1)(C). Creditor's objection to confirmation is sustained on this ground.

LBR 3015-1(i) requires Debtors to file, serve, and set for hearing a valuation motion if a proposed plan will reduce or eliminate a secured claim based on the value of its collateral. LBR 3015-1(i). The hearing must be concluded before or in conjunction with the confirmation of the plan. Id. Here, Creditor filed a proof of claim for the secured amount of \$24,575.00. Claim #4. The Plan reduces Creditor's claim based on the reduced value of its collateral to \$21,473.31. Doc. #3. Thus, Debtors must file, serve, and set for hearing a valuation motion pursuant to LBR 3015-1(i) before the Plan can be confirmed. Creditor's objection to confirmation is sustained on this ground.

The Plan proposes an interest rate of 6%. Doc. #3. Creditor contends that under the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), the interest rate should be at least 11.5%. Doc. #12.

The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till, 541 U.S. at 480. This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80.

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor argues that 11.5% is the appropriate rate because the national prime rate of interest as of October 18, 2023, was 8.5%. Ex. D, Doc. #15. The court agrees that setting the interest rate below the current prime rate of interest does not satisfy Till. Creditor's objection to confirmation is sustained on this ground.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

6. [23-12324](#)-A-13 **IN RE: BERNARDO DECENA PIZANO**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
12-4-2023 [\[23\]](#)

ALLY BANK/MV
PETER BUNTING/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Bernardo Decena Pizano ("Debtor") filed his chapter 13 plan (the "Plan") on October 18, 2023. Doc. #3. Ally Bank ("Creditor") objects to confirmation of

the Plan on the grounds that the Plan does not provide for an appropriate interest rate on Creditor's secured claim. Doc. #23.

The Plan proposes an interest rate of 5%. Doc. #3. Creditor contends that under the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), the interest rate should be at least 10.5%. Doc. #23.

The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till, 541 U.S. at 480. This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80.

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor argues that 10.5% is the appropriate rate because the national prime rate of interest as of October 18, 2023, was 8.5%. Doc. #23. The court agrees that setting the interest rate below the current prime rate of interest does not satisfy Till.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

7. [23-12324](#)-A-13 **IN RE: BERNARDO DECENA PIZANO**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST NATIONAL ASSOCIATION
11-21-2023 [\[18\]](#)

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Bernardo Decena Pizano ("Debtor") filed his chapter 13 plan (the "Plan") on October 18, 2023. Doc. #3. U.S. Bank Trust National Association, not in its Individual Capacity but solely as Owner Trustee for RCF2 Acquisition Trust ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not provide for the curing of the \$8,625.37 default on Creditor's claim. Doc. #18. The Plan only provides for arrears in the amount of \$4,360.00. Doc. #3.

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 its proof of claim on November 30, 2023. Claim #4.

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

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

8. [23-12433](#)-A-13 **IN RE: ROBERTO HUERTA AND KRYSTYNA MARTINEZ**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
11-22-2023 [\[15\]](#)

KRYSTYNA MARTINEZ/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 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). 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.

Roberto Huerta and Krystyna Maria Martinez (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors'

2018 Chevrolet Tahoe LS ("Vehicle"), which is the collateral of AmeriCredit Financial Services, Inc. dba GM Financial ("Creditor"). Doc. #15.

11 U.S.C. § 1325(a) (*) (the hanging paragraph) permits a debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert the Vehicle was purchased more than 910 days before the filing of this case. Decl. of Krystyna Maria Martinez, Doc. #17. Debtors assert a replacement value of the Vehicle of \$29,569.00 and ask the court for an order valuing the Vehicle at \$29,569.00. Doc. #15; Martinez Decl., Doc. #16. On November 8, 2023, Creditor filed a proof of claim that values the Vehicle at \$29,569.00. Claim #2.

The motion is GRANTED. Creditor's secured claim will be fixed at \$29,569.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

9. [19-10558](#)-A-13 **IN RE: GWENDOLYN BROWN**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-27-2023 [[123](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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 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.

Fear Waddell, P.C. ("Movant"), counsel for Gwendolyn Brown ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$7,546.50 and reimbursement for expenses in the amount of \$332.53 for services rendered from December 10, 2021 through October 12, 2023. Doc. #123. Debtor's confirmed plan provides, in addition to \$1,190.00 paid prior to filing the case, for \$16,000.00 in attorney's fees. Plan, Doc. ##108, 120. One prior fee application has been granted to Debtor's prior attorney, David Jenkins, awarding final compensation in the amount of \$6,000.00. Order, Doc. #88. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #125.

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). 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) preparation and prosecution of modified plan; (2) preparation of motion to borrow money to purchase home; (3) preparation of stipulation for relief from the automatic stay proceeding; (4) case administration; (5) preparation of fee application; and (6) preparation for discharge and case closing. Doc. #125. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$7,546.50 and reimbursement for expenses in the amount of \$332.53 to be paid in a manner consistent with the terms of the confirmed plan.

10. [23-12360](#)-A-13 **IN RE: LAWRENCE GOWIN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-4-2023 [\[13\]](#)

ANDREW MOHER/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 debtor filed a modified plan on December 9, 2023 (AAM-1, Doc. #17), with a motion to confirm the modified plan set for hearing on February 1, 2024 at 9:30 a.m. Doc. ##17-21.

11. [19-15081](#)-A-13 **IN RE: CHRISTOPHER/KERRI TYSON**
[SL-3](#)

MOTION TO MODIFY PLAN
10-12-2023 [\[45\]](#)

KERRI TYSON/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [23-11198](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[TCS-1](#)

CONTINUED MOTION TO CONFIRM PLAN
10-4-2023 [\[34\]](#)

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

NO RULING.

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

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

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to dismiss the case on December 19, 2023. Doc. #29.

14. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FW-3](#)

MOTION TO PAY
12-15-2023 [\[11\]](#)

KODIAK TRUCKING INC./MV
PETER FEAR/ATTY. FOR DBT.
OST 12/18/23

NO RULING.