

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, March 28, 2019
Place: Department B – Courtroom #13
Fresno, California

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. 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. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[FRB-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-14-2019 [\[46\]](#)

FARM CREDIT SERVICES OF
AMERICA, PCA/MV
DAVID JOHNSTON
MICHAEL GOMEZ/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Farm Credit Services of America ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) to sell a KCI Raisin Tray Pickup Machine, Model NO. CPPUM44, Serial No. 6101401115 ("Equipment").

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

After review of the included evidence, the court finds that "cause" exists to lift the stay. Movant holds an unsatisfied judgment against debtors. Doc. #50, 51. The judgment provides, inter alia, that Movant is entitled to immediate possession of the Equipment and that Movant is entitled to sell the Equipment and apply the proceeds toward payment of the judgment. Id. Movant is in possession of the

Equipment currently, and was in possession prior to the commencement of this bankruptcy case. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the property is depreciating.

2. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-18](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
3-8-2019 [\[311\]](#)

VERSA MARKETING, INC./MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may . . . reject any executory contract . . . unexpired lease of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the four agreements detailed in debtor's exhibits. Doc. #314.

Any claim based on this motion shall be filed on or before June 19, 2019 provided notice of the order rejecting this contract is served on the other parties to this contract on or before April 10, 2019.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-88](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
3-8-2019 [[1215](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

NO RULING.

1:30 PM

1. [18-15011](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H.
MEYER
2-5-2019 [\[13\]](#)

MICHAEL MEYER/MV
F. GIST

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED.

By prior order of the court (doc. #29), debtor had until either
March 14, 2019 to file a written response to the trustee's
objection, or file a modified plan not later than March 21, 2019 or
the objection would be sustained on the grounds stated therein.
Debtor did neither. Therefore, this objection is SUSTAINED.

2. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[HTK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-2019 [\[13\]](#)

MEL ABDELAZIZ/MV
H. KHARAZI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

Movant Mel Abdelaziz ("Movant") asks the court to modify the
automatic stay to allow Movant to complete an eviction of the debtor
from a commercial property located at 1708 S. Cedar, Fresno, CA. The
Fresno County Superior Court apparently entered a judgment for
possession on December 4, 2017. Shortly thereafter, the debtor filed
a Superior Court lawsuit against movant alleging many claims related
to the property. The parties agreed that debtor could continue to

possess the property if he made monthly rental payments of \$2,000 so the lawsuit could proceed. Those payments ceased in November 2018.

The debtor filed a bankruptcy case on December 4, 2018 which was dismissed on January 17, 2019 for failure to file schedules, *inter alia*. This bankruptcy case was filed February 14, 2019. The court entered an order extending the automatic stay to April 12, 2019 conditioned on the debtor complying with certain requirements such as attending the meeting of creditors and providing all documents necessary to the Chapter 13 trustee. The order was without prejudice to any party including movant filing and prosecuting a motion for relief from the automatic stay.

First, there many procedural errors with the motion:

1. LBR 9004-2(c)(1) requires that motions, notices, *inter alia*, to be filed as separate documents. Here, the motion and notice were combined into one document and not filed separately. Doc. #13.

2. LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on February 20, 2019 and set for hearing on March 28, 2019. Doc. #13, 17. March 28, 2019 is more than 28 days after February 20, 2019 and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice did not state whether written opposition was required, and if it was, when it must be filed. Doc. #17. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and it must be filed at least 14 days prior to the hearing and served on the movant. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

3. The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Second, Movant did not submit any exhibits with the motion even though they were referenced in Mr. Kharazi's declaration. There is therefore no evidence before the court other than Mr. Kharazi's hearsay statements about the entry of the judgment for possession or the existence of the interim possession agreement. The court will not accept those statements on this contested motion. The debtor provided no competent evidence in opposition to the motion.

Third, because of the lack of evidence, the movant has not met the burden of proof. Relief from stay may be granted so long as the movant establishes a "colorable claim" sufficient to establish his or her entitlement to seek relief from the automatic stay. Biggs v. Stovin (In re Luz Int'l, Ltd., 219 B.R. 837, 842 (9th Cir. BAP 1998); see also Veal v. Am. Home Mortg. Servicing Inc. (In re Veal), 450 B.R. 897, 914 (9th Cir. BAP 2011). A claim is colorable for relief from stay purposes when there is a "reasonable likelihood" that the creditor has a legitimate claim or lien against the debtor's property. Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 32-34 (1st Cir. 1994).

If proven with competent evidence, movant has a "colorable claim." A Superior Court has entered a judgment for possession. The debtor essentially admits in the schedules his claim to the property is "equitable" based on agreements which are not part of the record. Movant has record title to the property.

The debtor's references to GMAC Mortg. Corp. v. Salisbury (In re Loloee), 241 B.R. 655, 660 (9th Cir. BAP 1999) and Bear v. Coben (In re Golden Plan of Cal., Inc.), 829 F.2d 705, 711-12 (9th Cir. 1986) are of no assistance. Those cases dealt with rulings regarding priority of interests in the context of sale motions. There were questions of due process in those cases. That is not the case here. The court can grant stay relief without ruling on the validity of any interest. This is an administrative motion which only involves "colorable" claims to the commercial property. There is no dispute movant has a colorable claim. In re Luz Int'l, Ltd. 219 B.R. at 842.

The motion is DENIED WITHOUT PREJUDICE.

3. [18-15121](#)-B-13 **IN RE: MIGUEL/ARACELI PADILLA**
[SL-1](#)

MOTION TO CONFIRM PLAN
1-31-2019 [\[27\]](#)

MIGUEL PADILLA/MV
SCOTT LYONS
RESPONSIVE PLEADING WITHDRAWN

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The court notes that the chapter 13 trustee withdrew their opposition. Doc. #65.

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

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
2-19-2019 [\[163\]](#)

PETER FEAR

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

The motion will be GRANTED. Debtor's bankruptcy counsel, Fear Waddell, P.C., requests fees of \$25,644.00 and costs of \$698.18 for a total of \$26,342.18 for services rendered from December 22, 2017 through January 31, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparing and filing the bankruptcy petition and all other necessary documents, (2) Claim administration and objections, (3) Filing and prosecuting motions to confirm a chapter 13 plan, (4) Opposing several motions to dismiss, and (5) General case administration. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$25,644.00 in fees and \$698.18 in costs.

5. [18-15127](#)-B-13 **IN RE: FRANCISCO GUADRON AND MARIA CHAVOYA-GUADRON**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-4-2019 [\[18\]](#)

MICHAEL MEYER/MV
JERRY LOWE

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED.

By prior order of the court (doc. #25), debtor had until either March 14, 2019 to file a written response to the trustee's objection, or file a modified plan not later than March 21, 2019 or the objection would be sustained on the grounds stated therein. Debtor did neither. Therefore, this objection is SUSTAINED.

6. [18-14943](#)-B-13 **IN RE: MATTHEW CAZARES**
[MHM-3](#)

MOTION TO DISMISS CASE
2-11-2019 [\[37\]](#)

MICHAEL MEYER/MV
DISMISSED 3/1/19

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on March 1, 2019. Doc. #47.

7. [17-10245](#)-B-13 **IN RE: MICHAEL/CAROL LUSK**
[PBB-1](#)

MOTION FOR ALLOWING TRANSFER OF PROPERTY OF THE ESTATE
3-14-2019 [\[50\]](#)

MICHAEL LUSK/MV
PETER BUNTING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtors are authorized, but not required, to transfer title of the 2006 Chevrolet Corvette and the 2010 Mercedes-Benz GL550 to Giant Chevrolet of Visalia in trade for a used 2016 Cadillac SRX. Doc. #50. The court notes that the Corvette and GL550 are unencumbered, and the Corvette was exempt in the amount of \$3,050.00. Debtors will also pay \$2,400.00 for the purchase of the Cadillac.

8. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. DEBTORS ATTORNEY(S)
2-11-2019 [\[76\]](#)

GABRIEL WADDELL

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

This motion is GRANTED. Movant is awarded \$9,168.50 in fees and \$293.65 in costs.

9. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[FW-3](#)

MOTION TO MODIFY PLAN
2-11-2019 [\[81\]](#)

LAURIE BUDRE/MV
GABRIEL WADDELL

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount 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.

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

10. [19-10372](#)-B-13 **IN RE: JERUSALEN GUERRERO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-11-2019 [\[16\]](#)

MARK ZIMMERMAN
\$310.00 FINAL INSTALLMENT PAYMENT 3/12/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full on March 12, 2019.

11. [18-13481](#)-B-13 **IN RE: JAVIER VELIZ**
[PBB-4](#)

MOTION TO VALUE COLLATERAL OF NELLIE O. WADE
2-26-2019 [\[98\]](#)

JAVIER VELIZ/MV
PETER BUNTING

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

The respondent's secured claim will be fixed at \$0.00 and the deficiency shall be classified as an unsecured priority claim.

Fresno Department of Child Support Services filed a claim on behalf of Nellie O. Wade. Claim #1. The claim is in the amount of \$74,615.42. The claim does not list a secured portion - the claim is listed entirely as unsecured priority debtor.

Debtor's Schedule D lists claim #1 as secured by personal property in the amount of \$26,638.95. Doc. #1. There are senior liens in the aggregate amount of \$105,125.62. After the senior liens are deducted, there is no value remaining that would secure the lien held by Nellie O. Wade.

The only evidence movant submits to support the valuation is creditor's claim. This jurisdiction's local rules require a motion to value collateral be noticed and set for a hearing before a plan can be confirmed if the plan reduces an allowed secured claim in class 2 based on collateral value. See Local Rule of Practice 3015-1(i). Because respondent's claim is not actually being impaired, the court does not believe a declaration from the debtor, an appraisal, or some other form of evidence is necessary to value the collateral at \$0.00.

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.

12. [18-15084](#)-B-13 **IN RE: ROBERT SANFORD**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
2-4-2019 [\[16\]](#)

SCOTT LYONS

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. Debtor filed an amended plan. Doc. #38.

13. [18-13887](#)-B-13 **IN RE: GREG/MARY JENNINGS**
[SAH-3](#)

MOTION TO CONFIRM PLAN
1-30-2019 [\[52\]](#)

GREG JENNINGS/MV
SUSAN HEMB
RESPONSIVE PLEADING WITHDRAWN

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The court notes that the chapter 13 trustee withdrew their opposition. Doc. #62.