

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 22, 2021
Place: Department A - Courtroom #11
Fresno, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [20-13804](#)-A-13 **IN RE: EVERETTE DEVAN AND RENEE FLORES-DEVAN**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-5-2021 [\[26\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 not done here.

In Part 1 of Schedule C (Official Form 106C), the debtor is to identify property claimed as exempt and list the amount of the exemption claimed. In stating the amount of the exemption claimed, the debtor may either enter a sum certain dollar amount or check a box that states "100% of fair market value, up to any applicable statutory limit." In this case, Everette Charles DeVan and Renee Leticia Flores-DeVan (together, "Debtors") identified \$45.00 in cash (the "Cash") claimed as exempt. Schedule C, Doc. #1. Rather than state a specific dollar amount of the claimed exemption, Debtors chose to check the box exempting 100% of the fair market value of the Cash, up to any applicable statutory limit. Debtors' Schedules A/B and C list the Cash with a current value of \$45.00 for the portion owned by Debtors. Schedules A/B and C, Doc. #1. Debtors claim an exemption in the Cash under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(5), which permits Debtors to exempt their interest in up to \$30,825 in any property. See Schedule C, Doc. #1; C.C.P. § 703.140(b)(5).

Michael H. Meyer ("Trustee"), the Chapter 13 trustee, objects to \$4,282.96 in exemptions Debtors claimed in the following additional property under C.C.P. § 703.140(b)(5). Tr.'s Obj., Doc. #26.

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Description	Exemption Amount
Tent	\$50.00
Golf Clubs	\$25.00
4 Bowling Balls	\$100.00
Digital Camera	\$50.00
Checking: Wells Fargo Bank	\$849.00
Checking: Pacific Service CU	\$1.76
Savings: Pacific Service CU	\$5.00
Rental deposit: Holders Properties	\$1,320.00
New York Whole Life	\$1,882.20
Total	\$4,282.96

Trustee asserts that, by checking the box exempting 100% of the fair market value of the Cash, up to any applicable statutory limit, Debtors used the entire amount of their \$30,825 exemption available under C.C.P. § 703.140(b)(5) to exempt the Cash, so there no dollar amount remains under C.C.P. § 703.140(b)(5) to exempt the property listed above. Trustee states that "[c]laiming an exemption of 100% of the statutory limit presumes that Debtors exempt the asset for the full statutory limit, here \$30,825.00." Obj., Doc. #26.

The court disagrees with Trustee. Debtors did not claim an exemption of 100% of the statutory limit imposed by C.C.P. § 703.140(b)(5) in the Cash. Rather, Debtors claimed an exemption of 100% of the fair market value of their interest in \$45.00 Cash, up to any applicable statutory limit. The court acknowledges that when a debtor claims an exemption in 100% of the fair market value of a non-cash asset such exemption may be objectionable because the value of the asset claimed as exempt may exceed the applicable statutory limit. See Schwab v. Reilly, 560 U.S. 770 (2010). However, it is unclear to the court how Debtors' interest in the Cash might exceed the fair market value of the Cash, which would be \$45.00. The court finds that Debtors' claimed exemption in the Cash under C.C.P. § 703.140(b)(5) used \$45.00 of the applicable statutory limit, leaving Debtors with the ability to exempt other property in an amount of up to \$30,780.00. Thus, the court holds that Debtors have sufficient value remaining under C.C.P. § 703.140(b)(5) to fully exempt each of the assets listed in the table above.

Accordingly, Trustee's objection is OVERRULED.

2. [21-10206](#)-A-13 **IN RE: MICHAEL/RANDI KESTNER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-5-2021 [\[19\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.
\$80.00 INSTALLMENT FEE PAID 4/8/21
\$154.00 INSTALLMENT FEE PAID 4/9/21

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 have been paid in full. The case shall remain pending.

3. [20-11908](#)-A-13 **IN RE: BRIAN/STEPHANIE RICH**
[PBB-6](#)

MOTION TO MODIFY PLAN
3-9-2021 [\[79\]](#)

STEPHANIE RICH/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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.

4. [21-10125](#)-A-13 **IN RE: JOEL/ARACELI ALVARADO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-1-2021 [\[30\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtors filed a first modified plan on April 9, 2021 (MAZ-1, Doc. ##35-40), with a motion to confirm the first modified plan set for hearing on May 27, 2021 at 9:30 a.m.

5. [18-13226](#)-A-13 **IN RE: CHARLES/SHUANTA BROWN**
[TCS-1](#)

MOTION TO MODIFY PLAN
3-4-2021 [\[38\]](#)

SHUANTA BROWN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

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.

6. [21-10129](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[MHM-1](#)

MOTION TO DISMISS CASE
3-12-2021 [\[14\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

7. [20-12732](#)-A-13 **IN RE: JOSE CUIRIZ**
[MHM-3](#)

MOTION TO DISMISS CASE
3-4-2021 [[67](#)]

MICHAEL MEYER/MV
CHINONYE UGORJI/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 27, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1). The chapter 13 trustee asks the court to dismiss this case for unreasonably delay by the debtor that is prejudicial to creditors and for failure to confirm a chapter 13 plan. Doc. #67. This case was filed on August 19, 2020, and no plan has been confirmed.

While no written opposition to Trustee's motion has been filed, the court will continue the hearing on this motion to May 27, 2021 at 9:30 a.m. to track with the continued hearing debtor's motion to confirm the first modified chapter 13 plan (NUU-1).

The Trustee has opposed confirmation of the first modified plan. This motion may be granted should the debtor's motion to confirm the first modified plan be denied.

8. [20-12732](#)-A-13 **IN RE: JOSE CUIRIZ**
[NUU-1](#)

MOTION TO CONFIRM PLAN
2-24-2021 [[62](#)]

JOSE CUIRIZ/MV
CHINONYE UGORJI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 27, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii) that requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

This motion was set for hearing on at least 42 days' notice as required by LBR 3015-1(d)(1). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the first modified Chapter 13 plan. Tr.'s Opp'n, Doc. #71. 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 May 6, 2021. 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 May 13, 2021.

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 May 13, 2021. 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. A denial of this motion may result in the court granting Trustee's pending motion to dismiss (MHM-3).

9. [20-13342](#)-A-13 **IN RE: GINGER MULLINS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-4-2021 [\[36\]](#)

TOYOTA LEASE TRUST/MV
PETER BUNTING/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
NON-OPPOSITION

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). On March 10, 2021, the debtor filed written non-opposition stating that the debtor does not oppose the motion and will not appear at the scheduled hearing. Doc. #42. 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 non-responding 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Lease Trust, as serviced by Toyota Motor Credit Corporation d/b/a Toyota Financial Services ("Movant") seeks relief from the automatic stay

under 11 U.S.C. § 362(d)(1) with respect to a 2018 Lexus ES 350 VIN 58ABK1GG7JU0886014 ("Vehicle"). Doc. #36.

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 because the Vehicle lease agreement between the debtor and Movant has matured and the debtor has not provided Movant with payment for the lease of the Vehicle. Decl. of Hillary Coffelt, Doc. #38. The debtor has surrendered the Vehicle. Doc. #36. The debtor does not oppose Movant's motion. Doc. #42.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession and/or dispose of the Vehicle pursuant to applicable law. Relief from stay also is terminated to permit Movant to send any party or parties protected by the automatic stay any notice required by state and/or federal law, regulation or statute. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor's possessory interest in the Vehicle has expired, the Vehicle has been surrendered to Movant and the debtor does not oppose the motion.

10. [20-10748](#)-A-13 **IN RE: NIFESIA STENHOFF**
[WSL-2](#)

MOTION TO MODIFY PLAN
3-18-2021 [\[58\]](#)

NIFESIA STENHOFF/MV
GREGORY SHANFELD/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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.

11. [20-13554](#)-A-13 **IN RE: CYRUSS/KRISTEN LA MARSNA**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-5-2021 [\[22\]](#)

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

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

DISPOSITION: Sustained.

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

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Cyruss Bryndt La Marsna and Kristen Elizabeth La Marsna (together, "Debtors"), objects to Debtors' claim of a \$1,200.00 exemption in a Kimber 1911 Custom TLE II (the "Firearm"). Tr.'s Obj., Doc. #22; see Schedule C, Doc. #7. Debtors claim an exemption in the Firearm under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(3).

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § 703.140(b)[] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

C.C.P. § 703.140(b)(3) permits Debtors to exempt their interest in household goods, not to exceed \$725.00 in any particular item. The \$1,200 exemption claimed by Debtors in the Firearm exceeds the statutory limit. Debtors have not responded to Trustee's objection.

Accordingly, Trustee's objection is SUSTAINED because the \$1,200 exemption claimed by Debtors in the Firearm exceeds the statutory limit.

12. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[TCS-5](#)

MOTION TO MODIFY PLAN
3-4-2021 [\[79\]](#)

SARINA DUTEY/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a fourth modified plan on April 7, 2021 (TCS-6, Doc. ##88-94), with a motion to confirm the fourth modified plan set for hearing on May 13, 2021 at 9:30 a.m.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

13. [21-10171](#)-A-13 **IN RE: MICHELLE/MANUEL VALENCIA**
[GB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
3-16-2021 [\[19\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. The debtors filed a written response to the objection on April 13, 2021. Doc. #25.

The debtors filed their Chapter 13 plan ("Plan") on January 27, 2021. Doc. #4. Deutsche Bank National Trust Company, as certificate Trustee on Behalf of Bosco Credit II Trust Series 2010-1 ("Creditor") objects to confirmation of the Plan on the grounds that the Plan misidentifies Creditor and does not provide for cure of pre-petition arrears owed to Creditor. Doc. #19.

In response, the debtors argue that Creditor's objection is moot because the debtors have since filed an amended Schedule D (Doc. #23) and first modified chapter 13 plan (Doc. #24), which address Creditor's objection and nullifies confirmation of the original Plan. Doc. #25.

While the debtors did file a first modified chapter 13 plan, the debtors have not moved to confirm the first modified plan as required by Local Rule of Practice 3015-1(d)(1).

The court is inclined to overrule Creditor's objection as moot if the debtors promptly move to confirm the first modified plan and set that motion for hearing.

14. [21-10475](#)-A-13 **IN RE: MARY-ESTHER SANCHEZ**
[BDB-1](#)

MOTION TO VALUE COLLATERAL OF CREDIT ACCEPTANCE CORPORATION
3-16-2021 [\[16\]](#)

MARY-ESTHER SANCHEZ/MV
BENNY BARCO/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 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.

Mary-Esther F. Sanchez ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing the Debtor's 2014 Jeep Compass ("Property"), which is the collateral of Credit Acceptance Corporation ("Creditor"). Doc. #16.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property 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).

Debtor asserts the Property was purchased more than 910 days before the filing of this case. Doc. #18. Debtor asserts a replacement value of the Property of \$9,900.00 and asks the court for an order valuing the Property at \$9,900.00. Doc. #16; Doc. #18. Debtor is competent to testify as to the value of the Property. Creditor filed a proof of claim on March 1, 2021, which valued the Property at \$9,600.00. Claim 1. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$9,900.00. 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.

15. [18-15097](#)-A-13 **IN RE: ERIC/ELIZABETH AYALA**
[TCS-3](#)

MOTION TO MODIFY PLAN
3-3-2021 [\[54\]](#)

ELIZABETH AYALA/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 27, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

This motion was set for hearing on at least 35 days' notice as required by LBR 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the second modified chapter 13 plan. Tr.'s Opp'n, Doc. #61. Creditor Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust F ("Creditor"), also objected to confirmation of the second modified chapter 13 plan but indicated that its opposition could be addressed in the order confirming the plan. Doc. #65. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve written responses to both objections no later than May 6, 2021. The responses shall specifically address each issue raised in the objections to confirmation, state whether the issues

are disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee and Creditor shall file and serve their replies, if any, by May 13, 2021.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing any response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 13, 2021. If the debtors do not timely file a modified plan or written responses, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

16. [21-10398](#)-A-13 **IN RE: ALBERT/MARY SALAZAR**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF NBT BANK, N.A.
3-5-2021 [\[11\]](#)

MARY SALAZAR/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 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.

Albert A. Salazar and Mary Ann Salazar (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the Debtors' solar equipment ("Property"), which is the collateral of NBT Bank, N.A. ("Creditor"). Doc. #11.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property 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 Property was purchased more than 910 days before the filing of this case. Doc. #13. Debtors assert a replacement value of the Property of \$10,000.00 and ask the court for an order valuing the Property at \$10,000.00. Doc. #11; Doc. #13. Debtors are competent to testify as to the value of the Property. Creditor filed a proof of claim on March 18, 2021, which also valued the Property at \$10,000.00. Claim 12. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$10,000.00. 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.

1. [20-13822](#)-A-7 **IN RE: FAUSTO CAMPOS AND VERONICA NAVARRO**
[21-1006](#)

STATUS CONFERENCE RE: COMPLAINT
2-11-2021 [[1](#)]

RAMIREZ V. CAMPOS
PAMELA THAKUR/ATTY. FOR PL.

NO RULING.

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

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

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

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

DISPOSITION: Continued to September 16, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement (Doc. #40), the status conference will be continued to September 16, 2021, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than September 9, 2021.

3. [02-10437](#)-A-13 **IN RE: MARK STEINHAUER**
[20-1064](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-24-2020 [[1](#)]

STEINHAUER ET AL V. HSBC FINANCE CORPORATION
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Continued to May 27, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Due to the granting of Plaintiffs' motion for default judgment (matter #4, below), the status conference will be continued to May 27, 2021, at 11:00 a.m. to permit Plaintiffs to submit a default judgment to the court. If a default

judgment has not been entered on or before May 20, 2021, Plaintiffs shall file a unilateral status report not later than May 20, 2021.

4. [02-10437](#)-A-13 **IN RE: MARK STEINHAUER**
[20-1064](#) [FW-1](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
3-2-2021 [\[19\]](#)

STEINHAUER ET AL V. HSBC FINANCE CORPORATION
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was initially set for hearing on April 1, 2021, but the court continued the hearing to April 22, 2021 to permit the moving party to supplement the legal grounds for the relief sought. The moving party filed a supplemental memorandum on April 8, 2021 (Doc. #30). The failure of 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). 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.

Mark Edward Steinhauer and Marsha J. Steinhauer-Brazeal (together, "Plaintiffs") commenced this adversary proceeding by filing a complaint on November 24, 2020 (the "Complaint"). Adv. Proc. No. 20-01064, Doc. #1. By the Complaint, Plaintiffs seek a judgment from the court declaring the satisfaction and discharge of the deed of trust held by HSBC Finance Corporation, successor of acquired corporation Household Finance Corporation of California ("Defendant"). This court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1).

Defendant failed to respond to the Complaint. On January 29, 2021, Plaintiffs filed a request for entry of default (Doc. #11), and, on February 2, 2021, the United States Bankruptcy Court Clerk filed the Entry of Default. Doc. #14. Plaintiffs moved for default judgment (the "Motion"), and a hearing was held on April 1, 2021. Doc. #19. At that hearing, counsel for Plaintiffs agreed to provide supplemental briefing to the court to support Plaintiffs' request for an order discharging the deed of trust. Civil Minutes, Doc. #25. Defendant has not responded.

In support of the Motion, Plaintiffs request the court take judicial notice of six documents: (1) the Deed of Trust recorded June 17, 1994 as document number 1994-99165 in the office of the Fresno County Recorder ("Deed of Trust"); (2) Plaintiffs' chapter 13 plan filed as Doc. #4 in bankruptcy case number 02-10437-A-13, United States Bankruptcy Court, Eastern District of

California ("Bankruptcy Case"); (3) the Order Confirming Plan and Valuing Collateral filed as Doc. #19 in the Bankruptcy Case ("Confirmation Order"); (4) the Discharge of Debtor After Completion of Chapter 13 Plan filed as Doc. #29 in the Bankruptcy Case; (5) the Preliminary Final Report and Account filed as Doc. #28 in the Bankruptcy Case; and (6) a document entitled "division of corporations - filing" printed from the Delaware Department of State, Division of Corporations website accessed on November 19, 2020. Doc. #22.

Federal Rule of Evidence 201(b) provides the criteria for judicially noticed facts. Courts may take judicial notice of matters of public record, and the court takes judicial notice of the Deed of Trust recorded in Fresno County. See Rosal v. First. Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009). As to the documents filed in the Bankruptcy Case, the records of court proceedings cannot reasonably be questioned, and the court takes judicial notice of those documents. The court takes judicial notice of the division of corporations - filing document as a website of a government agency. See U.S. ex rel Modglin v. DJO Glob. Inc., 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014). The court does not take judicial notice of the truth of the contents of any documents. Faulkner v. M & T Bank (In re Faulkner), 593 B.R. 263, 273 n.2 (Bankr. E.D. Pa. 2018).

Federal Rule of Civil Procedure 55, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055, "gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." Televideo, 826 F.2d at 917. "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Factors which may be considered by the court in exercising discretion as to the entry of default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

The facts set out in the Complaint are as follows. Plaintiffs were chapter 13 bankruptcy debtors whose chapter 13 plan was confirmed on May 9, 2002. Bankr. Case No. 02-10437, Doc. #19. At the time Plaintiffs filed their Bankruptcy Case, Plaintiffs owed a debt to Defendant secured by the Deed of Trust on Plaintiffs' residence located at 206 E. Thomas Ave., Fresno, CA 93728 (the "Property") and recorded in Fresno County. Compl. ¶¶ 11-12, Doc. #1. As part of the Confirmation Order confirming Plaintiffs' chapter 13 plan, the bankruptcy court granted Plaintiffs' motion to value the collateral of Household Finance Corporation of California, Defendant's acquired corporation. Ex. C, Doc. #23. In the Confirmation Order, the court determined the replacement value of the collateral and the secured claim of Defendant to be \$0.00, and ordered any deficiency be allowed as a general unsecured claim. Ex. C, Doc. #23. Upon completion of the chapter 13 plan, Plaintiffs were granted a discharge under 11 U.S.C. § 1328(a) on April 3, 2007. Ex. E, Doc. #23. The completion of Plaintiffs' chapter 13 plan and subsequent discharge resulted in the satisfaction of the obligation secured by Defendant's Deed of Trust, and California law required Defendant to reconvey the Deed of Trust within thirty calendar days after the obligation was satisfied, which Defendant failed to do. Compl. ¶¶ 19, 36-38, Doc. #1. Because Defendant failed to reconvey the required documents, Plaintiffs request a judgment declaring the debt owed to Defendant satisfied and the Deed of Trust avoided. Compl. Prayer, Doc. #1. In the Complaint, Plaintiffs also sought money damages, but are not pursuing that relief as part of this Motion. Mot. § III, Doc. #19.

The court finds that entry of default judgment is appropriate in this case. The merits of Plaintiffs' claim, the sufficiency of the Complaint, and the lack of the possibility of disputes concerning material fact favor entering default judgment.

Taking the factual allegations as true, Plaintiffs are entitled to the relief sought. Plaintiffs completed their chapter 13 plan payments and were granted a chapter 13 discharge, satisfying the debt owed to Defendant. California Civil Code § 2941(b) requires the reconveyance of the note and Deed of Trust on satisfaction of the obligation. In California, a deed of trust is generally extinguished by payment in an amount which satisfies the lien. Bank of New York Mellon v. Citibank, N.A., 8 Cal. App. 5th 935, 945-46 (2017). "However, it has long been recognized that whether the payment of a debt operates to release the lien of a mortgage depends on the mortgage's terms and conditions." Id. at 946 (citations omitted). The Deed of Trust states that "[u]pon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee." Deed of Trust ¶ 19, Ex. A, Doc. #23. The fixing of Defendant's secured claim to be \$0.00 and the completion of Plaintiffs' chapter 13 Plan leave no sums secured by the Deed of Trust to be paid.

Under the terms of the Deed of Trust, Defendant should have taken the steps necessary to extinguish the lien in 2007 when Plaintiffs received their discharge. Defendant failed to do so, and Plaintiffs are entitled to have the Deed of Trust extinguished.

Here, Plaintiffs' chapter 13 plan has been fully performed and is binding on Plaintiff and Defendant as provided in 11 U.S.C. § 1327(a). See generally Martin v. CitiFinancial Servs. (In re Martin), 491 B.R. 122 (Bankr. E.D. Cal. 2013). Because Defendant does not have an allowed secured claim as that term is defined by the Bankruptcy Code, Defendant's lien against Plaintiffs' Property is void by operation of 11 U.S.C. § 506(d). Martin, 491 B.R. at 128-30.

The court finds that Plaintiffs Mark Edward Steinhauer and Marsha J. Steinhauer-Brazeal are entitled to judgment quieting title, determining that the Deed of Trust recorded June 17, 1994 in Fresno County, as previously defined herein, and any interest, lien, or encumbrance pursuant thereto against the Property known as 206 E. Thomas Ave., Fresno, CA 93728, is void, unenforceable, and of no force and effect. Further, the court finds that Defendant HSBC Finance Corporation, successor of acquired corporation Household Finance Corporation of California, has no interest in said Property.

Accordingly, Plaintiffs' Motion for Entry of Default Judgment is GRANTED. Defendant's Deed of Trust is void, unenforceable, and of no force and effect and Defendant has no interest in the Property. Plaintiffs are authorized, but not required, to record the judgment and take any other action required to clear title to the Property in a manner consistent with this decision.

5. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[20-1062](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-5-2020 [[1](#)]

FEAR V. RODGERS ET AL
LISA HOLDER/ATTY. FOR PL.
DISMISSED 4/2/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on April 2, 2021. Doc. #18. Therefore, the status conference will be dropped as moot.

6. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-5-2018 [[131](#)]

KODIAK MINING & MINERALS II LLC ET AL V. DON ROSE OIL CO., INC.
VONN CHRISTENSON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.