

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, May 13, 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. [20-11700](#)-A-13 **IN RE: PATSY CALDWELL**
[ASW-1](#)

MOTION TO MODIFY PLAN
3-17-2021 [26]

PATSY CALDWELL/MV
ALLAN WILLIAMS/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.

The debtor previously moved to confirm the modified plan, but confirmation was denied because debtor's counsel failed to comply with the Local Rules of Practice. See Civil Minutes, Doc. #31. This motion and the supporting papers also fail to comply with LBR 9014-1(c), 9014-1(d) (3) (B). Because continued dismissal of the motion for failure to comply with the Local Rules of Practice will only prejudice the debtor, this motion will be granted notwithstanding the non-compliance. Any failure of counsel to comply with the local rules in the future will result in denial without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

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.

2. [18-14905](#)-A-13 **IN RE: TRACEY PRITCHETT**
[TCS-8](#)

MOTION TO MODIFY PLAN
3-31-2021 [[133](#)]

TRACEY PRITCHETT/MV
NANCY KLEPAC/ATTY. FOR DBT.
TIMOTHY SPRINGER/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 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. The local rules can be accessed at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

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.

3. [17-11123](#)-A-13 **IN RE: EDUARDO LUPIAN**
[PLG-3](#)

MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION FOR
CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
4-29-2021 [\[85\]](#)

EDUARDO LUPIAN/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Eduardo Quiroz Lupian ("Debtor"), the chapter 13 debtor, seeks authorization from the court to enter into a loan modification agreement with Pennymac Loan Services, LLC ("Lender"). Doc. #85. Lender holds a first deed of trust that currently encumbers Debtor's residential real property commonly known as 3506 San Pablo Avenue, Merced, CA 95348 (the "Property"). Doc. #88. Debtor asserts that loan modification will reduce Debtor's monthly payment and interest rate. Decl., Doc. #87. Debtor believes the terms are advantageous. Decl., Doc. #87. Debtor is current with his chapter 13 plan payments. Decl., Doc. #87.

The new unpaid principal balance will be \$197,127.30. The new interest rate will be 3.125%. The new monthly payment is \$844.44, which includes principal and interest. See Ex. 1, Doc. #88.

This motion will be GRANTED. Debtor is authorized, but not required, to complete the loan modification with Lender. Debtor shall continue making plan payments in accordance with their confirmed chapter 13 plan. Debtor must modify the plan if they payments under the modified loan prevent Debtor from paying under the plan.

4. [21-10129](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-6-2021 [[20](#)]

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection will be OVERRULED AS MOOT. The chapter 13 trustee objects to the debtors' claim of exemptions because the debtors improperly exempted assets under both Cal. Civ. Proc. Code ("C.C.P.") §§ 703.140(b) and 704. Obj., Doc. #20. On April 21, 2021, the debtors filed an amended Schedule C claiming exemptions under C.C.P. § 703.140(b) only. Doc. #27.

5. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[TCS-6](#)

MOTION TO MODIFY PLAN
4-7-2021 [[88](#)]

SARINA DUTEY/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. The local rules can be accessed at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

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. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR A 180 DAY BAR
FROM DEBTOR INITIATING A NEW CASE OR TRANSFERRING THE CURRENT CASE
4-20-2021 [[68](#)]

T2M INVESTMENTS LLC/MV
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice 9014-1(f)(2) and will proceed as scheduled. Though not required, Sylvia Nicole ("Debtor") filed written opposition on April 30, 2021. Doc. #91. The moving party, T2M Investments, LLC ("Movant") replied to Debtor's opposition on May 4, 2021. Doc. #95. Debtor filed a declaration in further opposition on May 10, 2021. Doc. #105. This matter will proceed as scheduled. If there is further opposition presented at the hearing, the court will consider that opposition.

By this motion, Movant seeks relief from stay to allow Movant to continue to final judgment state court litigation pending as T2M Investments v. Sylvia Nicole et al., Case No. 20CV-01478, in the Superior Court of California, County of Merced ("State Court Action"). Movant also seeks a 180-day bar prohibiting Debtor from initiating a new bankruptcy case or transferring the current bankruptcy case to a different chapter or attempting to transfer the real property that is the subject of the State Court Action to a third party or entity.

The court has considered Movant's motion, Debtor's opposition, and Movant's reply and is inclined to deny the motion based on the facts and circumstances currently before the court.

Factual Background

Movant holds a first deed of trust and promissory note against Debtor in the real property commonly known as 1521 S. 7th Street, Los Banos, CA 93635 (the "Property"). Decl. of Cory Chartrand ("Chartrand Decl.") ¶ 4, Doc. #70. Debtor defaulted on her obligations to Movant under the loan. Decl. of Jay Moore ("Moore Decl.") ¶ 6, Doc. #71. On August 6, 2018, Debtor filed for bankruptcy in the Eastern District of California and a chapter 7 discharge was granted on April 17, 2019. See Case No. 18-13218, Bankr. E.D. Cal. In late August 2019,

Debtor and Movant entered into a Settlement Agreement and Release ("Settlement Agreement") whereby Debtor agreed, among other things, to convey title to the Property to Movant and Movant agreed, among other things, to release any claim or security interest secured by the Property. Moore Decl. ¶ 7-8, Doc. #71; Ex. C, Doc. #76 (although Movant cites to Exhibit 4 as the Settlement Agreement, the Settlement Agreement entered into in August 2019 is actually Exhibit C, which is part of Exhibit 5).

Following execution of the Settlement Agreement, a grant deed was executed transferring the Property to Movant. Ex. 5, Doc. #75. Movant sought to sell the Property, but the title company required a Deed in Lieu of Foreclosure. Moore Decl. ¶ 12, Doc. #71. Movant alleges that Debtor failed to perform under the terms of the Settlement Agreement because Debtor did not execute documents required by Movant's title company to facilitate the sale of the Property. Moore Decl. ¶ 10, Doc. #71. After unsuccessful attempts at contacting Debtor, Movant commenced foreclosure. Moore Decl. ¶ 13, Doc. #71.

Movant engaged state court counsel Cory Chartrand to litigate the State Court Action, which Movant describes as a quiet title action against Debtor. Moore Decl. ¶ 14, Doc. #71. The State Court Action was commenced on April 8, 2020 against Debtor, a corporation controlled by Debtor, and at least two other individuals. Chartrand Decl. ¶ 7, Doc. #70; Ex. 5, Doc. #74. The State Court Action had entered the default stage, and a final prove up against Debtor was forthcoming. Chartrand Decl. ¶ 11, Doc. #70. Before a default judgment could be entered, Defendant filed the instant chapter 13 petition on January 5, 2021. Chartrand Decl. ¶ 12, Doc. #70. Debtor's Schedule A/B lists the Property and Debtor claims an undivided interest in the Property. Schedule A/B, Doc. #18. The Property is by far the most significant asset listed on Debtor's schedules. Id. The filing of Debtor's bankruptcy petition has stayed the State Court Action.

Debtor asserts Movant failed to perform under the Settlement Agreement and the Property belongs to the bankruptcy estate. Debtor's Decl., Doc. #105. On March 8, 2021, Debtor commenced an adversary proceeding against Movant requesting, among other things, that the grant deed conveying title to the Property to Movant be voided and the Settlement Agreement be voided. Doc. #55.

No Cause Exists to Grant Relief from Stay

Movant requests relief from the automatic stay under 11 U.S.C. § 362(d)(1) to continue to prosecute the State Court Action. Doc. #68.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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).

"Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

The Ninth Circuit in Tucson Estates set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial; and
- (12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

Applying the Tucson Estates factors, the court finds these factors do not support permissive abstention, and therefore do not support relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: The Property is Debtor's largest scheduled asset and the primary asset of the estate, so a determination of Debtor's rights in the Property likely will significantly impact the administration of Debtor's estate. The State Court Action primarily seeks to determine Debtor's rights to the Property by adjudicating to final judgment a quiet title action involving the Property. Granting relief from stay to permit Movant to prosecute the State Court Action to final judgment would not necessarily further administration of this estate asset. If relief from stay is granted and a default judgment is entered against Debtor in the State Court Action, Movant's ability to use the default judgment award to resolve outstanding issues in Debtor's bankruptcy case and related adversary proceeding with respect to the Property is unclear. See Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1246-47 (9th Cir. 2001) (establishing preclusive effect requires the subsequent court to find that an issue was actually litigated and necessary to judgment). A determination of the preclusive effect of the State Court Action could further delay administration of the bankruptcy estate, especially if this court finds the default judgment in the State Court Action has no preclusive effect and matters raised in the State Court Action have to

be addressed anew in this court. This factor weighs against permissive abstention.

2. Extent to Which State Law Issues Predominate: The State Court Action is primarily an action to quiet title stemming from Debtor's alleged breach of the Settlement Agreement. The State Court Action requires an adjudication of property rights under state law. However, "[s]ince the Bankruptcy Code itself does not determine the existence and scope of a debtor's interest in property," property of the estate is determined "by reference to state law." Abele v. Phoenix Suns Ltd. P'ship (In re Harrell), 73 F.3d 218, 219 (9th Cir. 1995). Because state law determines what constitutes Debtor's property in both this bankruptcy case and the State Court Action, this factor weighs against permissive abstention.
3. Difficulty or Unsettled Nature of Applicable Law: Although neither Movant nor Debtor address this issue, there is no indication that the law underlying the State Court Action is unsettled, difficult, or even novel. This factor weighs against permissive abstention.
4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and has been since April 2020 but has only progressed to the entry of default against Debtor. This factor weighs only slightly in favor of permissive abstention.
5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of permissive abstention.
6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: Resolution of the State Court Action would have the effect of determining Movant's and Debtor's interests in the Property and their rights and obligations under the Settlement Agreement. The Property is the primary asset of the bankruptcy estate, and a determination of Debtor's rights to the Property would directly impact Debtor's bankruptcy case. Further, it appears at this juncture that resolution of the State Court Action in favor of Movant would stem from a default judgment. However, it is uncertain whether a default judgment in the State Court Action would have preclusive effect in this court. See Harmon, 250 F.3d at 1246-47. This factor weighs against permissive abstention.
7. Substance of the Asserted Core Proceeding: No party asserts that the State Court Action is a core proceeding. This factor weighs in favor of permissive abstention.
8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The State Law Action involves state law claims, and the adversary proceeding filed by Debtor arises out of the same facts as the State Law Action and asserts state law claims. The state law claims cannot be separated from core bankruptcy proceedings because state law also governs what is or is not property of the bankruptcy estate. Although the claims involve state law, the state law determinations are also necessary to administering the bankruptcy estate. This factor weighs against permissive abstention.
9. Burden of Bankruptcy Court's Docket: Lifting the automatic stay to permit the State Court Action to proceed would not eliminate this court having to try the adversary proceeding initiated by Debtor. Further, because lifting the automatic stay does not resolve the estate's

interest in the Property and because the preclusive effect of a default judgment in the bankruptcy case and adversary proceeding is uncertain, lifting the automatic stay to permit the State Court Action to proceed may well increase the burden on the bankruptcy court's docket. This factor weighs against permissive abstention.

10. Likelihood of Forum Shopping: Because Debtor filed a bankruptcy case shortly before Movant was able to prove up a default judgment, and because Debtor is a serial bankruptcy debtor, it appears Debtor may be forum shopping to have this court effectively restart the State Court Action. This factor weighs in favor of permissive abstention.
11. Existence of Right to Jury Trial: Neither Movant nor Debtor address the existence of a right to jury trial, but at the time Debtor filed bankruptcy the State Court Action was preparing to decide default judgment to quiet title. This factor weighs against permissive abstention.
12. Presence of Non-Debtor Parties in Related Proceeding: There are non-debtor defendants named in the State Court Action, although Movant concedes that "the present dispute is really a two-party dispute between [M]ovant and Debtor." Mem. in Support of Mot. at 6:14-15, Doc. #72. This factor weighs against permissive abstention.

Given that most of the Tucson Estates factors weigh against this court abstaining from exercising its jurisdiction over the claims between Movant and Debtor that are already the subject of the State Court Action, the court finds that cause does not exist to lift the automatic stay.

In addition to the analysis under Tucson Estates, when a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors do not support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the state court to enter a default judgment in the State Court Action will not resolve the dispute over the Property and will not further the administration of the bankruptcy estate. Assuming the State Court Action is finally resolved through a default judgment, Movant's ability to use such judgment to resolve outstanding issues related to the property of Debtor's bankruptcy estate and the adversary proceeding is unclear. Harmon, 250 F.3d at 1246-47. While the state court has expertise to hear actions to quiet title, this court has exclusive jurisdiction over property of the estate. 28 U.S.C. § 1334(e)(1). The State Court Action has only been pending since April 2020 and had only progressed to the entry of default and a default prove-up against Debtor at the time Debtor's bankruptcy case was filed.

The interests of judicial economy and the expeditious and economical resolution of the issues do not heavily favor lifting the automatic stay because the State Court Action is not at an advanced stage. Retaining jurisdiction will permit a resolution of the issues between Movant and Debtor on the merits in the adversary filed by Debtor in this court. Movant admits that this is primarily a two-party dispute between Movant and Debtor, so retaining jurisdiction will not prejudice non-debtor parties. The balance of hurt does not favor granting relief from stay because Debtor's history of filing bankruptcy does not cut against the policy favoring decisions on the merits.

Accordingly, the court finds no cause to lift the stay based on the current facts and circumstances of the case, and this motion will be DENIED.

Movant also requests this court impose a 180-day bar preventing Debtor from refileing or attempting to transfer the present bankruptcy case to any other bankruptcy chapter and to prohibit Debtor from transferring the Property. Doc. #68. While the bankruptcy court's authority to grant such relief in the context of a relief from stay motion is dubious, the denial of Movant's request to lift the automatic stay renders Movant's additional requests MOOT.

7. [16-14288](#)-A-13 **IN RE: RYAN/NIKOLE EKIZIAN**
[FW-4](#)

CONTINUED MOTION TO MODIFY PLAN
2-8-2021 [[68](#)]

NIKOLE EKIZIAN/MV
PETER FEAR/ATTY. FOR DBT.
WITHDRAWAL OF 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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition in consideration of terms agreeable to the debtors and put forth in a stipulation and proposed order filed April 23, 2021. Doc. ##91, 92. 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 be consistent with the proposed order marked Exhibit A, Doc. #92.

8. [19-11493](#)-A-13 **IN RE: KENNETH/LAVERNE BRISTER**
[TCS-3](#)

MOTION TO MODIFY PLAN
3-31-2021 [59]

LAVERNE BRISTER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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)(1). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition on May 4, 2021. Doc. #68. 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. The local rules can be accessed at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

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.

9. [18-10695](#)-A-13 **IN RE: JOSE ZAVALA AND ADELAIDA TREJODE ZAVALA**
[PBB-1](#)

MOTION TO MODIFY PLAN
3-31-2021 [[28](#)]

ADELAIDA TREJODE ZAVALA/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.

1. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [CBC-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION FOR ABSTENTION
4-6-2021 [[29](#)]

NICOLE V. ELIOPULOS ET AL
CORY CHARTRAND/ATTY. FOR MV.
CONT'D TO 5/27/21, DOC # 74

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

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

NO ORDER REQUIRED.

On April 29, 2021, the court issued an order continuing the hearing on the motion to dismiss the adversary proceeding to May 27, 2021 at 11:00 a.m. Doc. #74.

2. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [CBC-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION FOR ABSTENTION
4-6-2021 [[41](#)]

NICOLE V. ELIOPULOS ET AL
CORY CHARTRAND/ATTY. FOR MV.
CONT'D TO 5/27/21, DOC # 76

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

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

NO ORDER REQUIRED.

On April 29, 2021, the court issued an order continuing the hearing on the motion to dismiss the adversary proceeding to May 27, 2021 at 11:00 a.m. Doc. #76.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [CBC-2](#)

MOTION TO STRIKE
4-6-2021 [[35](#)]

NICOLE V. ELIOPULOS ET AL
CORY CHARTRAND/ATTY. FOR MV.
CONT'D TO 5/27/21, DOC # 66

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

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

NO ORDER REQUIRED.

On April 29, 2021, the court issued an order continuing the hearing on the motion to strike to May 27, 2021 at 11:00 a.m. Doc. #66.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [CBC-4](#)

MOTION TO STRIKE
4-6-2021 [[47](#)]

NICOLE V. ELIOPULOS ET AL
CORY CHARTRAND/ATTY. FOR MV.
CONT'D TO 5/27/21, DOC # 68

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

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

NO ORDER REQUIRED.

On April 29, 2021, the court issued an order continuing the hearing on the motion to strike to May 27, 2021 at 11:00 a.m. Doc. #68.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [PJL-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
4-6-2021 [[23](#)]

NICOLE V. ELIOPULOS ET AL
PAUL LEEDS/ATTY. FOR MV.
CONT'D TO 5/27/21, DOC # 70

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

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

NO ORDER REQUIRED.

On April 29, 2021, the court issued an order continuing the hearing on the motion to dismiss the adversary proceeding to May 27, 2021 at 11:00 a.m. Doc. #70.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [SSA-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION FOR ABSTENTION
4-2-2021 [[15](#)]

NICOLE V. ELIOPULOS ET AL
STEVEN ALTMAN/ATTY. FOR MV.
CONT'D TO 5/27/21, DOC # 72

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

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

NO ORDER REQUIRED.

On April 29, 2021, the court issued an order continuing the hearing on the motion to dismiss the adversary proceeding to May 27, 2021 at 11:00 a.m. Doc. #72.