UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday June 10, 2020
Place: Department B – Courtroom #13
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. 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. 19-12714-B-13 **IN RE: STEVEN LEAL**
PLG-1

MOTION TO MODIFY PLAN
5-5-2020 [19]

STEVEN LEAL/MV
RABIN POURNAZARIAN/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 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.

2. 20-11345-B-13 **IN RE: MICHAEL PORTER**
SW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
5-4-2020 [21]

PS FUNDING, INC./MV
JANET LAWSON/ATTY. FOR DBT.
ANDREW STILL/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 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 movant, PS Funding, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1), (d)(2) and (d)(4) concerning real property located at 7979-7981 Freeport Boulevard in Sacramento, CA 95832 ("Property").

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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

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

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor defaulted early on in the contract's life and failed to make the final and complete payment. Doc. #23, 68.

After review of the included evidence, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. The property is worth $235,000.00 (doc. #24) and debtor owes $342,455.44 (doc. #23). Debtor has not opposed this motion and there is no evidence supporting a finding that the property is necessary to an effective reorganization.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

Movant entered into a loan agreement with borrower Philip J. Latona, LLC ("Borrower") to lend to Borrower $300,000.00. Borrower granted Movant a security interest in the Property. Borrower was to pay monthly payments on the first day of each month beginning on February 1, 2019 with the loan becoming due and payable on January 1, 2020. Borrower defaulted and failed to pay the balance on January 1, 2020. In what has been described as "a clear effort to hinder [Movant's] efforts to foreclose . . . Borrower transferred via gift a 5% interest in the Property to the debtor as a tenant-in-common." Doc. #21. Debtor filed bankruptcy approximately one week later. A foreclosure sale was scheduled approximately two days after debtor filed bankruptcy. There has been no opposition to this motion.

The court finds that the debtor's bankruptcy filing was part of a scheme, the object of which appears to been to delay, hinder, or

defraud Movant, and the scheme involved the transfer of a 5% interest in the Property without Movant's consent or court approval.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated concerning the Property; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4) 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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has a minimal interest in the Property and Borrower's gift to debtor was made in an attempt to hinder Movant's foreclosure sale.

3. 19-12446-B-13 **IN RE: CARLOS/BRANDI MOLINA**
MHM-1
OBJECTION TO CLAIM OF LVNV FUNDING LLC, CLAIM NUMBER 18
4-15-2020 [42]

MICHAEL MEYER/MV
PETER BUNTING/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 objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 objection is SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was in March 3, 2006, which is well past the two and four year mark in the statutes of limitations.

Therefore, claim no. 18 filed by LVNV Funding LLC is disallowed in its entirety.

4. 17-14157-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
NDK-7

MOTION TO MODIFY PLAN
4-29-2020 [156]

VICTOR ISLAS/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 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.

5. 17-14157-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
TCS-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF TIMOTHY C. SPRINGER FOR TIMOTHY C. SPRINGER, DEBTORS ATTORNEY(S) 5-5-2020 [165]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

It appears that this form, which the court found via an internet search on the chapter 13 trustee's website, has not been updated since 2013. Numerous changes to the LBR have been made since 2013. In 2017, a change was made which required additional language to be added to the notice of hearing. See http://www.caeb.uscourts.gov/documents/Forms/LocalRules/September2017LocalRules.pdf.

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.

6. 20-10957-B-13 **IN RE: GURMIT SANDHU AND KARAMJIT BRAR**
MHM-2

MOTION TO DISMISS CASE
5-4-2020 [35]

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to August 12, 2020 at 9:30 a.m.

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)(1) and will proceed as scheduled.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the chapter 13 trustee ("Trustee") has requested dismissal pursuant to 11 U.S.C. §§ 1307(c), 1307(e) and 1308(a). Trustee alleges that debtor has failed to file tax returns for the years 2016, 2017, and 2018.

11 U.S.C. § 1308(a) states

> Not later than the day before the date on which the meeting of the creditors is first schedule to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

11 U.S.C. § 1307(e) states

> Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

Trustee states that debtor failed to file state and federal tax returns for the years 2016 through 2018. See doc. #37, claim 5. The docket reveals that the meeting of creditors was set on May 1, 2020.

The debtors appeared and the meeting was concluded. The Trustee did not hold open the meeting under 11 U.S.C. § 1308(b).

Debtor timely responded, stating that after contacting the California Franchise Tax Board ("FTB"), debtors were told that "two out of three [years of tax returns] had not been processed completely" but that FTB's claim "would be amended after all three tax returns were processed . . . ." Doc. #63. As for the IRS claim, debtor's opposition (the declaration of Martha Garcia, an employee of debtor's counsel) states a copy of the debtors' 2018 signed tax return was sent to the IRS representative and the Chapter 13 Trustee seven days after this motion was filed.

This matter will be called to allow Trustee to respond to Debtor's opposition. In light of the COVID-19 pandemic and the effect it has had on government systems, the court is inclined to continue this motion to August 12, 2020 at 9:30 a.m. to allow the FTB to process the tax returns and amend their claim.

The court is aware that §§ 1308 and 1307(e) leaves very little room for discretion. But there is a factual question as to whether the returns were timely filed despite the representations in the tax authorities' proofs of claim.

7. 20-10858-B-13 **IN RE: CHRISTOPHER/TRACEY PRESS**
MHM-1

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-5-2020 [23]

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #31.

8. 20-10858-B-13 **IN RE: CHRISTOPHER/TRACEY PRESS**
TCS-1

MOTION TO CONFIRM PLAN
5-5-2020 [15]

CHRISTOPHER PRESS/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 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.

9. 20-10859-B-13 **IN RE: KEITH/GERALDINE CASH**
TCS-1

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
5-7-2020 [16]

KEITH CASH/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The motion is DENIED WITHOUT PREJUDICE.

The declaration does not contain the debtor's opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "current value," which is not specific enough.

10. 18-11583-B-13 **IN RE: TODD FISHER AND LEZA COOPER**
SLL-4

MOTION FOR APPROVAL FOR DEBTOR'S HOME INSURANCE COMPANY TO PAY FOR KITCHEN REMODEL DUE TO WATER DAMAGE
5-11-2020 [73]

TODD FISHER/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Debtors ask the court for an order allowing them to have their kitchen remodeled and paid for by their home insurance company. Doc. #73. In early December 2019, debtors' kitchen was damaged by water. Doc. #75. Debtors' home insurance company has agreed to pay for the remodel. Id. Debtors will not be paying for any of the repair or remodel. Id. The confirmed plan here does not re-vest property of the estate in the debtors upon Plan confirmation.

The chapter 13 trustee ("Trustee") timely responded, asking the court to make a finding as to whether the insurance proceeds are a pre-petition or post-petition asset. Doc. #78. Because the confirmed plan provides that property of the estate will not re-vest in debtors upon confirmation, and therefore the insurance proceeds will remain property of the estate, Trustee contends that debtors may be required to turn over the insurance proceeds to the Trustee. Doc. #78. Trustee argues that whether debtors must turn over the insurance proceeds depends on whether the insurance proceeds are determined to be a pre-petition or post-petition asset. Id. Trustee relies on two recent Ninth Circuit Bankruptcy Appellate Panel cases: Berkley v. Burchard (In re Berkley), 613 B.R. 547 (B.A.P. 9th Cir. 2020) and Black v. Leavitt (In re Black), 609 B.R. 518 (B.A.P. 9th Cir. 2019).

Debtors replied, stating that Trustee has mischaracterized the insurance proceeds "as some sort of windfall" in income. Doc. #80. Instead, debtors argue that the insurance proceeds are not an increase in income, but the "replacement of damaged goods." Id. Debtors further argue that the proceeds are in the name of the debtors and their mortgage company. Id. As such, the insurance proceeds "are going to be used to protect the interest of the secured lien holder." Id.

The Ninth Circuit B.A.P. in Berkley affirmed the bankruptcy court's decision granting the chapter 13 trustee's motion to modify the debtor's plan to use a portion of the debtor's $3.8 million increase in post-petition income from stock options to pay the unsecured creditors 100% of their allowed claims. See In re Berkley, 613 B.R. at 552. The debtor argued that his creditors were not entitled to any portion of the $3.8 million because that money was not property of his estate after plan confirmation. Id. The Ninth Circuit B.A.P. agreed that though the Ninth Circuit follows the rule that "the estate terminates at confirmation" (see Cal. Franchise Tax Bd. V. Jones (In re Jones), 420 B.R. 506, 515 (9th Cir. B.A.P. 20098), aff'd on other grounds, 657 F.3d 921 (9th Cir. 2011)), the Ninth Circuit B.A.P. reasoned that plan payments may be funded by property outside of the estate. See also Black v. Leavitt (In re Black), 609 B.R. 518, 529 (9th Cir. B.A.P. 2019).

In reaching that decision, the Ninth Circuit B.A.P. consistently used the term "income," using the examples of family contributions, loans or withdrawals from pension plans, or the sale of exempt assets. Berkley, 613 B.R. at 553. Though "income" is not defined in the code, it is defined by Merriam Webster's dictionary as "a gain or recurrent benefit usually measured in money that derives from capital or labor."

Family contributions, loans or withdrawals from pension plans, or the sale of exempt assets are all distinguishable from insurance proceeds. One may pay for insurance coverage and may not utilize the benefits of insurance coverage for years or may never need those benefits. The benefits are also not entirely within the control of the policy-holder; the insurance provider also has an interest in the benefits and may withhold benefits if the insurance policy does not permit a pay-out based on the facts of the matter. The same cannot be said of pension plans or the sale of exempt assets, which are entirely within the control of the pensioner and the owner of the exempt assets. Family contributions are simple charitable contributions by the family members of the debtors, the reasons of which are numerous and intangible.

Unlike Berkley and Black, the plan here does not vest the property in the debtors upon confirmation. Chapter 13 gives debtors the option to have estate property remain estate property even after plan confirmation. See § 1327(b). The First Modified Plan confirmed in this case says as much. Doc. #63. So, the question is whether the insurance payment is property of the estate.

"Proceeds" of pre-petition property are property of the estate in a chapter 13 case even if they are acquired post-petition. See §§ 541(a)(6) and 1306(a). Though chapter 13 plans must provide for submission of all or such portion of future earnings *or other future income* of the debtor to the supervision and control of the Trustee as is necessary for the execution of the plan (§ 1322(a)(1)) [emphasis added], that begs the question of whether the insurance proceeds are "income." In this case, they are not. See, McDonald v. Burgie (In re Burgie), 239 B.R. 406, 410 (B.A.P. 9th Cir. 1999) ["The sale of a capital asset does not create 'disposable income' pursuant to § 1325"].

The insurance payments are property of the estate. But that is not the end of the inquiry. They are not income. They rather are a casualty payment for a loss the debtors suffered. The payment is closer to selling a pre-petition capital asset than receiving a substantial bonus for post-petition services. *Cf.* Berkley [stock options]. Also, the payment is made jointly to debtors' home lender. The debtors here have little control over the proceeds.

The Trustee here concedes if the insurance proceeds are pre-petition property, the debtors have enough available exemptions to remove the proceeds from estate property. If the insurance payment is post-petition property, there is no evidence the insurance payment is "appreciated" property. So, the proceeds do not appear to create a liquidation issue. As noted above, the casualty payment here should not be considered "income" for purposes of § 1322(a) if there is a "hostile" modification.

Based on the record, the court finds that the insurance proceeds are not income nor appreciated property of the estate. As debtors note in their reply, the bankruptcy code and the LBR require debtors to maintain insurance. See § 1326(a)(4); LBR 3015-1(b)(3). Insurance coverage is not a means to increase income, but to compensate for loss. That is what happened here. The facts here are distinguishable from the facts in Berkley.

The motion is GRANTED.

11. 20-10489-B-13 **IN RE: REYMUNDO GARZA**
BDB-3

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES, INC.
5-8-2020 [39]

REYMUNDO GARZA/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 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 is GRANTED. 11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

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."

11 U.S.C. § 506(a)(2) 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" 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."

Debtors ask the court for an order valuing a 2016 Hyundai Veloster ("Vehicle") at $13,025.00. Doc. #39. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Wells Fargo Dealer Services, Inc. ("Creditor"). Debtors purchased the Vehicle on November 16, 2016, which is more than 910 days preceding the petition filing date. Debtors' declaration states that the Vehicle was acquired for debtors' personal use. The elements of § 1325(a)(*) are met and § 506 is applicable.

Debtors' declaration states the replacement value of the Vehicle is $13,025.00. Doc. #42. Creditor's claim states the value of the Vehicle is $16,050.00. Claim #9.

The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at $13,025.00. 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. 20-10489-B-13 **IN RE: REYMUNDO GARZA**
BDB-4

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC.
5-8-2020 [44]

REYMUNDO GARZA/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 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 is GRANTED. 11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

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."

11 U.S.C. § 506(a)(2) 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" 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."

Debtors ask the court for an order valuing a 2012 Harley Davidson ("Vehicle") at $19,120.00. Doc. #44. The Vehicle is encumbered by a non-purchase money security interest in favor of creditor Onemain Financial Group, LLC. ("Creditor"). Debtors purchased the Vehicle on March 13, 2018, which is less than 910 days preceding the petition filing date. Debtors' declaration states that the Vehicle was acquired for debtors' personal use. The encumbrance here is not securing "purchase money." The elements of § 1325(a)(*) are met and § 506 is applicable.

Debtors' declaration states the replacement value of the Vehicle is $19,125.00. Doc. #47. Creditor's claim states the value of the Vehicle is $19,120.00. Claim #3.

The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at $13,025.00. 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.

13. 20-11394-B-13 **IN RE: CRUZ/CORINA ORTEGA**
JPW-1

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC
5-12-2020 [14]

NATIONSTAR MORTGAGE LLC/MV
DAVID JENKINS/ATTY. FOR DBT.
JACKY WANG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This objection is OVERRULED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The court must first note movant's procedural error. LBR 9004-2(c)(1) requires that motions, notices, certificates of service, *inter alia*, to be filed as separate documents. Here, the certificate

of service was combined with both the motion and the notice of hearing and not filed separately. Failure to comply with this rule in the future will result in the motion being denied without prejudice.

Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper's ("Creditor") objection is that the plan does not account for the entire amount of the pre-petition arrearages that debtors owe to Creditor as required by 11 U.S.C. § 1325(a)(5)(B)(ii). Doc. #14, claim #5.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #2. Creditor's proof of claim, filed May 11, 2020, states a claimed arrearage of $2,009.94. This claim is classified in class 4 – paid directly by debtors. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11. The debtors may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Creditor will have stay relief. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED.

14. 15-14695-B-13 **IN RE: MARCEL/STACY CORTEZ**
PBB-3

MOTION TO MODIFY PLAN
5-4-2020 [53]

MARCEL CORTEZ/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 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.

15. 20-10595-B-13 **IN RE: ARLENE GONZALES**
SLL-3

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
5-7-2020 [44]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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 $5,695.00 in fees and $84.20 in costs.

11:00 AM

1. 19-15302-B-7 **IN RE: LONELL GOODMAN**
20-1005

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-30-2020 [1]

GOODMAN, JR. V. BEST SERVICE COMPANY, INC.
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION: This matter will be continued to August 12, 2020 at 11:00 a.m.

ORDER: The court will issue the order.

Plaintiff shall file a motion for entry of default and judgment or dismissal before the continued hearing. If such a motion is filed, the status conference will be dropped and the court will hear the motion when scheduled. If no motion for default and judgment or dismissal is filed prior to the continued hearing, the court will issue an order to show cause on why this case should not be dismissed.

2. 11-63503-B-7 **IN RE: FRANK/ALICIA ITALIANE**
12-1053

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
10-18-2012 [21]

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE
HAMID RAFATJOO/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 15, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is continued to July 15, 2020 at 11:00 a.m. to be heard in conjunction with a motion to strike answer to amended complaint (HRR-5) and a motion for summary judgment (CHC-1). See doc. #163.

3. 19-13569-B-7 **IN RE: JOHN ESPINOZA**
20-1021

STATUS CONFERENCE RE: COMPLAINT
4-8-2020 [1]

FEAR V. ESPINOZA ET AL
KELSEY SEIB/ATTY. FOR PL.

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

DISPOSITION: This matter will be continued to July 8, 2020 at 11:00 a.m.

ORDER: The court will issue the order.

The Plaintiffs' defaults were entered on June 3, 2020. See doc. ##14, 16, 18. Plaintiff shall file a motion for entry of default and judgment or dismissal before the continued hearing. If such a motion is filed, the status conference will be dropped and the court will hear the motion when scheduled. If no motion for default and judgment or dismissal is filed prior to the continued hearing, the court will issue an order to show cause on why this case should not be dismissed.

4. 19-13374-B-7 **IN RE: KENNETH HUDSON**
19-1128

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-26-2019 [1]

BROWN V. HUDSON
GLEN GATES/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. 19-15277-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
20-1019

STATUS CONFERENCE RE: COMPLAINT
4-3-2020 [1]

BIMBO BAKERIES USA, INC. V. SVENHARD'S SWEDISH BAKERY
CHERYL CHANG/ATTY. FOR PL.
CASE TRANSFERRED TO SACRAMENTO PER ECF ORDER #19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The case has been transferred to Sacramento. Doc. #19.

6. 19-15277-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
20-1029

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-18-2020 [8]

SVENHARD'S SWEDISH BAKERY V. UNITED STATES BAKERY ET AL
CASE TRANSFERRED TO SACRAMENTO PER ECF ORDER #9

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The case has been transferred to Sacramento. Doc. #9.

7. 19-15087-B-7 **IN RE: KARMELA KHAJI**
20-1020

STATUS CONFERENCE RE: COMPLAINT
4-3-2020 [1]

BADELBOU V. KHAJI
ROBERT BADELBOU/ATTY. FOR PL.
DISMISSED 5/14/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #12.