

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, June 30, 2021  
Place: Department B – Courtroom #13  
Fresno, California

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**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.**

**9:30 AM**

1. [21-10300](#)-B-13     **IN RE: DONALD/STEPHANIE SALKIN**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
6-2-2021    [\[24\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the chapter 13 plan confirmation of Donald Lee Salkin and Stephanie Austin Salkin ("Debtors"). Doc. #24.

Though not required, Debtors timely responded. Doc. #33

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the defaults of all non-responding parties except Debtors. 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).

Trustee makes two major objections. Doc. #24. First, at the time of objecting Trustee had not received (1) Debtors' 2020 federal and state tax returns and (2) proof of education expenses for minor dependent children as deducted on Form 122C-2. Thus, the plan fails to comply with other applicable provisions of the Bankruptcy Code as required by 11 U.S.C. § 1325(a)(1). Trustee reserves the right to object to the plan's proposed liquidation value upon receipt of Debtors' 2020 tax returns if the plan fails to comply with § 1325(a)(4).

Second, Trustee contends that the plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the plan as required by § 1325(b). *Id.* The plan provides for a 4% dividend to be paid to unsecured claims. Doc. #3, § 3.14. Trustee disputes certain expenses deducted on Debtors' Form 122C-2 (Doc. #1):

1. Mortgage Expenses, ¶¶ 9b, 33a: Debtors deduct \$2,209.00 as their total average monthly mortgage payment, but the plan

reflects that they pay \$1,609.00 to their lender, "Mega Cap Fnd." Meanwhile, Mega Capital Funding, Inc.'s proof of claim filed March 12, 2021 shows a monthly payment of \$1,607.57. Claim #11.

2. Local Transportation Expenses, ¶ 12: Debtors deduct \$670.00 for vehicle operation expenses. Trustee contends that the maximum allowable deduction for one vehicle is \$209.00 per vehicle, or \$418.00 for two vehicles. Doc. #24, citing *In re Luedtke*, 508 B.R. 408, 414 (B.A.P. 9th Cir. 2014); *In re Rodriguez*, 620 B.R. 94, 103 (B.A.P. 9th Cir. 2020). Thus, Debtors cannot deduct more than \$418.00 for this line.
3. Education Expenses, ¶ 29: Debtors deduct \$125.00 for education expenses for dependent children who are younger than 18. Trustee states that no documentation has been provided demonstrating that the expense is actual, reasonable, necessary, and not already accounted for in other lines.

Debtors filed a response, supporting declaration, exhibits, and an amended Form 122C-2. Docs. #31, 33-35. The 2020 tax returns were provided to Trustee. Doc. #34. Debtors included an exhibit document with a list of school and educational expenses. Doc. #35, Ex. C. The list includes baseball equipment, school supplies and lunches, drum lessons, and music supplies. Joint debtor Donald Salkin declares that the extracurricular activities are important in the education experience and necessary for getting into the college of their choice in the future. Doc. #34.

Mr. Salkin also says that his job is located in Monterey, California, which is 330 miles away from Fresno. *Id.* Debtors effectively have two households: a mortgage payment, a rent payment, and two sets of charges for commuting, travel, electricity, and other expenses. Debtors pay \$2,204.37 for housing and \$677 for gasoline each month, not including costs for repairs and maintenance. *Id.* Debtors moved the additional housing and vehicle costs to line 42 as special circumstances. Doc. #35, Ex. B.

Debtors contend that the plan now satisfies the requirements of 11 U.S.C. § 1325(a)(1), (a)(4), and (b), so the objection should be overruled, and the plan confirmed.

This matter will be called as scheduled to inquire about Trustee's current position.

2. [19-13411](#)-B-13     **IN RE: ADAM CHAVEZ**  
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS  
ATTORNEY(S)  
5-19-2021    [\[72\]](#)

NEIL SCHWARTZ/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.

Neil E. Schwartz of the Law Offices of Neil E. Schwartz ("Movant"), counsel for Adam Chavez ("Debtor"), requests interim compensation of \$11,788.00 under 11 U.S.C. §§ 330, 331. Doc. #72. Movant seeks fees of \$11,342.50 and costs of \$445.50 for services rendered from July 17, 2019 through May 11, 2021. Debtor reviewed the fee application has no objections. *Id.*, at ¶ 7.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 chapter 13 trustee, 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 amounts 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.

First, the court notes a procedural defect. The notice of hearing (Doc. #73) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice of hearing does include the names of parties who must receive opposition, but it does not contain their addresses. Doc. #73. The local rules are available at <http://www.caeb.uscourts.gov/LocalRules.aspx> to ensure procedural compliance in subsequent motions.

Second, Debtor's consent statement is not properly dated. Doc. #72, ¶ 7. Debtor signed the statement that he reviewed the fee application and has no objection, but it is dated "May 2021." That

is not specific enough. The statement should have included the full date on which the document was signed.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid \$2,190.00 prior to the filing of the case and, subject to court approval, additional fees of \$12,000.00 shall be paid through this plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #2, § 3.05; #3. This amount plus the \$310.00 filing fee results in the \$2,500.00 amount that Debtor paid as a pre-petition retainer.

Movant indicates that his firm spent 43.00 billable hours totaling \$11,342.50 in fees as follows:

Professional	Rate	Hours	Total Amount
N.S. Attorney	\$300.00	34.10	\$10,230.00
J.L. Paralegal	\$125.00	8.90	\$1,112.50
<b>Total</b>		<b>43.00</b>	<b>\$11,342.50</b>

Docs. #72, ¶ 5; #74, Ex. B. Movant also incurred the following expenses:

Credit Counseling Courses	\$50.00
Filing Fees	\$310.00
Credit Report	\$28.00
Court Call	\$22.50
Postage/Stamps	\$35.00
<b>Total Costs</b>	<b>\$445.50</b>

*Ibid.*; Doc. #72, ¶ 6. These combined fees and expenses total **\$11,788.00**. In light of the pre-petition retainer of \$2,500.00, Movant requests **\$9,288.00** to be payable through the plan.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

Movant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) reviewing Debtor's financial information, the effects of exemptions, repossession, and value of assets; (3) gathering information and documents to prepare the petition; (4) preparing the petition, schedules, statements, and chapter 13 plan; (5) preparing and sending § 341 meeting documents to Trustee; (6) attending and completing the § 341 meeting of creditors; (7) confirming a chapter 13 plan. Doc. #74, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded \$11,342.50 in fees and \$445.50 in costs on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330. In light of the \$2,500.00 pre-petition retainer, the chapter 13 trustee will be authorized to pay Movant

\$9,288.00 through the plan for services rendered from July 17, 2019 through May 11, 2021.

3. [19-10421](#)-B-13     **IN RE: ARMANDO ROBLES**  
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
5-27-2021    [\[40\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining that: (1) Armando Daniel Robles ("Debtor") has cured the default with respect to a July 13, 2009 promissory note secured by a deed of trust encumbering residential real property located at 942 N. Larson Street, Porterville, CA 93257 in favor of Guild Mortgage Company ("Creditor"); and (2) all post-petition payments due and owing from March 2019 through March 2021 have been paid. Doc. #40.

Creditor timely responded to concur that (1) all pre-petition arrears are paid in full and (2) Debtor's loan is current post-petition, with the next payment due on August 1, 2021. Doc. #44. However, Creditor notes that on March 5, 2019, it filed a Notice of Post-petition Mortgage Fees, Expenses, and Charges under Rule 3002.1(c) indicating a total of \$904.35 in fees were incurred on the loan, which remains unpaid and outstanding. *Id.*

Trustee replied. Doc. #46.

Other than Creditor, no other parties in interest timely filed written opposition.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The defaults of all non-responding will be entered.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts.

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments to the same through March 2021. Doc. #42. Trustee states that his office has paid a total of \$24,119.35 toward the ongoing mortgage payment, \$11,231.50 towards the pre-petition arrearage claim, and \$89.03 in late fees. *Id.*

Creditor concurs that all pre-petition arrears and post-petition mortgage payments have been paid. Doc. #44. However, Creditor contends that it has not received \$904.35 in fees incurred on the loan pursuant to its Rule 3002.1(c) notice.

In reply, Trustee quotes section 3.07(b)(6) of the plan, which states: "If the holder of a Class 1 claim gives Debtor and Trustee notice of post-petition fees, expenses, and charges pursuant to [Rule] 3002.1(c), Debtor shall modify this plan if Debtor wishes to provide for such fees, expenses, and charges." *Id.*; cf. Doc. #22.

Debtor's plan was confirmed on May 28, 2019. Doc. #27. The plan does not provide for post-petition fees, expenses, or charges to be paid, and the plan was never modified after confirmation. Since Debtor has completed plan payments (Doc. #31), Trustee contends that Debtor is responsible for paying such post-petition fees, expenses, and charges directly to Creditor.

This matter will be called as scheduled to inquire about the parties' current positions.

4. [19-12622](#)-B-13      **IN RE: JULIE MARTINEZ**  
[FW-7](#)

CONTINUED MOTION TO MODIFY PLAN  
4-12-2021    [\[93\]](#)

JULIE MARTINEZ/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
OPPOSITION WITHDRAWN 6/30/21

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.

Julie Ann Martinez ("Debtor") proposes this Fifth Modified Plan for confirmation to provide for missed payments and re-amortize secured debt over 84 months under 11 U.S.C. § 1329(d) as amended by the COVID-19 Bankruptcy Relief Extension Act of 2021. Doc. #92.

Chapter 13 trustee Michael H. Meyer timely objected to plan confirmation under 11 U.S.C. § 1325(a)(6) because Debtor was delinquent on plan payments in the amount of \$4,370.00. Doc. #102.

This matter was previously continued so that Debtor could file and serve a response to Trustee's objection. Docs. ##104-05.

Debtor filed a responsive declaration on June 16, 2021, wherein she addresses the plan payment deficiency and anticipates being current before the June 25, 2021 plan payment date. Doc. #108.

In response, Trustee withdrew his objection on June 23, 2021. Doc. #111.

This motion will be GRANTED.

This motion was originally set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, 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 amounts 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.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021. P.L. 117-5, 135 Stat. 249 (March 27, 2021). Here, Debtor has had reductions in income due to the COVID-19 pandemic. Doc. #95. Debtor's previous plan was confirmed on February 4, 2021, which is before the Bankruptcy Relief Extension Act was enacted on March 27, 2021. Doc. #89. Accordingly, Debtor satisfies the requirements to extend the plan beyond 60 months under § 1329(d).

This motion will be 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. [21-11223](#)-B-13     **IN RE: CHRISTOPHER/TRACEY PRESS**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
6-15-2021    [\[24\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

Toyota Motor Credit Corporation ("Creditor") objects to Christopher David Press and Tracey Lee Press' ("Debtors") plan confirmation. Doc. #24.

First, the notice of hearing (Doc. #25) did not contain the language required under LBR 9014-1(d)(3)(B), which is about noticing requirements. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking the court's website at <http://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.

Second, Creditor filed a second objection to confirmation of Debtors' plan the day after this objection was filed, which is currently set for hearing on July 14, 2021. See KMM-2. The second objection's notice of hearing notifies respondents that they can check pre-hearing dispositions on the court's website, and therefore complies with LBR 9014-1(d)(3)(B)(iii). Doc. #29.

The court notes that the meeting of creditors was continued to July 13, 2021. General Order 20-02 extends the deadline to file objections to plan confirmation to seven days after the § 341 meeting is concluded and not continued to a further date. See Am. Gen. Order 20-02, at 4, ¶ 5 (Am. Apr. 16, 2020). So, if the meeting of creditors concludes on July 13, 2021, the deadline to file objections to confirmation will be extended to July 20, 2021. If the meeting is further continued, the deadline will be extended under GO 20-02.

Since Creditor filed a second objection to confirmation, this first objection will be OVERRULED AS MOOT.

6. [21-10724](#)-B-13     **IN RE: JUAN SANTOYO AND JEANETTE NEVAREZ**  
[SL-2](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL  
SERVICES, INC.  
5-24-2021     [\[26\]](#)

JEANETTE NEVAREZ/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

Juan Javier Santoyo and Jeanette Jessica Nevarez ("Debtors") move for an order valuing a 2014 Buick Regal ("Vehicle") at \$8,320.00. under 11 U.S.C. §§ 506, 1322(b), and Rule 3012. Doc. #26. The Vehicle is secured by Americredit Financial Services, Inc. ("Creditor").

This motion will be DENIED WITHOUT PREJUDICE for failing to comply with the Federal Rules of Bankruptcy Procedure.

Rule 3012(b) provides that a request to determine the amount of secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 13 case. When the request is made in a chapter 13 plan, the plan must be served in the manner provided in Rule 7004. The court notes that the proposed chapter 13 plan is consistent with this motion and lists Creditor as a Class 2(B) creditor that includes claims reduced based on the value of collateral. Doc. #3. The original plan was filed within 14 days of the petition under Local Rule of Practice ("LBR") 3015-1(c)(1), which should have been served on the chapter 13 trustee ("Trustee"). LBR 3015-1(c)(2). LBR 3015-1(c)(3) then requires Trustee to serve the plan on all creditors. The docket indicates that the chapter 13 plan was transmitted to the Bankruptcy Noticing Center ("BNC") for service (Doc. #12) and served on all creditors on April 4, 2012. Doc. #19. Creditor's BNC service was addressed to Americredit GM Financial, Attn Bankruptcy, PO Box 183853, Arlington, TX 76096-3853. *Id.*

Creditor filed a Request for Notice under Rule 2002(g) requesting notices, pleadings, and other documents to be served upon it at Americredit Financial Services, Inc. dba GM Financial, PO Box 183853, Arlington, TX 76096. Doc. #20.

Rule 3012(b) is silent as to whether a determination by motion or claim objection requires Rule 7004 service. However, Rule 9014(b) requires contested matters to be served in accordance with Rule 7004. "Valuations pursuant to 11 U.S.C. § 506(a) and [Rule] 3012 are contested matters and do not require the filing of an adversary proceeding." *In re Wall*, 2009 Bankr. LEXIS 5679, at \*4 (Cal. E.D. Bankr. May 7, 2009); see also *In re Johnson*, 2020 Bankr. LEXIS 1730, at \*1 (Bankr. D.D.C. July 2, 2020) (denying motion to value a motor

vehicle because the debtor did not make proper service under Rule 7004, which is required under Rule 9014); *In re Kelley*, 2020 Bankr. LEXIS 1276, at \*\*1-2 (Bankr. D.D.C. May 11, 2020) (reasoning that a motion to redeem a vehicle under § 722, which implicated § 506(a)(2) to the extent the vehicle is secured, initiated a contested matter requiring Rule 7004 service).

Rule 7004 allows service in the United States by first class mail on domestic or foreign corporations "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process[.]" Rule 7004(b)(3).

Here, the certificate of service lists multiple attempts to serve Creditor:

1. **Sent Via First Class Mail  
(Pursuant to Proof of Claim Filed):**  
Americredit Financial Services, Inc. dba  
GM Financial  
P.O. Box 183853  
Arlington, TX 76096
2. **Sent Via Certified Mail and First Class Mail  
(Pursuant California Secretary of State):**  
Americredit Financial Services, Inc.,  
c/o Corporation System Company  
dba CSC Lawyers Incorporating Service  
801 Cherry St. STE 3600  
Fort Worth, TX 76102  
**Attn:** Officer Authorized  
to receive Service of Process
3. **Sent Via First Class Mail (Pursuant to  
Request for Special Notice):**  
Americredit Financial Services, Inc.  
dba GM Financial  
P.O. Box 183853  
Arlington, TX 76096

Doc. #30. The second service attempt is the closest to complying with Rule 7004(b)(3) because Corporation System Company ("CSC") is the registered agent for service of process for Creditor, so it is authorized by law to receive service of process. However, the address provided is Creditor's mailing address, not CSC's mailing address (which is 251 Little Falls Drive, Wilmington, DE 19808 per <http://businesssearch.sos.ca.gov>). So, that service attempt would have gone to Creditor, but with attention to CSC, so CSC would not have received it.

The second service attempt also directs attention to an "Officer Authorized to receive Service of Process[.]" Doc. #30. There is a split in authority regarding whether service upon an unnamed officer is sufficient. *Addison v. Gibson Equip. Co. (In re Pittman Mech, Contractors)*, 180 B.R. 604 (Bankr. E.D. Va. 1995) ("Attn: President" is insufficient for service under Rule 7004(b)(3)); *cf. Schwab v.*

*Assocs. Commercial Corp. (In re C.V.H. Transp., Inc.)*, 254 B.R. 331 (Bankr. M.D. Pa. 2000) (finding that service directed to unnamed "officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" was sufficient under Rule 7004(b)(3)).

However, the Ninth Circuit has long required Rule 7004(b)(3) service to be directed to a named officer. See *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) ("Only if the notice is 'directed to a corporation and the attention of an officer or agent as identified in Rule 7004(b)(3),' can it be considered to have been received by a person who is charged with responding to the service.") quoting *C.V.H. Transport*, 254 B.R. at 334.

Thus, this motion will be DENIED WITHOUT PREJUDICE because the service of the motion was insufficient. The proof of service does not indicate that the motion was mailed to a named officer of Creditor.

7. [21-10726](#)-B-13      **IN RE: DAVID CONTRERAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-1-2021    [\[30\]](#)

BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                The minutes of the hearing will be the court's findings and conclusions.

ORDER:                        The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

8. [21-10726](#)-B-13     **IN RE: DAVID CONTRERAS**  
[BDB-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
4-8-2021    [\[17\]](#)

DAVID CONTRERAS/MV  
BENNY BARCO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

David Contreras ("Debtors") seeks to confirm this First Modified Plan. Doc. #17. Debtor's original plan (Doc. #14) was not confirmed.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected to plan confirmation because Debtor will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6). Doc. #24. Trustee states that Debtor is delinquent on plan payments in the amount of \$1,290.65. *Id.*

This motion was originally set for hearing on at least 35 days' notice under Local Rule of Practice ("LBR") 3015-1(d)(1). The matter was continued so that Debtor could file and serve a written response addressing Trustee's objection. Doc. #26. Per the court's prior order, Debtor was to either (1) file and serve a written response to Trustee's objection to this motion not later than June 16, 2021; or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than June 23, 2021. Doc. #27. Debtor did neither. Therefore, Trustee's objection will be SUSTAINED, and this motion will be DENIED WITHOUT PREJUDICE.

9. [16-11038](#)-B-13     **IN RE: DANNY/TERI WATSON**  
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE  
3002.1  
5-27-2021    [\[97\]](#)

MICHAEL MEYER/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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining that: (1) Danny Wayne Watson and Teri Jean Watson

("Debtors") have cured the default with respect to a January 3, 2007 promissory note secured by a deed of trust encumbering residential real property located at 324 Rose Avenue, Chowchilla, CA 93610 in favor of M & T Bank ("Creditor"); and (2) all post-petition payments due and owing from April 2016 through March 2021 have been paid. Doc. #97.

No other parties in interest timely filed written opposition. This motion will be GRANTED.

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 amounts 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.

Federal Rule of Bankruptcy Procedure ("Rule") 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts.

The record shows that Debtors have cured the default on the loan with Creditor and is current on mortgage payments to the same through March 2021. Doc. #99. Trustee states that his office has paid a total of \$16,920.00 toward the ongoing mortgage payment, \$600.00 towards the pre-petition arrearage claim, and \$15.00 in late fees. *Id.*

Accordingly, this motion will be GRANTED. Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the Notice of Final Cure pursuant to Rule 3002.1(i). Debtor has cured the default and is current on mortgage payments through March 2021.

10. [21-10443](#)-B-13     **IN RE: JORGE LOPEZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-1-2021    [\[77\]](#)

MICHAEL MEYER/MV  
DUSHAWN JOHNSON/ATTY. FOR DBT.

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

DISPOSITION:     Continued to July 28, 2021, at 9:30 a.m.

ORDER:             The court will issue an order.

The trustee's motion to dismiss will be continued to July 28, 2021, at 9:30 a.m., to be heard with the debtor's motion to confirm plan (DJ-4).

11. [21-11046](#)-B-13     **IN RE: ROBERT/DARLENE AGUINAGA**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK  
MELLON  
5-27-2021    [\[20\]](#)

THE BANK OF NEW YORK MELLON/MV  
PETER BUNTING/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

The Bank of New York Mellon withdrew this objection on June 25, 2021. Doc. #34. Accordingly, this matter will be dropped from calendar.

12. [18-12050](#)-B-13     **IN RE: GENEVIEVE SANTOS**  
[ALG-6](#)

MOTION TO MODIFY PLAN  
5-17-2021    [[127](#)]

GENEVIEVE SANTOS/MV  
JANINE ESQUIVEL OJI/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Debtor Genevieve Ann Santos withdrew this motion on June 2, 2021.  
Doc. #138. Accordingly, this matter will be dropped from calendar.

13. [20-12861](#)-B-13     **IN RE: TODD/TINA ROTH**  
[DMG-2](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS  
ATTORNEY(S)  
6-9-2021    [[48](#)]

D. GARDNER/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 hearing.

D. Max Gardner ("Movant"), counsel for Todd Monroe Roth and Tina Deann Roth ("Debtors"), requests interim compensation of \$3,580.64 under 11 U.S.C. §§ 330, 331. Doc. #48. Movant seeks fees of \$3,410.00 and costs of \$68.64 for services rendered from August 31, 2020 through May 14, 2021. Movant also requests \$102.00 in unpaid pre-petition fees. Debtors represent that they have no objection to the granting of Movant's fee application, which would authorize chapter 13 trustee Michael H. Meyer ("Trustee") to pay Movant \$3,580.64 through the confirmed chapter 13 plan. Doc. #55.

No party in interest timely filed written opposition. This motion will be called as scheduled. If Movant properly notified the creditors on the master address list, motion will be GRANTED provided that Movant files an amended certificate of service.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the chapter 13 trustee, 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 amounts 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.

First, the court notes a procedural defect. The certificate of service (Doc. #52) references an "attached service list" that included the names and addresses of all parties in interest who were notified of this hearing. Fed. R. Bankr. P. ("Rule") 2002(a)(6) requires at least twenty-one days' notice to parties in interest, including all creditors, of a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000.00. Here, it does not appear that all creditors or other parties in interest were properly notified of this hearing. The court notes that the certificate of service for the previous attempt on this motion did include an attached list of all parties who were serviced the notice of hearing. Doc. #46.

The court will inquire at the hearing whether the parties in the master address list were properly notified. If so, the court will consider the merits of this motion and require Debtors to file an amended notice as evidence.

Section 3.05 of the plan indicates that Movant was paid \$1,200.00 prior to the filing of the case and, subject to court approval, additional fees of \$4,800.00 shall be paid through this plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #15, § 3.05. Form EDC 3-096, meanwhile, states that \$1,500.00 was paid pre-petition, and \$6,000.00 will be paid throughout the case. Doc. #14.

Movant indicates that his firm spent 11.00 billable hours at a rate of \$310.00 per hour, totaling **\$3,410.00** in fees. Doc. #49, ¶ 9. Movant also incurred the following expenses:

Postage	\$20.64
Photocopies	\$18.00
Courtcall	\$30.00
<b>Total Costs</b>	<b>\$68.64</b>

*Id.*, ¶ 10; Doc. #51, Ex. A. Movant also states that he received a pre-petition retainer of \$1,200, but incurred fees of \$1,302.00, leaving an unpaid balance of **\$102.00**. Doc. #50. These combined fees and expenses total **\$3,580.64**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . .[a]

professional person" and "reimbursement for actual, necessary expenses."

Movant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) reviewing Debtor's financial information, the effects of assets, liabilities, exemptions, and value of assets; (3) gathering information and documents to prepare the petition; (4) preparing the petition, schedules, statements, and chapter 13 plan; (5) preparing and sending § 341 meeting documents to Trustee; (6) attending and completing the § 341 meeting of creditors; (7) confirming a chapter 13 plan. Doc. #51, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded \$3,512.00 in fees and \$68.64 in costs on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Movant \$3,580.64 through the plan for services rendered from August 31, 2020 through May 14, 2021.

14. [18-11375](#)-B-13     **IN RE: ERIC RUBIO**  
[MHM-4](#)

MOTION TO DISMISS CASE  
5-21-2021    [\[99\]](#)

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

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

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors, and 1307(c)(6) for failure to complete the terms of the confirmed plan. Doc #99. Debtor did not oppose.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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 amounts 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.

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". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan.

Accordingly, the motion will be GRANTED. The case will be dismissed.

15. [21-10976](#)-B-13      **IN RE: MARK HALL AND LOUISE JURACEK HALL**  
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDIT SUISSE FIRST  
BOSTON MORTGAGE SECURITIES CORP.  
5-24-2021    [\[25\]](#)

CREDIT SUISSE FIRST BOSTON  
MORTGAGE SECURITIES CORP./MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Sustained.

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

Credit Suisse First Boston Mortgage Securities Corp., CSFB Mortgage-Backed Pass-Through Certificates, Series 2005-6, U.S. Bank National Association as Trustee ("Creditor"), as serviced by Specialized Loan Servicing, LLC, objects to Mark Stephen Hall and Louise Juracek Hall's ("Debtors") plan confirmation. Doc. #25.

Though not required, Debtors timely responded. Doc. #29.

This objection was filed pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. No party in interest was required to file written opposition. If further 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).

Creditor objects to plan confirmation because the plan does not account for or promptly cure the entire amount of pre-petition

arrears owed to Creditor as required by 11 U.S.C. § 1322(b)(5). Creditor also cites failure to comply with 11 U.S.C. § 1325(a)(6), contending that the plan fails to provide how Debtors will be able to make all payments under the plan and comply with the plan because Debtors' income will be insufficient to fund the plan after Creditor's arrears are added. Doc. #25.

Creditor filed Proof of Claim No. 2 in the amount of \$130,049.37 on April 30, 2021, which includes an arrearage of \$1,801.93. Claim #2. Creditor's claim is secured by real property located at 319 Fern Meadow Drive, Bakersfield, CA 93308 ("Property"). Creditor's claim is classified in Class 4 - paid directly by Debtors or a third party. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Doc. #23, ¶ 3.11. Debtors may need to modify the plan to account for the arrearage, but if they do not, Creditor will have stay relief.

In response, Debtors state they will file an amended plan. Doc. #29. Due to an IRS claim being significantly different than anticipated, Debtors state that a first modified plan will need to be filed. Further, Debtors acknowledge that payments were made slightly late, which was caused by a clerical error in the month of April. Debtors say that the May and June payments were made.

This matter will be called as scheduled to inquire about the parties' intentions. Since Debtors expect to file an amended plan, the court is inclined to SUSTAIN this objection.

16. [21-10681](#)-B-13     **IN RE: TERRY JACOBS**  
[PBB-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
4-8-2021    [\[17\]](#)

TERRY JACOBS/MV  
PETER BUNTING/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Debtor Terry LaVon Jacobs withdrew this motion on June 16, 2021. Doc. #54. Accordingly, this matter will be dropped from calendar.

17. [21-10681](#)-B-13     **IN RE: TERRY JACOBS**  
[PBB-2](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS, A NEW YORK  
PARTNERSHIP  
4-19-2021    [\[27\]](#)

TERRY JACOBS/MV  
PETER BUNTING/ATTY. FOR DBT.  
CONT'D TO 7/14/21 WITHOUT ORDER

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continued to July 14, 2021 at 9:30 a.m.

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

This motion was originally scheduled for hearing on June 30, 2021 at 9:30 a.m. Doc. #28. On May 6, 2021, a notice of continued hearing was filed and served, setting the hearing for July 14, 2021 at 9:30 a.m. Doc. #37. Continuances without a court order are not permitted under Local Rules of Practice ("LBR") 9014-1(j).

However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application.

If no written application for a continuance is received by the court before this hearing, and if debtor's counsel does not appear at the hearing to orally request a continuance, then the motion will be denied without prejudice for failure to comply with the local rules. If the debtor's counsel appears at the hearing to request a continuance, then this matter will be CONTINUED to July 14, 2021 at 9:30 a.m.

11:00 AM

1. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[19-1033](#)     [MBB-1](#)

MOTION FOR LEAVE TO FILE AMENDED ANSWER  
6-9-2021     [[227](#)]

SUGARMAN V. IRZ CONSULTING,  
LLC  
MICHAEL BROWN/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Denied without prejudice.

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

U.S. Farm Systems ("USFS") seeks leave to file an amended answer to IRZ Consulting, LLC's ("IRZ") third-party complaint pursuant to Civil Rule 15 and Rule 7015. Doc. #227. The court notes that USFS filed its First Amended Answer to Third-Party Complaint on June 9, 2021, the same day as this motion. Doc. #229.

This matter will be called as scheduled.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR"), the Federal Rules of Bankruptcy Procedure ("Rule"), and the Federal Rules of Civil Procedure ("Civil Rules").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

USFS previously filed a Motion to Dismiss and Motion For Abstention (Doc. #173) on March 18, 2021, which was denied on April 30, 2021. Doc. #200. The DCN for that motion was MB-1. This motion also has a DCN of MB-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, this motion was filed on less than 28 days' notice. LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify the respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date or continued date of the hearing. The alternative procedure to file motions on less than 28 days' notice under LBR 9014-1(f)(2) is not available in adversary proceedings. See LBR 9014-1(f)(2)(A).

The hearing is scheduled for June 30, 2019, but the motion was filed on June 9, 2021. Doc. #227. The notice of hearing was filed on June 11, 2021 and served on that same date. Docs. ##235-36. June 30, 2021 is 21 days after June 9, 2021, and 19 days after June 11, 2021. The motion should have been filed at least 28 days before the hearing date.

Third, exhibits are attached to the motion. LBR 9004-2(c)(1) requires motions, exhibits, and other specified pleadings to be filed separately. LBR 9004-2(e)(1) requires exhibits to be filed as a separate document from the document to which it relates and identify the document to which it relates. LBR 9004-2(e)(2) requires each exhibit document to have an index at the start of the document that lists and identifies by exhibit number or letter each exhibit individually, and to state the page number at which it is found within the exhibit document. LBR 9004-2(e)(3) requires exhibit document pages to be consecutively numbered, including the index page, and any separator, cover, or divider sheets.

Here, there is an exhibit attached to the motion and an exhibit attached to the exhibit to the motion. Doc. #227. There is an exhibit within an exhibit. The exhibits should have been filed as a separate document. Further, the exhibits shall include an index and consecutively numbered pages throughout the whole exhibit document.

Fourth, Civil Rule 15(a) (incorporated by Rule 7015) allows a party to amend its pleadings in certain circumstances. Civil Rule 15(a)(2) allows a party to amend its pleading only with the opposing party's written consent or the court's leave. Here, USFS filed its First Amended Answer without first obtaining leave to do. Doc. #229.

USFS references an amended complaint filed by plaintiffs within the time permitted by the scheduling order. Doc. #227, at 2, citing Doc. #85. But there does not appear to be an amended complaint or a scheduling order. USFS insists that allowing it to file an amended answer would serve justice and promote judicial efficiency, and that there would be no substantial or undue prejudice, undue delay, or futility.

USFS states that at the time it filed its original answer and motion to dismiss, it believed it would be paid as an unsecured creditor in the bankruptcy proceeding. USFS received small amounts from the chapter 11 trustee, but the remaining balance totals approximately \$187,559.73. After further research, USFS determined that the proof of claim denoting it as an unsecured creditor was either improperly filed or not filed at all. Thus, USFS seeks to offset any judgment against it in the amount that USFS is owed.

The court notes that the claims register in the underlying bankruptcy omits USFS until only recently. *See In re Gregory John te Velde*, 18-11651, Claim Nos. 74, 75.

Since USFS has determined that the contract it has with the debtor will never be completed, USFS wishes to setoff or recoup any amounts that are ordered against it. However, USFS filed its First Amended Answer on the same day as this motion. Doc. #229. USFS neither

obtained the opposing party's written consent, nor did it first obtain leave to file the First Amended Answer.

This matter will be called as scheduled. This motion will be DENIED WITHOUT PREJUDICE and the court will strike USFS's First Amended Answer because it did not first obtain leave to amend its answer or consent from the opposing parties.

2. [20-13855](#)-B-11     **IN RE: MOHOMMAD KHAN**  
[20-1068](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-30-2020    [[1](#)]

U.S. TRUSTEE V. KHAN  
JUSTIN VALENCIA/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

The court intends to grant the U.S. Trustee's motion for entry of default in matter #3 below. If that motion is granted, this status conference will be dropped from calendar and the clerk of the court will close the adversary proceeding without notice in 60 days unless the adversary proceeding has been concluded or set for a further status conference within that time. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue an order.

3. [20-13855](#)-B-11     **IN RE: MOHOMMAD KHAN**  
[20-1068](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
5-3-2021    [[45](#)]

U.S. TRUSTEE V. KHAN  
JUSTIN VALENCIA/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. Order preparation to be determined at the hearing.

Tracy Hope Davis, the United States Trustee for the Eastern District of California ("Plaintiff") requests that the court enter default judgment against *pro se* debtor Mohommad Mahmood Khan ("Defendant")



under Civil Rule 55 (as incorporated by Rule 7055).<sup>1</sup> Plaintiff prays for injunctive relief pursuant to 11 U.S.C. §§ 105 and 349, Rule 7001 and 7065, prohibiting the Defendant from filing or causing to be filed any subsequent petitions for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California for a period of two years without first obtaining permission from the Chief Bankruptcy Judge of the Eastern District of California.

On June 28, 2021, Defendant filed (1) opposition to the motion for entry of default; (2) a motion to reschedule the June 30, 2021 hearing date; and (3) a motion to extend time to file opposition to the to the motion for entry of default. Docs. ##50-52. None of these documents were served. Opposition was due not later than June 16, 2021, which is 14 days before the hearing.

Defendant did not timely oppose and is in default. Defendant's opposition will be stricken because it was not timely filed. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by LBR 9014-1(f)(1). Defendant to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B), which 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, Defendant's default is entered. Upon default, factual allegations will be taken as true (except those relating to amounts 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 Plaintiff has done here.

The court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b). The adversary proceeding is a "core" proceeding under 28 U.S.C. § 157(b)(2).

The court takes judicial notice of all documents filed and all court orders entered in the underlying bankruptcy case (Case No. 20-13855), this adversary proceeding, the prior bankruptcy cases, and any other cases referenced herein pursuant to Fed. R. Evid. 201.

As a preliminary matter, the court notes that Plaintiff did not include a Docket Control Number ("DCN") in the motion documents filed with this request for entry of default judgment. LBR 9004-2(a)(6), (b)(5), (b)(6), (e), and LBR 9014-1(c), (e)(3) are the rules about DCNs. These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, the motion, notice,

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<sup>1</sup> Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

declaration, exhibits, and certificate of service do not include a DCN. Docs. ##45-49.

LBR 1001-1(f) permits the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. In light of the circumstances of this case, and in the interests of a just and speedy adjudication, the court will overlook this procedural deficiency under LBR 1001-1(f) in this instance.

#### BACKGROUND

##### Prior Bankruptcies

Defendant is a repeat filer with eleven bankruptcy cases since 2011—ten of which were filed since 2016. Nine were filed in the Eastern District of California (Fresno Division) and two were filed in the Central District of California (Los Angeles Division) as follows:

1.     **11-13975-B-13**     (Pro se)  
      Type:       Chapter 13           Filed:       04/06/2011  
      Location:   Fresno            Dismissed: 04/25/2011  
      Reason:    Failure to file (i) schedules and statement of  
                      financial affairs, and (ii) a chapter 13 plan.  
                      Doc. #48, Exs. H, I, J, K.
2.     **16-bk-11408-SK**   (Pro se)  
      Type:       Chapter 13           Filed:       02/04/2016  
      Location:   Los Angeles       Dismissed: 03/11/2016  
      Reason:    Failure to file (i) schedules and statement of  
                      financial affairs, (ii) chapter 13 plan, (iii)  
                      credit counseling certificate, (iv) statement of  
                      related cases, (v) declaration of debtor re: last 60  
                      days income, (vi) verification of master address  
                      list, and (vii) voluntary petition form 101. *Id.*,  
                      Exs. L, M, N, O.
3.     **16-bk-16109-SK**   (Pro se)  
      Type:       Chapter 13           Filed:       05/09/2016  
      Location:   Los Angeles       Dismissed: 06/16/2016  
      Reason:    Failure to file (i) schedules and statement of  
                      financial affairs, (ii) chapter 13 plan, (iii)  
                      credit counseling certificate, (iv) statement of  
                      related cases, (v) declaration of debtor re: last 60  
                      days income, (vi) verification of master address  
                      list, and (vii) voluntary petition form 101. *Id.*,  
                      Exs. P, Q, R, S.
4.     **17-10547-A-13**   (Represented by counsel)  
      Type:       Chapter 13           Filed:       02/21/2017  
      Location:   Fresno            Dismissed: 03/22/2017  
      Reason:    Failure to file (i) schedules and statement of  
                      financial affairs, (ii) chapter 13 plan, and (iii)  
                      attorney's disclosure statement. *Id.*, Exs. T, U, V,  
                      W, X.

5. **17-13630-B-13** (Represented by counsel)  
Type: Chapter 13 Filed: 09/21/2017  
Location: Fresno Dismissed: 12/01/2017  
Reason: Failure to provide the chapter 13 trustee with payment advices and tax returns. *Id.*, Exs. Y, Z, AA, BB.
6. **18-11385-B-11** (*Pro se*)  
Type: Chapter 11 Filed: 04/10/2018  
Location: Fresno Dismissed: 05/31/2018  
Reason: Failure to file (i) schedules and statement of financial affairs, (ii) voluntary petition form 101, (iii) statement of current monthly income form 122B, and (iv) a chapter 11 plan. *Id.*, Exs. CC, DD, EE, FF, GG.
7. **19-10027-B-13** (*Pro se*)  
Type: Chapter 13 Filed: 01/08/2019  
Location: Fresno Dismissed: 01/31/2019  
Reason: Failure to file (i) schedules and statement of financial affairs, and (ii) a chapter 13 plan. *Id.*, Exs. HH, II, JJ, KK, LL.
8. **19-12039-A-13** (*Pro se*)  
Type: Chapter 13 Filed: 05/13/2019  
Location: Fresno Dismissed: 06/19/2019  
Reason: Failure to file (i) schedules and statement of financial affairs, and (ii) a chapter 13 plan. *Id.*, Exs. MM, NN, OO, PP.
9. **19-14658-B-13** (*Pro se*)  
Type: Chapter 13 Filed: 11/05/2019  
Location: Fresno Dismissed: 12/09/2019  
Reason: Failure to file (i) schedules and statement of financial affairs, and (ii) a chapter 13 plan. *Id.*, Exs. QQ, RR, SS, TT, UU.
10. **20-12774-A-13** (*Pro se*)  
Type: Chapter 13 Filed: 08/25/2020  
Location: Fresno Dismissed: 11/19/2020  
Reason: Failure to file (i) complete and accurate schedules, (ii) failure to set a plan for hearing, (iii) failure to complete credit counseling timely. *Id.*, Exs. VV, WW, XX, YY, ZZ.
11. **20-13855-B-11** (*Pro se*)  
Type: Chapter 11 Filed: 12/15/2020  
Location: Fresno Dismissed: 02/24/2021  
Reason: Bad faith, as well as failure to (i) file monthly operating reports, (ii) provide financial records, picture identification, and proof of social security number to Plaintiff; (iii) file a complete and accurate petition, schedules, or statement of financial affairs; (iv) unreasonable delay that is prejudicial to creditors. *Id.*, Exs. B, D, F.

None of these prior cases were disclosed in Defendant's petition for his most recent, eleventh bankruptcy case. *Id.*, Exs. B, D.

1. In Case No. 11-13975-B-13, Defendant signed under penalty of perjury that:

- a. his address was at 367 W. Paul, Fresno, CA 93704;
- b. his debts were primarily consumer debts;
- c. his assets were between \$100,000 and \$500,000; and
- d. his liabilities were between \$100,000 and \$500,000. *Id.*, Ex. I.

This case was dismissed on April 25, 2011. *Id.*, Ex. J.

2. In Case No. 16-bk-11408-SK, Defendant signed under penalty of perjury that:

- a. his address was at 2200 Willette Ave., Los Angeles, CA 90068;
- b. his debts were primarily consumer debts;
- c. his assets were between \$0 and \$50,000;
- d. his liabilities were between \$100,000 and \$500,000;
- e. he made no statement on domicile or residence for the last 180 days; and
- f. he claimed that "AAE Properties" was a landlord who obtained a judgment against Defendant. *Id.*, Ex. M.

This case was dismissed on March 11, 2016. A creditor moved to reopen the case to obtain relief from the automatic stay on a parcel of real property commonly known as 2614 Sacramento St., San Francisco, CA 94115 ("Sacramento St. Property") alleging that a 28% interest was transferred to Defendant in bad faith with intent to delay foreclosure. Although the motion for relief was granted, the issue concerning relief is currently pending on appeal. *Id.*, Exs. L, N, O.

3. In Case No. 16-bk-16109, Defendant signed under penalty of perjury that:

- a. his address was at 2242 Clifford St., Los Angeles, CA 90026;
- b. his debts were primarily consumer debts;
- c. his assets were between \$1 million and \$10 million;
- d. his liabilities were between \$1 million and \$10 million;
- e. he states that he has been domiciled 180 days pre-petition;
- f. he makes no claim that "AAE Properties" was a landlord who obtained a judgment against Defendant; and
- g. lists only Specialized Loan Servicing at 8742 Lucent Blvd., #300 in Littleton, CO 80129 as a creditor. *Id.*, Ex. Q.

This case was dismissed on June 16, 2016, after Defendant obtained an order granting his motion to extend time to file schedules. *Id.*, Exs. P, R, S.

4. In Case No. 17-10547-A-13, Defendant signed under penalty of perjury that:

- a. his address was at 84 Birch Ave., Clovis, CA 93611 ("Clovis Property");
- b. his debts were primarily consumer debts;
- c. he lists two of his prior cases filed in the Central District of California, including dates and case numbers;
- d. his assets were between \$0 and \$50,000; and
- e. his liabilities were between \$0 and \$50,000. *Id.*, Ex. U.

This case was dismissed on March 22, 2017, after Defendant obtained an order granting his motion to extend time to file schedules, but before a hearing on his motion to impose the automatic stay, which was subsequently dismissed as moot. *Id.*, Exs. T, V, W, X.

5. In Case No. 17-13630-B-13, Defendant signed under penalty of perjury that:

- a. his address was at Clovis Property;
- b. his debts were primarily business debts;
- c. he lists two of his prior cases filed in the Central District of California, including dates and case numbers;
- d. his assets were between \$1 million and \$10 million; and
- e. his liabilities were between \$100,000 and \$500,000. *Id.*, Ex. Z.

Defendant listed major assets including a single-family residence at 1810 Mora Ave., Calistoga, CA 94515 ("Mora Property") and a residential home at 7310 Plaza Circle, Tahoe, Vista, CA 96148 on Schedule A/B. *Ibid.* Defendant also listed in his schedules:

- a. In Schedule A/B, Defendant listed an \$840,000 claim for wrongful foreclosure and unlawful detainer judgment against Nationstar Mortgage, LLC, and US National Bank related to real property located at Sacramento St. Property. Defendant also listed a \$525,000 claim against Specialized Loan Servicing and HSBC for wrongful foreclosure on real property located at 1554 Greenwich, San Francisco, CA ("Greenwich Property"). Neither of these properties were listed on the schedules.
- b. Defendant listed a 5% ownership interest in "H Inc." that was further described in the Statement of Financial Affairs at part 11, question 27, as a business involving real estate acquisitions that was located at 255 Glendale Blvd., Glendale, CA 91202.
- c. In Schedule D, Defendant lists no secured creditors.
- d. In Schedule I, his occupation as State of California caretaker at IHSS in Los Angeles.
- e. In the Statement of Financial Affairs, Defendant lists a case against U.S. Bank National Association in the Superior Court of California for unlawful detainer. *Ibid.*

Defendant also filed a chapter 13 plan proposing a monthly payment of \$2,388 per month over 60 months but failed to list any treatment of any claim held by any creditor. *Id.* Ex. Y. This case was dismissed on December 1, 2017, after US Bank obtained relief from the automatic stay to exercise its remedies under state law against Sacramento St. Property. *Id.*, Exs. Y, AA, BB.

6. In Case No. 18-11385-B-11, Defendant signed under penalty of perjury that:

- a. his address was Clovis Property;
- b. his debts were primarily business debts, and that they are for business / real estate / tax;
- c. his assets were between \$1 million and \$10 million;
- d. his liabilities were between \$1 million and \$10 million;
- e. he checked the box that he is a small business debtor; and
- f. he lists 20 largest creditors and among them were (1) 2614 Sacramento St. LLC, 5758 Geary Blvd #368, San Francisco, CA 94121; (2) US Bank National Association, 425 Walnut St., Cincinnati, OH 45202; (3) Specialized Loan Services; (4) Nationstar Mortgage; (5) Bank of America, etc. *Id.*, Ex. DD.

A creditor moved for relief from the automatic stay with *in rem* provisions for Sacramento St. Property. *Id.*, Ex. CC. This case was dismissed on May 31, 2018 after Defendant obtained an order granting his motion to extend time to file schedules. *Id.*, Exs. CC, EE, FF, GG.

On motion by the Plaintiff, Defendant was barred from re-filing a bankruptcy case for 180 days from the entry of the order on June 15, 2018. *Id.*, Ex. CC. Defendant waited 208 days to file his next case.

7. In Case No. 19-10027-B-13, Defendant signed under penalty of perjury that:

- a. his address was at Clovis Property;
- b. his debts were primarily consumer debts;
- c. his assets were between \$1 million and \$10 million;
- d. his liabilities were between \$1 million and \$10 million;
- e. he denied being a sole proprietor of a business;
- f. he stated that his landlord obtained an eviction judgment against him; and
- g. he stated that he has filed bankruptcy in the last 8 years, but failed to list where, when, or any of the case numbers. *Id.*, Ex. II.

This case was dismissed on January 31, 2019, after Defendant's motion to impose the automatic stay and motion to extend deadlines to file schedules were denied. *Id.*, Exs. JJ, KK, LL.

8. In Case No. 19-12039-A-13, Defendant signed under penalty of perjury that:

- a. his address was at Clovis Property;
- b. his debts were primarily business debts in real estate losses;
- c. his assets were between \$1 million and \$10 million;
- d. his liabilities were between \$1 million and \$10 million;
- e. he has lived in the district the prior 180 days;
- f. he filed bankruptcy in the last 8 years, but failed to list where, when, or any of the case numbers;
- g. his landlord has not obtained an eviction judgment against him at Sacramento St. Property; and
- h. he does not rent his residence. *Id.*, Ex. NN.

This case was dismissed on June 19, 2019 after the Defendant obtained an order granting his motion to extend time to file schedules. *Id.*, Exs. MM, OO, PP.

9. In Case No. 19-14658-B-13, Defendant signed under penalty of perjury that:

- a. his address was at Clovis Property;
- b. his debts were primarily business debts;
- c. his assets were between \$1 million and \$10 million;
- d. his liabilities were between \$500,000 and \$1 million;
- e. he has lived in the district the prior 180 days;
- f. he filed bankruptcy in the last 8 years, but failed to list where, when, or any of the case numbers;
- g. his landlord has not obtained an eviction judgment against him; and
- h. he owns or has hazardous property or property that needs immediate attention (citing "fire at the property in Napa" and Mora Property). *Id.*, Ex. RR.

This case was dismissed on December 9, 2019, after Defendant obtained an order granting his motion to extend time to file schedules. *Id.*, Exs. RR, SS, TT, UU.

10. In Case No. 20-12774-A-13, Defendant signed under penalty of perjury that:

- a. his address was at Clovis Property;
- b. his debts were primarily business debts;
- c. his assets were between \$1 million and \$10 million;
- d. his liabilities were between \$1 million and \$10 million;
- e. he has lived in the district the prior 180 days;
- f. he filed bankruptcy in the last 8 years, but failed to list where, when, or any of the case numbers; and
- g. his landlord has not obtained an eviction judgment against him.

Defendant obtained an order granting his motion to extend time to file schedules. *Id.*, Ex. VV. Defendant filed schedules, statement of financial affairs, and a chapter 13 plan. *Id.*, Exs. VV, VVV, WWW.

In Schedule A/B, Defendant lists a single-family home located at Mora Property valued at \$2.4 million; a single-family home at 7310 Plaza, Tahoe Vista, CA valued at \$450,000; a single-family home, duplex, or multi-unit building concerning "Legal and business losses (lawsuit)" for the Sacramento St. Property and Greenwich Property; and alleges theft of intellectual property and wrongful foreclosure of real estate. *Id.*, Exs. VV, VVV. In addition, Defendant lists the following information on his schedules:

- a. In Schedule A/B, Defendant lists his interests in health and living group investments and misappropriate technology licenses.
- b. Defendant lists the same information, and his partners are handling the matter, with a value of \$15 million.
- c. In several sections, Defendant states that he has suffered technology losses and misappropriation of

- licenses related to Mora Property, Greenwich Property, and Sacramento St. Property.
- d. Defendant states that he has rental income from 7310 Plaza / income from health and living group food division / business income from 1810 Mora / and tenant paid rent through April 1, 2021 at Mora Property.
  - e. Defendant states that he has agricultural equipment at Mora Property leased to health and living group as partial tenant at Mora Property.
  - f. Defendant lists "will update as needed" regarding any business-related property.
  - g. He states that wine is "graped" at Mora Property.
  - h. In Schedule C, Defendant does not cite to any Bankruptcy exemptions.
  - i. In Schedule D, Defendant lists: (1) Fay Servicing for Mora Property; (2) Shell Point for Plaza Circle Property; (3) Nationstar/US Bank for the Sacramento St. Property; (4) SLS for Greenwich Property; and (5) Health and Living Investment for technology and licenses related to Mora Property and other real estate involved in litigation.
  - j. In Schedule I, Defendant lists that he is not employed and retired, but has a monthly income of \$10,400.
  - k. In the Statement of Financial Affairs, Defendant states that he has lived at Mora Property from 2010 to present.
  - l. Defendant lists rental income for the last three years.
  - m. Defendant cites two lawsuits: (1) Khan v. US Bank in Napa County Superior Court; and (2) Khan v. US Bank in the Ninth Circuit Court of Appeals.
  - n. Defendant states that Fay Loan Servicing for Mora Property had repossessed/foreclosed that property within 1 year prior to filing bankruptcy.
  - o. Defendant includes insufficient information about his business or connections to businesses.

Defendant also filed a chapter 13 plan, which proposes a 100% repayment to unsecured creditors over 36 months and proposed to pay the creditor secured by Mora Property \$1.1 million. However, Defendant used a chapter 13 plan form that was approved for the Central District of California rather than the Eastern District of California. *Id.*, Ex. WWW.

Defendant also filed an amended petition and stated:

- a. his assets were between \$500 million and \$1 billion; and
  - b. his liabilities were between \$1 million and \$10 million.
- Id.*, Ex. XXX.

Defendant filed a declaration stating that he was not paid by an employer because he was either self-employed or not employed. *Id.*, Ex. YYY. This case was dismissed on November 19, 2020 after the chapter 13 trustee moved for dismissal. *Id.*, Exs. VV, XX, YY, ZZ.

#### Underlying Bankruptcy

11. In Case No. 20-13855-B-11, Defendant filed a "skeletal" chapter 11 petition on December 15, 2020. Doc. #48, Ex. B. This case was dismissed on February 24, 2021 with prejudice. Debtor was barred



from refiling a bankruptcy case in this district for a period of 180 days. *Id.*, Ex. F.

Defendant's voluntary petition was signed under penalty of perjury. *Id.*, Ex. B. Defendant states that in the 180 days preceding the filing of his petition, he lived in this district longer than in any other district.

In Section 9 of the petition, Defendant was required to disclose prior bankruptcy cases he had filed in eight years before the petition date. Defendant did not disclose any prior cases in Section 9 of the petition.

In Section 11 of the petition, Defendant states that he does not rent his residence.

In Section 12 of the petition, Defendant states that he is the owner of a business that he operates as a sole proprietor: "Operation" at Mora Property and stated that he is a healthcare business as defined in 11 U.S.C. § 101(27A). Defendant also states that this is a single asset real estate case as defined in § 101(51B).

Section 15 states that Defendant received a briefing from approved credit counseling agency within 180 days before he filed his petition and will file it within 14 days. *Ibid.* Defendant did not file a certificate of credit counseling until January 14, 2021, nearly one month after filing his petition. *Id.*, Ex. G.

In Section 16, Defendant stated that his assets are between \$500,000 and \$1 billion. *Id.*, Ex. B. Section 20 states that Defendant's liabilities are between \$1 million and \$10 million. *Ibid.*

Defendant elected to file this case under Chapter 11, rather than Subchapter V of Chapter 11 in Section 13. *Ibid.*

Due to failure to meet the demands and requirements of Chapter 11, Defendant's case was dismissed with prejudice on February 24, 2021, barring Defendant from refiling a case in this district for 180 days after entry of the order dismissing the case. *Id.*, Ex. F. The court specifically retained jurisdiction over this adversary proceeding despite the dismissal.

#### Related Bankruptcies

Prior to Defendant's serial-filing spree beginning in 2016, his business partner, Bruce Chadbourne, filed Case No. 15-10249 on March 12, 2015 in the Northern District of California. See *In re Mohammad Mahmood Khan*, Case No. 20-13855, Doc. #82, Ex. 4. This case was allegedly filed to prevent a foreclosure of Mora Property and was ultimately dismissed on March 31, 2015. *Ibid.*

As foreclosure proceedings were re-initiated, Chadbourne transferred a 25% fractional interest in Mora Property Defendant as a gift for no consideration by way of an unauthorized grant deed on September 20, 2017. *Id.*, Ex. 5. The next day, September 21, 2017, Defendant

filed his fifth bankruptcy, Case No. 17-13630. As noted above, that case was dismissed on December 1, 2017.

Defendant subsequently filed additional cases. After his seventh case (Case No. 19-10027) was dismissed on January 31, 2019, a new foreclosure sale for Mora Property was rescheduled for February 14, 2019. Chadbourne transferred an 8% interest in Mora Property for no consideration to Defendant's spouse, Ayesha Khan, by way of unauthorized grant deed. *Id.*, Ex. 11. Ayesha Khan filed a chapter 13 bankruptcy petition in the Eastern District of California, Case No. 19-10511. *Id.*, Ex. 12. That case was dismissed on March 15, 2021 for failure to file documents. *Ibid.*

The foreclosure sale for Mora Property was rescheduled for May 17, 2019. The day before the foreclosure sale, Chadbourne filed another skeletal petition in the Northern District of California, Santa Rosa Division, Case No. 19-10346. *Id.*, Ex. 13.

In Chadbourne's bankruptcy case, secured creditor Wilmington Trust National Association ("Wilmington") filed a motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), (2), and (3) on May 24, 2019. *Id.*, Ex. 14. Wilmington cited to substantial default on the underlying loan, no equity in Mora Property, and bad faith with six bankruptcy filings purporting to affect Mora Property since March 2016, all being dismissed for failing to comply with a court order. The court denied the requested relief under § 362(d)(1) and (2) as moot because Chadbourne's case had been dismissed. However, the court granted the request for relief from the stay *in rem* under § 362(d)(4). 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. This order was entered on July 8, 2019, so the automatic stay in any bankruptcy will not affect Mora Property until after July 8, 2021. This order was recorded in Napa County on July 25, 2019. *Id.*, Doc. #80, Ex. 1.

*Defendant's Adversary Proceeding: Khan v. Wilmington*

Defendant filed an adversary proceeding against Wilmington on June 21, 2021 entitled *Khan v. Wilmington*, adv. proc. no. 21-01026 alleging violation of the automatic stay, fraud, turnover of property, and recovery. Adv. Proc. No. 21-01026, Doc. #1. Defendant also seeks a temporary restraining order and seeks to compel Wilmington to turnover Mora Property.

While the court cannot pre-judge Defendant's other proceedings, it should be noted (1) this adversary proceeding was filed while Defendant's bankruptcy case was dismissed with prejudice while the 180-day bar was in effect; and (2) the stay violation claims regarding Mora Property raised by Defendant have appeared in nearly all of his pleadings. The § 362(d)(4) relief granted to Wilmington in Chadbourne's Northern District of California bankruptcy, Case No. 19-10346, included *in rem* provisions binding to Mora Property for a period of two years in any other bankruptcy case. At the time Defendant alleges stay violations against Wilmington, the automatic stay was not in effect with respect to Mora Property.

This is another instance of Defendant abusing the bankruptcy process. Despite being informed multiple times, Defendant continues to raise patently frivolous claims brought solely to delay, hinder, and harass Wilmington.

Plaintiff's Adversary Proceeding: US Trustee v. Khan

Plaintiff filed this adversary proceeding on December 30, 2020. Doc. #1.

On December 30, 2020, the Clerk of the Bankruptcy Court issued a summons in connection with Plaintiff's complaint. Doc. #3. The summons required Defendant to file a motion or answer to the complaint within 30 days after the date the summons was issued: not later than January 29, 2021.

On December 31, 2021, Plaintiff served the complaint and the summons on Defendant by first class mail at the street address and mailing address listed in the petition in the underlying bankruptcy case in accordance with Rule 7004(b)(1) and (b)(9). Doc. #6. Defendant is not an infant or an incompetent person, nor is Defendant currently on active duty with the military services of the United States. Doc. #47. Defendant was properly served the complaint.

Defendant requested additional time to file an answer on January 29, 2021. Doc. #7. The court granted the request on February 1, 2021, giving Defendant until February 12, 2021 to file his answer. Defendant filed a response that did not comply with Civil Rule 8(b) on February 12, 2021. Doc. #9. Defendant's answer was stricken on February 25, 2021 for noncompliance. Doc. #10. Defendant was ordered to file an amended answer not later than March 12, 2021. Doc. #12.

Defendant filed a second request for an extension on March 12, 2021. Doc. #14. The court granted the request, giving Defendant until March 22, 2021 to file his answer. Doc. #15. The court also ruled that no further extensions would be granted without consent of Plaintiff.

Defendant filed a third request for an extension on March 22, 2021. Doc. #19. The court noted that no consent by the Plaintiff had been filed, as ordered in the prior extension, and Defendant provided no evidence that he requested consent. The court denied the request on March 24, 2021. Doc. #20.

Defendant requested a fourth extension on March 26, 2021 several days prior to the scheduled March 31, 2021 status conference. Doc. #22. Defendant failed to file consent of the extension by the Plaintiff. Defendant was not present at the status conference, which was continued to April 28, 2021. Docs. ##26-27.

On the date of the status conference, Plaintiff filed a request for entry of default (Doc. #24) and Defendant filed a fifth request for extension of time. Doc. #29. Defendant was served with the request for entry of default on March 31, 2021. Doc. #25. Later that day,

Defendant also filed a "Response" that did not confirm to Civil Rule 8(b), which appears in the underlying bankruptcy case. Doc. #28.

On April 1, 2021, the court entered Defendant's default under Civil Rule 55(a). Doc. #32. Plaintiff was directed to apply for a default judgment within 30 days of the date of entry of default for a "prove-up" hearing.

May 1, 2021 is 30th day after April 1, 2021. Plaintiff filed this motion on May 3, 2021. The motion documents were served on Defendant that same day. Doc. #49. However, May 1, 2021 is a Saturday. Under Rule 9006(a)(1)(C), if the last day of a time period specified in a court order is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday. So, the last day to apply for a default judgment was Monday, May 3, 2021. Plaintiff complied with the order on the entry of default.

Also on April 1, 2021, Defendant filed a motion to set aside default. Doc. #34. Defendant never filed a notice of hearing for this motion. The clerk of court issued a memorandum stating that the motion will be calendared only upon receipt of a notice of hearing. Doc. #36. No notice of hearing was ever filed.

The court denied Defendant's fourth and fifth requests for extension of time to file an answer on April 5, 2021. Doc. #37.

Plaintiff now requests entry of default judgment against Defendant for an injunction under 11 U.S.C. §§ 105 and 349 to prohibit Defendant from filing or causing to be filed any subsequent petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California for a period of two years without first obtaining permission from the Chief Bankruptcy Judge of the Eastern District of California. Doc. #1.

#### DISCUSSION

The court has discretion in whether to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). There are seven facts the court may consider in exercising its discretion as to entry of a default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of 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 court will now examine the *Eitel* factors.

## 1. Prejudice

If the court denies Plaintiff's request for entry of default judgment, Defendant will continue to repeatedly seek extensions, file incoherent documents, and cause undue delay. This case has already been delayed for six months due to Defendant's failure to adequately respond and his continuous requests for extensions of time. See *Warner Bros. Ent. Inc. v. Caridi*, 346 F. Supp 2d 1068, 1072 (C.D. Cal. 2004) (reasoning that a 10 month delay due to a defendant's failure to respond was prejudicial). Plaintiff has already suffered lengthy and costly delays. If the 180-day bar to refiling lapses, there is a substantial and strong likelihood that Defendant will file another bankruptcy case. This would require Plaintiff to expend additional legal resources. *IO Grp., Inc. v. Jordon*, 708 F. Supp. 2d 989 (N.D. Cal. 2010). This factor weighs in favor of default judgment.

## 2 & 3. Merits of Plaintiff's Substantive Claims and the Sufficiency of the Complaint

The second and third factors require considering the merits of the of Plaintiff's substantive claims and the sufficiency of the complaint.

### a. *Injunctive Relief*

Plaintiff's only claim in the complaint is for injunctive relief under 11 U.S.C. §§ 105 and 349.

Section 105(a) provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of any issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). Meanwhile, § 349(a) states:

Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were nondischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

11 U.S.C. § 349(a). "Cause" has not been defined but requires egregious conduct. "Generally, only if a debtor engages in egregious behavior that demonstrates bad faith and prejudices creditors . . . will a bankruptcy court forever bar the debtor from seeking to

discharge then existing debts. *In re Tomlin*, 105 F.3d 933, 936-37 (4th Cir. 1997).

The test to determine whether there is bad faith is the "totality of the circumstances." *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935 (B.A.P. 9th Cir. 1997) citing *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). The court must inquire whether the debtor has misrepresented facts in his filings or unfairly manipulated the Bankruptcy Code. *In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982). Bad faith exists where the debtor filed a petition only with the intention of defeating state court litigation. *Leavitt*, 209 B.R. at 939, citing *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir. 1986). The burden is on the debtor to prove that the petition was filed in good faith. *In re Powers*, 135 B.R. 980, 997 (Bankr. C.D. Cal. 1991).

Under the totality of the circumstances test, Plaintiff has sufficiently alleged that Defendant filed the underlying bankruptcy case in bad faith and has unfairly manipulated the Bankruptcy Code. Doc. #1. Plaintiff contends that Defendant filed the underlying bankruptcy case to invoke the automatic stay, cause delay and hinder creditors and other interested parties with no legitimate intent to perform his duties under the Bankruptcy Code, reorganize or discharge his dischargeable debts, or effectuate any legitimate purpose under the Bankruptcy Code.

Defendant is a serial filer. There are multiple discrepancies between the petition and schedules filed in each of those cases. In nearly every case, Defendant requests extensions of time, receives additional time, and then subsequently requests more time. In this case, Defendant made five requests for additional time before his default was entered.

Defendant has repeatedly stated that he needs to find counsel, and that he will retain counsel shortly. But Defendant never does retain counsel, and instead provides excuses for his inability to find counsel.

On June 28, 2021, Defendant again requested additional time to file a response to Plaintiff's request for entry of judgment, citing hospitalization. But Defendant has demonstrated a pervasive pattern of continuously seeking time extensions. In nearly all of his previous cases, Defendant has routinely requested additional time citing that he is finalizing retention of counsel, inability to obtain documents, medical issues, family issues, or hospitalization. He is initially granted additional time, but rather than using it to retain counsel, effectively mount a defense, or file required pleadings, he instead requests further additional time on the date of the deadline. This pattern of requesting more time appears to continue indefinitely and progress on the proceedings is effectively halted. Defendant never actually retains counsel, files required pleadings, or complies with the respective court order. Eventually, he exhausts his time extensions until the case is dismissed. And then he files a new bankruptcy.

Taking Plaintiff's allegations as true, and the evidence bears these allegations as true, the court finds that Plaintiff has adequately pled its claim and demonstrated a likelihood of success on the merits. *Leavitt*, 209 B.R. 935 (affirming dismissal and 18-month bar to refiling); *Kistler v. Johnson (In re Johnson)*, 2008 Bankr. LEXIS 469 (Bankr. E.D. Cal. Feb. 15, 2008) (enjoining debtor from filing a future bankruptcy petition for a three-year period). These two factors weigh in favor of entry of default judgment.

#### 4. Sum of Money at Stake

This factor is inapplicable. Plaintiff does not seek monetary damages or other legal remedies, instead contending that only injunctive relief will remedy Defendant's abuses of the Bankruptcy Code.

#### 5. Possibility of Dispute Concerning Material Facts

Defendant has filed multiple documents in this adversary and the underlying bankruptcy case. Each document is filled with incoherent and inconsistent statements. Defendant routinely rehashes frivolous allegations that Wilmington and Fay Servicing violated the automatic stay by foreclosing on Mora Property in December 2020, but no automatic stay was in existence at the time this bankruptcy case was filed. See Case No. 20-13855-B-11, Doc. #80, Ex. 1. Defendant has failed to present any evidence that contradicts his serial filing of bankruptcy petitions in bad faith. This factor weighs in favor of entry of default judgment.

#### 6. Possibility of Excusable Neglect

Sixth, the court must examine whether Defendant's failure to respond to Plaintiff's allegations was the result of excusable neglect. Here, the court has given Plaintiff multiple extensions of time in both the underlying bankruptcy case and the adversary proceeding. Defendant routinely states that he will find counsel, but never does.

Most recently, Defendant has requested extensions of time due to hospitalization for a heart issue. But Defendant makes the same claim in previous case filings. Medical issues are Defendant's "get out of jail free" card. At some point, the court cannot delay proceedings forever. Excusable neglect is an equitable principal that requires consideration of facts such as "prejudice, the length of the delay and impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

But Defendant has not acted in good faith. He was granted ample opportunity to retain counsel and file an answer on multiple occasions, but he failed to do so. Defendant's neglect is of the inexcusable variety. Rather than using the additional time he was provided to file a conforming answer, Defendant instead waited to request additional time on the day of the deadline.

## 7. Policy for Deciding on the Merits

"Cases should be decided on their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. However, "the mere existence of Rule 55(b) indicates that this preference, standing alone, is not dispositive." *PepsiCo, Inc. v. California Sec. Cans*, F. Supp. 2d 1172 (C.D. Cal. 2002) (internal quotation omitted). Defendant has had repeated opportunities to file an answer but has failed to do so. A decision on the merits is impracticable and it is unfair to Plaintiff to prolong this case further. This factor favors entry of default judgment.

The seven *Eitel* factors weigh in favor of this court entering default judgment against Defendant.

## CONCLUSION

Overall, Defendant's history of case filings betrays an intent to file the underlying case to solely obtain and extend the automatic stay. Defendant's filings demonstrate a complete lack of candor. It appears that the underlying petition and Defendant's prior bankruptcy petitions were filed in bad faith solely to acquire the benefit of the automatic stay.

The court finds that Defendant filed nine bankruptcy cases since 2016 in bad faith with the sole purpose of invoking the automatic stay to delay, hinder, and defraud creditors. This is "cause" to enter default judgment in favor of Plaintiff and against Defendant. The court will enjoin Defendant from filing another bankruptcy case in the Eastern District of California for a period of two years without first obtaining permission from the Chief Judge of the Eastern District of California Bankruptcy Court, effective from the date of entry of this order under 11 U.S.C. §§ 105 and 349.

The court will issue an order STRIKING Defendant's opposition because it was not timely. Order preparation for entry of default judgment will be determined at the hearing.

4. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**  
[20-1068](#) [MK-6](#)

MOTION TO EXTEND TIME TO FILE OPPOSITION TO MOTION FOR ENTRY OF  
DEFAULT JUDGMENT  
6-28-2021 [\[50\]](#)

U.S. TRUSTEE V. KHAN  
MOHOMMAD KHAN/MV.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.



*Pro se* Defendant Mohammad Mahmood Khan ("Defendant") asks to extend the time to file opposition to motion for entry of default judgment. Doc. #50.

This motion will be DENIED for failure to comply with the Local Rules of Practice ("LBR") and the Federal Rules of Bankruptcy Procedure ("Rules").

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure. LBR 1001-1(b). The LBR can be found on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>. The newest rules became effective April 12, 2021.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), and (e), and LBR 9014-1(c) and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Here, Defendant filed three separate matters under DCN MK-6:

- (1) Motion to Extend Time to File Opposition to Motion for Entry of Default (Doc. #50), and its Notice of Hearing (Doc. #53);
- (2) Opposition to Plaintiff's Motion for Entry of Default Judgment (Doc. #51); and
- (3) Motion to Continue Status Conference and Motion to Continue Motion for Entry of Default Judgment (Doc. #52) and its Notice of Hearing (Doc. #54).

All three of these matters have the same DCN of MK-6 and therefore do not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, this motion was filed on less than 28 days' notice. Doc. #53. LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date or continued date of the hearing. The alternative procedure to file motions on less than 28 days' notice under LBR 9014-1(f)(2) is not available in adversary proceedings. See LBR 9014-1(f)(2)(A).

The hearing is scheduled for June 30, 2019, but the motion was filed on June 28, 2021. Doc. #53. June 30, 2021 is 2 days after June 28, 2021. The motion should have been filed at least 28 days before the hearing date.

In appropriate circumstances and for good cause shown, LBR 9014-1(f)(3) allows the court to shorten the amount of notice required below the time constraints imposed in the LBR. When a motion is filed with an order shortening time, no written opposition is required. Here, Defendant did not file a motion for an order shortening time under 9014-1(f)(3). Thus, as noted above, his motion must be filed on at least 28 days' notice.

Further, the notice includes LBR 9014-1(f)(1)(B) language and notifies respondents that opposition must be filed at least 14 days before the hearing. But since this motion was filed on June 28, 2021, it requires opposition to be filed by June 16, 2021, which is before the motion was even filed. Even if Defendant had obtained an order shortening time, which he did not, the notice of hearing would need to provide that no opposition was required.

Third, Defendant did not file a certificate of service. Rule 7004 applies to adversary proceedings. Rule 7004(a)(1). Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3).

LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e)(1), (2). LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

Here, Defendant should have served Plaintiff and filed a corresponding proof of service with the other motion documents. He did not.

For the foregoing reasons, this motion will be DENIED.

5. [20-13855](#)-B-11     **IN RE: MOHOMMAD KHAN**  
[20-1068](#)     [MK-7](#)

AMENDED MOTION TO CONTINUE STATUS CONFERENCE RE: COMPLAINT,  
MOTION TO CONTINUE HEARING RE: MOTION FOR ENTRY OF DEFAULT  
JUDGMENT  
6-28-2021     [[55](#)]

U.S. TRUSTEE V. KHAN  
MOHOMMAD KHAN/MV.

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

DISPOSITION:     Denied.

ORDER:     The court will issue an order.

*Pro se* Defendant Mohammad Mahmood Khan ("Defendant") asks to continue the status conference and the motion for entry of default judgment at least 30 days. Doc. #52. Defendant filed an amended motion and supplemental declaration on June 29, 2021. Docs. ##55-56.

This motion will be DENIED for failure to comply with the Local Rules of Practice ("LBR") and the Federal Rules of Bankruptcy Procedure ("Rules").

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure. LBR 1001-1(b). The LBR can be found on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>. The newest rules became effective April 12, 2021.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), and (e), and LBR 9014-1(c) and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Here, Defendant filed three separate matters under DCN MK-6:

- (1) Motion to Extend Time to File Opposition to Motion for Entry of Default (Doc. #50), and its Notice of Hearing (Doc. #53);
- (2) Opposition to Plaintiff's Motion for Entry of Default Judgment (Doc. #51); and
- (3) Motion to Continue Status Conference and Motion to Continue Motion for Entry of Default Judgment (Doc. #52) and its Notice of Hearing (Doc. #54).

All three of these matters have the same DCN of MK-6 and therefore do not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Defendant partially resolves this issue with his amended motion, which is filed under DCN MK-7. Doc. #55. However, the original notice relating to the amended motion still bears a DCN relating to the other matters: MK-6. *Cf.* Doc. #53. Ideally, Defendant should have filed the original motion, notice, evidence, and certificate of service under an unused DCN. Then, Defendant could have used that same DCN to link to the amended motion. Pleadings related to the same matter should share the same DCN, while pleadings related to different matters should have a different DCN.

Second, this motion was filed on less than 28 days' notice. Doc. #54. LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date or continued date of the hearing. The alternative procedure to file motions on less than 28 days' notice under LBR 9014-1(f)(2) is not available in adversary proceedings. *See* LBR 9014-1(f)(2)(A).

The hearing is scheduled for June 30, 2019, but the motion was filed on June 28, 2021. Doc. #54. The amended motion was filed on June 29, 2021. Doc. #55. June 30, 2021 is two days after June 28, 2021, and one day after June 29, 2021. The motion should have been filed at least 28 days before the hearing date.

In appropriate circumstances and for good cause shown, LBR 9014-1(f)(3) allows the court to shorten the amount of notice required below the time constraints imposed in the LBR. When a motion is filed with an order shortening time, no written opposition is required. Here, Defendant did not file a motion for an order shortening time under 9014-1(f)(3). Thus, as noted above, his motion must be filed on at least 28 days' notice.

Further, the notice includes LBR 9014-1(f)(1)(B) language and notifies respondents that opposition must be filed at least 14 days before the hearing. But since this motion was filed on June 28, 2021 and amended June 29, 2021, the notice states that opposition is required to be filed by June 16, 2021, which is before the motion was even filed. Even if Defendant had obtained an order shortening time, which he did not, the notice of hearing would need to provide that no opposition was required.

Third, the exhibits were not filed separately. Doc. #56. LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, contain an exhibit index, and include consecutively numbered exhibit pages. Here, the exhibits were not filed as a separate document and were attached to the declaration. There was also no exhibit index, and the exhibit pages were not consecutively numbered.

Fourth, Defendant did not file a certificate of service. Rule 7004 applies to adversary proceedings. Rule 7004(a)(1). Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3).

LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e)(1), (2). LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served. Here, Defendant should have served Plaintiff and filed a corresponding proof of service evidencing the same. He did not.

Fifth, Defendant's exhibits indicate that he was admitted to Oakwood Gardens Care Center, a short-term rehabilitation and skilled nursing home, on June 25, 2021. Defendant's response to Plaintiff's motion for entry of default judgment, if any, was due not later than June 16, 2021.

For the foregoing reasons, this motion will be DENIED.