

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, July 1, 2020  
Place: Department B - Courtroom #13  
Fresno, California

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

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

9:30 AM

1. [20-11602](#)-B-13    **IN RE: CARLITO/CRISTINA CATUBIG**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE LLC  
6-15-2020    [\[16\]](#)

NATIONSTAR MORTGAGE LLC/MV  
ARETE KOSTOPOULOS/ATTY. FOR DBT.  
EDWARD TREDER/ATTY. FOR MV.

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 Moving Party will submit a proposed order after hearing.

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 respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Creditor Nationstar Mortgage LLC, d/b/a Mr. Cooper ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor as required by 11 U.S.C. §§ 1322(b)(2) and (b)(5). Doc. #16, claim #4.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #2. Creditor's proof of claim, filed June 1, 2020, states a claimed arrearage of \$2,451.74. Claim #4. This claim is classified in class 1 - paid by the chapter 13 trustee. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Debtors' plan understates the amount of arrears. The plan states arrears of \$0.00. Doc. #2. Creditor's claim states arrears of \$2,451.74. Though plan section 3.02 provides that the proof of claim, and not the plan itself, that determines the amount that will be repaid, section 3.07(b)(2) requires that the payment be adjusted accordingly for a class 1 claim.

Debtor responded on June 29, 2020, stating that the pre-petition arrearage of \$2,451.74 was paid prior to this hearing and should therefore not be considered a pre-petition arrear.

This matter will be called to allow Creditor to address debtors' response.

2. [20-10104](#)-B-13     **IN RE: MARGARET GRAVELLE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-1-2020    [[30](#)]

MICHAEL MEYER/MV  
THOMAS MOORE/ATTY. FOR DBT.

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

DISPOSITION:        Continued to July 15, 2020, at 9:30 a.m.

ORDER:                The court will issue an order.

The trustee's motion to dismiss will be continued to July 15, 2020, at 9:30 a.m., to be heard with the debtor's motion to confirm plan.

3. [20-11345](#)-B-13     **IN RE: MICHAEL PORTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-11-2020    [[42](#)]

JANET LAWSON/ATTY. FOR DBT.

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

DISPOSITION:        Dropped as moot.

NO ORDER REQUIRED

The case was dismissed on June 25, 2020. Doc. #47.

4. [20-10556](#)-B-13    **IN RE: DEBRA DURAN**  
[SL-2](#)

MOTION TO CONFIRM PLAN  
5-19-2020    [\[35\]](#)

DEBRA DURAN/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

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

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

5. [20-10263](#)-B-13     **IN RE: MANUELA MATA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-1-2020    [[63](#)]

MICHAEL MEYER/MV  
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION:         Granted.

ORDER:                The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to make all payments due under the plan 11 U.S.C. § 1307(c)(1) and (c)(4). Accordingly, the case will be dismissed.

6. [15-12681](#)-B-13     **IN RE: MICHAEL/YVONNE MIRIGIAN**  
[DRJ-3](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)  
5-27-2020    [[64](#)]

DAVID JENKINS/ATTY. FOR DBT.

TENTATIVE RULING:        The matter will proceed as scheduled.

DISPOSITION:         Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The court notes that the approval of this application and Trustee payments to counsel under the Plan results in \$2,000.00 of approved fees that will not be paid through the Plan. The application does not state the fees will be waived. The court will inquire about this at the hearing.

This motion is GRANTED. Movant is awarded \$6,000.00 in fees, \$4,810.00 of which are due, and \$310.00 in costs.

7. [16-14381](#)-B-13 **IN RE: PONDER RICHARDSON AND SONYA MURPHY**  
[TCS-1](#)

CONTINUED MOTION TO MODIFY PLAN  
4-7-2020 [[31](#)]

PONDER RICHARDSON/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. Debtors filed an amended plan on June 19, 2020. See [TCS-2](#), doc. #49.

8. [19-15396](#)-B-13     **IN RE: JUAN/MARYLOU BARRAGAN**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-2-2020   [\[30\]](#)

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

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

DISPOSITION:       Continued to July 15, 2020 at 9:30 a.m.

ORDER:               The court will issue an order.

This motion is continued to July 15, 2020 at 9:30 a.m. The grounds of this motion are that dismissal is warranted because debtor has not yet confirmed a chapter 13 plan. Doc. #30. The order confirming the plan, however, cannot be entered "until an **order is entered** valuing the 2017 Honda Accord held by American Honda Finance." Doc. #32.

Debtor's motion valuing the 2017 Honda Accord is tentatively granted on the debtor's motion below, matter #9, SL-1. Therefore this matter is continued to allow debtor time to submit an order for the motion, if it is in fact granted at the hearing.

9. [19-15396](#)-B-13     **IN RE: JUAN/MARYLOU BARRAGAN**  
[SL-1](#)

MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE CORPORATION  
6-16-2020   [\[34\]](#)

JUAN BARRAGAN/MV  
SCOTT LYONS/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 will submit a proposed order after hearing.

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

The motion is GRANTED. 11 U.S.C. § 1325(a) (\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money

security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a) (1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

11 U.S.C. § 506(a) (2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined."

Debtor ask the court for an order valuing a 2017 Honda Accord ("Vehicle") at \$16,398.00. Doc. #34. The Vehicle is encumbered by a purchase-money security interest in favor of creditor American Honda Finance Corporation ("Creditor"). Debtors purchased the Vehicle on May 27, 2017, which is more than 910 days preceding the petition filing date. Debtors' declaration states that the Vehicle was acquired for debtors' personal use. The elements of § 1325(a) (\*) are met and § 506 is applicable.

Debtors' declaration states the replacement value of the Vehicle is \$16,398.00. Doc. #36. Creditor's claim states the amount owed to be \$24,793.86. Claim #1.

The debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$16,398.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.



11:00 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**  
[18-1006](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION ET AL V. MACPHERSON OIL  
T. BELDEN/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

2. [19-14045](#)-B-7 **IN RE: DAVID MARTIN**  
[20-1010](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
2-11-2020 [[1](#)]

EDMONDS V. FARRIS  
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Continued to July 8, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is continued to July 8, 2020 at 11:00 a.m. to be heard in conjunction with the motion to compromise controversy tentatively continued to that date and time.

3. [19-14045](#)-B-7 **IN RE: DAVID MARTIN**  
[20-1010](#) [ADJ-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH BILL GENE FARRIS  
4-28-2020 [[23](#)]

EDMONDS V. FARRIS  
ANTHONY JOHNSTON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 8, 2020 at 11:00 a.m.

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

This motion was originally scheduled for hearing on June 9, 2020 at 1:30 p.m. Doc. #24. An amended notice of hearing was filed and

served on June 9, 2020, setting the hearing for July 1, 2020 at 11:00 a.m. Doc. #36. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See 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 of Practice.

4. [18-14160](#)-B-7     **IN RE: BRYAN ROCHE**  
[19-1013](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
1-17-2019    [[1](#)]

VANDENBERGHE V. ROCHE  
DAREN SCHLECTER/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

5. [17-11570](#)-B-13     **IN RE: GREGGORY KIRKPATRICK**  
[19-1100](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
9-24-2019    [[1](#)]

KIRKPATRICK V. CALLISON ET AL  
MARTIN GAMULIN/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

6. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**  
[20-1029](#)

STATUS CONFERENCE RE: COMPLAINT  
5-4-2020 [[1](#)]

SVENHARD'S SWEDISH BAKERY V. UNITED STATES BAKERY ET AL  
DERRICK TALERICO/ATTY. FOR PL.  
TRANSFERRED TO SACRAMENTO - JUDGE KLEIN. SET TO 7/8/20 PER ECF  
ORDER #40

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order transferring the case has already  
been entered. Doc. #40.