

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, August 2, 2018
Place: Department B - Courtroom #13
Fresno, California

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. [17-10327](#)-B-12 IN RE: EDWARD/LISA UMADA
[FW-15](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CITIZENS BUSINESS BANK
7-5-2018 [[317](#)]

EDWARD UMADA/MV
PETER FEAR

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

It appears from the moving papers that the debtor in possession ("DIP") has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and

- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the DIP's business judgment. The order should be limited to the claims compromised as described in the motion.

The DIP requests approval of a settlement agreement between the debtor and Citizens Business Bank "CBB").

Under the terms of the compromise, CBB shall not be required to file a motion to determine the amount of the Class 7.1 and 8.1 claims, the interest component of the Class 7.1 claim shall be \$105,121.70 and the attorney fees and costs component of Class 7.1 shall be \$65,000.00, contingent upon debtors selling Field 38 no later than March 28, 2019. CBB also consents to the sale of Field 38 and agrees to receive the net proceeds of that sale in exchange for release of its security interest against Field 38. If debtors do not close the sale as stated above, the amount of attorney fees and costs in the Class 7.1 claim shall be \$121,154.22. The interest component of the Class 8.1 claim shall be \$60,069.59 and the attorney fees and costs component of Class 8.1 claim shall be \$0.00 as of April 30, 2018.

On a motion by the DIP and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the primary issue in dispute was the amount of attorney fees and costs that would be awarded to CBB and to debtors, but the probability of success is uncertain and bankruptcy courts have discretion in determining how much to award each party for attorney fees and costs; collection would be easy because CBB appears solvent and would likely be able to pay any debts it has; the litigation is factually intensive and would require a great deal of work to litigate; and the creditors will greatly benefit from debtors and CBB resolving their disputes because it will keep their attorney's fees lower than they otherwise would be, and allows debtors to focus on farming and making their chapter 12 payments instead of litigation; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976).

Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

2. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[FW-16](#)

MOTION TO MODIFY CHAPTER 12 PLAN
6-28-2018 [[311](#)]

EDWARD UMADA/MV
PETER FEAR

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. Paragraph 2.08.2 of the confirmed plan shall be deleted in its entirety and replaced with the following: "2.08.2 Amount of Claim. The amount of the Class 7.1 claim shall be the amount agreed upon and approved by the Bankruptcy Court pursuant to the Settlement Agreement between Debtors and Citizens Business Bank dated May 24, 2018. The Class 7.1 claimholder shall not be required to file a motion to determine the amount of the Class 7.1 claim;" and Paragraph 2.10.2 of the confirmed plan shall be deleted in its entirety and replaced with the following: "2.10.2 Amount of Claim. The amount of the Class 8.1 claim shall be the amount agreed upon and approved by the Bankruptcy Court pursuant to the Settlement Agreement between Debtors and Citizens Business Bank dated May 24, 2018. The Class 8.1 claimholder shall not be required to file a motion to determine the amount of the Class 8.1 claim."

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

3. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-29-2018 [[1](#)]

RILEY WALTER

NO RULING.

4. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**
[WW-7](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR JOSE DIMAS
VALADAO, JOINT DEBTOR MARY JANE VALADAO
6-12-2018 [[113](#)]

RILEY WALTER

NO RULING.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[BPC-1](#)

MOTION TO COMPEL ASSUMPTION OR REJECTION OF EQUIPMENT LEASES
AND/OR MOTION TO DIRECT PAYMENT OF POST-PETITION
ADMINISTRATIVE RENT , MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2018 [[581](#)]

WELLS FARGO VENDOR FINANCIAL
SERVICES, LLC/MV
RILEY WALTER
JEANNIE KIM/ATTY. FOR MV.

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

DISPOSITION: Continued to October 25, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation (doc. #621), this matter is continued to October 25, 2018 at 9:30 a.m.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-41](#)

MOTION FOR AUTHORITY TO ENTER INTO TRANSACTION INCLUDING
BORROWING FUNDS, SALES OF PERSONAL PROPERTY AND PROVIDING
SECURITY, ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES
AND FOR AUTHORITY TO LEASE REAL PROPERTY
7-20-2018 [[603](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
OST 7/19/18

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)(3) and an order shortening time (doc. #598) and will proceed as scheduled. The order stated that "objections to the emergency borrowing Motion may be made up to the commencement of the hearing. Objections to the Transaction described in the Motion may be made up until one day prior to the final hearing." Doc. #598. The notice of hearing that was sent to creditors stated "objections, if any, must be filed and served by August 1, 2018." Doc. #604. Because the order shortening time used the word "may" and the notice used the word "must," any opposition may also be presented at the hearing. The court also notes that the notice did not include the language required under LBR 9014-1(d)(3)(B)(iii). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. Tulare Local Healthcare District ("TRMC") is authorized to enter into the Lease, Asset Purchase Agreement, Credit Agreement, Security Agreement and Deed of Trust, and Interim Management Services Agreement. TRMC is also authorized to assume and assign the contracts and leases identified in this motion. The court finds that Adventist Health has negotiated the transaction in good faith and due to the time-sensitive nature of the requested relief, the stay under Federal Rule of Bankruptcy Procedure 6004(h) is waived.

1:30 PM

1. [18-11703](#)-B-13 **IN RE: ENRIQUE IBARRA AND NORMA CORTEZ IBARRA**
[TGM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RESIDENTIAL
FUNDING MORTGAGE SECURITIES II, INC.
5-22-2018 [[14](#)]

RESIDENTIAL FUNDING MORTGAGE
SECURITIES II, INC./MV
PETER BUNTING
TYNEIA MERRITT/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #35.

2. [18-12205](#)-B-13 **IN RE: DEQUAN/ALEXIS KELSEY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
7-17-2018 [[13](#)]

MICHAEL MEYER/MV
JOEL WINTER

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

DISPOSITION: Continued to September 13, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This objection will be set for a continued hearing on September 13,
2018 at 1:30 p.m. The court will issue an order. No appearance is
necessary.

The trustee has filed a detailed objection to the debtors' fully
noticed motion to confirm a chapter 13 plan. Unless this case is
voluntarily converted to chapter 7, dismissed, or the trustee's
opposition to confirmation is withdrawn, the debtors shall file and
serve a written response not later than August 30, 2018. The
response shall specifically address each issue raised in the
opposition to confirmation, state whether the issue is disputed or
undisputed, and include admissible evidence to support the debtors'
position. If the debtors elect to withdraw this plan and file a
modified plan in lieu of filing a response, then a confirmable
modified plan shall be filed, served, and set for hearing, not later
than September 6, 2018. If the debtors do not timely file a modified

plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

3. [17-10507](#)-B-13 **IN RE: KRYSTAL WEDEKIND**
[FW-3](#)

MOTION TO MODIFY PLAN
6-12-2018 [[44](#)]

KRYSTAL WEDEKIND/MV
GABRIEL WADDELL
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Debtor withdrew the second modified plan and filed a third modified plan. Doc. #64.

4. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[MHM-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
7-17-2018 [[84](#)]

MICHAEL MEYER/MV
PETER FEAR
MICHAEL MEYER VS.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice. The court sets October 17, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed.

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

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

The chapter 13 trustee filed a detailed objection to this fully noticed motion. Trustee objects on the grounds that it has been more than 45 days since the meeting of creditors was held and the plan

has not been confirmed, and take issue with Non-Standard Provision 7.04 of the plan, which purports to make any unpaid fees owed to the attorney nondischargeable, and paid directly to counsel "before and/or after entry of the discharge." Doc. #84. Trustee stated that the current plan can be confirmed with one change in the Order Confirming Plan: (1) Strike 7.04 of the non-standard provisions.

Debtor filed a timely reply, stating that "[d]ebtor would agree in this case to additional requirements added to the order confirming the plan consistent with the holding in Bingham." Doc. #95. In re Bingham, 2018 WL 2059604 (Bankr. N.D. Cal.) analyzed language similar to the language debtor's counsel used in section 7.04 that trustee has objected to. While the court upheld the additional provision in the debtor's chapter 13 plan, it created some additional provisions that must be included in a situation where attorneys' fees will not be discharged, but paid outside the plan post-discharge. The provisions the court ordered are the following:

- (1) The additional provision must be revised so as to apply only to a discharge in the Chapter 13 case. For example:
"Attorneys fees and costs approved by the court but unpaid as of completion of the plan shall not be discharged and shall be paid directly by the debtor to counsel for the debtor notwithstanding a discharge entered in this Chapter 13 case."
- (2) The order confirming a plan that contains such an additional provision shall include the following: "Conversion of the case to Chapter 7 voids the additional provision. If converted, Counsel is required to file a claim for any unpaid fees, and will receive a distribution on such claim pursuant to § 726 if there are sufficient assets in the estate to do so. Any unpaid portion of the claim is discharged."
- (3) Prior to incurring fees that will require the filing of a supplemental fee application in which counsel anticipates the fees will not be paid in full prior to discharge, counsel shall meet in person with the debtor to explain what fees are anticipated to be paid through the plan and what they will seek to collect following discharge.
- (4) Counsel must explain, and provide in writing, the following to the debtor:
 - He or she will not be able to discharge the fees in a subsequent Chapter 7 case for six years pursuant to § 727(a)(9),
 - unless payments under his or her Chapter 13 plan provided for 100% of the allowed unsecured claims in the case, or
 - debtor paid 70% of allowed unsecured claims and the plan was proposed in good faith and was his or her best effort;
 - He or she will not be able to discharge the fees in a subsequent Chapter 13 case for two years pursuant to § 1328(f)(2).
- (5) Counsel shall also discuss with the debtor how they will pay the fees.
- (6) Finally, counsel shall also tell the debtor how he or she will collect the fees if the debtor does not pay them.
- (7) In any supplemental fee application:

- State that the plan includes a provision authorizing payment of fees post-discharge;
- State whether the requested fees are anticipated to be paid through the plan;
- If the requested fees are not anticipated to be paid through the plan, then specifically state the amount expected to remain due post-discharge and certify that counsel held an in person meeting with the debtor as required above.
- Counsel must also serve debtor with the fee application, accompanied by a cover letter clearly stating the additional information required above.

Doc. #87, See In re Bingham, 2018 WL 2059604, *2-3, (Bankr. N.D. Cal.).

This matter will be called to allow trustee to respond to the debtor's reply.

Pursuant to § 1324(b), the court will set October 17, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

5. [17-14131](#)-B-13 **IN RE: CAROL BADAWI**
[TCS-2](#)

MOTION TO MODIFY PLAN
6-19-2018 [[31](#)]

CAROL BADAWI/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

6. [18-11338](#)-B-13 **IN RE: ISMAEL/MARIA PARAMO**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
7-17-2018 [[39](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Continued to September 13, 2018 at 1:30 p.m. The court sets October 17, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed.

ORDER: The court will issue an order.

This objection will be set for a continued hearing on September 13, 2018 at 1:30 p.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than August 30, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 6, 2018. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set October 17, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

7. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I LLC, CLAIM NUMBER 4
6-7-2018 [[88](#)]

MICHAEL MEYER/MV
JEFFREY ROWE

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

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

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

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

to the evidence was in October of 2008, which is well past the two and four year mark under the statutes of limitations.

Claim no. 4 filed by Cavalry SPV I, LLC is disallowed in its entirety.

8. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I LLC, CLAIM NUMBER 5
6-7-2018 [[92](#)]

MICHAEL MEYER/MV
JEFFREY ROWE

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

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

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

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract,

obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was in October of 2008, which is well past the two and four year mark under the statutes of limitations.

Claim no. 5 filed by Cavalry SPV I, LLC is disallowed in its entirety.

9. [18-10642](#)-B-13 **IN RE: PETER SOLORIO**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
6-4-2018 [[44](#)]

MICHAEL MEYER/MV
YELENA GUREVICH
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The grounds of this motion were that debtor had prejudiced creditors by failing to confirm a plan. Doc. #44. Matter #10 below, YG-2, debtor's motion to confirm plan is granted. Therefore, this motion is DENIED AS MOOT.

10. [18-10642](#)-B-13 **IN RE: PETER SOLORIO**
[YG-2](#)

MOTION TO CONFIRM PLAN
6-10-2018 [[48](#)]

PETER SOLORIO/MV
YELENA GUREVICH
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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, except the chapter 13 trustee, 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. The confirmation order shall also include the following language: "Plan payments commencing in month 1 shall be \$1,997.51."

The chapter 13 trustee filed an objection to the plan, objecting on the grounds that the plan did not comply with 11 U.S.C. § 1322(a) because debtor was not submitting all future income necessary to support the plan. Doc. #56. Trustee stated that the plan payment would need to increase to \$1,997.51 monthly and debtor would also need to make an additional payment of \$1,016.04 in order to cure a delinquent amount. *Id.*

Debtor responded, stating that they would agree to the increased amount, pay the additional \$1,016.04 and would be able to fund the plan due to debtor's girlfriend contributing \$350 per month. Doc. ##63, 67. Debtor filed amended schedules I and J, showing a currently monthly income of \$1,993.83. Doc. #65. Though this amount is below the plan payment amount, it is not so low that debtor will be unable to find room in his expenses to find an additional \$3.68 each month.

11. [18-12145](#)-B-13 **IN RE: MARCO ALVAREZ AND CLAUDIA GARCIA**
[TOG-1](#)

CONTINUED HEARING RE: MOTION TO VALUE COLLATERAL OF LENDMARK
FINANCIAL SERVICES
6-2-2018 [[8](#)]

MARCO ALVAREZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties.

The parties filed a stipulation on July 30, 2018 (doc. #25),
agreeing that creditor Lendmark Financial Services secured claim
(claim #1) shall be allowed and secured in the amount of \$4,632.00,
with an additional unsecured portion of \$3,773.97.

12. [18-12246](#)-B-13 **IN RE: CHARLES/MICHAELA GIBBS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
7-17-2018 [[15](#)]

MICHAEL MEYER/MV
PHILLIP GILLET

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained without prejudice.

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

This objection is SUSTAINED WITHOUT PREJUDICE.

Confirmation will be denied unless debtors' file the required
counseling certificates pursuant to 11 U.S.C. § 109(h).

If the certificates are filed prior to this hearing date, the matter
will be continued to August 16, 2018 at 1:30 p.m. to be heard in
conjunction with the trustee's motion to dismiss.

13. [18-12358](#)-B-13 **IN RE: CHRISTIAN ORNELAS**
[KDG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-5-2018 [[19](#)]

EQUITY STRATEGIC INVESTMENTS,
LLC/MV
NEIL SCHWARTZ
JACOB EATON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Equity Strategic Investments, LLC, seeks relief from the automatic stay under § 362(d)(1) and (4) with respect to a piece of real property located at 3312 Elda Avenue in Bakersfield, CA 93307.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

Under 11 U.S.C. § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property.

After review of the included evidence, the court concludes that "cause" exists to lift the stay because Yekuyeku properties failed

to make payments under the obligation owed to movant and failed to maintain insurance on the property as required under contract

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval. On or about October 30, 2013, Yekuyeku Properties, Inc. ("Yekuyeku") executed a Promissory Note in the amount of \$120,000.00 which is secured by a Deed of Trust against real property at 3312 Elda Avenue in Bakersfield, CA 93307. Doc. #23. After Yekuyeku became delinquent a foreclosure sale was set for February 28, 2018, Yekuyeku transferred the subject property to the debtor, and debtor first filed for bankruptcy relief on February 26, 2018. *Id.* Debtor's first bankruptcy case was dismissed on June 11, 2018. *Id.* Then on June 12, 2018, the debtor filed for bankruptcy relief a second time.

The Court having rendered findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 3312 Elda Avenue in Bakersfield, CA 93307; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant is ready to move forward with a foreclosure sale.

14. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[JFL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC
6-14-2018 [8]

DITECH FINANCIAL LLC/MV
RABIN POURNAZARIAN
JAMES LEWIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
 conference.

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

The hearing on this objection will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: the
amount of pre-petition arrearages debtor owes to creditor.

15. [16-10361](#)-B-13 **IN RE: LODGERIO/ANTONIA JORGE**
[JCW-1](#)

MOTION TO APPROVE LOAN MODIFICATION
6-29-2018 [96]

FREEDOM MORTGAGE
CORPORATION/MV
STEVEN ALPERT
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The court approves the loan modification entered into by movant and debtors though the court is not requiring the debtor to enter into the modification. If the modification requires a change in the debtors' budget affecting plan payments, debtor shall continue to perform under the plan until the plan is modified.

16. [18-10764](#)-B-13 **IN RE: CYNTHIA SANCHEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-9-2018 [[28](#)]

TIMOTHY SPRINGER
\$59.00 FINAL INSTALLMENT PAYMENT 7/16/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. A final installment of \$59.00 was paid on July 16, 2018.

17. [18-11865](#)-B-13 **IN RE: GERALD SANDERS**
[EPE-2](#)

MOTION TO CONFIRM PLAN
6-28-2018 [[41](#)]

GERALD SANDERS/MV
ERIC ESCAMILLA

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.

18. [18-12265](#)-B-13 **IN RE: ROBERTO JAUREGUI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-9-2018 [[26](#)]

THOMAS GILLIS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The debtor has requested that his case be dismissed. Doc. #39.

19. [18-12366](#)-B-13 **IN RE: LAURENCE/TUESDAY SHANNON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-17-2018 [[25](#)]

TIMOTHY SPRINGER

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. A final installment of \$310.00 was paid on July 18, 2018.

20. [18-11472](#)-B-13 **IN RE: EFRAIN MEJIA**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON
SAVINGS FUND SOCIETY, FSB
6-5-2018 [[32](#)]

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
DAVID JENKINS
JAMIE HANAWALT/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

Creditor's objection is on the grounds that the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor and that the plan is not feasible. Doc. #32, claim #8.

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. Claim #8. Therefore, this objection is OVERRULED WITHOUT PREJUDICE.

21. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[MHM-2](#)

MOTION TO DISMISS CASE
6-27-2018 [[22](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Continued to August 16, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion was fully noticed in accordance with Local Rule of Practice 9014-1(f)(1). The grounds of this motion are that debtor has failed to provide necessary documents to the trustee. Doc. #22. Debtor filed a timely response, stating that due to unforeseen

circumstances, she became saddled with obligations that previously her husband handled, prior to his passing. Doc. #29. Debtor recently retained counsel, and a declaration from a member of counsel's office staff states that several of the documents were sent to the trustee's office. Doc. #30.

Because debtor has recently retained counsel, provided evidence of her attempts to comply with trustee's orders and is working diligently to completely comply with trustee's orders, the court will continue this matter for two weeks, to August 16, 2018 at 1:30 p.m. If the trustee receives the requested documents prior to the continued hearing date, trustee will withdraw the motion. If the motion is not withdrawn, the court may call the matter to further inquire as to the status of the parties.

22. [15-14576](#)-B-13 **IN RE: JOSHUA/IRENE COSTNER**
[MAZ-1](#)

MOTION TO INCUR DEBT
6-28-2018 [[32](#)]

JOSHUA COSTNER/MV
MARK ZIMMERMAN

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(f)(1)(B) requires the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on June 28, 2018 and set for hearing on August 2, 2018. Doc. #33, 36. August 2, 2018 is 36 days after June 28, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and respondents must appear at the hearing to oppose. Doc. #33. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

23. [18-12186](#)-B-13 **IN RE: GAVINO/OLGA CANO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-5-2018 [[17](#)]

MARK ZIMMERMAN

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.

24. [18-11989](#)-B-13 **IN RE: KIMBERLY WILLIAMS**
[MHM-2](#)

MOTION TO DISMISS CASE
6-27-2018 [[16](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA

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. The debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

25. [18-11892](#)-B-13 **IN RE: ISIDRO FERNANDEZ AND ANA CORTEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-28-2018 [[13](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #22.

26. [18-10396](#)-B-13 **IN RE: AHARON/GRANUSH GASPARIAN**
[MHM-4](#)

MOTION TO DISMISS CASE
7-3-2018 [[45](#)]

MICHAEL MEYER/MV
KARNEY MEKHITARIAN

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 respondents' defaults 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 the debtors have failed to confirm a Chapter 13 Plan pursuant to 11 U.S.C. § 1307(c)(1) and (3). Accordingly, the case will be dismissed.

27. [18-11697](#)-B-13 **IN RE: JOSE MUNOZ JR. AND DEBORAH MUNOZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-28-2018 [[36](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK
RESPONSIVE PLEADING

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

DISPOSITION: Conditionally granted in part. The court sets a bar date of October 17, 2018 by which a chapter 13 plan must be confirmed.

ORDER: The court will issue an order.

This motion is CONDITIONALLY GRANTED IN PART. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

This motion is CONDITIONALLY GRANTED IN PART. This motion is based on the ground of unreasonable delay that is prejudicial to creditors for debtor's failure to confirm a chapter 13 plan pursuant to 11 U.S.C. §§ 1307(c)(1), (c)(3). Doc. #36. Section 2.09(d) of the plan states that the Class 2 claim of GM Financial for the 2012 Chevy Malibu is to be valued and reduced based on the value of the collateral. Doc. #5. Debtor's first motion to value collateral was denied without prejudice. Debtor filed another motion to value collateral, matter #28 below, which is also being denied without prejudice for procedural reasons.

11 U.S.C. § 1307(c)(1) allows the court to dismiss or convert a case, for cause, for unreasonable delay by the debtor that is prejudicial to creditors.

11 U.S.C. § 1307(c)(3) allows the court to dismiss or convert a case, for cause, for failure to file a plan timely under section 1321. 11 U.S.C. § 1321 states simply that "[t]he debtor shall file a plan."

Debtors are in compliance with 11 U.S.C. §§ 1307(c)(3) and 1321 because they filed a plan on the same day they filed their petition for relief. Doc. #5.

Based upon the evidence in front of the court, the court is unable to find that there is an unreasonable delay that is prejudicial to creditors. The § 341 meeting concluded on June 12, 2018. The time for objections to the plan has passed, and no objection to the plan has been filed. The delay has been mainly due to procedural errors,

inter alia, in a motion to value collateral based on section 2.09 of the plan. That delay cannot be said to be unreasonable. Both motions were filed on 28 days' notice and no opposition was received, leading this court to believe that the creditor is unopposed to the granting of this motion.

Yet, debtor has not made a procedurally proper motion for valuation of collateral. The bar date provides a last opportunity to confirm a plan.

For the above reasons, this motion is CONDITIONALLY GRANTED IN PART.

If a plan is not confirmed on or before October 17, 2018, the case will be dismissed on the trustee's declaration of non-compliance.

28. [18-11697](#)-B-13 **IN RE: JOSE MUNOZ JR. AND DEBORAH MUNOZ**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
6-25-2018 [[30](#)]

JOSE MUNOZ JR./MV
STEPHEN LABIAK

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, this motion was not compliance with Local Rule of Practice ("LBR") 9014-1(c), which requires that each motion shall include a new docket control number ("DCN") with "the number that is one higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case."

The DCN on this motion is "SL-1." However, the DCN on a previously filed motion to value collateral was also "SL-1."

Second, the debtor is competent to testify as to the value of the 2012 Chevrolet Malibu. However, the declaration does not contain the debtor's opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "current value," which is not specific enough.

Third, Debtor states that his opinion is based on a "Value Report for NADA Guides" which placed a "Clean retail value of \$8,125.00" for the vehicle. Debtor has not established himself as an expert, and cannot rely on the NADA guidelines in determining the replacement value of the vehicle. See Federal Rules of Evidence 701, 702, and 703. Therefore, this motion is DENIED WITHOUT PREJUDICE.

29. [18-11697](#)-B-13 **IN RE: JOSE MUNOZ JR. AND DEBORAH MUNOZ**
[SL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS
ATTORNEY(S)
6-25-2018 [[26](#)]

STEPHEN LABIAK

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, LBR 9014-1(f)(1)(B) requires the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on June 25, 2018 and set for hearing on August 2, 2018. Doc. #27, 35. August 2, 2018 is 39 days after June 25, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and respondents must appear at the hearing to oppose. Doc. #27. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

Second, a motion for compensation is not the correct method to receive the relief requested. For the relief movant prays for, movant must modify the plan.