

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 3, 2020
Place: Department A - Courtroom #11
Fresno, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878. A telephone appearance through CourtCall must be arranged 24 hours in advance of the hearing time.

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.

1. [18-11813](#)-A-13 **IN RE: LILY AVALOS**
[SLL-1](#)

MOTION TO MODIFY PLAN
7-27-2020 [[24](#)]

LILY AVALOS/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 24, 2020. Doc. #35.

2. [20-12119](#)-A-13 **IN RE: JAVIER GARZA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-30-2020 [[27](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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 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.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). Debtor is delinquent in the amount of \$1,932.00.

Doc. #29. Before this hearing, another payment in that same amount will also come due. Id. Debtor did not oppose.

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)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

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 provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). The debtor also failed to provide Credit Counseling Certificate. [11 U.S.C. §109(h)]. And, he failed to file correct form for Chapter 13 Plan as provided by the Local Rule 3015-1(a) Official Local Form EDC 3-080 (rev. 11/9/18) and General Order GO.18-03 Order Adopting Attached Chapter 13 Plan as Official Local Form EDC 3-080.

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

3. [19-13924](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[MHM-3](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
7-16-2020 [[86](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
DISMISSED 8/17/20

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on August 17, 2020. Doc. #93. The motion will be DENIED AS MOOT.

4. [20-12228](#)-A-13 **IN RE: KHALID CHAOU**
[MHM-1](#)

MOTION TO DISMISS CASE
8-6-2020 [[41](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

NO RULING

5. [20-11231](#)-A-13 **IN RE: MARIA FIGUEROA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-29-2020 [[26](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 3, 2020. Doc. #31.

6. [18-15035](#)-A-13 **IN RE: HENRY LOYA HERNANDEZ AND ALICE**
 HERNANDEZ
[SL-1](#)

MOTION TO MODIFY PLAN
7-24-2020 [[45](#)]

HENRY LOYA HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 1, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtors' motion to confirm a modified Chapter 13 plan. Doc. #53. 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 September 10, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. The Trustee shall file and serve a reply, if any, by September 17, 2020.

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 17, 2020. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

7. [19-15040](#)-A-13 **IN RE: CHRISTINE VILLARREAL**
[SLL-2](#)

MOTION TO MODIFY PLAN
7-27-2020 [[31](#)]

CHRISTINE VILLARREAL/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 1, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtor's motion to confirm a modified Chapter 13 plan. Doc. #38. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than September 10, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The Trustee shall file and serve a reply, if any, by September 17, 2020.

If the debtor elects 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 17, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

8. [15-10847](#)-A-13 **IN RE: RONALD/DOLORES SANDERS**
[MHM-1](#)

CONTINUED MOTION TO DETERMINE FINAL CURE AND MORTGAGE
PAYMENT RULE 3002.1
5-13-2020 [[57](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

This motion for determination of final cure was filed by Michael H. Meyer (the "Trustee"), the Chapter 13 trustee in the bankruptcy case of Ronald Sanders and Dolores Sanders (collectively, the "Debtors"), on May 13, 2020 in accordance with the notice requirements of Local Rule of Practice ("LBR") 9014-1(f)(1).

Doc. ##57-61. The Trustee moved the court pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 3002.1(h) for an order determining (1) the Debtors have cured the pre-petition default with respect to the promissory note dated January 24, 2005, secured by a deed of trust on real property located at 4760 Ave. 208, Visalia, California 93291, in favor of U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust ("Creditor"); and (2) the Debtors are current on all post-petition payments due and owing since April 2015. Id.

The Trustee filed a notice of final cure pursuant to FRBP 3002.1(h) on April 20, 2020. See Doc. #53. On May 6, 2020, Creditor filed a response to notice of final cure payment pursuant to FRBP 3002.1(g), agreeing that the Debtors have cured the pre-petition default but asserting the Debtors were not current on post-petition payments. FRBP 3002.1(h) provides, "[o]n motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts."

The Trustee and Creditor stipulated to continue the hearing on this motion to July 16, 2020 (Doc. ##62, 64), and again to September 3, 2020 (Doc ##68, 70), to allow the parties time to resolve the motion.

On July 7, 2020, Creditor filed an amended response to notice of final cure payment, which reflects that pre-petition default payments are paid in full and the Debtors are current with post-petition payments with the next payment due on July 28, 2020. See Doc. #73, Ex. 1. Based on Creditor's filing of an amended response to the Trustee's notice of final cure, Creditor filed a response to this motion on August 20, 2020 asking that the motion for determination of final cure be denied as moot. Doc. #72.

Accordingly, having reviewed Creditor's amended response to the notice of final cure and response to this motion, the court is inclined to deny the Trustee's motion for determination of final cure as moot.

9. [20-11453](#)-A-13 **IN RE: GLORIA ROBLES**
[BDB-1](#)

MOTION TO CONFIRM PLAN
7-29-2020 [[43](#)]

GLORIA ROBLES/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 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.

10. [20-10654](#)-A-13 **IN RE: PETE AVILA AND PRISCILLA VELOZ**
[JDW-2](#)

MOTION TO CONFIRM PLAN
7-14-2020 [\[41\]](#)

PETE AVILA/MV
JOEL WINTER/ATTY. FOR DBT.

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 Debtor has filed a modified plan (JDW-3, Doc. #50), with a motion to confirm the modified plan set for hearing on September 17, 2020 at 9:30 a.m. (Doc. ##47-51).

11. [18-13980](#)-A-13 **IN RE: JOAO VAZ**
[MHM-1](#)

OBJECTION TO CLAIM OF TULARE SALES YARD, INC., CLAIM NUMBER 3
7-16-2020 [\[30\]](#)

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

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

DISPOSITION: Sustained.

ORDER: The Moving Party will submit a proposed order after hearing.

This objection to proof of claim was set for hearing on at least 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.

Accordingly, the Chapter 13 trustee's objection to Tulare Sales Yard, Inc.'s proof of claim, filed on November 26, 2018 and amended on December 19, 2018 as Claim No. 3-2, asserting a priority claim in the amount of \$8,443.94, is SUSTAINED. Tulare Sales Yard, Inc.'s claim shall be allowed as a general unsecured claim.

12. [11-19090](#)-A-13 **IN RE: JASON/ROBIN MYERS**
[JDW-8](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
8-13-2020 [\[92\]](#)

JASON MYERS/MV
JOEL WINTER/ATTY. FOR DBT.

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.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled.

Jason Myers and Robin Myers (collectively, the "Debtors"), the debtors in this reopened Chapter 13 case, move pursuant to 11 U.S.C. § 522(f) to avoid a judicial lien of FIA Card Services, N.A. ("Creditor") on their residential real property commonly known as 5416 E Dakota Ave, Fresno, California 93727 (the "Property").

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994)). For purposes of lien avoidance under section 522(f), the relevant valuation date is the date of the filing of the petition. 11 U.S.C. § 522(a)(2).

A judgment was entered against Robin Myers in the amount of \$37,232.51 in favor of Creditor on May 19, 2010. Doc. #96, Ex. 1. An abstract of judgment was recorded with Fresno County on June 14, 2010. Id. That lien attached to the Debtors' interest in the Property. See Doc. #1, Schedules A, D. The Debtors filed this Chapter 13 bankruptcy case on August 11, 2011. Doc. #1. The Debtors valued

their interest in the Property as of the petition date at \$200,000.00, subject to the unavoidable liens of Select Portfolio Servicing in the amount of \$235,000.00 and Wells Fargo Home Equity in the amount of \$48,398.00. Id., Sched. D. The sum of Creditor's judicial lien and all other liens on the Property exceeded the value of the Debtors' interest in the property, and therefore impaired any exemption to which the Debtors would have been entitled under section 522(b). See Doc. #94, Myers Decl. at ¶ 3. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would have been insufficient equity to support Creditor's judicial lien. However, Goswami requires that the Property be listed on the Debtors' schedules as exempt and the lien must impair the exemption. See Goswami, 304 B.R. at 390-91. The court observes that the Debtors' Schedule C filed on August 11, 2011 does not list a claim of exemption in the Property. Doc. #1. The Debtor would be entitled to relief but for the fact that the Property is not listed on the Debtors' schedules as exempt.

Because the record does not support the finding that the Debtors established the four elements necessary to avoid a lien under Goswami, the court is inclined to deny the motion without prejudice to the Debtors filing an amended Schedule C with a claim of exemption in the Property to supplement the record if the Debtors wish to avoid Creditor's lien.

13. [19-13493](#)-A-13 **IN RE: JOSHUA FULFER**
[TCS-1](#)

MOTION TO MODIFY PLAN
7-28-2020 [[43](#)]

JOSHUA FULFER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to October 22, 2020 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 set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1) and will proceed as scheduled.

The Chapter 13 trustee (the "Trustee") has filed an objection to the Debtor's motion to confirm a modified Chapter 13 plan pursuant to 11 U.S.C. § 1322(a) on the grounds that the monthly payments are insufficient to fund the plan in the remaining months. Doc. #54. Bankruptcy Code section 1322(a) requires the plan shall "provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan." The Debtor's modified plan proposes payments over 60 months. Doc. #44. However, the Trustee alleges based on the filed claims that the plan will take 91 months to fund. Doc. #54. The Debtor filed a response to the Trustee's objection citing the pending objection to determine the Internal Revenue Service's ("IRS") claim. Doc. #56. However, the Trustee's objection points out that even if the Debtor reduced the IRS's claim to \$0.00, the plan will still not fund in time and the plan payments will need to increase. Doc. #54. Moreover, as set forth in Item #14 on this calendar

below, the court is inclined to overrule the Debtor's objection to the IRS's proof of claim.

Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a status report not later than October 15, 2020. The status report shall inform the court and Trustee on the issue of the IRS's claim and if the Debtor still believes the plan as modified is confirmable.

If the Debtor elects 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 October 15, 2020. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

14. [19-13493](#)-A-13 **IN RE: JOSHUA FULFER**
[TCS-2](#)

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 6
7-31-2020 [\[50\]](#)

JOSHUA FULFER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection to proof of claim was set for hearing on at least 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). However, constitutional due process requires that a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Joshua Fulfer (the "Debtor"), the debtor in this Chapter 13 case, objects to the proof of claim of the Internal Revenue Service ("IRS"), filed on September 10, 2019 as Claim No. 6-1. Doc. #50.

The Debtor states that according to the IRS's proof of claim, the Debtor allegedly owes \$16,861.80 in past due priority debt. Doc. #50, at ¶ 3. However, the court observes the IRS's proof of claim actually asserts an unsecured priority claim of \$20,101.40 and a general unsecured claim of \$4,339.00, totaling \$24,440.40. See Claim No. 6-1. It appears the Debtor is objecting to that part of the IRS's proof of claim for income taxes due for years 2017 (\$10,112.40) and 2018 (\$6,749.40), totaling \$16,861.80. See id.

Federal Rule of Bankruptcy Procedure 3001(f) provides 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." Bankruptcy Code section 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. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." In re Consolidated Pioneer Mortg., 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

Here, the Debtor has not provided sufficient evidence to negate any of the facts in the IRS's proof of claim, and therefore failed to meet his burden of proof. The Debtor declared that "[he] filed [his] taxes and provided proof of filing to the Chapter 13 Trustee and the IRS." Doc. #52, Fulfer Decl. at ¶ 6. However, there is no allegation or supporting evidence regarding when the Debtor filed his tax returns, for what years the returns were filed, and whether the returns related to the claims for taxes owed in years 2017 and 2018. While the Debtor alleges he provided proof of filing his taxes to the Chapter 13 Trustee and the IRS, no evidence has been presented to the court with the Debtor's declaration in support of the objection. See id. The Debtor claims to owe only "approximately \$2,000 to the IRS." Id. at ¶ 4. As the Debtor acknowledges, this amount is only an estimate, and provides no details about what exactly is the Debtor's tax liability according to the filed tax returns, what tax years this amount is owed, whether the debt is for taxes and/or interest, and what amount is entitled to priority and what amount is a general unsecured claim. The Debtor argues this objection is filed in lieu of the IRS amending its claim. Id. at ¶ 6. The Debtor's objection is lacking in specificity and supporting evidence such that the Debtor fails to rebut the prima facie validity of the IRS's proof of claim and shift the burden back to the IRS to prove the validity and amount of its claim.

Accordingly, the Debtor's objection to the IRS's claim is OVERRULED.

15. [20-11698](#)-A-13 **IN RE: DAVID DY**
[MHM-1](#)

MOTION TO DISMISS CASE
7-29-2020 [\[14\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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 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.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)).

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)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(3) for failing to timely confirm a chapter 13 plan.

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

11:00 AM

1. [20-11321](#)-A-7 **IN RE: SENaida GONZALES**
[20-1043](#)

STATUS CONFERENCE RE: COMPLAINT
7-2-2020 [[1](#)]

JOHN C. HART, CONSERVATOR OF
THE ESTATE OF JAMES G V.
RYAN SULLIVAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [02-12046](#)-A-13 **IN RE: TERRY BURGESS**
[19-1084](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-16-2019 [[1](#)]

BURGESS V. HOMEQ SERVICING
CORPORATION ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Concluded

NO ORDER REQUIRED.

Plaintiff has agreed to a settlement with Wells Fargo and PHH, which has been finalized. See Doc. ##73, 74. All claims against all other defendants in this adversary proceeding have been resolved. Therefore, the status conference is concluded, and the adversary proceeding shall be closed.

3. [19-13951](#)-A-7 **IN RE: BHUPINDER MAVI**
[19-1139](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-26-2019 [[1](#)]

TRANSPORT FUNDING, LLC V. MAVI
RAFFI KHATCHADOURIAN/ATTY. FOR PL.

NO RULING.

4. [19-13951](#)-A-7 **IN RE: BHUPINDER MAVI**
[19-1139](#) [FEC-1](#)

CONTINUED RE: ORDER TO SHOW CAUSE
3-2-2020 [[16](#)]

TRANSPORT FUNDING, LLC V. MAVI

NO RULING.