UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, September 23, 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

CONTINUED MOTION TO CONFIRM PLAN
7-6-2020 [26]

CARLITO CATUBIG/MV
ARETE KOSTOPOULOS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied for lack of service and inadequate notice.

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 is DENIED. The court continued this motion to allow debtors an opportunity to respond to oppositions to confirmation filed by two creditors, Sierra Pacific Mortgage Company Inc. ("SPMC") and Nationstar Mortgage LLC dba Mr. Cooper ("Nationstar"). SPMC withdrew its objection. Doc. #46. Nationstar filed non-opposition to this amended plan. Doc. #44. The court notes that Nationstar's previous objection was sustained by the court on July 1, 2020. Doc. #22. The two objections to confirmation are essentially moot.

But recent events have left the record confused and incomplete. The events also show lack of appropriate notice.

Debtors withdrew a certificate of service (doc. #48) one week prior to the hearing for unknown reasons. See doc. #50. The withdrawn certificate of service (doc. #48) did not include the referenced "attached service list," which was a problem the court noted it its ruling on August 19, 2020. Doc. #41. Doc. #49 appears to be the master address list. But since doc. #50 withdrew doc. #48, doc. #55 appears to be the only relevant document in this confusing web - yet again though, debtors' amended certificate of service (doc. #55) does not include the attached service list. So, there is no proof the relevant parties have been served with the amended plan.

On that same date, debtors filed an amended motion to confirm a chapter 13 plan, set for hearing on this calendar. KLG-1. Why debtors did so remains unclear. At any rate, the notice period is inadequate.

On this record, the motion should be DENIED for lack of service and inadequate notice.

2. 18-14020-B-13 **IN RE: JOSEPH/CLAUDIA CARRILLO**
JRL-2

MOTION TO MODIFY PLAN
8-14-2020 [32]

JOSEPH CARRILLO/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 21, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtors' fully noticed motion to modify a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than October 7, 2020. 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. Trustee shall file and serve a reply, if any, by October 14, 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 October 14, 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 opposition without a further hearing.

3. 20-12125-B-13 **IN RE: JOLYNN DURAN**

ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED
8-19-2020 [28]

NO RULING.

4. 20-12125-B-13 **IN RE: JOLYNN DURAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-20-2020 [30]

$79.00 INSTALLMENT FEE PAID 8/31/20

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.

An order approving payment of filing fee in installments was entered on June 25, 2020 (Doc. #6) with the following payments:

- $ 79.00 on or before 07/27/2020
- $ 77.00 on or before 08/24/2020
- $ 77.00 on or before 09/23/2020
- $ 77.00 on or before 10/23/2020

Debtor has made one payment to date of $79.00 on August 31, 2020. Debtor still owes for the August 24, 2020 payment in the amount of $77.00.

5. 19-13329-B-13 **IN RE: SALLY REYES**
TCS-3

MOTION TO MODIFY PLAN
8-14-2020 [69]

SALLY REYES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

6. 18-10438-B-13 **IN RE: CONSUELO MARTINEZ**
PBB-1

MOTION TO MODIFY PLAN
7-31-2020 [54]

CONSUELO MARTINEZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

7. 17-13445-B-13 **IN RE: FROYLAN/MARGARET GARCIA**
PBB-1

MOTION TO MODIFY PLAN
8-4-2020 [38]

FROYLAN GARCIA/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 21, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtors' fully noticed motion to modify a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than October 7, 2020. 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. Trustee shall file and serve a reply, if any, by October 14, 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 October 14, 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 opposition without a further hearing.

8. 19-13345-B-13 **IN RE: ERIC STEPHNEY**
HDN-2

MOTION TO MODIFY PLAN
8-3-2020 [52]

ERIC STEPHNEY/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 chapter 13 trustee withdrew his opposition. Doc. #63. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

9. 15-10849-B-13 **IN RE: ERIC SANBRANO**
TCS-5

MOTION TO RECONSIDER AND/OR MOTION TO VACATE
8-14-2020 [106]

ERIC SANBRANO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The defaults of all responding parties, except for State Farm Mutual Automobile Insurance Company ("State Farm"), are entered.

The court notes State Farm's procedural error. State Farm's opposition contains the wrong Docket Control Number ("DCN"). The DCN on the opposition is "TCS-2" (the DCN of the original motion), but the DCN on this motion to reconsider is TCS-5.

This motion is DENIED. Debtor asks the court for relief from a prior order denying Debtor's motion to avoid a judicial lien held by State Farm. See TCS-2, doc. #94. That was a contested matter. Debtor claimed there was no equity in the residence on which State Farm's judicial lien would attach; State Farm disagreed. The court continued the matter to July 15, 2020 to allow the parties to obtain and submit appraisals on the subject property.

At the continued hearing on July 15, 2020, a scheduling conference, the court gave the parties several options for the evidentiary hearing since an in-person hearing was impossible due to the court's General Order 618. The first option was to continue the matter. The second option was to hold a hearing through software such as Zoom. The third option was to waive the right to cross-examination and have the court make a ruling based on what was submitted.

Debtor originally agreed to have the court take the matter under submission without any further discovery, as did State Farm. However, Debtor later stipulated to State Farm's appraisal amount, stating on the record "all of the values . . . on the property lead to the same result. There is no actual dispute as to facts since all of the values – it doesn't which one you use – equal the same legal result." Ms. Klepac stated "I'm willing to stipulate to the $95,000.00." The court provided several opportunities for the parties to reaffirm and clearly state their intentions on the record.

The following day the court issued its ruling, denying the motion based on the stipulated $95,000.00 value of the subject property. Doc. #94.

The debtor later amended schedule C to claim a homestead exemption in the amount of $100,000.00 under Cal. Code Civ. Proc. § 704.730. The 30 days to object to the amendment expired at the end of August 2020 and no objection to the amendment has been filed.

Ten days after the court's ruling, Debtor filed their first motion to reconsider, which was denied without prejudice for procedural reasons: failure to comply with Local Rules of Practice ("LBR") 9004-2(a)(6), (b)(5), (b)(6), (e), and 9014-1(c). Contrary to counsel's assertion in this motion (see doc. #106, p.3, ¶¶21-25) the LBR are clear: "However, motions for reconsideration and countermotions shall be treated as separate motions with a new Docket Control Number assigned in the manner provided for above." See LBR 9014-1(c)(4).

This leads to this motion, which State Farm timely opposed, albeit with a procedural defect as explained earlier. State Farm states that there is no evidence to support debtor's $100,000.00 exemption on Schedule C under California Code of Civil Procedure § 704.730, and there is no error of law or fact warranting debtor's requested relief. Doc. #111. State Farm also requests attorney's fees. Id. Debtor replied. Doc. #112.

I. FEDERAL RULE OF CIVIL PROCEDURE 59

Federal Rule of Civil Procedure 59 (made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 9023) states that a motion to alter or amend a judgment shall be filed no later than 14 days after entry of judgment. Debtor timely complied with the rule, but Debtor has not made a showing sufficient to alter or amend the court's judgment.

Debtor asks the court to "reconsider its denial of [the] motion avoiding a pre-petition judicial lien on [debtor's] residential real estate based on the third ground for relief; "a need to prevent manifest injustice or to correct a clear error of fact or law." However, Counsel has mis-quoted the rule. The quoted language does not appear to be included in the language or either Fed. R. Civ. P. 59 nor Fed. R. Bankr. P. 9023. Nor is that language correctly quoted in the context of leading Ninth Circuit authority, as explained below.

"[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (citing 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999)). A motion for reconsideration "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." Marlyn Nutraceuticals, Inc., 571 F.3d at 880 (citing Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)).

There are no "highly unusual circumstances" here. The court has not been presented with newly discovered evidence, has not committed clear error, and there has been no intervening change in the controlling law. The court understands the relief Debtor is seeking to be the following: change its ruling because counsel made a mistake in stipulating to the $95,000.00 value without a prior amendment to Schedule C. Debtor admits as much. See Doc. #106, p.3, ¶¶11-14. In fact, at the hearing, the court gave counsel every opportunity to further raise arguments and cross-examine State Farm. Debtor chose not to. Instead, Debtor's counsel opted to stipulate to a finding of the subject property being valued at $95,000.00. Debtor cannot obtain the desired relief under this rule.

The late amendment of schedule C does not change the result for at least two reasons. First, Marlyn Nutraceuticals, Inc. holds a reconsideration motion should not be used to present evidence which could have reasonably been presented earlier. Debtor's counsel here declares a "belief" the amended schedules were filed before the hearing on the underlying motion. Doc. #108, 112. This establishes that there is no newly discovered evidence at all.

Second, even if the amendment is considered "newly discovered evidence" — it is not — the debtor has not established the State Farm lien should be avoided. The Ninth Circuit requires the debtor prove at least three things:

a) The fixing of a lien on an interest of the debtor in property.
b) Such lien impairs an exemption *to which the debtor would have been entitled.*
c) Such lien is a judicial lien.

Culver, LLC v. Kai-Ming Chiu (In re Chiu), 304 F.3d 905, 908 (9th Cir. 2002) (quoting Estate of Catli v. Catli (In re Catli), 999 F.2d

1405, 1406 (9th Cir. 1993)) (emphasis added). The fact there is no objection to the exemption claim does not mean the debtor is entitled to the exemption on a lien avoidance motion. In re Morgan, 149 B.R. 147, 152 (9th Cir. BAP 1993). No evidence was before the court before or now meeting this element. It is the debtor's burden. Premier Capital, Inc. v. DeCarolis (In re DeCarolis), 259 B.R. 467, 471 (B.A.P. 1st Cir. 2001).

Cal. Code Civ. Proc. § 704.730(a)(2) effective in 2015 (when this case was filed) required the homestead claimant asserting a $100,000.00 homestead, to meet certain requirements: member of a family unit and one member of the family unit had no interest in the homestead. There is no evidence the debtor met those requirements when the petition was filed.

11 U.S.C. § 522(f) "was not intended to free the debtor's property of judicial liens altogether; rather it was intended to preserve the debtor's exemption." Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 594 (9th Cir. BAP 1997), aff'd 196 F.3d 1292 (9th Cir. 1999). The debtor did not meet his burden before or now.

II. FEDERAL RULE OF CIVIL PROCEDURE 60

Federal Rule of Civil Procedure 60 (made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 9024) states that "the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect . . . or any other reason that justifies relief" and a host of other reasons, none of which are applicable here.

Debtor states that "the grounds for vacating its judgment are the same grounds as were used for reconsideration." Doc. #106. Part of those grounds is that Debtor has a very broad right to amend Schedules under Fed. R. Bankr. P. 1009. True enough, but at the time of the hearing, and Debtor rejecting other options the court presented which would have allowed a timely amendment, Schedule C exempted only $84,064.00. Doc. #1. The Debtor's right to amend Schedules cannot be used to fix a judicial admission resulting from an "on the record" stipulation under these facts.

The court has discretion whether to grant the relief requested. As for 60(b)(1), "[n]either ignorance nor carelessness on the part of the litigant or his attorney provide grounds for relief under Rule 60(b)(1).") Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1101 (9th Cir. 2006) (citations omitted). The Ninth Circuit adopted the rulings of other circuits, which held "that out-and-out lawyer blunders -- the type of action or inaction that leads to successful malpractice suits by the injured client -- do not qualify as 'mistake' or 'excusable neglect' within the meaning of Rule 60(b)(1)." Latshaw, 452 F.3d at 1101 (citing McCurry ex rel. Turner v. Adventist Health System/Sunbelt, Inc., 298 F.3d 586, 595 (6th Cir. 2002)). The court does not find a "blunder" by counsel here. But there is no legal basis to set aside the order.

There is no "mistake" or "excusable neglect" here. Counsel for the debtor, an experienced bankruptcy attorney, stipulated to a value for purposes of the motion. The court took the matter under submission since the $95,000.00 value was undisputed. No relief is available under 60(b)(1).

The court is mindful of the "excusable neglect" standard espoused by the Supreme Court in Pioneer Inv. Servs. V. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993). Pioneer involved a failure to timely file a proof of claim by a deadline and the holding may have limited applicability here. The determination of whether neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Id. at 395. The Court cautioned though that the proper focus is not just on the client's "policing" of counsel but whether neglect was excusable on the part of the client and chosen counsel. Id. at 397.

There is no evidence yet of bad faith on the part of the debtor here or any record so far of legal prejudice suffered by State Farm if the motion was granted. But there is a significant impact on judicial administration which weighs against granting the relief here. The court continued the hearing on the underlying motion to let both parties to obtain and present their appraisals. The debtor had two appraisals neither of which agreed with State Farm's appraisal. The court gave all parties options for determining the matter. Counsel for Debtor stipulated to a value equal to State Farm's claimed value making that value conclusive for purposes of the underlying motion. The court decided the motion based on the agreed value. This is the second motion for reconsideration which the court has had to determine.

The relevant circumstances do not support the relief requested here.

As for 60(b)(6), "a party who moves for such relief 'must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with . . . the action in a proper fashion.'" Latshaw, 452 F.3d at 1103 (citing Community Dental Services v. Tani, 282 F.3d 1164, 1168 (9th Cir. 2002)).

Debtor has not made this demonstration. The circumstances were in counsel's control. This rule is to be used "'sparingly as an equitable remedy to prevent manifest injustice' and 'is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment.'" Latshaw, 452 F.3d at 1103 (9th Cir. 2006) (citing United States v. Washington, 394 F.3d 1152, 1157 (9th Cir. 2005) (quoting United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993)). Debtor has not shown any "extraordinary circumstances" which prevented him from taking timely action to prevent or correct an erroneous judgment. The order here is not erroneous. It is consistent with the undisputed facts.

The motion is DENIED. State Farm's request for attorney's fees is likewise DENIED. State Farm has not shown any legal support on this record for awarding fees. If State Farm wishes to file a motion seeking fees, the court will consider the merits at that time.

10. 19-15350-B-13 **IN RE: LUIS BORGES**
PLG-1

CONTINUED MOTION TO MODIFY PLAN
7-6-2020 [20]

LUIS BORGES/MV
STEVEN ALPERT/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. Debtor filed an amended plan. Doc. #34, PLG-2.

11. 20-10152-B-13 **IN RE: RANDY/EUFEMIA BROWN**
MAZ-3

MOTION TO MODIFY PLAN
8-3-2020 [81]

RANDY BROWN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 chapter 13 trustee withdrew his opposition. Doc. #97. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

12. 20-12452-B-13 **IN RE: RAMON SEGURA DIAZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-27-2020 [27]

MARK ZIMMERMAN/ATTY. FOR DBT.
$310.00 FINAL INSTALLMENT PAID 9/3/20

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 have been paid in full. Therefore, the order to show cause will be vacated.

13. 19-11859-B-13 **IN RE: JOSHUA BOVARD**
FW-3

CONTINUED MOTION TO MODIFY PLAN
7-6-2020 [52]

JOSHUA BOVARD/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 chapter 13 trustee withdrew his opposition on August 20, 2020. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. 17-11570-B-13 **IN RE: GREGGORY KIRKPATRICK**
MHG-7

MOTION TO MODIFY PLAN
8-19-2020 [225]

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order 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). The default of all responding parties except creditors Callison and Perez shall be entered.

There is some ambiguity as to whether this motion was opposed. Creditors Callison and Perez filed opposition to the fourth amended plan but used the wrong docket control number. Doc. #223. The creditors used "MHG-6" as the docket control number when it should have been "MHG-7," the docket control number for this motion. The Callison-Perez opposition is on the same grounds as the opposition to the third modified Plan: insufficient payment on the secured claim and feasibility.

Debtor filed a "reply to opposition" on September 16, 2020. Doc. #237. Debtor simultaneously states that 1.) the reply is to an opposition filed by secured creditors Christopher Callison and Perla Ivette Perez and 2.) "no formal objection has been made to Debtor's confirmation of his Fourth Modified Plan with docket control number MHG-7." Id.

Debtor is correct that no formal opposition was filed by Callison-Perez to *this* motion to confirm because of the docket control number being incorrect on the creditors' pleading. But, in fact, opposition *was* filed. The court can understand the problem here since the Fourth Modified Plan and this motion were filed a day or two *after* the opposition to the Fourth Modified Plan was filed by Callison-Perez. It is uncertain why that happened, but the court will entertain the opposition.

That said, the objections to confirmation are OVERRULED. The claim filed by Callison-Perez, in the absence of objection, will control the distribution amount under the Plan. Callison-Perez have apparently filed multiple Notices of Fees Expenses and Charges under Fed. R. Bankr. P. 3002.1. The Debtor asserts they will be subject to objection. When and if the objections are properly filed and prosecuted, the court will rule. The court is not allowing or disallowing the claim by this order. Until then, the Trustee will pay dividends as provided under the Plan.

Feasibility is the debtor's burden to prove under § 1325(a)(6). Other than a blanket unsupported objection, Callison-Perez have provided no evidence contradicting debtor's declaration. Debtor explains why the COVID-19 restrictions have affected his business. In the absence of contrary evidence, it appears the debtor has met his burden.

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

15. 16-14381-B-13 **IN RE: PONDER RICHARDSON AND SONYA MURPHY**
TCS-3

MOTION TO MODIFY PLAN
7-31-2020 [59]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

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

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

16. 20-11581-B-13 **IN RE: APRIL BETTERSON**
EPE-2

MOTION TO CONFIRM PLAN
8-18-2020 [47]

APRIL BETTERSON/MV
ERIC ESCAMILLA/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.

17. 19-14186-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
TCS-5

MOTION TO MODIFY PLAN
8-11-2020 [105]

HUMBERTO VIDALES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 chapter 13 trustee withdrew his opposition on. Doc. #116. 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. 20-12486-B-13 **IN RE: DOUGLAS/HEATHERLY MICHAEL**

OBJECTION TO CONFIRMATION OF PLAN BY AUDREY KEE
9-9-2020 [20]

AUDREY KEE/MV
GABRIEL WADDELL/ATTY. FOR DBT.
NANETTE BEAUMONT/ATTY. FOR MV.

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 the order.

This objection is OVERRULED for failure to comply with the Local Bankruptcy Rules ("LBR").

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

This objection does not have a DCN .

Second, the notice of hearing did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Third, the objection is late. LBR 3015-1(c)(4) states that an objection to confirmation "must be filed and served . . . after the first date set for the meeting of creditors . . . ."

The first date set for the § 341 meeting of creditors was September 1, 2020. This objection was filed and served on September 9, 2020, which is more than seven days after September 1, 2020.

The court also did not see a proof of claim showing objector's claim. The court notes that objector has until October 5, 2020 to file a claim. See doc. #9. 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. Though the objection is overruled, so long as a timely claim is filed and not objected to, objector will not be prejudiced.

19. 20-12486-B-13 **IN RE: DOUGLAS/HEATHERLY MICHAEL**
APN-1

OBJECTION TO CONFIRMATION OF PLAN BY VW CREDIT INC.
8-24-2020 [14]

VW CREDIT INC./MV
GABRIEL WADDELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection is SUSTAINED.

Creditor VW Credit Inc. dba Volkswagen Credit ("Creditor") objects to plan confirmation on the grounds that Creditor's claim is not included in debtor's proposed plan and that if the claim were included, the plan would not be feasible. Doc. #14. Creditor is secured by a 2015 Volkswagen Jetta ("Vehicle"). Id. Debtors responded, stating that they surrendered the vehicle prior to filing. Doc. #18. However, debtors have acquiesced to Creditor's request that the Vehicle be designated and treated in Class 3, for surrender, in the order confirming the plan. Id.

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

20. 20-12288-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
RWR-1

OBJECTION TO CONFIRMATION OF PLAN BY NOBLE FEDERAL CREDIT UNION
8-25-2020 [41]

NOBLE FEDERAL CREDIT UNION/MV
SUSAN HEMB/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 Noble Federal Credit Union ("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, the claim should be treated under Class 1 to cure the delinquency, and the plan does not pay interest. Creditor holds a second deed of trust on property owned by debtors, and the interest rate on the loan is 10.25%. Doc. #41, claim #12.

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 does not state an arrearage, but Creditor states that an amended claim will be filed to fix the arrearage error on the claim filed July 24, 2020.

Debtors' plan understates the actual amount of arrears, Creditor's claim should be placed in class 1, and interest must be paid on Creditor's claim. Class 1 "includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence." Creditor's claim matures in 2037, well after this plan will complete.

Therefore, this objection is SUSTAINED.

21. 20-12288-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
SAH-3

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.
8-14-2020 [29]

FRANCISCO RAMIREZ/MV
SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be

resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The court must first note movant's procedural errors.

LBR 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion and declaration both included exhibits were combined into one document and not filed separately. The court also encourages counsel to review the LBR for the proper procedures for exhibits. Failure to comply with this rule in the future may result in the motion being denied without prejudice.

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

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

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

Debtors ask the court for an order valuing a 2014 Toyota Prius ("Vehicle") at $5,925.00. Doc. #29. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Ally Financial, Inc. ("Creditor"). Debtors purchased the Vehicle on July 18, 2014, which is more than 910 days preceding the petition filing date. The elements of § 1325(a)(*) are not met and § 506 is applicable.

Debtors' declaration states the replacement value of the Vehicle is $5,925.00. Doc. #31. Creditor's claim states the amount owed to be $13,834.62. Claim #2.

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 $5,925.00. 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.

22. 20-12288-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
SAH-4

MOTION TO VALUE COLLATERAL OF UNITED LOCAL CREDIT UNION
8-14-2020 [33]

FRANCISCO RAMIREZ/MV
SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #45.

23. 18-13595-B-13 **IN RE: DIMAS COELHO**
TCS-1

MOTION TO SUBSTITUTE ATTORNEY
9-2-2020 [62]

DIMAS COELHO/MV
THOMAS GILLIS/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.

This motion is GRANTED. Debtor wishes to substitute the law office of Timothy C. Springer for Thomas O' Gillis for representation in that bankruptcy case. Doc. #62. Attempts at contacting their current counsel were unsuccessful, and so the motion was set for hearing. Unless opposition is presented at the hearing, the motion is GRANTED.

24. 18-13895-B-13 **IN RE: CAROL SHIELDS**
DRJ-5

MOTION TO SET ASIDE AND/OR MOTION TO REINSTATE PLAN
8-31-2020 [77]

CAROL SHIELDS/MV
DAVID JENKINS/ATTY. FOR DBT.
DISMISSED 08/17/2020, RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally 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. The chapter 13 trustee filed and served opposition on September 2, 2020. Doc. #82. Unless further opposition is presented at the hearing, the court intends to enter the respondents' defaults, except for the chapter 13 trustee, 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.

This motion is CONDITIONALLY GRANTED. Debtor asks the court to set aside the order dismissing her chapter 13 case. Doc. #77. Debtor received notice of her delinquency and promptly sent in a check in the amount stated on the notice. Doc. #80. The check was received on August 13, 2020 at 8:30 a.m. Doc. #79. However, the payment was not posted until August 17, 2020, past the August 14, 2020 deadline contained in the notice.

The chapter 13 trustee opposed, stating that "Received means that the funds have cleared the Trustee's bank and are visible in the Trustee's computer system." Doc. #82. However, Trustee also states that "if the court is inclined to vacate the dismissal, the Trustee requests that the order be conditioned on Debtor being fully current on her plan payments." Id.

The court is so inclined. The debtor has warranted as such. If debtor is current by the hearing, meaning that the requisite funds have cleared the Trustee's bank and are visible in the Trustee's computer system, then the motion will be granted. If not, the motion will be denied.

25. 20-11602-B-13 **IN RE: CARLITO/CRISTINA CATUBIG**
KLG-1

AMENDED MOTION TO CONFIRM PLAN
9-16-2020 [51]

CARLITO CATUBIG/MV
ARETE KOSTOPOULOS/ATTY. FOR DBT.
SEE ORIGINAL MOTION #26 - EAT-1 AT TOP OF THIS CALENDAR ITEM #1

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(d) requires any plan set for a confirmation hearing be set on at least 35 days' notice. LBR 9014-1(f)(3) allows a party to notice matters on shortened time with a court order.

This motion was filed and served on September 16, 2020 and set for hearing on September 23, 2020. Doc. #52, 55. September 23, 2020 is seven days after September 26, 2020, and therefore this hearing was set on less than 35 days' notice as required by LBR 9014-1(d). The court has not signed an order shortening time. Therefore the motion is DENIED WITHOUT PREJUDICE.

11:00 AM

1. 17-14112-B-13 **IN RE: ARMANDO NATERA**
20-1035

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-5-2020 [1]

NATERA V. BARNES ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 21, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is continued to October 21, 2020 at 11:00 a.m. to be heard in conjunction with motions to strike affirmative defenses and causes of action. FW-1, FW-3.

2. 19-15246-B-7 **IN RE: ANDREA CASTILLO**
20-1016

STATUS CONFERENCE RE: COMPLAINT
3-12-2020 [1]

SEMPER V. CASTILLO
BRIAN WHELAN/ATTY. FOR PL.

NO RULING.

3. 19-15246-B-7 **IN RE: ANDREA CASTILLO**
20-1016 TCS-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-12-2020 [17]

SEMPER V. CASTILLO
UNKNOWN TIME OF FILING/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion is DENIED. 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).

Defendant Andrea Castillo ("Defendant") asks this court for an order dismissing the adversary proceeding pursuant to Federal Rule of Civil Procedure 4(m). Doc. #17. Plaintiff timely opposed. Defendant replied. Doc. #25-27. Plaintiff filed exhibits on September 16, 2020. Doc. #29.

Plaintiff filed the adversary proceeding on March 12, 2020. Doc. #1. Plaintiff served the summons and complaint on Defendant's attorney in the bankruptcy case, Timothy Springer ("Springer"), March 24, 2020. Doc. #6. At that time, Springer was not representing Defendant in the adversary proceeding. Springer states that he agreed to accept service and assumed that under "Rule 7004(b)(9), the Debtor would also be mailed a copy at her petition address." Doc. #19. On May 14, 2020, because service was not properly completed, the court ordered Plaintiff to obtain a re-issued summons and serve it and the complaint on Defendant in accordance with the applicable rules of procedure. Doc. #9, 10. The day prior (when the court's rulings were posted on the website), Springer claims that he was "again contacted and asked to accept service of the complaint." Doc. #19. He agreed, "believing that Plaintiff would now follow this court's order, and the rules and send the request for waiver of service in writing, as required by Rule 4(d)(1)(A)." Id. Apparently, that never happened.

Approximately two months after the court's order dropping the status conference and ordering Plaintiff to re-serve the Defendant was mailed (doc. #9, 10, 11), a summons was reissued and on July 15, 2020 Plaintiff served the debtor and debtor's counsel by mail. Doc. #14. That time the summons and complaint were properly served. The time from March 12, 2020 to July 15, 2020 is 125 days, including two holidays.

Plaintiff essentially claims, inter alia, that Springer lied to Plaintiff when he said that "he was not authorized to accept service, though he previously unequivocally stated as much . . . ." Doc. #23, 29. Plaintiff argues that the motion should be denied based on an agency theory (which will not be discussed) and because the court has discretion to order that service be made within a specified time. Id.

Defendant replied, again showing Plaintiff's violation of the rules. Doc. #25-27. However, for the reasons stated below, Defendant has not met their burden, and only the latter part of Plaintiff's opposition has any merit.

Federal Rule of Civil Procedure 4(m) (made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7004) gives the plaintiff 90 days to serve the defendant the complaint. If not timely performed, the court must dismiss the action without prejudice, or order that service be made within a specified time.

The court must also extend the time for service for an appropriate period if plaintiff shows good cause.

Defendant claims essentially that "good cause" does not exist under these facts to extend the time for service for an appropriate period. The Ninth Circuit in Wei v. Hawaii, 763 F.2d 370, 372 (9th Cir. 1985) stated that counsel's "inadvertence" does not qualify as good cause for failure to comply with Federal Rule of Civil Procedure 4(j) (now Fed. R. Civ. P. 4(m)). The "burden of showing good cause for failure to meet the . . . deadline" rests on "the party on whose behalf service was required." Id.

Proper service was performed on July 15, 2020. Doc. #14. The court notes that Plaintiff waited almost two months before obtaining a reissued summons. See doc. #10, 11, and 12. Plaintiff's counsel must appear at the hearing and explain why they waited so long. Only then will the court have enough information to fully decide the matter, in its sole discretion. The court also notes that Defendant has not filed an answer.

If the court is satisfied with Plaintiff's answer, then the court finds the following:

The court has the discretion to "order that service be made within a specified time." The court need not entertain agency theories, or strike Plaintiff's procedurally problematic filings, or anything of the like, nor is a showing of "good cause" necessary. Proper service has been performed. It was completed over two months ago. The court can see no prejudice for letting the case continue. Additionally, despite the Ninth Circuit's inadequate definition of "good cause" in this context, this court finds that the facts in Wei and the facts in this case are materially different. Plaintiff attempted to serve. Plaintiff apparently detrimentally relied on Springer's representations. The attorneys in Wei made no attempt at service. The distinction is on its face.

Had Plaintiff not attempted to again properly serve Defendant until after this motion was filed, the court would have likely found differently. The court's decision is entirely independent of whatever substance Plaintiff put forth in their opposition and Defendant argued in their reply.

However, future violations of the Federal Rules of Bankruptcy Procedure, the LBR, or any other rule may not grant the court as much as discretion as Fed. R. Civ. P. 4(m) does. The court takes procedure very seriously and urges Plaintiff's counsel to become familiar with all applicable rules and abide by them strictly.

The court will make no ruling or finding on the statements made to Plaintiff's counsel in this matter – that is neither before the court nor pertinent to the issue before it immediately.

The court finds that Defendant was properly served, albeit untimely.

Defendant must file and serve an answer or any other proper pre-answer motion not later than October 23, 2020. Failure to do so may result in the issuing of sanctions or entry of Defendant's default.

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

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

DISPOSITION: Closed.

ORDER: The court will issue an order.

The case is dismissed on plaintiff's motion, DMS-3, matter #5 below.

5. 18-14160-B-7 **IN RE: BRYAN ROCHE**
19-1013 DMS-3

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-12-2020 [77]

VANDENBERGHE V. ROCHE
DAREN SCHLECTER/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. Plaintiff asks the court to dismiss this adversary proceeding pursuant to a settlement agreement. Doc. #77. It appears that all creditors were served, and there has been no opposition to this motion.

A creditor filing an objection to discharge is viewed as undertaking a fiduciary responsibility to other creditors in the debtor's case. Settlement or dismissal of the action therefore affects all creditors in the case. Bankr. Receivables Mgmt. v. De Armond (In re De Armond), 240 B.R. 51, 56-57 (Bankr. C.D. Cal. 1999; In re Bates, 211 B.R. 338, 346 (Bankr. D. Minn. 1997). A compromise between the debtor and a creditor who has objected to the debtor's discharge requires notice to all creditors and the U.S. Trustee, plus court approval. See Fed. R. Bankr. P. 9019.

Some courts consider settlement of § 727 actions on a case-by-case basis using the factors employed in evaluating settlements in other adversary proceedings: — the probability of success in litigation; — the difficulties in collection; — the complexity, expense, inconvenience and delay attendant to continued litigation; and — the interest of the creditors. Jacobson v. Robert Speece Props. (In re Speece), 159 B.R. 314, 317 (Bankr. E.D. Cal. 1993). The Court in Bankr. Receivables Mgmt. v. De Armond (In re De Armond), 240 B.R. 51, 54 (Bankr. C.D. Cal. 1999) noted: A proposed compromise may be approved only if it is "fair and equitable."

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

Under the terms of the compromise, the plaintiff and defendant have agreed to completely and mutually release any and all claims between the parties, and no monetary consideration is to be exchanged.

The court authorizes the dismissal, finding the following: due to the family law dissolution proceeding debtor is entangled in, plaintiff may have to contend with the possible priority claims of debtor's ex wife, and balancing the strength of the 523 and 272 claims, the settlement agreement appears to be a fair and equitable compromise of the claims between the parties; plaintiff's § 523 claims were demonstrably stronger than the § 727 claims, so pursuing those claims was not likely to result in a positive result for plaintiff; proceeding to trial and attempting to collect given the pending family law proceeding would come with significant uncertainty; and all creditors, the chapter 7 trustee, and the United States Trustee have been given notice of the motion and have not opposed.; the settlement is fair and equitable.

6. 18-13468-B-7 **IN RE: MANUEL/LUPITA MENDOZA**
20-1032

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-2-2020 [1]

SALVEN V. MENDOZA ET AL
RUSSELL REYNOLDS/ATTY. FOR PL.

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

DISPOSITION: Continued to September 29, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is continued to the above date and time to be heard in conjunction with plaintiff's motion for entry of default judgment.

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

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

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

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

DISPOSITION: This matter will be continued to October 21, 2020 at 11:00 a.m.

ORDER: The court will issue the order.

Plaintiff's first and second motions for entry of default judgment were denied without prejudice for procedural reasons. See doc. #38, 49.

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

8. 20-11296-B-7 **IN RE: KYLE/DEANNA MAURIN**
20-1044

STATUS CONFERENCE RE: COMPLAINT
7-10-2020 [1]

KAPITUS SERVICING, INC. V. MAURIN ET AL
MICHAEL MYERS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

9. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
20-1002

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-14-2020 [1]

TULARE LOCAL HEALTHCARE DISTRICT V. BAKER & HOSTETLER
RILEY WALTER/ATTY. FOR PL.
CONTINUED TO 10/28/20 PER STIP & ORDER DOC. #30.

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

DISPOSITION: Continued to October 28, 2020 at 11:00 a.m.

NO ORDER REQUIRED: The court already issued an order.