

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, September 27, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [18-11166](#)-B-11 IN RE: JOSE/MARY VALADAO

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

RILEY WALTER

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

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

ORDER: The court will issue an order.

This matter is continued to October 16, 2018 to be heard in conjunction with the disclosure statement.

2. [18-11166](#)-B-11 IN RE: JOSE/MARY VALADAO
[BAS-2](#)

MOTION FOR COMPENSATION FOR BRADLEY A. SILVA, CREDITOR COMM.
ATY(S)
8-29-2018 [[169](#)]

RILEY WALTER

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").

The notice 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.

3. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**
[WW-7](#)

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

RILEY WALTER

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

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

ORDER: The court will issue an order.

Pursuant to the amended notice of hearing (doc. #181), this matter
will be continued to October 16, 2018 at 1:30 p.m.

4. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD**
INC
[DMG-4](#)

CHAPTER 11 SMALL BUSINESS DISCLOSURE STATEMENT FILED BY
DEBTOR CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC
8-15-2018 [[44](#)]

D. GARDNER
RESPONSIVE PLEADING

NO RULING.

5. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD**
INC
[DMG-5](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
9-6-2018 [[51](#)]

D. GARDNER

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's counsel is awarded fees of \$8,882.00 and costs of \$39.25.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[MRH-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
4-10-2018 [[475](#)]

MEDLINE INDUSTRIES, INC./MV
RILEY WALTER
MICHAEL HOGUE/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties.
Doc. #764.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-47](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
9-13-2018 [[739](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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. 11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume...any...unexpired lease of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

The presumption has not been rebutted, and so the court finds that the debtor-in-possession's decision to reject the "Master Lease Agreement" is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the "Master Lease Agreement" with GE HFS, LLC.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-48](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
9-13-2018 [\[751\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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. 11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume...any...unexpired lease of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

The presumption has not been rebutted, and so the court finds that the debtor-in-possession's decision to reject the vehicle lease agreement is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the vehicle lease agreement with Toyota Financial Services.

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-51](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
9-13-2018 [[745](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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. 11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume...any...unexpired lease of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

The presumption has not been rebutted, and so the court finds that the debtor-in-possession's decision to reject the non-residential real property lease is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the non-residential real property lease with the City of Tulare.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-54](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
9-13-2018 [[757](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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. 11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume...any...unexpired lease of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

The presumption has not been rebutted, and so the court finds that the debtor-in-possession's decision to reject the 26 contracts designated in the attached exhibit is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the designated executory contracts listed in debtor's Exhibit 1 (doc. #760).

1:30 PM

1. [17-12900](#)-B-13 IN RE: PAUL/TERESA YAMASHITA
[ALG-5](#)

MOTION TO MODIFY PLAN
8-2-2018 [[67](#)]

PAUL YAMASHITA/MV
JANINE ESQUIVEL

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.

2. [18-12803](#)-B-13 **IN RE: INPREET SINGH**
[MHM-1](#)

MOTION TO DISMISS CASE
8-23-2018 [[22](#)]

MICHAEL MEYER/MV
JERRY LOWE

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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. 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.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to appear at the § 341 meeting and setting a plan for a confirmation hearing and noticing creditors. Doc. #22. Debtor did not oppose.

The court finds that dismissal would be in the best interests of creditors and the estate. This is the third bankruptcy case debtor has filed in less than two years, and the court notes that debtor filed another case in chapter 7, pro se, approximately six weeks after this case was filed. See case no. 18-13390. That case was recently dismissed for failure to timely file documents.

For the above reasons, this motion is GRANTED.

3. [16-13305](#)-B-13 **IN RE: JAMES MUNRO**
[PBB-2](#)

AMENDED OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
8-9-2018 [[62](#)]

JAMES MUNRO/MV
PETER BUNTING

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

DISPOSITION: Sustained.

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

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

This objection is SUSTAINED.

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

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

Here, debtor objects to claim #6 for two reasons: first, "to the extent the claim is for fees, expenses and charges incurred prior to February 4, 2017 such charges should be disallowed as untimely" pursuant to Federal Rule of Bankruptcy Procedure 3002.1(c); second, "to the extent the claim is for charges incurred after entry of the confirmation order on February 4, 2017, such fees should be disallowed unless the claimant can demonstrate that the debtor was in post-confirmation default and the fees, expenses and charges were

reasonable and necessary." The creditor, Fresno Fire Department Credit Union ("Creditor"), did not oppose.

Creditor filed a "Notice of Postpetition Mortgage Fees, Expenses, and Charges" ("Notice") on August 9, 2017, included in this motion as Exhibit E. Doc. #60.

The debtor has established a valid objection to Creditor's Notice and met their burden of proof. Fed. R. Bankr. P. 3002.1(c) places a 180 day limit on such notices; "the notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred." The fees, expenses, and charges were incurred on September 12, 2016 and September 15, 2016. 180 days after both of those dates is March 11, 2017 and March 14, 2017, respectively. Therefore, Creditor's Notice is untimely.

Creditor's Notice is disallowed in its entirety.

4. [17-14711](#)-B-13 **IN RE: ELLIOT BADGER AND BRENDA VAQUERA**
[CJO-1](#)

MOTION TO APPROVE LOAN MODIFICATION
9-5-2018 [[32](#)]

ELLIOT BADGER/MV
ROBERT WILLIAMS

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 is authorized, but not required, to enter into and finalize a loan modification with movant, creditor JPMorgan Chase Bank, N.A. The modification provides for a lower interest rate and the capitalization of arrears into a modified principal balance. Doc. #34. After review of the exhibits, debtor's schedule J, and the confirmed plan, the court believes that the modification will not impair debtor's ability to complete their chapter 13 plan. If debtor is unable to make both the plan payment and the new mortgage payment, debtor shall continue making plan payments until a modified plan can be confirmed, if necessary.

5. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[FW-1](#)

MOTION TO CONFIRM PLAN
8-16-2018 [[106](#)]

DOMINIC BURRIEL/MV
PETER FEAR
PLAN WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #143.

6. [18-11338](#)-B-13 **IN RE: ISMAEL/MARIA PARAMO**
[TOG-2](#)

MOTION TO CONFIRM PLAN
8-16-2018 [[48](#)]

ISMAEL PARAMO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #59.

7. [18-12542](#)-B-13 **IN RE: ISABEL SANCHEZ**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
8-9-2018 [[24](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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 the order.

This motion is DENIED WITHOUT PREJUDICE.

This motion was continued to allow debtor another opportunity to appear at the § 341 meeting and provide the necessary and requested documents to the trustee's office.

The record shows that debtor appeared at the rescheduled § 341 meeting. Unless this matter is withdrawn prior to the hearing, both parties shall appear the trustee shall explain to the court what remaining issues establish why this case should be dismissed.

8. [18-13153](#)-B-13 **IN RE: LUIS BRAVO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-5-2018 [[49](#)]

ERIC ESCAMILLA
\$335.00 FINAL INSTALLMENT PAID 9/11/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full on September 11, 2018.

9. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[MHM-1](#)

MOTION TO DISMISS CASE
8-27-2018 [[99](#)]

MICHAEL MEYER/MV
JAMES MICHEL
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 25, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion will be continued to October 25, 2018 at 1:30 p.m. to be heard in conjunction with debtor's motion to confirm plan (JAM-4).

10. [18-12357](#)-B-13 **IN RE: ANGEL RODRIGUEZ**
[AP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-22-2018 [[36](#)]

BANK OF AMERICA, N.A./MV
SCOTT LYONS
WENDY LOCKE/ATTY. FOR MV.

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.

Pursuant to 11 U.S.C. § 362(c)(4)(A)(i), if the debtor has had 2 or more cases pending within the previous year, but those cases were dismissed, then the automatic stay will not go into effect upon the filing of the later case. The debtor can move the court for an order imposing the automatic stay, after notice and a hearing made within 30 days of the case's commencement. See 11 U.S.C. § 362(c)(4)(B).

The debtor had two cases pending within the previous year: case no. 17-14851 and case no. 18-10386. Case no. 17-14851 was a chapter 13 case filed on December 22, 2017, and was dismissed on January 9, 2018 for failure to timely file documents. Case no. 18-10386 was filed on February 6, 2018, and was dismissed on May 17, 2018 for failure to provide necessary and requested documents to the trustee's office. In this case, the automatic stay was extended as to all creditors. In both cases, debtor did not oppose the dismissal motions, nor has debtor opposed this motion.

Because the prior two cases were pending within the previous year, the automatic stay did not go into effect upon the filing of this case on June 12, 2018. Debtor did not timely file a motion to impose the stay. Therefore, the stay did not go into effect on June 12, 2018.

Additionally, this case was dismissed on September 14, 2018. Doc. #49.

11. [18-12761](#)-B-13 **IN RE: JESUS/FATIMA AYALA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-10-2018 [[30](#)]

CASE DISMISSED 9/14/18

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED. The case has already been dismissed on
September 14, 2018 (Document No. 34).

12. [18-12761](#)-B-13 **IN RE: JESUS/FATIMA AYALA**
[MHM-1](#)

MOTION TO DISMISS CASE
8-23-2018 [[26](#)]

MICHAEL MEYER/MV
CASE DISMISSED 9/14/18

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on September 14, 2018 (Doc #34).

13. [18-12564](#)-B-13 **IN RE: EFREN SOLIS**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
8-17-2018 [[29](#)]

EFREN SOLIS/MV
MARK ZIMMERMAN

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.

14. [18-11865](#)-B-13 **IN RE: GERALD SANDERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-11-2018 [\[64\]](#)

ERIC ESCAMILLA
\$13.00 FINAL INSTALLMENT PAID 9/13/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full on September 13, 2018.

15. [18-12366](#)-B-13 **IN RE: LAURENCE/TUESDAY SHANNON**
[TCS-2](#)

MOTION TO CONFIRM PLAN
8-16-2018 [\[39\]](#)

LAURENCE SHANNON/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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 the order.

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

The chapter 13 trustee has filed a detailed objection to this motion. Doc. #49. The trustee contends that the plan payment as currently proposed is not sufficient to fund the claims in 60 months. The payment would need to increase to \$2,462.26 for 60 months. "Debtors would need to increase their plan payment in September to \$2,462.26 plus pay an additional \$62.52 in order to be current under this plan." *Id.* The plan also states that the debtors will file, serve, and set for hearing a motion to value their Chevrolet Suburban, but that has not happened.

The trustee states that the current plan can be confirmed if the plan payment is increased to \$2,462.26 per month and the debtors file, serve, and set for hearing a motion to value the Suburban. Debtors' amended Schedules I and J (filed August 16, 2018) do not presently show an ability to make that payment. Doc. #45.

Debtor responded to the objection on August 30, 2018, consenting to the increased plan payment. Doc. #52. That does not resolve all the remaining issues: motion to value a vehicle and demonstration of feasibility of the higher plan payment. Also, the debtor's status on the plan payments must be established.

This matter will be called to inquire why debtors have not yet filed, served, and set for hearing a motion to value the Suburban nor filed amended Schedules I and J showing an ability to pay the increased plan payment. Whether the debtor is current in making the plan payments is also an issue.

The court notes that creditor Carrington Mortgage Services, LLC, withdrew its Objection to Confirmation. Doc. #57.

16. [17-13168](#)-B-13 **IN RE: DIEGO/KAROL ROSPIGLIOSI**
[FW-3](#)

MOTION TO MODIFY PLAN
8-14-2018 [[34](#)]

DIEGO ROSPIGLIOSI/MV
GABRIEL WADDELL

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. [18-12773](#)-B-13 **IN RE: IRAYDA BAUTISTA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-23-2018 [[21](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 18,
2018. Doc. #32.

18. [18-13076](#)-B-13 **IN RE: JASON/IRENE FORBIS**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
8-31-2018 [14]

WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled.

ORDER: The court will issue an order.

This objection is OVERRULED. 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).

Wells Fargo Bank, N.A.'s ("Objector") objection is on the grounds that the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to Objector and that the plan is not feasible. Doc. #14, claim #8.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #4. Objector's proof of claim filed August 28, 2018 states a claimed arrearage of \$8,665.44. Claim 8-1. This claim is classified in class 4 - paid directly by debtor. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11. But, the trustee has continued the meeting of creditors to October 16, 2018. So the plan is not ready for confirmation.

Debtors' response to the objection is that they "believe" the payments are current. But there has been no claim objection or adversary proceeding filed. The debtors may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Objector will have stay relief. If the plan is modified, then this objection is moot.

Therefore, this objection is OVERRULED.

19. [18-12879](#)-B-13 **IN RE: GERALD STULLER AND BARBARA WILKINSON-STULLER**

[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
8-27-2018 [[60](#)]

WELLS FARGO BANK, N.A./MV
SCOTT SAGARIA
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Continued to October 25, 2018 at 1:30 p.m.

ORDER: No appearance is necessary. The court will issue the order.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 meeting has concluded, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

20. [18-12980](#)-B-13 **IN RE: FRANCISCO/MICHELLE GUIZAR**

[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
9-11-2018 [[22](#)]

LAKEVIEW LOAN SERVICING,
LLC/MV
TIMOTHY SPRINGER
DARLENE VIGIL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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") 3015-1(c)(4) and will proceed as scheduled.

Creditor Lakeview Loan Servicing, LLC ("Creditor") objects to confirmation on the grounds that their claim showing a first priority lien encumbering real property is improperly listed as belonging to South Shore Bank Doc. #22. Debtor responded, stating that was accidentally listed. Doc. #35.

Debtors' Schedule D, item 2.4, shows that South Shore Bank is secured by debtors' residence at 7256 Babigian Avenue in Fresno, CA 93722. Creditor's exhibit 2 shows that the original deed of trust was assigned to Creditor on or about August 2, 2018. Doc. #25.

This mistake can be corrected in the order confirming plan. This objection is OVERRULED WITHOUT PREJUDICE.

21. [18-13694](#)-B-13 **IN RE: ADRIAN/MARISELA PALAFOX**
[ALG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-11-2018 [8]

ADRIAN PALAFOX/MV
JANINE ESQUIVEL

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 court will issue the order.

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

This case was filed on September 11, 2018 and the automatic stay will expire on October 11, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad

faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed on the grounds that the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtors' previous case was dismissed for their failure to make plan payments. Debtors state that was because Marisela Palafox became unemployed. Doc. #10. Now however, she is employed. Debtors' Schedules I and J show that Marisela is a Sales Clerk and makes roughly \$1,400.00 a month. Doc. #1. The monthly net income is just enough to make the plan payment of \$675.00. Doc. #2. The prior case's payment was nearly double that amount.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.

22. [18-12879](#)-B-13 **IN RE: GERALD STULLER AND BARBARA WILKINSON-STULLER**

[KWS-5](#)

MOTION TO EXTEND AUTOMATIC STAY
9-19-2018 [[72](#)]

GERALD STULLER/MV
SCOTT SAGARIA
OST 9/21/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(3) and an order shortening time. Doc. #81. Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

A prior motion to extend the automatic stay was granted on August 17, 2018. The stay was extended "for all purposes as to all parties who received notice except Wells Fargo N.A., unless terminated by further order of this court." Doc. #57. The court's order imposed several conditions on the stay as to Wells Fargo N.A: the stay would expire on October 5, 2018; and the debtors could file a motion requesting the court to extend the deadlines, but the motion must be served on counsel for Wells Fargo and must be heard no later than September 27, 2018. *Id.*

Debtors are asking this court to extend the stay as to Wells Fargo N.A. until November 5, 2018 to "the meeting of creditors [can] be completed, the trustee's motion to dismiss be resolved, and the case be confirmed." Doc. #72.

The first § 341 meeting was held on September 5, 2018 - both debtors and counsel appeared. The meeting was continued to October 16, 2018. The chapter 13 trustee filed a motion to dismiss the case for the debtors' failure to provide necessary documents to his office. Doc. #66. In counsel's declaration supporting their opposition to that motion (as well as the declaration supporting this motion, doc. #74), they stated that they provided the requested documents on September 11, 2018. Doc. #79.

The court finds good cause to extend the automatic stay as to Wells Fargo N.A. until November 8, 2018. November 5, 2018 is not a date which this court regularly hears motions. Therefore, they stay will be continued to November 8, 2018. Debtors and counsel appeared at the § 341 meeting and debtors timely opposed the chapter 13 trustee's motion to dismiss and included evidence supporting their opposition. The court is convinced that the debtors are making a good faith effort to confirm a chapter 13 plan and receive a fresh start through bankruptcy.

The motion will be granted and the automatic stay shall be extended for all purposes as to Wells Fargo N.A. until November 8, 2018. If a chapter 13 plan is confirmed before the November 8, 2018 hearing, the terms of the plan shall control Wells Fargo N.A.'s rights. Ongoing mortgage payment shall continue to be paid promptly pursuant to the controlling contracts for all months after the petition was filed through November 5, 2018. Both debtors and counsel shall appear at the continued § 341 meeting. The debtors may again file a motion requesting the court extend the deadlines but the motion must be filed and served on counsel for Wells Fargo N.A. and heard not later than October 25, 2018. The debtors may request an order shortening time if necessary, consistent with the Local Rules of Practice. The extension is without prejudice to Wells Fargo filing a motion for stay relief for cause.

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.