

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, October 1, 2020
Place: Department A - Courtroom #11
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [18-12204](#)-A-13 **IN RE: THOMAS/RUSELL WHEELER**
[JDW-2](#)

MOTION TO MODIFY PLAN
8-12-2020 [46]

THOMAS WHEELER/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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 moving party 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. [18-10105](#)-A-13 **IN RE: SCOTT MARSH**
[JRL-2](#)

CONTINUED MOTION TO MODIFY PLAN
7-14-2020 [76]

SCOTT MARSH/MV
JERRY LOWE/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. The debtor filed a modified plan on September 16, 2020 (JRL-3, Doc. #93), with a motion to confirm the modified plan set for hearing on October 22, 2020 at 9:30 a.m. See Doc. ##89-96.

3. [19-12606](#)-A-13 **IN RE: JUAN/MARIA QUEVEDO**
[PBB-4](#)

MOTION TO MODIFY PLAN
8-19-2020 [[66](#)]

JUAN QUEVEDO/MV
PETER BUNTING/ATTY. FOR DBT.
OPPOSITION 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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 Trustee timely opposed this motion, but withdrew said opposition on September 18, 2020. Doc. #79. The failure of creditors, 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 moving party 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.

4. [20-11908](#)-A-13 **IN RE: BRIAN/STEPHANIE RICH**
[PBB-2](#)

OBJECTION TO CLAIM OF ASPEN PROPERTIES GROUP LLC, CLAIM
NUMBER 1
9-1-2020 [[37](#)]

BRIAN RICH/MV
PETER BUNTING/ATTY. FOR DBT.

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 debtors will submit a proposed order after the hearing.

This motion was filed and served with at least 30 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(B)(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 90141(f)(2). The court will issue an order if a further hearing is necessary.

Pursuant to 11 U.S.C. § 502(b), debtors Brian Wayne Rich and Stephanie Lynn Rich (collectively, "Debtors") object to the proof of claim of Aspen Properties Group LLC as Trustee of AG3 Revocable Trust ("Claimant"), filed on June 5, 2020 as Claim No. 1 (the "Claim"), on the grounds that the Claim asserts ongoing payments in an amount that Debtors contend will result in double recovery of arrearage principal or early payout of the note before the maturity date. Doc. #37.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." Bankruptcy Code section 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. The party objecting to a presumptively valid claim has the burden of presenting evidence to overcome the prima facie showing made by the proof of claim. In re Medina, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). The objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (quoting In re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." In re Consol. Pioneer Mortg., 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

The Claim asserts a secured claim of \$44,260.19 pursuant to a home equity line of credit note dated December 21, 2006 (the "Note") secured by a deed of trust on Debtors' principal residence located at 286 East Lynn Avenue, Tulare, California 93274. Doc. #40, Ex. pp. 4, 18-25, 26-35. The Note provides for a draw period of 120 months and a repayment period of 120 months, with a maturity date of January 15, 2027. Id. at p. 26. The current interest rate under the Note is 4.75%. Id. at p. 4. The Claim lists a prepetition arrearage of \$27,415.40. Id. The Claim states the monthly mortgage payment is \$412.39. Id. at p. 6.

Debtors argue that the secured claim of \$44,260.19 represents the total debt owed to Claimant. Doc. #37, at ¶ 12. Of the total amount owing under the Note, \$27,415.40 represent prepetition arrearages. Id. It appears from Debtor's Chapter 13 plan that Debtors intend to provide for arrearages due to Claimant under Class 1. See Doc. #44. Debtors contend the remaining balance of \$16,844.79 is the unpaid principal due under the Note and is not in default. Doc. #37, at ¶ 12. Debtors calculate that monthly payments of \$412.39 at 4.75% interest would pay off \$16,844.79 in 44.64 months, thereby accelerating the maturity date of the note from January 15, 2027 to March 15, 2024. Id. at ¶ 13. Debtors calculate the monthly payments needed to pay off \$16,844.79 in the 79 months between the petition date and maturity date should be \$248.72.

Debtors say the total secured claim is \$44,260.19, of which \$27,415.40 are prepetition arrearages, and the balance of \$16,844.79 is principal not in

default. The proof of claim form supports breaking up the total secured claim like this, but the supporting documents to the proof of claim do not clearly set out the amounts as prepetition arrears and remaining unpaid principal.

Having reviewed the included evidence, and unless opposition is presented at the hearing, the court is inclined to find Debtors have rebutted the prima facie showing made by Claimant's proof of claim.

Accordingly, the court is inclined to SUSTAIN the Debtors' objection to Claim No. 1, and order ongoing principal and interest payments to Claimant shall be \$248.72 per month, subject to change of interest rates as provided under the Note and deed of trust.

5. [18-12912](#)-A-13 **IN RE: FRANK/ANGIE WOODS**
[PBB-2](#)

MOTION TO MODIFY PLAN
8-19-2020 [[47](#)]

FRANK WOODS/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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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. Burke (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 moving party 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. [18-11813](#)-A-13 **IN RE: LILY AVALOS**
[SLL-2](#)

MOTION TO MODIFY PLAN
8-24-2020 [[37](#)]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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. Burke (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 moving party 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. [20-10318](#)-A-13 **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
6-23-2020 [[62](#)]

MICHAEL MEYER/MV
MARK HANNON/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.

An order dismissing this case was already entered on September 25, 2020. Doc. #98. The motion will be DENIED AS MOOT.

8. [20-10318](#)-A-13 **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**
[MJH-2](#)

MOTION TO CONFIRM PLAN
8-27-2020 [[89](#)]

JOSE GONZALEZ/MV
MARK HANNON/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.

An order dismissing this case was already entered on September 25, 2020.
Doc. #98. The motion will be DENIED AS MOOT.

9. [20-11821](#)-A-13 **IN RE: ARMIDA GOMEZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
7-9-2020 [[17](#)]

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10. [20-11821](#)-A-13 **IN RE: ARMIDA GOMEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-24-2020 [[37](#)]

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

NO RULING.

11. [18-15035](#)-A-13 **IN RE: HENRY LOYA HERNANDEZ AND ALICE**
HERNANDEZ
[SL-1](#)

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

HENRY LOYA HERNANDEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 10, 2020.
Doc. #60.

12. [19-15040](#)-A-13 **IN RE: CHRISTINE VILLARREAL**
[SLL-2](#)

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

CHRISTINE VILLARREAL/MV
STEPHEN LABIAK/ATTY. FOR DBT.
OPPOSITION 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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 Trustee timely opposed this motion, but withdrew said opposition on September 14, 2020. Doc. #48. The failure of creditors, 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 moving party 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.

13. [20-11243](#)-A-13 **IN RE: ARTHUR/SONIA PINA**
[MHM-3](#)

MOTION FOR ORDER TO SHOW CAUSE FOR DEBTOR'S COUNSEL TO
APPEAR AND BE HEARD
9-2-2020 [[39](#)]

MICHAEL MEYER/MV
THOMAS MOORE/ATTY. FOR DBT.
DISMISSED 06/15/2020

NO RULING.

14. [20-11646](#)-A-13 **IN RE: LEAH KLASCIUS**
[ETW-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2020 [[25](#)]

JOSEF BEGELFER/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
EDWARD WEBER/ATTY. FOR MV.

NO RULING.

15. [20-11646](#)-A-13 **IN RE: LEAH KLASCIUS**
[WLG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
8-11-2020 [[42](#)]

LEAH KLASCIUS/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

NO RULING.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-28-2020 [\[35\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
SCOTT LYONS/ATTY. FOR DBT.
ROBERT ZAHRADKA/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 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, U.S. Bank National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Chevrolet Silverado ("Vehicle"). Doc. #35.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make seven complete pre-petition and at least seven post-petition payments. Doc. #37.

The court also finds that the debtor does not have any equity in the Vehicle. Movant has produced evidence that the debtor owes Movant a total of \$29,620.42. Doc. #39, Gonzalez Decl. at ¶ 7. Movant contends the current replacement value of the Vehicle is only \$28,875.00, and thus the debtor lacks equity in the Vehicle. Id. at ¶ 6; Doc. #35, at ¶ 7.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

17. [20-12667](#)-A-13 **IN RE: KIMBERLY/KIM LOPEZ**
[EPE-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.
9-2-2020 [[17](#)]

KIMBERLY LOPEZ/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The motion was resolved by stipulation filed on
September 23, 2020. Doc. #28.

18. [19-14377](#)-A-13 **IN RE: ERIC/MARIE MENDEZ**
[UST-3](#)

MOTION TO COMPEL
9-2-2020 [[107](#)]

TRACY DAVIS/MV
MARK HANNON/ATTY. FOR DBT.
JASON SHORTER/ATTY. FOR MV.
DISMISSED 05/12/2020; RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 4, 2020, at 9:30 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the motion to compel to November 4, 2020, at 9:30 a.m. The court has already issued an order on September 29, 2020. Doc. #131.

19. [19-15179](#)-A-13 **IN RE: ANGELA VALENCIA**
[PBB-2](#)

MOTION TO MODIFY PLAN
8-19-2020 [[31](#)]

ANGELA VALENCIA/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 at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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 moving party 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 shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

20. [18-14586](#)-A-13 **IN RE: JAMES/LAURA JORGENSEN**
[NEA-3](#)

CONTINUED MOTION TO MODIFY PLAN
6-11-2020 [[213](#)]

JAMES JORGENSEN/MV
NICHOLAS ANIOTZBEHERE/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.

An order dismissing this case was already entered on September 28, 2020. Doc. #248. The motion will be DENIED AS MOOT.

21. [19-14187](#)-A-13 **IN RE: KELLY BURNS AND MARIA SANTORA-BURNS**
[TCS-1](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AND FOR
APPOINTMENT OF REPRESENTATIVE AS TO DEBTOR
9-4-2020 [[20](#)]

MARIA SANTORA-BURNS/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 noticed for hearing pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The court notes the certificate of service states that the moving papers were served on all creditors, the Chapter 13 trustee, and the United States Trustee on September 3, 2020, but the moving papers were not filed with the court until September 4, 2020. Doc. #24. LBR 9014-1(f)(1) requires the moving party to file and serve the motion at least 28 days prior to the hearing date. Failure to comply with the LBR is grounds for denial without prejudice, but the court will waive this procedural defect in this instance because the moving papers were timely served on all parties in interest.

The failure of creditors, the Chapter 13 trustee, 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Maria Burns ("Debtor"), a debtor in the Chapter 13 bankruptcy case of Maria Burns and Kelly Burns ("Decedent"), moves this court for an order (1) appointing Debtor as representative of Decedent's estate pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 1016; (2) waiving the post-petition education requirement under 11 U.S.C. § 1328(g) for discharge of Decedent; and (3) waiving the certification requirements for entry of discharge in a Chapter 13 case to the extent Decedent cannot demonstrate the ability to provide such certification. Doc. #20.

Debtor and Decedent filed a joint petition for relief under Chapter 13 of the Bankruptcy Code on October 2, 2019. See Doc. #1. Debtor and Decedent were married at the time that their bankruptcy petition was filed. Doc. #22, Burns Decl. at ¶ 2. Decedent passed away on August 9, 2020. Id. at ¶ 4 and Doc. #23, Ex. A.

Debtor seeks to be appointed as representative of Decedent's estate. Doc. #20. In the event of death of the debtor in Chapter 13, and if further administration is possible and in the best interest of the parties, FRBP 1016 provides the case may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred. Fed. R. Bankr. P. 1016. The court finds good cause exists for Debtor to represent Decedent's estate as Debtor and Decedent were married, property of the bankruptcy estate includes community property, and Debtor intends to modify and complete a plan to obtain the discharge. Doc. #20 and Doc. #22, Burns Decl. at ¶¶ 2, 6-8.

Debtor also seeks waiver of the requirement of the financial management course under 11 U.S.C § 1328(g)(1) and certification of the 11 U.S.C. § 1328(a)-(f) requirements for entry of discharge for Decedent. The court finds Decedent did not fulfill the requirements of section 1328(g)(1) before death and cannot now fulfill the requirements. Therefore, the court finds good cause to waive the financial management course requirement for Decedent's estate and the certification requirements for entry of discharge in a Chapter 13 case to the extent Decedent cannot demonstrate the ability to provide such certifications.

Accordingly, the motion is GRANTED.

22. [18-11388](#)-A-13 **IN RE: RAYMOND AVILES**
[JDR-4](#)

MOTION TO MODIFY PLAN
8-27-2020 [[90](#)]

RAYMOND AVILES/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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 moving party 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.

23. [20-10189](#)-A-13 **IN RE: JOSHUA CRABLE**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
5-18-2020 [[31](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

This matter was continued from a hearing scheduled for August 26, 2020.
Doc. #77. Because the debtor's motion to confirm plan is granted, as set forth
in Item #24 on this calendar, the court is inclined to deny this motion as
moot.

24. [20-10189](#)-A-13 **IN RE: JOSHUA CRABLE**
[TAM-3](#)

MOTION TO CONFIRM PLAN
8-20-2020 [[63](#)]

JOSHUA CRABLE/MV
THOMAS MOORE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by
Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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 moving party 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.

25. [11-19090](#)-A-13 **IN RE: JASON/ROBIN MYERS**
[JDW-9](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
9-16-2020 [[105](#)]

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion to avoid lien was filed by the Debtors on September 16, 2020. Doc. #105. A motion to avoid lien is a contested matter under Federal Rule of Bankruptcy Procedure ("FRBP") 9014. As such, a motion to avoid lien is to be served in the manner provided for service of a summons and complaint by FRBP 7004. Fed. R. Bankr. P. 9014(b).

Local Rule of Practice 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed concurrently with the pleadings or documents served, or not more than three days after the papers are filed. Because there is no proof of service showing that this motion was served on the lienholder, the motion is denied without prejudice.

1. [18-14542](#)-A-7 **IN RE: LARRY SELL**
[19-1025](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-15-2019 [[1](#)]

THE LEAD CAPITAL, LLC V. SELL
DERRICK COLEMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[18-1017](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
4-23-2018 [[1](#)]

SALVEN V. CALIFORNIA
DEPARTMENT OF FOOD &
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 17, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the Joint Status Report filed on September 16, 2020, Doc. #78, the status conference will be continued to June 17, 2021, at 11:00 a.m. The parties shall file a joint status report not less than 7 days prior to the continued hearing date.