

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, October 10, 2019
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. [16-13849](#)-B-12 **IN RE: DON FALLERT**
[STH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-30-2019 [\[220\]](#)

KUBOTA CREDIT CORPORATION/MV
D. GARDNER
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

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

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

Debtor opposed on the grounds that movant will be paid in full once the lease and sale of debtor's real property is consummated. Doc. #231. Debtor stated that he is attempting to "obtain [movant's] cooperation in obtaining payment through the sale and will advise the Court as to status before or at the time of hearing." Id.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**

MOTION FOR ORDER APPROVING STIPULATION REGARDING ADMINISTRATIVE
EXPENSE PRIORITY CLAIM
9-24-2019 [\[2756\]](#)

OFFICIAL COMMITTEE OF UNSECURED CREDITORS/MV
MICHAEL COLLINS
JESSE MAXWELL/ATTY. FOR MV.

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.

The motion is GRANTED. The stipulation is approved.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[DJP-1](#)**

CONTINUED MOTION FOR APPOINTMENT OF OFFICIAL COMMITTEE OF
UNSECURED CREDITORS
5-16-2019 [\[207\]](#)

BECKMAN COULTER, INC./MV
RILEY WALTER
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied

ORDER: The court will issue the order unless
otherwise ordered at the hearing.

RULINGS ON DEBTOR'S OBJECTIONS TO STEVE POGGI'S DECLARATION

Relevance objection is overruled.

Foundation for opinion is sustained because the declaration provides no evidence Mr. Poggi's opinion is rationally based on his perception.

Foundation for statement Elite is suffering financial difficulties is overruled.

THE MERITS

Movant, Beckman Coulter, Inc. ("Beckman") a creditor with an unsecured claim in this case asks the court to order the United States Trustee ("UST") to appoint a committee of unsecured creditors in this Chapter 9 case under 11 U.S.C. 1102(a)(2). The motion was continued to this date so the court could rule on the UST's appointment of an unsecured creditors committee under § 1102(a)(1).

The court has granted the debtor's motion to disband the committee UST appointed because § 1102(a)(1) did not apply in this chapter 9 case. See WW-14, docs. #415-424. But there is no ruling on Beckman's motion to either ratify the UST's appointment of the committee or alternatively, for the court to order the UST to appoint a committee. The portion of this motion requesting ratification of the UST appointed committee is DENIED due to the court's previous ruling.

The facts pertinent to this motion have been presented in the court's memorandum in connection with the ruling on WW-14 and will not be repeated here.

Parties' Positions

Beckman makes three arguments. First, a committee is needed because over 100 creditors with claims ranging from \$11 million to less than \$800.00 have filed claims in the case and the sheer numbers justify a committee. Second, a committee is specifically needed to: negotiate a Plan of Adjustment; monitor dispositions of assets since there are assets available to creditors with unsecured claims; and evaluate claims and litigation. Beckman questions whether debtor can represent creditor interests because the claims are diverse. Third, Beckman claims creditors with counsel have fared better, so far, and unsecured creditors should have a collective counsel.

All creditors have been informed, debtor argues, and they may be part of any hearing. Debtor refutes Beckman's "creditors with counsel do better" argument by urging that if stay relief was not opposed by the debtor earlier it was because the debtor had no use for the collateral. Also, debtor worked to clarify a secured creditor's rights in collateral which had no adverse impact on unsecured creditors. Debtor also disputes Beckman has met its burden of proof on the motion and notes Beckman provided no evidence of other creditors supporting a committee (except Elitecare whose CEO, Mr. Poggi, provided a declaration supporting the motion). Finally, debtor reminds us that there is no estate to protect in a chapter 9 so there is no need for a committee.

UST initially opposed the motion but withdrew its opposition on October 3, 2019. They do stand ready to appoint a committee should the court order them to do so. Doc. #427.

Analysis

11 U.S.C. § 1102(a)(2) provides: “[O]n request of a party in interest, the court may order the appointment of additional committees of creditors . . . if necessary, to assure adequate representation of creditors The United States Trustee shall appoint any such committee.”

Under this section the court may, but is not required, to order appointment of additional committees of creditors. See In re PG&E Corp., Nos. 19-30088-DM, 19-30089-DM, 2019 Bankr. LEXIS 1706, at *5 (Bankr. N.D. Cal. May 28, 2019). This District is familiar with appointments of additional committees in chapter 11 cases. See Granahan v. Christian (In re Cent. Valley Processing, Inc.), No. 03-11610-B-7, 05-1089, KDG-44, 2007 Bankr. LEXIS 926 (Bankr. E.D. Cal. March 16, 2007) (appointed *sua sponte*).

The parties have not cited, and the court has not found controlling authority about appointing “an additional” committee in chapter 9 cases under § 1102(a)(2). The published authorities arise in chapter 11 cases and invariably after UST has appointed a committee, but a separate constituency seeks another committee appointed. Yet, the authorities do provide some guidance about what the court should consider in this case: See In re Nat’l R.V. Holdings Inc., 390 B.R. 690 (Bankr. C.D. Cal. 2008); In re Enron Corp., 279 B.R. 671 (Bankr. S.D.N.Y. 2002); In re McLean Indus., Inc., 70 B.R. 852, 856 (Bankr. S.D.N.Y. 1987).

The process requires two steps. First, the court must determine whether an additional committee is necessary to assure adequate representation. If so, then second, the court must decide if it should exercise its discretion and order the appointment of a committee.

Adequate Representation

Usually courts consider the ability of the committee to function, the nature of the case, and the desires of various constituencies. Enron, 279 B.R. at 685 (citing McLean, 70 B.R. at 857-58). Other considerations include the ability of creditors to participate without a committee; potential to recover expenses under § 503(b); class treatment under a Plan; motivations of the movants; cost incurred in appointing the committee; and tasks the committee would perform. Enron, 279 B.R. at 685.

There is no committee in place, here. So, many of the difficult factors to consider are not germane. The putative committee did function before it was disbanded. At least Beckman and Elitecare wanted the committee though they were the only two members of the putative committee – well below the presumptively acceptable number of members. See § 1102(b)(1). Though Beckman argues a committee is needed because of the benefit counsel would provide the

constituency, there is no evidence the debtor has excluded the creditors from the process. At the same time, other than Beckman and Elitecare, no other unsecured claimants are active in the case, to the court's knowledge.

Though the debtor requested and was granted a continuance of the hearing date on the adequacy of the disclosure statement, it seems inevitable that unsecured claimants will be in their own class in a Plan of Adjustment. Debtor has filed a modified Plan of adjustment recently.

That said, this case is not large. It involves a rural hospital district. The district has leased facilities to a third party and sold certain personal property. The source of plan funding is likely finite and easily projected unless there are large recoveries the court has not been apprised about. A refinance package with beneficial terms has been approved by the court; the putative committee did assist in negotiating the lease/sale transaction and reviewed the refinancing package. But that is only evidence a committee could function if the court ordered its' appointment.

The question is whether the committee is "necessary to assure adequate representation." See § 1102(a)(2), emphasis added. There is an insufficient record on this motion for the court to make that finding. True, there are over 100 creditors who filed claims and the claims are very diverse in basis and amount. By contrast, two creditors have expressed interest in serving on the committee: Beckman and Elitecare. Each have large claims - in excess of \$200,000. No other creditor has expressed interest in serving on the committee and the record on this motion does not even suggest there is interest by other creditors. Though Beckman argues creditor numerosity supports a committee, when the putative committee functioned, only Beckman and Elitecare participated. That does not suggest adequate representation. Both creditors supplied services or product. The other claimants who filed claims have divergent bases for their claims and they have not participated.

The putative committee may have performed a beneficial service in negotiating the additional or modified terms on the lease/sale transaction early in the case. Again, that is not germane to whether the record on this motion supports a finding that a committee appointed now would assure adequate representation. The case has progressed, and the debtor has filed a modified Plan of Adjustment and Disclosure Statement. The debtor's modified plan was filed October 4, 2019. Doc. #432. The hearing on the adequacy of the Disclosure Statement is scheduled for December 2019.

The plan proposes to pay the unsecured creditors with allowed claims approximately 50% of the claim from a segregated "Plan Fund." Payments are proposed to be made over ten years. Those claimants who assert liability claims against debtor will be paid from available insurance coverage or if coverage is unavailable, they will be in the unsecured creditor class. The separate classifications of unsecured claims are treated differently but only the unsecured claims are entitled to vote; the liability claimants are, according to the debtor, unimpaired. The limited source of funding for these

classes suggests no need for separate representation. This is underscored by the actual lack of apparent interest by the unsecured creditors in this case.

On balance, given the size of the case, the lack of unsecured creditor participation with the exception of Beckman and Elitecare, the ability of creditors to participate in the case if they wish, the finite source of funding for unsecured claims if the plan is confirmed and the lack of a substantial record suggesting the contrary to all of the above, the court does not find appointment of a committee at this time necessary to assure adequate representation.

Discretion to Order Appointment

Even if the record supported that appointment of a committee is necessary to assure adequate representation – and it does not – the court declines to exercise its discretion to appoint a committee. See Enron, 279 B.R. at 658.

First, the appointment now would be late in the process. A Modified Plan and Disclosure Statement have been filed and the adequacy of the Disclosure Statement is scheduled to be heard in December 2019. Though that provides time for a committee to negotiate plan terms, the realistic timeline for appointing a committee that is representative and productive negotiations is short. Also, the court has approved a lease transaction which has realistically limited part of the debtor's flexibility.

Second, there are other avenues for creditor participation now including plan voting and challenging the adequacy of the disclosure statement. It is noteworthy that despite several motions to reject certain contracts, virtually no party to the contracts rejected has appeared in opposition to the debtor's motions to reject. But any creditor will have the opportunity to deal with the proposed rejection of the contract or treatment under the plan without a committee.

Also, if the Plan is unsuccessful any creditor can file a motion to dismiss the case. A committee need not, and the court may set its own motion if necessary. 11 U.S.C. § 930(b). Only the debtor can file a Plan under chapter 9. 11 U.S.C. § 941. So a committee does not have that tool in this case.

Third, at this time no party has shown the court an available asset to sell or claim to litigate that would potentially result in an additional recovery for creditors. Nor is there evidence presented so far suggesting the debtor is not maximizing realistic recoveries.

The court is not reaching the issue of cost of a committee because it is unnecessary. Though the debtor resists the hiring of committee counsel in the case and opposes payment of counsel, there is no documented evidence that the cost of a committee would be prohibitive, or the court's review of professional fees would not serve as a check on costs and fees incurred.

The motion is DENIED.

4. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[FRB-1](#)

CONTINUED MOTION TO EMPLOY MICHAEL J. GOMEZ AS SPECIAL COUNSEL
3-25-2019 [[127](#)]

ELITECARE MEDICAL STAFFING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order denying the motion has already been entered. Doc. #421.

5. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[SWE-1](#)

CONTINUED MOTION TO EMPLOY ROBERT S. MARTICELLO AS ATTORNEY(S)
3-22-2019 [[122](#)]

ELITECARE MEDICAL STAFFING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order denying the motion has already been entered. Doc. #423.

1:30 PM

1. [14-13502](#)-B-13 **IN RE: LEO BERGER**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
9-4-2019 [\[45\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

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.

Federal Rule of Bankruptcy Procedure 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Fed. R. Bankr. P. 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

The record shows that the debtors have cured the default on the loan with Wilmington Savings Fund Society FSB and are current on mortgage payments to the same through July 2019. Therefore, this motion is GRANTED.

2. [18-14902](#)-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
[SAH-3](#)

MOTION TO MODIFY PLAN
8-23-2019 [\[56\]](#)

FRANCISCO RAMIREZ/MV
SUSAN HEMB
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #65.

3. [19-13502](#)-B-13 **IN RE: KAREN KRBECHER**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY
9-25-2019 [\[18\]](#)

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

Creditor Ford Motor Credit Company ("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. #18. Creditor is secured by a Ford F-150 ("Vehicle"). Id. The Vehicle is properly listed in Schedules A/B and D of the bankruptcy petition. Doc. #23. Creditor filed its claim on September 26, 2019. Claim #11.

A secured creditor's claim need not be "provided for" by the Plan. If a claim is provided for by the Plan, § 1325(a)(5) governs its treatment. But, there is nothing in §§ 1322 or 1325 requiring that a secured creditor's claim be "provided for" in the Plan.

Second, section 3.11(b) of the Plan states that a secured creditor whose claim is not provided for may seek stay relief. See doc. #10.

Third, Section 3.01 of the Plan provides that it is the proof of claim, not the plan itself, that determines the amount to be repaid under the plan. Id. If the plan is confirmed, Creditor may seek stay relief.

This vehicle collateral may be subject to the valuation limitations of "the hanging paragraph" in 11 U.S.C. § 1325. But that does not change the fact that a Chapter 13 Plan does not have to "provide for" a secured claim.

This objection is OVERRULED.

4. [19-13902](#)-B-13 **IN RE: HEZEKIAH SHERWOOD**
[JMM-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-17-2019 [\[10\]](#)

HEZEKIAH SHERWOOD/MV
JEFFREY MEISNER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE. The certificate of service showed that only the "Notice of Motion" was served. Neither debtor's declaration, nor the actual motion were served. Local Rule of Practice ("LBR") 9014-1(e)(1) requires "[s]ervice of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the court."

Also, though the notice was served, the parties who are directly affected by the relief requested (i.e., foreclosing creditor(s)) are to be served with all necessary documents. LBR 9014-1(d)(3)(B)(iv). That was not done here.

The certificate of service was not served within three days of filing the documents, as required by LBR 9014-1(e)(2).

Additionally, Federal Rule of Bankruptcy Procedure 9014(b) states "[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d)."

5. [14-14016](#)-B-13 **IN RE: ISMAEL GONZALEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-9-2019 [[87](#)]

MICHAEL MEYER/MV
VINCENT GORSKI

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that the debtors have failed to complete the terms of the confirmed plan (11 U.S.C. § 1307(c)(6)) and termination of a confirmed plan other than completion of payments (11 U.S.C. § 1307(c)(8)). Accordingly, the case will be dismissed.

6. [19-13122](#)-B-13 **IN RE: RAFAEL ESCAMILLA GARCIA AND ALMA ESCAMILLA**
[MHM-1](#)

MOTION TO DISMISS CASE
9-3-2019 [[16](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents'

defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtors failed to provide the trustee with all the required documentation. Accordingly, the case will be dismissed.

7. [19-13422](#)-B-13 **IN RE: LINNEY WADE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-16-2019 [\[17\]](#)

MARK ZIMMERMAN
\$310 FILING FEE PAID IN FULL 9/27/19

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. \$310 was paid on September 27, 2019. Therefore, the Order to Show Cause will be vacated.

8. [19-13328](#)-B-13 **IN RE: LARRY/DOLORES SYRA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
9-20-2019 [\[16\]](#)

MARK ZIMMERMAN

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

DISPOSITION: Continued to November 8, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than October 25, 2019. 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. The trustee shall file and serve a reply, if any, by November 1, 2019.

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 November 1, 2019. If the debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

9. [19-12929](#)-B-13 **IN RE: HERBERT/CECILIA JUAREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-9-2019 [\[22\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 13 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for October 15, 2019 at 11:00 a.m. If the debtors fail to do so, the chapter 13 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

10. [19-13329](#)-B-13 **IN RE: SALLY REYES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
9-20-2019 [\[17\]](#)

TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is **OVERRULED AS MOOT**. Debtor has filed an amended plan. See TCS-1, doc. #28. In debtor's response to this objection, debtor states that the original plan and the first modified plan "are the same but filed separately to avoid any confusion under the motion." Doc. #31.

11. [19-13230](#)-B-13 **IN RE: RUSSELL/MARICELA STANFORD**
[TCS-1](#)

MOTION TO CONFIRM PLAN
8-29-2019 [[16](#)]

RUSSELL STANFORD/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 8, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee and creditor Toyota Motor Credit Corporation ("Creditor") have filed objections to the debtors' fully noticed motion to confirm a chapter 13 plan. Doc. ## 23, 25. Debtor responded, stating that a motion to value collateral (TCS-2, doc. #29), which would resolve both Trustee's and Creditor's issues, is set for hearing on November 8, 2019 at 10:30 a.m. Doc. #34. Therefore this motion is continued to that date to be heard in conjunction with debtor's motion to value collateral. If that motion is granted, this motion may also be granted. If the motion is denied or continued, this motion may also be denied or continued.

12. [19-12934](#)-B-13 **IN RE: SYLVIA NICOLE**
[MHM-1](#)

MOTION TO DISMISS CASE
9-3-2019 [[26](#)]

MICHAEL MEYER/MV
CASE DISMISSED 9/30/19

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on September 30, 2019. Doc. #42.

13. [19-12934](#)-B-13 **IN RE: SYLVIA NICOLE
MHM-2**

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-11-2019 [[33](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING, CASE DISMISSED 9/30/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #42.

14. [19-13237](#)-B-13 **IN RE: MARGARITA NAVARRO PENA
RAS-1**

OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.
9-19-2019 [[19](#)]

CITIBANK, N.A./MV
SCOTT LYONS
SEAN FERRY/ATTY. FOR MV.

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 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.

Creditor Citibank, N.A., not in its individual capacity, but solely
as trustee of NRZ pass-through trust VI ("Creditor") objects to plan
confirmation because the proposed plan incorrectly lists the
outstanding balance of Creditor's total claim and the interest rate
is too low. Doc. #19. Creditor's claim, filed September 17, 2019
(claim #2), lists the interest rate at 11.984% and the total debt at
\$48,116.73.

In Till, the Supreme Court determined that the appropriate interest
rate for a secured claim should be determined by the 'formula
approach,' which requires the court to take the national prime
interest rate and adjust it to compensate for an increased risk of
default. Till, 124 S. Ct. at 1957. Such factors include (1)
circumstances of the estate, (2) the nature of the security, and (3)
duration and feasibility of the reorganization plan. Id. at 1960.

Creditor "believe[s] [sic] that Creditor should be paid its entire
claim at an interest rate no lower than the till [sic] interest

rate." Doc. #19. But Creditor has not introduced any evidence as to what the Till rate should be, nor proposed a Till rate.

Furthermore, 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. #10. Creditor's proof of claim states a claimed arrearage of \$48,116.73, though somewhat ambiguously (a note explains that amount is the "*TOTAL DEBT*," so the court is not sure if the debt is solely arrears or if there are no arrears). The debtor may need to modify the plan to account for the discrepancy. If they do not and the plan is confirmed, debtor will not receive their discharge unless Creditor's claim is paid in full. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED.

15. [19-13342](#)-B-13 **IN RE: LINDA GLOSSOP**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
9-20-2019 [\[21\]](#)

PETER BUNTING

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

DISPOSITION: Continued to November 8, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than October 25, 2019. 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 debtor's position. The trustee shall file and serve a reply, if any, by November 1, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 1, 2019. If the debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without a further hearing.

16. [19-13650](#)-B-13 **IN RE: ANTHONY ESTACIO**
[RWR-2](#)

MOTION THAT CASE NOT BE DISMISSED PURSUANT TO THE DELEGATED
AUTHORITY GIVEN THE CLERK OF THE BANKRUPTCY COURT
9-9-2019 [[16](#)]

RICHARD BLOOM/MV
RUSSELL REYNOLDS/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #33.

17. [19-13650](#)-B-13 **IN RE: ANTHONY ESTACIO**
[RWR-2](#)

NOTICE OF INTENT TO DISMISS CASE IF DOCUMENTS ARE NOT TIMELY
FILED
8-26-2019 [[3](#)]

WITHDRAWN

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

DISPOSITION: Withdrawn.

ORDER: The court will issue the order.

The motion was withdrawn on September 27, 2019. Doc. #33.

18. [19-13165](#)-B-13 **IN RE: JAPHENA MUSSON**
[MHM-1](#)

MOTION TO DISMISS CASE
9-11-2019 [[18](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the
motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of
Practice and there is no opposition. Accordingly, the respondent's
default will be entered. Federal Rule of Civil Procedure 55, made

applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor has failed to provide all required documentation to the trustee. The debtor has failed to set a plan for hearing, failed to file complete and accurate Schedules (11 U.S.C. § 521 and/or Federal Rule of Bankruptcy Procedure 1007), and has filed in an improper venue (28 U.S.C. § 1408, Fed. R. Bankr. P. 1014(a)(2)). Accordingly, the case will be dismissed.

19. [19-13165](#)-B-13 **IN RE: JAPHENA MUSSON**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-11-2019 [\[22\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The case is dismissed. See matter #18 above, MHM-1.

20. [19-13274](#)-B-13 **IN RE: JOSE/SONIA JIMENEZ**
[VVF-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MECHANICS BANK
9-23-2019 [\[16\]](#)

MECHANICS BANK/MV
THOMAS GILLIS
VINCENT FROUNJIAN/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. #23.

as opposed to the amount due on the loan, when the loan is secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of the filing.

Debtor asks the court for an order valuing a 2014 Hyundai Elantra at \$7,850.00. Doc. #30. Creditor Americredit Financial Services, Inc. dba GM Financial's ("Creditor") claim states the amount owed to be \$13,520.73, \$8,100.00 of which is secured. Claim #6. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$7,850.00. Doc. #32. Debtor incurred the debt on November 15, 2014. Id. That date is more than 910 days before debtor filed this case.

The debtor is competent to testify as to the value of the 2014 Hyundai Elantra. 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 \$7,850.00. 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.

23. [17-10683](#)-B-13 **IN RE: MALYNDA KEMMER**
[MJA-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ARNOLD LAW GROUP,
APC FOR MICHAEL J. ARNOLD, DEBTORS ATTORNEY(S)
7-31-2019 [\[34\]](#)

MICHAEL ARNOLD

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. Movant is awarded \$5,690.00 in fees and \$310.00 in costs. Movant is authorized to withdraw \$1,000.00 held in movant's trust account and the chapter 13 trustee is authorized to pay \$5,000.00 to movant as an administrative expense in debtor's chapter 13 plan.

24. [19-11784](#)-B-13 **IN RE: FELICITAS DE CARRILLO**
[MHM-2](#)

MOTION TO DISMISS CASE
9-11-2019 [\[27\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on October 3, 2019. Doc. #33. Therefore, the motion will be DENIED AS MOOT.

25. [19-12388](#)-B-13 **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**
[DRJ-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF WEST COAST CAPITAL
GROUP, INC. AND/OR MOTION TO VALUE COLLATERAL OF JOHN COONIS
7-18-2019 [\[25\]](#)

CHRISTOPHER MILAUCKAS/MV
DAVID JENKINS
RESPONSIVE PLEADING

NO RULING.

26. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[RS-1](#)

MOTION TO VALUE COLLATERAL OF CHEVRON VALLEY CREDIT UNION
9-12-2019 [\[47\]](#)

ROBINSON POLANCO/MV
RICHARD STURDEVANT

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.

First, the notice did not contain the language required under Local Rule of Practice 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.

Second, debtor's declaration does not contain the debtor's opinion of the relevant value. Doc. #49. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not just "value," which is not specific enough.

27. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[RS-2](#)

MOTION TO VALUE COLLATERAL OF CHALLENGE FINANCIAL SERVICES
9-12-2019 [[52](#)]

ROBINSON POLANCO/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

First, the court notes that the notice did not contain the language required under Local Rule of Practice 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.

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

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

Based on the record, the factual issues appear to include: the replacement value of the 2005 Nissan titan.

Neither declaration filed by the parties contains an admissible opinion. The debtor's joint declaration states their collective opinion but rely upon a Kelly Blue Book quotation. The debtors are

competent to testify as to value of their property but are not experts. See Federal Rule of Evidence 701. Ms. Cervantes' declaration does not qualify her as an expert. Instead she states her employer is experienced in auto lending which does not provide the foundation for Ms. Cervantes' opinion.

28. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[KR-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CHALLENGE
FINANCIAL SERVICES
9-9-2019 [\[42\]](#)

CHALLENGE FINANCIAL SERVICES/MV
RICHARD STURDEVANT
KAREL ROCHA/ATTY. FOR MV.

NO RULING.

This matter was continued to be heard in conjunction with the debtors' motion to value collateral, RS-2, matter #27 above. That motion is tentatively pre-disposed to proceed as a scheduling conference.