

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Friday, November 8, 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. [19-14109](#)-B-7 **IN RE: RENE/SANDRA SALINAS**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-11-2019 [9]

AMERICAN HONDA FINANCE CORPORATION/MV
TIMOTHY SPRINGER
VINCENT FROUNJIAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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 for relief from stay was fully noticed in compliance with the Local Rules of Practice. On October 22, 2019, Debtors filed non-opposition (Doc. #15). No responsive pleading has been filed by the trustee. The trustee's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2017 Honda Civic. (Doc. #13). The collateral has a value in between \$16,050.00 and \$19,400.00. *Id.* The debtor owes \$23,208.51 *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the possession of the movant and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding, then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

2. [14-16013](#)-B-7 **IN RE: ABRAHAM GARCIA AND ANGELA BECERRA**
[NES-3](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
10-8-2019 [54]

ABRAHAM GARCIA/MV
NEIL SCHWARTZ

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

A judgment was entered against the debtor in favor of Discover Bank in the sum of \$9,517.92 on July 17, 2013. Doc. #58. The abstract of judgment was recorded with Kern County on August 23, 2013. Id. That lien attached to the debtors' interest in two parcels of residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The first subject real property (4516 Siam Court in Bakersfield, CA) had an approximate value of \$76,778.00 as of the date of filing an amended Schedule A/B (August 29, 2019, doc. #44). The second subject real property (8617 Fuentes Street in Bakersfield, CA) had an approximate value of

\$160,253.00 as of the petition date. Doc. #1. The unavoidable liens on the Siam Court property totaled \$76,778.00 as of the petition date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage (doc. #1, Schedule D), and as to the Fuentes Street property, the unavoidable liens totaled \$268,745.08 as of the petition date, consisting of a first deed of trust in favor of Ocwen Loan Servicing, LLC (id.). The debtor claimed exemptions pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$26,924.00 and \$1.00, respectively. Doc. #44, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. [18-13218](#)-B-7 **IN RE: VAN LAI**
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
9-26-2019 [\[233\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's accountant, James Salven, requests fees of \$1,475.00 and costs of \$213.04 for a total of \$1,688.04 for services rendered from September 15, 2019 through September 22, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee applications, (2) Determining tax basis and acquisition date, (3) Determining foreclosure amounts, and (4) Inputting data and processing tax returns. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$1,475.00 in fees and \$213.04 in costs.

4. [19-13819](#)-B-7 **IN RE: DIONISIO/SILVINA PELAYO**
[GT-1](#)

MOTION TO COMPEL ABANDONMENT
10-9-2019 [\[25\]](#)

DIONISIO PELAYO/MV
GRISELDA TORRES

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

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

A Motion to Compel Abandonment was previously filed on September 4, 2019 (doc. #7) and denied without prejudice on October 9, 2019. Doc. #24. The DCN for that motion was GT-1. This motion also has a DCN of GT-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

5. [18-13824](#)-B-7 **IN RE: JEFFREY/ALYSHA GRAHAM**
[STH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-27-2019 [40]

SPECIALIZED LOAN SERVICING LLC/MV
JERRY LOWE
STEPHEN HICKLIN/ATTY. FOR MV.

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

DISPOSITION: Granted in part as to the trustee's interest and
denied as moot in part as to the debtors' interest.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on February 11, 2019. Doc. #32. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a parcel of real property commonly known as 4288 N. Greenwood Ave, Sanger, California 93657. Doc. #44. The collateral has a value of \$450,000.00 and the amount owed is \$393,176.65. Doc. #42. The order shall provide the motion is DENIED AS MOOT as to the debtors.

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding, then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

6. [16-14433](#)-B-7 **IN RE: ISAIAS BRAVO**
[ICE-4](#)

MOTION FOR COMPENSATION FOR IRMA CORRAL EDMONDS, TRUSTEES
ATTORNEY(S)
10-2-2019 [60]

JERRY LOWE

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's counsel, Irma Corral Edmonds, requests fees of \$14,097.75 and costs of \$529.75 for a total of \$14,627.50 for services rendered from May 24, 2018 through October 2, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Reviewing debtor's schedules and petition, (2) Asset analysis and recovery, (3) Analyzing a personal injury claim for potential litigation, and (4) Preparing and filing employment and fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$14,097.75 in fees and \$529.75. in costs.

7. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JRD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-10-2019 [[211](#)]

BB&T COMMERCIAL EQUIPMENT CAPITAL CORP./MV
THOMAS HOGAN
JONATHAN DOOLITTLE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.
ORDER: The court will issue an order.

The moving papers do not include an appropriate Docket Control Number as required by LBR 9014-1(c). The movant has previously used Docket Control Number JRD-1 in this case.

8. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[MAS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-16-2019 [[222](#)]

DE LAGE LANDEN FINANCIAL SERVICES, INC./MV
THOMAS HOGAN
MARK SERLIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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 automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay. The court takes note of the Request for Judicial Notice filed concurrently with this motion (Doc. #225) and served on all interested parties on October 16, 2019.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is five 2017

Utility 53' VS2RA Reefer Trailers and two 2017 Freightliner Cascadia CA125SLP Truck Tractors. Doc. #224. The collateral has a value of \$278,827.00 and debtor owes \$535,774.08. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding, then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

10:00 AM

1. [19-12643](#)-B-7 **IN RE: JAMES MACMINN**

CONTINUED REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY
8-30-2019 [\[17\]](#)

GEORGE ALONSO

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

Based on the filing of the amended reaffirmation agreement on October 30, 2019 (Doc. #25), no hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

2. [19-13452](#)-B-7 **IN RE: FRANCES BURGER**

PRO SE REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK, N.A.
10-14-2019 [\[20\]](#)

NO RULING.

3. [19-13668](#)-B-7 **IN RE: REYNALDO PEREZ**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
10-8-2019 [\[14\]](#)

NO RULING.

4. [19-13971](#)-B-7 **IN RE: DEBORAH WIGGINS-STEVENSON**

PRO SE REAFFIRMATION AGREEMENT WITH 21ST MORTGAGE CORPORATION
10-16-2019 [\[15\]](#)

NO RULING.

5. [19-12484](#)-B-7 **IN RE: ALLISON KENYON**

CONTINUED REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE
CORP.

9-10-2019 [[16](#)]

NO RULING.

10:30 AM

1. [18-14902](#)-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
[SAH-4](#)

MOTION TO MODIFY PLAN
9-27-2019 [\[66\]](#)

FRANCISCO RAMIREZ/MV
SUSAN HEMB
OPPOSITION WITHDRAWN

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

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).

No evidence is offered that the proposed modification complies with 11 U.S.C. § 1325(a), as required by 11 U.S.C. § 1329(b). The declaration does not address the relevant elements. The burden is on movant. Withdrawal of the chapter 13 trustee's opposition is not a replacement for meeting the debtor's burden of proof. Therefore, the motion is DENIED WITHOUT PREJUDICE.

2. [19-14304](#)-B-13 **IN RE: RAFAEL ESCAMILLA GARCIA AND ALMA ESCAMILLA**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-17-2019 [9]

RAFAEL ESCAMILLA GARCIA/MV
SCOTT LYONS

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 Local Rule of Practice ("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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-13122. That case was filed on July 23, 2019 and was dismissed on October 11, 2019 for failure to provide requested and necessary documents to the chapter 13 trustee's office. This case was filed on October 11, 2019 and the automatic stay will expire on November 10, 2019.

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) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

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 because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa).

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.

Debtor's previous case was dismissed for failure to provide a check stub dated July 19, 2019 in a timely manner. Doc. #11. Debtor states he failed to do so because he works long hours as a landscaper and overlooked it. Id.

Debtor is now certain that he will be able to complete a chapter 13 plan. Id. The plan proposes to pay 100% of all unsecured debts. Doc. #16. The proposed payment is \$1,175.00. Id. Debtors' Schedule J shows a current monthly net income of \$1,198.77. Doc. #15. The court finds that the petition was filed in good faith.

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.

3. [19-12717](#)-B-13 **IN RE: CARLOS SOTO**
[PBB-1](#)

MOTION TO CONFIRM PLAN
9-19-2019 [[27](#)]

CARLOS SOTO/MV
PETER BUNTING
RESPONSIVE PLEADING

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 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). Therefore, the defaults of the above-mentioned parties in interest, except for the chapter 13 trustee, are entered. 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 chapter 13 trustee ("Trustee") opposes confirmation under 11 U.S.C. §§ 1322(a) and 1325(a). Doc. #37. Debtor responded, partially conceding to Trustee's arguments in the opposition and offering a resolution, proposing that the plan can be confirmed "with the requirement that the Debtor pay 78% to allowed unsecured claims with interest at the federal rate and a minimum of \$25,986 to allowed priority and unsecured claims. In the 3rd month the Plan payments increase to \$1,600.00 per month." Doc. #41.

This matter will be called to allow Trustee to respond to Debtor's proposal.

4. [19-13822](#)-B-13 **IN RE: SALVADOR PULIDO**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HOMESTREET BANK
10-7-2019 [\[14\]](#)

HOMESTREET BANK/MV
TIMOTHY SPRINGER
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The 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. Though unnecessary, the debtor filed opposition to the objection. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults, except the debtor's, and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

HomeStreet Bank ("Creditor") objects to plan confirmation because the plan fails to properly provide for Creditor's claim because the plan fails to provide for a cure of Creditor's pre-petition claim in full. Doc. #14. Creditor also opposes on feasibility grounds. Id.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #2. Creditor's proof of claim, filed October 4, 2019, states a claimed arrearage of \$19,031.10. This claim is classified in class 1 - paid by the chapter 13 trustee. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly. Doc. #2.

Debtors' plan understates the amount of arrears. The plan states arrears of \$16,477.52. Id. Creditor's claim states arrears of \$19,031.10. Though plan section 3.02 provides that the proof of claim, and not the plan itself, that determines the amount that will be repaid, section 3.07(b)(2) requires that the payment be adjusted accordingly for a class 1 claim.

Debtor opposed, stating that the chapter 13 trustee will pay according to the proof of claim and "if the amount it understated and affects feasibility, the Chapter 13 Trustee will adjust the payment in the Order Confirming and/or it will be dealt with at the time of the Notice of filed claims." Doc. #23. That does not solve

the feasibility problem since the debtor does not have disposable income to make the increased payment to satisfy the arrearage. The debtor has not objected to HomeStreet's claim.

The court finds that the language of the plan prevails, and unless Creditor consents to debtor's proposed treatment, then the plan language controls.

Therefore, this objection is SUSTAINED.

5. [19-13822](#)-B-13 **IN RE: SALVADOR PULIDO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-9-2019 [[18](#)]

TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The objection was withdrawn. Doc. #26.

6. [19-13328](#)-B-13 **IN RE: LARRY/DOLORES SYRA**
[MHM-1](#)

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

MARK ZIMMERMAN
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The objection was withdrawn. Doc. #27.

7. [19-13329](#)-B-13 **IN RE: SALLY REYES**
[TCS-1](#)

MOTION TO CONFIRM PLAN
9-21-2019 [\[20\]](#)

SALLY REYES/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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. The chapter 13 trustee withdrew his opposition on November 6, 2019. Doc. #38.

8. [19-13230](#)-B-13 **IN RE: RUSSELL/MARICELA STANFORD**
[TCS-1](#)

CONTINUED 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: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. A motion to confirm a modified plan was filed on October 24, 2019 and set for hearing on December 19, 2019. Doc. #42. The court notes that that motion contains the same docket control number as the motion to value collateral of Noble Credit Union, matter #9 below, and will be denied without prejudice for failure to comply with the Local Rules of Practice.

9. [19-13230](#)-B-13 **IN RE: RUSSELL/MARICELA STANFORD**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF NOBLE CREDIT UNION
9-25-2019 [[29](#)]

RUSSELL STANFORD/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a

prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion is GRANTED. 11 U.S.C. § 1325(a) (*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle acquired for the personal use of the debtor at its current amount, 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 2013 Ford Mustang at \$12,550.00. Doc. #29. Creditor Noble Credit Union's ("Creditor") claim states the amount owed to be \$14,085.30. Claim #3. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$12,550.00. Doc. #32. Debtor incurred the debt on January 2, 2017. 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 2013 Ford Mustang. 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 \$12,550.00. 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.

10. [19-13835](#)-B-13 **IN RE: JOSE VITOLAS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-10-2019 [[25](#)]

JAMES CANALEZ

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 filed a modified plan on October 18, 2019. Doc. #30.

11. [19-12041](#)-B-13 **IN RE: JERRY WALKER**
[WLG-2](#)

MOTION TO CONFIRM PLAN
10-2-2019 [\[35\]](#)

JERRY WALKER/MV
NICHOLAS WAJDA

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.

12. [19-13342](#)-B-13 **IN RE: LINDA GLOSSOP**
[MHM-1](#)

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

PETER BUNTING
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 withdrew her chapter 13
plan. Doc. #41.

13. [19-13544](#)-B-13 **IN RE: RENE/ESPERANZA DE LUNA**
[STH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
9-19-2019 [[16](#)]

THE BANK OF NEW YORK MELLON/MV
SCOTT LYONS
STEPHEN HICKLIN/ATTY. FOR MV.

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.

14. [19-13551](#)-B-13 **IN RE: DANIEL GARCEZ AND MYRNA BUENO-GARCEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-9-2019 [\[19\]](#)

JEFFREY ROWE
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The objection was withdrawn. Doc. #27.

15. [19-13554](#)-B-13 **IN RE: GEORGE FONSECA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-10-2019 [\[15\]](#)

THOMAS MOORE

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

DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to confirmation of the debtor's plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than November 27, 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. Trustee shall file and serve a reply, if any, by December 4, 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 December 4, 2019. If the debtor does not timely file a modified plan or a written response, confirmation will be denied on the grounds stated in the opposition without a further hearing.

16. [19-13859](#)-B-13 **IN RE: WILLIAM SEUELL**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MTGLQ INVESTORS, L.P.
10-8-2019 [[19](#)]

MTGLQ INVESTORS, L.P./MV
MARK ZIMMERMAN
SEAN FERRY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults, except the debtor's, and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Creditor MTGLQ Investors, L.P. ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor and that the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #19, claim #5.

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. #3. Creditor's proof of claim, filed October 4, 2019, states a claimed arrearage of \$72,582.42. This claim is classified in class 1 - paid by the chapter 13 trustee. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Debtors' plan understates the amount of arrears. The plan states arrears of \$54,961.85. Doc. #3. Creditor's claim states arrears of \$72,582.42. Though plan section 3.02 provides that the proof of claim, and not the plan itself, that determines the amount that will be repaid, section 3.07(b)(2) requires that the payment be adjusted accordingly for a class 1 claim.

The debtor responded and did not oppose increasing the arrearage to the amount on Creditor's claim and increasing the plan payment to \$6,864.68. Doc. #24. But the increase in payment must be feasible. Debtor filed amended schedules I and J on November 7, 2019. Doc. #26. Amended Schedule J shows a current monthly net income of

\$6,864.68. Id. This matter will be called to allow Creditor to respond to Debtor's proposed plan payment increase.

17. [17-12560](#)-B-13 **IN RE: CHARLES/DAWN ONTIVEROS**
[WLG-1](#)

MOTION TO MODIFY PLAN
10-3-2019 [[25](#)]

CHARLES ONTIVEROS/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtors' fully noticed motion to modify their chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than November 27, 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. Trustee shall file and serve a reply, if any, by December 4, 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 December 4, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

18. [19-13560](#)-B-13 **IN RE: ROBERT/HOLLY WOODS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-9-2019 [[17](#)]

MICHAEL ARNOLD

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 filed a modified plan. See doc. #23, MJA-1.

19. [19-10965](#)-B-13 **IN RE: GUADALUPE RAMIREZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
9-16-2019 [[32](#)]

MICHAEL MEYER/MV
SCOTT LYONS
CONTINUED TO 12/12/19 WITHOUT AN ORDER

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.
NO ORDER REQUIRED: The court already issued an order. Doc. #61.

20. [19-10965](#)-B-13 **IN RE: GUADALUPE RAMIREZ**
[SL-1](#)

MOTION TO CONFIRM PLAN
10-3-2019 [[38](#)]

GUADALUPE RAMIREZ/MV
SCOTT LYONS
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Denied as moot.
ORDER: The court will issue an order.

This motion is DENIED AS MOOT. Debtor has filed a second motion to confirm a plan set for hearing on December 12, 2019. SL-2, doc. #50.

21. [19-12075](#)-B-13 **IN RE: MARIA DEL ROCIO SAAVEDRA**
[SLL-3](#)

MOTION FOR COMPENSATION FOR STEPHEN L LABIAK, DEBTORS ATTORNEY
10-14-2019 [[35](#)]

STEPHEN LABIAK

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Dropped from calendar.
NO ORDER REQUIRED: Movant withdrew the motion. Doc. #42.

22. [19-13082](#)-B-13 **IN RE: DAVID GROVES**
[JMM-1](#)

MOTION TO CONFIRM PLAN
9-17-2019 [[27](#)]

DAVID GROVES/MV
JEFFREY MEISNER

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.

23. [19-13588](#)-B-13 **IN RE: KEVIN SISEMORE**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-9-2019 [[13](#)]

DAVID JENKINS

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

DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to confirmation of the debtor's plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than November 27, 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. Trustee shall file and serve a reply, if any, by December 4, 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 December 4, 2019. If the debtor does not timely file a modified plan or a

written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

24. [19-13688](#)-B-13 **IN RE: MICHAEL/NANCY FERRARO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-9-2019 [[17](#)]

PETER BUNTING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The objection was withdrawn. Doc. #34.

25. [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.

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 filed a modified plan.
See RS-3, doc. #64.

26. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[RS-3](#)

MOTION TO CONFIRM PLAN
9-25-2019 [64]

ROBINSON POLANCO/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The court first notes that 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.

The chapter 13 trustee ("Trustee") has filed an objection to the debtors' fully noticed motion to modify their chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than November 27, 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. Trustee shall file and serve a reply, if any, by December 4, 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 December 4, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

27. [19-13793](#)-B-13 **IN RE: JOSE/ROSA ESPINO**
[TOG-2](#)

MOTION TO CONFIRM PLAN
9-26-2019 [[22](#)]

JOSE ESPINO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtors' fully noticed motion to modify their chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than November 27, 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. Trustee shall file and serve a reply, if any, by December 4, 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 December 4, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

28. [19-14295](#)-B-13 **IN RE: RUBEN/MARIA QUINTANILLA**
[SL-1](#)

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

RUBEN QUINTANILLA/MV
SCOTT LYONS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-10305. That case was filed on January 30, 2019 and was dismissed on August 15, 2019 for failure to confirm a chapter 13 plan. This case was filed on October 11, 2019 and the automatic stay will expire on November 10, 2019.

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) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith does not arise. Debtor has not had "more than 1 previous case . . . pending within the preceding 1-year period," (11 U.S.C. § 362(c)(3)(C)(i)(I), and the previous case was not dismissed either for failure to file documents as required by the bankruptcy code and the court without substantial excuse (11 U.S.C. § 362(c)(3)(C)(i)(II)(aa)) or for failure to perform the terms of a plan confirmed by the court (11 U.S.C. § 362(c)(3)(C)(i)(II)(cc)). Nor is there thus far any reason to conclude that this case will not conclude with a fully performed and confirmed chapter 13 plan (§ 362(c)(3)(C)(III)(bb)).

However, even though the presumption of bad faith does not arise, the court must still find that "the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed"

Debtors' previous case was dismissed for failure to confirm a chapter 13 plan on the chapter 13 trustee's motion. Doc. #12. Debtors did not oppose the trustee's motion in the previous case. Debtors claim that they were unable to confirm a plan because the plan listed an incorrect amount of arrears owed to debtors' mortgage lien holder. Id. Debtors now have a plan which proposes to pay 100% of all unsecured debts at \$3,030.00 per month. Doc. #6. Debtors current monthly net income is \$3,044.80. Doc. #1. These facts show a likelihood of being able to make the necessary plan payments.

Creditor Ajax Mortgage Loan Trust's ("Creditor") filed opposition. Doc. #19. The opposition appears to state that this case was not filed in good faith because the prior case was dismissed for justifiable reasons, namely that debtors had a clear opportunity to confirm a modified plan after Creditor's objection to confirmation was sustained. Id. Creditor's objection was sustained because the pre-petition arrears owed to Creditor were inaccurately listed on the plan, and the plan required modification to accurately reflect the arrears.

Creditor urges that the reason the previous case was dismissed alleged by the debtor - failure to accurately provide arrearage data to counsel - is disingenuous since creditor filed a proof of claim with the accurate arrearage stated in the previous case. If true, the question then is whether the debtors' situation has significantly changed. Debtor's evidence on the subject is thin, to be sure. But, it appears there is enough income to fund plan payments. Yet, that may be irrelevant given the status of the collateral.

Creditor has not yet filed a proof of claim in this case. The proposed plan lists Creditor's pre-petition arrears in the combined amount of \$38,544.94. Doc. #6.

In [the Ninth Circuit], the "totality of circumstances" test for determining whether a debtor filed a chapter 13 case in good faith includes: 1) whether debtor misrepresented facts in the petition or the plan, unfairly manipulated the Code or otherwise filed the current chapter 13 plan or petition in an inequitable manner; 2) debtor's history of filings and dismissals; 3) whether debtor only intended to defeat state court litigation; and 4) whether egregious behavior is present.

In re Montoya, 342 B.R. 312, 317 (Bankr. S.C. Ca. 2006) (citing In re Leavitt, 171 F.3d 1219, 1224 (9th Cir. 1999)).

The court finds that none of these circumstances exist. None of the evidence Creditor provided supports this argument, and Creditor's

opposition does not address these circumstances either. There was no allegation, and the court could not find, any misrepresentation of facts by the debtor in the petition or plan, nor any evidence of filing a petition or plan in an inequitable manner. This is only debtor's second bankruptcy filing. There does not appear, and there has been no allegation of, an intent to defeat state court litigation through filing bankruptcy, and the only "egregious behavior" Creditor alleges that the court can decipher is that the collateral has been sold. It is unclear whether the collateral was sold to a third party. Nevertheless, the collateral is no longer property of the estate. But no evidence of the sale was provided - no price, no buyer, just two paragraphs in the declaration. Doc. #20, ¶¶10-11. The court is not persuaded that this case was filed in bad faith.

However, if it is indeed true that the collateral has been sold, then it is no longer property of the estate and presumably not property of the debtor. If the collateral is not property of the estate, or debtor's property, then this court has no jurisdiction over the property and cannot enforce, nor order the extension of, the automatic stay over the collateral.

The motion will be called to allow debtor to respond to Creditor's opposition.

29. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[19-1039](#) [DRJ-4](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF
REMOVAL
9-17-2019 [\[103\]](#)

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
DAVID JENKINS/ATTY. FOR MV.

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Plaintiff shall file a status report within 14 days of the Ninth Circuit Court of Appeals' issuance of its ruling and set a hearing for this matter.

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

This motion is stayed pending the Ninth Circuit's review of the court's previous order. This adversary proceeding will be stayed until then.

Appeals generally divest the trial court of jurisdiction over the matter being appealed. In re Adams Apple, 829 F.2d 1484, 1489 (9th Cir. 1987). "Timely filing of [a] notice of appeal of the BAP's decision to [the Ninth Circuit Court of Appeals] confer[s] jurisdiction on (the Ninth Circuit Court of Appeals) and divests[s]"

both the BAP and the bankruptcy court over those aspects of the case involved in the appeal." Neary v. Padilla (In re Padilla), 222 F.3d 1189, 1190 (9th Cir. 1999) (citations omitted). See also, Marino v. Classic Auto Refinishing, Inc. (In re Marino), 234 B.R. 767, 770 (B.A.P. 9th Cir. 1999) [even if appellate mandate is issued, bankruptcy court is divested of jurisdiction upon filing of notice of appeal from a BAP decision]. This is a "judge-made doctrine designed to avoid the confusion and waste of time that might flow from putting the same issues before two courts at the same time." Padilla, 222 F.3d at 1190, quoting United States v. Thorp (In re Thorp), 655 F.2d 997, 998 (9th Cir. 1981).

Here, this court dismissed Reyes' motion to vacate the state court judgments because to entertain the motion would be contrary to *Rooker-Feldman* and for other reasons. This order was affirmed by the BAP on appeal. See Reyes v. Kutnerian, BAP No. 18-1229 (April 18, 2019). The BAP never issued a mandate because on May 17, 2019 Reyes filed a notice of appeal to the Ninth Circuit Court of Appeals. BAP dkt. # 35. Court of Appeals case no. 19-60027. The appeal is now pending. Appellants' opening brief due December 13, 2019, and appellees' brief due January 13, 2020. Ninth Circuit dkt. #11.

To be sure, even when there is an appeal, the bankruptcy court retains jurisdiction over all other matters that it must undertake "to implement or enforce the judgment or order" appealed from although it "may not alter or expand upon the judgment." Sherman v. SEC (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007), quoting Padilla, 222 F.3d at 1190. Absent a stay, the bankruptcy court could continue to exercise jurisdiction over other proceedings related to the petition. Sherman, 491 F.3d at 967, citing In re Combined Metals Reduction Co., 557 F.2d 179, 201-03 (9th Cir. 1977). See also 28 U.S.C. § 158(d) (2) (D); Federal Rule of Bankruptcy Procedure 8007(e).

The court does not currently have jurisdiction to decide the issues in the adversary proceeding. The second amended complaint raises an issue which Reyes contends was not decided by the California trial and appellate courts: the significance of defendant's alleged incorrect Fictitious Business Name Statement on the state court proceedings. But, the determination of the issue would substantially change the status quo surrounding this court's previous ruling that it does not have subject matter jurisdiction to review the state court judgments and rulings. Though denying Reyes relief prayed in the second amended complaint is consistent with the ruling on appeal, it would expand the judgment appealed. If Reyes prevailed, the status quo would be significantly changed. Either scenario may result in further appeals confusing the record and the status of the case. The adversary proceeding thus relates directly to the matter being appealed and the court cannot now exercise jurisdiction.

This matter is stayed until the Ninth Circuit Court of Appeals issues its ruling. Plaintiff here shall file a status report within 14 days of the Ninth Circuit's issuance of its ruling and set a status conference and this motion will be heard on a date after the conference.

30. [18-11831](#)-B-13 **IN RE: DEBORAH ALDRIDGE**
[TCS-1](#)

MOTION TO VACATE DISMISSAL OF CASE
10-28-2019 [[38](#)]

DEBORAH ALDRIDGE/MV
TIMOTHY SPRINGER
OST 10/29/19

RESPONSIVE PLEADING

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)(3) and an order shortening time (doc. #44) 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. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

In this case, debtor's plan was confirmed approximately two months after filing the petition in May 2018. Her case was dismissed for being delinquent on plan payments. Doc. #38. Debtor did not realize that TFS was not scheduled to take the right amount. Id. Up until dismissal, she made a payment every month. Id. She claims to not have received the Notice of Intent to Dismiss. Id. She set up payments to be withdrawn on the 25th, but did not realize that that would mean she would be delinquent in making payments. Id. She gets paid on the 4th Wednesday of every month and is revising her payment to pay the correct amount and to have it arrive before the end of the month. Id.

The debtor's claim that she did not receive the notice from the Trustee lacks merit. Debtor has not notified the court or the trustee that she changed her address and neither the court or the trustee need or can assure correspondence being sent to her stated address will be seen by the debtor. Service was complete upon mailing or other form of notice.

The court finds excusable neglect and grants the motion if the debtor is current at the hearing. Debtor was delinquent only a small amount and made good faith efforts to pay the complete payment. If debtor is current by the date of this hearing, then the court intends to GRANT this motion.

11:00 AM

1. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-74](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGASER WATKINS
& WIELAND, P.C. FOR IAN B. WIELAND, SPECIAL COUNSEL(S)
10-22-2019 [[2853](#)]

IAN WIELAND/MV
MICHAEL COLLINS
IAN WIELAND/ATTY. FOR MV.

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

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 for failure to comply with
the Federal Rules of Bankruptcy Procedure and the Local Rules of
Practice ("LRB").

First, Fed. R. Bankr. P. 2002(a)(6) requires at least 21 days'
notice to parties in interest of "a hearing on any entity's request
for compensation or reimbursement of expenses if the request exceeds
\$1,000.00."

The motion seeks compensation and reimbursement of over \$1,000.00.
The motion was filed and served on October 22, 2019. Doc. #2858. The
motion was set for hearing on November 8, 2019. November 8, 2019 is
17 days after October 22, 2019. Therefore the motion does not comply
with Fed. R. Bankr. P. 2002(a)(6).

Second, 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.

The court notes the United States Trustee's reservation of rights.
Doc. #2902.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-75](#)

MOTION FOR COMPENSATION FOR FRAZER, LLP, ACCOUNTANT(S)
10-22-2019 [[2859](#)]

MICHAEL COLLINS

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

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 for failure to comply with the Federal Rules of Bankruptcy Procedure.

First, Fed. R. Bankr. P. 2002(a)(6) requires at least 21 days' notice to parties in interest of "a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000.00."

The motion seeks compensation and reimbursement of over \$1,000.00. The motion was filed and served on October 22, 2019. Doc. #2864. The motion was set for hearing on November 8, 2019. November 8, 2019 is 17 days after October 22, 2019. Therefore the motion does not comply with Fed. R. Bankr. P. 2002(a)(6) and is DENIED WITHOUT PREJUDICE.

The court notes the United States Trustee's reservation of rights. Doc. #2904.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-76](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHWABE WILLIAMSON AND WYATT FOR ELIZABETH E. HOWARD, SPECIAL COUNSEL(S)
10-25-2019 [[2876](#)]

MICHAEL COLLINS

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

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 for failure to comply with the Federal Rules of Bankruptcy Procedure and the Local Rules of Practice ("LRB").

First, Fed. R. Bankr. P. 2002(a)(6) requires at least 21 days' notice to parties in interest of "a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000.00."

The motion seeks compensation and reimbursement of over \$1,000.00. The motion was filed and served on October 22, 2019. Doc. #2858. The motion was set for hearing on November 8, 2019. November 8, 2019 is 17 days after October 22, 2019. Therefore the motion does not comply with Fed. R. Bankr. P. 2002(a)(6).

Second, LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed and served on October 25, 2019 and set for hearing on November 8, 2019. Doc. #2877, 28815. November 8, 2019 is 14 days after October 25, 2019, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #2877. That is incorrect. Because the hearing was set on 14 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

The court notes the United States Trustee's reservation of rights. Doc. #2906.

4. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[WJH-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES HELSLEY
PC FOR RILEY C. WALTER, SPECIAL COUNSEL(S)
10-11-2019 [[2833](#)]

RILEY WALTER/MV
MICHAEL COLLINS
RILEY WALTER/ATTY. FOR MV.
RESPONSIVE PLEADING

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) and Federal Rule of Bankruptcy Procedure 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. The chapter 11 trustee's ("Trustee") special counsel, Wanger Jones Helsley PC, requests fees of \$61,120.50 and costs of \$6,852.97 for a total of \$67,973.47 for services rendered from July 1, 2019 through September 30, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Working with Trustee in the sale of assets at the debtor's Lost Valley Farm, (2) Working on pending litigation in and out of the district, and (3) Assisted Trustee in filing a restraining order against the debtor. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

The court notes the United States Trustee's limited opposition. Doc. #2873. Any fees awarded will be on an interim basis. 11 U.S.C. §

331. The court continues to review fees and will consider any objection.

Movant shall be awarded \$61,120.50 in fees and \$6,852.97 in costs.

5. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WJH-6](#)

OBJECTION TO CLAIM OF JESSIE C. JAUREGUI, CLAIM NUMBER 102
9-25-2019 [[399](#)]

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER
STIPULATION TO CONTINUE TO 1/9/19

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

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

NO ORDER REQUIRED: The court already issued an order. Doc. #452.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-10](#)

OBJECTION TO CLAIM OF LEVINSON ARSHONSKY & KURTZ, LLP, CLAIM
NUMBER 174
9-25-2019 [[1657](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER
STIPULATION TO CONTINUE TO 12/19/19

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

DISPOSITION: Continued to December 19, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court issued an order. Doc. #1704.

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

OBJECTION TO CLAIM OF MYLENE RUCKER, CLAIM NUMBER 35
9-11-2019 [\[1644\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER

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).

Claimant Mylene Rucker ("Claimant") filed proof of claim 35 in the amount of \$24,000.00 for work performed as an independent contractor physician at a rate of \$205.00 per hour covering a period from August 2017 through October 2017.

Debtor objects to Claimant's claim on the basis that the claim is (1) not entitled to priority status as only 11 U.S.C. § 507(a)(2) is incorporated into Chapter 9 by § 901; (2) the District's records reflect a lower amount of total hours worked, specifically only 66

total hours from August 1, 2017 through to September 30, 2017 for a total of \$13,530.00 earned up to the petition date, and; (3) the 40 hours purportedly worked by Claimant in October 2017 were worked post-petition and should not be included in the amount asserted as of the petition date and included in the claim. Doc. #1644.

Claimant did not oppose.

Therefore, claim no. 35 is denied any entitlement to priority status and is allowed as a general unsecured claim in the amount of \$13,530.00.