

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, November 21, 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. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[JMB-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2019 [[1985](#)]

RABOBANK, N.A./MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOSEPH VANLEUVEN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 4, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

This matter is continued to December 4, 2019 at 10:30 a.m. to be heard in conjunction with the continued chapter 11 plan confirmation. If the confirmation order is entered, this motion will be denied as moot and no hearing will be necessary.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-73](#)

OBJECTION TO CLAIM OF VALMONT NORTHWEST, INC., CLAIM NUMBER 28
10-7-2019 [[2799](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.
MOTION TO CONTINUE TO 2/11/19 AT 1:30

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

DISPOSITION: Continued to February 11, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc.
#2931.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[RAC-10](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP FOR
RONALD A. CLIFFORD, CREDITORS ATTORNEY(S)
10-24-2019 [[2868](#)]

MICHAEL COLLINS/ATTY. FOR DBT.
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). 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 United States 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 motion is GRANTED. The Committee of unsecured creditors' counsel, Blakeley LLP, requests fees of \$55,256.00 and costs of \$2,793.15 for a total of \$58,049.15 for services rendered from August 3, 2019 through October 18, 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) Advising creditors regarding cash collateral budgets and general case status, (2) Reviewed issues surrounding asset dispositions, (3) Case administration, (4) Attended the mediation between the chapter 11 trustee and Soleseco, LLC, and (5) Reviewed matters of importance to the unsecured creditors' committee. The United States Trustee filed a reservation of rights to this motion, but did not object to the requested fees. Doc. #2908. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$55,256.00 in fees and \$2,793.15 in costs.

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

CONTINUED DISCLOSURE STATEMENT FILED BY DEBTOR COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT
7-31-2019 [[328](#)]

RILEY WALTER/ATTY. FOR DBT.
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Dropped from calendar.
NO ORDER REQUIRED: Movant withdrew the disclosure statement. Doc. #455.

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

OBJECTION TO CLAIM OF BECKMAN COULTER, INC., CLAIM NUMBER 3
10-7-2019 [[434](#)]

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Continued to December 12, 2019 at 9:30 a.m.
ORDER: The moving party shall submit an order.

The parties stipulated to continuing the matter to December 11, 2019 at 9:30 a.m. Doc. #464. However, chapter 9 matters are not set for that time. The nearest other date and time that chapter 9 matters are set for is December 12, 2019 at 9:30 a.m.

If that date is acceptable to the parties, then movant shall submit the appropriate order to chambers continuing the matter to December 12, 2019 at 9:30 a.m. If that date and time are not acceptable, the parties shall mutually agree upon a date and time the court hears chapter 9 matters and submit an order to chambers continuing this objection to that date.

1:30 PM

1. [19-14101](#)-B-13 IN RE: WILLIAM/DORETTA COX
[ASW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC
11-5-2019 [[21](#)]

DITECH FINANCIAL LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
DANIEL FUJIMOTO/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 Ditech Financial LLC ("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 payment to Creditor would need to increase the payment \$29.69 per month in order to cure Creditor's pre-petition arrears. Doc. #21. Creditor is secured by real property commonly known as 2000 East Stockham Avenue in Tulare, CA 93274. Doc. #22. As of November 18, 2019, Creditor has not yet filed its claim.

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.

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 will have stay relief. This objection is OVERRULED.

2. [19-13902](#)-B-13 **IN RE: HEZEKIAH SHERWOOD**
[JMM-4](#)

MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
11-7-2019 [[42](#)]

HEZEKIAH SHERWOOD/MV
JEFFREY MEISNER/ATTY. FOR DBT.

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 shorten time was previously filed and granted on October 11, 2019. Doc. #24, 31. The DCN for that motion was JMM-4. That motion to shorten time was for a motion to extend the automatic stay (which had a DCN of JMM-3). This motion also has a DCN of JMM-4 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

3. [19-11512](#)-B-13 **IN RE: TEOFILO/CHRISTY RODRIGUEZ**
[SLL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY
10-29-2019 [[68](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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 served and filed on October 29, 2019 and set for hearing on November 21, 2019. Doc. #69, 74. November 21, 2019 is less than 28 days after October 29, 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. #69. That is incorrect. Because the hearing was set on less than 28 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.

4. [19-14417](#)-B-13 **IN RE: RAY CABALLERO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-4-2019 [[12](#)]

CASE DISMISSED 11/8/19

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The case has already been dismissed on November 8, 2019 (Document No. 14). Therefore, the Order to Show Cause will be dropped as moot.

5. [19-13918](#)-B-13 **IN RE: JOSHUA/KRISTEN CARTER**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PNC BANK, NATIONAL
ASSOCIATION
10-15-2019 [[19](#)]

PNC BANK, N.A./MV
GLEN GATES/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot.

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 PNC Bank, National Association ("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 #1.

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. #14. Creditor's proof of claim, filed October 7, 2019, states a claimed arrearage of \$35,604.84. 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 \$32,000.00. Doc. #14. 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, stating that the order confirming plan "shall be adjusted to provide for the difference in the payment sum to the creditor via the plan dividend from \$534.00 per month, to \$593.41," thereby rendering this objection moot. Doc. #25. Debtors' schedules I/J show an ability to make the increased payment. Doc. #13.

Therefore, this objection is OVERRULED AS MOOT.

6. [19-13918](#)-B-13 **IN RE: JOSHUA/KRISTEN CARTER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
11-1-2019 [22]

GLEN GATES/ATTY. FOR DBT.

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' plan for confirmation. Debtors filed a response to the objection on November 20, 2019. Doc. #29. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Trustee shall file and serve a reply by December 5, 2019.

If the debtors elect to withdraw this plan and file a modified plan, then a confirmable modified plan shall be filed, served, and set for hearing, not later than December 5, 2019.

7. [19-12622](#)-B-13 **IN RE: JULIE MARTINEZ**
[FW-1](#)

MOTION TO CONFIRM PLAN
10-3-2019 [[19](#)]

JULIE MARTINEZ/MV
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

8. [15-13227](#)-B-13 **IN RE: VONNETTE WRIGHT**
[SL-1](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE
SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
10-16-2019 [[16](#)]

VONNETTE WRIGHT/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor's counsel asks the court to excuse debtor from being required to complete and file a certificate of completion of financial management course and directing the clerk's office to treat this case as it would if the debtor had. Doc. #16. Debtor passed away recently and is therefore unable to complete a financial management course.

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed

and be concluded in the same manner, so far as possible,
as though the death or incompetency had not occurred.

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, the debtor is excused from completing and filing a certificate of completion of the financial management course. The clerk's office is to treat this case as it would if the debtor had filed a certificate of completion of the financial management course.

9. [19-12351](#)-B-13 **IN RE: ERICA GOMEZ**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF
FROM CO-DEBTOR STAY, MOTION FOR ADEQUATE PROTECTION
10-22-2019 [[53](#)]

MECHANICS BANK/MV
THOMAS GILLIS/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case has been dismissed. Doc.
#64.

10. [19-14051](#)-B-13 **IN RE: RICHARD CERVANTES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-31-2019 [[20](#)]

BENNY BARCO/ATTY. FOR DBT.
\$79.00 INSTALLMENT PAYMENT PAID ON 11/1/19

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 were paid on
November 1, 2019.

The order permitting the payment of filing fees in installments will
be modified to provide that if future installments are not received
by the due date, the case will be dismissed without further notice
or hearing.

11. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[MHM-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-22-2019 [[64](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustain unless otherwise overruled.

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

This objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, Schedule C was amended on October 11, 2019 and this objection was filed on October 22, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

The chapter 13 trustee ("Trustee") objects to the debtor's exemption of a 2015 GMC Yukon XL ("Vehicle") under California Code of Civil Procedure § 704.010. According to Schedule A/B, line 3.2, Debtors own a 2015 GMC Yukon XL SLT valued a \$35,740.00 and, "[f]unds from personal injury settlement were used to purchase vehicle." Doc. #1. Debtors timely opposed. Doc. #69.

The court previously sustained Trustee's prior objection to this claim of exemption on August 1, 2019. See MHM-3, doc. #37.

C.C.P § 703.080 provides:

- (a) Subject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent.
- (b) The exemption claimant has the burden of tracing an exempt fund.

(c) The tracing of exempt funds in a deposit account shall be by application of the lowest intermediate balance principle unless the exemption claimant or the judgment creditor shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case.

C.C.P § 704.140 provides:

"(a) . . . a cause of action for personal injury is exempt without making a claim.
(b) . . . an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor . . .
."

C.C.P § 704.010 provides:

(a) Any combination of the following is exempt in the amount of three thousand three hundred and twenty-five dollars (\$3,325):
(1) The aggregate equity in motor vehicles.
(2) The proceeds of an execution sale of a motor vehicle.
(3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

Debtors' original Schedule C and the amended Schedule C differ as to the Vehicle in one way: amended Schedule C exempts "\$0.00" of the Vehicle under C.C.P. § 704.010 and the entire value of the Vehicle under C.C.P. § 704.140, while the original Schedule C only exempts the entire value of the vehicle under C.C.P. § 704.140. See doc. ##1, 55.

Trustee argues that the objection should be sustained based on *res judicata*. The court's order in MHM-3 sustained Trustee's objection based under C.C.P. § 704.140.

Debtor provides no authority supporting the contention that §703.080 is inapplicable to §§ 704 et al. Section 703.080 is part of the general provisions and debtor has provided no authority to the court to explain how § 703.080 is not applicable when taking exemptions under § 704. It is true that § 703.140(a) forbids a debtor from utilizing the "§ 703.140" exemptions and the "§ 704" exemptions together, but the language of the statute specifically refers to "exemptions," as this court interprets it, meaning the *specific* exemptions. Section 703.080 is not itself an exemption, but rather a general rule applicable to all exemptions. See Haaland v. Corp. MGMT., 172 B.R. 74, 78 (S.D. Cal. 1989); McMullen v. Haycock, 147 Cal. App. 4th 753, 759, 54 Cal. Rptr. 3d 660 (2007); Kilker v. Stillman, 233 Cal. App. 4th 320, 329-30, 182 Cal. Rptr. 3d 712

(2015); Sourcecorp, Inc. v. Shill, 206 Cal. App. 4th 1054, 1058-59, 142 Cal. Rptr. 3d 414 (2012).

§ 703.140 exemptions are available only to debtors in bankruptcy. It would not make sense that debtors outside of bankruptcy need not trace funds. The legislative committee comment to § 703.080 also contemplates that § 703.080 is applicable to § 704 exemptions.

Even if the court were convinced that § 703.080 was not applicable to § 704 exemptions, the court is persuaded, and debtor's opposition did not address this issue, that the relief sought is barred under res judicata.

The order on the prior objection to exemptions was not appealed and became a final as to all property listed on Debtors' schedule A/B filed May 14, 2019. Doc. ## 37, 40. Res judicata binds Debtors to the court's final order and bars Debtors from claiming the 2015 GMC Yukon XL SLT as exempt under C.C.P. § 704.140.

"Issue preclusion is appropriate when (i) the previous and current proceedings involve the same issue; (ii) the issue was actually litigated and determined; (iii) the prior decision is valid and final; and (iv) the determination of the issue was essential to the prior decision." In re Phillips, No. C09-1399Z, 2010 WL 3041968, (W.D. Wash. July 30, 2010), aff'd, 460 F. App'x 636 (9th Cir. 2011).

In this case, these four factors are present. The issues are the same (whether the 2015 GMC Yukon XL SLT is exempt under C.C.P. § 704.140); Trustee's objection to exemption was previously sustained on August 1, 2019; This court's ruling sustaining the Trustee's objection to exemptions is a final ruling, and; the determination of the current issue: whether the 2015 GMC Yukon XL SLT is exempt under C.C.P. § 704.140, was essential to the court's prior decision sustaining the Trustee's objection to exemptions. Therefore, the amended claim of exemptions for the 2015 GMC Yukon LX SLT under C.C.P. § 704.140 is barred by res judicata.

12. [19-14263](#)-B-13 **IN RE: PLACIDO RODRIGUEZ HERNANDEZ**
[ALG-3](#)

MOTION TO EXTEND AUTOMATIC STAY
11-7-2019 [[40](#)]

PLACIDO RODRIGUEZ HERNANDEZ/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.
JANINE ESQUIVEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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

11 U.S.C. § 362(c)(3)(A) states that the automatic stay will expire 30 days after a case is filed if that case was filed within one year of another pending case.

11 U.S.C. § 362(c)(3)(B) allows a party in interest to extend the stay upon successfully litigating a motion to extend the stay, which must be heard "before the expiration of the 30-day period"

This case was filed on October 8, 2019. Debtor previously filed bankruptcy on August 6, 2019. Therefore this case was filed within one year of debtor's previous case and the stay will expire on November 7, 2019. In order to extend the stay, this motion must have been set for a hearing prior to November 7, 2019.

This motion was originally set for hearing in front of Department A and Judge Fredrick Clement on November 21, 2019. However, Judge Clement recused himself on November 8, 2019. Doc. #44. Debtor filed an amended notice of hearing on November 12, 2019, stating that the location of the hearing would be in courtroom 13. Doc. #51. Judge Clement's recusal does not change the outcome because this hearing was set for the same day before the recusal. Because November 21, 2019 is after November 7, 2019, the court is unable to grant the requested relief.

13. [19-14165](#)-B-13 **IN RE: MATTHEW REECE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-5-2019 [[22](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

14. [19-10573](#)-B-13 **IN RE: CHAD/MICHELLE ORNELLAS**
[SL-1](#)

MOTION TO MODIFY PLAN
10-14-2019 [[28](#)]

CHAD ORNELLAS/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

15. [19-12075](#)-B-13 **IN RE: MARIA DEL ROCIO SAAVEDRA**
[SLL-4](#)

MOTION FOR COMPENSATION FOR STEPHEN L LABIAK, DEBTORS ATTORNEY
10-29-2019 [[44](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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 served and filed on October 29, 2019 and set for hearing on November 21, 2019. Doc. #45, 50. November 21, 2019 is less than 28 days after October 29, 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. #69. That is incorrect. Because the hearing was set on less than 28 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.

16. [17-12486](#)-B-13 **IN RE: PAULA DUNAWAY**
[PK-3](#)

MOTION TO INCUR DEBT
10-31-2019 [[43](#)]

PAULA DUNAWAY/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor asks the court for permission to borrow \$330,000.00 from Plaza Home Mortgage at a rate of 4.0% to purchase a home ("Property"). The loan will be secured by the Property and the real property commonly known as 11329 Traviso Avenue in Bakersfield, CA 93312. The monthly payment will be \$2,288.00. No party has opposed the motion.

After review of the attached evidence, the court finds that debtor is able to make the monthly payment for the new Property in Bakersfield, CA. Debtor's amended schedules I and J show an ability to pay the increased amount. Doc. #51. Debtor is authorized, but not required, to incur further debt in order to purchase real property and a home located at 11329 Traviso Avenue in Bakersfield, CA for \$330,000.00 with an estimated monthly payment of \$2,288.00. Should the debtor's budget prevent maintenance of current plan payment, debtor shall continue making plan payments until the plan is modified.

17. [19-13688](#)-B-13 **IN RE: MICHAEL/NANCY FERRARO**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF TOYOTA MOTOR CREDIT CORPORATION
10-22-2019 [[29](#)]

MICHAEL FERRARO/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 respondent's secured claim will be fixed at \$25,279.00. The only evidence movant submits to support the valuation is creditor's claim, which lists the same amount as secured. This jurisdiction's local rules require a motion to value collateral be noticed and set for a hearing before a plan can be confirmed if the plan reduces an allowed secured claim in class 2 based on collateral value. See Local Rule of Practice 3015-1(i). Because respondent's claim is not actually being impaired, the court does not believe a declaration from the debtor, an appraisal, or some other form of evidence is necessary to value the collateral at \$25,279.00.

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.

18. [19-13791](#)-B-13 **IN RE: DANIEL FELIPE AND ELVIA BARRERA**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF WEST AMERICA BANK
10-23-2019 [[17](#)]

DANIEL FELIPE/MV
THOMAS GILLIS/ATTY. FOR DBT.

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).

The motion is DENIED WITHOUT PREJUDICE.

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

Therefore, this motion is DENIED WITHOUT PREJUDICE.

19. [19-14526](#)-B-13 **IN RE: YESENIA BAROCIO**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-13-2019 [[19](#)]

YESENIA BAROCIO/MV
PETER BUNTING/ATTY. FOR DBT.
OST 11/13/19

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)(3) and an order shortening time. Doc. #26. 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. 18-10640. That case was filed on February 26, 2018 and was dismissed on February 20, 2019 for failure to make plan payments. This case was filed on October 29, 2019 and the automatic stay will expire on November 28, 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 perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith,

and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor states they fell behind on their plan payments because they were "helping my daughter financially by paying for her college expenses," which put them "behind and I was unable to cure my default prior to the hearing set to dismiss my case." Doc. #21.

Debtor is no longer providing their daughter's college expenses and does not foresee any changes to their income. Id. Debtor's proposed plan payment ranges from \$900.00 for the first month, then increases to \$1,488.00 for the remainder of the plan. Doc. #18. Debtor's current monthly income is \$1,489.76, which shows an ability to make the plan payments. Doc. #13.

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.

20. [19-14738](#)-B-13 **IN RE: LAUREN SO**
[TCS-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
11-13-2019 [[11](#)]

LAUREN SO/MV
NANCY KLEPAC/ATTY. FOR DBT.
OST 11/13/19

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 Impose the Automatic Stay was properly set for hearing on an order shortening time and Local Rule of Practice 9014-1(f)(3). Doc. #15. 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 oppose 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 presented, the court will take up the merits of the motion.

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

Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay will not go into effect when the later case was filed. This was case was filed on November 12, 2019. Doc. #1. Debtor had two cases that were pending but dismissed in the past year, case no. 19-12235 (filed on May 28, 2019 and dismissed on August 17, 2019) and case no. 19-14130 (filed on September 30, 2019 and dismissed on October 30, 2019).

11 U.S.C. § 362(c)(4)(B) allows the court to impose 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 two or more previous cases under this title in which the individual was a debtor were within the 1-year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

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 two prior bankruptcy cases were filed without the assistance of counsel. Debtor has primarily filed bankruptcy in order to save her house. She has fallen behind on the payments due to health issues. Doc. #13. Debtor's health issues also hindered her ability to provide the necessary documents to the trustee. Id. Debtor has now hired counsel, the petition and schedules appear to have been filed completely, and a chapter 13 plan has also been filed. Unless opposition is presented at the hearing, the court finds that the presumption of bad faith has been rebutted by clear and convincing evidence.

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 notes Elwood Quesada and Martha Quesada, Trustees of the Elwood Ricardo Quesada and Martha E. Quesada Revocable Trust's opposition. Doc. #18.