

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, November 29, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [13-11054](#)-B-12 **IN RE: MARIA BRASIL**
[WW-5](#)

MOTION FOR ENTRY OF DISCHARGE
10-31-2018 [\[87\]](#)

MARIA BRASIL/MV
RILEY WALTER

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 for Entry of Discharge was previously filed on September 19, 2018 (doc. #75) and denied without prejudice on October 25, 2018. Doc. #84. The DCN for that motion was WW-5. This motion also has a DCN of WW-5 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

2. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[JLG-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY

11-15-2018 [[114](#)]

FRESNO FIRST BANK/MV
RILEY WALTER
JESSICA GIANNETTA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. The court approves the stipulation between Fresno First Bank, a California corporation and debtor Versa Marketing, Inc. The automatic stay shall be terminated for cause as to the interest of the Debtor and the entire bankruptcy estate, if any, in and to the debtor's accounts, including without limitation, the Pre-Petition Purchased Accounts and the Non-Purchased Accounts, retroactively effective as of September 7, 2018 in order to Permit Fresno First Bank, or its assigns, to exercise its rights and remedies, pursuant to applicable non-bankruptcy law, in and to said accounts, including without limitation, the Pre-Petition Purchased Accounts and any and all Non-Purchased Accounts.

The 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

3. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[JLG-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
11-15-2018 [[119](#)]

FRESNO FIRST BANK/MV
RILEY WALTER
JESSICA GIANNETTA/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 Federal Rules of Bankruptcy Procedure.

Federal Rule of Bankruptcy Procedure 2002(a)(2) requires at least 21 days notice for "a proposed . . . sale . . . of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice."

This motion was filed and served on November 15, 2018 (doc. #122) and set for hearing on November 29, 2018 (doc. #120). That is only 14 days' notice.

Movant has not shown that the property to be sold free and clear of liens, accounts receivable, are within the ordinary course of business, and no order shortening time has been issued by the court.

4. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[RAC-1](#)

MOTION TO EMPLOY RONALD A. CLIFFORD AS ATTORNEY(S)
11-5-2018 [[77](#)]

BRUCEPAC/MV
RILEY WALTER
RONALD CLIFFORD/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is

presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. Pursuant to 11 U.S.C. § 328, a committee appointed under 11 U.S.C. § 1102 may, with the court's approval, employ a professional person under § 327.

The Committee of Unsecured Creditors ("Committee") seeks authorization to employ Blakely, LLP as its counsel. Doc. #77.

After review of the evidence, and unless any opposition is given at the hearing, the court finds that Committee's proposed counsel, Blakely, LLP, does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Blakely, LLP is to be employed. The reason for Blakely, LLP's employment is to, inter alia, assist Committee in its investigation of the financial condition of the Debtor; preparing on behalf of the Committee necessary legal papers; assisting Committee in preparing and presenting to the Court a disclosure statement and plan of reorganization, and; performing such other legal services as may be required in the interests of the creditors.

Committee is authorized to employ Blakely, LLP for the purpose stated above; the effective date of employment shall be October 26, 2018 and the payment, if any, to which Blakely, LLP is entitled to shall be on an hourly basis. Blakely, LLP has not received a retainer in this matter.

5. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-1](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR CREATION OF
A PACA TRUST ACCOUNT
11-15-2018 [[108](#)]

VERSA MARKETING, INC./MV
RILEY WALTER
OST 11/14/18

NO RULING.

6. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-10](#)

MOTION FOR AN ORDER AUTHORIZING THE PAYMENT OF PREPETITION
CLAIMS ASSERTED UNDER THE PERISHABLE AGRICULTURAL
COMMODITIES ACT
11-14-2018 [[93](#)]

VERSA MARKETING, INC./MV
RILEY WALTER
OST 11/13/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party
will submit a proposed order consistent with
this ruling 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. #89) and
will proceed as scheduled. Unless opposition is presented at the
hearing, the court intends to enter the respondents' defaults and
grant the motion. If opposition is presented at the hearing, the
court will consider the opposition and whether further hearing is
proper pursuant to LBR 9014-1(f)(2). The court will issue an order
if a further hearing is necessary.

The court notes the absence of the language required in notice of
hearings filed in the Eastern District of California under Local
Rule of Practice 9014-1(d)(3)(B)(iii).

This motion is GRANTED. Debtor is authorized to pay the PACA claims
in an aggregate amount not to exceed \$900,000.00 in accordance with
procedures approved by the court. The proposed order shall be
consistent with this ruling.

7. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-3](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO EMPLOY TERENCE J.
LONG AS CONSULTANT(S)
9-21-2018 [[14](#)]

VERSA MARKETING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

8. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-8](#)

MOTION FOR ORDER ESTABLISHING PROCEDURES FOR THE
IDENTIFICATION, TREATMENT, AND PAYMENT OF CLAIMS ARISING
UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT
11-14-2018 [99]

VERSA MARKETING, INC./MV
RILEY WALTER
OST 11/14/18

NO RULING.

9. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-9](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
10-24-2018 [52]

VERSA MARKETING, INC./MV
RILEY WALTER

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.

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

In evaluating a decision to reject an executory contract or
unexpired lease in the Ninth Circuit, "the bankruptcy court should

presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

The debtor-in-possession is authorized to reject the non-residential real property lease dated July 1, 2007 with Goularte-Hummel Properties.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[BPC-1](#)

CONTINUED MOTION TO COMPEL ASSUMPTION OR REJECTION OF EQUIPMENT LEASES, AND/OR MOTION TO DIRECT PAYMENT OF POST-PETITION ADMINISTRATIVE RENT, MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2018 [[581](#)]

WELLS FARGO VENDOR FINANCIAL SERVICES, LLC/MV
RILEY WALTER
JEANNIE KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-41](#)

CONTINUED MOTION FOR AUTHORITY TO ENTER INTO TRANSACTION INCLUDING BORROWING FUNDS, SALES OF PERSONAL PROPERTY AND PROVIDING SECURITY, ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES AND FOR AUTHORITY TO LEASE REAL PROPERTY
7-20-2018 [[603](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER
ECF ORDER #902 CONTINUING TO 1/29/19

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The matter is continued to January 29, 2019 at 9:30 a.m. except as to Alcon Laboratories

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

All parties who opposed this relief have had their objections disposed of by court order or stipulation continuing the objection to January 29, 2019. Alcon Laboratories has not. The matter will be

called to permit Alcon Laboratories to appear and advise the court if they oppose the relief.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-50](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
10-31-2018 [[856](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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

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 consistent with this ruling.

This motion was originally filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). The hearing was held November 15, 2018. At that hearing, Wells Fargo Vendor Financial Services LLC ("WFVFS") appeared and expressed limited opposition. WFVFS had concerns about the rejection damages it would have if the motion was granted. Because it was a preliminary hearing, the court continued the hearing to this date and ordered that any opposition be filed by November 21, 2018.

No opposition was filed.

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

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

In the absence of opposition, the court finds that the presumption has not been rebutted, and therefore the debtor's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor is authorized to reject the equipment leases with Wells Fargo Vendor Financial Services, LLC. WFVFS must file a claim under FRBP 3002 (c)(4) on or before January 2, 2019.

13. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-64](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
11-15-2018 [\[882\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

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

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the 21 designated contracts described in movant's "Exhibit A," consisting of physician contracts and various service agreements.

14. [17-12998](#)-B-12 **IN RE: LJB FARMS, LLC**
[KDG-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN,
DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP FOR
JACOB L. EATON, DEBTORS ATTORNEY(S)
11-8-2018 [[176](#)]

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

The motion will be GRANTED. Debtor's bankruptcy counsel, Klein, Denatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, requests fees of \$10,231.00 and costs of \$98.26 for a total of \$10,329.26 for services rendered from December 20, 2017 through November 8, 2018.

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 debtor about the administration of its chapter 12 case and its duties as debtor-in-possession, (2) Communicating with the debtor and secured creditors regarding employment of realtor, (3) Communicating with the chapter 12 trustee and debtor regarding tax returns, and (4) counseling debtor regarding the implementation of the chapter 12 plan. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$10,231.00 in fees and \$98.26 in costs. No portion shall be paid from cash collateral absent further court order.

The court notes American AgCredit, PCA's ("American") response. Debtor must be prepared to respond to American's concerns at the hearing.

15. [17-12998](#)-B-12 **IN RE: LJB FARMS, LLC**
[MHM-1](#)

MOTION TO DISMISS CASE
10-25-2018 [\[163\]](#)

MICHAEL MEYER/MV
JACOB EATON
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 court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest, except for American AgCredit, PCA and Community West Bank, 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.

11 U.S.C. § 1208(c)(6) states that after notice and a hearing on request of a party in interest, the court may dismiss a case for cause, including material default by the debtor with respect to a term of a confirmed plan.

Chapter 12 trustee Michael Meyer ("Trustee") asks the court to dismiss the case for cause, on the grounds that debtor is delinquent in the amount \$152,023.26. Doc. #165. Secured creditor Community West Bank filed a "joinder" on October 26, 2018, joining the Trustee in this motion. Doc. #167. American AgCredit, PCA ("American") filed a statement of position on November 15, 2018, only opposing "the use of any of American's collateral, including crop proceeds, other than payment to American in accordance with the loan documents." Doc. #182. American does not consent to the use of any cash collateral or the proceeds thereof, including after dismissal. Debtor did not file any opposition.

The court finds that debtor materially defaulted with respect to a term of a confirmed plan, and in the absence of opposition, GRANTS this motion. This matter will be called to allow trustee to respond to American's concerns regarding the use of its collateral.

1:30 PM

1. [18-13803](#)-B-13 **IN RE: DAIZY RINCON**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-13-2018 [\[20\]](#)

WELLS FARGO BANK, N.A./MV
NELLIE AGUILAR
JENNIFER WONG/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #31.

2. [18-13608](#)-B-13 **IN RE: ROMEO/NANCY FAUNI**
[MHM-2](#)

MOTION TO DISMISS CASE
10-31-2018 [\[22\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f) (1).

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss
this case under 11 U.S.C. §§ 1307(c) (1) and 521(a) (3), (4). Trustee
contends that he has not received all of the documents to which he
is entitled and which are necessary for performance of his duties.
Debtor, opposes the motion, contending that the necessary and
requested documents have been supplied. Doc. ##22, 24.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13
case for cause. Failure to provide documents required by the chapter
13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr.
S.C. 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the
trustee is long. At a minimum it includes (1) pay advices for the 60
days prior to the petition, 11 U.S.C. § 521(a) (1) (B) (iv), Federal

Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). As one commentator noted, "'Cooperate' is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

The Trustee has requested the following additional documentation from the debtor: Debtor Romeo Fauni's last paystub for August for IHSS. Doc. #22. Debtor timely responded, without evidence, stating that the debtors have had trouble obtaining the document and "are in the process of providing that document." Doc. #30. They are also "seeking additional time to provide the document." *Id.*

Nearly a month has passed since that demand and the debtor has not provided those documents. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The court finds that the debtor has had a reasonable time to cooperate, and has not done so.

For each of these reasons, unless the trustee withdraws the motion, the case is dismissed.

3. [16-12421](#)-B-13 **IN RE: INEZ SEARS**
[TCS-5](#)

MOTION TO MODIFY PLAN
10-22-2018 [\[86\]](#)

INEZ SEARS/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order denying the motion without prejudice
was already entered. Doc. #95.

4. [18-12023](#)-B-13 **IN RE: CARLOS PADILLA**
[MHM-3](#)

MOTION TO DISMISS CASE
10-19-2018 [\[42\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: The case shall be converted to chapter 7.

ORDER: The court will issue the order.

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

This motion is GRANTED. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to provide

necessary and requested documents to the trustee's office. Doc. #44. The trustee first requested proof of homeowners insurance policies on two properties (245 North F Street, Tulare, CA and 27450 Highway 99, Visalia, CA) on July 10, 2018 at the first § 341 meeting of creditors. *Id.* To date, debtor has not provided the documents. *Id.* Debtor did not oppose. Debtor previously filed bankruptcy on February 14, 2018 (case no. 18-10478) and it was dismissed on May 11, 2018, again, for failure to provide necessary documents to the trustee's office. The debtor did not oppose that motion to dismiss, either.

The court finds that conversion would be in the best interests of creditors and the estate. After review of the debtor's schedules, the court finds that there are significant assets that could be liquidated to pay unsecured creditors. Schedule A/B reflects an ownership interest with over \$850,000.00 of value in real property that is not the debtor's residence. Doc. #38. Schedule D shows only one secured creditor, CitiBank N.A., which is secured by the real property located at 1364 E Academy Ave. in Tulare, CA 93274. Doc. #16. This property is also exempt under California Code of Civil Procedure 704.730, which is available only for debtor's homestead, for \$175,000.00. Debtor's schedules do not show that the other five parcels of real property are encumbered with liens or are exempt. Debtor's unsecured debts appear to largely be back-taxes owed; Schedule E/F shows only \$1,413.19 in nonpriority unsecured debt. *Id.*

For the above reasons, the court finds that conversion to chapter 7, and not dismissal, is in the best interests of creditors.

5. [18-11825](#)-B-13 **IN RE: JESSICA RAMOS**
[MHM-3](#)

MOTION TO DISMISS CASE
11-1-2018 [\[66\]](#)

MICHAEL MEYER/MV
PETER CIANCHETTA
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 4, 2019 at 11:00 a.m.

ORDER: The court will issue an order.

This motion was filed, served, and noticed in compliance with Local Rule of Practice 9014-1(f)(1).

The chapter 13 trustee ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) for failure to confirm a chapter 13 plan. Doc. #66.

Debtor timely responded, stating that a motion to confirm plan has been set for hearing on January 4, 2019 at 11:00 a.m. Doc. #70.

Therefore, this motion is continued to be heard in conjunction with the motion to confirm plan on January 4, 2019.

At the continued hearing, if the motion to confirm plan has been granted, then this motion shall be denied. If the motion to confirm plan is denied, then this motion may be granted.

6. [18-13225](#)-B-13 **IN RE: MANUEL GUILLEN AND CATHLEEN NICHOLS-GUILLEN**

[MHM-1](#)

MOTION TO DISMISS CASE
10-22-2018 [\[15\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion was filed in accordance with Local Rule of Practice 9014-1(f) (1).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the chapter 13 trustee ("Trustee") has requested dismissal for failure to confirm a chapter 13 plan under § 1307(c) (1). The declaration of Elizabeth Clark, an employee of Trustee who is familiar with the trustee's offices' intake of documents and procedures for documenting case notes, stated that Trustee cannot submit the Order Confirming Plan until an order is entered valuing the 2014 Lexis IS-250 held by Golden One Credit Union. Doc. #17. Debtor timely opposed, stating that they had set a motion to value the above collateral for a hearing on this calendar. Doc. #24.

That motion to value collateral is granted. See matter #7, TCS-1, below. Therefore, this motion shall be continued to December 19, 2018 at 1:30 p.m. Prior to that hearing, debtor's counsel shall have a proposed order in conformance with the ruling given in matter #7, TCS-1 below, submitted AND signed by the court prior to this hearing, barring any justifiable excuse. If counsel does not comply without good cause, the court will grant this motion.

7. [18-13225](#)-B-13 **IN RE: MANUEL GUILLEN AND CATHLEEN NICHOLS-
GUILLEN**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
10-29-2018 [[19](#)]

MANUEL GUILLEN/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 debtor is competent to testify as to the value of the 2014 Lexus IS-250. 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). The respondent's secured claim will be fixed at \$22,286.00. 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.

8. [18-13126](#)-B-13 **IN RE: J JESUS MATA AND HILDA DE MATA**
[TOG-1](#)

MOTION TO CONFIRM PLAN
10-12-2018 [[30](#)]

J JESUS MATA/MV
THOMAS GILLIS

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.

9. [18-13727](#)-B-13 **IN RE: JOLYNN DURAN**
[JHC-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MERCED COUNTY TREASURER
TAX COLLECTOR
11-5-2018 [[18](#)]

MERCED COUNTY TAX COLLECTOR/MV
PETER BUNTING
JACQUELYN CHOI/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

This objection is OVERRULED 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.

10. [18-13728](#)-B-13 **IN RE: CANDELARIA MUNIZ**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF MECHANICS BANK
10-29-2018 [[16](#)]

CANDELARIA MUNIZ/MV
PETER BUNTING

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 \$5,925.00. 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 \$5,925.00.

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.

11. [18-12132](#)-B-13 **IN RE: ALICE BURTON**
[DRJ-3](#)

MOTION TO CONFIRM PLAN
10-11-2018 [56]

ALICE BURTON/MV
DAVID JENKINS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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. [18-13435](#)-B-13 **IN RE: ESTHER SERRANO**
[TOG-1](#)

MOTION TO CONFIRM PLAN
10-24-2018 [[16](#)]

ESTHER SERRANO/MV
THOMAS GILLIS

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.

13. [18-12542](#)-B-13 **IN RE: ISABEL SANCHEZ**
[MHM-5](#)

MOTION TO DISMISS CASE
10-31-2018 [[48](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 4, 2019 at 11:00 a.m.

ORDER: The court will issue the order.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case,
whichever is in the best interests of creditors and the estate, for
cause.

Here, the trustee has requested dismissal because the debtor was
delinquent in her plan payments in the amount of \$2,146.00 as of
October 31, 2018. Doc. #48, 50. Debtor timely opposed, twice,
without evidence. Doc. ##54, 58. The first opposition stated that
debtors were current. Doc. #54. The second opposition stated that
debtor "misunderstood and thought that the plan payments had to be
mailed by the 25th," but that means that debtor is always a month
behind based on the trustee's system. Doc. #58. Debtor is "filing a
modified plan to correct this problem and bring the debtor current."
Id.

The debtor filed a modified plan and motion to confirm the plan on
November 20, 2018. Doc. ##59-65, TCS-1. The hearing on the debtor's
motion is scheduled for January 4, 2019 at 11:00 a.m. This hearing
will be continued to that date. If the motion to confirm plan is
granted, this motion will be dismissed; if not, then this motion may
be granted, unless withdrawn.

14. [18-13354](#)-B-13 **IN RE: DAHNE FRAKER**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-29-2018 [[29](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #36.

15. [16-11356](#)-B-13 **IN RE: CHERYL DOEPEL**
[PLG-4](#)

MOTION TO MODIFY PLAN
10-23-2018 [[68](#)]

CHERYL DOEPEL/MV
RABIN POURNAZARIAN

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.

16. [18-13759](#)-B-13 **IN RE: DEBBIE GOMES**
[MHM-1](#)

MOTION TO DISMISS CASE
11-1-2018 [[22](#)]

MICHAEL MEYER/MV
DAVID JOHNSTON

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), failed to file tax returns required by 11 U.S.C. §§ 1307(e) and 1308(a), failed to set a plan for hearing with notice to creditors, failed to file complete and accurate Schedule H required by 11 U.S.C. § 521, failed to properly fill out Official Form 122C-1 required by 11 U.S.C. §101(10A), failed to make plan payments under 11 U.S.C. §1326, and failed to file 521(a)(1)(B)(v) statement. Accordingly, the case will be dismissed.

17. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[JFL-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CONFIRMATION OF
PLAN BY DITECH FINANCIAL LLC
6-14-2018 [8]

DITECH FINANCIAL LLC/MV
RABIN POURNAZARIAN
JAMES LEWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 17, 2019 at 1:30 p.m. to be
heard with the claim objection, item #18 below (PLG-
1). Objector shall withdraw this objection if the
claim dispute is resolved.

ORDER: The court will issue the order.

18. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[PLG-1](#)

CONTINUED OBJECTION TO CLAIM OF DITECH FINANCIAL LLC, CLAIM
NUMBER 1
9-11-2018 [38]

ALVINA FISCHER/MV
RABIN POURNAZARIAN
ORDER CONTINUING TO 1/17/19, ECF #61 DATED 11/13/18

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

DISPOSITION: Continued to January 17, 2019 at 1:30 p.m.

NO ORDER REQUIRED: An order was already issued. Doc. #61.

19. [18-13771](#)-B-13 **IN RE: LARISSA REYES**
[MHM-2](#)

MOTION TO DISMISS CASE
10-31-2018 [[19](#)]

MICHAEL MEYER/MV
SHANE REICH
RESPONSIVE PLEADING

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

DISPOSITION: Conditionally granted. The debtor shall provide all documents requested by the Trustee or the Trustee shall be satisfied with the production on or before December 11, 2018. If the documents are not produced, the case will be dismissed on the Trustee's ex parte application supported by a declaration of non-compliance.

ORDER: The court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1).

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3), (4). Trustee contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Doc. ##19, 21. Debtor, opposed the motion, stating that she was out of town caring for her sick mother, and will provide the documents prior to the hearing. Doc. ##25, 26.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr. S.C. 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). As one commentator noted, "'Cooperate' is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Trustee has requested the following additional documentation from the debtor: Class 1 Mortgage Checklist with payment coupon or last statement; 2017 State and Federal Tax Returns; proof of all income, i.e., pay advices; profit and loss statements; rental income; unemployment compensation; social security income; disability; and retirement for the six months prior to filing. Trustee sent a letter to debtor and debtor's counsel requesting the above documents, among others. Doc. #21. The deadline for receiving these documents was October 2, 2018, but they were partially delivered on October 29, 2018. *Id.*

Debtor timely responded, stating that she has been out of state caring for her ill mother, but "will provide additional documentation to the Chapter 13 Trustee" prior to the hearing. Doc. #26.

These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The court finds that the debtor has had a reasonable excuse for non-compliance but based on the debtor's responsive declaration, she can now properly attend to her case. The meeting of creditors has been continued to December 18, 2018. This is the Trustee's first motion to dismiss.

For each of these reasons, unless Trustee withdraws the motion, the debtor shall comply as ordered. This motion is **CONDITIONALLY GRANTED**.

20. [18-13172](#)-B-13 **IN RE: MARIAN DIAZ**
[MHM-3](#)

MOTION TO DISMISS CASE
10-31-2018 [[28](#)]

MICHAEL MEYER/MV
SCOTT SAGARIA

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

DISPOSITION: Granted unless withdrawn before the hearing.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice ("LBR") and there was no timely opposition.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to make all payments due under the plan required by 11 U.S.C. § 1307(c)(1) and (c)(4). The debtor's plan was filed incomplete, and the debtor failed to confirm a Chapter 13 Plan required by 11 U.S.C. § 1307(c).

Debtor responded on November 21, 2018, nearly a week past the deadline. The notice filed and served with the motion stated that opposition, if any, was to be written, and filed and served not later than 14 days prior to the hearing. That date was November 15, 2018. The opposition will be stricken under LBR 9014-1(1).

But even if the late opposition was considered, it makes no difference. The evidence supplied with the response was a declaration of the attorney, not the debtor. Doc. #33. The declaration is largely deficient. First, the statements are made without foundation. The general statement that the attorney has personal knowledge does not explain how he knows the debtor made payments. Second, the declaration contains a 'request,' but no facts.

Therefore, unless the trustee withdraws this motion, the case will be dismissed.

21. [18-12773](#)-B-13 **IN RE: IRAYDA BAUTISTA**
[SL-1](#)

MOTION TO CONFIRM PLAN
10-8-2018 [[37](#)]

IRAYDA BAUTISTA/MV
STEPHEN LABIAK

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.

22. [18-13973](#)-B-13 **IN RE: ANDREW/MICHELLE BUSTOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-5-2018 [[17](#)]

MARK ZIMMERMAN

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.

23. [18-13975](#)-B-13 **IN RE: JOSHUA/SHERLYN PORTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-5-2018 [[16](#)]

MARK ZIMMERMAN
\$310 FILING FEE PAID IN FULL 11/13/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due were paid in full on November 13, 2018.

24. [16-10080](#)-B-13 **IN RE: MARY MIGLIORE**
[MHM-1](#)

MOTION TO DISMISS CASE
10-23-2018 [[74](#)]

MICHAEL MEYER/MV
GLEN GATES

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a

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

The record shows that there is a material default under the plan. Accordingly, the case will be dismissed.

25. [18-14481](#)-B-13 **IN RE: BETTY OCHOA**
[GEG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-6-2018 [[12](#)]

BETTY OCHOA/MV
GLEN GATES

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, case no. 18-13380. That case was filed on August 20, 2018 and was dismissed on November 1, 2018 for failure to make plan payments. This case was filed on November 1, 2018 and the automatic stay will expire on November 30, 2018.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose,

after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

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

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

Debtor's previous case was dismissed for failure to make plan payments. Debtor was under the impression that after contacting TFS shortly after filing the previous bankruptcy, that the plan payment would be automatically deducted from her bank account. Doc. #14. However, no money was withdrawn from her account and after numerous calls to TFS and her attorney, was unable to understand how TFS works. *Id.* At the § 341 meeting on October 2, 2018, she was told that the payment for September had not been made, and that TFS would be "taking out the payment on the 5th of October 2018." *Id.* Because debtor was delinquent one month, the following month she would have to make two plan payments in order to become current, which she was not able to do. *Id.*

However, debtor now states that she understands how the TFS system works and the importance of timely plan payments. *Id.*

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.

26. [18-11583](#)-B-13 **IN RE: TODD FISHER AND LEZA COOPER**
[SL-3](#)

MOTION TO MODIFY PLAN
10-22-2018 [[59](#)]

TODD FISHER/MV
STEPHEN LABIAK

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.

27. [18-10987](#)-B-13 **IN RE: ARTHUR/LEANN LOPEZ**
[PBB-1](#)

CONTINUED MOTION TO MODIFY PLAN
9-12-2018 [[25](#)]

ARTHUR LOPEZ/MV
PETER BUNTING
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court shall issue the order.

This motion was continued to allow debtor to respond to the chapter 13 trustee's ("Trustee") detailed opposition.

By prior order of the court (doc. #37), debtor was to either file and serve a written response addressing Trustee's objections not later than November 15, 2018; or, file, serve, and set for hearing a confirmable modified plan not later than November 22, 2018.

Both of these dates have passed and debtor has not complied with the court's order. Therefore, the trustee's objection is sustained and this motion is DENIED.

28. [14-15895](#)-B-13 **IN RE: ERWIN/LAURA GAMEZ**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
10-17-2018 [[66](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

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

The record shows that the debtors have cured the default on the loan with Seterus, Inc. and are current on mortgage payments to the same through August 2018. On November 14, 2018, the creditor (Fannie Mae) filed a response agreeing with the relief requested. Therefore, this motion is GRANTED.

29. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-13-2018 [\[26\]](#)

STEPHEN LABIAK

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.