UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Friday, January 4, 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. 18-14901-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
KDG-1

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
12-10-2018 [9]

FRANK HORSTINK/MV
JACOB EATON
RESPONSIVE PLEADING

NO RULING.

2. 13-11054-B-12 **IN RE: MARIA BRASIL**
WW-6

MOTION FOR ENTRY OF DISCHARGE
12-7-2018 [94]

MARIA BRASIL/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.

This motion is GRANTED. 11 U.S.C. § 1228(a) states "as soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant a discharge of all debts provided for by the plan."

The court finds that debtor has made all payments under the confirmed chapter 12 plan and notes that no opposition has been filed. Pursuant to § 1228(a), debtor's discharge shall be entered.

The court finds that there is no reasonable cause to believe that 11 U.S.C. § 522(q)(1) may be applicable to the debtor and there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B).

3. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
AML-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION , MOTION TO DETERMINE THE AUTOMATIC STAY IS INAPPLICABLE TO PROCEEDINGS CONCERNING SEIZED FUNDS
12-6-2018 [919]

MB FINANCIAL BANK, N.A./MV
RILEY WALTER
MICHAEL GREGER/ATTY. FOR MV.

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

DISPOSITION: Continued to January 17, 2019 at 9:30 a.m. Partial relief from stay is granted as set forth below.

ORDER: The court will issue the order.

Movant and Debtor filed a stipulation (doc. #953) which was approved by the court on December 27, 2018 (doc. #959). No party filed opposition to the stay relief described in the stipulation and order.

The automatic stay is terminated as to Celtic Commercial Finance and MB Financial Bank, N.A. ("MB Parties") to allow them to immediately enforce all of their respective rights, remedies, and claims with respect to the Seized Funds described in the motion, including, but not limited to, seeking to intervene in the underlying state court proceeding concerning the Seized Funds and seeking to assert any ownership interest in the Seized Funds under applicable law. The stipulation is attached to doc. #959.

The 14-day stay provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is hereby waived as required to implement the limited relief described in the stipulation and order.

Except with respect to the relief from stay granted hereby, the hearing on this motion is continued to January 17, 2019 at 9:30 a.m. Debtor's opposition, if any, is due January 3, 2019, and the MB Parties' reply is due January 10, 2019. Except for the relief from stay granted hereby, the parties to the stipulation shall not modify any of the Parties' respective rights and remedies.

4. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WW-63

OBJECTION TO CLAIM OF EMPLOYMENT DEVELOPMENT DEPARTMENT, CLAIM NUMBER 90
11-14-2018 [870]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall

constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Here, the debtor objects on the grounds that during the period for which the claim is asserted, it was Healthcare Conglomerate Associates, LLC ("HCCA"), and not the Debtor, Tulare Local Healthcare District doing business as Tulare Regional Medical Center ("TRMC"), who was responsible for payment of all payroll benefits and related payroll taxes.

Prior to filing bankruptcy, TRMC was under the management and control of HCCA. Doc. #872. Part of HCCA's responsibilities was paying payroll benefits and taxes. *Id.*

Claimant, the Employment Development Department ("EDD") filed their claim of $4,656.73 for the tax period July 1, 2016 through December 31, 2016. Claim #90.

The court finds that TRMC has rebutted EDD's claim, and the burden of proof has switched to EDD. EDD did not file any opposition to this objection.

Therefore, claim no. 90 filed by EDD is disallowed in its entirety.

5. 17-12998-B-12 **IN RE: LJB FARMS, LLC**
TGM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
12-18-2018 [200]

AMERICAN AGCREDIT, PCA/MV
JACOB EATON
THOMAS MOUZES/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 was dismissed on December 18, 2018. Doc. #209.

6. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
SW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-2018 [66]

ALLY BANK/MV
RILEY WALTER
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Ally Bank, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Dodge Caravan.

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

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

After review of the included evidence, the court concludes that "cause" exists to lift the stay because there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization. The movant has produced evidence that the vehicle has a value of $12,375.00 and its secured claim is approximately $25,578.72. Doc. #70. Debtor is delinquent in the amount of $1,761.60. Doc. #68.

The debtor filed non-opposition to this motion December 28, 2018. Doc. #80.

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

Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is depreciating in value.

7. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
SW-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-2018 [72]

ALLY BANK/MV
RILEY WALTER
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Ally Bank, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Dodge Caravan.

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

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

After review of the included evidence, the court concludes that "cause" exists to lift the stay because there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization. The movant has produced evidence that the vehicle has a value of $12,375.00 and its secured claim is approximately $25,580.72. Doc. #74, 76. Debtor is delinquent in the amount of $1,761.60. Doc. #74.

The debtor filed non-opposition to this motion December 28, 2018. Doc. #82.

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

Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is depreciating in value.

11:00 AM

1. 18-13608-B-13 **IN RE: ROMEO/NANCY FAUNI**
MHM-3

MOTION TO DISMISS CASE
11-9-2018 [26]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
DISMISSED 11/30/18

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This case was dismissed on November 30, 2018. Doc. #32.

2. 18-11825-B-13 **IN RE: JESSICA RAMOS**
MHM-3

CONTINUED 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 February 14, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This motion was continued to be heard in conjunction with debtor's motion to confirm plan (PLC-3, matter #3 below).

The trustee timely opposed confirmation. The grounds of the opposition are that debtor did not file amended Schedules I and J showing an ability to make the plan payment, and debtor used the incorrect form. Doc. #81.

The plan confirmation has been continued to February 14, 2019. Therefore, this motion will be continued to that date to be heard in conjunction with the continued motion to confirm plan. If the corrections are not made, the court may dismiss the case at the next hearing.

3. 18-11825-B-13 **IN RE: JESSICA RAMOS**
PLC-3

MOTION TO CONFIRM PLAN
11-15-2018 [72]

JESSICA RAMOS/MV
PETER CIANCHETTA

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

DISPOSITION: Continued to February 14, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on February 14, 2018 at 1:30 p.m.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than January 31, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 7, 2019. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

4. 18-14325-B-13 **IN RE: TIMOTHY BURNETT**
BMO-1

OBJECTION TO CONFIRMATION OF PLAN BY FRESNO POLICE DEPARTMENT CREDIT UNION
11-26-2018 [18]

FRESNO POLICE DEPARTMENT
CREDIT UNION/MV
MICHAEL ARNOLD
BRANDON ORMONDE/ATTY. FOR MV.

NO RULING.

5. 18-13728-B-13 **IN RE: CANDELARIA MUNIZ**
MHM-2

MOTION TO DISMISS CASE
11-9-2018 [25]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #42.

6. 18-13728-B-13 **IN RE: CANDELARIA MUNIZ**
PBB-2

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
11-27-2018 [31]

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.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt;

(3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Midland Funding LLC in the sum of $2,271.64 on March 29, 2018. Doc. #34. The abstract of judgment was recorded with Tulare County on April 18, 2018. *Id.* That lien attached to the debtor's interest in a residential real property in Tulare, CA. The subject real property had an approximate value of $185,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled $144,517.00 on that same date, consisting of a first deed of trust in favor of PennyMac. *Id.* The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of $100,000.00. *Id.*

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

7. 18-13541-B-13 **IN RE: MORGAN BROWN**
MHM-2

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
12-6-2018 [22]

MICHAEL MEYER/MV
GABRIEL WADDELL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained without prejudice to filing another plan.

ORDER: The court will prepare the order.

Morgan Brown ("debtor") filed this Chapter 13 bankruptcy case a few days before a trial was scheduled to begin in Fresno County Superior Court on a claim by the estate of Jayden Wayde Wright and his heirs for Mr. Wright's wrongful death allegedly caused by an auto accident involving the debtor. The debtor was operating a motor vehicle while intoxicated when the accident occurred six years ago when the debtor was 20 years old. The debtor plead guilty to vehicular manslaughter charges stemming from the accident.

The debtor proposed a plan when this case was filed. The plan has a 60-month duration; provides that the debtor continues to make payments on a 2016 Jeep Cherokee outside the plan; provides for attorney's fees, and eight percent to creditors with allowed

unsecured claims. The plan does not propose to evaluate a security interest or affect any secured claims. There are no secured claims scheduled. The debtor estimated the unsecured claims to be approximately $107,000.00.

The debtor's schedules (and the claims filed thus far) evidence almost entirely non-dischargeable debts. The only scheduled unsecured debts are student loans and the claims of the Wright heirs.

The Chapter 13 trustee objects to confirmation contending the plan is not feasible currently because the Wright heirs have filed a $24 million claim which will not be paid an 8% dividend if the plan is confirmed (Docs. 22-26). The trustee also contends the plan cannot be confirmed under either §'s 1325 (a) (3) [plan not proposed in good faith] or 1325 (a) (7) [petition filed in bad faith]. The trustee supports the good faith challenges by noting that at the meeting of creditors the debtor testified the last settlement offer made by the Wright claimants was $10 million so the debtor could not in good faith believe the claim is only $100,000.00 as listed in the schedules. The Trustee also points to discrepancies in the description of the Wright heirs' claim in the bankruptcy schedules and claims they were misleading since they referenced the Wright claim was "concluded" and the lawsuit was for "collection." Since the debtor is not experiencing collection efforts now, the trustee contends, there is no reason for filing this case and that Chapter 13 cannot provide any relief to the debtor now until the Wright claim is liquidated. The trustee finally opines the case was strategically filed before the Wright claim was liquidated so the debtor would avoid an eligibility dispute. The Wright heirs have filed a joinder in the trustee's objection. The debtor counters that the Wright claims are very over inflated and are disputed, contingent and unliquidated. The debtor also claims any schedule discrepancies were mistakes that have been corrected. Also, the debtor claims the case was filed for a "breathing spell" so that the debtor can restore a Registered Dental Assistant certification lost because of the conviction, establish in a job, improve income, and buy a car while paying creditors what the debtor can reasonably afford. Apparently, "a couple of" years must pass before the certification is restored. (Docs. 39 and 40). There is no dispute that this is the debtor's first bankruptcy case.

Neither party has set forth separate statements of material disputed facts under LBR 9014-1 (f) (1) and have thus consented to the court ruling without an evidentiary hearing. The debtor has the burden of proof to establish each element required to confirm a Chapter 13 plan. In re Barnes, 32 F. 3d 405, 407 (9th Cir. 1994). After considering the facts in this case, the court SUSTAINS the objection without prejudice to the debtor filing a new plan.

First, the plan is currently not feasible. With the $24 million claim, the plan is not going to fund by the conclusion of the 60-month plan term. The debtor's willingness to have the claim liquidated by the Superior Court (by conditionally agreeing to a modification of the automatic stay) or by objecting to the claim does not change the analysis. Unless the debtor essentially "wins"

the state court lawsuit, the claim will need to be dealt with by a modified plan. Confirming this plan changes nothing. Also, this court likely lacks jurisdiction to either liquidate or estimate a personal injury claim absent all parties' consent. See 28 U.S.C. § 157 (b) (2) (B).

Second, the plan is vague as to treatment of the student loan debt. The court cannot find that the plan complies with the provisions of the bankruptcy code as required by § 1325 (a) (1). The Supreme Court in United Student Aid Funds v. Espinosa, 559 U.S. 260, 278 (2010) directed that the bankruptcy court decide "undue hardship" before confirming a Chapter 13 plan that proposes to discharge student loan debt. The plan here says nothing about that debt. One must assume, then, the debtor's intent is to discharge the student loan debt after 60 months and paying only 8% of the allowed claims.

Third, the court is not convinced the plan is proposed in good faith. The debtor has the burden of proof on this factor. Ho v. Dowell (In re Ho), 274 BR 867, 883 (9th Cir. BAP 2002). Existence of good faith is a factual question. In re Eliapo, 298 BR 392, 397 (9th Cir. BAP 2003). In this circuit, this determination requires examining the "totality of the circumstances." Goeb v. Heid (In re Goeb), 675 F. 2d 1386, 1391 (9th Cir. 1982). The BAP has held that the "factors" discussed in Leavitt v. Soto (In re Leavitt), 171 F. 3d 1219, 1224 (9th Cir. 1999) is the controlling method for assessing bad faith under Goeb's "totality of the circumstances." In re Ho, 274 BR at 876-77. All militating factors should also be considered. Id. The court may also consider "the legal effect of the confirmation of a Chapter 13 Plan in light of the spirit and purposes of Chapter 13." In re Escarega, 573 BR 219, 242 (9th Cir. BAP 2017) quoting Chinichian v. Campolongo (In re Chinichian), 784 F. 2d 1440, 1444 (9th Cir. 1986).

The "Leavitt factors" are: (1) whether the debtor misrepresented facts in the petition, manipulated the bankruptcy code or acted in an inequitable manner. (2) The debtor's history of filings and dismissals. (3) Whether the debtor's purpose was to defeat litigation. (4) Whether egregious behavior is present. Yet these factors are not to be applied rigidly. In re: Elliott-Cook, 357 BR 811, 814 (Bankr. N.D. Cal. 2016). There are no facts supporting elements 2 and 4 currently so they are neutral.

There are reasons factor one is present. The debtor's schedules were initially misleading. Mitigating that factor though is the debtor's prompt correction. But the debtor essentially admits the timing of the filing and the reason for the filing was avoidance of a trial. Also, the debtor claims the need for a "breathing spell" so the debtor could establish employment, improve income, buy a car, and pay creditors what is affordable. The debtor does not assert that reorganizing debts was the debtor's goal. Rather, it appears the debtor is attempting to "buy time" if possible to accomplish certain personal goals. In mitigation, the debtor does appear to be sincere in wanting to do the best the debtor can accomplish. However, an objective view of the debts involved here establish that they are largely not subject to discharge. The debt to the Wright's, once liquidated, is very likely precluded from discharge

under §'s 523 (a) (9) and 1328 (a) (2). The student loan debt is not dischargeable absent further litigation. § 523 (a)(8).

The Ninth Circuit has not yet clearly held that filing chapter 13 to pay small sums on non-dishchargeable debts is, by itself, indicia of bad faith. At least one circuit has. See, e.g. In re Love, 957 F. 2d 1350, 1357 (7th Cir., 1992); Marshall v. Blake, 885 F. 3d 1065, 1081 (7th Cir. 2018); In re Larson-Asplund , 519 BR 682, 693 (Bankr. E.D. Mich. 2014). But the court need not make that finding. The nature of the debts affected by the proposed plan, the small distribution on those debts and the circumstances of the filing of this case all support sustaining the objection here.

There are reasons factor three is present. In mitigation, the debtor claims agreement with limited stay relief so the right claim is liquidated. Yet the debtor filed this case in August and has enjoyed a four month "breathing spell" when this objection will be heard. Second, the claims filed by the Wrights have attached deposition transcripts which indicate the debtor is represented in the litigation. Third, the debtor testified the last offer was to settle with the Wrights was $10 million and that the debtor contends the claims are over inflated. But the debtor does not justify estimating the claim at $100,000 other than to say the debtor needed to be under the debt limit when the case was filed. Fourth, the debtor has not offered any evidence that the debtor was subject to collection proceedings when the case was filed. So, other than temporarily stopping the trial of the Wright claim, there does not appear to be any reason this plan was filed.

The court is not finding the debtor filed the petition in bad faith at this time. Those facts need not be present for the court to deny confirmation of this plan.

The objection is SUSTAINED without prejudice to the debtor filing another plan.

8. 18-13941-B-13 **IN RE: JUAN MENDOZA**
TOG-1

MOTION TO CONFIRM PLAN
11-30-2018 [16]

JUAN MENDOZA/MV
THOMAS GILLIS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #23.

9. 18-12542-B-13 **IN RE: ISABEL SANCHEZ**
MHM-5

CONTINUED 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: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #71.

10. 18-12542-B-13 **IN RE: ISABEL SANCHEZ**
TCS-1

MOTION TO CONFIRM PLAN
11-20-2018 [59]

ISABEL SANCHEZ/MV
TIMOTHY SPRINGER

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

DISPOSITION: Continued to February 14, 2019 at 1:30 p.m. The court sets March 21, 2019 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on February 14, 2018 at 1:30 p.m.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than January 31, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 7, 2019. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set March 21, 2019 as a bar date by which a chapter 13 plan must be confirmed *or objections to*

claims must be filed or the case will be dismissed on the trustee's declaration.

11. 16-11043-B-13 **IN RE: MARK/RISE MARTIN**
SL-1

OBJECTION TO DEBTORS 11 U.S.C. SEC. 1328 CERTIFICATION BY OMEGA FINANCIAL SERVICES, INC.
11-26-2018 [112]

SCOTT LYONS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This objection is OVERRULED WITHOUT PREJUDCE for failure to comply with the Local Rules of Practice ("LBR") and the Federal Rules of Bankruptcy Procedure.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, a corporation cannot represent itself in court. The court notes that the objection stated that "Omega Financial Services, Inc." was acting pro se. See Rowland v. California Men's Colony, 506 U.S. 194, 202 (1993) ("It has been the law for the better part of two centuries. . . that a corporation may appear in the federal courts only through licensed counsel") (citations omitted). The court has also no reason to believe that Michael E. Martin ("Martin") is an attorney licensed to practice in the state of California. A quick internet search yielded no results showing a "Michael E. Martin" was an attorney licensed to practice in California, and the documents do not contain a bar number in the caption.

Second, the objection, notice, and proof of service did not include a proper Docket Control Number ("DCN"). DCN SL-1 was used previously. See doc. #9-12, 27-29, and 31. LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about 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. Each separate matter filed with the court must have a different DCN.

Third, a party to a matter may not serve the documents themselves. See Federal Rule of Civil Procedure 4(c)(2) (made applicable by Federal Rule of Bankruptcy Procedure 7004, and to contested matters by Fed. R. Bankr. P. 9014(b). Doc. #114 shows that Martin served the objection and notice of hearing.

Fourth, 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.

Fifth, the notice did not contain the language in LBR 9014-1(f)(1)(B), which states that motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This objection motion was filed and served on November 26, 2018 and set for hearing on January 4, 2019. Doc. #113. January 4, 2019 is more than 28 days after November 26, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated nothing about opposition, if it was necessary, if it need to be written and submitted to the court or could be made orally at the hearing, at what time written opposition needed to have been filed and served, etc. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

Sixth, an adversary proceeding is the only way in which the requested relief can be granted. See Fed. R. Bankr. P. 7001(4), (6).

Seventh, the claims filed by this creditor state they were secured by "miscellaneous personal property" or a vehicle. The claims specify nothing else concerning the creditor's collateral. The plan confirmed in this case may not have provided for this creditor's claim. The remedy is stay relief since a plan is not required to provide for a secured claim. See 11 U.S.C. § 1322(b).

12. 18-14143-B-13 **IN RE: DAVID/CARLA LOWERY**
CGF-1

MOTION TO CONFIRM PLAN
11-24-2018 [22]

DAVID LOWERY/MV
CHRISTOPHER FISHER

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. 18-14453-B-13 **IN RE: ALBERT/MARIA ELENA OLIVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-5-2018 [17]

MARK ZIMMERMAN

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 filing fee was paid in full on December 26, 2018.

14. 18-13076-B-13 **IN RE: JASON/IRENE FORBIS**
MHM-3

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-21-2018 [55]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #60.

15. 18-13681-B-13 **IN RE: ARTURO/ELIZABETH ESPINOSA**
TOG-1

MOTION TO CONFIRM PLAN
11-26-2018 [28]

ARTURO ESPINOSA/MV
THOMAS GILLIS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #44.

16. 18-13887-B-13 **IN RE: GREG/MARY JENNINGS**
SAH-1

MOTION TO CONFIRM PLAN
12-4-2018 [25]

GREG JENNINGS/MV
SUSAN HEMB
ECF #31 NOTICE CONTINUING TO 1/17/19 WITHOUT ORDER

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

This motion was originally scheduled for hearing on January 4, 2019 at 11:00 a.m. Doc. #26. The following day an amended notice of hearing was filed and served, setting the hearing for January 17, 2019 at 1:30 p.m. Doc. #31. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See LBR 9014-1(j).

However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application.

If no written application for a continuance is received by the court before this hearing, and if debtor's counsel does not appear at the hearing to orally request a continuance, then the motion will be denied without prejudice for failure to comply with the Local Rules of Practice.

17. 18-13595-B-13 **IN RE: DIMAS COELHO**
TOG-3

OBJECTION TO CLAIM OF CMT CABRERA MENESES SERVICE, CLAIM NUMBER 2
11-15-2018 [31]

DIMAS COELHO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

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

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

Based on the record, the factual issues appear to include: the amount of, if any, interest owed to creditor.

The court notes that the opposition was not in compliance with LBR 9004-2(c)(1), which requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the opposition and exhibits were combined into one document and not filed separately.

18. 18-13681-B-13 **IN RE: ARTURO/ELIZABETH ESPINOSA**

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2018 [38]

CYNTHIA LIEDSTRAND/MV
THOMAS GILLIS
RALPH SWANSON/ATTY. FOR MV.

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").
First, the motion and accompanying documents did not contain a Docket Control Number ("DCN"). LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about 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.

Second, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Third, the notice did not contain any language informing the noticed parties regarding the rules on opposition the motion. LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed and served on December 20, 2018 and set for hearing on January 4, 2019. Doc. #38, 41. January 4, 2019 is 15 days after December 20, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). Because the hearing was set on 14 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

19. 18-14325-B-13 **IN RE: TIMOTHY BURNETT**
BMO-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-2-2019 [36]

FRESNO POLICE DEPARTMENT
CREDIT UNION/MV
MICHAEL ARNOLD
BRANDON ORMONDE/ATTY. FOR MV.
OST 12/31/18

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 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. #35) 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 that the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

The movant, Fresno Police Department Credit Union, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to a 1933 Ford Coupe, a 1962 Chevrolet Corvette, and a 2015 Harley-Davidson motorcycle ("Vehicles").

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

After review of the included evidence, the court concludes that there is no equity in the Vehicles and no evidence exists that it is necessary to a reorganization. Movant's motion stated that debtor is going to surrender the Vehicles. Doc. #36. The movant has produced evidence that the Vehicles have a collective value of $76,749.00 and debtor owes $240,083.45. Doc. #38, 39, 40.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the Vehicles are depreciating in value.