



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 11, 2024
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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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, and all parties will need to appear at the hearing unless otherwise ordered. 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.

1. [23-12702](#)-A-13 **IN RE: LILIBETH LICONA**
[JGD-1](#)

MOTION TO DISMISS DUPLICATE CASE
12-5-2023 [\[8\]](#)

LILIBETH LICONA/MV
JOHN DOWNING/ATTY. FOR DBT.

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

DISPOSITION: Hearing previously vacated.

NO ORDER REQUIRED.

The court granted this motion and vacated the hearing by order entered on January 9, 2024. Doc. #24.

2. [23-11903](#)-A-13 **IN RE: ABEL/CRYSTAL SANCHEZ**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-4-2023 [\[39\]](#)

JERRY LOWE/ATTY. FOR DBT.
DISMISSED 12/14/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on December 14, 2023. Doc. #44. Therefore, this objection will be OVERRULED AS MOOT.

3. [21-12006](#)-A-13 **IN RE: KRYSTAL WEDEKIND**
[FW-4](#)

MOTION TO MODIFY PLAN
11-29-2023 [\[62\]](#)

KRYSTAL WEDEKIND/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [21-12006](#)-A-13 **IN RE: KRYSTAL WEDEKIND**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
11-3-2023 [\[58\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. [23-11308](#)-A-13 **IN RE: TINA MARQUEZ**
[JDM-2](#)

CONTINUED MOTION TO CONFIRM PLAN
10-19-2023 [\[49\]](#)

TINA MARQUEZ/MV
JAMES MILLER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The court is granting the trustee's motion to dismiss [MHM-3] below, therefore this motion to confirm will be DROPPED AS MOOT.

6. [23-11308](#)-A-13 **IN RE: TINA MARQUEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
10-12-2023 [\[45\]](#)

MICHAEL MEYER/MV
JAMES MILLER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The court is granting the trustee's motion to dismiss [MHM-3] below, therefore this motion to dismiss [MHM-2] will be DROPPED AS MOOT.

MOTION TO DISMISS CASE
12-6-2023 [\[72\]](#)

JAMES MILLER/ATTY. FOR DBT.

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 motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #72. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to make all payments due under the plan. As of December 6, 2023, the debtor is delinquent in the amount of \$5,480.00. Doc. #72. While this motion is pending, further payments will come due. In addition to the above amount, the debtor must also continue to make the monthly plan payment of \$5,483.00 for December 25, 2023. Id. The debtor did not oppose.

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. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(4) as the debtor has failed to make all payments due under the plan.

A review of the debtor's Schedules A/B, C and D shows that the debtor's significant asset, real property, is encumbered and fully exempt. The debtor has minimal non-exempt equity in tax refunds owed. Because there is minimal equity to be realized for the benefit of the estate, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

8. [23-12518](#)-A-13 **IN RE: ANA RAMOS**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FLAGSTAR BANK, N.A.
12-26-2023 [[15](#)]

FLAGSTAR BANK, N.A./MV
STEVEN ALPERT/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Flagstar Bank, N.A. withdrew the objection to confirmation of the plan on January 10, 2024. Doc. #22.

9. [19-13821](#)-A-13 **IN RE: CHRISTINA HALL**
[TCS-6](#)

CONTINUED MOTION TO MODIFY PLAN
11-6-2023 [[57](#)]

CHRISTINA HALL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The debtor withdrew the motion on December 28, 2023. Doc. #88.

10. [19-13821](#)-A-13 **IN RE: CHRISTINA HALL**
[TCS-7](#)

MOTION TO MODIFY PLAN
12-7-2023 [[72](#)]

CHRISTINA HALL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice 3015-1(d)(2). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party 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.

11. [23-12122](#)-A-13 **IN RE: KAYLA GARZA**
[WLG-1](#)

MOTION TO CONFIRM PLAN
11-27-2023 [\[32\]](#)

KAYLA GARZA/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice 3015-1(d)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party 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. [23-11824](#)-A-13 **IN RE: DARIN/YVETTE CIOTTI**
[TAA-1](#)

MOTION TO CONFIRM PLAN
11-27-2023 [[33](#)]

YVETTE CIOTTI/MV
KEVIN TANG/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

There is no certificate of service filed with the court showing when the motion was served. Therefore, the motion filed by the debtors does not comply with Local Rule of Practice ("LBR") 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three (3) days after the pleading is filed with the court. The motion also does not comply with LBR 3015-1(d)(1), which requires that a motion to confirm a modified plan must be served on parties in interest at least thirty-five (35) days prior to the hearing.

13. [23-12324](#)-A-13 **IN RE: BERNARDO DECENA PIZANO**
[MHM-1](#)

MOTION TO DISMISS CASE
12-6-2023 [[27](#)]

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 2, 2024. Doc. #40. Therefore, this motion will be DENIED AS MOOT.

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-20-2023 [\[35\]](#)

JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Cari Thornton ("Debtor") filed his chapter 13 plan (the "Plan") on October 13, 2023. Doc. #11. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that: (1) Debtor's plan imposes an unreasonable delay and violates the requirements of 11 U.S.C. § 1325(a)(1); (2) the Plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of Trustee as is necessary for execution of the Plan pursuant to 11 U.S.C. §1322(a); and (3) the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d). Doc. #35.

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends Debtor's Statement of Financial Affairs No. 1 states that Debtor is married, which requires Debtor to mark No. 3 of the Statement of Financial Affairs as yes and complete Schedule H No. 2. Doc. #35.

Section 1322(a) of the Bankruptcy Code states that a plan shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan. 11 U.S.C. § 1322(a). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997). Here, the plan is short by \$224.74 per month. Plan, Doc. #11. Further, Debtor lists Foxwood Apartments in Class 1 and section 4.02 of the plan. Id. However, the lease agreement should be listed in section 4.02 only.

Section 1322(d) of the Bankruptcy Code requires that a plan cannot provide for payments to creditors for longer than 5 years. The Plan currently provides for plan payments of \$462.31. Plan, Doc. #11. However, Trustee contends the Plan would take 63.33 months to fund. Doc. #35. Thus, the Plan does not fund in 5 years and cannot be confirmed.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

15. [23-11733](#)-A-13 **IN RE: GORDON/LESLIE SMITH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-13-2023 [[61](#)]

DISMISSED 12/14/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on December 14, 2023. Doc. #63. The order to show cause will be dropped as moot. No appearance is necessary.

16. [23-12433](#)-A-13 **IN RE: ROBERTO HUERTA AND KRYSTYNA MARTINEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-7-2023 [[32](#)]

PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection to confirmation of the plan on December 19, 2023. Doc. #41.

17. [23-12433](#)-A-13 **IN RE: ROBERTO HUERTA AND KRYSTYNA MARTINEZ**
[PBB-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
11-28-2023 [[21](#)]

KRYSTYNA MARTINEZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Roberto Huerta and Krystyna Maria Martinez (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Citibank, N.A. ("Creditor") on the residential real property commonly referred to as 619 East Hopkins Avenue, Fresno, CA 93706 (the "Property"). Doc. #21; Schedule C, Doc. #1; Schedule D, Doc. #1.

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 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on October 31, 2023. Doc. ##1, 3. A judgment was entered against Debtors in the amount of \$8,742.73 in favor of Creditor on October 12, 2022. Ex. D, Doc. #24. An abstract of judgment was recorded pre-petition as to Roberto Huerta in Fresno County on December 5, 2022, as document number 2022-0145308. Ex. D, Doc. #24. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$8,742.73 as of the petition date. Decl. of Robert Huerta, Doc. #23. Debtors assert a market value for the Property as of the petition date at \$369,000.00. Am. Schedule A/B, Doc. #31. The Property also is encumbered by a first deed of trust in favor of Loancare, LLC in the amount \$170,464.00. Huerta Decl., Doc. #23. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

There appears to be one senior judicial lien on the Property: The senior judicial lien was recorded in Fresno County on July 20, 2021 on behalf of Wells Fargo Bank, N.A. for \$6,617.94. Ex. D, Doc. #29. Debtors estimate the first senior judicial lien to be \$0 as of the petition date. Huerta Decl., Doc. #28.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$8,742.73
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$170,464.00
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$519,206.73
Value of Debtors' interest in the Property absent liens	-	\$369,000.00
Amount Creditor's lien impairs Debtors' exemption		\$150,206.73

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

18. [23-12433](#)-A-13 **IN RE: ROBERTO HUERTA AND KRYSTYNA MARTINEZ**
[PBB-3](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
11-29-2023 [\[26\]](#)

KRYSTYNA MARTINEZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Roberto Huerta and Krystyna Maria Martinez (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Wells Fargo Bank, N.A. ("Creditor") on the residential real property commonly referred to as 619 East Hopkins Avenue, Fresno, CA 93706 (the "Property"). Doc. #26; Schedule C, Doc. #1; Schedule D, Doc. #1.

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 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on October 31, 2023. Doc. ##1, 3. A judgment was entered against Debtors in the amount of \$6,617.94 in favor of Creditor on July 20, 2021. Ex. D, Doc. #29. An abstract of judgment was recorded pre-petition as to Roberto Huerta in Fresno County on November 30, 2021, as document number 2021-0196177. Ex. D, Doc. #29. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors estimate the judicial lien to be \$0 as of the petition date. Decl. of Robert Huerta, Doc. #28. Debtors assert a market value for the Property as of the petition date at \$369,000.00. Am. Schedule A/B, Doc. #31. The Property also is encumbered by a first deed of trust in favor of LoanCare, LLC in the amount \$170,464.00. Huerta Decl., Doc. #28. Debtors claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$0
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$170,464.00
Amount of Debtors' claim of exemption in the Property	+	\$340,000.00
		\$510,464.00
Value of Debtors' interest in the Property absent liens	-	\$369,000.00
Amount Creditor's lien impairs Debtors' exemption		\$141,464.00

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

19. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
9-8-2023 [[26](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

NO RULING.

20. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[MM-3](#)

MOTION TO CONFIRM PLAN
12-7-2023 [\[64\]](#)

MARSHA MENDOZA/MV
RESPONSIVE PLEADING

NO RULING.

21. [23-12841](#)-A-13 **IN RE: ANDRE HOWELL**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
12-22-2023 [\[8\]](#)

ANDRE HOWELL/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if an amended certificate of service is filed
before the hearing.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

As a procedural matter, the declarant failed to complete the last page of the court's mandatory Certificate of Service form by not signing the certificate of service. Doc. #12. The court will hear the matter if an amended certificate of service addressing this deficiency is filed before the hearing.

Debtor Andre Wishon Howell ("Debtor"), the debtor in this chapter 13 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #8.

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 23-12361 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on October 31, 2023 and dismissed at Debtor's request on November 13, 2023. Decl. of Andre Wishon Howell, Doc. #11. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay 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 current case. Debtor filed this case on December 21,

2023. Petition, Doc. #1. The automatic stay will terminate in the present case on January 20, 2024.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). 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 offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises only if Debtor has not had a substantial change in his financial or personal affairs since dismissal of the Prior Case. In support of this motion to extend the automatic stay, Debtor declares that the instant case was filed to prevent a foreclosure sale on the same property that was scheduled for December 26, 2023. Howell Decl., Doc. #11. In Debtor's prior bankruptcy case, Debtor's previous attorney included the repayment to PHH Mortgage in his chapter 13 plan even though PHH Mortgage's loan was secured by real property of Debtor's parents. Id. Including PHH Mortgage in Debtor's chapter 13 plan resulted in unfeasible proposed plan payments and led to Debtor voluntarily dismissing his case. Id.

Debtor's current proposed plan omits PHH Mortgage and only includes the lender secured whose loan is secured solely by Debtor's property, Select Portfolio Servicing, Inc. Plan, Doc. #4. Debtor states that he has the income ability to maintain plan payments in his current proposed chapter 13 plan and is confident that a chapter 13 plan will be confirmed. Howell Decl., Doc. #11. Debtor filed a proposed plan on December 21, 2023. Doc. #4. Debtor's Schedules I and J filed in this case list monthly income of \$6,621.67 and expenses of \$1,019.00, resulting in monthly net income of \$5,602.67 of which Debtor proposes to apply \$5,500.00 to plan payments in this case. Schedules I and J, Doc. #1; Chapter 13 plan, Doc. #4.

The court finds that the non-inclusion of the mortgage on the real property of Debtor's parents constitutes a substantial change in Debtor's financial affairs since the voluntary dismissal of the Prior Case. Further, there is reason to conclude that this case will result in a confirmed plan that will be fully performed.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties named in Debtor's motion

(Doc. #8), unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.

22. [23-12543](#)-A-13 **IN RE: HERNAN CORTEZ**

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
12-18-2023 [\[14\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
JOEL WINTER/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

NO RULING.

As a procedural matter, the objection to confirmation does not comply with Local Rule of Practice ("LBR") 3015-1(c)(4), which requires that "[t]he objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection." Here, the objection to confirmation does not include a Docket Control Number. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

23. [23-12543](#)-A-13 **IN RE: HERNAN CORTEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-20-2023 [\[18\]](#)

JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Hernan Ernie Cortez ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on November 14, 2023. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the grounds that: (1) Debtor's plan fails to comply with the provisions of chapter 13 and with other applicable provisions of title 11 in violation of 11 U.S.C. § 1325(a)(1); (2) the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d); and (3) the

Plan does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors as required by 11 U.S.C. § 1325(b)(1)(B). Doc. #18. The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends Debtor's Statement of Financial Affairs No. 1 states Debtor is not married; however, Schedule I lists wages of Debtor's non-filing spouse. Form 122C-1 also includes Debtor's non-filing spouse in Debtor's household size. If Debtor is married, the Statement of Financial Affairs Nos. 1 and 3 need to be marked yes, Schedule H No. 2 needs to be completed, and Form 122C-1 needs to include the income of Debtor's non-filing spouse. In addition, Schedule I lists income from space rental at 500 E. Date Street, but space at 500 E. Date Street is not listed as an asset on Schedule A/B. Doc. #18; Schedule A/B, Doc. #1. The court also notes that there are no executory contracts or unexpired leases listed on Schedule G. Schedule G, Doc. #1.

Section 1322(d) of the Bankruptcy Code requires that a plan cannot provide for payments to creditors for longer than 5 years. The Plan currently provides for plan payments of \$1,944.86. Plan, Doc. #3. However, Trustee contends the Plan would take 91.33 months to fund. Doc. #18. Thus, the Plan does not fund in 5 years and cannot be confirmed.

Finally, upon the objection of the trustee or the holder of an allowed unsecured claim, 11 U.S.C. § 1325(b) requires the plan provide for all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Trustee objects pursuant to § 1325(b) asserting that the Plan fails to pay all of Debtor's disposable income to unsecured creditors as determined under § 1325(b)(3). Doc. #18. As noted above, there is a discrepancy as to whether Debtor is married. If he is, the income for Debtor's non-filing spouse needs to be included on Form 122C-1. In addition, Debtor's gross income on Form 122C-1 needs to be accurate. Finally, because Debtor is a below-median debtor, the \$200.00 in rental expenses may not be deducted. See Drummond v. Wiegand (In re Wiegand), 386 B.R. 238 (B.A.P. 9th Cir. 2008).

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

24. [23-12348](#)-A-13 **IN RE: ABRAHAM URESTI AND CATHERINE BARAJAS**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
12-11-2023 [\[31\]](#)

CAPITAL ONE AUTO FINANCE/MV
PETER BUNTING/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

25. [23-12348](#)-A-13 **IN RE: ABRAHAM URESTI AND CATHERINE BARAJAS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-7-2023 [\[28\]](#)

PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection to confirmation of the plan on January 5, 2024.
Doc. #59.

26. [18-15149](#)-A-13 **IN RE: MIGUEL FERNANDEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
12-11-2023 [\[48\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
DISMISSED 12/27/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on December 27, 2023. Doc. #54.
Therefore, this motion will be DENIED AS MOOT.

27. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[FW-5](#)

CONTINUED MOTION TO MODIFY PLAN
11-2-2023 [\[90\]](#)

TONI LACSINA/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice 3015-1(d)(2). The chapter 13 trustee timely opposed this motion but withdrew her opposition on January 2, 2024. Doc. ##100, 123. The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have 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.

28. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[FW-6](#)

MOTION TO SELL
12-1-2023 [\[106\]](#)

TONI LACSINA/MV
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Edgardo Flores Lacsina and Toni Lynn Lacsina (together, "Debtors") petition the court for an order authorizing retroactive approval to sell real property located at 3088 Parks Avenue, Tulare, California 93274 (the "Property") to Kimberly Ashley Munoz ("Buyer") for \$370,000.00. Doc. #106. Debtors filed a voluntary chapter 13 petition on May 15, 2021. Doc. #1. Debtors' first modified

chapter 13 plan was confirmed on August 2, 2022 and provides for a 100% dividend to general unsecured creditors. Plan, Doc. #50; Order, Doc. #69.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

Bankruptcy courts possess the equitable power to retroactively approve the sale of property of the estate "where such relief is necessary or appropriate to carry out the provisions of the Code." See Sherman v. Harbin (In re Harbin), 486 F.3d 510, 522 (9th Cir. 2007). In determining whether to grant retroactive approval, the court should consider whether the debtor satisfactorily explained her failure to receive prior approval and whether the transaction provided a benefit to the bankruptcy estate. Id. at 522-23.

This motion was properly served and noticed, and no opposition has been filed. Debtors had a fee simple ownership interest in the Property. Schedule A/B, Doc. #1. Debtors' confirmed plan does not revert property of the estate in Debtors upon confirmation. Plan, Doc. #50; Order, Doc. #69. Without prior court approval, on or about December 21, 2022, Debtor sold the Property to Buyer. Decl. of Toni Lynn Lacsina, Doc. #108. At the time of the sale, Debtors were unaware of the requirement to obtain bankruptcy court approval for the sale. Id. Debtors sold the Property to allow Debtors to get financially ahead and to stay ahead of their chapter 13 plan payments as well as to move into a rental with Mrs. Lacsina's stepmother who needed a place to live. Id.

Debtors received \$32,619.69 in net proceeds from the sale and used those funds to make the chapter 13 plan payments and for reasonable and necessary living expenses. Lacsina Decl., Doc. #108. The equity in the Property was and is fully exempt. Id.

The court finds that the sale of the Property is in the best interests of the estate, that Debtors have satisfactorily explained their failure to obtain bankruptcy court approval prior to selling the Property to Buyer, and that the transaction will provide a benefit to the estate because Debtors have used part of the fully exempt funds to make chapter 13 plan payments.

Accordingly, this motion is GRANTED.

29. [21-11251](#)-A-13 **IN RE: EDGARDO/TONI LACSINA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
10-5-2023 [\[84\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On October 5, 2022, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure to make all payments due under the plan. Doc. #84. Plan payments are delinquent in the amount of \$6,600.00 as of October 5, 2023, with an additional \$3,600.00 due on October 25, 2023. Id. The debtors responded on November 2, 2023, stating that the debtors intended to cure the plan payment default by filing and serving a third modified plan. Doc. #97.

On November 2, 2023, the debtors filed and served a motion to confirm the debtors' third modified plan and set that motion for hearing on December 14, 2023. Doc. ##90-96. Trustee filed an objection to confirmation of the Plan and the confirmation hearing was continued to January 11, 2024 to permit the debtors to respond to Trustee's objection. Doc. #110. That motion has been granted by final ruling, matter #27 above.

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. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). It appears that confirmation of the debtors' third modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1) or (c)(6).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

30. [21-10856](#)-A-13 **IN RE: MARK/AMELIA CAVE**
[MHM-2](#)

MOTION TO DISMISS CASE
12-4-2023 [\[136\]](#)

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

31. [23-12265](#)-A-13 **IN RE: GILBERTO CHAVIRA AND ALMA BARBA**
[FAT-1](#)

MOTION TO CONFIRM PLAN
11-29-2023 [[29](#)]

ALMA BARBA/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice 3015-1(d)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have 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.

32. [23-12266](#)-A-13 **IN RE: SHENA SIELERT**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2023 [[37](#)]

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on January 3, 2024. Doc. #45.

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EMPLOYMENT DEVELOPMENT
DEPARTMENT
12-7-2023 [\[32\]](#)

SHENA SIELERT/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Shena Janelle Sielert ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of State of California, Employment Development Department ("Creditor") on the residential real property commonly referred to as 55640 Quail Hollow Court, North Fork, California 93643 (the "Property"). Doc. #32; Schedule C, Doc. #1; Am. Schedule D, Doc. #30.

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 debtors' 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 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed the bankruptcy petition on October 11, 2023. Doc. #1. A judgment was entered against Shena Sielert in the amount of \$6,717.72 in favor of Creditor on October 27, 2022. Ex. D, Doc. #35. The abstract of judgment was recorded pre-petition in Madera County on October 28, 2022, as document number 2022027850. Id. The lien attached to Debtor's interest in the Property located in Madera County. Id. Debtor estimates the judicial lien to be \$4,716.19 as of the petition date. Decl. of Shena Janelle Sielert, Doc. #34. The Property also is encumbered by a first deed of trust in favor of Deutsche Bank National Trust Co. in the amount \$73,817.69. Am. Schedule D, Doc. #30. Debtor claimed an exemption of \$340,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$440,588.00. Schedule A/B, Doc. #1. Sielert Decl., Doc. #34.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,716.19
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$73,817.69
Amount of Debtor's claim of exemption in the Property	+	\$340,000.00
		\$418,533.88
Value of Debtor's interest in the Property absent liens	-	\$440,588.00
Amount Creditor's lien impairs Debtor's exemption		-\$22,054.12

Application of the arithmetical formula required by § 522(f)(2)(A) shows that Creditor's judicial lien does not impair Debtor's exemption in the Property.

Accordingly, this motion is DENIED.

34. [23-10691](#)-A-13 **IN RE: KAYE KIM**
[ICE-3](#)

MOTION FOR COMPENSATION FOR IRMA C. EDMONDS, TRUSTEES ATTORNEY(S)
12-5-2023 [\[91\]](#)

LEONARD WELSH/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Irma C. Edmonds ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from July 24, 2023 through December 4, 2023. Doc. #91; Exs. A & B, Doc. #95. Movant provided legal services valued at \$22,820.00. However, Movant has agreed to reduce the incurred fees by \$7,820.00 and requests compensation in the amount of \$15,000.00. Doc. #91. Movant also waives reimbursement for expenses and requests no amount for expenses. Doc. #91. This is Movant's first and final fee application. The court notes that an order converting the chapter 7 case to chapter 13 was entered on November 14, 2023. Order, Doc. #80. The court also notes that the time billed

after this case was converted to chapter 13 consists solely of the preparation of this fee motion. Ex. A, Doc. #95.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's authorized services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) preparing motion for authorization to sell the estate's interest in company shares; (3) general case administration; and (4) preparing and filing employment and fee applications. Exs. A & B, Doc. #95. Trustee has no objection to the amounts requested. Doc. #93. The court finds the compensation sought is reasonable, actual, and necessary.

This motion will be GRANTED on a final basis. The court will allow final compensation in the amount of \$15,000.00 and no amount for reimbursement for expenses.

35. [23-10691](#)-A-13 **IN RE: KAYE KIM**
[JES-1](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE(S)
12-11-2023 [[101](#)]

JAMES SALVEN/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James E. Salven ("Movant"), the chapter 7 trustee, requests allowance of final compensation and reimbursement for expenses for services rendered as a chapter 7 trustee in this case prior to conversion. Doc. #101. Movant provided chapter 7 trustee services valued at \$5,250.00, and requests compensation for

that amount. Doc. #101. Movant requests reimbursement for expenses in the amount of \$173.35. Doc. #101.

Since being appointed to this case on April 4, 2023, Movant administered the chapter 7 estate and employed counsel to dispose of estate property, review and reconcile financial records, and prepare final filings. Exs. A & B, Doc. #103. However, an order converting the chapter 7 case to chapter 13 was entered on November 14, 2023. Order, Doc. #80. Because Movant did not perform all of his statutory duties prior to conversion of the chapter 7 case to chapter 13, Movant requests payment of his fees and expenses based on *quantum meruit*.

"Both prior and subsequent to the enactment of BAPCPA, courts have awarded fees on a *quantum meruit* theory to chapter 7 trustees in cases that have been converted to chapter 13." In re Mitchell, 638 B.R. 455, 460 (Bankr. D. Idaho 2022) (citing cases). These court have awarded fees where the chapter 7 trustee "had performed substantial services to benefit the estate but did not actually disburse any money to creditors." Id.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant's authorized services included, without limitation: (1) preparing to conduct the 341 meeting of creditors; (2) analyzing various documents relating to pre-petition purchase of shares in corporation from prior shareholder; and (3) negotiating purchase of shares of stock from prior owner that was not consummated because the chapter 7 case was converted to chapter 13. Exs. A & B, Doc. #103. The court finds Movant's services and related expenses incurred prior to conversion were actual and necessary to the administration of the chapter 7 estate and should be awarded based on *quantum meruit*.

This motion is GRANTED. The court allows compensation in the amount of \$5,250.00 and reimbursement for expenses in the amount of \$173.35.

36. [23-12398](#)-A-13 **IN RE: BRANDEE LEONARD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
12-12-2023 [\[24\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

37. [23-12398](#)-A-13 **IN RE: BRANDEE LEONARD**
[MHM-2](#)

MOTION TO DISMISS CASE
12-12-2023 [\[27\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion to dismiss the case on January 3, 2034. Doc. #39.

1. [23-11803](#)-A-7 **IN RE: VALERIE RODRIGUEZ**
[23-1051](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE CORPORATE DISCLOSURE STATEMENT
12-12-2023 [9]

RODRIGUEZ V. DEPT OF ED
EDFINANCIAL ET AL

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the missing corporate disclosure statement was filed on December 13, 2023. Doc. #11. Therefore, this order to show cause will be VACATED.

2. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[21-1004](#) [HRH-3](#)

MOTION TO STRIKE AND/OR MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-1-2023 [91]

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant, 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 non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

BMO Harris Bank, N.A. ("Plaintiff") moves to strike the defendant's answer and enter default judgment against the defendant pursuant to Federal Rule of Civil Procedure ("Rule") 37(d), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7037. Doc. #91.

Plaintiffs filed a non-dischargeability complaint against Amandeep Singh ("Defendant") on February 5, 2021 ("Complaint"). Doc. #1. Defendant answered the Complaint on March 8, 2021 ("Answer"). Doc. #7. Pursuant to the Order Approving Second Stipulation to Continue Status Conference and Related Dates, fact discovery was extended from October 26, 2022 to August 14, 2023. Doc. #46. While Defendant was originally represented by counsel, Defendant's counsel withdrew from this adversary proceeding on April 5, 2023, and Defendant now represents himself. Doc. #53.

On May 3, 2023, Plaintiff served Defendant with Plaintiff's First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admissions. Decl. of Raffi Khatchadourian, Doc. #64. When Plaintiff did not receive a response from Defendant to its written discovery, Plaintiff sent a meet-and-confer letter ("First Letter") to Defendant on June 20, 2023, requesting a response no later than June 26, 2023. Khatchadourian Decl. at ¶ 5, Doc. #64.

Plaintiff did not receive a response to the First Letter. Khatchadourian Decl. at ¶ 6. On August 17, 2023, Plaintiff, using online resources, located a phone number that matched the current address that Plaintiff has for Defendant. Decl. of Stephanie J. Schiern, Doc. #95. Plaintiff attempted to reach Defendant at that number, but the phone number was no longer in service. Id. at ¶ 2. On August 18, 2023, Plaintiff sent another meet-and-confer letter ("Second Letter") to Defendant via regular mail, certified mail, and Federal Express. Id. at ¶ 3. The Second Letter was delivered to Defendant on August 21, 2023. Id.; Ex. 2, Doc. #96. Plaintiff has not received a response from Defendant to the Second Letter. Schiern Decl. at ¶ 4, Doc. #95.

On August 31, 2023, Plaintiff's attorney emailed Defendant's previous attorney, Robert S. Williams, to request Defendant's current contact information. Schiern Decl. at ¶ 5, Doc. #95. Mr. Williams provided Plaintiff's attorney with the last known telephone numbers and an email address for Defendant the same day. Id. at ¶ 6. Also on August 31, 2023, Plaintiff's attorney called the two phone numbers provided by Mr. Williams and received a message that the call could not be completed as dialed for both phone numbers. Id. at ¶ 7. Plaintiff's attorney also emailed Defendant requesting that Defendant contact Plaintiff's attorney by Tuesday, September 5, 2023, to discuss responding to the written discovery, but Plaintiff's attorney did not receive a response to this email. Id. at ¶ 8.

Defendant never responded to the written discovery, the First Letter, the Second Letter, or the email sent on August 31, 2023. Schiern Decl., Doc. #95. Further, Plaintiff was able to obtain three possible phone numbers for Defendant, none of which were in service. Id. Plaintiff filed a Motion for Sanctions on September 7, 2023, which was granted on October 10, 2023. Doc. #62, 87. Accordingly, Plaintiff filed the instant motion on December 1, 2023. Doc. #91.

Under Rule 37(d), this court can issue sanctions listed in Rule 37(b)(2)(a)(i)-(vi) for the failure of a party to serve answers, objections or written response after being properly served with interrogatories under Rule 33. The sanctions permitted under Rule 37(b)(2)(a)(i)-(vi) include striking a pleading in whole or in part and rendering a default judgment against the non-complying party. The court has broad discretion to impose sanctions as a remedy for non-compliance with a discovery order. See Roadway Express v. Piper, 447 U.S. 752, 763 (1980).

Where the drastic sanctions of dismissal or default are imposed "the range of discretion is narrowed and the losing party's noncompliance must be due to

willfulness, fault, or bad faith." Henry v. Gill Indus., Inc., 983 F.2d 943, 946 (9th Cir. 1993) (citations omitted). "'[D]isobedient conduct not shown to be outside of the control of the litigant' is all that is required to demonstrate willfulness, bad faith or fault." Id. at 948 (quoting Fjelstad v. American Honda Motor Co., 762 F.2d 1334, 1341 (9th Cir. 1985)).

As set forth in one of the decisions relied upon by Plaintiff in its motion, "[b]efore imposing the sanction of dismissal under Rule 37(b)(2), five factors must be considered: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Lebbos v. Schuette (In re Lebbos), 422 B.R. 235, 239 (E.D. Cal. 2009). The first two factors favor the imposition of sanctions, whereas the fourth factor cuts against drastic sanctions, "[t]hus the key factors are prejudice and the availability of lesser sanctions." Henry v. Gill Indus., Inc., 983 F.2d at 948. The fifth factor, the availability of less drastic sanctions, requires the court to consider three sub-factors: (a) the availability of lesser sanctions; (b) the use of lesser sanctions before terminations; and (c) whether the party was adequately warned of the possibility of termination. Adriania Int'l Corp. v. Lewis & Co., 913 F.2d 1406, 1412-13 (9th Cir. 1990).

Here, the court's previous discovery order did not warn Defendant of any consequences if Defendant failed to comply with that order. In addition, Plaintiff's motion did not set forth the appropriate legal analysis upon which this court can grant the relief requested.

Because Plaintiff did not provide the court with the requisite legal analysis for this court to impose the sanctions requested by Plaintiff in its motion, the motion is DENIED.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [[203](#)]

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

NO RULING.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [NS-18](#)

MOTION TO RECONSIDER
11-21-2023 [\[488\]](#)

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defendant and counter-claimant timely filed written opposition on December 28, 2023. Doc. ##499-502. Instead of filing a reply to the opposition, the plaintiff slightly amended paragraphs 5 and 18 of the declaration accompanying this motion and re-noticed the motion for hearing on February 29, 2024. Doc. ##503-506. Because the plaintiff did not comply with LBR 9014-1(j), which requires any continuance of a hearing to be approved by the court, and because the re-noticed motion has the same deficiencies as this motion, the court will not continue the hearing on this motion and will rule on this motion and the re-noticed motion on the merits. This matter will proceed as scheduled.

Sylvia Nicole ("Plaintiff" or "Ms. Nicole") is a chapter 13 debtor pro se and the plaintiff and counter-defendant in this adversary proceeding. By this motion, Plaintiff requests that this court reverse its ruling on a bench trial that commenced on October 16, 2023, and culminated in an oral decision on the record in favor of defendant and counter-claimant T2M Investments, LLC ("Defendant" or "T2M"). Doc. #488. On October 16, 17 and 18, 2023, this court held a bench trial with the consent of the parties on Plaintiff's first two causes of action, breach of contract and contract fraud, and all causes of action on Defendant's counter-claim: quiet title, breach of contract, specific performance, enforcement of settlement agreement under California Code of Civil Procedure § 664.6, and declaratory relief. Plaintiff's breach of contract and contract fraud causes of action are essentially the same cause of action. Due to the delay by Plaintiff in providing Defendant or the court with information regarding her alleged damages with respect to her causes of action, the court bifurcated the trial, trying liability regarding the breach of contract causes of action and deferred any trial or ruling on damages as a result thereof.

Defendant opposes the motion on the grounds that the motion is premature because no judgment has been entered in this adversary proceeding. Even if the court considers the motion to be timely, Defendant contends that the motion should be denied because there is no error of law, no error of fact, and no newly discovered evidence. Doc. #499.

APPLICABLE LAW

Neither the Federal Rules of Civil Procedure nor Federal Rules of Bankruptcy Procedure recognize a motion for reconsideration. Defendant contends that the motion for reconsideration should be denied as premature because no judgment has been entered. Here, a proposed judgment has been circulated but not yet

entered. Doc. ##486, 487, 492. However, “[a] district court has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment, whether they be oral or written, and there is no provision in the rules or any statute that is inconsistent with this power.” United States v. Lo Russo, 695 F.2d 45, 53 (2d Cir. 1982) (internal citations omitted).

Nevertheless, “[a] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (quoting 389 Orange St. Partners v. Arnold, 179 F.3d 656, 655 (9th Cir. 1999)). “A district court does not commit clear error warranting reconsideration when the question before it is a debatable one.” Bailey v. Diaz, No. C 12-1414 CRB (PR), 2013 U.S. Dist. LEXIS 170520, at *2 (N.D. Cal. Nov. 25, 2013) (citing McDowell v. Calderon, 197 F.3d 1253, 1256 (9th Cir. 1999)).

“A motion for reconsideration ‘may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.’” Marlyn Nutraceuticals, 571 F.3d at 880 (quoting Kona Enters. Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)) (emphasis in original). In addition, a motion for reconsideration is “‘not another opportunity for the losing party to make its strongest case, reassert arguments, or revamp previously unmeritorious arguments,’ nor is a motion for reconsideration meant to give a party a ‘second bite at the apple.’” In re Frantz, No. 6:15-bk-19432-MH, 2023 Bankr. LEXIS 1580, at *8 (Bankr. C.D. Cal. June 16, 2023).

LEGAL ANALYSIS

While Plaintiff is representing herself in pro se, “a pro se litigant is not excused from knowing the most basic pleading requirements.” Am. Ass’n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). Here, Plaintiff provides no legal authority or analysis in support of her motion. The only support for Plaintiff’s motion is a declaration that sets forth various reasons for her motion (“Nicole Declaration”). Doc. #490. Because Plaintiff does not present any newly discovered evidence or an intervening change in the law, this court will only reverse its ruling on the bench trial if this court determines it committed clear error.

There is no memorandum of points and authorities setting forth the standard for a motion for reconsideration and explaining to the court in detail how this court committed clear error, and nothing in Plaintiff’s motion or in the Nicole Declaration explains how this court committed clear error in its oral ruling. Moreover, the breach of contract issues before the court at the bench trial were debatable ones, so reconsideration for clear error is not warranted. Bailey, 2013 U.S. Dist. LEXIS 170520, at *2. Further, the Nicole Declaration sets forth many of the facts and theories that were presented at the bench trial that the court thoroughly considered and rejected in making its oral ruling on October 26, 2023 (“October 26 Ruling”). Reiterating facts and theories already presented to the court is not an appropriate use of a motion for reconsideration. Frantz, 2023 Bankr. LEXIS 1580, at *8.

This adversary proceeding revolves around a settlement between Plaintiff and Defendant regarding two parcels of real property, a residence parcel and a vacant lot parcel, that secured a loan to Plaintiff. Transcript of October 26 Ruling at 6:21 – 7:2; 7:10-15, Doc. #497. T2M held the deed of trust against both parcels of real property. Id. at 7:24 – 8:1. Plaintiff and T2M each allege that the other party breached the settlement agreement. First Amended

Complaint, Doc. #203; Counter-Claim, Doc. #261. The main question to be addressed by the court at the first phase of the bench trial was whether Plaintiff performed under the terms of the settlement agreement or had an excuse for non-performance and T2M breached the settlement agreement or whether T2M performed under the terms of the settlement agreement or had an excuse for non-performance and Plaintiff breached the settlement agreement. Transcript of October 26 Ruling at 24:15-21.

The court's breach of contract analysis relies heavily on a few key findings. First, Ms. Nicole left a letter dated August 18, 2019 ("August 18 Letter") and an executed grant deed for the residence parcel at the offices of the entity conducting a foreclosure sale of Ms. Nicole's real property on behalf of GLVM proposing that T2M accept the enclosed grant deed in lieu of foreclosing on the residence parcel. Transcript of October 26 Ruling at 10:3 - 11:13, Doc. #497. While Ms. Nicole testified at trial that she had discussions with Mr. Altman regarding the proposed settlement described in the August 18 Letter, Mr. Altman testified at trial that he did not have any such discussions with Ms. Nicole. Id. at 11:14-19. The court found Mr. Altman's testimony more credible than Ms. Nicole's testimony on this issue. Id. at 11:20-22.

Second, both parties agree that the intent of the settlement agreement was for T2M to obtain title to the residence parcel, for Ms. Nicole to obtain title to the vacant lot free from T2M's lien, and for both parties to go their separate ways. Transcript of October 26 Ruling at 11:23 - 12:2, Doc. #497. Ms. Nicole was under the impression that GLVM's proposal would operate like a sale of the residence. Id. 12:2-11. The grant deed included with GLVM's August 18 Letter is consistent with a grant deed that would be provided with a sale of the residence parcel. Id. 12:12-14. T2M understood GLVM's proposal to offer T2M a deed in lieu of foreclosure with respect to the residence parcel such that T2M would receive clean or marketable title to the residence parcel in exchange for stopping foreclosure proceedings against both the residence parcel and the vacant lot parcel, and T2M would release its lien on the vacant lot parcel. Id. 12:16-22.

Third, T2M decided to accept GLVM's deed in lieu of foreclosure proposal and instructed Mr. Altman to draft a settlement agreement. Transcript of October 26 Ruling at 12:22-25, Doc. #497. Mr. Altman drafted a settlement agreement and, once the form of the settlement agreement was approved by T2M, Mr. Altman had Jay Moore execute the settlement agreement on behalf of T2M. Id. at 13:1-4. On or about August 26, 2019, Mr. Altman forwarded the settlement agreement signed by Mr. Moore to Ms. Nicole for review and possible changes and, if there were no changes, for execution by GLVM and Ms. Nicole. Id. at 13:4-8.

Fourth, Ms. Nicole did not ask for any changes to be made to the settlement agreement and did not insert any email and/or mailing address information for noticing purposes where there were blanks indicated for such information for either Ms. Nicole or GLVM into the relevant section 10(d) of the settlement agreement. Id. at 13:16-24. To the extent Plaintiff in her motion for reconsideration contends that Mr. Altman drafted a settlement agreement to which Ms. Nicole had no opportunity to request clarification of terms and obligations or request alternate terms or other modifications, based on the testimony at the bench trial, that is not the case. In any event, based on the signature dates on the fully executed settlement agreement, Ms. Nicole and GLVM executed the settlement agreement on August 27, 2019, either the same day or the day after the settlement agreement was emailed to Ms. Nicole by Mr. Altman. Id. at 14:8-12.

In the motion, Plaintiff also raises issues with respect to a deed of trust against the residence parcel held by Tam Nguyen that is junior to the deed of

trust held by T2M. In the October 26 Ruling, the court determined that, contrary to Ms. Nicole's belief, T2M did not obligate itself to pay the Tam Nguyen deed of trust as part of the accepted settlement agreement with Plaintiff. Transcript of October 26 Ruling at 29:21-23, 30:13-16, Doc. #497. Even if the court had ruled that T2M obligated itself to pay the Tam Nguyen deed of trust, which the court did not rule, Tam Nguyen was sued by T2M in this adversary proceeding, was properly served, did not respond, and her default has been entered. Doc. ##261, 275, 306, 313. Thus, this court can void the Tam Nguyen deed of trust through a default judgment in this adversary proceeding.

Because Plaintiff has not demonstrated that this court committed clear error of fact or law in its October 26 Ruling, no grounds exist for reconsideration. Accordingly, the motion for reconsideration will be denied.

Because the re-noticed motion filed on January 5, 2024 (Doc. #503) also relies solely on a declaration of Ms. Nicole in support of the motion and does not include any memorandum of points and authorities setting forth appropriate legal authority as well as the alleged clear errors of this court's October 26 Ruling, the court will deny the re-noticed motion for the same reasons as this motion is being denied without a hearing. The hearing on the re-noticed motion set for February 29, 2024 will be vacated.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1029](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-12-2023 [[1](#)]

NICOLE V. AAA INSURANCE ET AL
RESPONSIVE PLEADING

NO RULING.