

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, January 29, 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-2](#)

MOTION TO EMPLOY JACOB L. EATON AS ATTORNEY(S)
12-28-2018 [\[37\]](#)

FRANK HORSTINK/MV
JACOB EATON
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. Farm Credit West to sign the proposed order consenting as to form.

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. Movant is authorized to employ Klein, Denatale, Goldner, Cooper, Rosenlieb & Kimball, LLP as its bankruptcy counsel. The court notes creditor Farm Credit West's ("Creditor") response. Creditor shall sign off as to the form of the order. The order shall not contain any finding about the priority of any interest in funds held by counsel.

2. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**
[WW-1](#)

FURTHER INTERIM HEARING RE: MOTION TO USE CASH COLLATERAL
4-2-2018 [\[15\]](#)

JOSE VALADAO/MV
RILEY WALTER
DISMISSED 12/21/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #262.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A**
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[WW-6](#)

MOTION FOR ORDER AUTHORIZING REJECTION OF MASTER AGREEMENT
(CAREFUSION SOLUTIONS, LLC)
1-11-2019 [\[94\]](#)

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOCAL
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

In evaluating a decision to reject an executory contract or
unexpired lease in the Ninth Circuit, "the bankruptcy court should
presume that the debtor-in-possession acted prudently, on an
informed basis, in good faith, and in the honest belief that the
action taken was in the best interests of the bankruptcy estate."

Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

The debtor-in-possession is authorized to reject the master service agreement with CareFusion Solutions, LLC. CareFusion Solutions, LLC supplied certain rental equipment and licensed certain software to the debtor. Any claim based on this motion shall be filed on or before April 15, 2019 provided notice of the order rejecting this contract is served on the other part(ies) to this contract on or before February 4, 2019.

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
9-7-2018 [\[1\]](#)

RILEY WALTER

NO RULING.

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

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

VERSA MARKETING, INC./MV
RILEY WALTER

NO RULING.

6. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-1](#)

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

VERSA MARKETING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: This is a duplicate of matter #5 above.

7. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-13](#)

MOTION TO EXTEND TIME TO ASSUME OR REJECT NONRESIDENTIAL
REAL PROPERTY LEASE
12-21-2018 [[218](#)]

VERSA MARKETING, INC./MV
RILEY WALTER

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(f)(1)(B) 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 motion was served and filed on December 21, 2018 and set for hearing on January 29, 2019. Doc. #219, 223. January 29, 2019 is 38 days after December 21, 2018, and therefore this hearing was set on more than 28 days' notice under LBR 9014-1(f)(1). The notice of this motion stated that: the motion was made on 14 days' notice; written opposition was not required; and opposition could be presented at the hearing. Doc. #219. That is incorrect. Because the hearing was set on at least 28 days' notice, the notice should have stated that written opposition was required and had to have been filed and served at least 14 days before the scheduled hearing. 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.

8. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-14](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM
LAW GROUP FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
1-8-2019 [\[228\]](#)

RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's bankruptcy counsel, The Law Office of Walter Wilhelm Law Group, requests fees of \$17,299.50 and costs of \$1,420.47 for a total of \$18,719.97 for services rendered from November 17, 2018 through December 31, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Finalizing and consummating the cash collateral budget and related PACA trust account, (2) Prosecuting a motion to reject the debtor's Cambria house lease, (3) Generally administering the case including working with the Debtor on an overall plan and go-forward strategy, and (4) Preparing and filing the fee and employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$17,299.50 in fees and \$1,420.47 in costs.

9. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-15](#)

MOTION FOR COMPENSATION FOR TERENCE J. LONG, CONSULTANT(S)
1-8-2019 [\[235\]](#)

TERENCE LONG/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's consultant, Terence J. Long, requests fees of \$17,296.00 for services rendered from September 7, 2018 through December 31, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Assisting in creating the cash collateral budget, (2) Preparing financial reports and projections, (3) Assisting with the creation of the PACA trust account, and (4) Preparing fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$17,296.00.

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION
9-30-2017 [\[1\]](#)

RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

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

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 14, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court already entered an order.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-72](#)

MOTION FOR ORDER AUTHORIZING REJECTION OF MASTER AGREEMENT
1-14-2019 [[1002](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

In evaluating a decision to reject an executory contract or
unexpired lease in the Ninth Circuit, "the bankruptcy court should
presume that the debtor-in-possession acted prudently, on an
informed basis, in good faith, and in the honest belief that the
action taken was in the best interests of the bankruptcy estate."

Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

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

The debtor-in-possession is authorized to reject the two service agreements with FUJIFILM Medical Solutions USA, Inc ("FUJIFILM"). FUJIFILM provided certain maintenance services to the debtor.

13. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-73](#)

MOTION FOR ORDER AUTHORIZING REJECTION OF MASTER AGREEMENT
1-14-2019 [[1007](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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

DISPOSITION: Continued to February 14, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The parties stipulated to the continuance.

This matter is continued to February 14, 2019 at 9:30 a.m. The parties must submit an acceptable order to the court approving the stipulation.

14. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-68](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
12-28-2018 [[965](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

NO RULING.

1:30 PM

1. [18-13602](#)-B-13 **IN RE: RAMIRO/ENEDELIA SANCHEZ**

MOTION TO CONFIRM PLAN
12-14-2018 [\[39\]](#)

RAMIRO SANCHEZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice. The court sets April 11, 2019 as the bar date by which a chapter 13 plan must be confirmed or the case will be dismissed on the trustee's ex parte application.

ORDER: The court will issue the order.

The court notes that movant withdrew the motion. Doc. #52.

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

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

This motion had no DCN. The court additionally notes that both the chapter 13 trustee and creditor Noble Federal Credit Union objected to the chapter 13 plan. Doc. #44, 49.

Pursuant to § 1324(b), the court sets April 11, 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 ex parte application. Despite movant's withdrawal, the court has the authority to issue an order in this matter. See Federal Rules of Bankruptcy Procedure 9014(c), 7041, and Federal Rule of Civil Procedure 41(a)(2). The terms that the court considers proper are that the trustee requested a bar date, and the court finds the bar date necessary to avoid prejudice to creditors. This case was filed five months ago and there is no plan confirmed.

2. [18-14906](#)-B-13 **IN RE: STEVEN/MATISHA NORENBURG**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-14-2019 [[13](#)]

MARTHA PASSALAUQA

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

DISPOSITION: Continued to February 28, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' 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 debtors shall file and serve a written response not later than February 14, 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 debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 21, 2019. If the debtors do 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.

3. [17-10507](#)-B-13 **IN RE: KRYSTAL WEDEKIND**
[FW-5](#)

MOTION TO MODIFY PLAN
12-10-2018 [[69](#)]

KRYSTAL WEDEKIND/MV
GABRIEL WADDELL

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion on January 23,
2019. Doc. #89.

4. [18-14811](#)-B-13 **IN RE: ALICE RUBIO**
[CJO-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ROUNDPOINT MORTGAGE
SERVICING CORPORATION
1-15-2019 [\[16\]](#)

ROUNDPOINT MORTGAGE SERVICING
CORPORATION/MV
GABRIEL WADDELL
CHRISTINA O/ATTY. FOR MV.

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 unless otherwise ordered.

This motion is OVERRULED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Creditor Roundpoint Mortgage Servicing Corporation's ("Creditor") objection is on the grounds that the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to Creditor and that the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #16, claim #7.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #4. Creditor's proof of claim, filed January 15, 2019, stated a claimed arrearage of \$312.37. The Plan classifies the claim in class 4 - paid directly by debtor. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11. The debtor may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Creditor will have stay relief. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED WITHOUT PREJUDICE.

5. [18-14516](#)-B-13 **IN RE: MICHAEL PANERO**
[MHM-2](#)

MOTION TO DISMISS CASE
12-28-2018 [\[23\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court shall issue the order.

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

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

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to provide necessary and requested documents to the trustee's office. Doc. #23. Debtor did not oppose.

The court finds that dismissal would be in the best interests of creditors and the estate. This is the second bankruptcy case debtor has filed in less than two years, and his third overall. The debtor's schedules do not show any equity in non-exempt assets that could be liquidated in chapter 7 for the benefit of creditors

For the above reasons, this motion is GRANTED.

6. [14-10121](#)-B-13 **IN RE: GREGORY/ERIKA IRELAND**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
12-21-2018 [\[159\]](#)

PETER FEAR

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's bankruptcy counsel, The Law Office of Fear Waddell, P.C., requests fees of \$27,116.50 and costs of \$217.13 for a total of \$27,333.63 for services rendered from June 1, 2015 through December 20, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Modifying the chapter 13 plan, (2) Opposing motions to dismiss, (3) Prosecuting several motions, including a motion to approve insurance proceeds and for determination that the remaining proceeds were not estate assets, (4) Preparing fee applications, and (5) Beginning the work to close the case. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$27,333.63 in fees and \$217.13 in costs.

7. [18-13727](#)-B-13 **IN RE: JOLYNN DURAN**
[MHM-2](#)

MOTION TO DISMISS CASE
12-21-2018 [\[33\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to appear at the scheduled 341 meeting of creditors. The debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1). Accordingly, the case will be dismissed.

8. [18-13832](#)-B-13 **IN RE: ANDREA SOUSA**
[JRL-3](#)

MOTION TO CONFIRM PLAN
12-18-2018 [\[49\]](#)

ANDREA SOUSA/MV
JERRY LOWE
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 28, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' 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 debtors shall file and serve a written response not later than February 14, 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 debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 21, 2019. If the debtors do 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.

9. [18-13436](#)-B-13 **IN RE: GILBERTO GARCIA AND OLIVIA ROMERO**
[TOG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
11-12-2018 [\[31\]](#)

GILBERTO GARCIA/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #48.

10. [18-14036](#)-B-13 **IN RE: JEFFREY/ELIZABETH MILLER**
[LKW-1](#)

MOTION FOR COMPENSATION FOR LEONARD K WELSH, DEBTORS
ATTORNEY(S)
1-7-2019 [\[22\]](#)

LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded fees of \$2,671.50 and costs of \$10.90.

11. [18-14538](#)-B-13 **IN RE: OSCAR ANAYA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-26-2018 [\[28\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Denied as moot.

ORDER: The court will issue the order.

The case has been converted to Chapter 7 on January 24, 2019. Doc. #33. Therefore, this matter is DENIED AS MOOT.

12. [18-14539](#)-B-13 **IN RE: CARMEN ZAMBRANO**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF MADISON MANAGEMENT SERVICES,
LLC
12-31-2018 [\[17\]](#)

CARMEN ZAMBRANO/MV
PETER BUNTING
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 value of debtor's residence.

13. [18-13846](#)-B-13 **IN RE: EDUARDO HURTADO-ORTIZ AND VERONICA
HURTADO
[MHM-3](#)**

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-27-2018 [\[43\]](#)

MICHAEL MEYER/MV
YELENA GUREVICH

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

DISPOSITION: Sustained.

ORDER: The court will issue an order sustaining the
objection to the claimed exemption of \$3,225.00 in a
checking account.

This objection 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 objection is SUSTAINED.

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

In this case, the § 341 meeting concluded on December 11, 2018 and this objection was filed on December 27, 2018, which is within the 30 day timeframe.

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

The chapter 13 trustee ("Trustee") objects on the grounds that debtor's exemption of the full value of their checking account in the amount of \$3,225.00 does not comply with California Code of Civil Procedure § 704.070. Section 704.070 only exempts 75% of the amount, and the description of the asset does not indicate whether the funds are paid earnings or even if the funds are earnings that were paid during the 30 day period prior to the filing of the petition.

The court finds that the debtor has not met their burden of proof, that Trustee's legal analysis is correct, and in the absence of any objection or opposing evidence, SUSTAINS Trustee's objection.

14. [18-13447](#)-B-13 **IN RE: WILEY GARDNER**
[DRJ-2](#)

MOTION TO CONFIRM PLAN
12-24-2018 [\[28\]](#)

WILEY GARDNER/MV
DAVID JENKINS
RESPONSIVE PLEADING

NO RULING.

15. [18-14550](#)-B-13 **IN RE: JOSE VARGAS PACHECO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2019 [\[29\]](#)

MARK ZIMMERMAN

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

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

If the case is dismissed below on the trustee's motion [MHM-1], this matter will be dropped as moot.

16. [18-14550](#)-B-13 **IN RE: JOSE VARGAS PACHECO**
[MHM-1](#)

MOTION TO DISMISS CASE
12-21-2018 [\[22\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

17. [18-14352](#)-B-13 **IN RE: STEVEN CHAVEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
12-18-2018 [\[37\]](#)

MICHAEL MEYER/MV
SHARLENE ROBERTS-CAUDLE
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless withdrawn prior to the hearing.

ORDER: The court will issue the order.

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

The chapter 13 trustee ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1), (c)(4) and 521(a)(3), (4), and (a)(1)(B)(v). Trustee contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Doc. #37. Debtor is also apparently delinquent in the amount of at least \$8,425.51. Doc. #39. However, after the filing of this motion and prior to the hearing, another two payments in that same amount will come due. *Id.*

Debtor opposes the motion, contending that the necessary and requested documents have been supplied or will be supplied prior to this hearing, and that the debtor will become current prior to the hearing. Doc. #43. The debtor filed no evidence in support of the opposition. Also, the opposition states that while the "class one checklist" has been submitted, the net income statement and delinquent plan payments will be provided before the hearing. So, unless the trustee withdraws the motion, there is still non-compliance with chapter 13 requirements.

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

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

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). As one commentator noted, "'Cooperate' is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and

optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Trustee has requested the following additional documentation from the debtor: a complete Class I Checklist and a "521(a)(1)(B)(v) statement: A statement of the amount of monthly net income, itemized to show how the amount is calculated." The court notes that failure to file this document is an automatic dismissal on the 46th day under 11 U.S.C. § 521(i)(1). This case was filed October 26, 2018. December 10, 2018 was 45 days after filing. This case could have been dismissed December 11, 2018.

Debtor timely responded, without evidence, stating that the "complete Class One Mortgage Checklists have now been submitted and the statement of net income will be provided to the Chapter 13 trustee well in advance of the scheduled hearing on this motion." Doc. #42. Delinquent payments, counsel states, will be made before the hearing.

These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The court finds that the debtor has had a reasonable time to cooperate, and without evidence, the court has no ability to determine whether the debtor has done so. Compliance with 11 U.S.C. § 521 is the debtor's burden. No evidence of compliance has been offered.

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

18. [18-14453](#)-B-13 **IN RE: ALBERT/MARIA ELENA OLIVA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-21-2018 [\[24\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal

Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that the debtors failed to appear at the scheduled 341 meeting of creditors. Accordingly, the case will be dismissed.

19. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[PLG-1](#)

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

ALVINA FISCHER/MV
RABIN POURNAZARIAN
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 the order.

The parties have stipulated to continue this matter. The deadline for debtor to file a reply, if any, is extended to on or before February 7, 2019. (Docs. #81 and #83).

20. [18-14561](#)-B-13 **IN RE: KRISTI GARCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
12-21-2018 [[22](#)]

MICHAEL MEYER/MV
BENNY BARCO

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion on January 22, 2019. Doc. #28.

21. [18-14662](#)-B-13 **IN RE: MARIA NUNEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER

1-14-2019 [[13](#)]

THOMAS GILLIS

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

Debtor filed a non-opposition on January 23, 2019. Doc. #26.

22. [18-14764](#)-B-13 **IN RE: ESTEBAN ARIAS AND SOFIA HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES

1-3-2019 [[20](#)]

THOMAS GILLIS

INSTALLMENT FEE PAID \$100.00 1/8/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due were paid on
January 8, 2019.

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

23. [17-11565](#)-B-13 **IN RE: PETER/MICHELLE GUTIERREZ**
[DJD-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY

12-28-2018 [[34](#)]

SPECIALIZED LOAN SERVICING

LLC/MV

PETER BUNTING

DARREN DEVLIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

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

This motion is DENIED. 11 U.S.C. § 362(j) only applies if the stay was either terminated or never arose under § 362(c). Relief under § 362(j) does not include declaratory relief about the effect of a confirmed chapter 13 plan. Declaratory relief can only be granted through an adversary proceeding. See Federal Rule of Bankruptcy Procedure 7001. No evidence has been presented that § 362(c) applies.

Movant's collateral is in Class 4 and the plan provisions are in effect.

24. [17-13168](#)-B-13 **IN RE: DIEGO/KAROL ROSPIGLIOSI**
[FW-4](#)

MOTION TO MODIFY PLAN
12-13-2018 [[48](#)]

DIEGO ROSPIGLIOSI/MV
GABRIEL WADDELL

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.

25. [18-13481](#)-B-13 **IN RE: JAVIER VELIZ**
[MHM-4](#)

CONTINUED MOTION TO DISMISS CASE
11-14-2018 [\[50\]](#)

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 on January 23,
2019. Doc. #90.

26. [18-13481](#)-B-13 **IN RE: JAVIER VELIZ**
[PBB-2](#)

OBJECTION TO CLAIM OF DEPARTMENT OF THE TREASURY - INTERNAL
REVENUE SERVICE, CLAIM NUMBER 5
12-5-2018 [\[62\]](#)

JAVIER VELIZ/MV
PETER BUNTING

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be

taken as true (except those relating to amount of damages).
Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

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

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Claimant Internal Revenue Service ("IRS") filed claim number 5 on October 5, 2018. The claim is in the amount of \$221,693.23. In the claim, the IRS included unassessed tax liability for unfiled 940 and 941 returns dating back to 2012. Debtor is self-employed and has not had employees since 2011, and did not know he was required to continue filing employee returns. Doc. #64. Debtor has now filed the unfiled returns. *Id.*

The court finds that the debtor has met their burden of proof, and without further response from the IRS, holds that Claim no. 5 filed by the IRS is disallowed in its entirety.

27. [18-13481](#)-B-13 **IN RE: JAVIER VELIZ**
[PBB-3](#)

OBJECTION TO CLAIM OF EMPLOYMENT DEVELOPMENT DEPARTMENT,
CLAIM NUMBER 3
12-6-2018 [\[68\]](#)

JAVIER VELIZ/MV
PETER BUNTING

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not

materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

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

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Claimant Employment Development Department ("EDD") filed claim number 3 on September 18, 2018. The claim is in the amount of \$5,339.09. In the claim, the EDD asserted that the amounts owed are estimates due to unfiled returns from April 1, 2012 through December 31, 2013. Debtor is self-employed and has not had employees since 2011, and did not know he was required to continue filing employee returns. Doc. #70. Debtor has now filed the unfiled returns. *Id.*

The court finds that the debtor has met their burden of proof, and without further response from the EDD, holds that Claim no. 3 filed by the EDD is disallowed in its entirety.

28. [18-14481](#)-B-13 **IN RE: BETTY OCHOA**
[MHM-2](#)

MOTION TO DISMISS CASE
12-21-2018 [\[34\]](#)

MICHAEL MEYER/MV
GLEN GATES
RESPONSIVE PLEADING

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 13 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtor shall attend the meeting of creditors rescheduled for February 19, 2019 at 9:30 a.m. If the debtor fails to do so, the chapter 13 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

All applicable deadlines under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure relating to the chapter 13 trustee and the U.S. Trustee's ability to object to plan confirmation and other applicable deadlines are extended to 60 days after the conclusion of the meeting of creditors.

29. [18-14783](#)-B-13 **IN RE: SANDRA SPITZER**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF UNITED LOCAL C.U.
12-20-2018 [\[14\]](#)

SANDRA SPITZER/MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

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

The debtor is competent to testify as to the value of the 2016 Hyundai Elantra. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$11,825.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

30. 18-14785-B-13 IN RE: LINNEY WADE

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-4-2019 [18]

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 installment fees now due have been paid.

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

31. 18-14589-B-13 **IN RE: TIMOTHY/VICKIE WEATHERLY**
MHM-2

MOTION TO DISMISS CASE
12-21-2018 [37]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion on January 22, 2019. Doc. #51.

32. 18-14589-B-13 **IN RE: TIMOTHY/VICKIE WEATHERLY**
SL-2

MOTION TO CONFIRM PLAN
12-18-2018 [28]

TIMOTHY WEATHERLY/MV
SCOTT LYONS

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. Debtor filed, served, and set for hearing an amended plan. Doc. #47, SL-3.

33. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF SANTANDER
12-6-2018 [\[43\]](#)

RUSSELL FANN/MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

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

The debtor is competent to testify as to the value of the 2008 BMW. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$5,975.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

34. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP LLC
12-6-2018 [\[49\]](#)

RUSSELL FANN/MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

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

The debtor is competent to testify as to the value of the 2009 Toyota Prius. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$5,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

35. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[SL-3](#)

MOTION TO CONFIRM PLAN
12-4-2018 [\[41\]](#)

RUSSELL FANN/MV
STEPHEN LABIAK
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 28, 2019 at 1:30 p.m.

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

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another seven days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 meeting has concluded, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

36. [19-10023](#)-B-13 **IN RE: LUIS GUTIERREZ JIMENEZ AND MIRANDA**
GUTIERREZ
[WLG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-15-2019 [\[13\]](#)

LUIS GUTIERREZ JIMENEZ/MV
NICHOLAS WAJDA

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in

this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtors have had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtors had one case pending within the preceding one-year period, case no. 18-14025. That case was filed on October 2, 2018 and was dismissed on October 22, 2018 for failure to file necessary documents. This case was filed on January 7, 2019 and the automatic stay will expire on February 6, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed on the grounds that debtors failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

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

Debtor previously filed bankruptcy in order to protect their residence from foreclosure. Doc. #15. The previous case was dismissed for debtor's failure to file the necessary documents. Debtors failed to file the documents "due to family issues we were dealing with at the time," namely that "Joint Debtor was in a high-risk pregnancy needing extensive care and attention," which along with work responsibilities, "proved too much for us and we were unable to gather all required documents." *Id.*

Debtors are no longer in that situation however, and have gathered all the required documentation and have filed a chapter 13 plan. *Id.*

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

37. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[JFL-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DITECH
FINANCIAL LLC
6-14-2018 [\[8\]](#)

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

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.

The parties have stipulated to continue the objection of Ditech's claim (PLG-1, matter #19 above) to February 14, 2019 at 1:30 p.m. This matter will be continued to that same date and time to be heard in conjunction with PLG-1.

38. [18-13481](#)-B-13 **IN RE: JAVIER VELIZ**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H.
MEYER
11-14-2018 [\[45\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the objection on January 23, 2019. Doc. #88.