

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 4, 2021
Place: Department A - 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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.

1. [20-13524](#)-A-13 **IN RE: KYLE/NATALIE SINGLEY**
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
12-8-2020 [[17](#)]

BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: To be continued at the request of the parties.

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

2. [20-13524](#)-A-13 **IN RE: KYLE/NATALIE SINGLEY**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-22-2020 [[22](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on January 11, 2021. Doc. #29. 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.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Kyle William Singley and Natalie Rania Singley (together, "Debtors"), objects to Debtors' claim of a \$3,000.00 exemption in Debtors' 2006 Stellar Travel Trailer (the "Trailer"). Tr.'s Obj., Doc. #22; see Schedule C, Doc. #1. Debtors claim an exemption in the Trailer under California Code of Civil Procedure ("C.C.P.") § 704.060.

"[T]he 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 California Code of Civil Procedure § [704.060] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation."); In re Guevarra, No. 18-25306-B-7, 2020 Bankr. LEXIS 1455, at *6 (Bankr. E.D. Cal. June 1, 2020).

Debtors filed their Chapter 13 case on November 3, 2020. At the time of filing, C.C.P. § 704.060 allowed for a debtor to exempt "[t]ools, implements, instruments . . . and other personal property" if the "aggregate equity therein does not exceed" \$6,075 and "if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood." C.C.P. § 704.060(a)(1). "[T]he evident purpose and policy of the exemption is to protect the basic tools and utensils necessary to aid the debtor in continuing in his means of livelihood." Kono v. Meeker, 126 Cal. Rptr. 3d 208, 213 (Cal. Ct. App. 2011).

Trustee objects to Debtors' exemption of the Trailer on the grounds that the Trailer is not necessary to the trade, business, or profession of co-debtor Kyle Singley. Doc. #22. Co-debtor Kyle Singley is a lineman for IES and testified at the 341 meeting of creditors that he uses the Trailer for lodging when he works out of town. Doc. #22. Trustee argues that "[t]he mere fact that Debtor is required to supply his own lodging, when working out of town, is not necessary to execute his trade." Doc. #22. For this argument, Trustee relies on In re Rawn which held that the debtor's use of a vehicle as a means of transportation to and from work does not itself justify an exemption under C.C.P. § 704.060. In re Rawn, 199 B.R. 733, 736 (Bankr. E.D. Cal. 1996).

The court finds this argument unpersuasive and is inclined to agree with Debtors' rebuttal that the Trailer is necessary for Mr. Singley's work as a lineman and is not merely a means of transportation. Debtors' Resp., Doc. #29. Mr. Singley testifies that, as part of his work as a lineman, he is regularly dispatched to "disaster zones" where no hotels are available. Decl. of Kyle Singley, Doc. #30. Mr. Singley is dispatched to the "disaster zones" every summer for at least four months, sometimes for as long as eight months. Decl., Doc. #30. Mr. Singley's employer requires him to take the Trailer on those jobs so that Mr. Singley has a place to live and sleep. Decl., Doc. #30. The court finds that the Trailer is reasonably necessary to and actually used by Mr. Singley in the exercise of Mr. Singley's trade and may be exempted under C.C.P. § 704.060.

Accordingly, this objection is OVERRULED.

3. [17-14537](#)-A-13 **IN RE: FREDDIE/EVELYN GARCIA**
[RSW-3](#)

MOTION TO MODIFY PLAN
12-17-2020 [\[59\]](#)

FREDDIE GARCIA/MV
ROBERT WILLIAMS/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 as required by Local Rule of Practice ("LBR") 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.

4. [20-12439](#)-A-13 **IN RE: RAFAEL/BLANCA RIVERA**
[PK-2](#)

MOTION TO VALUE COLLATERAL OF PORTFOLIO RECOVERY ASSOCIATES, LLC
1-7-2021 [\[33\]](#)

RAFAEL RIVERA/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Rafael B. Rivera and Blanca H. Rivera (collectively, "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' kitchen furniture consisting of a table and breakfast bar ("Property"), which is the collateral of Portfolio Recover Associates, LLC, assignee of CitiBank, N.A. ("Creditor"). Doc. #33.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value the Property at its current value, as opposed to the amount due on the loan, if the collateral for the debt consists of any thing of value (other than a motor vehicle) and the debt was not incurred during the one-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert the Property was purchased over one year ago. Decl. of Blanca Rivera, Doc. #35. Debtors assert a replacement value of the Property of \$2,500.00 and ask the court for an order valuing the Property at \$2,500.00. Doc. #33; Doc. #35. Blanca Rivera, co-debtor, is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$2,500.00. 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.

5. [19-14744](#)-A-13 **IN RE: KENNETH/TRISTA CARTER**
[PLG-2](#)

MOTION TO MODIFY PLAN
12-9-2020 [[51](#)]

KENNETH CARTER/MV
STEVEN ALPERT/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 as required by Local Rule of Practice ("LBR") 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.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B) which requires the notice of hearing to include "the names and addresses of the persons who must be served with any opposition." Counsel is encouraged to review the local rules to ensure compliance in future matters.

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.

6. [20-10748](#)-A-13 **IN RE: NIFESIA STENHOFF**
[WSL-1](#)

MOTION TO MODIFY PLAN
12-10-2020 [[28](#)]

NIFESIA STENHOFF/MV
GREGORY SHANFELD/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #46. 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. This matter will proceed as scheduled.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B) which requires the notice of hearing to include "the names and addresses of the persons who must be served with any opposition." Counsel is encouraged to review the local rules to ensure compliance in future matters.

Nifesia Lyn Stenhoff ("Debtor"), the Chapter 13 debtor, moves the court to confirm the first modified Chapter 13 plan. Doc. #28. Under the modified plan,

Debtor will increase the monthly plan payment from \$536.00 to \$579.00 and increase the percentage paid to unsecured creditors from 21% to 22%. Doc. #32.

Trustee opposes Debtor's motion on two grounds. First, Trustee objects because the Debtor's first amended plan contains additional provisions despite Debtor's failure to check the box at section 1.02 of the plan which states that nonstandard provisions will be given no effect unless this section indicates a nonstandard provision is included in section 7 and it appears in section 7. Tr.'s Opp'n, Doc. #46; Am. Plan, Doc. #34.

On January 28, 2021, Debtor replied to Trustee's opposition and requested the additional provisions of the proposed first modified plan be incorporated into the order confirming the first modified plan. Doc. #48. The court is inclined to overrule this aspect of Trustee's motion on the grounds that this error may be corrected in the order confirming the first modified plan.

Second, Trustee raises concerns as to Debtor's good faith in filing the first modified plan. Doc. #46. While Trustee does not contend that the plan was filed in bad faith, Trustee alerts the court to various increases in Debtor's expenses for which Debtor had not provided any explanation. Doc. #46. Specifically, Trustee notes the following increases in Debtor's expenses that are not explained in Debtor's declaration filed with the motion:

Description	Orig. Sched. J	Amended Sched. J	Increase
Electricity, heat, natural gas	\$120.00	\$204.00	\$84.00
Telephone, cell phone, internet, satellite, and cable services	\$135.00	\$212.00	\$77.00
Clothing, laundry, and dry cleaning	\$125.00	\$200.00	\$75.00
Transportation	\$325.00	\$450.00	\$125.00
Vehicle Insurance	\$111.00	\$400.00	\$289.00
Contingency/Miscellaneous	\$100.00	\$100.00	\$0.00
Continuing Education Expense	\$0.00	\$67.00	\$67.00
Pets	\$0.00	\$150.00	\$150.00

On January 28, 2021, Debtor filed a written declaration addressing Trustee's good faith concerns ("Supplemental Declaration"). Doc. #49.

"The Debtor has the burden of proof to establish, by a preponderance of the evidence, that her Plan complies with the provisions of the Bankruptcy Code." In re Renteria, 456 B.R. 444, 447 (Bankr. E.D. Cal. 2011). Section 1325(a)(3) requires a plan to be "proposed in good faith." 11 U.S.C. § 1325(a)(3). The bankruptcy court is required to consider the totality of the circumstances in determining good faith. Khan v. Barton (In re Barton), 846 F.3d 1058, 1065 (9th Cir. 2017). The court should consider a number of factors, including whether the debtor misrepresented facts in her petition or plan, the debtor's history of filings and dismissals, and the debtor's egregious behavior. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999). The evidence before the court shows that Debtor has not misrepresented facts in the petition or plan, does not have a history of filings, and has not engaged in any egregious behavior.

When the debtor seeks to modify an existing plan, the court may consider an assessment of the debtor's overall financial condition as part of the good faith determination. Sunahara v. Burchard (In re Sunahara), 326 B.R. 768, 781 (B.A.P. 9th Cir. 2005).

Turning to various increases in Debtor's expenses for which Debtor had not provided any explanation, Debtor's amended Schedule J shows an \$84.00 expense

increase for electricity, heat, natural gas. Am. Schedule J, Doc. #29; Tr.'s Opp'n, Doc. #46. In the Supplemental Declaration, Debtor testifies that she received a \$600.00 energy bill for the amount of energy drawn from the electric grid as opposed to her solar panels, and entered into an agreement with the power company to accept monthly payments of \$115.00. Doc. #49 at ¶ 3. With respect to the \$77.00 increase in expenses for telephone, cell phone, internet, satellite, and cable services, Debtor testifies that her monthly telephone, internet, and cable service expense increased because she is no longer in the promotional period. Doc. #49 at ¶ 4. Regarding the increase in expenses for clothing, laundry, and dry cleaning as well as transportation, Debtor testifies that she was recently promoted to a managerial position at work and is now a salaried employee. Doc. #49 at ¶ 2. Because of Debtor's promotion, Debtor is required to dress more professionally and her clothing, laundry, and dry-cleaning expenses have increased. Doc. #49 at ¶ 5. Debtor also is driving to work more as a result of her promotion, and also had to pay for automotive repairs. Doc. #49 at ¶ 6. Debtor further testifies that her insurance expense increased as the result of a speeding ticket. Doc. #49 at ¶ 7. Debtor testifies that her continuing monthly education expense increased because her employer requires that Debtor renew her dispatch license and take ongoing classes. Doc. #49 at ¶ 8. Finally, with respect to the increase expense for pets, Debtor testifies that she has 3 dogs and 3 cats and inadvertently failed to include expenses for her pets on her original Schedule J. Doc. #49 at ¶ 9. Debtor continues to include \$100.00 per month for contingency/miscellaneous expense because she continues to have unexpected expenses, including veterinarian expenses that resulted from a recent attack on one of her dogs. Doc. #49 at ¶ 10. After considering the evidence before the court, the court finds that Debtor's first modified plan is proposed in good faith.

Accordingly, this motion is GRANTED. The confirmation order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall correct the nonstandard provision oversight.

7. [15-13649](#)-A-13 **IN RE: TY RAWLES**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-16-2020 [\[22\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO MODIFY PLAN
12-30-2020 [\[28\]](#)

TY RAWLES/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #37. 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. This matter will proceed as scheduled.

Ty Jay Rawles ("Debtor"), the Chapter 13 debtor, moves the court to confirm Debtor's first modified Chapter 13 plan. Doc. #28. Trustee opposes Debtor's motion on two grounds. First, Trustee objects because the Debtor's first amended plan contains a typographical error in section 3.08 and the plan is short \$0.11 per month starting in month 64. Doc. #37. Debtor acknowledges that typographical error and consents to an increase in payments of \$0.11. Doc. #43. Debtor believes the change can be addressed in the order confirming Debtor's first modified plan. Doc. #43. The court is inclined to agree with Debtor and allow the change to be addressed in the confirmation order.

Second, Trustee objects to confirmation because Debtor's last Schedules I and J were filed in 2015. Doc. #37. Debtor has since filed amended Schedules I and J. Doc. #41.

Accordingly, the court is inclined to GRANT Debtor's motion to confirm the first modified plan, with the increase in payments of \$0.11 to be included in the confirmation order. The confirmation order shall also include the docket control number of the motion and it shall reference the plan by the date it was filed.

CONTINUED MOTION TO MODIFY PLAN
11-12-2020 [\[59\]](#)

MICHAEL LOPEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Debtors Michael Thomas Lopez and Lucia Lopez (collectively, "Debtors") filed and served this motion to confirm the third modified Chapter 13 plan pursuant to Local Rule of Practice 3015-1(d)(2) and set the hearing on January 7, 2021 at 9:00 a.m. Doc. ##59-64. The Chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #67. The court continued the hearing on this matter to February 4, 2021 at 9:00 a.m. and ordered Debtors to file and serve a written response to Trustee's objection by January 27, 2021. Order, Doc. #72. Pursuant to the Order, Debtors were to "specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position." Order, Doc. #72

Trustee opposed Debtors' motion first because the monthly plan payment of \$665.00 beginning in December 2020 is insufficient to pay monthly dividends under the proposed plan and second, should the plan payment increase to an amount sufficient to fund the plan, Debtors do not have sufficient monthly income to make the increased plan payments. Doc. #67. Debtors' amended Schedules I and J show Debtors' monthly net income is \$659.83. Am. Schedule J, Doc. #65

On January 19, 2021, Debtors responded to Trustee's opposition. Doc. #74. Debtors' reply states that "Debtors' mortgage company filed a request on 1/11/21 to further forbear the mortgage payments through March 2021. Therefore, the Debtors can afford to pay the required plan payment as proposed." Doc. #74. While Deutsche Bank National Trust Company did file a notice of forbearance on January 11, 2021, Debtors will still be required to resume mortgage payments beginning April 5, 2021. Notice, filed 1/11/21, Doc(3).

On January 28, 2021, Trustee filed an additional response. Doc. #76. Trustee explains that, starting April 2021, the monthly plan payment would need to increase to \$1,925.00. Doc. #76. Debtors' monthly net income is \$659.83. Therefore, 11 U.S.C. § 1325(a)(6), which requires the debtor to be able to make all payments under the plan and to comply with the plan, is not satisfied.

Accordingly, Debtors' motion to confirm their third modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

MOTION TO MODIFY PLAN
12-16-2020 [\[44\]](#)

JERRICK BLOCK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #52. 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. This matter will proceed as scheduled.

Jerrick Lee Block and Sandra Edith Block (together, "Debtors"), the Chapter 13 debtors, move the court to confirm their second modified Chapter 13 plan (the "Plan"). Doc. #44. Debtors seek to extend their plan term to 84 months and provide for a 0% payback to general unsecured creditors. Second Modified Plan, Doc. #48. Trustee opposes Debtors' motion on the grounds that Debtors' have not met their burden of meeting the elements of § 1325(a) as required by § 1329(b)(1). Tr.'s Opp'n, Doc. #52.

Although Trustee "does not contend that the plan was filed in bad faith," Trustee raises concerns as to Debtors' good faith in filing the Plan. Doc. #52. Trustee alerts the court to various increases in expenses for which Debtors have not provided any explanation. Doc. #52. As Trustee demonstrates, Debtors' combined monthly income has increased \$1,575.92. Compare Schedule I, Doc. #36 with Am. Schedule I, Doc. #50. However, Debtors' monthly expenses have also increased by \$1,262.10. Compare Schedule J, Doc. #36 with Am. Schedule J, Doc. #50. Specifically, Trustee notes the following increases in Debtors' expenses that are not explained in the declaration filed with the motion:

Description	Orig. Sched. J	Amended Sched. J	Increase
Electricity, heat, natural gas	\$225.26	\$475.00	\$249.74
Clothing, laundry, and dry cleaning	\$200.00	\$365.00	\$165.00
Transportation	\$325.00	\$1,000.00	\$500.00

On January 21, 2021, Debtors filed a supplemental declaration responding to Trustee's opposition ("Supplemental Declaration"). Doc. #54.

"The Debtor has the burden of proof to establish, by a preponderance of the evidence, that her Plan complies with the provisions of the Bankruptcy Code." In re Renteria, 456 B.R. 444, 447 (Bankr. E.D. Cal. 2011). Section 1325(a)(3)

requires a plan to be "proposed in good faith." 11 U.S.C. § 1325(a)3). The bankruptcy court is required to consider the totality of the circumstances in determining good faith. Khan v. Barton (In re Barton), 846 F.3d 1058, 1065 (9th Cir. 2017). The court should consider a number of factors, including whether the debtor misrepresented facts in her petition or plan, the debtor's history of filings and dismissals, and the debtor's egregious behavior. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999). The evidence shows that Debtors' have not misrepresented facts in the petition or plan, do not have a history of filings, and have not engaged in any egregious behavior.

When the debtor seeks to modify an existing plan, the court may consider an assessment of the debtor's overall financial condition as part of the good faith determination. Sunahara v. Burchard (In re Sunahara), 326 B.R. 768, 781 (B.A.P. 9th Cir. 2005). In the Supplemental Declaration, Debtor Sandra Block testifies that the increased expense for electricity, heat, and gas on the amended schedules represents the average monthly expenditure and that expense on Debtors' original schedules represented the lowest figure in the range. Doc. #54 at ¶ 1. Mrs. Block further testifies that Mr. Block is driving further for work and the transportation expense increased to cover increased gas bills, van pool contributions and other vehicle maintenance costs. Doc. #54 at ¶ 2. Finally, Mrs. Block testifies that Debtors' clothing, laundry, and dry cleaning expense increased because Debtors are no longer reimbursed for work uniforms, and the average cost per month is listed accurately in the amended schedules. Doc. #54 at ¶ 3. After considering the evidence before the court, the court finds that Debtors' second modified plan is proposed in good faith.

Accordingly, 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. [20-11354](#)-A-7 **IN RE: SERGIO ANDRADE**
[MHM-2](#)

MOTION TO DISMISS CASE
1-5-2021 [[144](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CONVERTED TO CH. 7 1/5/21

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

A notice converting this case to one under chapter 7 was entered on January 5, 2021. Doc. #143. Therefore, the motion to dismiss the case will be DENIED AS MOOT.

MOTION TO MODIFY PLAN
12-11-2020 [\[74\]](#)

JUSTIN FARMER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #87. 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. This matter will proceed as scheduled.

Justin Edward Farmer and Katharine Eileen Farmer (together, "Debtors"), the Chapter 13 debtors, move the court to confirm their third modified Chapter 13 plan (the "Plan"). Doc. #74. Debtors seek to extend their plan term to 84 months and continue to provide for a 0% payback to general unsecured creditors. Third Modified Plan, Doc. #80. Trustee opposes Debtors' motion on the grounds that Debtors' have not sufficiently shown the plan is proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). Tr.'s Opp'n, Doc. #87.

Although Trustee "does not contend that the plan was filed in bad faith," Trustee raises concerns as to Debtors' good faith in filing the Plan. Doc. #87. Trustee alerts the court to various increases in expenses for which Debtors had not provided any explanation. Doc. #87. As Trustee demonstrates, Debtors' combined monthly income has increased \$1,138.68. Compare Am. Schedule I, Doc. #64 with Am. Schedule I, Doc. #82. However, Debtors' monthly expenses have increased by \$1,138.40. Compare Am. Schedule J, Doc. #64 with Am. Schedule J, Doc. #82. Specifically, Trustee notes the following increases in Debtors' expenses that are not explained in the declaration filed with the motion:

Description	Orig. Sched. J	Amended Sched. J	Increase
Solar	\$0.00	\$434.00	\$434.00
2nd "Solar"	\$0.00	\$250.00	\$250.00
Childcare and children's education cost	\$0.00	\$700.00	\$700.00

On January 21, 2021, Debtors filed a reply and supplemental declaration ("Supplemental Declaration") addressing Trustee's opposition. Doc. #89, 91. On January 26, 2021, Trustee filed a response to Debtors' reply. Doc. #95.

As an initial matter, Debtors' reply (Doc. #89) and Trustee's subsequent response (Doc. #95) seem to raise a tangential issue regarding the applicable

commitment period for below-median income debtors. In In re Pasley, 507 B.R. 312 (Bankr. E.D. Cal. 2014), cited by both Debtors and Trustee, the issue before the court was "whether the good faith required by § 1325(a)(3) prevents [the] below-median-income chapter 13 debtors, who initially confirmed a 60-month plan, from subsequently modifying their plan to reduce the term." Pasley, 507 B.R. at 317. Here, Debtors have voluntarily agreed to increase the plan term to 84 months, and Debtors' schedules show that nearly all of Debtors' monthly net income of \$3,501.13 is being contributed to Plan payments of \$3,500. Plan, Doc. #80; Am. Schedule J, Doc. #82. As with the original plan, the proposed modified Plan provides for a 0% dividend to general unsecured creditors. Doc. #80. Pasley is not instructive in this instance, and the court will not rule on the arguments presented by Debtors and Trustee in that regard.

"The Debtor has the burden of proof to establish, by a preponderance of the evidence, that her Plan complies with the provisions of the Bankruptcy Code." In re Renteria, 456 B.R. 444, 447 (Bankr. E.D. Cal. 2011). Section 1325(a)(3) requires a plan to be "proposed in good faith." 11 U.S.C. § 1325(a)(3). The bankruptcy court is required to consider the totality of the circumstances in determining good faith. Khan v. Barton (In re Barton), 846 F.3d 1058, 1065 (9th Cir. 2017). The court should consider a number of factors, including whether the debtor misrepresented facts in her petition or plan, the debtor's history of filings and dismissals, and the debtor's egregious behavior. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999).

Debtors seek to modify the plan so that they may continue making payments to creditors while saving to make an upcoming balloon payment. Decl. of Kathy Farmer, Doc. #77. Debtors are unsure of their ability to make the payment without extending the plan period due to the economic slowdown caused by COVID-19. Doc. #77. Debtors are current on the plan payments. Doc. #77. The evidence shows that Debtors' have not misrepresented facts in the petition or plan, do not have a history of filings, and have not engaged in any egregious behavior.

When the debtor seeks to modify an existing plan, the court may consider an assessment of the debtor's overall financial condition as part of the good faith determination. Sunahara v. Burchard (In re Sunahara), 326 B.R. 768, 781 (B.A.P. 9th Cir. 2005). In the Supplemental Declaration, Debtor Kathy Farmer testifies that her parents own the home in which Debtors reside and the increased expense for "solar," listed as a utility, is due to her parent's decision to install solar in the property. Doc. #91 at ¶ 3(a). The decision to install solar was precipitated by the ongoing need to run air conditioning for Mrs. Farmer's disabled sister-in-law. Doc. #91 at ¶ 3(b). With respect to the increase expense for childcare and children's education cost, Debtors sought and obtained guardianship of their grandchildren post-petition. Doc. #56 at ¶ 8; Doc. #91 at ¶ 8. After considering the evidence before the court, the court finds that Debtors' third modified Plan is proposed in good faith.

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

13. [18-12667](#)-A-13 **IN RE: SAMANTHA JOHNSON**
[RSW-2](#)

MOTION TO MODIFY PLAN
12-17-2020 [\[42\]](#)

SAMANTHA JOHNSON/MV
ROBERT WILLIAMS/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 as required by Local Rule of Practice ("LBR") 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.

14. [20-12867](#)-A-13 **IN RE: ULF JENSEN AND BARBARA KIRKEGAARD-JENSEN**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
10-8-2020 [\[21\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion to dismiss was originally filed by the Chapter 13 trustee ("Trustee") on October 8, 2020, and set for hearing on November 5, 2020. Doc. #21, 22. Trustee moved to dismiss for unreasonable delay by the debtor that is prejudicial to creditors (§ 1307(c)(1)) and for failure to set a plan

for hearing with notice to creditors. Doc. #21. The debtors timely filed written opposition. Doc. #28.

At the November 5 hearing, the court sustained an objection to confirmation of plan by CIT Bank, N.A. Order, Doc. #35. With respect to Trustee's motion to dismiss, counsel for Ulf Jensen and Barbara Ann Kirkegaard-Jensen ("Debtors") represented that a revised plan would be forthcoming. Debtors' counsel further represented that "if [Mr. Jensen] is healthy enough to go back to work, we [will] file a modified plan. If he's not, we [will] convert to Chapter 7." Court Audio, Doc. #32. Debtors' counsel noted that he needed more health and financial information from Debtors before filing the modified plan but expected to receive that information soon. Doc. #32. The court continued the hearing on Trustee's motion to dismiss to December 3, 2020 at 9:00 a.m. Order, Doc. #36.

By the time of the continued hearing on December 3, 2020, a modified Chapter 13 plan had not yet been filed, nor had Debtors converted this bankruptcy case to Chapter 7.

At the hearing on December 3, Debtors' counsel represented that Mr. Jensen had surgery the prior night, and as a result of Mr. Jensen's ongoing medical concerns, a modified plan had not yet been signed. Court Audio, Doc. #40. Debtors' counsel indicated, however, that a modified plan "has been prepared" and expected a motion to confirm the modified plan "on the February calendar" for "a confirmable plan." Doc. #40. Trustee requested the court set a "drop dead" date by which the modified plan was to be confirmed. Doc. #40. Trustee suggested that, should Debtors fail to meet the deadline set by the court, the case should then be dismissed. Doc. #40. The hearing on Trustee's motion to dismiss was continued to February 4, 2021 at 9:00 a.m. "to be heard in conjunction with a motion to approve a modified plan." See Civil Minutes, Doc. #41.

Having reviewed the docket in this case, the court finds that Debtors have not voluntarily converted this case to Chapter 7 or dismissed this case, and have not filed, served, and set for hearing a confirmable modified plan. Trustee's motion to dismiss has not been withdrawn.

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). The court finds there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtors that is prejudicial to creditors and for failing to move for confirmation of a Chapter 13 plan because confirmation of Debtors' Chapter 13 plan was denied on November 5, 2020, and Debtors have not filed, served, and set for hearing a confirmable modified plan.

Accordingly, this motion will be GRANTED. The case will be dismissed.

15. [17-14784](#)-A-13 **IN RE: RICHARD/GINA ESPITIA**
[LKW-6](#)

MOTION TO MODIFY PLAN
12-22-2020 [[112](#)]

RICHARD ESPITIA/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

16. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[MHM-4](#)

CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE
1-26-2021 [[84](#)]

GARY SAUNDERS/ATTY. FOR DBT.

NO RULING.

10:00 AM

1. [20-13982](#)-A-7 **IN RE: RUSSELL/SHAWNA MILLS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2021 [[12](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 1/21/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due were paid in full on January 21, 2021. The case shall remain pending.

2. [16-12063](#)-A-7 **IN RE: TIMOTHY CLARK**
[RSW-6](#)

MOTION TO AVOID LIEN OF BALBOA CAPITAL CORPORATION
1-21-2021 [[148](#)]

TIMOTHY CLARK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to March 4, 2021, at 10:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status report filed on February 2, 2021, the court is inclined to continue this matter to March 4, 2021, at 10:00 a.m. Doc. #159.

3. [16-12063](#)-A-7 **IN RE: TIMOTHY CLARK**
[RSW-7](#)

MOTION TO AVOID LIEN OF TRI COUNTIES BANK
1-21-2021 [[153](#)]

TIMOTHY CLARK/MV
ROBERT WILLIAMS/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.

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. The court intends to deny this motion for lack of supporting evidence. Opposition may be presented at the hearing, and 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.

Timothy Scott Clark ("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 liens of Tri Counties Bank ("Creditor") on Debtor's residential real property commonly referred to as 9100 Bridlewood Ln., Bakersfield, Kern County, CA 93311, (the "Property"). Doc. #153; Am. Schedule C, Doc. #59.

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 section 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 section 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's schedules inconsistently define Debtor's interest in the Property. Debtor's Schedule A/B describes the nature of Debtor's ownership interest in the Property as a tenant in common, yet also indicates that Debtor alone has an interest in the Property. Am. Schedule A/B, Doc. #57. In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(ii). Id. at 90.

Here, Debtor's Schedule A/B states that Debtor owns the Property as a tenant in common, but no information is provided describing what fractional share of the Property Debtor's interest represents. Am. Schedule A/B, Doc. #57. Additionally, Debtor's Schedule D states that the Property secures a debt to Caliber Home Loans that is owed by Debtor and another. Schedule D, Doc. #24. Official Form 106H lists Michael Moore as a co-debtor to the debt owed to Caliber Home Loans, though Mr. Moore does not appear to reside at the Property. Form 106H, Doc. #24. It is unclear whether the debt owed to Caliber Home Loans is a consensual encumbrance against the entire co-owned property or only against Debtor's tenant in common interest. Schedule D, Doc. #24.

Without evidence establishing Debtor's fractional share in the Property and evidence showing that the secured debt to Caliber Home Loans is shared amongst the co-tenants in common, the court lacks the necessary information to grant this motion under § 522(f). Accordingly, the court is inclined to DENY this motion.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[DJP-2](#)

OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 13
12-17-2020 [[417](#)]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

The objection to claim will be OVERRULED WITHOUT PREJUDICE. The form and/or content of the pleadings do not comply with Local Rule of Practice ("LBR") 9014-1(c). The docket control number used was previously used for a motion to withdraw as counsel, which was filed by another party. Doc. #370. The movant shall use a unique docket control number associated with its law firm for each motion or other request for relief set for hearing.

Also, there was no motion or other request for relief filed. According to LBR 9014-1(d)(3)(A), the application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. In this instance, the moving party did not file an objection to claim, only a support document entitled "Memorandum and Points and Authorities in Support of the Debtor's Objection to Claim No. 13." Doc. #417.

The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[DJP-2](#)

OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 14
12-17-2020 [[420](#)]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

The objection to claim will be OVERRULED WITHOUT PREJUDICE. The form and/or content of the pleadings do not comply with Local Rule of Practice ("LBR") 9014-1(c). The docket control number used was previously used for a motion to withdraw as counsel, which was filed by another party. Doc. #370. The movant

shall use a unique docket control number associated with its law firm for each motion or other request for relief set for hearing.

Also, there was no motion or other request for relief filed. According to LBR 9014-1(d)(3)(A), the application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. In this instance, the moving party did not file an objection to claim, only a support document entitled "Memorandum and Points and Authorities in Support of the Debtor's Objection to Claim No. 14." Doc. #420.

The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[DJP-2](#)

OBJECTION TO CLAIM OF BLUE PHOENIX VENTURES, LLC, CLAIM NUMBER 15
12-17-2020 [[423](#)]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

The objection to claim will be OVERRULED WITHOUT PREJUDICE. The form and/or content of the pleadings do not comply with Local Rule of Practice ("LBR") 9014-1(c). The docket control number used was previously used for a motion to withdraw as counsel, which was filed by another party. Doc. #370. The movant shall use a unique docket control number associated with its law firm for each motion or other request for relief set for hearing.

Also, there was no motion or other request for relief filed. According to LBR 9014-1(d)(3)(A), the application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. In this instance, the moving party did not file an objection to claim, only a support document entitled "Memorandum and Points and Authorities in Support of the Debtor's Objection to Claim No. 15." Doc. #423.

The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

4. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
DJP-2

OBJECTION TO CLAIM OF PLATINUM FARM SERVICES, LLC, CLAIM NUMBER 16
12-17-2020 [426]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

The objection to claim will be OVERRULED WITHOUT PREJUDICE. The form and/or content of the pleadings do not comply with Local Rule of Practice ("LBR") 9014-1(c). The docket control number used was previously used for a motion to withdraw as counsel, which was filed by another party. Doc. #370. The movant shall use a unique docket control number associated with its law firm for each motion or other request for relief set for hearing.

Also, there was no motion or other request for relief filed. According to LBR 9014-1(d)(3)(A), the application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. In this instance, the moving party did not file an objection to claim, only a support document entitled "Memorandum and Points and Authorities in Support of the Debtor's Objection to Claim No. 16." Doc. #426.

The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

5. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
DJP-2

OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 17
12-17-2020 [429]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

The objection to claim will be OVERRULED WITHOUT PREJUDICE. The form and/or content of the pleadings do not comply with Local Rule of Practice ("LBR") 9014-1(c). The docket control number used was previously used for a motion to withdraw as counsel, which was filed by another party. Doc. #370. The movant

shall use a unique docket control number associated with its law firm for each motion or other request for relief set for hearing.

Also, there was no motion or other request for relief filed. According to LBR 9014-1(d)(3)(A), the application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. In this instance, the moving party did not file an objection to claim, only a support document entitled "Memorandum and Points and Authorities in Support of the Debtor's Objection to Claim No. 17." Doc. #429.

The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

6. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-19](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
1-11-2021 [[469](#)]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed 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. Though not required, Meggan Phillips, a secured creditor, filed a limited objection on January 21, 2021. Doc. #484. Further opposition may be presented at the hearing, and 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.

Eduardo Zavala Garcia and Amalia Perez Garcia ("DIP"), the debtors and debtors in possession, move to sell 77.04 acres of real property grazing and farmland in Kern County, California, identified as the Portillo Ranch, for \$1,000,000.00 cash to Rene Garcia and Guadalupe Gomez ("Buyers"). Doc. #469. Buyers are Debtors' adult children. Doc. #469. DIP has produced evidence showing Portillo Ranch is subject to the following liens:

Name of Creditor	Lien	Estimated Amount of Claim on April 1, 2021	Estimate of Proposed Distribution of Proceeds from sale
Kern County Treasurer - Tax Collector	Tax Lien	\$28,143.27	\$28,143.27
Meggan Sill Phillips	Deed of Trust	\$531,963.77	\$531,963.77
Maxco Supply, Inc.	Deed of Trust	\$288,774.19	\$236,205.48
Helena Chemical Co.	Abstract of Judgment	\$275,151.39	\$113,687.48

Escrow on the sale will close within 30 days of this court entering an order authorizing the sale free and clear of liens. Doc. #471. In the motion, DIP approximates that proceeds from the sale of the Portillo Ranch will be paid and distributed as follows:

Kern County Treasurer - Tax Collector (tax lien)	\$ 28,143.27
Meggan Sill Phillips (deed of trust)	\$ 531,963.77
Maxco Supply, Inc. (deed of trust)	\$ 236,205.48
Helena Chemical Co. (judicial lien)	\$ 113,687.48
Real estate commission (1%)	\$ 10,000.00
DIP's costs of sale (3%)	\$ 30,000.00
DIP's authorized attorneys' fees and costs	\$ 35,000.00
DIP's authorized accountant's fees and costs	\$ 15,000.00
	<u>\$1,000,000.00</u>

The court is inclined to GRANT this motion assuming Maxco Supply, Inc. and Helena Chemical Company both affirmatively consent to partial payment of their respective liens. Under 11 U.S.C. § 363(f), DIP may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if: (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f). The language of § 363(f) is disjunctive such that a sale free and clear may occur if any one of the above-mentioned conditions has been met. E.g., In re Blixseth, No. 09-60452-7, 2011 Bankr. LEXIS 1451, at *42 (Bankr. D. Mont. Apr. 20, 2011).

DIP asserts that the sale free and clear of liens is authorized under § 363(f) because each entity will be paid in full or has consented. Meggan Phillips, a creditor whose interest is secured by Portillo Ranch, filed a limited objection requesting only that the payment of Ms. Phillips' claim be made directly from escrow or concurrently with the transfer of title. Doc. #484. Maxco Supply, Inc. consents and will reconvey its Deed of Trust against Portillo Ranch for a payment of \$236,205.48. Decl. of Rene Garcia, Doc. #471. While DIP asserts in the motion that the lack of objection by holders of liens and interests to the motion satisfies the consent requirement under § 363(f)(2), the court requires the affirmative consent from a secured creditor to satisfy § 363(f)(2).

Pending any further opposition at the hearing, and subject to DIP's agreement to pay Ms. Phillips' claim in the manner set forth in her limited opposition and the affirmative consent of both Maxco Supply, Inc. and Helena Chemical Company to the partial payment of their respective liens, this motion will be GRANTED. DIP is authorized to sell Portillo Ranch to Buyers for \$1,000,000.00 and DIP is authorized to use proceeds received from the sale of Portillo Ranch in the manner set forth in the motion.

MOTION FOR COMPENSATION FOR DAVID M. SOUSA, CHAPTER 11 TRUSTEE(S)
12-19-2020 [[214](#)]

DAVID SOUSA/MV
LEONARD WELSH/ATTY. FOR DBT.
DAVID SOUSA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice 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 above-mentioned parties in interest are entered. 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.

As a procedural matter, the court draws the trustee's attention to LBR 9004-2. Specifically, LBR 9004-2(b) which, among other things, requires double-spaced text, and 9004-2(c), which requires page numbering. Additionally, the Notice of Hearing does not include the names and addresses upon whom service of any opposing papers must be made as required by LBR 9014-1(d)(3)(B)(i). The court urges the trustee to review the Local Rules to ensure compliance in future matters. The rules can be accessed at the courts website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

David M. Sousa ("Trustee"), the Chapter 11 subchapter V trustee in the bankruptcy case of debtors and debtors in possession Jared Allen Watts and Sarah Danielle Watts ("DIP"), requests an allowance of interim compensation and reimbursement for expenses for services rendered July 2, 2020 through November 20, 2020. Doc. ##214, 217. Trustee provided services valued at \$14,397.75, and requests compensation for that amount. Doc. #214. Trustee requests reimbursement for expenses in the amount of \$67.50. Doc. #214.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 11 case. 11 U.S.C. § 330(a)(1). Payment to a non-standing trustee under subchapter V of chapter 11 is not restricted to the limitations imposed by 11 U.S.C. § 326(a) or (b). 11 U.S.C. § 326. Trustee was appointed pursuant to 11 U.S.C. § 1183(a). Doc. #22. Therefore, in determining the amount of reasonable compensation to be awarded to a non-standing subchapter V trustee, 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).

Trustee's services included, without limitation: (1) reviewing documents received and preparing questions for DIP; (2) scheduling and attending the initial debtor interview and the section 341 examination; (3) reviewing filed claims and engaged with creditors regarding plan treatment; (4) reviewing cash collateral budgets, cash flow, and operating budgets; (5) reviewing DIP's plan of reorganization and comparing plan budget to monthly operating reports, financial summaries, and income tax returns; and (6) discussing changes to the operating business with DIP while operating DIP's plan. Doc. #214; Exs., Doc. #216. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Trustee requests an order authorizing and directing DIP to pay Trustee the allowed compensation from the first available funds of the estate as an administrative expense. Doc. #214. 11 U.S.C. § 503(b)(2) permits administrative expenses for "compensation and reimbursement awarded" under § 330(a). However, Section 4.02 of the confirmed plan provides that each holder of an administrative claim allowed under § 503 "will be paid in full on the Effective Date or upon such other terms as may be agreed upon by the holder of the Claim and Debtors." Doc. #194. The court will call this matter so Trustee can clarify to the court whether Trustee's request for payment in the motion is consistent with Section 4.02 of the confirmed plan.

This motion is GRANTED. The court allows interim compensation in the amount of \$14,397.75 and reimbursement for expenses in the amount of \$67.50. Trustee is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order pursuant to Section 4.02 of the confirmed plan. See Doc. #194.

11:00 AM

1. [18-14445](#)-A-7 **IN RE: KONARK RANCHES, LLC**
[20-1061](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-30-2020 [[1](#)]

PARKER V. STAR NUT, CO. ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [20-12873](#)-A-7 **IN RE: KEVIN/DELAINE MCNAMARA**
[20-1066](#)

STATUS CONFERENCE RE: COMPLAINT
12-10-2020 [[1](#)]

MCNAMARA ET AL V. AMERICAN CONTRACTORS INDEMNITY COMPANY
PATRICK KAVANAGH/ATTY. FOR PL.

NO RULING.

3. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [[40](#)]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

1. [20-13484](#)-A-7 **IN RE: RAMON GARCIA AND LISET ARMENTA-ANGULO**

PRO SE REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC
1-8-2021 [[15](#)]

JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.