

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, February 28, 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. [16-13849](#)-B-12 **IN RE: DON FALLERT**
[DMG-9](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
1-25-2019 [\[198\]](#)

D. GARDNER

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/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 motion is GRANTED. Movant is awarded \$2,153.50 in fees and \$86.87 in costs.

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

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP
FOR RONALD A. CLIFFORD, CREDITOR COMM. ATY(S)
2-5-2019 [\[283\]](#)

RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally 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 and complying with the court's conditions.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(6) 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 CONDITIONALLY GRANTED. The creditor's committee's counsel, The Law Office of Blakeley LLP for Ronald A. Clifford, requests fees of \$28,875.50 and costs of \$632.40 for a total of \$29,507.90 for services rendered from October 26, 2018 through December 7, 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) Filing several motions, including a motion to establish procedures to deal with PACA claims, (2) Filing a limited opposition to debtor's use of cash collateral, and (3) Reviewing motions, documents, operations, and assets of the debtor. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

The court did not see any consent from the creditor's committee to the fee application. The court will conditionally grant the motion and Movant shall be awarded \$28,875.50 in fees and \$632.40 in costs if movant files a declaration showing consent from the committee. The declaration shall be filed not later than March 14, 2019. If the declaration is not filed by that date, or the committee does not approve the fees and costs, then the motion shall be denied without prejudice.

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

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

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties.
Doc. #1150.

4. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WW-77

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [1103]

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the executory contract identified as the "Call Coverage Agreement" between the District and Fateh Entabi, M.D. to Adventist Health.

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-78](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [\[1108\]](#)

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the executory contract identified as the "Call Coverage Agreement" between the District and Chidi J. Ukatu, M.D. to Adventist Health.

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-79](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [\[1113\]](#)

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the Professional Services Agreement, and amendment thereto, between the District and Microcorre Diagnostic Laboratory to Adventist Health.

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-80](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [\[1118\]](#)

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make

subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the Emergency Department Professional and Medical Director Services Agreement, between the District and CEP America-California d/b/a VITIVITY to Adventist Health.

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-81](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [\[1123\]](#)

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption

has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the Radiology Department Professional and Medical Services Agreement between the District and Los Angeles Radiology Medical Associates, Inc. to Adventist Health

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-82](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [\[1128\]](#)

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the

debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the Hospitalist Services Agreement between the District and Galen Inpatient Physicians, Inc. d/b/a VITIVITY to Adventist Health.

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-83](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
2-14-2019 [[1133](#)]

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).

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the Anesthesia Department Professional and Medical Director Services Agreement between the District and Paramount Anesthesia Associates, Inc. to Adventist Health.

Any claim based on this motion shall be filed on or before May 30, 2019 provided notice of the order assuming this contract is served on the other parties to this contract on or before March 7, 2019.

1:30 PM

1. [18-11201](#)-B-13 **IN RE: DOUGLAS PARKS**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-30-2019 [\[92\]](#)

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. for Gabriel J. Waddell, requests fees of \$14,052.50 and costs of \$673.54 for a total of \$14,726.04 for services rendered from February 28, 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) Preparing the petition and schedules, (2) Attending the meeting of creditors in Fresno, (3) Modifying the chapter 13 plan, (4) Defending against a motion to dismiss, and (5) Preparing and filing this fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$14,052.50 in fees and \$673.54 in costs.

2. [18-14902](#)-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
[SAH-3](#)

MOTION TO CONFIRM PLAN
1-11-2019 [\[32\]](#)

FRANCISCO RAMIREZ/MV
SUSAN HEMB

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.

3. [18-14906](#)-B-13 **IN RE: STEVEN/MATISHA NORENBURG**
[MHM-1](#)

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

MARTHA PASSALAQUA
CASE DISMISSED 2/15/19

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. #26.

4. [13-15410](#)-B-13 **IN RE: GREGORY/ROSA MOORE**
[CJO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
2-8-2019 [\[94\]](#)

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
DONNY BRAND
CHRISTINA O/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted provided movant augments the record as
discussed below.

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

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

The movant, JP Morgan Chase Bank, N.A., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) on real property commonly known as 314 NE 2nd Avenue in Visalia, CA 93291.

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

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor has failed to make post-petition payments. Debtor owes \$7,245.54 post-petition. Doc. #97. Also, the plan does not provide for this claim. The debtors' interest in the real property is not even scheduled.

Movant's motion generally complied with requirements for stay relief motions in chapter 13 cases. LBR 4001-1(b). But movant did not authenticate the "cure letter" or provide evidence proving the facsimile was sent to debtors' counsel.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make post-petition payments.

5. [18-15011](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
2-5-2019 [\[13\]](#)

MICHAEL MEYER/MV
F. GIST

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

DISPOSITION: Continued to March 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 March 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. The trustee shall file and serve a reply, if any, by March 21, 2019.

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 March 21, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

Depending on subsequent pleadings filed by the parties, the March 29, 2019 hearing will be a scheduling conference.

6. [18-14914](#)-B-13 **IN RE: MARIA AVILA**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DLJ MORTGAGE CAPITAL,
INC.
1-25-2019 [\[20\]](#)

DLJ MORTGAGE CAPITAL, INC./MV
NIMA VOKSHORI
WENDY LOCKE/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.

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 DLJ Mortgage Capital, Inc.'s ("Creditor") objection is that the plan is not feasible and that the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #20.

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 February 19, 2019 (claim #3), states a claimed arrearage of \$21,085.30. Debtor's plan (doc. #14) states the arrearage to be \$16,652.46. This claim is classified in class 1. If confirmed, the plan will not terminate the automatic stay, but Creditor may move the court for an order for relief from the stay if debtor fails to make any plan payment. Plan section 3.11(c). The debtor may need to modify the plan to account for the arrearage or object to the claim. If the plan is modified, or a claim objection sustained, then this objection may be moot.

Therefore, this objection is OVERRULED.

7. [18-14914](#)-B-13 **IN RE: MARIA AVILA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-31-2019 [\[24\]](#)

MICHAEL MEYER/MV
NIMA VOKSHORI

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on February 28,
2019. Doc. #28.

8. [18-14915](#)-B-13 **IN RE: PAUL FREDERICK**
[MHM-2](#)

MOTION TO DISMISS CASE
1-30-2019 [\[17\]](#)

MICHAEL MEYER/MV

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. 11 U.S.C. § 1307(c)(1). The debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all required documentation. Accordingly, the case will be dismissed.

9. [18-15121](#)-B-13 **IN RE: MIGUEL/ARACELI PADILLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-31-2019 [\[36\]](#)

SCOTT LYONS
\$79.00 INSTALLMENT PAYMENT ON 2/1/19

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 February 1, 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.

10. [18-15121](#)-B-13 **IN RE: MIGUEL/ARACELI PADILLA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-25-2019 [\[20\]](#)

CREDIT ACCEPTANCE
CORPORATION/MV
SCOTT LYONS
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 movant, Credit Acceptance Corporation, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2015 Nissan Altima.

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

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor has failed to make payments to movant. Debtor owes pre-petition amounts of \$3,947.59. Doc. #25, claim 1.

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

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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

11. [18-15121](#)-B-13 **IN RE: MIGUEL/ARACELI PADILLA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-31-2019 [\[32\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

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 there has been unreasonable delay by the debtors that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtors failed to set and notice a plan for hearing. The Debtors failed to file a complete and accurate Statement of Financial Affairs. 11 U.S.C. § 521. Accordingly, the case will be dismissed.

12. [18-15127](#)-B-13 **IN RE: FRANCISCO GUADRON AND MARIA CHAVOYA-
GUADRON
[MHM-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-4-2019 [\[18\]](#)

MICHAEL MEYER/MV
JERRY LOWE

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

DISPOSITION: Continued to March 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 March 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. The trustee shall file and serve a reply not later than March 21, 2019.

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 March 21, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

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

CONTINUED 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: Denied.

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

This motion is DENIED. By prior order of the court, the debtor had two opportunities to respond to the trustee's opposition to this motion. Debtor could have either filed and served a written response not later than February 14, 2019, or debtor could have filed, served, and set for hearing a confirmable modified chapter 13 plan not later than February 21, 2019. Doc. #62. Failure to perform would result in the court denying the motion.

Debtor failed to perform, and therefore this motion is DENIED.

14. [18-13436](#)-B-13 **IN RE: GILBERTO GARCIA AND OLIVIA ROMERO**
[TOG-2](#)

MOTION TO CONFIRM PLAN
1-21-2019 [\[50\]](#)

GILBERTO GARCIA/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

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

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

15. [18-14539](#)-B-13 **IN RE: CARMEN ZAMBRANO**
[PBB-1](#)

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

CARMEN ZAMBRANO/MV
PETER BUNTING
RESPONSIVE PLEADING

NO RULING.

16. [18-15140](#)-B-13 **IN RE: GARY/ROSE BRADY**
[MHM-1](#)

MOTION TO DISMISS CASE
1-31-2019 [\[18\]](#)

MICHAEL MEYER/MV
SUSAN HEMB

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 there has been unreasonable delay by the debtors that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtors failed to provide to the Chapter 13 Trustee all the required documentation. LBR 3015-1(b)(6); 11 U.S.C. § 521(a)(1)(B)(iv); LBR 1007-1(c)(1). The debtor failed to complete and timely file Credit Counseling Certificates. 11 U.S.C. § 109(h). Accordingly, the case will be dismissed.

17. [18-14943](#)-B-13 **IN RE: MATTHEW CAZARES**
[EGS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY GUILD MORTGAGE COMPANY
1-30-2019 [\[18\]](#)

GUILD MORTGAGE COMPANY/MV
EDWARD SCHLOSS/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

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

Second, LBR 9004-2(c)(1) requires that declarations, exhibits, notices, *inter alia*, to be filed as separate documents. Here, the notice and declaration included exhibits and proofs of service. Each type of document must be filed separately.

18. [18-14943](#)-B-13 **IN RE: MATTHEW CAZARES**
[JHW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA
INC.

2-5-2019 [\[33\]](#)

SANTANDER CONSUMER USA INC./MV
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

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

19. [18-14943](#)-B-13 **IN RE: MATTHEW CAZARES**
[MHM-2](#)

MOTION TO DISMISS CASE
1-31-2019 [\[26\]](#)

MICHAEL MEYER/MV

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. 11 U.S.C. § 1307(c)(1). The debtor failed to provide to the Chapter 13 Trustee all required documentation. LBR 3015-1; 11 U.S.C. § 521(e)(2)(A)(B); 11 U.S.C. § 521(a)(1)(B)(iv); LBR 1007-1(c)(1). The debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to file complete and accurate schedules 11 U.S.C. § 521 and/or F.R.B.P. 1007. Accordingly, the case will be dismissed.

20. [18-14946](#)-B-13 **IN RE: ALVINO GARCIA**
[JRL-2](#)

MOTION TO CONFIRM PLAN
1-22-2019 [\[21\]](#)

ALVINO GARCIA/MV
JERRY LOWE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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 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). 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 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 CONDITIONALLY DENIED. Though this motion was unopposed, there is also on this calendar an unopposed motion to dismiss the case. See matter #21 below, MHM-1. This matter will be called for the movant to explain to the court why the motion to dismiss should be denied and this motion granted.

21. [18-14946](#)-B-13 **IN RE: ALVINO GARCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-31-2019 [\[26\]](#)

MICHAEL MEYER/MV
JERRY LOWE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied unless withdrawn prior to the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the 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. 11 U.S.C. § 1307(c)(1). The debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). The debtor failed to provide to the Chapter 13 Trustee all required documentation. 11 U.S.C. § 521(e)(2)(A)(B).

Though this motion was unopposed by debtor, there is also on this calendar an unopposed motion to confirm a chapter 13 plan. See matter #20 above, JRL-2. This matter will be called for the movant to explain to the court why the motion to confirm should be denied and this motion granted.

22. [18-13447](#)-B-13 **IN RE: WILEY GARDNER**
[DRJ-2](#)

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

WILEY GARDNER/MV
DAVID JENKINS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was continued to allow debtor to file and serve amended forms 122C-1 and 122C-2 not later than February 15, 2019. Doc. #42.

The court notes that those amended forms were filed and served (pursuant to Federal Rule of Civil Procedure 5(b)(1)(E); see 5(d)(1)) on February 15, 2019.

This motion will be called to allow trustee to respond and verify the accuracy of the amended forms.

23. [18-14454](#)-B-13 **IN RE: ESEQUIEL/ROXANNE PEREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
1-29-2019 [\[23\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #39.

24. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I LLC, CLAIM NUMBER 1
1-8-2019 [\[88\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH

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

DISPOSITION: Sustained.

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

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

This objection is SUSTAINED.

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

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

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according

to the evidence was in October of 2008, which is well past the two and four year mark in the statutes of limitations.

Claim no. 1 filed by Cavalry SPV I, LLC is disallowed in its entirety.

25. [18-14662](#)-B-13 **IN RE: MARIA NUNEZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
1-23-2019 [\[17\]](#)

MARIA NUNEZ/MV
THOMAS GILLIS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion/objection.

26. [13-17074](#)-B-13 **IN RE: FRANCISCO/MARIA ESPINOSA**
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
1-25-2019 [\[85\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

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

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

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

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

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

The record shows that the debtors have cured the default on the loan with Goldman Sachs Mortgage Company c/o Rushmore Loan Management Services and its successors in interest and are current on mortgage payments to the same through October 2018. Therefore, this motion is GRANTED.

27. [18-14178](#)-B-13 **IN RE: GENE FEUERSINGER AND DENISE CAMPOS**
[PBB-1](#)

OBJECTION TO CLAIM OF DEPARTMENT OF THE TREASURY-INTERNAL
REVENUE SERVICE, CLAIM NUMBER 4
1-11-2019 [\[38\]](#)

GENE FEUERSINGER/MV
PETER BUNTING

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

DISPOSITION: Sustained as provided in this ruling.

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

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

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

This objection is SUSTAINED.

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

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

Here, the movant has established, and claimant Department of the Treasury - Internal Revenue Service ("IRS") has not opposed, that the amount of the claim, \$293,614.65, is incorrect. Doc. #38. Debtor has submitted their 2017 tax return, but the return has not yet been processed by the IRS. Id. The return shows a tax liability of \$18,800.00. Doc. #41.

Claim no. 4-1 filed by the IRS is disallowed since it was superceded by claim 4-2 filed February 8, 2019. The amended claim reflects an estimated tax for 2017 equal to what debtors' claim is owed.

28. [18-14178](#)-B-13 **IN RE: GENE FEUERSINGER AND DENISE CAMPOS**
[PBB-2](#)

OBJECTION TO CLAIM OF FRESNO DISTRIBUTING COMPANY, CLAIM
NUMBER 1
1-11-2019 [\[43\]](#)

GENE FEUERSINGER/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).

Here, the movant has established, and claimant Fresno Distributing Company ("FDC") has not opposed, that the claim was discharged in a previous bankruptcy. Doc. #43. Debtor has submitted a "Certificate of Notice" from their previous bankruptcy (case no. 12-12811, discharged on June 26, 2012) which includes FDC among creditors sent notice. Doc. #46.

Therefore, Claim no. 1 filed by FDC is disallowed in its entirety.

29. [18-13979](#)-B-13 **IN RE: ANTHONY/ELIZABETH MIGUEL**
[JRL-2](#)

MOTION TO MODIFY PLAN
1-23-2019 [\[20\]](#)

ANTHONY MIGUEL/MV
JERRY LOWE

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.

30. [18-15084](#)-B-13 **IN RE: ROBERT SANFORD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-4-2019 [\[16\]](#)

SCOTT LYONS

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

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

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than March 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 debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 21, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

31. [18-10987](#)-B-13 **IN RE: ARTHUR/LEANN LOPEZ**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
1-8-2019 [\[44\]](#)

MICHAEL MEYER/MV
PETER BUNTING
DISMISSED 1/14/19

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. #52.

32. [19-10387](#)-B-13 **IN RE: OMAR MARTINEZ**
[DMG-1](#)

CONTINUED MOTION TO IMPOSE AUTOMATIC STAY
2-4-2019 [\[9\]](#)

OMAR MARTINEZ/MV
D. GARDNER

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 continued because debtor was ordered to re-serve the
motion and accompanying documents on all creditors, including the
United States Trustee. See doc. #21.

The court notes that doc. ##24 and 25 show that the motion and
accompanying papers, as well as a notice of continued hearing, were
properly served on all the creditors and the United States Trustee.

Unless opposition by a newly-noticed creditor is presented at the
hearing, the court intends to GRANT this motion and impose the stay
indefinitely as to all creditors. The order is without prejudice to
any creditor who has acted in reliance on the absence of the
automatic stay before entry of the order.

33. [14-12788](#)-B-13 **IN RE: NICHOLAS SANDERS**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-17-2019 [\[22\]](#)

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/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 motion is GRANTED. Movant is awarded \$1,550.50 in fees and \$345.97 in costs.

34. [18-13895](#)-B-13 **IN RE: CAROL SHIELDS**
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-12-2019 [\[56\]](#)

21ST MORTGAGE CORPORATION/MV
DAVID JENKINS
DIANE WEIFENBACH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot and for failure to comply with
the local rules of practice.

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

This motion is DENIED AS MOOT.

First, the motion does not comply with Local Rule of Practice 4001-
1(b).

Second, debtor confirmed a chapter 13 plan on February 8, 2019. Doc.
#55. Movant's collateral is in class 4 of the plan. Doc. #4.
According to plan section 3.11(a), upon confirmation, "the automatic
stay . . . [is] . . . modified to allow the holder of a Class 4
secured claim to exercise its rights against its collateral and any
nondebtor in the event of a default under applicable law or
contract." Therefore, the stay is no longer in effect as to movant
or their collateral.

For those reasons, this motion is DENIED AS MOOT.

35. [18-13895](#)-B-13 **IN RE: CAROL SHIELDS**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-28-2019 [\[51\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

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 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 sustaining of the objection. 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 concluded or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on January 9, 2019 and this objection was filed on January 28, 2019, 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."

Trustee makes objections to two of debtor's claimed exemptions: (1) the \$20 in a Union Bank checking account claimed exempt under California Code of Civil Procedure ("CCP") § 704.070; (2) \$3,400.00 in a Union Bank savings account claimed exempt under CCP § 704.070; and (3) a 2017 income tax refund of \$4,100.00 claimed exempt under CCP § 704.070. Trustee objections to (1) and (2) because only 75% of those funds are exempt, and objects to (3) because tax refunds are not "paid earnings" as defined under CCP § 706.011(b).

The court finds that the trustee is correct, and in the absence of any objection or opposing evidence, SUSTAINS the trustee's objection.

36. [18-14098](#)-B-13 **IN RE: RUSSELL FANN AND CHRISTIE GAITAN-FANN**
[SL-3](#)

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

RUSSELL FANN/MV
STEPHEN LABIAK
RESPONSIVE PLEADING, CASE DISMISSED 2/15/19

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. #84.

37. [16-14099](#)-B-13 **IN RE: KATHERINE LIMATA**
[TCS-1](#)

CONTINUED MOTION TO MODIFY PLAN
12-26-2018 [\[19\]](#)

KATHERINE LIMATA/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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

This motion is CONDITIONALLY DENIED. Unless debtor complies with the court's previous order (doc. #41) and files the plan on the correct form before the continued hearing date, this motion will be denied.