UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 29, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at https://www.caeb.uscourts.gov/Calendar/RemoteAppearances. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the CourtCall Appearance Information.

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of 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, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 23-10703-A-13 **IN RE: CESAR BANDA AND SILVIA PENA**
NFS-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-2024 [124]

FEDERAL HOME LOAN MORTGAGE CORPORATION/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.
NATHAN SMITH/ATTY. FOR MV.
DISMISSED 05/25/2023

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on May 25, 2023. Doc. #71. Therefore, this motion will be DENIED AS MOOT.

2. 23-12914-A-13 **IN RE: MARK WHITE AND SHEALON HILLIARD-WHITE**
PBB-1

MOTION TO VALUE COLLATERAL OF AQUA FINANCE, INC.
1-30-2024 [18]

SHEALON HILLIARD-WHITE/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Mark Anthony White and Shealon Hilliard-White (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' water treatment equipment and reverse osmosis equipment (collectively, the "Property"), which is the collateral of Aqua Finance, Inc. ("Creditor"). Doc. #18; Decl. of Shealon Hilliard-White, Doc. #20.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-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 more than one year before the filing of this case and that the loan is a purchase money security interest. Doc. ##18, 20. Debtors assert a replacement value of the Property of $1,000.00 and ask the court for an order valuing the Property at $1,000.00. Id. Debtors are 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 $1,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

3. 23-12914-A-13 **IN RE: MARK WHITE AND SHEALON HILLIARD-WHITE**
PBB-2

MOTION TO VALUE COLLATERAL OF GOODLEAP, LLC
1-30-2024 [23]

SHEALON HILLIARD-WHITE/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of

the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Mark Anthony White and Shealon Hilliard-White (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' solar panels and equipment (collectively, the "Property"), which is the collateral of Goodleap, LLC ("Creditor"). Doc. #23; Decl. of Shealon Hilliard-White, Doc. #25.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-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 more than one year before the filing of this case and that the loan is a purchase money security interest. Doc. ##23, 25. Debtors assert a replacement value of the Property of $5,000.00 and ask the court for an order valuing the Property at $5,000.00. Id. Debtors are 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 $5,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

4. 24-10016-A-13 **IN RE: ANTHONY/CORINA DEMERA**
CAS-1

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
2-13-2024 [18]

ALLY BANK/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Anthony Christopher Demera and Corina Serena Demera (together, "Debtors") filed their chapter 13 plan (the "Plan") on January 4, 2024. Doc. #3. Ally Bank ("Creditor") objects to confirmation of the Plan on the ground that the Plan does not provide for an appropriate interest rate on Creditor's secured claim. Doc. #18. The Plan proposes an interest rate of 9%. Doc. #3. Creditor contends that under the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), the interest rate should be at least 10.5%. Doc. #18.

The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till, 541 U.S. at 480. This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80.

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor argues that 10.5% is the appropriate rate because the national prime rate of interest as of February 13, 2024, was 8.5%. Doc. #18. Based on the evidence currently before the court, the court agrees that Debtors have not met their burden of proof to establish that setting the interest rate only .5%

above the current prime rate of interest satisfies Till. Creditor's objection to confirmation is sustained.

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

5. 24-10016-A-13 **IN RE: ANTHONY/CORINA DEMERA**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
2-12-2024 [15]

TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to confirmation was withdrawn on February 20, 2024. Doc. #25.

6. 23-12323-A-13 **IN RE: GUADALUPE SIERRA-OSORIO AND ANTONIOETTE SIERRA**
DAB-1

MOTION TO CONFIRM PLAN
1-22-2024 [41]

ANTONIOETTE SIERRA/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. However, when the declarant served all creditors with plan, notice of the hearing and related papers, that service was made pursuant to Rule 7005 and the appropriate boxes in section 6B should have been checked, not the boxes in section 6A.

As a further informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form (Doc. #44) filed in connection with the motion. Instead of using a copy of the Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached a list of names and addresses served that was generated through PACER. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served. That list can be generated by using the following link on the court's website: https://www.caeb.uscourts.gov/RequestForSpecialNotice.

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.

7. 23-11539-A-13 **IN RE: MARSHA MENDOZA**
MM-4

MOTION TO CONFIRM PLAN
1-26-2024 [89]

MARSHA MENDOZA/MV
MARSHA MENDOZA/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on January 24, 2024, with a hearing date set for February 29, 2024. The motion was set for hearing on less than 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). Notice also is improper because the hearing date listed in the notice of hearing is not correct. The date listed in the body of the notice of hearing is February 24, 2024, while the date in the caption is February 29, 2024, which is the correct date for the hearing. Because the motion was not noticed at least 35 days prior to the hearing date, the motion was not properly noticed and is denied without prejudice.

As a procedural matter, the certificate of service filed with the motion is incomplete and does not show proper service even if the motion was served timely. First, the certificate of service does not list the documents served in section 4, so the court does not know what documents were served on interested parties. Second, the certificate of service does not include an attachment showing the names and addresses of the parties on whom the documents were

served. Without this attachment, the court cannot determine whether all parties who required notice were properly served with the motion, notice of hearing and proposed chapter 13 plan.

As a further procedural matter, the motion does not comply with LBR 9014-1(d)(3), which requires in relevant part that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Here, as noted by the chapter 13 trustee in her opposition to confirmation, the motion to confirm the proposed plan is not supported by a declaration of the debtor setting forth the evidence establishing the factual allegations in the motion and demonstrating that the debtor is entitled to the relief requested.

As an informative matter, the address for the chapter 13 trustee in the notice of hearing to which any opposition should be sent is inaccurate. The notice of hearing is dated January 24, 2024, and the name and address for the chapter 13 trustee is: Michael H. Meyer, P.O. Box 28950, Fresno, CA 93729. Doc. #90. However, Mr. Meyer retired as the chapter 13 trustee as of December 31, 2023. Doc. #77. The name and address of the successor chapter 13 trustee is: Lilian G. Tsang, P.O. Box 3051, Modesto, CA 95353-3051, and that should have been the name and address used in the notice of hearing.

8. 23-12841-A-13 **IN RE: ANDRE HOWELL**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
2-12-2024 [33]

PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Andre Wishon Howell ("Debtor") filed his chapter 13 plan (the "Plan") on December 21, 2023. Doc. #4. Lilian G. Tsang, chapter 13 trustee ("Trustee"), objects to confirmation of the Plan on the grounds that: (1) the Plan fails to comply with the provisions of chapter 13 and with other applicable provisions of title 11 in violation of 11 U.S.C. § 1325(a)(1); (2) the monthly Plan payments are short by $56.81 per month because the proposed payments do not account for Trustee's compensation; (3) the Plan provides for payments to creditors for a period longer than 5 years in violation of 11 U.S.C. § 1322(d); and (4) the Plan provides for the payment of attorneys' fees in excess of the fixed compensation allowed in LBR 2016-1(c). Doc. #33.

The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Trustee contends Debtor's Schedule A/B does not disclose Debtor's real estate, loan officer and catering businesses, which are required to determine liquidation analysis. Schedule A/B, Doc. #1. The court has reviewed Debtor's Schedule A/B and agrees with Trustee's objection.

Section 1326(b) requires that Trustee's percentage fee, which is permitted under 28 U.S.C. § 586(e)(1)(B), be paid from a monthly plan payment before other payments are paid to creditors. 11 U.S.C. § 1326(b)(2). Here, the proposed plan payments are short by $56.81 per month because the proposed distribution of payments under the Plan do not provide for the payment of Trustee's percentage fee permitted under 28 U.S.C. § 586(e)(1)(B). Trustee's objection to confirmation on this ground is sustained.

Section 1322(d) of the Bankruptcy Code requires that a plan cannot provide for payments to creditors for longer than 5 years. Here, the Plan currently provides for plan payments of $5,600.00. Plan, Doc. #4. Trustee contends the Plan would take 94.57 months to fund because the filed secured claim of the Franchise Tax Board is $51,208.80 while the Plan only provides for a secured claim of $20,052.46. Doc. #33. Thus, the Plan does not fund in 5 years and cannot be confirmed.

LBR 2016-1(c)(4)(B) provides that after confirmation of Debtor's Plan, Trustee shall pay Debtor's counsel a sum equal to the flat fee prescribed by subdivision (c)(1) less any retainer received in equal monthly installments over the term of the confirmed Plan. Here, the proposed Plan provides for attorney's fees totaling $12,500.00 that is to be paid in full through the Plan. The Plan proposes to pay a monthly dividend of $209.00 to Debtor's counsel, and that amount exceeds the monthly installment amount permitted by LBR 2016-1(c)(4)(B). The attorney fee dividend needs to be reduced to $208.33 per month to comply with LBR 2016-1(c). Further, an amended Disclosure of Compensation form needs to be filed to remove the following language from No. 7: "judicial lien avoidances, relief from stay actions." Doc. #1. Trustee's objection to confirmation in these grounds is sustained.

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

9. 23-10344-A-13 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
BDB-2

CONTINUED MOTION TO MODIFY PLAN
12-9-2023 [60]

LOARINA DOMENA-QUINVILLE/MV
BENNY BARCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors Susan Marie Quinville and Loarina Victoria Domena-Quinville (collectively, "Debtors") filed and served this motion to confirm the first modified Chapter 13 plan pursuant to Local Rule of Practice 3015-1(d)(2) and set that motion for hearing on February 1, 2024. Doc. ##60-64. The chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #69. The court continued this matter to February 29, 2024 and ordered Debtors to file and serve a written response to Trustee's objection by February 15, 2024; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by February 22, 2024. Doc. #72.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

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

10. 21-10856-A-13 **IN RE: MARK/AMELIA CAVE**
MHM-2

CONTINUED MOTION TO DISMISS CASE
12-4-2023 [136]

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On December 4, 2023, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors because the debtors were delinquent in their plan payments in the amount of $18,412.66. Doc. #136.

On January 10, 2024, the debtors filed and served a motion to confirm the debtors' third modified plan and set that motion for hearing on February 29, 2024. Doc. ##146-151. The court proposes to grant that motion pursuant to a tentative ruling, matter #11 below.

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). Because confirmation of the debtors' third modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1), and the motion to dismiss is denied.

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

11. 21-10856-A-13 **IN RE: MARK/AMELIA CAVE**
SL-9

MOTION TO MODIFY PLAN
1-10-2024 [146]

AMELIA CAVE/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("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 movants have done here.

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

12. 23-12360-A-13 **IN RE: LAWRENCE GOWIN**
AAM-2

MOTION TO CONFIRM PLAN
1-19-2024 [34]

LAWRENCE GOWIN/MV
ANDREW MOHER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

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. 19-11775-A-13 **IN RE: LISA DE ORIAN**
FW-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
1-31-2024 [29]

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for Lisa Gaye De Orian ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of $7,029.50 and reimbursement for expenses in the amount of $151.19 for services rendered from January 1, 2020 through January 17, 2024. Doc. #30. Debtor's confirmed plan provides, in addition to $2,690.00 paid prior to filing the case, for $8,000.00 in attorney's fees. Plan, Doc. ##2, 13. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of $2,351.00 and reimbursement for expenses totaling $326.31. Order, Doc. #22. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #32.

Section 330(a) 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 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) claim administration and objections; (2) confirmation of chapter 13 plan; (3) preparation of interim fee application; and (4) preparation for discharge and case closing. Doc. #57. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on

an interim bases, in addition to compensation requested by this motion in the amount of $7,029.50 and reimbursement for expenses in the amount of $151.19 to be paid in a manner consistent with the terms of the confirmed plan.

14. 19-15081-A-13 **IN RE: CHRISTOPHER/KERRI TYSON**
SL-4

MOTION TO MODIFY PLAN
1-17-2024 [69]

KERRI TYSON/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("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 movants have done here.

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

15. 23-10691-A-13 **IN RE: KAYE KIM**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
2-12-2024 [131]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to April 11, 2024, at 9:30 a.m.

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

While not required, the debtor filed a response to the chapter 13 trustee's objection to confirmation requesting that the hearing on this objection to confirmation of the plan be continued to the same date and time as the objection to confirmation filed by creditor Calvin Kim. Doc. #125. The court is inclined to continue the trustee's objection to confirmation to April 11, 2024, at 9:30 a.m., to be heard in connection with continued hearing on the objection to confirmation filed by Calvin Kim.

16. 24-10197-A-13 **IN RE: VINCE/VANIDA CHITTAPHONG**
LGT-1

MOTION TO DISMISS CASE
1-30-2024 [8]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtors, 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.

Here, the chapter 13 trustee asks the court to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) because the debtors failed to comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1). Doc. #8. The debtors did not file written opposition.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Vince Chittaphong and Vanida Chittaphong (collectively, "Debtors") filed for relief under chapter 13 of the Bankruptcy Code on January 29, 2024. Doc. #1. Debtors have not filed certificates of pre-petition credit counseling.

The Bankruptcy Code allows a debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtors have not requested a waiver of the § 109(h)(1) requirements post-petition. Because Debtors did not receive credit counseling within the 180-days prior to filing the bankruptcy petition and have not received a waiver of that requirement, Debtors may not be debtors pursuant to § 109(h).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) because Debtors did not obtain pre-petition credit counseling as required by § 109(h)(1) and did not request a waiver of the § 109(h)(1) requirement post-petition.

Because Debtors are not eligible to be debtors, dismissal rather than conversion is appropriate.

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

17. 18-14299-A-13 **IN RE: GAVINO/OLGA CANO**
SL-2

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
1-29-2024 [51]

OLGA CANO/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Scott Lyons ("Movant"), counsel for Gavino Cano ("Debtor") and Olga Cano, joint debtors in this chapter 13 case, requests the court name Movant as the successor to the deceased Debtor, permit the continued administration of this chapter 13 case, and waive the § 1328 certification requirements for Debtor. Doc. #51.

Upon the death of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not

occurred upon a showing that further administration is possible and in the best interest of the parties. Debtor died on April 14, 2021. Decl. of Scott Lyons, Doc. #53; Ex. A, Doc. #54. Movant is qualified to represent Debtor's estate in the bankruptcy case. Lyons Decl., Doc. #53. The plan payments required under the confirmed plan in this case have been completed. Doc. #43. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Debtor failed to meet the post-petition financial education requirements before Debtor died. Lyons Decl., Doc. #53. Debtor's death demonstrates an inability to provide certifications required, and the certification requirements will be waived.

Accordingly, Movant's application to be appointed representative of Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Debtor's § 1328 certification requirements is GRANTED.

11:00 AM

1. 14-13417-A-12 **IN RE: DIMAS/ROSA COELHO**
23-1022

PRE-TRIAL CONFERENCE RE: COMPLAINT
4-24-2023 [1]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A judgment in favor of the defendant was entered on February 6, 2024. Doc. #102. Accordingly, this pre-trial conference is dropped from calendar. This adversary may be administratively closed when appropriate.

2. 23-12328-A-7 **IN RE: RUSTY PITTS**
23-1056 CAE-1

STATUS CONFERENCE RE: COMPLAINT
12-27-2023 [1]

YOUNG V. PITTS
KEITH CABLE/ATTY. FOR PL.

NO RULING.

3. 22-11754-A-7 **IN RE: ALYSSA THOMPSON**
23-1001

PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
2-24-2023 [10]

DAVIS V. THOMPSON
JUSTIN VECCHIARELLI/ATTY. FOR PL.
DISMISSED 10/9/23; CLOSED 10/27/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on October 9, 2023. Doc. #42. Accordingly, this pre-trial conference will be dropped as moot. The adversary proceeding was closed on October 27, 2023.

4. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
21-1015 CAE-1

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

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

NO RULING.

5. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
21-1015 NS-18

MOTION TO RECONSIDER
1-5-2024 [503]

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on January 11, 2024. Doc. #515.

6. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
21-1015 NS-19

MOTION TO REOPEN TRIAL
1-11-2024 [509]

NICOLE V. T2M INVESTMENTS, LLC
SYLVIA NICOLE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The defendant timely filed written opposition on February 15, 2024. Doc. #522. The plaintiff filed a late response to the opposition. Doc. ##525-526. This matter will proceed as scheduled.

Sylvia Nicole ("Plaintiff" or "Ms. Nicole") is a chapter 13 debtor pro se and the plaintiff and counter-defendant in this adversary proceeding. This court

held a bench trial in October 2023 over three days that culminated in an oral decision in favor of defendant and counter-claimant T2M Investments, LLC ("Defendant" or "T2M") being read into the record on October 26, 2023. Doc. #481. By this motion filed on January 11, 2024, Plaintiff requests that this court reopen the trial in this adversary proceeding to permit Plaintiff to call Jay Moore, Amy Wall, Placer Title Company, and Fidelity National Title to testify as witnesses for Plaintiff's case. Doc. #511.

Defendant opposes the motion on the grounds that Plaintiff did not file her points and authorities with the motion and, other than Jay Moore, the witnesses that Plaintiff seeks to have testify were all available to be called at the trial and were not properly listed or subpoenaed by Plaintiff. Doc. #522. As for Jay Moore, Mr. Moore requested to appear at trial by Zoom and Plaintiff objected to that appearance. Id. Defendant asserts that it "suffers prejudice each day judgment is delayed, as it cannot sell the property without clear title and get out from under this bad investment." Id.

Because neither party provided the court with the appropriate legal standard for determining this motion, the court will not deny the motion for Plaintiff's failure to file and serve her memorandum of points and authorities timely. Rather, the court denies the motion on the merits.

RELEVANT FACTS

On October 16, 17 and 18, 2023, this court held a bench trial with the consent of the parties on Plaintiff's remaining causes of action, breach of contract and contract fraud, and all causes of action on Defendant's counter-claim: quiet title, breach of contract, specific performance, enforcement of settlement agreement under California Code of Civil Procedure § 664.6, and declaratory relief. Plaintiff's breach of contract and contract fraud causes of action are essentially the same cause of action. Due to the delay by Plaintiff in providing Defendant or the court with information regarding Plaintiff's alleged damages with respect to her causes of action, the court bifurcated the trial, trying liability regarding the competing breach of contract causes of action and deferred any trial or ruling on damages as a result thereof.

Prior to the trial, this court granted Defendant's motion to exclude Plaintiff from calling several witnesses at trial, including, among other witnesses, Fidelity National Title. Order, Doc. #447. In addition, Plaintiff listed only the following witnesses on her list of witnesses for the trial filed with the court on October 11, 2023: (a) T2M Investments, LLC; (b) Joe Trindade; (c) Jay Moore; (d) Steven S. Altman; (e) Cory Chartrand; and (f) Sylvia Nicole. Doc. #463. Thus, the court excluded any witness from Fidelity National Title prior to the commencement of trial.

On October 26, 2023, this court read into the record a lengthy oral decision in favor of Defendant. On November 21, 2023, Plaintiff filed a motion for reconsideration that was set for hearing on January 11, 2024. Doc. ##488, 489. Plaintiff withdrew the motion for reconsideration at the hearing held on January 11, 2024, the same day that this motion to reopen the trial was filed. Doc. ##509, 515.

This adversary proceeding revolves around a settlement between Plaintiff and Defendant regarding two parcels of real property, a residence parcel and a vacant lot parcel, that secured a loan to Plaintiff. Transcript of October 26 Ruling ("Transcript") at 6:21 – 7:2; 7:10-15, Doc. #497. The residence parcel was Ms. Nicole's residence from the time she purchased the property until she moved out on September 4, 2019 pursuant to the settlement agreement that is at

issue in this adversary proceeding. Id. at 7:3-9. T2M held the deed of trust against both parcels of real property. Id. at 7:24 – 8:1.

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

The court's decision on the breach of contract causes of action relies heavily on a few key findings, as set forth on the record at the October 26 hearing. First, Ms. Nicole, on behalf of GLVM, Ms. Nicole's wholly owned corporation and the entity on title to the residence parcel, left a letter dated August 18, 2019 ("August 18 Letter") and an executed grant deed for the residence parcel at the offices of the entity foreclosing on the real property on behalf of T2M proposing that T2M accept the enclosed grant deed in lieu of foreclosing on the real property. Transcript at 9:25 - 11:13. While Ms. Nicole testified at trial that she had discussions with Mr. Altman regarding the proposed settlement described in the August 18 Letter, Mr. Altman testified at trial that he did not have any such discussions with Ms. Nicole. Id. at 11:14-19. The court found Mr. Altman's testimony to be more credible than Ms. Nicole's testimony on this issue. Id. at 11:20-22.

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

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

Fourth, Ms. Nicole did not ask for any changes to be made to the settlement agreement and did not insert any email and/or mailing address information for noticing purposes where there were blanks indicated for such information for either Ms. Nicole or GLVM into the relevant section 10(d) of the settlement agreement. Transcript at 13:16-24. Based on the signature dates on the fully executed settlement agreement, Ms. Nicole and GLVM executed the settlement agreement on August 27, 2019, either the same day or the day after the settlement agreement was emailed to Ms. Nicole by Mr. Altman. Id. at 14:8-12.

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APPLICABLE LAW

Neither the Federal Rules of Civil Procedure nor Federal Rules of Bankruptcy Procedure recognize a motion to reopen the record to submit additional evidence. Rather, a motion to reopen a trial "appears to be a cannibalization of those qualities found in Rules 59 and 60, Federal Rules of Civil Procedures, New Trials and Relief from Judgment or Order respectively, geared by the philosophy of Rule 1, that is, the 'just, speedy, and inexpensive determination of every action.'" Caracci v. Brother Int'l Sewing Mach. Corp., 222 F. Supp. 769, 771 (E.D. La. 1963).

Whether to reopen a trial to permit additional evidence is within the sound discretion of the trial court. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 331 (1971). When considering whether to reopen the trial record, the trial court "should take into account . . . the character of the additional testimony and the effect of granting the motion. The court should also consider the diligence of the moving party, and any possible prejudice to the other party." SEC v. Rogers, 790 F.2d 1450, 1460 (9th Cir. 1986) (citations omitted). Trial courts "generally act within their discretion in refusing to reopen a case for cumulative evidence or evidence with little probative value." Thomas v. Yates, Case No. 1:05-CV-01198, 2011 U.S. Dist. LEXIS 146090 at *28 (E.D. Cal. Dec. 20, 2011) (citations omitted).

"The trial court may properly look with more favor upon a motion to reopen made after the submission, but before any indication by [it] as to its decision, than when the motion comes after a decision has been rendered . . . and [before] judgment [has been] entered." Caracci, 222 F. Supp. at 771 (citations omitted).

LEGAL ANALYSIS

In the motion, Plaintiff does not explain how the proposed additional testimony will impact the key findings that form the basis of this court's decision on the two breach of contract claims. The court's ruling in this adversary proceeding depends in large part on the actions of Ms. Nicole and Mr. Altman, both of whom testified at the bench trial. In particular, the testimony and documentary evidence show the following facts that were key to this court's analysis and decision:

(1) Ms. Nicole, on behalf of GLVM, left the August 18 Letter and an executed grant deed for the residence parcel at the offices of the entity foreclosing on the real property on behalf of T2M proposing that T2M accept the enclosed grant deed in lieu of foreclosing on the real property.

(2) Both parties agreed that the intent of the settlement agreement was for T2M to obtain title to the residence parcel, for Ms. Nicole to obtain title to the vacant lot free from T2M's lien, and for both parties to go their separate ways, although Ms. Nicole was under the impression that GLVM's proposal would operate like a sale of the residence and T2M understood GLVM's proposal to offer T2M a deed in lieu of foreclosure with respect to the residence parcel such that T2M would receive clean or marketable title to the residence parcel in exchange for stopping foreclosure proceedings against both the residence parcel and the vacant lot parcel, and T2M would release its lien on the vacant lot parcel.

(3) T2M decided to accept GLVM's deed in lieu of foreclosure proposal and instructed Mr. Altman to draft a settlement agreement, which was

drafted and executed by Jay Moore on behalf of T2M and forwarded to Ms. Nicole on or about August 26, 2019 for review and possible changes and, if there were no changes, for execution by GLVM and Ms. Nicole.

(4) Ms. Nicole did not ask for any changes to be made to the settlement agreement and did not insert any email and/or mailing address information for noticing purposes where there were blanks indicated for such information for either Ms. Nicole or GLVM into the relevant section 10(d) of the settlement agreement. This is important because Ms. Nicole resided at the residence parcel and, because the settlement agreement contemplated Ms. Nicole vacating the residence parcel, without an email or mailing address added to the settlement agreement, T2M would not have any contact information for Ms. Nicole after she vacated the residence parcel. Based on the signature dates on the fully executed settlement agreement, Ms. Nicole and GLVM executed the settlement agreement on August 27, 2019, either the same day or the day after the settlement agreement was emailed to Ms. Nicole by Mr. Altman.

Any testimony of Jay Moore, Amy Wall, Placer Title Company or Fidelity National Title will have little probative value as to the key issues with respect to the breach of contract causes of action, namely, who and how the settlement was proposed, how the settlement agreement was drafted and sent to Ms. Nicole, and the actions of Ms. Nicole on behalf of GLVM and herself with respect to clarifying and asking for changes to that document. Where, as here, the proposed new testimony will have little probative value, a motion to reopen is properly denied.

Moreover, this motion to reopen comes months after this court issued its oral decision in the adversary proceeding and after the court issued a pre-hearing disposition in which this court explained why it intended to deny Plaintiff's motion for reconsideration of the October 26 oral decision. A motion to reopen a trial after the trial court has rendered its decision is disfavored.

Finally, granting the motion to reopen will prejudice T2M because permitting possible testimony that does not appear to impact the key determinations that are at the heart of this court's findings of fact and conclusions of law will continue to delay T2M from obtaining entry of a judgment that is necessary to clear title to the residence so T2M can sell the residence and get out from under this bad investment. This consideration further supports denial of the motion to reopen.

Accordingly, because the proposed testimony will have little probative value to the issues at the heart of this dispute, the motion was filed months after the court issued its oral decision in this trial and reopening the testimony in this trial will prejudice T2M, Plaintiff's motion to reopen the trial will be denied.