

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 3, 2022
Place: Department A – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

1. [17-13818](#)-A-13 **IN RE: ANTHONY FRACKOWIAK**
[RSW-4](#)

MOTION TO MODIFY PLAN
1-18-2022 [\[78\]](#)

ANTHONY FRACKOWIAK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

2. [18-11923](#)-A-13 **IN RE: VICTOR/LANNEISE OROPEZA**
[PK-1](#)

MOTION TO APPROVE LOAN MODIFICATION
2-3-2022 [\[42\]](#)

LANNEISE OROPEZA/MV
PATRICK KAVANAGH/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 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.

Victor B. Oropeza and Lanneise D. Oropeza (together, "Debtors"), the debtors in this chapter 13 case, seek authorization from this court to enter into a loan modification agreement with Wells Fargo Bank N.A. ("Lender"). Doc. #42; Ex. A, Doc. #46.

Lender holds the first mortgage in Debtors' interest in a parcel of residential real property commonly known as 310 4th Street, McFarland, CA 93250 ("Property"). Doc. #44. Debtors assert that they will be able to successfully make payments after modification of the loan and that the terms are advantageous. Decl., Doc. #44. The proposed modification provides for a new principal balance of \$125,860.72 with an interest rate of 3.0% for 360 months. Ex. A, Doc. #46. The total monthly payment will be \$771.83. Id. Although Debtors indicated that amended Schedules I and J would be filed with the motion, no amended schedules have been filed. However, reviewing Debtors' original Schedule J shows that the loan modification will reduce Debtors' monthly mortgage payment. Schedule J, Doc. #1. The declarations filed by Debtors also state that the loan modification will reduce the monthly payment owed to Lender. Doc. ##44, 45. Debtors' pay Lender outside of their chapter 13 plan, and the reduction in mortgage payment owed to Lender will not prejudice creditors or adversely impact administration of the chapter 13 plan.

This motion is GRANTED. Debtors are authorized, but not required, to complete the loan modification with Lender. Debtors shall continue making plan payments in accordance with their confirmed chapter 13 plan.

3. [18-14853](#)-A-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-4](#)

CONTINUED MOTION TO MODIFY PLAN
12-14-2021 [\[65\]](#)

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(d). The chapter 13 trustee timely opposed this motion, but withdrew his opposition in consideration of terms

agreeable to the debtors and put forth in a stipulation and proposed order filed February 24, 2022. Doc. ##80, 81. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #81.

4. [20-12558](#)-A-13 **IN RE: IRMA MARTINEZ**
[PLG-2](#)

MOTION TO MODIFY PLAN
1-27-2022 [[36](#)]

IRMA MARTINEZ/MV
L. RODKEY/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

CONTINUED MOTION TO DISMISS CASE
12-23-2021 [\[14\]](#)

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The chapter 13 trustee ("Trustee") originally filed this motion to dismiss on December 23, 2021. Doc. #14. This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Although no opposition to the motion was ever filed, Trustee requested the court continue the hearing on the motion to be heard March 3, 2022 at 9:00 a.m. Doc. #23. The court granted Trustee's request for a continuance. Doc. #32.

The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. This matter will proceed as scheduled to track with Trustee's objection to professional fees, matter number 7 below (MHM-3).

Trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor failed to meet the requirements of 11 U.S.C. § 109(h) and is ineligible to be a debtor. Doc. #14. The debtor did not oppose the chapter 13 trustee's motion.

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). Cristy Eloisa Paredes ("Debtor") filed for relief under chapter 13 of the Bankruptcy Code on November 30, 2021. Doc. #1. Debtor has not filed a certificate showing that she received credit counseling before Debtor filed her bankruptcy petition. The Bankruptcy Code allows the 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, Debtor has not requested a waiver of the § 109(h)(1) requirements and, because Debtor did not receive credit counseling prior to filing her bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor 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) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 109(h) for failing to complete credit counseling timely.

Because Debtor is ineligible to be a debtor under both chapter 13 and chapter 7, the court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

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

6. [21-12758](#)-A-13 **IN RE: CRISTY PAREDES**
[MHM-2](#)

OBJECTION TO PROFESSIONAL FEES OF PETER L. NISSON
2-1-2022 [\[25\]](#)

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 3, 2022. Doc. #30.

7. [21-12758](#)-A-13 **IN RE: CRISTY PAREDES**
[MHM-3](#)

OBJECTION TO PROFESSIONAL FEES OF PETER NISSON
2-3-2022 [\[33\]](#)

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.

NO RULING.

8. [17-14163](#)-A-13 **IN RE: JOHN/RITA CORSON**
[PK-4](#)

MOTION TO MODIFY PLAN
1-17-2022 [\[103\]](#)

RITA CORSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 7, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #110. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than March 17, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by March 24, 2022.

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 24, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

9. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF PENTAGON FEDERAL CREDIT UNION
1-19-2022 [\[46\]](#)

SHANNON SIMPSON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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.

Shannon Elaine Simpson ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing the Debtor's 2017 Chevrolet Camaro ("Vehicle"), which is the collateral of Pentagon Federal Credit Union ("Creditor"). Doc. #46.

Bankruptcy Code § 1325(a)(*) (the hanging paragraph) permits the debtor to value 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 910-day 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).

Debtor asserts the Vehicle was purchased more than 910 days before the filing of this case. Decl. of Debtor, Doc. #48. Debtor states that loan from Creditor was a purchase money loan secured by the Vehicle. Doc. #48. Debtor asserts a replacement value of the Vehicle of \$27,000.00 and asks the court for an order valuing the Vehicle at \$27,000.00. Doc. #48. Debtor is competent to testify as to the value of the Vehicle. Creditor has not filed a proof of claim. Given the absence of contrary evidence, Debtor's 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 \$27,000.00. 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.

10. [21-12495](#)-A-13 **IN RE: JARED/CHRISTINA HARP**
[DMG-2](#)

CONTINUED MOTION TO CONFIRM PLAN
12-30-2021 [\[29\]](#)

CHRISTINA HARP/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a modified plan on February 18, 2022 (DMG-3, Doc. #51), with a motion to confirm the modified plan set for hearing on March 31, 2022 at 9:30 a.m. Doc. ##48-52.

1. [21-12353](#)-A-7 **IN RE: RESTITUTO SALANG**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
1-12-2022 [\[18\]](#)

TRACY DAVIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor timely filed a written opposition. Doc. #25. The failure of creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court to dismiss the chapter 7 bankruptcy case of Restituto Decena Salang ("Debtor") for abuse under 11 U.S.C. § 707(b)(2) (presumptive abuse) and § 707(b)(3)(B) (totality of the circumstances abuse). Doc. #18.

The court "may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts . . . if it finds that the granting of relief would be an abuse of the provisions of" chapter 7. 11 U.S.C. § 707(b)(1). The court may find abuse if the presumption of abuse arises pursuant to § 707(b)(2) or, under § 707(b)(3)(B), if the totality of the circumstances of the debtor's financial situation demonstrates abuse. 11 U.S.C. § 707(b)(3); In re Katz, 451 B.R. 512, 515 (Bankr. C.D. Cal. 2011).

The provisions of § 707(b)(2) create a formulaic test to determine whether Debtor's chapter 7 bankruptcy case is presumed abusive. Whether the presumption of abuse arises and the case should be dismissed depends on the means test calculation. Reed v. Anderson (In re Reed), 422 B.R. 214, 221 (C.D. Cal. 2009). The means test is a mechanical computation that demonstrates either the presumption of abuse or not, and the court has minimal discretion. See Katz, 451 B.R. at 519. Section 707(b)(2)(A) establishes a presumption of abuse "if the debtor's current monthly income ["CMI"] reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of [] 25% of the debtor's nonpriority unsecured claims in the case, or \$8,175, whichever is greater, or [] \$13,650." 11 U.S.C. § 707(b)(2)(A)(i). Based on this calculation, if a debtor's monthly disposable income exceeds \$227.50 per month (or \$13,650 over a period of 60 months), "a presumption of abuse arises and the debtor's case can be dismissed under § 707(b)(2)." Reed, 422 B.R. at 221.

Debtor's CMI listed on Form 122A-1, filed October 6, 2021, is \$10,194.07. Doc. #1. Debtor originally calculated his monthly disposable income after the claimed deductions to be -\$468.94, which, when multiplied by 60, would total -\$28,136.40 and would avoid the presumption of abuse. Doc. #1. However, UST conducted an independent calculation based on documents and statements provided by Debtor. Decl. of Teresa B. Field, Doc. #21. UST does not dispute Debtor's CMI, but rather disagrees with certain deductions and expenses claimed by Debtor. Doc. #21. Based on the documents provided to UST by Debtor, UST decreased tax liability from \$2,248.88 to \$1,534.30, decreased life insurance expense from \$641.46 to \$395.51, decreased health insurance and health savings account expenses from \$586.95 to \$478.66, decreased charitable contributions from \$50 to \$0, and increased chapter 13 monthly administrative expense from \$39.05 to \$49.64. Doc. #21. UST's adjustments reduce Debtor's deductions to \$9,554.31, leaving a monthly disposable income of \$638.76 (\$38,325.60 over 60 months). Doc. #21; Ex. A, Doc. #22. Debtor agrees with UST's adjustments and calculations. Doc. #25. Therefore, because Debtor's monthly disposable income, multiplied by 60 months, is greater than \$13,650, the presumption of abuse arises.

Debtor believes monthly payments Debtor and his non-debtor spouse send every month to Debtor's wife's parents ("Parents") in the Philippines in the approximate amount of \$900 to \$1,200 should be allowed as a deduction. Doc. #25. A debtor's monthly expenses may include actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled parent if the parent is unable to pay for such reasonable and necessary expenses. 11 U.S.C. § 707(b)(2)(A)(ii)(II); In re Harris, 415 B.R. 756, 759 (Bankr. E.D. Cal. 2009). However, Debtor has not included any ongoing contributions to Parents on Form 122A-1.

The presumption of abuse under § 707(b)(2) "may only be rebutted by demonstrating special circumstances . . . to the extent such special circumstances that [sic] justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(i). The debtor must demonstrate special circumstances by "itemiz[ing] each additional expense or adjustment of income and [providing] documentation for such expense or adjustment to income [and] a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. § 707(b)(2)(B)(ii). The debtor also must "attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required." 11 U.S.C. § 707(b)(2)(B)(iii).

Debtor argues that the presumption of abuse can be rebutted based on Debtor's ongoing payments to family in the Philippines. Doc. #25. Debtor contends that special circumstances justify the payments because Parents are elderly and in poor health. Decl. of Debtor, Doc. #26. Debtor submitted a number of receipts for purchases purportedly related Parents' health expenses; however, no explanation is provided regarding the care that Parents require, Parents' ability to care for themselves, or whether any care is ongoing. Doc. #27. After reviewing Debtor's schedules and submitted evidence, the court does not find that the presumption of abuse has been rebutted.

Debtor's opposition states that the exchange rate from U.S. dollars to Philippine pesos ("PHP") is about 1 to 50, such that \$1USD equates to 50PHP. Doc. #25. Although none of the receipts supporting Debtor's expenses for support of Parents are authenticated, the court reviewed the receipts and did not find a single month of expenses greater than \$500USD. Exs., Doc. #27. UST completed a similar analysis and found that the receipts show total expenses

for the year 2021 are less than \$400USD, although the receipts for January 2022 show monthly expenses of \$418USD. Doc. #29.

The presumption of abuse arises if a debtor's monthly disposable income is greater than \$227.50. Because Debtor's monthly disposable income is \$638.75, the presumption of abuse under § 707(b)(2) arises in this case. Debtor has not demonstrated special circumstances justifying monthly payments to Parents to rebut the presumption of abuse. Because Debtor has not rebutted the presumption of abuse as required by Bankruptcy Code § 707(b)(2)(B), UST's motion to dismiss for abuse under § 707(b)(2) is GRANTED.

Because this case can be dismissed for abuse under § 707(b)(2), the court will not consider dismissal under § 707(b)(3)'s totality of the circumstances analysis.

2. [20-11367](#)-A-7 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[DMG-6](#)

MOTION TO EXTEND DEADLINE TO ASSUME EXECUTORY CONTRACTS AND LEASES
2-7-2022 [[388](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Temblor Petroleum Company LLC ("Debtor"), moves to extend the time to assume or reject non-operator interests in various oil and gas leases identified as the "Witter Field" ("Working Interests") by 90 days from the hearing date of March 3, 2022. Doc. #388. Ninety days from the hearing date on the motion, March 3, 2022, is June 1, 2022.

Under 11 U.S.C. § 365(d)(1), in a chapter 7 bankruptcy case, an executory contract is deemed rejected if not assumed or rejected within 60 days from the order for relief unless the court, for cause, extends the time to assume or reject within that 60-day period. Debtor's bankruptcy case was converted to chapter 7 on May 5, 2021. Doc. #328. Ninety days from the conversion date was July 4, 2021. However, a prior request to extend the deadline to assume executory contracts and leases was granted on August 13, 2021, which set October 26, 2021, as the date by which Trustee could assume or reject executory contracts and leases. Order, Doc. #369. The court further extended the deadline

to assume or reject executory contracts and leases to February 15, 2022. Doc. #377. Trustee timely filed this motion on February 7, 2022. Fed. R. Bankr. P. 9006(a)(1); Southwest Aircraft Servs., Inc. v. City of Long Beach (In re Southwest Aircraft Servs., Inc.), 831 F.2d 848, 853 (9th Cir. 1987); Carrico v. Tompkins (In re Tompkins), 95 B.R. 722, 724 (B.A.P. 9th Cir. 1989).

The Working Interests are among the assets of Debtor's estate. After interviewing representatives of Debtor and representatives from the entity employed in the chapter 11 case to market the Working Interests, Trustee has determined that Trustee should attempt to sell the Working Interests, and there is interest by third parties in the Working Interests. Tr.'s Decl., Doc. #390. Trustee has not yet determined the value or ability to sell the Working Interests and seeks to preserve the rights of the chapter 7 estate in the Working Interests by extending the time to assume or reject the Working Interests for 90 days from the date of the hearing on the motion. Id.

The court finds that cause exists to extend the period to assume or reject the Working Interests. Trustee needs additional time to evaluate the Working Interests. The deadline for Trustee to assume or reject the Working Interests will be extended to June 1, 2022.

3. [21-12584](#)-A-7 **IN RE: JONATHAN/BETHANY ELLIS**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
1-12-2022 [\[20\]](#)

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor timely filed a written non-opposition. Doc. #25. The failure of creditors 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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court to dismiss the chapter 7 bankruptcy case of Steven Jonathan Michael Ellis

and Bethany Ann Ellis (together, "Debtors") for abuse under 11 U.S.C. § 707(b)(2) (presumptive abuse) and § 707(b)(3)(B) (totality of the circumstances abuse). Doc. #20. Debtors do not oppose UST's motion. Doc. #25.

The court "may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts . . . if it finds that the granting of relief would be an abuse of the provisions of" chapter 7. 11 U.S.C. § 707(b)(1). The court may find abuse if the presumption of abuse arises pursuant to § 707(b)(2) or, under § 707(b)(3)(B), if the totality of the circumstances of the debtor's financial situation demonstrates abuse. 11 U.S.C. § 707(b)(3); In re Katz, 451 B.R. 512, 515 (Bankr. C.D. Cal. 2011).

The provisions of § 707(b)(2) create a formulaic test to determine whether Debtors' chapter 7 bankruptcy case is presumed abusive. Whether the presumption of abuse arises and the case should be dismissed depends on the means test calculation. Reed v. Anderson (In re Reed), 422 B.R. 214, 221 (C.D. Cal. 2009). The means test is a mechanical computation that demonstrates either the presumption of abuse or not, and the court has minimal discretion. See Katz, 451 B.R. at 519. Section 707(b)(2)(A) establishes a presumption of abuse "if the debtor's current monthly income ["CMI"] reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of [] 25% of the debtor's nonpriority unsecured claims in the case, or \$8,175, whichever is greater, or [] \$13,650." 11 U.S.C. § 707(b)(2)(A)(i). Based on this calculation, if a debtor's monthly disposable income exceeds \$227.50 per month (or \$13,650 over a period of 60 months), "a presumption of abuse arises and the debtor's case can be dismissed under § 707(b)(2)." Reed, 422 B.R. at 221.

Debtors' CMI listed on Form 122A-1, filed November 7, 2021, is \$11,922.59. Doc. #1. UST prepared an independent calculation of Debtors' monthly disposable income and Debtors do not dispute UST's calculations. Doc. ##22, 25. Per UST's calculations, Debtors' monthly disposable income after deductions is \$853.46, which multiplied by 60 totals \$51,207.60. Doc. #22. Because Debtors' monthly disposable income, multiplied by 60 months, is greater than \$13,650, the presumption of abuse arises.

The presumption of abuse under § 707(b)(2) "may only be rebutted by demonstrating special circumstances . . . to the extent such special circumstances that [sic] justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(i). The debtor must demonstrate special circumstances by "itemiz[ing] each additional expense or adjustment of income and [providing] documentation for such expense or adjustment to income [and] a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. § 707(b)(2)(B)(ii). The debtor must also "attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required." 11 U.S.C. § 707(b)(2)(B)(iii).

Here, Debtors have not demonstrated any special circumstances and have not rebutted the presumption of abuse. Debtors do not contest UST's motion to dismiss. Doc. #25.

The presumption of abuse under § 707(b)(2) arises in this case. Because Debtors have not rebutted the presumption of abuse as required by Bankruptcy Code § 707(b)(2)(B), UST's motion to dismiss for abuse under § 707(b)(2) is GRANTED.

Because this case can be dismissed for abuse under § 707(b)(2), the court will not consider dismissal under § 707(b)(3)'s totality of the circumstances analysis.

4. [21-12731](#)-A-7 **IN RE: GURMEET CHERA**
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-8-2022 [[17](#)]

NO RULING.

10:30 AM

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

1. [21-10425](#)-A-7 **IN RE: WAMIDH AL KAJAJI**
[21-1028](#) [CAE-1](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
8-31-2021 [[11](#)]

SMAHA LAW GROUP, APC V. KAJAJI ET AL
KRISTEN FRITZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [19-13729](#)-A-7 **IN RE: MICHELLE PAUL**
[19-1130](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-2-2019 [[1](#)]

LOS ANGELES FEDERAL CREDIT UNION V. PAUL
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 7, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on February 24, 2022 (Doc. #52), the status conference will be continued to April 7, 2022, at 11:00 a.m.

If this adversary proceeding is not finally resolved prior to the continued date, the parties shall file either joint or unilateral status report(s) not later than April 1, 2022.

1. [21-12578](#)-A-7 **IN RE: JOSE MADRIGAL MARTINEZ**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
2-1-2022 [\[26\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The debtor's counsel shall inform the debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship, which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.