

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 10, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [20-13407](#)-A-13 **IN RE: ANGIE BEASWORRICK**
[LAR-2](#)

CONTINUED MOTION TO MODIFY PLAN
12-20-2021 [\[49\]](#)

ANGIE BEASWORRICK/MV
LAUREN RODE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Angie C. Beasworrick ("Debtor") filed and served this motion to confirm the second modified chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set for hearing on January 27, 2022. Doc. ##49-54. The chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #55. The court continued this matter to March 10, 2022 and ordered Debtor to file and serve a written response to Trustee's objection by February 10, 2022; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by February 17, 2022. Doc. #58.

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has not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn.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

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

2. [18-11813](#)-A-13 **IN RE: LILY AVALOS**
[SLL-3](#)

MOTION TO MODIFY PLAN
1-24-2022 [\[50\]](#)

LILY AVALOS/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted pending Debtor's acceptance of proposed language.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") timely filed limited opposition this motion. See Opp'n, Doc. #56. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Lily S. Avalos ("Debtor"), the chapter 13 debtor, moves the court to confirm Debtor's third modified chapter 13 plan. Doc. ##50-55. Trustee objects to the percentage dividend allocated to nonpriority unsecured creditors in the plan. Doc. #56. The plan proposes to pay 2.819% of \$35,470.77 to general unsecured creditors, but the allowed unsecured claims total \$18,495.65. Doc. #56. Debtor's case has a liquidation requirement of \$1,000, but a dividend of 2.819% of allowed unsecured claims will only pay \$521.39. Doc. #56. Therefore, Trustee proposes that the order confirming the plan raise the percentage to unsecured creditors to 5.41% to satisfy the liquidation requirement. The following language should be included in the order confirming Debtor's third modified plan:

"General unsecured creditors shall be paid 5.41%."

Debtor has not responded to Trustee's limited opposition. This matter will proceed as scheduled so Debtor may respond.

If Debtor consents to the dividend increase, the motion to confirm Debtor's third modified plan will be GRANTED. The proposed order shall reflect the percentage to be paid to general unsecured creditors. The court will continue this matter if a further hearing is necessary.

3. [21-12819](#)-A-13 **IN RE: CLAUDIA CASTRO**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE CO.
1-14-2022 [[25](#)]

CLAUDIA CASTRO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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.

By the motion, the debtor seeks to value the collateral of Regional Acceptance Corporation ("Creditor"), the holder of a secured claim evidenced by a proof of claim, Claim 4. Federal Rule of Bankruptcy Procedure 3012(a) requires notice be given to the holder of the claim, which was not done here. Creditor's Claim 4 was filed January 5, 2022. Claim 4 states that notice to Creditor shall be sent to: PO Box 1847, Wilson, N.C., 27894. Claim 4. Notice by mail of this motion

was sent January 14, 2022, but no notice was sent to the address indicated on Creditor's proof of claim. Doc. #30.

4. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-9](#)

MOTION TO MODIFY PLAN
2-9-2022 [[126](#)]

ROCHELLE PORTILLO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
OST 2/9/22

NO RULING.

5. [18-14223](#)-A-13 **IN RE: KRISTIN COLLINS**
[PK-4](#)

MOTION TO MODIFY PLAN
2-10-2022 [[76](#)]

KRISTIN COLLINS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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.

On February 10, 2022, the debtor moved to confirm the first modified plan on shortened time. Doc. ##76-82. The Notice of Hearing filed with the motion states that written opposition is required. Doc. #77. The Notice of Hearing only states that a failure to timely file written opposition may be deemed a waiver of any opposition, without providing any date by which written opposition must be submitted.

Because the Notice of Hearing does not provide a date by which written opposition was required, this motion is DENIED WITHOUT PREJUDICE for improper notice.

6. [19-14729](#)-A-13 **IN RE: JASON/JODI ANDERSON**
[FW-4](#)

MOTION TO MODIFY PLAN
1-13-2022 [\[64\]](#)

JODI ANDERSON/MV
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 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.

7. [21-11640](#)-A-13 **IN RE: TRICIA ACEVES**
[SLL-3](#)

MOTION TO MODIFY PLAN
1-24-2022 [\[51\]](#)

TRICIA ACEVES/MV
STEPHEN LABIAK/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.

8. [19-14555](#)-A-13 **IN RE: JOSHUA/MANDY NEUFELDT**
[FW-4](#)

MOTION FOR HARDSHIP DISCHARGE
2-3-2022 [[50](#)]

MANDY NEUFELDT/MV
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 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.

Joshua Allen Neufeldt and Mandy Anne Neufeldt (together, "Debtors"), the chapter 13 debtors, move the court for a hardship discharge pursuant to 11 U.S.C. § 1328(b). Doc. #50.

Debtors filed this chapter 13 case on October 31, 2019. Doc. #1. Debtors' chapter 13 plan was confirmed February 18, 2020. Doc. ##21, 24. Debtors confirmed their first modified chapter 13 plan on August 28, 2020. Doc. #48.

Mandy Anne Neufeldt was diagnosed with Stage 4 breast cancer in November 2021. Decl. of Mandy Anne Neufeldt, Doc. #52. She has begun to undergo significant chemotherapy treatments that will likely continue for the rest of her life. Id. Mrs. Neufeldt has been placed on permanent disability and will not be able to return to work. Id. Mrs. Neufeldt's disability payments end in May 2022 after which she will only receive social security income. Id. Debtors filed amended

Schedules I and J showing anticipated household income and expenses. Doc. #54. Debtors' amended schedules show that Debtors' income is not sufficient to meet the reasonable and necessary expenses and plan modification is not practicable. Doc. #52. Debtors received a chapter 7 discharge within eight years prior to the filing of this chapter 13 and are unable to convert and obtain a chapter 7 discharge. Doc. #52. There would be no equity to disburse in a chapter 7. Id.

Bankruptcy Code § 1328(b) permits the court to grant a hardship discharge to a debtor who has not completed plan payments if certain requirements are met. The hardship discharge may be granted only if:

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under § 1329 of this title is not practicable.

11 U.S.C. § 1328(b)(1)-(3). The debtor bears the burden of proof on all elements of § 1328(b). Roberts v. Boyajian (In re Roberts), 279 F.3d 91, 93 (1st Cir. 2002). The grant or denial of a request for a hardship discharge is within the discretion of the bankruptcy court. Id.

The court finds Debtors have satisfied the first condition under § 1328(b). Mrs. Neufeldt's cancer diagnosis and Debtors' subsequent failure to complete the payments under the plan is due to circumstances beyond their control. Mrs. Neufeldt will not be able to rejoin the work force and will require intensive cancer treatments for the foreseeable future. Debtors' inability to complete plan payments is due to circumstances for which Debtors should not justly be held accountable.

The court finds the second condition under § 1328(b) also is met. The value distributed under Debtors' plans is greater than the 0% unsecured creditors would have received from liquidation under Chapter 7 because Debtors have no nonexempt property that could have been liquidated. See Doc. #1, Schedules A/B and C.

Finally, the court finds the third condition under § 1328(b) also is satisfied. Debtors' most recent schedules filed on February 3, 2022 show Debtors have monthly income of \$3,817.75 and monthly expenses of \$5,655.00. Am. Schedules I and J, Doc. #54. Accordingly, it appears Debtors have a monthly deficit of \$1,837.25 and are unable to afford payments under the current plan or any modified plan.

Because the court finds that Debtors have met their burden of proof on all elements of § 1328(b), this motion is GRANTED.

Pursuant to Federal Rule of Bankruptcy Procedure 4007(d), the last day to file a complaint under § 523(a)(6) of the Bankruptcy Code is May 9, 2022. Not later than March 24, 2022, Debtors' counsel shall give notice to all creditors and file a proof of service so indicating.

9. [22-10158](#)-A-13 **IN RE: GUILLERMO/VERONICA PRADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-18-2022 [[21](#)]

JASON VOGELPOHL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

The exhibits to the opposition filed by counsel on February 25, 2022 (Doc. ##26, 27) are not receipts and do not show that a payment was made. The court's finance department does not show receipt of the funds.

10. [19-12961](#)-A-13 **IN RE: LEONARDO GONZALEZ**
[SL-4](#)

CONTINUED MOTION TO MODIFY PLAN
12-17-2021 [[104](#)]

LEONARDO GONZALEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN/CASE DISMISSED 2/25/22

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 9, 2022. Doc. #116. The case was dismissed on February 25, 2022. Doc. #119.

11. [17-11375](#)-A-13 **IN RE: POLLY RISENHOOVER**
[PLG-1](#)

MOTION TO MODIFY PLAN
2-3-2022 [[27](#)]

POLLY RISENHOOVER/MV
STEVEN ALPERT/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [19-14175](#)-A-13 **IN RE: LEOBIGILDO ESTRADA**
[BDB-1](#)

MOTION TO MODIFY PLAN
2-2-2022 [\[40\]](#)

LEOBIGILDO ESTRADA/MV
BENNY BARCO/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.

13. [20-12179](#)-A-13 **IN RE: BURRON/ANNA CUMMINGS**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
2-4-2022 [\[68\]](#)

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 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 Burron Marcel Cummings and Anna Mae Cummings (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of \$4,150.50 and reimbursement for expenses of \$186.01 for services rendered from April 16, 2021 through January 31, 2022. Doc. #68. Debtors' confirmed plan provides for \$12,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #55, 65. One prior fee application has been approved authorizing interim compensation and reimbursement of expenses of \$4,853.30. Doc. #41. Debtors consent to the amount requested in Movant's application. Ex. E, Doc. #70.

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). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). 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) preparing and prosecuting Debtors' first modified plan; (2) responding to a motion for relief from stay filed by a creditor; (3) general case administration; and (4) preparing the fee application. Exs. A, B & C, Doc. #70. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation of \$4,150.50 and reimbursement for expenses of \$186.01, totaling \$4,336.51, to be paid in a manner consistent with the terms of the confirmed plan.

14. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[MHM-8](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-4-2022 [[320](#)]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Set for evidentiary hearing.

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On February 25, 2022, Sylvia Nicole

("Debtor"), the chapter 13 debtor, filed untimely opposition. Doc. #338. The failure the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

In what appears to be her fifth amended Schedule C filed on January 6, 2022, Debtor asserts a homestead exemption in the residence located at 1521 S. 7th Street, Los Banos, CA 93635 (the "Property") under California Code of Civil Procedure ("C.C.P.") § 704.730. Am. Schedule C, Doc. #304. By order of the court dated January 13, 2022, Debtor is prohibited from filing an amended Schedule C without prior leave of this court until after the current objections to exemption have been finally resolved on the merits. Order, Doc. #311.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, and creditor T2M Investments LLC ("T2M") object to Debtor's claim of a homestead exemption in the Property. Tr.'s Obj., Doc. #320; T2M's Obj., Doc. #323. Although T2M did not join Trustee's objection, T2M and Trustee raise the same objection, relying on essentially the same facts and law. Debtor raises the same arguments in opposition to both objections. In the interests of judicial economy, the court will address Trustee's and T2M's objections simultaneously.

After reviewing the objections, opposition, and included evidence, the court concludes that an evidentiary hearing is needed to resolve Debtor's entitlement to a homestead exemption.

California has opted out of the federal system and the validity of exemptions are controlled by California law. C.C.P. § 703.130; Phillips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018); Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). The property to which California's homestead exemption applies must be a homestead as that term is defined by C.C.P. § 704.710(c). California Code of Civil Procedure § 704.710(c) defines homestead as follows:

"Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). "'Dwelling' means a place where a person resides." C.C.P. § 704.710(a). The following examples of a dwelling are provided in the California statute:

- (1) A house together with the outbuildings and the land upon which they are situated.
- (2) A mobilehome together with the outbuildings and the land upon which they are situated.
- (3) A boat or other waterborne vessel.
- (4) A condominium.
- (5) A planned development.
- (6) A stock cooperative.
- (7) A community apartment project.

C.C.P. § 704.710(a). Debtor believes she is entitled to a homestead exemption in the Property because, Debtor argues, the Property is her primary residence and she lives there, having only left temporarily. Both Trustee and T2M contend

that Debtor does not currently reside on the Property and/or Debtor has not intended to retain the Property as her homestead.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730(a)] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz, 547 B.R. at 337 (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

If the court determines that there is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or denied, an evidentiary hearing may be held. LBR 9014-1(g). In this case, the objections by T2M and Trustee, and Debtor's responses, require the court to decide disputed questions of material fact that can be resolved only after an evidentiary hearing.

Accordingly, an evidentiary hearing is needed to resolve the objections Debtor's homestead exemption. At the hearing, the parties shall be prepared to propose a schedule for an evidentiary hearing.

15. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SSA-6](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-4-2022 [\[323\]](#)

T2M INVESTMENTS LLC/MV
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Set for evidentiary hearing.

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On February 25, 2022, Sylvia Nicole ("Debtor"), the chapter 13 debtor, filed untimely opposition. Doc. #337. The failure the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

In what appears to be her fifth amended Schedule C filed on January 6, 2022, Debtor asserts a homestead exemption in the residence located at 1521 S. 7th Street, Los Banos, CA 93635 (the "Property") under California Code of Civil Procedure ("C.C.P.") § 704.730. Am. Schedule C, Doc. #304. By order of the court dated January 13, 2022, Debtor is prohibited from filing an amended Schedule C without prior leave of this court until after the current objections to exemption have been finally resolved on the merits. Order, Doc. #311.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, and creditor T2M Investments LLC ("T2M") object to Debtor's claim of a homestead exemption in the Property. Tr.'s Obj., Doc. #320; T2M's Obj., Doc. #323. Although Trustee did not join T2M's objection, T2M and Trustee raise the same objection, relying on essentially the same facts and law. Debtor raises the same arguments in opposition to both objections. In the interests of judicial economy, the court will address Trustee's and T2M's objections simultaneously.

After reviewing the objections, opposition, and included evidence, the court concludes that an evidentiary hearing is needed to resolve Debtor's entitlement to a homestead exemption.

California has opted out of the federal system and the validity of exemptions are controlled by California law. C.C.P. § 703.130; Phillips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018); Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). The property to which California's homestead exemption applies must be a homestead as that term is defined by C.C.P. § 704.710(c). California Code of Civil Procedure § 704.710(c) defines homestead as follows:

"Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). "'Dwelling' means a place where a person resides." C.C.P. § 704.710(a). The following examples of a dwelling are provided in the California statute:

- (1) A house together with the outbuildings and the land upon which they are situated.
- (2) A mobilehome together with the outbuildings and the land upon which they are situated.
- (3) A boat or other waterborne vessel.
- (4) A condominium.
- (5) A planned development.
- (6) A stock cooperative.
- (7) A community apartment project.

C.C.P. § 704.710(a). Debtor believes she is entitled to a homestead exemption in the Property because, Debtor argues, the Property is her primary residence and she lives there, having only left temporarily. Both Trustee and T2M contend that Debtor does not currently reside on the Property and/or Debtor has not intended to retain the Property as her homestead.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730(a)] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz, 547 B.R. at 337 (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

If the court determines that there is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or

denied, an evidentiary hearing may be held. LBR 9014-1(g). In this case, the objections by T2M and Trustee, and Debtor's responses, require the court to decide disputed questions of material fact that can be resolved only after an evidentiary hearing.

Accordingly, an evidentiary hearing is needed to resolve the objections Debtor's homestead exemption. At the hearing, the parties shall be prepared to propose a schedule for an evidentiary hearing.

16. [21-11182](#)-A-13 **IN RE: KIAH SANDERS**
[WLG-2](#)

CONTINUED MOTION TO MODIFY PLAN
12-14-2021 [[29](#)]

KIAH SANDERS/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 31, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to March 31, 2022, at 9:30 a.m., to be heard with the debtor's motion to incur debt (DCN WLG-3).

17. [21-12785](#)-A-13 **IN RE: THURMAN ROGERS**
[MHM-1](#)

MOTION TO DISMISS CASE
2-9-2022 [[21](#)]

MICHAEL MEYER/MV

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 debtor's case will be dismissed pursuant to the trustee's motion to dismiss (DCN MHM-2), matter number 18 below.

MOTION TO DISMISS CASE
2-9-2022 [\[25\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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). 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss the chapter 13 bankruptcy case of Thurman L. Rogers Jr. ("Debtor") for unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). Doc. #25. Debtor failed to provide Trustee with any of the documentation required by Bankruptcy Code and local rules. Doc. #25. Trustee also asks the court to dismiss this case because Debtor has failed to demonstrate timely completion of credit counseling pursuant to 11 U.S.C. § 109(h). Doc. #25. Debtor 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). Debtor filed for relief under chapter 13 of the Bankruptcy Code on December 9, 2021. Doc. #1. Debtor has not filed proof that he received credit counseling prior to filing his 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. Further, § 109(h)(3)(B) prohibits a court from granting a waiver of the pre-petition credit counseling requirement if not requested within 45 days of the petition date. Debtor filed the petition on December 9, 2021; Trustee's motion to dismiss was filed February 9, 2022. Because Debtor did not receive credit counseling prior to filing his bankruptcy petition and cannot receive 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. Debtor commenced this bankruptcy case on December 9, 2021. Doc. #1. Debtor has provided no documents to Trustee. Doc. #27. Additionally, Debtor has failed to show evidence of completion of pre-petition credit counseling and is ineligible to be a debtor.

Debtor has failed to submit the required documentation, including evidence of pre-petition credit counseling which is required of a debtor in both chapter 7 and chapter 13. Because Debtor is ineligible under either chapter 7 or 13 of the Bankruptcy Code, 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.

19. [20-10691](#)-A-13 **IN RE: JENNIFER SCHULTZ**
[FW-5](#)

MOTION TO MODIFY PLAN
1-14-2022 [[91](#)]

JENNIFER SCHULTZ/MV
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 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.

20. [21-12296](#)-A-13 **IN RE: ISTVAN/MARGIT MAJOROS**
[PWG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
12-23-2021 [[50](#)]

MARGIT MAJOROS/MV
PHILLIP GILLET/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [21-12014](#)-A-7 **IN RE: YADWINDER SINGH**
[22-1002](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
1-7-2022 [\[6\]](#)

SALVEN V. SINGH ET AL
ANTHONY JOHNSTON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why they have not filed the discovery plan as required by the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on January 6, 2022. Doc. #5.

2. [21-10842](#)-A-7 **IN RE: JESUS FLORES AND LETICIA HERNANDEZ**
[21-1029](#) [SLL-1](#)

MOTION FOR SUMMARY JUDGMENT
1-21-2022 [\[15\]](#)

VOKSHORI LAW GROUP V. FLORES
STEPHEN LABIAK/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 31, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

On February 28, 2022, the plaintiff, who is not the moving party, filed a Notice of Settlement of Entire Case ("Notice") and served the Notice on counsel for the defendant. Doc. ##30-31. According to the Notice, the parties have reached a settlement of this adversary proceeding that needs to be formalized. While the plaintiff requested that the motion for summary judgment be taken off calendar, the court instead will continue the motion to the next adversary proceeding calendar on March 31, 2022, at 11:00 a.m. to permit the parties to finalize their settlement and for the moving party to withdraw the motion, if appropriate. Counsel for the defendant should file and serve a status report on or before March 17, 2022 if the defendant seeks to have the motion for summary judgment decided on the merits at the continued hearing on March 31, 2022.

3. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA**
[20-1040](#) **MALDONADO-RAMIREZ**

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [\[1\]](#)

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
ROBERT RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [NS-13](#)

MOTION TO DISMISS DEFENDANT T2M INVESTMENTS, LLC'S CROSS-COMPLAINT
1-18-2022 [\[297\]](#)

NICOLE V. T2M INVESTMENTS, LLC
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.

Sylvia Nicole ("Nicole") is a chapter 13 debtor pro se and the plaintiff in this adversary proceeding. On September 9, 2021, T2M Investments LLC ("T2M") filed a counterclaim ("Counterclaim") against Nicole, GLVM a California corporation ("GLVM"), Tam Nguyen, Does 1 through 15, and all other persons unknown claiming any right, title, estate, lien, or interest in the properties described in the counterclaim (collectively, "Counter-Defendants"). Doc. #261. T2M filed the Counterclaim under Federal Rule of Civil Procedure ("Rule") 13(a), compulsory counterclaims. By the Counterclaim, T2M asserts five claims for relief against Counter-Defendants.

The first claim for relief seeks to quiet title against the claims of Counter-Defendants on the real property commonly referred to as 1521 S. 7th Street, Los Banos, Merced County, California Parcel No. 026-091-033 and Parcel No. 026-091-032 (together, the "Property"). Doc. #261. The second claim for relief is against Nicole and GLVM for breach of contract. The third claim for relief seeks specific performance of Nicole and GLVM stemming from the breach of contract. The fourth claim for relief seeks the enforcement of a settlement agreement under California Code of Civil Procedure § 664.6 against Nicole and GLVM. The fifth and final claim for relief seeks declaratory relief against all Counter-Defendants concerning title and ownership of the Property.

On November 12, 2021, Nicole moved to dismiss the Counterclaim for failure to state a claim but withdrew the motion on January 7, 2022, one day prior to the date set for hearing. See Doc. #282; Doc. #295. The court dropped the matter from calendar. Doc. #296. Nicole never filed a responsive pleading to the Counterclaim. On January 18, 2022, Nicole filed the motion to dismiss the Counterclaim presently before the court ("Motion"). Doc. #297. Nicole asks the

court to dismiss T2M's Counterclaim for failure to state a claim upon which relief can be granted but does not cite any specific legal authority. Doc. #297. The court construes this request as a motion to dismiss the Counterclaim for failure to state a claim pursuant to Rule 12(b)(6), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012(b).

As stated above, Nicole previously brought a motion to dismiss for failure to state a claim before filing a responsive pleading. Doc. #282; see Rule 7(a). T2M has not amended the Counterclaim, yet Nicole again brings a motion to dismiss for failure to state a claim without having filed a responsive pleading. T2M objects to the Motion because the Motion is barred by Rule 12(g) and (h). Doc. #300.

Rule 12(g) states that "[e]xcept as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." Rule 12(g)(2). Rule 12(h)(2) is an exception to Rule 12(g)(2) and provides that a motion under Rule 12(b)(6) may be raised "(A) in any pleading allowed or ordered under Rule 7(a); (B) by a motion under Rule 12(c); or (C) at trial." Rule 12(h)(2); Opus East, L.L.C. v. Opus, L.L.C. (In re Opus East, L.L.C.), 480 B.R. 561, 569 (Bankr. D. Del. 2012). "Rule 12(g)(2) provides that a defendant who fails to assert a failure-to-state-a-claim defense in a pre-answer Rule 12 motion cannot assert that defense in a later pre-answer motion under Rule 12(b)(6), but the defense may be asserted in other ways." In re Apple iPhone Antitrust Litigation, 846 F.3d 313, 317-18 (9th Cir. 2017), aff'd sub nom, Apple Inc. v. Pepper, 139 S. Ct. 1514 (2019); see Sagastume v. Psychedemics Corp., No. CV 20-6624, 2021 U.S. Dist. LEXIS 197343 at *7-8 (C.D. Cal. Feb. 16, 2021). "Rule 12(g) is designed to avoid repetitive motion practice, delay, and ambush tactics." In re Apple iPhone Antitrust Litigation, 846 F.3d at 318 (quoting Allstate Ins. Co. v. Countrywide Fin. Corp., 824 F. Supp. 2d 1164, 1175 (C.D. Cal. 2011)).

Nothing has changed between the filing of Nicole's first Rule 12(b)(6) motion and the current Motion under Rule 12(b)(6). Deciding the merits of the Motion now would violate Rule 12(g)'s ban on repetitive, dilatory Rule 12(b) motions.

Accordingly, the Motion is DENIED.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[22-1003](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
2-1-2022 [[31](#)]

NICOLE V. PEEK FUNERAL HOME ET AL

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

DISPOSITION: Continued to April 21, 2022 at 11:00 a.m.

NO ORDER REQUIRED.

On February 25, 2022, the court issued an order continuing the hearing on the order to show cause to April 21, 2022 at 11:00 a.m. Doc. #40.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[22-1003](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
1-24-2022 [[29](#)]

NICOLE V. PEEK FUNERAL HOME ET AL

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

DISPOSITION: Continued to April 21, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court continued the hearing on the order to show cause, matter number 5 above. Therefore, the status conference will be continued to coincide with the continued hearing on the order to show cause.

7. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#)

TELEPHONIC STATUS CONFERENCE RE: AMENDED COMPLAINT
9-5-2018 [[131](#)]

KODIAK MINING & MINERALS II LLC ET AL V. DON ROSE OIL CO.,
VONN CHRISTENSON/ATTY. FOR PL.

NO RULING.