



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, March 16, 2023  
Department A – Courtroom #11  
Fresno, California**

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## 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. [23-10200](#)-A-13     **IN RE: ROSALINDA GIRON**  
[MHM-1](#)

MOTION TO DISMISS CASE  
2-7-2023    [[11](#)]

MICHAEL MEYER/MV  
DISMISSED 2/22/23

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 February 22, 2023. Doc. #15.  
Therefore, this motion will be DENIED AS MOOT.

2. [19-10404](#)-A-13     **IN RE: MARIA VASQUEZ**  
[MHM-4](#)

MOTION TO DISMISS CASE  
2-9-2023    [[62](#)]

MICHAEL MEYER/MV  
BENNY BARCO/ATTY. FOR DBT.  
WITHDRAWN 3/14/23

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to dismiss the case on March 14, 2023. Doc. #66.

MOTION TO VACATE DISMISSAL OF CASE  
3-1-2023    [\[141\]](#)

JAMIE MAXFIELD/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
DEBTORS DISMISSED 01/19/2023

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.

Tucker McKay Maxfield and Jamie Leann Maxfield (together, "Debtors") move to vacate the order dismissing their chapter 13 case and allow Debtors to continue with their chapter 13 plan. Doc. #141. Debtors' bankruptcy case was dismissed on January 19, 2023, after failing to bring plan payments current. Doc. #135.

Debtors move under Federal Rule of Civil Procedure ("Rule") 60(b), incorporated to this proceeding by Federal Rule of Bankruptcy Procedure 9024, to vacate the dismissal of their bankruptcy case. Rule 60(b)(1) permits the court to grant relief from a final order for, *inter alia*, mistake, inadvertence, surprise, excusable neglect, or any other reason that justifies relief. Rule 60(b)(1); Doc. #141. A motion to reconsider an order is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. v. Estate of Bishop, 299 F.3d 877, 890 (9th Cir. 2000); see also Berman v. Freedom Fin. Network, LLC, 30 F.4th 849 (9th Cir. 2022) (applying the standard to Rule 60(b)).

Debtors argue that the order dismissing their chapter 13 case should be vacated under Rule 60(b) because of excusable neglect. "[F]or purposes of Rule 60(b), 'excusable neglect' is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 394 (1993). The determination of "what sorts of neglect will be considered 'excusable' . . . is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Id. at 395. Relevant circumstances include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Id.

The court is inclined to grant Debtors' motion and vacate the dismissal due to excusable neglect. Debtors filed the chapter 13 bankruptcy petition on February 13, 2019. Doc. #1. The first modified chapter 13 plan was confirmed on

September 16, 2019. Doc. #86. The second modified plan was confirmed on May 11, 2020. Doc. #107. Debtors' case was previously dismissed on November 18, 2021, for failure to make plan payments. Doc. #115. The court vacated the dismissal on December 20, 2021. Doc. #123. Debtors' case was again dismissed on January 19, 2023, for failure to make plan payments. Doc. #134.

Debtors received a Notice of Default and Intent to Dismiss Case ("NODID") in December 2022 that required Debtors to be fully current on their plan by paying \$3,667.30 by January 16, 2023. Decl. of Tucker Maxfield, Doc. #143. Debtors made a payment and believed the payment was sufficient to be received by the chapter 13 trustee by January 16, 2023 since the money was taken out of their bank account on January 13, 2023. Id. at ¶ 9. Debtors state that TFS had the payment for several days, but Debtors had no way of knowing when the payment was received. Id. at ¶ 10. Additionally, Debtors state that they would have become current on their plan payments as soon as they got the NODID, but joint-debtor Jamie Maxfield ("Joint Debtor") had surgery and caught an infection that prevented Joint Debtor from returning to work. Id. at ¶ 13. Shortly thereafter, Joint Debtor's sister had a stroke and Joint Debtor traveled to Reno to take care of her sister, which delayed Joint Debtor from recovering from her infection and returning to work. Id. at ¶ 14. On January 17, 2023, the chapter 13 trustee filed a declaration seeking dismissal of Debtors' case because Debtors failed to comply timely with the NODID. Doc. #132.

Debtors have been in bankruptcy for 47 of 60 months and have tendered \$53,476.30 to the chapter 13 trustee for plan payments. Maxfield Decl. at ¶ 4, Doc. #143. Debtors' confirmed plan is a 5-year plan that provides a 10% dividend to unsecured creditors. Doc. #93. Debtors have completed 4 of the 5 years of the confirmed plan and intend to complete the plan. Doc. #141.

It appears that refusing to vacate the dismissal order would be highly prejudicial to Debtors, that the length of delay between dismissal and Debtors' request to vacate dismissal is minimal, that Debtors' payments of all amounts due through December 2022 and available funds on hand to pay amounts due through January 2023 will neutralize any impact that vacating dismissal will have on the bankruptcy case, and that Debtors acted in good faith. Debtors have established excusable neglect under Rule 60(b).

Accordingly, pending any opposition raised at the hearing, this motion will be GRANTED. The court will vacate the dismissal order.

4. [18-13311](#)-A-13      **IN RE: MELINDA MARTINDALE**  
[DMG-7](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)  
2-21-2023    [\[192\]](#)

D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:      Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

D. Max Gardner, Attorney at Law ("Movant"), counsel for Melinda Martindale ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$8,482.50 and reimbursement for expenses in the amount of \$144.65 for services rendered February 1, 2020 through March 31, 2023. Doc. #192. Debtor's confirmed plan provides for \$9,500.00 in attorney's fees to be paid through the plan in addition to a \$2,500 pre-petition retainer. Plan, Doc. ##170, 198. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$8,814.00 and reimbursement for expenses in the amount of \$167.91. Order, Doc. #134. Debtor reviewed the second and final fee application and has no objection. Doc. #196.

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) preparing motion to incur debt; (2) communicating with Debtor regarding litigation of her business; (3) preparing and filing two modified plans; (4) obtaining authority for Debtor to purchase a new car; (5) drafting and assembling responses to request for production; (6) drafting motion for order authorizing Debtor to refinance her residence; and (7) preparing and filing fee applications. Gardner Decl., Doc. #195. Ex. A, Doc. #194. 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 basis, in addition to compensation requested by this motion in the amount of \$8,482.50 and reimbursement for expenses in the amount of \$144.65 to be paid in a manner consistent with the terms of the confirmed plan.

5. [22-11116](#)-A-13     **IN RE: THEDFORD JONES**  
[MJB-5](#)

MOTION FOR COMPENSATION FOR MICHAEL JAY BERGER, DEBTORS ATTORNEY(S)  
1-30-2023     [\[128\]](#)

MICHAEL BERGER/ATTY. FOR MV.  
DISMISSED 01/27/2023

NO RULING.

MOTION TO DISMISS CASE  
2-13-2023    [\[12\]](#)

MICHAEL MEYER/MV

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

DISPOSITION:      Granted.

ORDER:              The court will issue the order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 asks the court to dismiss this case pursuant to 11 U.S.C. § 1307(c) because the debtor failed to comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1). Doc. #12. The debtor did not file written opposition.

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 the debtor failed to comply with the pre-petition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1).

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). The debtor filed for relief under chapter 13 of the Bankruptcy Code on February 6, 2023. Doc. #1. 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). The Bankruptcy Code also allows the court to waive the § 109(h)(1) requirement to receive credit counseling pre-petition based on incapacity, disability, or active military duty in a military combat zone but only after notice and a hearing. 11 U.S.C. § 109(h)(4). The debtor has not requested a waiver of the § 109(h)(1) requirements and, because the debtor did

not receive credit counseling prior to filing his bankruptcy petition and has not received a waiver of that requirement, the debtor may not be a debtor pursuant to § 109(h). Thus, dismissal rather than conversion is appropriate.

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

7. [18-13226](#)-A-13     **IN RE: CHARLES/SHUANTA BROWN**  
[TCS-3](#)

MOTION TO VACATE DISMISSAL OF CASE  
2-28-2023    [\[77\]](#)

SHUANTA BROWN/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
DEBTORS DISMISSED 02/24/2023

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 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.

As a procedural matter, the certificate of service (Doc. #80) does not comply with LBR 9014-1(c) since it identifies DCN TCS-4 instead of DCN TCS-3. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

As an 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. #80) 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 another generated list of names and addresses served. In the future, the movant should attach a copy of 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.

Charles Brown and Shaunta Brown (together, "Debtors") move the court for an order vacating the February 24, 2023 order dismissing Debtors' bankruptcy case. Mot., Doc. #77; Order, Doc. #76. Debtors move under Federal Rule of Civil



Procedure ("Rule") 60(b), incorporated to this proceeding by Federal Rule of Bankruptcy Procedure 9024. Doc. #77.

Debtors filed the voluntary chapter 13 petition on August 6, 2018. Doc. #1. On May 4, 2021, the court confirmed Debtors' First Modified Chapter 13 Plan filed March 4, 2021 (the "Plan"). Order, Doc. #48; Plan, Doc. #40. On December 15, 2022, the court denied Debtors' Second Modified Chapter 13 Plan filed on October 7, 2022. Order, Doc. #71; Plan, Doc. #58.

On January 10, 2023, the chapter 13 trustee ("Trustee"), properly served a Notice of Default and Intent to Dismiss Case ("NODID") on Debtors pursuant to LBR 3015-1(g). Doc. #72. Debtors were required to cure the plan default within 30 days of the date the NODID was mailed either by bringing the payments current, filing a motion to modify the plan and having it heard and approved, or requesting a hearing on the notice and providing evidence that a default had not occurred within 28 days of the mailing of the default. Id. On February 24, 2023, the court entered an Order Dismissing the Case based on the failure of Debtors to cure the default. Doc. #76. On February 28, 2023, Debtors filed this Motion to Vacate Dismissal. Doc. #77.

By the motion, Debtors contend that as soon as Debtors realized they would be unable to pay their plan payments they contacted their attorney and decided to file a modified plan to reflect their current financial situation. Doc. #77. Debtors signed the documents for the modified plan on January 31, 2023, and Debtors' attorney completed the required documents for filing a modified plan on February 1, 2023. Id. Debtors' attorney believed the motion was filed and awaiting a hearing. Decl. of Nancy D. Klepac, Doc. #79. For reasons that remain unclear to Debtors' attorney, the motion was completed by Debtors' attorney's office but not filed or served. Id. Debtors' attorney did not know the motion was not filed or served until she received the Notice of Dismissal. Id.

Debtors argue that the order dismissing their chapter 13 case should be vacated under Rule 60(b) because of excusable neglect. "[F]or purposes of Rule 60(b), 'excusable neglect' is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 394 (1993). The determination of "what sorts of neglect will be considered 'excusable' . . . is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Id. at 395. Relevant circumstances include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Id.

The court is inclined to grant Debtors' motion and vacate the dismissal due to excusable neglect based on an analysis of the Pioneer factors.

With respect to the first Pioneer factor, denying the motion to vacate the dismissal order would cause prejudice to Debtors. At the time of dismissal, Debtors had been in bankruptcy for four years, signed documents for a modified plan on January 31, 2023 that addressed the default set forth in the NODID, and intended to complete the modified plan. Debtors state they are financially capable of performing under the terms of the modified plan. Reinstating the bankruptcy case by vacating the dismissal would reimpose the automatic stay and halt any enforcement actions that may have been resumed based on the dismissal of the case. However, there is no indication that any creditor has acted in reliance on the dismissal. This factor favors vacating the dismissal order.

With respect to the second Pioneer factor, the delay between dismissal and Debtors' Rule 60(b) motion is nominal. The order dismissing Debtors' case was entered on February 24, 2023, and Debtors submitted this motion on February 28, 2023. There would also be minimal impact on judicial proceedings, since a review of the docket reveals no outstanding motions were interrupted and there are no related adversary proceedings. After the court denied Debtors' Second Modified Chapter 13 Plan in December 2022, the only activity on Debtors' bankruptcy docket prior to the instant motion was Trustee's NODID filed on January 12, 2023. This factor favors vacating the dismissal order.

With respect to the third and fourth Pioneer factors, Debtors contend they decided to file a modified plan and signed documents for a modified plan on January 31, 2023 to cure their default. Debtors' counsel failed to file and serve the required documents for the modified plan. Thus, the reason for dismissal was not in Debtors' control. Debtors were otherwise trying to modify their Plan to cure their default, perform under the terms of the Plan, and there is no evidence of bad faith. The court is hesitant to punish Debtors for their attorney's failure to file and serve the modified plan. The third and fourth factors weigh in favor of granting the motion.

Accordingly, pending any opposition raised at the hearing, this motion will be GRANTED. The court will vacate the dismissal order.

8. [22-10826](#)-A-13     **IN RE: CHRISTOPHER RENNA**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
12-2-2022    [\[50\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/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 an order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on December 29, 2022. Doc. #63. 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.

On December 2, 2022, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #50. Trustee states that Trustee has been informed that the debtor, without authorization, without court approval, without seeking approval of the settlement by virtue of a 9019 motion, and in contravention of the confirmed plan, has paid to a creditor, Richard Lima ("Mr. Lima"), the sum of \$20,000.00. Id. Further, there are no assets listed in the debtor's schedules

that have a value of \$20,000.00 other than the debtor's retirement account Id. Based on the payment of monies, Trustee asserts that conversion to chapter 7 may be in the best interest of creditors and the estate. Id.

The debtor responded that the debtor and Mr. Lima reached and signed a settlement agreement with respect to litigation pending in the superior court that has not been presented to the court. Reply, Doc. #63. As a part of the agreement, Mr. Lima was paid \$20,000.00 in full settlement of his claims in a personal injury dispute and the funds were sourced from the debtor's parents. Id. The debtor states that Mr. Lima asserted that since the debtor's parents paid the settlement, no court approval was required. Id. Mr. Lima withdrew his claim and moved to dismiss the adversary proceeding. Id. The debtor did not believe his actions would result in a dismissal. Id.

On February 1, 2023, the debtor filed and served a motion to compromise controversy/approve settlement agreement with Mr. Lima and set that motion for hearing on February 16, 2023. Doc. #71-74. The court denied that motion without prejudice for improper notice. Doc. ##87, 90. On February 16, 2023, the debtor filed and served another motion to compromise controversy/approve settlement agreement with Mr. Lima and set that motion for hearing on March 16, 2023. Doc. ##91-96. That motion has been granted by final ruling, matter #10 below.

On February 15, 2023, the debtor filed and served a motion to incur the debt used to pay the settlement amount to Mr. Lima and set that motion for hearing on March 16, 2023. Doc. ##80-84. That motion has been granted by final 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). It appears that the filing and approval of the debtor's motion to compromise controversy/approve settlement agreement with Mr. Lima (matter #10, below) and motion to incur debt (matter #11, below) satisfy all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1).

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

9. [22-10826](#)-A-13      **IN RE: CHRISTOPHER RENNA**  
[TCS-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
12-8-2022    [\[54\]](#)

CHRISTOPHER RENNA/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH  
RICHARD LIMA  
2-16-2023    [\[91\]](#)

CHRISTOPHER RENNA/MV  
TIMOTHY SPRINGER/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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. 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>.

Christopher Renna ("Debtor"), the chapter 13 debtor, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes between Debtor and Richard Lima ("Mr. Lima") arising out of a personal injury claim based on negligence and the intentional tort of battery. Doc. #91. Mr. Lima filed a proof of claim in Debtor's chapter 13 proceeding in the amount of \$140,087.96 relating to Mr. Lima's personal injury claim. Claim 4.

In state court, Debtor and Mr. Lima reached a settlement and signed an agreement that listed the settlement as non-dischargeable under 11 U.S.C. § 523. Doc. #91; Ex. A, Doc. #94. A settlement of a \$20,000.00 was offered to Mr. Lima, which is a significant reduction from Mr. Lima's proof of claim filed in the amount of \$140,087.96. Decl. of Christopher Renna, Doc. #93. Debtor is seeking authorization to borrow \$20,000.00 from Debtor's father to pay Mr. Lima directly. Id. at ¶ 8. Debtor did not realize that he would have to seek the court's approval and did not realize the terms of the motion for stay relief prevent Mr. Lima or Mr. Lima's attorney, Mr. Nunez, from accepting money without a further order from the court. Id. at ¶ 9.

On a motion by a chapter 13 debtor and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtor has considered the standards of A & C Properties and Woodson. Doc. #91. The proposed settlement allows for a payment of \$20,000.00 to Mr. Lima and is a significant reduction from the amount Mr. Lima was seeking in his proof of claim. Id.; Claim 4. The settlement in this matter has already been paid, and Debtor is seeking retroactive approval of that payment. Id. The settlement is fair, reasonable, and obtains an economically advantageous result. The court concludes that the A & C Properties factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is reasonable. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Debtor and Mr. Lima is approved retroactively. Debtor is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

11. [22-10826](#)-A-13     **IN RE: CHRISTOPHER RENNA**  
[TCS-6](#)

MOTION TO INCUR DEBT  
2-15-2023    [\[80\]](#)

CHRISTOPHER RENNA/MV  
TIMOTHY SPRINGER/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 movants have done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion (Doc. #81) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. 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>.

Christopher Renna ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to incur new debt and approve a settlement agreement. Doc. #80. Debtor seeks retroactive authority to borrow \$20,000.00 from Debtor's father, Christopher Renna Sr., to settle a court case. Decl. of Christopher Renna, Doc. #82. Debtor and Richard Lima ("Mr. Lima"), the plaintiff in a state court action and pending non-dischargeable adversary proceeding, agreed to a settlement of \$20,000, which was listed in the settlement agreement as a non-dischargeable debt under 11 U.S.C. § 523. Id. at ¶ 6. Not realizing that borrowing money required court approval, Debtor already borrowed \$20,000 from Debtor's father, and the \$20,000.00 was paid to Mr. Lima to resolve the dispute. Id. at ¶ 9. As a result, Mr. Lima already withdrew his claim in Debtor's bankruptcy proceeding. Id. at ¶ 10. Payments to Debtor's father will be made according to Debtor's ability to pay, so it would not affect Debtor's ability to complete his chapter 13 plan. Id. at ¶ 11.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed, and no timely written opposition was filed. There is no indication that Debtor is not current on his chapter 13 plan payments or that the chapter 13 plan is in default. The new debt is a single \$20,000 loan with 0% interest incurred to settle a court case. The new debt will be unsecured. All payments on the new debt shall be made as Debtor is able to pay outside the chapter 13 plan. Debtor filed Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new debt. Ex. A, Doc. #83.

Accordingly, this motion is GRANTED. Debtor is authorized, but not required, to incur debt in a manner consistent with the motion.

12. [23-10232](#)-A-13     **IN RE: SHAUN SESTINI**  
[MHM-1](#)

MOTION TO DISMISS CASE  
2-16-2023    [\[9\]](#)

MICHAEL MEYER/MV  
DANIEL KING/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 March 7, 2023. Doc. #20.

13. [22-11635](#)-A-13     **IN RE: EMELITA BROWN**

MOTION TO SELL FREE AND CLEAR OF LIENS  
2-22-2023    [\[55\]](#)

EMELITA BROWN/MV  
JOSHUA STERNBERG/ATTY. FOR DBT.  
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 February 22, 2023, with a hearing date set for March 16, 2023. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the Notice of Hearing filed with the motion stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(2).

Further, as a procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).



As a further procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion and amended notice of hearing do not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion and supporting papers on February 22, 2023, using a Clerk's Matrix of Creditors that was generated on December 1, 2022. Doc. #59. The moving party also served amended notice of the motion on February 24, 2023, using a Clerk's Matrix of Creditors that was generated on December 1, 2022. Doc. #62.

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>.

14. [23-10344](#)-A-13      **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**  
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
3-2-2023    [\[8\]](#)

LOARINA DOMENA-QUINVILLE/MV  
BENNY BARCO/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 court will issue an order.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Though not required, Trustees of the Grant F. Schreiber Trust ("Creditor") filed written opposition on February 13, 2022 (Doc. #17). Additional opposition may be presented at the hearing. If no additional opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If additional opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtors Susan Marie Quinville and Loarina Domena-Quinville (together, "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #8. Creditor opposes. Doc. #17.

Debtors had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 22-11935 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on November 14, 2022 and dismissed on February 23, 2023. Decl. of Susan Marie Quinville, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtors filed this case on February 28, 2023. Petition, Doc. #1. The automatic stay will terminate in the present case on March 30, 2023.



Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

In this case, the presumption of bad faith arises. The Prior Case was filed on November 14, 2022 and dismissed on February 23, 2023 because Debtors failed to timely file tax documents in the Prior Case. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was never confirmed. Debtors state that they dismissed their Prior Case because Debtors became aware that their 2018 tax returns were not filed and that the chapter 13 trustee had filed a motion to dismiss or convert Debtors' case to chapter 7. Quinville Decl., Doc. #10.

The presumption that this bankruptcy case was filed not in good faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In support of this motion to extend the automatic stay, Debtors declare that when they filed their Prior Case, Debtors believed that all of their prior four years of tax returns had been filed and in no way were Debtors attempting to delay or hinder creditors. Quinville Decl. at ¶ 4, Doc. #10. Debtors further state that they have the income ability to maintain plan payments and are confident that a chapter 13 plan will be confirmed. Id. at ¶ 5. Debtors state since the filing of the Prior Case, Debtors' household income has increased due to improved employment (hourly rate increase of \$4/hr.). Id. at ¶ 6. Debtors filed a proposed plan on March 8, 2023. Doc. #15. Debtors' Schedules I and J filed in this case list monthly combined income of \$4,932.00 and expenses of \$2,552.00, resulting in monthly net income of \$2,552.00 of which Debtors propose to apply \$2,511.30 to plan payments in this case. Schedules I and J, Doc. #14; Chapter 13 plan, Doc. #15.

Creditor opposes Debtors' motion on several grounds. Creditor first disputes Debtors' claim that the reason that Debtors requested dismissal of the Prior Case was because they did not realize all required tax returns had been filed. Doc. #17. Creditor highlights that Debtors did not disclose to the court that there was a pending objection to Debtors' plan and a motion to dismiss filed by Creditor at the time of their request to dismiss. Id. Creditor asserts that Creditor was likely to prevail on both the objection and motion to dismiss because it is not possible for Debtors to file a confirmable plan that will allow Debtors to modify the terms of their home loan. Id. Creditor further

disputes that Debtors will be able to file a confirmable plan in this case since Debtors' proposed plan seeks to pay Creditor a monthly payment on a matured note. Id.

Second, Creditor contends that Debtors' circumstances have not changed since the Prior Case, so this case has been filed in bad faith pursuant to 11 U.S.C. §362(c)(3)(C)(i)(III). Specifically, Debtors' plan in the Prior Case and Debtors' proposed plan in this case seek to modify the terms of their home loan by paying Creditor a monthly payment on a promissory note that matured on July 1, 2017. Id. Creditor contends that 11 U.S.C. §1322(b)(2) does not permit Debtors to modify Creditor's rights by paying Creditor a monthly payment on the promissory note that matured on July 1, 2017. Id. Since the law does not allow Debtors to create a repayment plan on a matured note, the plan filed in this case suffers the same infirmity as the plan in the Prior Case. Id. The court is not convinced that 11 U.S.C. § 1322(c)(2) precludes modification of fully matured mortgages securing a primary residence. See In re Collier-Abbott, 616 B.R. 117, 122 (Bankr. E.D. Cal. 2020).

After reviewing Creditor's opposition, the court is inclined to GRANT Debtors' motion. The issue presented by Debtors' motion is whether Debtors have rebutted by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. That presumption arises from the court finding no substantial change in Debtors' financial or personal affairs, see 11 U.S.C. § 362(c)(3)(C)(i)(III). Although Creditor makes the suggestion that Debtors were delinquent in plan payments in the Prior Case before Debtors dismissed the Prior Case, the Prior Case was not dismissed for Debtors' failure to make plan payments, and Creditor has not established as a factual matter any delinquency in the Prior Case. Further, while Creditor contends that Debtors' circumstances have not changed since the Prior Case, the court is inclined to find that Debtors' circumstances have changed.

The court is inclined to find that Debtors' reasoning for allowing the Prior Case to be dismissed rebuts the presumption of bad faith. Further, Debtors testify that their financial affairs have changed since they dismissed the Prior Case, and they will be able to make plan payments in this case since their income has increased due to improved employment.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties named in Debtors' motion (Doc. #8), unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is necessary.

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY  
2-21-2023    [\[32\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV  
AUSTIN NAGEL/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 further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the motion and certificate of service do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). 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.

As an informative matter, the certificate of service filed in connection with the opposition (Doc. #35) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

The debtors filed their chapter 13 plan ("Plan") on January 3, 2023. Doc. #7. Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust 2006-WMC1, Mortgage Pass-Through Certificates, Series 2006-WMC1 ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$11,620.99 default on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are provided for fully. Doc. #32.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section

501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on February 22, 2023. Claim 2.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #7. The Plan only accounts for the \$20,000.00 of arrearages on Creditor's claim. Claim 2; Doc. #3.

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

16. [23-10049](#)-A-13     **IN RE: ALICIA ELIAS MENDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-7-2023     [\[30\]](#)

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 order to show cause.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

17. [22-12163](#)-A-13     **IN RE: TINA GARCIA**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
2-7-2023     [\[18\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

ORDER:     The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on February 16, 2023, amending the claimed exemption in the debtor's real property. Doc. #32.

18. [22-10777](#)-A-13     **IN RE: STEVENS/CONSTANCE RYAN**  
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE  
12-23-2022    [[90](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

19. [22-10777](#)-A-13     **IN RE: STEVENS/CONSTANCE RYAN**  
[TCS-4](#)

MOTION TO CONFIRM PLAN  
1-31-2023    [[100](#)]

CONSTANCE RYAN/MV  
TIMOTHY SPRINGER/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 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)(1). On February 7, 2023, the chapter 13 trustee filed an objection to the debtors' motion to confirm third modified chapter 13 plan. Doc. #112. On February 9, 2023, the chapter 13 trustee filed a supplemental objection to the debtors' motion to confirm third modified chapter 13 plan. Doc. #114. On February 28, 2023, secured creditor Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Owner Trustee of the Aspen Holdings Trust, a Delaware Statutory Trust, its successors and/or assignees ("Creditor"), filed an objection to plan confirmation. Doc. ##121, 124. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled.

As a procedural matter, the movant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004, although it appears that service was actually made pursuant to Rule 7005. The certificate of service filed with the motion (Doc. #106) included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant

to Rule 7004, the movant should have attached a list of the persons served, including their names/capacity to receive service, and address.

Stevens Garret Ryan and Constance Elaine Ryan (collectively, "Debtors") filed their third modified chapter 13 plan (the "Plan") on January 31, 2023. Doc. #104. Michael Meyer, the chapter 13 trustee ("Trustee"), and Creditor object to confirmation of the Plan. Tr.'s Obj., Doc. ##112, 114; Creditor's Obj., Doc. ##121, 124.

Trustee objects to confirmation of the Plan on three grounds. First, Trustee contends that Debtors have filed inaccurate schedules. Tr.'s Obj., Doc. #112. Debtors' Schedule J indicates that Debtors have an automobile expense of \$649.00 per month. Id.; Schedule J, Doc. #10. However, no automobile loan is listed in Debtors' schedules. Id.; Schedule J, Doc. #10. Trustee contends that Debtors testified that Debtors no longer have an auto loan as it was paid off prior to filing bankruptcy. Tr.'s Obj., Doc. #112. However, on July 8, 2022, creditor Toyota Motor Credit Corporation ("Toyota"), filed proof of claim 4 indicating that as of the petition date there was a balance due and owing of \$2,598.80. Claim 4. Trustee contends if Debtors have not paid off the Toyota loan, then Debtors must include Toyota in Class 2 if Debtors desire to keep the vehicle which secures the loan. Tr.'s Obj., Doc. #112. Trustee requests clarification as to the status of this loan. Id.

Debtors responded that Toyota is not a secured creditor. Reply, Doc. #117. Debtors assert that Toyota has attempted to assert a claim to a vehicle for which Ryan Steve is listed as a registered owner on a certificate of title, although the court notes that the address on the certificate of title is Debtors' principal residence. Ex. A, Doc. #119; Doc. #1. Debtors asserts that Debtors have contacted Toyota to fix the claim and will be filing an objection to Toyota's proof of claim. Id. This court is inclined to overrule this objection once an objection to claim has been filed.

Second, Trustee has yet to receive a Class 1 Checklist for Class 1 secured creditor Select Portfolio Servicing, Inc. Tr.'s Obj., Doc. #112. Trustee requests that this be provided as soon as possible. Id. Debtors reply that Debtors are sending a Class 1 Checklist to Trustee. Reply, Doc. #117. If Trustee confirms at the hearing that Debtors have provided the Class 1 Checklist, the court will overrule this objection.

Third, the Plan has not been proposed in good faith in violation of 11 U.S.C. §1325(a)(3). Trustee believes that the filing of the modified plan at Docket 111 lacks good faith and the plan, filed at Docket 104, is not executed by Debtors or their attorney. Tr.'s Obj., Doc. ##112, 114. Trustee contends from a review of the October 12, 2022, modified plan and February 3, 2023 modified plan that the signature pages are identical in every way, including where the ink fades in Mrs. Ryan's signature. Id. Trustee requests that the court use its discretion as provided by 11 U.S.C. §105(a) in determining the appropriate action in this matter. Id. Further, Trustee would like an opportunity to hear from Debtors themselves as to whether Debtors were provided an opportunity to review and execute the proposed modified plan. Id.

Debtors responded that Trustee was correct that the original plan was uploaded without Debtors' signatures, but a plan with Debtors signatures has been uploaded at Doc. #111 on February 3, 2023. Reply, Doc. #117.

The evidence offered by Debtors is not sufficient to instill confidence that the Plan has been proposed in good faith. The court cannot determine on the evidence currently before the court that Debtors were provided an opportunity

to review and execute the proposed modified plan. Accordingly, this court is inclined to sustain this objection.

Creditor objects to confirmation of the Plan on the grounds that Debtors proposed a 1% interest rate on Creditor's allowed claim is not appropriate or permissible pursuant to applicable precedent. Creditor's Obj., Doc. #121. Creditor is entitled to receive payments pursuant to a Promissory Note ("Note"), which matured on June 30, 2022. Creditor's Obj., Doc. #121. The Note is secured by a Deed of Trust on the subject property commonly known as 41345 Lilley Mountain Drive, Coarsegold, CA 93614 ("Property"), which is Debtors' principal residence. Id.

As of May 7, 2022, the amount in default was \$139,243.62, which represents monthly payments and late charges due; advances for taxes and insurance, if any; and foreclosure costs and attorneys' fees incurred with respect to the default. Id. The interest rate is fixed at 8.85%. Id. In the Plan, Debtors use a 1% interest rate on Creditor's secured claim. Section 3.08, Doc. #111.

Creditor contends that the Supreme Court's decision in Till requires Debtors to establish the national prime rate, adjusted upward for the risk of nonpayment. Creditor's Obj., Doc. #121. The actual risk adjustment percentage was not decided in Till; however, the Supreme Court did state that courts have generally approved adjustments between 1%-3% in addition to the national prime rate. Id.

By proposing a 1% interest rate for payment of Creditor's secured claim, Debtors have not attempted to apply the standard applied by the Supreme Court in Till. Accordingly, this court is inclined to sustain this objection.

Accordingly, pending any opposition at hearing, Creditor's objection will be SUSTAINED and Trustee's objections will be sustained in part, and confirmation of the Plan will be DENIED.

20. [22-10777](#)-A-13     **IN RE: STEVENS/CONSTANCE RYAN**  
[TCS-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB  
3-2-2023    [[124](#)]

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
KELLI BROWN/ATTY. FOR MV.

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

The movant has filed and set for hearing an objection to confirmation of the plan (TCS-4) on March 2, 2023. Doc. #124. A separate notice of hearing was not required. The court will address the movant's objection in matter #19, above. Therefore, this hearing will be DROPPED FROM CALENDAR.

21. [22-10777](#)-A-13     **IN RE: STEVENS/CONSTANCE RYAN**  
[TCS-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND SOCIETY, FSB  
3-2-2023    [\[121\]](#)

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
KELLI BROWN/ATTY. FOR MV.

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

DISPOSITION:     Dropped as moot.

ORDER:             The court will issue an order.

On March 2, 2023, the movant filed an objection to confirmation of the chapter 13 plan (TCS-4), notice of hearing and certificate of service. Doc. ##121-123. On March 2, 2023, the movant filed a duplicate objection to confirmation of the chapter 13 plan, notice of hearing, and a certificate of service. Doc. ##124-126. The court has deemed Doc. ##124-126 to be duplicates of Doc. ##121-123. Therefore, the duplicate objection, notice of hearing and certificate of service (Doc. ##124-126) will be DROPPED AS MOOT.

22. [22-10988](#)-A-13     **IN RE: ORLANDO REGINO**  
[PBB-1](#)

MOTION TO MODIFY PLAN  
2-3-2023    [\[26\]](#)

ORLANDO REGINO/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 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 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.

23. [19-11493](#)-A-13     **IN RE: KENNETH/LAVERNE BRISTER**  
[TCS-5](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT  
2-13-2023    [\[88\]](#)

LAVERNE BRISTER/MV  
TIMOTHY SPRINGER/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.

Kenneth Brister and Laverne Brister (collectively, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to modify their existing mortgage. Doc. #88. Debtors seek to modify the mortgage on their primary residence located at 4146 N. Cecelia Ave. Fresno, CA 93722 ("Residence"). Id. The modification will capitalize the arrearage amount of \$17,833.21, will change the total due on the mortgage to \$179,438.43 as of December 1, 2022, and will change the interest rate on the mortgage to 4.125% resulting in a payment of \$839.88 for 480 months. Decl. of Kenneth Brister, Doc. #90. After the modification, Debtors will be fully current on their loan. Id. at ¶ 15. Debtors will make all of their mortgage payments in class 4 under their plan. Motion, Doc. #88. The monthly payment will not exceed \$2,000 and will be paid outside of Debtors' chapter 13 plan. Brister Decl. at ¶ 10 & ¶ 13, Doc. #90.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

It appears that motion was served and noticed properly, and no timely written opposition was filed. There is no indication that Debtors are not current on

their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors' Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence. The only security for the modification will be Debtors' Residence.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to modify the existing mortgage in a manner consistent with the motion.

1. [19-11901](#)-A-7     **IN RE: ARMANDO CRUZ**  
[19-1095](#)

CONTINUED PRETRIAL CONFERENCE RE: COMPLAINT  
8-12-2019    [[1](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ  
JARRETT OSBORNE-REVIS/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

2. [19-11901](#)-A-7     **IN RE: ARMANDO CRUZ**  
[19-1095](#)     [BN-8](#)

MOTION FOR AN ORDER ASSIGNING ADVERSARY PROCEEDING TO THE BANKRUPTCY  
DISPUTE RESOLUTION PROGRAM  
2-9-2023    [[199](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ  
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

NO RULING.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The Notice of Hearing refers to an attached service list for names and addresses of parties to be served but does not include a service list. Doc. #200.

3. [22-10113](#)-A-7     **IN RE: ANTHONY LOPEZ**  
[22-1013](#)

ORDER TO SHOW CAUSE REGARDING SETTING ASIDE ENTRY OF DEFAULT  
2-2-2023    [[62](#)]

THE GOLDEN 1 CREDIT UNION V. LOPEZ

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:            The defendant's entry of default will be set aside.

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

On February 2, 2023, the court issued an Order to Show Cause because it appeared to the court, after careful consideration, that the entry of default against defendant Anthony Lopez ("Defendant") in this adversary proceeding should be set aside pursuant to Federal Rule of Civil Procedure ("Rule") 55,

made applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7055, and relevant Ninth Circuit authority (the "OSC"). OSC, Doc. #62. The court ordered any written response to the OSC to be filed and served no later than March 2, 2023, and set a hearing for March 16, 2023 at 11:00 a.m. Doc. #62. No written opposition to the OSC has been filed. This matter will proceed as scheduled.

## **I. RELEVANT BACKGROUND**

On May 5, 2022, plaintiff Golden 1 Credit Union ("Plaintiff") commenced this adversary proceeding by filing a complaint ("Complaint"). Doc. #1. By the Complaint, Plaintiff seeks a non-dischargeability judgment against Defendant in the amount of \$32,049.35, plus interest, costs, and reasonable attorney's fees pursuant to 11 U.S.C. § 523(a)(2)(A) on the ground that Defendant knowingly and intentionally misrepresented that Defendant would make monthly payments for the purchase of a 2017 Ram 1500 ("Vehicle") pursuant to a written Retail Installment Sale Contract ("Contract") that secured a loan from Plaintiff to purchase the Vehicle. Id.

As alleged in the Complaint, on or about April 26, 2020, Defendant, for valuable consideration, made, executed, and delivered the Contract to Porterville Chrysler Jeep Dodge. Complaint ¶ 5. Plaintiff is the current holder of the Contract. Complaint ¶ 8. Pursuant to the Contract, Defendant agreed to pay for the Vehicle by making monthly payments to Plaintiff until the Vehicle was paid in full. Complaint ¶ 10. On or about June 10, 2020, and continuing thereafter, Defendant defaulted on the terms, conditions, and covenants of the Contract by failing to make the monthly payments due and owing. Complaint ¶ 12. Plaintiff believes and alleges that Defendant intended to effectuate an actual fraud when Defendant made the loan application. Complaint ¶ 23.

Defendant failed to respond timely to the Complaint. Plaintiff filed a request for entry of Defendant's default on July 12, 2022. Doc. #10. On July 21, 2022, the United States Bankruptcy Court Clerk entered Defendant's default. Doc. #17.

On August 24, 2022, Plaintiff filed a motion for default judgment ("First Motion") and set a hearing on the First Motion for September 15, 2022. Doc. #20. On September 6, 2022, Defendant submitted a signed affidavit to the court in response to the First Motion ("Response") in which Defendant claimed to be a victim of identity theft perpetrated by an individual named Lucas Baker ("Baker"). Doc. #25. The court denied the First Motion without a hearing because the hearing on the First Motion was not set on at least 28-days' notice as required by the court's Local Rule of Practice 9014-1(f)(2)(A). Doc. ##26, 27. Defendant appeared at the court for the September 15, 2022 hearing.

On September 16, 2022, Plaintiff filed a second motion for default judgment ("Second Motion") and set a hearing on the Second Motion for October 20, 2022. Doc. #28. The court held a hearing on the Second Motion on October 20, 2022, but counsel for Plaintiff did not appear at the hearing and the Second Motion was denied for lack of prosecution. Doc. #34. Defendant appeared at the court for the October 20, 2022 hearing. Id.

On December 29, 2022, Plaintiff filed a third motion for default judgment ("Third Motion") and set a hearing on the Third Motion for January 26, 2023. Doc. #50. The court held a hearing on the Third Motion on January 26, 2023 and continued the hearing on the Third Motion to March 16, 2023, at 11:00 a.m. to be heard with this order to show cause as to why the entry of Defendant's default should not be set aside. Doc. #56. Defendant appeared at the court for the January 26, 2023 hearing. Id.

## II. APPLICABLE LAW

Rule 55(c) provides that an entry of default may be set aside for good cause. See Hawaii Carpenters' Tr. Funds v. Stone, 794 F.2d 508, 513 (9th Cir. 1986). "Rule 55(c) frees a court considering a motion to set aside a default entry from the restraint of Rule 60(b) and entrusts determination to the discretion of the court." Id. Unlike Rule 60(b), which provides that a court may relieve a party from a final default judgment "on motion," Rule 55(c) permits a court to "set aside an entry of default for good cause." The rules for determining when a default should be set aside are solicitous towards movants whose actions leading to the default were taken without the benefit of legal representation. United States v. Mesle, 615 F.3d 1085, 1089 (9th Cir. 2010). Further, "judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." Id. at 1091 (internal quotation marks and citations omitted).

### A. Response as a Motion to Set Aside Default

Although Defendant has not submitted any papers in this adversary proceeding since he filed his Response, the court must consider whether Defendant, through the Response, has nonetheless moved to set aside the entry of default in light of the fact that Defendant is a pro se litigant and has appeared at several hearings with respect to Plaintiff's various motions for entry of default judgment.

In A.F. Holdings LLC v. Skoda, No. 2:12-cv-1663 JAM JFM, 2013 U.S. Dist. LEXIS 15633 (E.D. Cal. 2013), the defendant did not file a timely answer to the complaint and the defendant's default was entered. A.F. Holdings, 2013 U.S. Dist. LEXIS 15633, at \*1. The defendant then filed an answer in response to the plaintiff's motion for a default judgment. Id. at \*2. The plaintiff filed a motion to strike the defendant's answer to which the defendant responded. Id. The defendant did not make a motion to set aside the default, but the court construed the defendant's argument in his opposition to the motion to strike as a motion to set aside the default since it had a similar effect. Id. at \*4.

Here, although Defendant has not filed a formal motion with the court to set aside entry of the default, the Response and Defendant's appearances at three hearings with respect to Plaintiff's three motions for entry of default judgment have a similar effect to a motion. See A.F. Holdings, 2013 U.S. Dist. LEXIS 15633, at \*4. Accordingly, the court construes the Response as a motion to set aside the entry of Defendant's default.

### B. Considerations for Setting Aside a Default

The Ninth Circuit sets forth a three-factor test to determine if "good cause" exists to set aside entry of default: (1) the moving party's culpable conduct, (2) prejudice to the non-moving party, and (3) the moving party's meritorious defenses. Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 925-26 (9th Cir. 2004). The moving party bears the burden of demonstrating that these factors favor setting aside the entry of default. Id. at 926.

#### 1. Defendant's Culpable Conduct

With respect to the moving party's culpable conduct, "the usual articulation of the governing standard [of culpable conduct] is that 'a defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer.'" TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 697 (9th Cir. 2001). In this context, intentional means "something more like . . . 'willful, deliberate, or evidence of bad faith.'"

Id. (internal quotations omitted). "Neglectful failure to answer [for] which the defendant offers a credible, good faith explanation negating any intention to take advantage of an opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process is not 'intentional' . . . [and] not necessarily . . . culpable or inexcusable." Id. at 697-98 (internal quotations omitted). This is the proper standard for determining culpable conduct when the moving party is not a lawyer and is unrepresented at the time of the default. Mesle, 615 F.3d at 1093.

It appears that Defendant's conduct was not culpable under applicable Ninth Circuit authority. Defendant has offered a credible, good faith explanation negating any intention to take advantage of an opposing party, interfere with judicial decision making, or otherwise manipulate the legal process. Specifically, at the hearing held on January 26, 2023, Defendant stated that around the time he received the Complaint, Defendant got sick and could not walk and was not able to meet with the attorney that filed Defendant's bankruptcy case about the Complaint. Court Audio, Doc. #61. When the court asked if Defendant discussed this adversary proceeding with his bankruptcy attorney, Defendant responded that the attorney "said he would represent [Defendant] in the case at first" but later the attorney said he "didn't want to represent [Defendant] because it would cost too much." Id. Defendant filed the Response shortly after the First Motion requesting default judgment was filed asserting that Defendant's identity was stolen and that Defendant did not sign the Contract. Further, Defendant has appeared at several hearings with respect to Plaintiff's various motions for default judgment.

## **2. Prejudice to Plaintiff**

Turning to the prejudice to the non-moving party, the plaintiff must suffer more than a delayed resolution of the adversary proceeding. TCI Group, 244 F.3d at 701. The plaintiff's ability to pursue its claim must be hindered. Id. "[T]he delay 'must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.'" Greschner v. Cal. Dep't. of Corr. & Rehab., No. 2:15-cv-1663 MCE, 2020 U.S. Dist. LEXIS 160528, at \*6 (E.D. Cal. Sept. 2, 2020). Attorneys' fees can be a significant source of prejudice, and prejudice also may arise when the non-moving party has placed their entire theory of the lawsuit on the record in the context of the default and default prove-up. See Halper v. Cohen (In re Halper), BAP Nos. CC-18-1225-TaLS, CC-18-1226-TaLS, 2019 Bankr. LEXIS 1967, at \*15-17 (B.A.P. 9th Cir. June 28, 2019).

Here, setting aside Defendant's default would not prejudice Plaintiff. Defendant's default in this adversary proceeding was entered on July 21, 2022. Defendant filed his Response on September 6, 2022, less than two months later, alleging a meritorious defense and has appeared at several hearings with respect to Plaintiff's various motions for default judgment. Because the court has tentatively ruled to deny Plaintiff's Third Motion for default judgment on the merits, Plaintiff's ability to pursue its claim against Defendant is not hindered, and the delay is unlikely to have caused Plaintiff tangible harm.

## **3. Defendant's Meritorious Defenses**

Finally, turning to Defendant's meritorious defense, under Ninth Circuit authority, "all that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense: 'the question whether the factual allegation is true' is not to be determined by the court when it decides the motion to set aside the default." United States v. Aguilar, 782 F.3d 1101, 1107 (9th Cir. 2015) (internal quotations omitted). The Ninth Circuit in Aguilar further states that "this

approach is consistent with the principle that 'the burden on a party seeking to vacate a default judgment is not extraordinarily heavy.'" Aguilar, 782 F.3d at 1107 (internal quotations omitted).

Here, the claim for relief in the Complaint alleges that Defendant's debt stemming from the Contract is non-dischargeable under 11 U.S.C. § 523(a)(2)(A). A creditor asserting a claim of non-dischargeability under § 523(a)(2)(A) must prove by a preponderance of the evidence: "(1) the debtor made . . . representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; [and] (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made." Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010) (citation omitted).

In the Response, Defendant asserts that his identity was stolen by Baker and that it was Baker who signed the Contract to purchase the Vehicle. Doc. #25. Defendant further asserts that he only visited Porterville Chrysler Jeep Dodge once to buy a part for his 1999 Dodge Grand Caravan. Id. It is Defendant's belief that Baker forged his signature to buy the Vehicle. Id. Defendant believes that Baker took papers with Defendant's signature on them as well as Defendant's driver's license when Baker showered in Defendant's bathroom during the time that Baker was living on Defendant's property in a motorhome prior to the purchase of the Vehicle. Id. Defendant did not know that Baker bought the Vehicle until Defendant received a letter from the DMV. Id. Defendant also asserts that Defendant does not have insurance for the Vehicle and does not see a copy of Defendant's driver's license to identify Defendant as the person who signed the Contract to procure the loan to buy the Vehicle. Id. Based on the Response, Defendant has alleged sufficient facts to constitute a meritorious defense to the Complaint.

Based on the above analysis of the three-factor test to determine if "good cause" exists to set aside entry of default, it appears that there is good cause to set aside Defendant's entry of default. Accordingly, Defendant's default is set aside. Defendant shall have until April 6, 2023 to file an answer or otherwise respond to the Complaint.

4. [22-10113](#)-A-7     **IN RE: ANTHONY LOPEZ**  
[22-1013](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
5-6-2022     [\[1\]](#)

THE GOLDEN 1 CREDIT UNION V. LOPEZ  
KAREL ROCHA/ATTY. FOR PL.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Continued to May 25, 2023 at 11:00 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.

Due to the court's ruling on the Order to Show Cause, the status conference will be continued to May 25, 2023 at 11:00 a.m.

The parties shall comply with the various requirements set forth in the Order to Confer on Initial Disclosures and Setting Deadlines (Doc. #5) using the May 25, 2023 status conference date.

5. [22-10113](#)-A-7     **IN RE: ANTHONY LOPEZ**  
[22-1013](#)     [KR-2](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT  
12-29-2022     [\[50\]](#)

THE GOLDEN 1 CREDIT UNION V. LOPEZ  
KAREL ROCHA/ATTY. FOR MV.

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 for default judgment was continued from the prior hearing to be heard in conjunction with the court's order to show cause as to why the defendant's entry of default should not be set aside, matter #3 on this calendar.

Because the defendant's entry of default has been aside, the plaintiff's pending motion for default judgment is denied because the entry of default is the first step in the two-step process required by Rule 55 to obtain a default judgment. See, e.g., Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986).

6. [20-13822](#)-A-7     **IN RE: FAUSTO CAMPOS AND VERONICA NAVARRO**  
[21-1006](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
5-6-2021     [\[18\]](#)

RAMIREZ V. CAMPOS  
PAMELA THAKUR/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the certificate of service filed in connection with the plaintiff's status report does not comply with Local Rule of Practice ("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.

As a further procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 9004-2(c)(1), which requires proofs of service and related pleadings to be filed as separate documents. The plaintiff's status report was filed as a single document that included the plaintiff's proof of service. E.g., Doc. #66.



The court encourages counsel to review the local rules to ensure compliance in future matters. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

7. [22-10826](#)-A-13     **IN RE: CHRISTOPHER RENNA**  
[22-1016](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR  
FAILURE TO PROSECUTE  
2-3-2023    [[27](#)]

LIMA V. RENNA  
RESPONSIVE PLEADING

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

On February 3, 2023, this court issued an order to show cause ("OSC") why this adversary proceeding should not be dismissed for lack of prosecution for the failure of the plaintiff's counsel to appear at the continued status conference held on February 2, 2023. Doc. #27.

On March 7, 2023, counsel for the plaintiff filed a declaration explaining that the date of the February 2, 2023 continued status conference was not calendared by counsel and/or counsel's office staff and, as a result, counsel for the plaintiff did not appear at the February 2, 2023 continued status conference. Doc. #33.

Based on the explanation provided by counsel for the plaintiff, the court finds that the failure of counsel for the plaintiff to appear at the February 2, 2023 continued status conference to be inadvertent, and the court will not dismiss the adversary proceeding for lack of prosecution as set forth in the OSC. The OSC is vacated.

8. [22-10826](#)-A-13     **IN RE: CHRISTOPHER RENNA**  
[22-1016](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-11-2022    [[1](#)]

LIMA V. RENNA  
HENRY NUNEZ/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

9. [20-11147](#)-A-7     **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**  
[20-1040](#)

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

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL  
ROBERT RODRIGUEZ/ATTY. FOR PL.  
DISMISSED 2/7/23; CLOSED 2/27/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on February 7, 2023. Doc. #93.

10. [20-11147](#)-A-7     **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**  
[20-1040](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR  
FAILURE TO PROSECUTE  
2-3-2023    [[89](#)]

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL  
DISMISSED 02/07/23; CLOSED 2/27/23

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

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on February 7, 2023. Doc. #93.

11. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
2-5-2021    [[1](#)]

BMO HARRIS BANK, N.A. V. SINGH  
RAFFI KHATCHADOURIAN/ATTY. FOR PL.  
RESPONSIVE PLEADING; CONT'D TO 9/14/23 PER ECF ORDER #46

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

DISPOSITION:     Continued to September 14, 2023, at 11:00 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the pre-trial conference to September 14, 2023, at 11:00 a.m. The court has already issued an order on March 8, 2023. Doc. #46.

12. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)     [RSW-1](#)

MOTION BY ROBERT S. WILLIAMS TO WITHDRAW AS ATTORNEY  
1-17-2023     [\[39\]](#)

BMO HARRIS BANK, N.A. V. SINGH  
ROBERT WILLIAMS/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted if record sufficiently supplemented.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant, 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. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

As a procedural matter, the certificate of service does not comply with LBR 9014-1(c) because the certificate of service does not include the Docket Control Number for the motion. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

Robert S. Williams ("Movant"), counsel for defendant Amandeep Singh ("Defendant"), the defendant in this adversary proceeding, moves to withdraw as Defendant's attorney of record in this adversary proceeding. Doc. #39. Movant's withdrawal will leave Defendant unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e).

Movant has not conformed with LBR 2017-1(e). Specifically, Movant's declaration does not provide the current or last known address of Defendant. Decl. of Robert S. Williams, Doc. #41. The court requires Movant to file a supplemental

declaration stating Defendant's current or last known address(es) before the motion will be granted. In addition, Movant's declaration does not state the efforts Movant made to notify Defendant of Movant's intentions to withdraw as his attorney. Williams Decl., Doc. #41. The court will permit Movant to supplement the record at the hearing with respect to such efforts before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that Defendant received notice via U.S. mail. Doc. #42. Service was also made upon the plaintiff, the chapter 7 trustee, and the United States trustee. Doc. #42.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that Defendant did not accept an offer of settlement received and mailed to Defendant in September 2021. Doc. #42. Movant further states that Defendant has not responded to any requests for communication from Movant since December 2021. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, subject to Movant sufficiently supplementing the record at the hearing and filing a supplemental declaration, this motion will be GRANTED.

13. [22-11754](#)-A-7     **IN RE: ALYSSA THOMPSON**  
[23-1001](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
2-24-2023     [[10](#)]

DAVIS V. THOMPSON  
JUSTIN VECCHIARELLI/ATTY. FOR PL.

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

DISPOSITION:     Continued to April 20, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

Based on the counter-complaint filed on March 10, 2023 (Doc. #13), the status conference will be continued to April 20, 2023 at 11:00 a.m.

The parties shall comply with the various requirements set forth in the Order to Confer on Initial Disclosures and Setting Deadlines (Doc. #5) using the April 20, 2023 status conference date.

14. [22-11754](#)-A-7     **IN RE: ALYSSA THOMPSON**  
[23-1001](#)     [FW-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
2-3-2023     [\[7\]](#)

DAVIS V. THOMPSON  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:     Denied as moot.

ORDER:     The court will issue an order.

An amended complaint was filed in response to this motion on February 24, 2023.  
Doc. #10. Therefore, this motion will be DENIED AS MOOT.