

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, March 18, 2020
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [19-14900](#)-B-13 **IN RE: ROSA RODRIGUEZ**
[ALG-2](#)

MOTION TO CONFIRM PLAN
2-3-2020 [\[43\]](#)

ROSA RODRIGUEZ/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.
JANINE ESQUIVEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

2. [19-14905](#)-B-13 **IN RE: GILBERT/CHRISTINE PADILLA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-14-2020 [\[44\]](#)

MICHAEL MEYER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

This motion is GRANTED. The chapter 13 trustee ("Trustee") requests dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to set a plan for a confirmation hearing and noticing creditors, for being delinquent in the amount of \$1,545.42, and for failing to list tax refunds of \$9,647.00 on Schedule A/B. Doc. #46. Debtor did not oppose.

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).

The court finds that dismissal would be in the best interests of creditors and the estate.

For the above reasons, this motion is GRANTED.

3. [17-10507](#)-B-13 **IN RE: KRYSTAL WEDEKIND**
[FW-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
2-18-2020 [\[101\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's bankruptcy counsel, Fear Waddell P.C. for Gabriel Waddell, requests fees of \$16,102.00 and costs of \$1,478.61 for a total of \$17,580.61 for services rendered from January 1, 2018 through December 31, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Worked on a first modified plan, (2) Worked on a second modified plan, (3) Worked on a third modified plan, (4) Defended against a motion to dismiss, and (5) Prepared and filed this fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$16,102.00 in fees and \$1,478.61 in costs.

4. [19-15313](#)-B-13 **IN RE: JENNIFER PAYAN**
[MHM-2](#)

MOTION TO DISMISS CASE
2-10-2020 [\[13\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as
scheduled.

This motion is DENIED. The chapter 13 trustee ("Trustee") asks the
court to dismiss this case because debtor is delinquent in the
amount of \$3,140.00. Doc. #15. Before this hearing, another payment
in that same amount will also come due. Id. Debtor timely responded,
stating that she has made all applicable payments as of February 13,
2020. Doc. #30, 31.

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)(6) for being delinquent in making plan payments.

Based on the evidence before the court, the court finds that the
debtor made the payment on February 3, 2020. Doc. #31. This matter
will be called to allow Trustee to respond to the debtor's
opposition and evidence.

5. [17-14219](#)-B-13 **IN RE: MICHAEL/TAMARA SMITH**
[MJA-1](#)

MOTION TO MODIFY PLAN
2-3-2020 [\[29\]](#)

MICHAEL SMITH/MV
MICHAEL ARNOLD/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The chapter 13 withdrew his opposition. Doc. #44. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

6. [17-14219](#)-B-13 **IN RE: MICHAEL/TAMARA SMITH**
[MJA-2](#)

AMENDED MOTION FOR COMPENSATION BY THE LAW OFFICE OF ARNOLD LAW
GROUP FOR MICHAEL J. ARNOLD, DEBTORS ATTORNEY(S)
2-10-2020 [\[40\]](#)

MICHAEL ARNOLD/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

There is no evidence of debtors' consent to the fee application before the court. The court notes the "Chapter 13 Fee Agreement" (doc. #37, exhibit C), however that is not consent to the fees requested in this motion.

7. [19-14425](#)-B-13 **IN RE: SILVIA JIMENEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
1-22-2020 [\[34\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #80.

8. [19-14427](#)-B-13 **IN RE: ISIDRO AREVALO AND CARMEN GUZMAN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2020 [\[29\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 29, 2020, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 29, 2020, at 9:30 a.m., to be heard with the debtor's motion to confirm the first amended plan. Doc. #35.

9. [19-14935](#)-B-13 **IN RE: MARIA SOTO**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2020 [\[30\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 29, 2020, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 29, 2020, at 9:30 a.m., to be heard with the debtor's motion to confirm the first amended plan. Doc. #36.

10. [19-14938](#)-B-13 **IN RE: ABEL ACEVEDO AND DENISE CASTILLO**
[MHM-2](#)

MOTION TO DISMISS CASE
3-3-2020 [\[46\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 29, 2020, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 29, 2020, at 9:30 a.m., to be heard with the debtors' motion to confirm plan. Doc. #52.

11. [19-13342](#)-B-13 **IN RE: LINDA GLOSSOP**
[MHM-3](#)

MOTION TO DISMISS CASE
2-10-2020 [\[65\]](#)

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

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

This motion is GRANTED. The chapter 13 trustee ("Trustee") asks the court to dismiss this case because debtor is delinquent in the

amount of \$5,040.00. Doc. #67. Before this hearing, a payment of \$2,430.00 will also come due. Id. Debtor did not oppose.

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)(6) for being delinquent in making plan payments.

For the above reasons, this motion is GRANTED.

12. [19-12351](#)-B-13 **IN RE: ERICA GOMEZ**
[MHM-5](#)

MOTION TO DISGORGE FEES
3-4-2020 [\[69\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
CASE DISMISSED 11/16/2019

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

DISPOSITION: Continued to April 29, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The matter is continued to April 29, 2020 at 9:30 a.m. The court will issue the order.

13. [19-14556](#)-B-13 **IN RE: NICOLAS/MARTHA NUNEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2020 [\[43\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 15, 2020, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 15, 2020, at 9:30 a.m., to be heard with the debtors' motion to confirm plan. Doc. #47.

14. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[DJP-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH RICHARD JOHN MARTINES AND DAWN MARIE MARTINES
2-12-2020 [[102](#)]

VIVINT SOLAR/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. It appears from the moving papers that the debtors have considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the debtors' business judgment. The order should be limited to the claims compromised as described in the motion.

The movant, Vivint Solar ("Movant"), requests approval of a settlement agreement between Movant and the debtors concerning alleged violations of the automatic stay. Doc. #102.

Prior to the debtors' petition for chapter 13 relief, Movant installed a solar photovoltaic system ("System") on the property located at 2997 Desert Ranch Way, Madera, California 93637 ("Property"). Doc. #104. On October 24, 2019, the debtors filed this adversary proceeding alleging that Movant, on various post-petition occasions, attempted to collect a pre-petition debt in violation of the automatic stay under 11 U.S.C. § 362(a). Id.

Under the terms of the compromise, Movant shall pay \$2,500.00 to the debtors' counsel in reimbursement for attorneys' fees and costs incurred by the debtors, in full satisfaction of all claims. Doc. #105. Movant shall remove the System from the Property, return the roof to a watertight condition, and repair any leaks for twelve months after the System is removed. Id. Movant shall cease all attempts to collect a debt from the debtors and the debtors shall cause the adversary proceeding to be dismissed with prejudice. Id.

On a motion by a party in interest 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. In re A & C Properties, 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. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: although the debtors may prevail, the probability of success is far from assured; collection will be very easy as the defendant is a large corporation which grosses billions of dollars annually; the litigation is not very complex, but moving forward would decrease the net to the estate due to the legal fees; and the estate and creditors will benefit because without punitive damages, the settlement would offset actual damages and costs; the settlement is equitable and fair. No party in interest opposes the motion.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

15. [20-10263](#)-B-13 **IN RE: MANUELA MATA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-2-2020 [\[27\]](#)

BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

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.

16. [20-10265](#)-B-13 **IN RE: ERICA GOMEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-2-2020 [\[16\]](#)

MARK HANNON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

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. [19-14470](#)-B-13 **IN RE: JOSE SANCHEZ AND CRISTINA TORREZ**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-19-2020 [\[52\]](#)

MIDFIRST BANK/MV
THOMAS GILLIS/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Midfirst Bank, a Federally Chartered Savings Association, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) against real property commonly known as 2507 Plumwood Way in Madera, CA 93637.

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

There has been no opposition to this motion. After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least three post-petition payments. The movant has produced evidence that debtor is delinquent at least \$2,223.85. Doc. #54, 55, 56.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral

pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

18. [19-14470](#)-B-13 **IN RE: JOSE SANCHEZ AND CRISTINA TORREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
3-2-2020 [\[60\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/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 the order.

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

The chapter 13 trustee ("Trustee") requests dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to confirm a Chapter 13 Plan. Doc. #62.

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).

This case was filed on October 23, 2019 and as of March 9, 2020, no amended plan has been set for a confirmation hearing and adequately served or noticed. The court previously denied a motion to confirm a chapter 13 plan on February 27, 2020. Unless this motion is adequately opposed at the hearing or withdrawn, the motion will be GRANTED.

19. [19-14173](#)-B-13 **IN RE: GONZALO ADAME AND MARTHA RAMIREZ DE ADAME**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-13-2020 [\[64\]](#)

MICHAEL MEYER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #73.

20. [19-14373](#)-B-13 **IN RE: GEORGE/ROSA VILLEGAS**
[MHM-3](#)

MOTION TO DISMISS CASE
3-2-2020 [\[71\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/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 the order.

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

The chapter 13 trustee ("Trustee") requests dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to confirm a Chapter 13 Plan. Doc. #73.

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).

This case was filed on October 16, 2019 and as of March 9, 2020, no amended plan has been set for a confirmation hearing and adequately served or noticed. The court previously denied a motion to confirm a

chapter 13 plan on January 29, 2020. Unless this motion is adequately opposed at the hearing or withdrawn, the motion will be GRANTED.

21. [19-14574](#)-B-13 **IN RE: JOSE MORALES**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2020 [\[57\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

22. [19-14176](#)-B-13 **IN RE: STEVEN WILSON**
[EPE-3](#)

MOTION TO CONFIRM PLAN
2-11-2020 [\[73\]](#)

STEVEN WILSON/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 15, 2020 at 9:30 a.m. The court sets June 3, 2020 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than April 1, 2020. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by April 8, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 8, 2020. If the debtor does not timely file a modified plan or a written

response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set June 3, 2020 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed on Trustee's declaration.

23. [19-14176](#)-B-13 **IN RE: STEVEN WILSON**
[EPE-4](#)

MOTION TO VALUE COLLATERAL OF KINECTA FEDERAL CREDIT UNION
2-12-2020 [\[78\]](#)

STEVEN WILSON/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

11 U.S.C. § 1325(a) (*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle at its current amount, as opposed to the amount due on the loan where the vehicle is the security on the loan. A purchase money security interest lien secured by a motor vehicle cannot be stripped down to the vehicle's value if, *inter alia*, the debt was incurred within a 910 day period preceding the date of the petition.

Debtor asks the court for an order valuing a 2007 Mercedes Benz S550 at \$8,000.00. Doc. #78.

First, the declaration does not contain the debtor's opinion of the relevant value. 11 U.S.C. § 506(a) (2) requires the valuation to be "replacement value," not "fair market value," which is not specific enough. Doc. #80.

Second, the Debtor does not identify when the debt was incurred. Under section 1325(a) (*), the debt cannot be stripped down if the debt was incurred within a 910 day period preceding the date of the petition. Debtor has not submitted any evidence, declaration or otherwise, indicating that the debt was incurred 910 days or more preceding the date of the petition.

Third, LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration and exhibits were combined into one document and not filed separately.

Fourth, LBR 9004-2(d) requires that exhibits shall be filed as a separate document, requires an index, and that exhibit pages be consecutively numbered. In this instance, the exhibits were not filed separately, there was no index, and the exhibit pages were not consecutively numbered.

Therefore, this motion is DENIED WITHOUT PREJUDICE.

24. [19-12280](#)-B-13 **IN RE: MARGARITO/GUADALUPE VILLEGAS**
[MHM-3](#)

MOTION TO DISMISS CASE
3-4-2020 [\[72\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #76.

25. [19-11386](#)-B-13 **IN RE: VINCENTE GARCIA AND MICHELLE RAMIREZ-**
GARCIA
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV II, LLC, CLAIM NUMBER 1
1-23-2020 [\[20\]](#)

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

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d

592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

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

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

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was June 23, 2009, which is well past the two and four year mark in the statutes of limitations. Doc. #20, 22.

Therefore, claim no. 1 filed by Cavalry SPV II, LLC is disallowed in its entirety.

26. [20-10089](#)-B-13 **IN RE: SUSANA ANDRES**
[MHM-1](#)

MOTION TO DISMISS CASE
2-14-2020 [\[22\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The chapter 13 trustee ("Trustee") requests dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to set a plan for a confirmation hearing and noticing creditors, for failing to file correct form of Chapter 13 Plan as provided by LBR 3015-1(a) and General Order GO.18-03, for failing to file Form 106C (Schedule C) and Form 106D (Schedule D), and for failing to file complete and accurate Schedule I and Statement of Financial Affairs. Doc. #24. Debtor did not oppose.

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).

The court finds that dismissal would be in the best interests of creditors and the estate.

For the above reasons, this motion is GRANTED.

27. [19-15090](#)-B-13 **IN RE: DENNIS/STEPHANIE MALDONADO**
[MHM-1](#)

MOTION TO DISMISS CASE
2-14-2020 [\[14\]](#)

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #27.

28. [19-15090](#)-B-13 **IN RE: DENNIS/STEPHANIE MALDONADO**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-14-2020 [\[18\]](#)

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

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

DISPOSITION: Sustained.

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

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

This objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was held and concluded on January 21, 2020 and this objection was filed and served on February 14, 2020, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee objects to debtor's exemption of a mountain bike under California Code of Civil Procedure § 703.140(b)(3) in the amount of \$1,500.00. Doc. #1.

C.C.P § 703.140(b)(3) exempts "[t]he debtor's interest, not to exceed [\$725.00] in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor."

The value of the Mountain Bike in the amount of \$1,500.00 exceeds the statutory limit of \$725.00. Therefore, the Mountain Bike may not be exempted under § 703.140(b)(3).

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

29. [19-14592](#)-B-13 **IN RE: ARTURO LEON AND ANA MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2020 [\[44\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 29, 2020, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to April 29, 2020, at 9:30 a.m., to be heard with the debtors' motion to confirm plan. Doc. #48.

11:00 AM

1. [19-14045](#)-B-7 **IN RE: DAVID MARTIN**
[20-1010](#)

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-25-2020 [9]

EDMONDS V. FARRIS
VACATED BY ECF ORDER #15

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

DISPOSITION: The OSC will be vacated.

NO ORDER REQUIRED: The court already issued an order. Doc. #15.

2. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[20-1011](#) [MB-1](#)

MOTION TO DISMISS
2-19-2020 [9]

GONZALES V. MID VALLEY SERVICES, INC.
HAGOP BEDOYAN/ATTY. FOR MV.

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

DISPOSITION: Granted with leave to amend. An amended complaint, if any, must be filed and served on the necessary parties within 14 days of entry of the order granting this motion.

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

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

This motion is GRANTED.

Plaintiff Minerva Gonzales ("Plaintiff"), who appears to be debtor Johnny Gonzales's ("Debtor") spouse, filed a state civil complaint against Mid Valley Services, Inc. ("Defendant") on January 21, 2020 in Fresno County Superior Court. The complaint is for loss of property and alleges "fraud and deceit." Doc. #4. Plaintiff is seeking monetary and punitive damages of \$200,000.00. Id.

Plaintiff has an interest in two properties: 4755 ("4755") and 4767 ("4767") E. Braly Avenue in Fresno, CA (collectively "Properties"). Id. The complaint states that 4755 was "not even part of deed of trust loan that Defendant lent to my husband," only the 4767 property. Id. Plaintiff accuses Defendant of deceiving Plaintiff "to sign off on community property at 4767 E. Braly Ave. . . . in 2007 and told Plaintiff when loan completed to give to my husband Johnny Gonzalez, they would put my name back on the deed, but found out on 5-13-19 that my name not on deed." Id. Plaintiff states that Defendant would not accept payment, refused to speak to her, and were planning to fraudulently foreclose on both properties. Plaintiff claims to have paid Defendant over \$200,000.00 on a \$112,000.00 loan. Id. At the end of the complaint Plaintiff states that she was "never made a part of any of these transactions." Id.

Defendant removed the matter to this court on February 18, 2020 (doc. #1) and has not opposed removal by making a motion to remand.

Debtor filed a chapter 7 bankruptcy case on October 1, 2019. The Properties were acquired pre-petition and therefore belong to the bankruptcy estate. Peter Fear is the chapter 7 trustee.

Defendant asks the court to dismiss the action under Federal Rules of Civil Procedure¹ 12(b)(6) and (7) (made applicable in bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 7012). Doc. #11. Defendant states that (1) Plaintiff has not met the heightened pleading standard under Civil Rule 9, and (2) Plaintiff has not joined a necessary party under Civil Rule 19 - the chapter 7 trustee. Id.

Civil Rule 12(b)(6) states dismissal is warranted "for failure to state a claim upon which relief can be granted." Courts may dismiss a complaint if it "fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." Caltex Plastics, Inc. v. Lockeheed Martin Corp., 824 F.3d 1156, 1159 (9th Cir. 2016) (citing Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010)); see also Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). "A complaint need not state 'detailed factual allegations,' but must contain sufficient factual matter to 'state a claim to relief that is plausible on its face.'" Doan v. Singh, 617 F.App'x. 684, 685 (9th Cir. 2015) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544-55 (2007)). "A claim has facial plausibility when the plaintiff pleads factual

¹ Future references to the Federal Rules of Civil Procedure will be shortened to "Civil Rule"; future references to the Federal Rules of Bankruptcy Procedure will be shortened to "Rule."

content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556).

When considering a motion to dismiss, all material facts of the complaint are to be taken as true and should be viewed in the light most favorable to the plaintiff. Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 662 (citing Twombly, 550 U.S. at 555). The court may also draw on its "judicial experience and common sense." Id. at 679.

Because Plaintiff is alleging fraud, Civil Rule 9(b) (made applicable to bankruptcy proceedings under Rule 7009) imposes a heightened pleading requirement. Under Civil Rule 9(b), a plaintiff is required to "state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." The rule applies to claims arising under state law. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103 (9th Cir. 2003). "[W]hile a federal court will examine state law to determine whether the elements of fraud have been pled sufficiently to state a cause of action, the Rule 9(b) requirement that the *circumstances* of the fraud must be stated with particularity is a federally imposed rule." Hayduck v. Lanna, 775 F.2d 441, 443 (1st Cir. 1985).

Allegations of fraud must "be 'specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.'" Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009) (citations omitted). "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." Vess, 317 F.3d at 1106 (quoting Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir. 1997)).

Plaintiff does not specify the method by which the promise was made, nor does she identify who, as an agent of Defendant, specifically made the promise. Plaintiff is silent as to where or when the promise was made and the time frame by which performance of the promise must have been completed. Plaintiff also does not establish that her name was on the title deed, when she ceased holding title, the means by which title was lost, and the reason why she was required by Defendant to remove her name from the title deed. At the very end of the complaint, Plaintiff states that "[she] was never made a part of any of these transactions," which appears to question her standing and whether she was the actual recipient of the alleged false promise. *Id.*

Plaintiff is afforded some lenience because she is pro se, but she still must comply with procedural requirements. "[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." McNeil v. U.S., 508 U.S. 106, 113 (1993); see also

Rasidescu v. Midland Credit Management, Inc., 435 F.Supp.2d 1090 (S.D. Cal. 2006) (dismissing a pro se plaintiff's complaint for failing to plead fraud with adequate specificity).

The court finds that dismissal with leave to amend is warranted under Civil Rule 12(b)(6) because Plaintiff did not plead the allegations of fraud with the particularity necessary under Civil Rule 9.

But even if Plaintiff's claims were correctly pled and the court were able to grant relief, the actions must be dismissed with leave to amend for failure to join a required party under Civil Rule 19(a). Plaintiff has not joined the chapter 7 bankruptcy trustee to this adversary proceeding.

The court uses a three-step process for determining whether the court should dismiss a claim for failure to join an indispensable third party. United States v. Bowen, 172 F.3d 682, 688 (9th Cir. 1999). The court must determine: (1) whether the absent party is necessary; (2) whether joinder is feasible; and (3) whether the absent party is "indispensable." Id.

The court finds that Plaintiff failed to join an indispensable party under Civil Rule 19 and dismissal is therefore appropriate under Civil Rule 12(b)(7).

First, the chapter 7 trustee is a necessary party. The Properties are part of the bankruptcy estate - the Debtor's schedules list the Properties, and the complaint alleges on its face that the Properties were acquired pre-petition. It is well established that a bankruptcy trustee will always be a necessary party in any claim involving any property of a bankruptcy estate. "The trustee is the representative of the estate . . . and must be named as a party defendant in an action seeking to proceed against the assets of the estate." Bellini Imports, Ltd. v. Mason and Dixon Lines, Inc., 944 F.2d 199, 202 (4th Cir. 1991).

Second, joinder is feasible because venue is proper and the court has both personal and subject matter jurisdiction over the trustee. See E.E.O.C., 400 F.3d at 789. The third step under Bowen is therefore moot.

The action is dismissed with leave to amend. Plaintiff shall file and serve an amended complaint, if any, on the necessary parties within 14 days of the entry of the order granting this motion.