



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 30, 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. [23-10102](#)-A-13 **IN RE: KERRIE GRAY**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR TOYOTA MOTOR CREDIT CORPORATION
2-22-2023 [[33](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV
GABRIEL WADDELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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 withdrew the original chapter 13 plan on March 29, 2023. Doc. #45.

2. [23-10102](#)-A-13 **IN RE: KERRIE GRAY**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-17-2023 [[30](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 March 27, 2023, amending the claimed exemption in the debtor's household furnishings and personal effects. Doc. #42.

3. [23-10216](#)-A-13 **IN RE: FERNANDO CRUZ**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
3-13-2023 [\[20\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
EDWARD TREDER/ATTY. FOR MV.
DISMISSED 3/17/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on March 17, 2023. Doc. #24.
Therefore, this objection will be OVERRULED AS MOOT.

4. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[MHM-1](#)

MOTION TO DISMISS CASE
3-14-2023 [\[37\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an 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. Though not required, Kimberly Yonemitsu-Todd ("Debtor")
filed written opposition on February 16, 2023. Doc. #44.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case
for unreasonable delay by Debtor that is prejudicial to creditors. 11 U.S.C.
§ 1307(c)(1). Doc. #37. Specifically, Trustee asks the court to dismiss this
case for Debtor's failure to: (1) appear at the scheduled § 341 meeting of
creditors; and (2) provide Trustee with 2021 tax returns required by 11 U.S.C.
§ 521. Doc. #37.

On February 16, 2023, Debtor responded to Trustee's motion. Doc. #44. Though
Debtor missed the initial meeting of creditors, Debtor plans to attend the
continued meeting of creditors scheduled for March 21, 2023 via Zoom Video
Conference. Doc. #44; Decl. of Kimberly Yonemitsu-Todd, Doc. #46. Based on the
court's docket, Debtor appeared at the continued meeting of creditors held on
March 21, 2023, and that meeting was concluded.

With respect to the missing 2021 tax returns, Debtor states that she has an appointment with her accountant to prepare and file her 2021 tax returns as soon as possible, and she will submit her 2021 federal tax return upon completion. Doc. #44; Yonemitsu-Todd Decl., Doc. #46.

While Debtor's appearance at the meeting of creditors on March 21, 2023 satisfies the first ground for dismissal, Debtor has failed to provide her filed 2021 Federal tax returns as required by 11 U.S.C. § 521(e)(2)(A)(i). If the debtor does not provide "not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed[,]" 11 U.S.C. § 521(e)(2)(A)(i), "the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor." 11 U.S.C. § 521(e)(2)(B) (emphasis added).

Debtor does not provide any case law or legal analysis to support Debtor's contention that promising to provide her 2021 Federal tax return to Trustee once filed permits her case to continue. It is unclear to the court how Debtor's need to meet with her accountant to have the missing tax return prepared and filed constitutes circumstances beyond the control of Debtor that permits this court to excuse Debtor's failure to timely provide Trustee with Debtor's 2021 Federal tax return, and the court finds that Debtor's assertion that she has an appointment with her accountant to prepare and file her 2021 Federal tax return as soon as possible does not constitute a failure to comply with 11 U.S.C. § 521(e)(2)(A)(i) that is beyond Debtor's control.

Once a trustee brings to the court's attention the failure of a debtor to provide the trustee with the relevant Federal tax return not later than 7 days prior to the first meeting of creditors and the court finds that such failure is not due to circumstances beyond the debtor's control, the court must dismiss the bankruptcy case under 11 U.S.C. § 521(e)(2)(B). In re Nordstrom, 381 B.R. 766, 770 (Bankr. C.D. Cal. 2008).

Because 11 U.S.C. § 521(e)(2)(B) obligates this court to dismiss Debtor's bankruptcy case based on the facts before the court, Trustee's motion to dismiss is granted, and the case is dismissed.

5. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[NES-1](#)

MOTION TO CONFIRM PLAN
2-16-2023 [\[27\]](#)

KIMBERLY YONEMITSU-TODD/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LINCOLN LAW, LLP FOR
CARL R GUSTAFSON, DEBTORS ATTORNEY(S)
2-16-2023 [\[24\]](#)

CARL GUSTAFSON/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 (Doc. #25) 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>.

Lincoln Law, LLP ("Movant"), counsel for Jeremy Alan Peck and Letitia Marie Peck (collectively, "Debtors"), the debtors in this chapter 13 case, requests additional compensation in the amount of \$6,437.50 and reimbursement for expenses in the amount of \$222.00 for services rendered from August 30, 2022 through February 16, 2023. Doc. #24. Debtors' confirmed plan provides, in addition to \$445.00 paid prior to filing the case, for additional fees that were to be determined to be paid through the plan. Plan, Doc. ##3, 31. No prior fee application has been filed. Debtors consent to the amount requested in Movant's application. Decl. of Jeremy Alan Peck, Doc. #27.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and

prosecuting Debtors' plan; (2) preparing case for meeting of creditors; (3) resolving trustee's objection to confirmation; (4) preparing the fee application; and (5) general case administration. Ex. A, Doc. #26. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows additional compensation in the amount of \$6,437.50 and reimbursement for expenses in the amount of \$222.00 to be paid in a manner consistent with the terms of the confirmed plan.

7. [23-10049](#)-A-13 **IN RE: ALICIA ELIAS MENDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-9-2023 [\[40\]](#)
DISMISSED 3/17/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on March 17, 2023, Doc. #46. The order to show cause will be dropped as moot. No appearance is necessary.

8. [23-10049](#)-A-13 **IN RE: ALICIA ELIAS MENDEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
2-23-2023 [\[36\]](#)
DISMISSED 3/17/23

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 March 17, 2023. Doc. #46. Therefore, this motion will be DENIED AS MOOT.

9. [22-11952](#)-A-13 **IN RE: HERNAN CORTEZ**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-30-2023 [[45](#)]

SCOTT LYONS/ATTY. FOR DBT.
DISMISSED 3/3/23

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on March 3, 2023. Doc. #67.
Therefore, this objection will be OVERRULED AS MOOT.

10. [22-11952](#)-A-13 **IN RE: HERNAN CORTEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
2-28-2023 [[62](#)]

SCOTT LYONS/ATTY. FOR DBT.
DISMISSED 3/3/23

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 March 3, 2023. Doc. #67.
Therefore, this motion will be DENIED AS MOOT.

11. [23-10152](#)-A-13 **IN RE: JERRY MEDRANO**
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
2-24-2023 [[13](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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. While not required, the debtor filed a written response to the objection to confirmation of plan. Doc. ##17, 19. The court intends to sustain the objection and will not consider the disallowance of attorney's fees for the objecting party as requested in debtor's written response. At the hearing, the court will consider additional 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 debtor filed his chapter 13 plan ("Plan") on January 28, 2023. Doc. #3. Toyota Motor Credit Corporation ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the full payment of 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. #13.

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 16, 2023, asserting a secured claim of \$15,005.55. Claim 1.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan proposes to pay Creditor only \$14,930.00. Doc. #3. Thus, the Plan fails to account for the full amount of Creditor's claim. Claim 1.

In their written response, the debtor requests that this court disallow any attorneys' fees requested by Creditor for filing this objection. However, there is no indication on the record that Creditor has requested such fees from the debtor, so that request is premature and is denied without prejudice to being raised if and when Creditor seeks such fees from the debtor.

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

12. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[TCS-8](#)

MOTION TO APPROVE LOAN MODIFICATION
3-15-2023 [[123](#)]

SARINA DUTEY/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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 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. While not required, the chapter 13 trustee ("Trustee") filed an opposition to the motion on February 22, 2023. Tr.'s Obj, Doc. #128. Based on Trustee's opposition, the court is inclined to deny the motion. If additional opposition is presented at the hearing, the court will consider the additional 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.

Scott Dutey and Sarina Dutey (collectively, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to modify their existing mortgage. Doc. #123. Debtors seek to modify the mortgage on their primary residence located at 30557 Seminole Dr. Coarsegold, CA 93614 (the "Residence"). Id. The proposed modification will change the interest rate on the mortgage to 4.5% for 303 months. Decl. of Sarina Dutey, Doc. #126. The Department of Housing and Urban Development will take care of the arrearage by placing a deed of trust of \$32,267.88 on the Residence that will be paid when the house is refinanced, sold, or in 2047. Dutey Decl. at ¶ 8. After the modification, Debtors will be fully current on their loan. Id. at ¶ 9. Debtors will make all of their mortgage payments in class 4 under their plan. Motion, Doc. #123. The monthly payment will increase to \$2,058.28. Id. at ¶ 7.

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. Trustee states that Debtors are not current on their chapter 13 plan payments and are delinquent by \$1,810.00 in plan payments through February 2023. Tr.'s Obj, Doc. #128. Further, Debtors did not file updated Schedules I and J that demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. Id. While the modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence, Debtors did not include a loan modification agreement that Debtors seek to have approved. Id. The only security for the modification will be Debtors' Residence.

Accordingly, based on the Trustee's opposition, this motion will be DENIED.

13. [23-10069](#)-A-13 **IN RE: ALEJANDRO ZAMBRANO-ARREOLA**
[MHM-1](#)

MOTION TO DISMISS CASE
3-1-2023 [\[12\]](#)

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 default of the debtor is 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 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 under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc #12. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; and (2) provide Trustee with requested documents. Doc. #12. The debtor did not oppose the motion.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

14. [23-10069](#)-A-13 **IN RE: ALEJANDRO ZAMBRANO-ARREOLA**
[MHM-2](#)

MOTION TO DISMISS CASE
3-10-2023 [\[16\]](#)

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court is granting the trustee's Motion to Dismiss [MHM-1] above, therefore this Motion to Dismiss [MHM-2] will be DENIED AS MOOT.

15. [22-12073](#)-A-13 **IN RE: ARMANDO/LAURA RODRIGUEZ**
[PLG-1](#)

MOTION TO CONFIRM PLAN
2-10-2023 [\[22\]](#)

LAURA RODRIGUEZ/MV
RABIN POURNAZARIAN/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)(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.

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.

16. [20-11385](#)-A-13 **IN RE: JOHN/DOLORES MARTINEZ**
[TCS-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, L.L.C.
2-22-2023 [\[31\]](#)

DOLORES MARTINEZ/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.

John Martinez and Dolores Martinez (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Portfolio Recovery Associates, L.L.C. on Debtors' primary residence located at 1015 E. Fountain Way Fresno, California, 93704. (the "Property"). Doc. #31; Am. Schedule C, Doc. #29; Am. Schedule D, Doc. #29.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on April 10, 2020. Doc. #1. A judgment was entered against John Martinez in the amount of \$1,325.53 in favor of Creditor on October 11, 2016. Ex. B, Doc. #34. The abstract judgment was recorded pre-petition in Fresno County on November 4, 2016, as document number 2016-0153721. Ex. A, Doc. #34. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #31. The Property also is encumbered by a first deed of trust in favor of Select Portfolio Servicing in the amount \$64,116.69 and a second deed of trust in favor of CalHFA Mortgage Assistance in the amount of \$76,000.00, which does not mature to be paid if all terms are met or until the house is sold. Id.; Am. Schedule D, Doc. #29. Debtors claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #29. Debtors asserts a market value for the Property as of the petition date at \$192,259.00. Am. Schedule A/B, Doc. #25.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$1,325.53
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$140,116.69
Amount of Debtor's claim of exemption in the Property	+	\$100,000.00
		\$241,442.22
Value of Debtor's interest in the Property absent liens	-	\$192,259.00
Amount Creditor's lien impairs Debtor's exemption		\$49,183.22

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

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

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#) [WLG-3](#)

MOTION FOR SUMMARY JUDGMENT
2-14-2023 [\[127\]](#)

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i) provides that "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." (Emphasis added). Because the notice of hearing filed in connection with this motion does not advise potential respondents (a) whether and when written opposition must be filed, (b) the deadline for filing and serving written opposition, and (c) the names and addresses of the persons who must be served with any opposition, notice of the motion is not proper. The motion is denied without prejudice for improper notice.

As a further procedural matter, the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(ii) because the notice of hearing fails to advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. The notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

3. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[22-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

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

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#) [WLG-3](#)

MOTION FOR SUMMARY JUDGMENT
2-14-2023 [[130](#)]

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i) provides that "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." (Emphasis added). Because the notice of hearing filed in connection with this motion does not advise potential respondents (a) whether and when written opposition must be filed, (b) the deadline for filing and serving written opposition, and (c) the names and addresses of the persons who must be served with any opposition, notice of the motion is not proper. The motion is denied without prejudice for improper notice.

As a further procedural matter, the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(ii) because the notice of hearing fails to advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. The notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

6. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[22-1022](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [\[203\]](#)

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

NO RULING.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [NS-17](#)

AMENDED MOTION TO CONTINUE DISCOVERY AND PRE-TRIAL DEADLINES
2-1-2023 [\[361\]](#)

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Defendant and counter-claimant T2M Investments, LLC ("T2M") timely filed written opposition on February 8, 2023. Doc. #365. 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 February 1, 2023, plaintiff Sylvia Nicole ("Plaintiff") filed and set for hearing a motion to continue discovery and pre-trial deadlines from the court's order for 90 days ("Motion"). Doc. #361. On November 19, 2021, this court issued a scheduling order in this adversary proceeding ("Scheduling Order") setting the close of fact discovery for May 31, 2022 and close of expert discovery for October 31, 2022. Doc. #291. The Scheduling Order also required Plaintiff's pre-trial statement to be filed no later than February 2, 2023, required T2M's pre-trial statement to be filed no later than February 9, 2023, and set a pre-trial conference for February 16, 2023. Id. T2M opposes the Motion. Doc. #365.

Federal Rule of Civil Procedure ("Rule") 16 is incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7016. Rule 16 provides, in part, that the bankruptcy court must issue a scheduling order limiting the time to complete discovery, and such schedule may be modified only for good cause and with the judge's consent. Rule 16(b).

When ruling on a motion to amend a Rule 16 scheduling order to reopen discovery, the court is to consider the following factors:

(1) whether trial is imminent, (2) whether the request is opposed, (3) whether the non-moving party would be prejudiced, (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the [trial] court, and (6) the likelihood that the discovery will lead to relevant evidence.

United States ex rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th Cir. 1995), vacated on other grounds, 520 U.S. 939 (1997). First among these is the diligence of the moving party. Johnson v. Mammoth Recreations, 975 F.2d 604, 609 (9th Cir. 1992).

Here, this court scheduled ample time to conduct discovery: six months for fact discovery and eleven months for expert discovery. Scheduling Order, Doc. #291. Plaintiff has not provided a declaration setting forth the discovery that Plaintiff has propounded in this adversary proceeding and has not submitted a declaration showing good cause for the requested continuance. In addition, the request is opposed by T2M. Doc. #365. T2M states that granting Plaintiff's request would necessitate a delay in the trial of this adversary proceeding, which is nearly two years old. Id. Moreover, T2M would suffer some prejudice if discovery were re-opened and the close of discovery extended, since such a result would delay the trial. Id. Further, T2M was not on notice that Plaintiff would seek to reopen discovery, and there would be undue prejudice to T2M in granting the request to reopen discovery.

Based on the evidence before the court, the court finds that Plaintiff was not diligent in prosecuting this adversary proceeding or defending against T2M's counterclaim. Further, Plaintiff has not submitted a declaration showing good cause to continue discovery and pre-trial deadlines.

Accordingly, the court does not find good cause to amend the Scheduling Order to extend discovery and pre-trial deadlines, and this Motion is DENIED.