

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, April 11, 2019  
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. [18-13677](#)-B-9 IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION  
9-7-2018 [[1](#)]

RILEY WALTER

NO RULING.

2. [18-13677](#)-B-9 IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[FRB-1](#)

MOTION TO EMPLOY MICHAEL J. GOMEZ AS SPECIAL COUNSEL  
3-25-2019 [[127](#)]

ELITECARE MEDICAL STAFFING,  
INC./MV  
RILEY WALTER  
RESPONSIVE PLEADING

NO RULING.

3. [18-13677](#)-B-9 IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[SWE-1](#)

MOTION TO EMPLOY ROBERT S. MARTICELLO AS ATTORNEY(S)  
3-22-2019 [[122](#)]

ELITECARE MEDICAL STAFFING,  
INC./MV  
RILEY WALTER  
RESPONSIVE PLEADING

NO RULING.

4. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT**  
[WW-5](#)

MOTION FOR AUTHORITY TO ENTER INTO TRANSACTION TO LEASE REAL  
PROPERTY PURSUANT TO 11 U.S.C. SECTIONS 105, 901 AND 922  
3-13-2019    [\[116\]](#)

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
RILEY WALTER  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

This motion was filed and served pursuant to Local Rule of Practice  
("LBR") 9014-1(f)(1) and will proceed as scheduled. The defaults of  
all parties that received notice are entered except: KS StateBank  
("KSB"); Beckman Coulter, Inc. and Elitecare Medical Staffing, Inc.;  
US Bank as Trustee under an indenture/trust agreement for  
Certificates of Participation (COP) under two bond issues  
benefitting the District ("USB").

Debtor Coalinga Regional Medical Center ("Debtor", "CRMC," or  
"District") asks this court for an order authorizing CRMC to enter  
into a transaction with Coalinga Medical Center, LLC, a California  
limited liability company, an affiliate of American Advanced  
Management Group ("CMC" or "Tenant") so that CRMC's general acute  
care hospital can be reopened so that people served by the District  
have access to acute care facilities. Doc. #116.

In short, the District wants to lease its property to Tenant with an  
option to purchase. The term proposed is 20 years. The property  
consists of the real property used by the District: the hospital; an  
attached skilled nursing facility ("SNF"); three medical office  
buildings including one large building; a separate SNF. The District  
also proposes entering into an Asset Purchase Agreement with the  
Tenant for the sale of attendant personal property.

Three limited oppositions were filed: USB (doc. #156), KSB (doc.  
#134), and Beckman Coulter/Elitecare Staffing (doc. #137).

USB wants adequate protection of its interests that may be affected  
by the transaction and any liens it has on the assets attach to any  
proceeds the District receives if Tenant exercises the option. Also,  
USB advises that the transaction may result in a default under the  
indenture/trust agreement. Doc. #156.

KSB wants clarification whether the HVAC system it financed for the District is part of the transaction and wants adequate protection of its interest. KSB provided evidence of the amount due under its financing (\$73,000 of an original \$437,000 loan). Doc. #134.

Beckman Coulter and Elitecare oppose on several grounds: approval of the transaction precludes all other alternatives; the transaction will limit Debtor's options with respect to the terms of a plan; even the transaction is approved, the proceeds from the transaction may not be paid to unsecured creditors on a pro-rata basis or that the transaction will result in a reduction in Debtor's tax revenues. Doc. #137.

Debtor's only substantive response was directed to Beckman Coulter and Elitecare. The court's role in a chapter 9 case, the District reminds us, is much more limited than in a chapter 11 case, and unless Debtor's decision is "capricious or whimsical," the court must approve the transaction. Doc. #150. Delaying the granting of the motion would delay the opening of the hospital. Id.

11 U.S.C. § 901 lists the provisions of the bankruptcy code applicable in chapter 9. Among the provisions not listed is § 363, which relates to the use and sale of property of the debtor (since there is no estate created in chapter 9, there is no estate property, see § 902(1), Diamond Z Tralier, Inc. v. JZ L.L.C., 371 B.R. 412, 419 n.4 (9th Cir. BAP 2007)). The omission of § 363 suggests that court approval is not necessary for a chapter 9 debtor to dispose of its own property in the way it sees fit. A bankruptcy court in Prime Healthcare Mgmt. v. Valley Health Sys. (In re Valley Health Sys.), 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010) held that

§ 363, which regulates the use, sale or lease of property, [is inapplicable] to a chapter 9 case. See 11 U.S.C. § 901(a). By virtue of § 904, a debtor in chapter 9 retains title to, possession of, and complete control over its property and its operations, and is not restricted in its ability to sell, use, or lease its property.

Likewise, in In re Richmond Unified School Dist., 133 B.R. 221, 225 (Bankr. N.D. Cal. 1991), the court held that "the [chapter 9 debtor] is free to use, sell or lease property without regard to the restrictions in section 363."

The "consent" of the Debtor for court intervention in this motion does not open the "court's tool box" that may be otherwise available on sale motions under § 363. A "[Chapter 9 debtor] can expend its property and revenues during the chapter 9 case as it wishes. It can pay any debt in full without permission of this court." In re City of Stockton, 486 B.R. 194, 199 (Bankr. E.D. Cal. 2013); § 904. With the District's consent, the court here can interfere "with the property or revenues of the debtor needed to accomplish the proposed transaction." Id. [applying FRBP 9019 approving a settlement because it was requested by the debtor]. The debtor requests a court order here because the Tenant wants one. Asking the court for that order is rational and makes sense. That does not mean this court's limited

role in a Chapter 9 case is suddenly expanded. The debtor asks for a simple order approving a transaction and does not request anything affecting existing rights of secured or unsecured creditors. The District was clear in limiting its waiver.

Because the court's involvement is limited in chapter 9 cases, and based on the above cited cases, the court intends to grant this motion. Debtor provides ample evidence to support the granting of the motion.

Wayne Allen, the Consultant and CEO of CRMC, in his declaration stated that the voters approved the ballot measure relating to the transaction with 93% of the votes approving the lease and sale of personal property; that the price to be paid by the Lessee for the lease of the facility is established by appraisal as required by state law; that the price to be paid for the assets to be purchased is also established by an appraisal, which is required by state law, and opening the hospital is a "significant public need and benefit." Doc. #118.

The declaration of William Lewis, President of the Board of Directors of CRMC, says the ballot measure to approve this transaction was approved by 93% of the voters at the March 5, 2019 special election. Doc. #119.

The court is unable to direct a municipality or examine under a microscope the actions of debtors in chapter 9. The bankruptcy code is explicit in what sections of the code are applicable, and which ones are not. The court does not have the authority to investigate the nature of the transaction because § 363 is not applicable in this case.

USB's and KSB's limited objections are overruled. If either party wants adequate protection, § 361 is a provision incorporated in Chapter 9. Neither has proposed a form of adequate protection except USB asking for its liens to follow purported sale proceeds. Also, § 922 provides an avenue for relief; § 363(e) does not. The court is not approving the transaction free and clear of liens or interests even if that were possible in a Chapter 9; it is not in this motion. If the transaction threatens the tax-exempt nature of the COPs in one of the offerings, the court cannot change that by approving the transaction or not. The District will have to deal with that default as it would outside of Chapter 9. Perhaps the Plan of Adjustment will solve the problem.

KSB's concern about its collateral being part of the transaction is a question that can be answered using simple bankruptcy discovery devices if the District has not yet adequately responded. But even if the HVAC equipment is included, KSB's rights are not affected by the motion.

Beckman Coulter and Elitecare's objections are overruled. First, the District's reorganization options may be limited if the transaction is approved. The objectors do not say how the approval of the transaction negatively impacts the unsecured creditors or them specifically. The District closed the hospital. It voluntarily

suspended their license. The unsecured creditors were getting "nothing" before the case was filed and now there is a reorganization that is possible. The unsecured creditors may benefit.

Second, the evidence offered by these objectors shows that marketing of the assets did occur before this transaction was considered by the District and its voters. No suggestion is made or proven that marketing was insufficient, that there are other "suitors" who would "pay more" for the assets or that the District acted capriciously in negotiating the transaction.

Third, the objection does not clarify what unencumbered proceeds are available for the unsecured creditors in the transaction. Now, the indenture trustee has liens on the revenue streams. The large medical building is encumbered by a deed of trust. If the objectors are concerned about the purchase option being exercised, there is no evidence it will be or when it will be.

Fourth, the *sub rosa* plan argument ignores the District's reality. True enough, a Plan of Adjustment may affect the indenture and may answer questions about the maintenance of tax-exempt status of one of the COP offerings. It is also true that the court has authority to set a date by which a plan must be filed. § 941. Nevertheless, the District has until July to activate the license or risk loss of the license. The Disclosure Statement and Plan approval process may take longer. Also, no party has asked the court to set a bar date and since the hospital is closed, there is little sense in setting a date. The objectors have their right to seek dismissal of the case if they have grounds to do so.

Fifth, the court cannot order the proceeds "held" on this record. The District does not consent and § 904 precludes such relief.

The court intends to GRANT the motion.

5. [18-13678](#)-B-11     **IN RE: VERSA MARKETING, INC.**  
[WW-20](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM  
LAW GROUP FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)  
3-14-2019     [\[319\]](#)

RILEY WALTER

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, Walter Wilhelm Law Group, requests fees of \$18,974.50 and costs of \$1,719.86 for a total of \$20,694.36 for services rendered from January 1, 2019 through March 11, 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) Working on PACA claims and cash collateral issues, (2) Preparing and prosecuting several motions to reject executory contracts and leases, (3) Working with debtor's special counsel in relation to the complaint against West Liberty Foods, (4) Coordinating consensual and continued uses of cash collateral, and (5) Beginning the work on a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$18,974.50 in fees and \$1,719.86 in costs.

6. [18-13678](#)-B-11     **IN RE: VERSA MARKETING, INC.**  
[WW-21](#)

MOTION FOR COMPENSATION FOR TERENCE J. LONG, CONSULTANT(S)  
3-14-2019    [\[326\]](#)

TERENCE LONG/MV  
RILEY WALTER

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 consultant, Terence J. Long, requests fees of \$7,144.00 for services rendered from January 1, 2019 through March 13, 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) Preparation fee applications, (2) Assisting with preparation of monthly operating reports, (3) Preparing financial reports and projections relative to cash collateral budgets, and (4) Communicated with counsel and debtor relative to a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$7,144.00 in fees.

7. [18-13678](#)-B-11      **IN RE: VERSA MARKETING, INC.**  
[WW-22](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN &  
HOROWITT, LLP FOR C. FREDRICK MEINE III, SPECIAL COUNSEL(S)  
3-14-2019    [\[333\]](#)

RILEY WALTER

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 special counsel, Coleman & Horowitz, LLP, requests fees of \$21,420.25 for services rendered from August 8, 2018 through March 13, 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) Preparing and filing an adversary proceeding against West Liberty Foods, (2) Discussing possibility of reaffirmation agreements with some creditors, (3) Preparing employment and fee applications, and (4) Corresponding with debtor and bankruptcy counsel regarding general case administration. Communicated with counsel and debtor relative to a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$21,420.25 in fees.

8. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**  
[WW-23](#)

MOTION FOR COMPENSATION FOR MATTHEWS, WALLACE & CO,  
ACCOUNTANT(S)  
3-14-2019 [\[340\]](#)

MATTHEWS, WALLACE & CO/MV  
RILEY WALTER

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 accountants, Matthews, Wallace & Co., Inc., requests fees of \$5,591.25 for services rendered from September 7, 2018 through December 31, 2018.

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) Reviewing debtor's general ledger, (2) Preparing the corporate income tax return, and (3) Preparing a pension trust accounting and census for the year ending June 30, 2018. Preparing employment and fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$5,591.25 in fees.

9. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[FWP-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES  
1-14-2019    [\[993\]](#)

CERNER CORPORATION/MV  
RILEY WALTER  
JASON RIOS/ATTY. FOR MV.  
ORDER CONTINUING HRG TO 5/16/19; ECF #1284

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

DISPOSITION:                    Continued to May 16, 2019 at 9:30 a.m.

NO ORDER REQUIRED:          The court already issued an order. Doc. #1284.

10. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-84](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
2-26-2019    [[1160](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER  
RESPONSIVE PLEADING

NO RULING.

The court notes creditor California Physicians' Service dba Blue Shield of California's objection. Doc. #1300.

11. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-86](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
2-26-2019    [[1172](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

NO RULING.

12. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-88](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
3-8-2019    [[1215](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may . . . reject any executory contract . . . ."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the Master Equipment and Products agreement, dated July 31, 2017, and an amendment and supplement to that agreement, dated July 31, 2017, between debtor and Siemens Healthcare Diagnostics Inc.

Any claim based on this motion shall be filed on or before July 11, 2019 provided notice of the order rejecting this contract is served on the other party to this contract on or before April 18, 2019.

13. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-89](#)

MOTION FOR ORDER AUTHORIZING ASSIGNMENT OF EXECUTORY  
CONTRACT (IBM CREDIT LLC)  
3-20-2019 [[1232](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume . . . any executory contract . . . of the debtor."

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the "Settlement Agreement" effectively dated January 23, 2019 between debtor and IBM Credit LLC Adventist Health. Doc. #1236. The 14 day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived, and Debtor is authorized to pay the cure amounts, if any exist, under the Settlement Agreement at the Closing Date.

14. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-90](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
3-22-2019    [[1249](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may . . . reject any executory contract . . . of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should

presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the Call Coverage Agreement between debtor and Fateh Entabi, M.D.

Any claim based on this motion shall be filed on or before July 11, 2019 provided notice of the order rejecting this contract is served on the other party to this contract on or before April 18, 2019.

15. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-91](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
3-22-2019 [[1255](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume . . . any executory contract . . . of the debtor."

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." *Id.* The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the "contract which provided the District with Orchard Software Silver Level Support, from October 1, 2017 to October 30, 2018 (as extended)" ("Contract") to Adventist Health. Doc. #1255, 1258. The 14 day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived, and Debtor is authorized to pay the cure amounts, if any exist, under the Contract at the Closing Date.

16. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-93](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
3-25-2019    [\[1272\]](#)

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may . . . reject any executory contract . . . of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent. The court notes creditor

California Physicians' Service dba Blue Shield of California's objection. Doc. #1300.

The debtor-in-possession is authorized to reject the seven designated contracts listed in Exhibit A. Doc. #1275.

Any claim based on this motion shall be filed on or before July 11, 2019 provided notice of the order rejecting this contract is served on the other party to this contract on or before April 18, 2019.



1:30 PM

1. [18-13602](#)-B-13     **IN RE: RAMIRO/ENEDELIA SANCHEZ**  
[TOG-2](#)

MOTION TO CONFIRM PLAN  
3-4-2019    [\[56\]](#)

RAMIRO SANCHEZ/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

NO RULING.

2. [18-13602](#)-B-13     **IN RE: RAMIRO/ENEDELIA SANCHEZ**  
[WFZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
3-25-2019    [\[64\]](#)

KINECTA FEDERAL CREDIT  
UNION/MV  
THOMAS GILLIS  
MARK BLACKMAN/ATTY. FOR MV.

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 for failure to comply with the Local Rules of Practice ("LBR"). LBR 4001-1(b) contains specific provisions relating to relief from stay motions in Chapter 12 and 13 cases. After review of the included evidence, the court did not see that this rule was complied with. Therefore the motion is DENIED WITHOUT PREJUDICE.

3. [19-10004](#)-B-13     **IN RE: GEORGE BAKER**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-6-2019    [\[47\]](#)

MICHAEL MEYER/MV  
JOEL WINTER

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 matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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 record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521. Accordingly, the case will be dismissed.

4. [19-10004](#)-B-13     **IN RE: GEORGE BAKER**  
[RMP-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS,  
INC.  
3-25-2019    [\[53\]](#)

REAL TIME RESOLUTIONS, INC./MV  
JOEL WINTER  
RENEE PARKER/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 case is dismissed. See  
matter #3. MHM-1, above.

5. [19-10305](#)-B-13     **IN RE: RUBEN/MARIA QUINTANILLA**  
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
3-1-2019    [\[15\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
SCOTT LYONS  
RENEE PARKER/ATTY. FOR MV.

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

DISPOSITION:     Overruled without prejudice.

ORDER:             The court will issue an order.

This objection is OVERRULED WITHOUT PREJUDICE for failure to comply  
with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-  
1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing  
requirements, requires movants to notify respondents that they can  
determine whether the matter has been resolved without oral argument  
or if the court has issued a tentative ruling by checking the  
Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day  
before the hearing.

Even if the procedural problem was resolved or non-existent, the  
objection should be overruled. First, objector has filed a proof of  
claim which contains the claimed arrearage. The proof of claim will  
control the treatment of the claim unless the debtors object to the  
claim or the court otherwise adjudicates the claim.

Second, the claimed property tax default has not been proven by the objector. The debtors do not list a property tax default in their schedules. If the debtors fail to provide for the tax claim in the Plan, that may be grounds for stay relief. If the debtors have failed to pay their taxes post-petition it is in breach of their duties under LBR 3015-1(b)(4). That may be grounds for stay relief.

6. [19-10509](#)-B-13     **IN RE: ROBERT CLYBORNE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-21-2019    [\[18\]](#)

STEPHEN LABIAK

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

The record shows that the installment fees now due were paid on April 2, 2019.

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.

7. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[HTK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM THAT THE AUTOMATIC STAY DOES NOT APPLY TO MR. CRUZ  
IN SUBSEQUENT FILINGS  
3-27-2019    [\[49\]](#)

MEL ABDELAZIZ/MV  
H. KHARAZI/ATTY. FOR MV.

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #71.

8. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[HTK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM THAT THE AUTOMATIC STAY DOES NOT APPLY TO MR. CRUZ  
IN SUBSEQUENT FILINGS  
3-27-2019    [\[54\]](#)

MEL ABDELAZIZ/MV  
H. KHARAZI/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             No appearance is necessary. The court will issue the  
order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with  
the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are  
the rules about Docket Control Numbers ("DCN"). These rules require  
the DCN to be in the caption page on all documents filed in every  
matter with the court and each new motion requires a new DCN.

A Motion for Relief from the Automatic Stay was previously filed on  
February 20, 2019 (doc. #13) and denied without prejudice on March  
28, 2019. Doc. #48. The DCN for that motion was HTK-1. This motion  
also has a DCN of HTK-1 and therefore does not comply with the local  
rules. Each separate matter filed with the court must have a  
different DCN.

9. [19-10023](#)-B-13     **IN RE: LUIS GUTIERREZ JIMENEZ AND MIRANDA**  
**GUTIERREZ**  
[MHM-3](#)

MOTION TO DISMISS CASE  
3-7-2019    [\[41\]](#)

MICHAEL MEYER/MV  
NICHOLAS WAJDA

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 matter was fully noticed in compliance with the Local Rules of  
Practice and there is no opposition. Accordingly, the respondents'  
defaults will be entered. Federal Rule of Civil Procedure 55, made

applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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 record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtors failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521. Accordingly, the case will be dismissed.

10. [19-10227](#)-B-13      **IN RE: MA GUADALUPE SERRANO**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHEAL H.  
MEYER  
3-13-2019    [\[20\]](#)

THOMAS GILLIS

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

DISPOSITION:      Sustained.

ORDER:              The court will issue the order.

This objection was set for hearing on 14 days' notice as required by Local Rule of Practice ("LBR") 3015-1(c)(4). The debtor filed non-opposition to the sustaining of this objection. Doc. #38. Therefore this objection is SUSTAINED.

11. [19-10227](#)-B-13     **IN RE: MA GUADALUPE SERRANO**  
[MSK-1](#)

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK  
NATIONAL TRUST COMPANY  
3-28-2019    [\[36\]](#)

DEUTSCHE BANK NATIONAL TRUST  
COMPANY/MV  
THOMAS GILLIS  
MARK KRAUSE/ATTY. FOR MV.

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

DISPOSITION:        Overruled without prejudice.

ORDER:                The court will issue an order.

This objection is OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

12. [18-13541](#)-B-13     **IN RE: MORGAN BROWN**  
[FW-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
1-22-2019    [\[48\]](#)

MORGAN BROWN/MV  
GABRIEL WADDELL  
PLAN WITHDRAWN

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #68.

13. [19-10141](#)-B-13     **IN RE: FRANK RECCHIO**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-7-2019    [\[25\]](#)

MICHAEL MEYER/MV  
ERIC ESCAMILLA  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted unless withdrawn prior to the hearing.

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). Therefore, the defaults of the above-mentioned parties in interest, with the exception of the debtor, are entered. 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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1), (3), 1307(e), and 521(e)(2)(A)(B). Trustee contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Debtor, opposes the motion, contending that the necessary and requested documents have been supplied. Doc. ##36.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr. D.S.C. Dec. 29 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. Aug. 5, 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and



investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). As one commentator noted, "'Cooperate' is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Trustee has requested the following additional documentation from the debtor: All pages of the most recent Federal Tax Return filed by the debtor; an accurate Schedule A/B; and requests dismissal on the grounds that debtor has failed to file tax returns for the years 2016, 2017, and 2018, inter alia.

Debtor timely responded, that he has provided the 2018 tax return to Trustee; that he has filed the tax returns for the years 2015-2018; that he did provide the 2015 tax return to Trustee; and that he did file an Amended, and supposedly accurate, Schedule A/B. Doc. #36. Debtor provided no other evidence besides his declaration. Id.

11 U.S.C. §§ 1308(a) and 1307(e) require the court to dismiss a chapter 13 case if "the debtor [fails] to file a tax return under section 1308 . . . ." This case was filed on January 18, 2019. Doc. #1. Debtor's declaration states that he filed his tax returns, but did not say if he filed them prior to filing his chapter 13 petition, which § 1308(a) requires. The docket reflects the Trustee continued the meeting of creditors three times. The last date for the continued meeting is May 14, 2019. The debtor has filed a motion to confirm a modified plan (doc. #38) to be heard May 16, 2019. The court will call the matter for a report from the parties on the status of debtor's duties in this case. If unsatisfactory, the case will be dismissed.

14. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[SFR-1](#)

CONTINUED MOTION TO IMPOSE AUTOMATIC STAY  
3-7-2019    [\[11\]](#)

STEVEN CHAVEZ/MV  
SHARLENE ROBERTS-CAUDLE

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 to Impose the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay will not go into effect when the later case was filed. This was case was filed on March 1, 2019. Doc. #1. Debtor had two cases that were pending but dismissed in the past year, case no. 18-13064 (filed on July 27, 2018 and dismissed on October 25, 2018) and case no. 18-14352 (filed on October 26, 2018 and dismissed on February 15, 2019).

11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the

affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because two or more previous cases under this title in which the individual was a debtor were dismissed within the 1-year period. 11 U.S.C. § 362(c) (4) (D) (i) (I).

Based on the moving papers and the record, the court is not persuaded that the presumption has been rebutted. The court intends to deny the motion to extend the automatic stay as to all creditors.

This is debtor's third bankruptcy filing in less than one year. The first case was a skeletal filing. After the court granted a motion to extend time to file the necessary schedules, the schedules were eventually filed, though three days later than the court ordered. The case was dismissed on the second of the two motions to dismiss the chapter 13 trustee filed.

The second case was filed the day after the first case was dismissed. Like the first case, this case was also a skeletal filing. No motion to extend the time to file schedules was filed; the necessary schedules were due by November 9, 2018 (case no. 18-14352, doc. #6), but, like the first case, they were filed three days after, on November 12, 2018. In that case, the court granted the motion to extend the automatic stay. At the hearing on that motion, no party opposed the granting of the motion. After a few failed attempts to confirm the chapter 13 plan, the case was eventually dismissed for failure to make plan payments and provide necessary and requested documents to the trustee's office.

This third case, like the first two, is also a skeletal filing. Unlike the first two however, the schedules were later timely filed. See doc. #6, 18. Debtor's Schedule J shows a current monthly net income of \$9,930.00. Doc. #18. Debtor's chapter 13 plan is for five years, the plan payment is \$8,426.51, with a proposed 0% dividend to unsecured claims, estimated to total \$170,687.37. Doc. #21.

The meeting of creditors was held on April 2, 2019. The trustee shortly thereafter filed a motion to dismiss on the grounds that debtor failed to provide certain documents to the trustee's office, failed to file his 2018 tax return, and failed to set a plan for hearing with notice to creditors. Doc. #29. The § 341 meeting was continued to April 23, 2019 at 10:00 a.m.

Debtor filed bankruptcy to "prevent the sale in foreclosure of [his] home, to pay [his] debts secured by personal property and [his] priority unsecured debtors, to pay to the extent of [his] ability [his] non-priority unsecured debts, and to receive a discharge . . . ." Doc. #13. He states, and the evidence supports, that part of the reason his second case was dismissed was because the electronic payment system automatically cancelled one of two identical payments as presumptively duplicative. Id., doc. #14. Debtor was supposed to receive an email informing of this, but apparently did not. Debtor's

first case was dismissed for failure to file necessary documents, and this was apparently so because of timing issues regarding a pending foreclosure sale. Doc. #13.

However, this evidence does not place in the court "an abiding conviction that" debtor's ability to complete a chapter 13 plan is "highly probable," because "the evidence offered in support" does not "instantly tilt the evidentiary scales in the affirmative." Debtor must make a prima-facie case to obtain the relief requested. Debtor has filed three cases; each filing was skeletal; in two of the three cases, the necessary schedules were filed late; a plan was never confirmed, payments were not made on time.

For the above reasons, the court intends to DENY this motion.

15. [19-10556](#)-B-13     **IN RE: REBECCA FREITAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-26-2019    [\[21\]](#)

DAVID JENKINS

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. [19-10258](#)-B-13     **IN RE: NELDA MCNEALY**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-13-2019    [\[23\]](#)

NICHOLAS WAJDA

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 court will issue  
the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and 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.

This objection is SUSTAINED. The chapter 13 trustee objects to confirmation on the grounds that the plan does not comply with 11 U.S.C. §§ 1322(a), (d), and 1325(a)(6). Doc. #23. The trustee believes that the plan can be confirmed if the plan payment is increased to \$1,040.67 and the attorney's fee dividend is made to \$29.00 per month, and debtor can file amended schedules I and J to show the ability to make those increased plan payments. Id.

This matter will be called to allow debtor to respond. If debtor agrees to the recommended changes, the matter may be continued or the objection conditionally overruled if the Trustee and Debtor agree on the terms of a confirmation order. The debtor did file amended Schedules I and J on April 4, 2019. Doc. #30. Otherwise, the objection will be sustained.

17. [19-10258](#)-B-13     **IN RE: NELDA MCNEALY**  
[TGM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK  
NATIONAL ASSOCIATION  
2-12-2019    [\[13\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
NICHOLAS WAJDA  
TYNEIA MERRITT/ATTY. FOR MV.

NO RULING.

18. [18-14662](#)-B-13     **IN RE: MARIA NUNEZ**  
[TOG-2](#)

MOTION TO CONFIRM PLAN  
3-7-2019    [\[31\]](#)

MARIA NUNEZ/MV  
THOMAS GILLIS

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.

19. [17-13168](#)-B-13     **IN RE: DIEGO/KAROL ROSPIGLIOSI**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-7-2019    [\[61\]](#)

MICHAEL MEYER/MV  
GABRIEL WADDELL  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #70.

20. [19-10181](#)-B-13     **IN RE: ARNULFO/LETICIA OLGUIN**  
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF TD RETAIL CARD SERVICES  
3-4-2019    [\[14\]](#)

ARNULFO OLGUIN/MV  
PETER BUNTING

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 debtor is competent to testify as to the value of the sectional and loveseat. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The

respondent's secured claim will be fixed at \$500.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

21. [19-10181](#)-B-13      **IN RE: ARNULFO/LETICIA OLGUIN**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-22-2019    [\[19\]](#)

AMERICAN HONDA FINANCE  
CORPORATION/MV  
PETER BUNTING  
VINCENT FROUNJIAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

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.

First, the court must note that movant failed to comply with LBR 4001-1(b). This rule contains specific provisions relating to relief from stay motions in Chapter 12 and 13 cases. After review of the included evidence, the court did not see that this rule was complied with. This is ordinarily grounds for denying the motion without prejudice. However, because debtor filed non-opposition, the court waives this requirement.

The movant, American Honda Finance Corporation, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1).

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make several post-petition payments, at least in the amount of \$1,051.76. Doc. #21. The movant has produced evidence that debtor owes movant



\$25,910.67. Id. The court also notes that debtors do not oppose this motion and have already surrendered the vehicle. Doc. #33.

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 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the vehicle is depreciating in value.

22. [19-10389](#)-B-13     **IN RE: PATRICK/MICHELE PENA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
3-14-2019    [\[13\]](#)

PETER BUNTING  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the objection. Doc. #22.

23. [18-13694](#)-B-13     **IN RE: ADRIAN/MARISELA PALAFOX**  
[ALG-4](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL, INC.  
2-14-2019    [\[51\]](#)

ADRIAN PALAFOX/MV  
JANINE ESQUIVEL

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).

The debtor is competent to testify as to the value of the two Chevrolet Silverado trucks. However, 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 "retail value," which is not specific enough, even though debtors further state their opinions are based on the "Retail Replacement Value" report from Kelly Blue Book. Doc. #53.

Additionally, debtors state that their opinions are based on "Retail Replacement Value report from Kelly Blue Book" which debtors state show the "retail value" of the trucks. But at the values suggested in the declaration, the printout shows that value to be the "Fair Purchase Price," which the court is not convinced is the same as the "replacement value" as defined in the bankruptcy code.

Lastly, debtors have not established themselves as experts, and cannot rely on the NADA guidelines in determining the replacement value of the vehicle. See Federal Rules of Evidence 701, 702, and 703. Therefore, this motion is DENIED WITHOUT PREJUDICE.

24. [18-13595](#)-B-13     **IN RE: DIMAS COELHO**  
[TOG-3](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF CMT CABRERA  
MENESES SERVICE, CLAIM NUMBER 2  
11-15-2018    [\[31\]](#)

DIMAS COELHO/MV  
THOMAS GILLIS  
RESOLVED BY ECF ORDER #56

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order dropping the pre-trial conference has  
already been entered. Doc. #58.