

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 25, 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. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[FRB-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2019 [\[115\]](#)

FARM CREDIT WEST, PCA/MV
JACOB EATON
MICHAEL GOMEZ/ATTY. FOR MV.

NO RULING.

This hearing will proceed as scheduled to allow counsel an opportunity to ask the court any questions they might have.

2. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[DJP-3](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
4-10-2019 [\[358\]](#)

MADERA WATER DISTRICT/MV
PETER FEAR
DON POOL/ATTY. FOR MV.

NO RULING.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-87](#)

OBJECTION TO CLAIM OF BB&T INSURANCE SERVICES, INC., CLAIM NUMBER
137
3-6-2019 [\[1204\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED. 11 U.S.C. § 502(a) states that a claim is "deemed allowed, unless a party in interest . . . objects."

Debtor Tulare Local Healthcare District dba Tulare Regional Medical Center ("Debtor") objects the claim of BB&T Insurance Services, Inc. ("Claimant"). The claim is for insurance consulting fees rendered to Healthcare Conglomerate Associates, LLC ("HCCA"), which managed and controlled Debtor. Doc. #1204. The claim is for \$41,666.64 for services rendered from June 1, 2017 through September 1, 2017. Claim #137.

Debtor objects to the claim because the during the period for which the claim is asserted it was not Debtor's responsibility to make payments to Claimant, but HCCA's. Doc. #1204.

Based on the evidence provided, and in the absence of opposition, the court SUSTAINS the objection and disallows Claimant's claim #137 in its entirety.

1:30 PM

1. [19-10100](#)-B-13 **IN RE: ASHLEY AMEZQUITA TRUJILLO**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
3-11-2019 [\[13\]](#)

ASHLEY AMEZQUITA TRUJILLO/MV
PETER BUNTING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

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

The motion does not contain sufficient evidence. The debtor is competent to testify as to the value of the 2015 Chevrolet Cruze LT, 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 "value," which is not specific enough.

Third, Debtor states that her opinion is based on a "Kelley Blue Book Suggested Retail Pricing Report dated January 7, 2019" which part of is unfortunately illegible and the court cannot discern the numbers. Debtor has not established herself as an expert, and cannot rely on the Kelley Blue Book report in determining the replacement value of the vehicle. See Federal Rules of Evidence 701, 702, and 703.

Debtor may appear at the hearing and amend the record. If debtor fails to appear and/or adequately amend the record, the motion will be DENIED WITHOUT PREJUDICE.

2. [19-10504](#)-B-13 **IN RE: SAMANTHA HENDRICKS**
[MSK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CONSUMER PORTFOLIO SERVICES,
INC.

4-8-2019 [\[14\]](#)

CONSUMER PORTFOLIO SERVICES,
INC./MV
GLEN GATES
MARK KRAUSE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Creditor Consumer Portfolio Services, Inc. ("Creditor") objects to plan confirmation because debtor is not able to cramdown the secured value of their collateral, a 2015 Toyota Prius ("Vehicle"). Doc. #14. Creditor alleges that debtor acquired the vehicle less than 910 days preceding this bankruptcy case and such acquisition was for "personal" use as evidenced by the Purchase Agreement. Id. Additionally, Creditor believes that the proposed value of the Vehicle is greater than what debtor proposes.

A Class 2(B) or 2(C) claim, which is a claim that may be reduced based on the value of the collateral, requires the debtor to file, serve, notice, and set for a hearing a motion valuing said collateral. See 11 U.S.C. § 1325(a)(9)(*), Plan section 1.04, doc. #2. No such motion has been filed in this case.

The court cannot at this time make a determination on the value of the collateral at this time - this is not the appropriate forum. However, regardless of the value of the Vehicle, based on the record before it, the court finds that the time limit in § 1325(a)(9)(*) has not yet run and therefore the claim cannot be crammed-down.

Therefore, this objection is SUSTAINED.

3. [19-10405](#)-B-13 **IN RE: MICHAEL HOLLINQUEST**
[MHM-1](#)

MOTION TO DISMISS CASE
3-15-2019 [\[19\]](#)

MICHAEL MEYER/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on April 16, 2019.
Doc. #40.

4. [19-10708](#)-B-13 **IN RE: ANTONIO/MARTHA AVILES**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
4-5-2019 [\[17\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
THOMAS GILLIS
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The hearing on this motion will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: the
interest rate on the 2016 Toyota Tacoma.

5. [19-10212](#)-B-13 **IN RE: BRANDON DE LA CRUZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-15-2019 [\[25\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
DISMISSED 3/22/19

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on March 22, 2019. Doc. #32.

6. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[FC-29](#)

OBJECTION TO CONFIRMATION OF PLAN BY SALAS FINANCIAL AND/OR
MOTION TO DISMISS CASE
4-9-2019 [\[73\]](#)

SALAS FINANCIAL/MV
THOMAS ENGEL/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 after 4:00 p.m. the day before the hearing.

7. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[HTK-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEL ABDELAZIZ
4-9-2019 [\[77\]](#)

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

NO RULING.

The court notes the procedural error in this objection. Local Rule of Practice 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, be filed as separate documents. Here, the declaration and exhibits were combined into one document and not filed separately. Failure to comply with this rule in the future will result in the court overruling the objection without prejudice.

The objection that an exemption is not properly claimed by the debtor is overruled. If objector wants to contest the exemption, the objector should file a timely exemption objection.

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

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-8-2019 [\[63\]](#)

NO RULING.

9. [18-15121](#)-B-13 **IN RE: MIGUEL/ARACELI PADILLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-1-2019 [\[70\]](#)

SCOTT LYONS
\$77.00 INSTALLMENT PAYMENT 4/1/19

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 1, 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.

10. [19-10421](#)-B-13 **IN RE: ARMANDO ROBLES**
[SL-1](#)

MOTION TO CONFIRM PLAN
3-13-2019 [\[19\]](#)

ARMANDO ROBLES/MV
SCOTT LYONS

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.

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

MOTION TO VALUE COLLATERAL OF FRANKLIN CREDIT MANAGEMENT
CORPORATION
3-16-2019 [\[2545\]](#)

MA GUADALUPE SERRANO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The hearing on this motion will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: the value
of debtor's residence. The court notes debtor's appraisal. Doc. #54.

12. [18-13832](#)-B-13 **IN RE: ANDREA SOUSA**
[MHM-3](#)

MOTION TO DISMISS CASE
3-15-2019 [\[72\]](#)

MICHAEL MEYER/MV
JERRY LOWE

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 has failed to confirm a Chapter 13 Plan. 11 U.S.C. § 1307(c)(1), (3). Accordingly, the case will be dismissed.

13. [19-10335](#)-B-13 **IN RE: PAUL/CARRIE COLVIN**
[KL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
4-9-2019 [\[25\]](#)

CARRINGTON MORTGAGE SERVICES
LLC/MV
MARK ZIMMERMAN
KELSEY LUU/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The court notes the procedural error in this objection. Local Rule of Practice 9004-2(c)(1) requires that objections, certificates of service, *inter alia*, be filed as separate documents. Here, the objection and certificate of service were combined into one document and not filed separately. Failure to comply with this rule in the future will result in the court denying the motion without prejudice.

Creditor Carrington Mortgage Services, LLC ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor (11 U.S.C. § 1325(a)(5)(B)(ii) and that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). Doc. #25, claim #8.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #5. Creditor's proof of claim, filed March 19, 2019, states a claimed arrearage of \$39,352.55. This claim is classified in class 1 - paid by the chapter 13 trustee. Plan section 3.07(b) (2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Debtors' plan understates the amount of arrears. The plan states arrears of \$31,583.10. Doc. #5. Creditor's claim states arrears of \$39,352.55. Though plan section 3.02 provides that the proof of claim, and not the plan itself, that determines the amount that will be repaid, section 3.07(b) (2) requires that the payment be adjusted accordingly for a class 1 claim. Because of the needed plan payment adjustment, the court also finds that the plan is not feasible. Schedule J does not show an ability to make the increased plan payment. Doc. #1.

Therefore, this objection is SUSTAINED.

14. [19-10436](#)-B-13 **IN RE: BILLIE CARVER**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK N.A.
4-5-2019 [\[21\]](#)

BILLIE CARVER/MV
SCOTT LYONS

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.

The debtor is competent to testify as to the value of the 2014 Cadillac ATS. 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 \$11,833.00. 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.

15. [13-11337](#)-B-13 **IN RE: GREGORY/KARAN CARVER**
[TCS-3](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF
THE DISCHARGE INJUNCTION
3-18-2019 [\[84\]](#)

GREGORY CARVER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The court notes the procedural errors in the opposition to this
motion.

First, Local Rule of Practice ("LBR") 9004-2(c)(1) requires that
opposition, memorandums of points and authorities, *inter alia*, be
filed as separate documents. Here, the opposition (and amended
opposition) and memorandum of points and authorities were combined
into one document and not filed separately. Doc. #89, 91. LBR 9014-
1(d)(4) states that an objection and memorandum of points and
authorities may be filed together as a single document when not
exceeding six pages in length, including the caption page. This
document was nine pages total. Failure to comply with this rule in
the future will result in the court denying the motion without
prejudice.

Second, the opposition was late. 14 days prior to the hearing was
April 10, 2019. The first opposition was not filed and served until
April 11, 2019. Doc. #89. That opposition also suffers from the same
procedural errors mentioned above, including the fact that the
certificate of service was not filed separately. Id. An amended
opposition (doc. #91), was filed and served that same day, this time
filing the certificate of service separately. Doc. #93. Ordinarily,
such late filings would be stricken. See LBR 9014-1(1).

The hearing on this motion will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether
creditor Nationstar Mortgage LLC d/b/a Mr. Cooper violated the
discharge injunction.

16. [19-10140](#)-B-13 **IN RE: KENNETH/PAULANNA INGLE**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
2-26-2019 [\[16\]](#)

SCOTT LYONS

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. Debtor filed an amended plan.
Doc. #22.

17. [15-10359](#)-B-13 **IN RE: JAMES/HAROLETTE MELTON**
[TCS-1](#)

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR
MOTION FOR WAIVER OF CERTIFICATION UNDER 11 U.S.C. 1328
3-19-2019 [\[49\]](#)

JAMES MELTON/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor's counsel asks the court to excuse
co-debtor James Melton from being required to complete and file a

certificate of completion of financial management course and directing the clerk's office to treat this case as it would if the debtor had. Doc. #49. Co-Debtor passed away prior to completing plan payments and is therefore unable to complete a financial management course.

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

The court notes that co-debtor Harolette Melton has completed the financial management course and that the plan has been completed. Doc. #54.

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, co-debtor James Melton is excused from completing and filing a certificate of completion of the financial management course. The clerk's office is to treat this case as it would if the debtor had filed a certificate of completion of the financial management course.

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

MOTION TO DISMISS CASE
3-15-2019 [\[38\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on April 15, 2019.
Doc. #45.

19. [19-10563](#)-B-13 **IN RE: CARL/ATHENA FREBERG**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
3-26-2019 [\[20\]](#)

THE BANK OF NEW YORK MELLON/MV
MARK ZIMMERMAN
WENDY LOCKE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This objection is OVERRULED 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).

Creditor Bank of New York Mellon fka The Bank of New York, as trustee, ("Creditor") objects to confirmation because the plan does not provide for pre-petition arrearages owed to Creditor and that the plan is not feasible because the actual monthly payment due objectors and the arrearage balance when applied to the plan establishes the plan does not fund.

However, Creditor has not provided any evidence to suggest that the arrearages listed in the plan are inaccurate. The objection states that the pre-petition arrearages will be approximately \$11,907.02 instead of the \$8,804.00. Doc. #20. But as of April 23, 2019, the claim has not yet been filed and the evidence included with the objection does not support Creditor's objection. Doc. #22. The deadline for creditor to file a claim is April 29, 2019. Doc. #17.

Also, the evidence is not admissible since there is no foundation for the documents' admission. Plus, there is no competent evidence supporting the monthly payment or arrearage claim.

Therefore, unless the claim is filed prior to this hearing, the court intends to OVERRULE the objection WITHOUT PREJUDICE.

20. [19-10468](#)-B-13 **IN RE: RENEE FONTES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-4-2019 [\[14\]](#)

JERRY LOWE

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #21.

21. [19-10170](#)-B-13 **IN RE: JOSE/TERESA MORENO**
[MHM-2](#)

MOTION TO DISMISS CASE
3-15-2019 [\[21\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on April 16, 2019.
Doc. #26.

22. [19-10270](#)-B-13 **IN RE: MATTHEW STREETER**
[MHM-2](#)

MOTION TO DISMISS CASE
3-15-2019 [\[16\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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. The debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). Accordingly, the case will be dismissed.

23. [18-11375](#)-B-13 **IN RE: ERIC RUBIO**
[TCS-2](#)

MOTION TO MODIFY PLAN
3-13-2019 [\[81\]](#)

ERIC RUBIO/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 30, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully noticed motion to modify a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than May 16, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by May 23, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 23, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

24. [18-14877](#)-B-13 **IN RE: SAUL OCHOA**
[NES-1](#)

MOTION TO CONFIRM PLAN
3-1-2019 [\[27\]](#)

SAUL OCHOA/MV
NEIL SCHWARTZ

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.

25. [19-10680](#)-B-13 **IN RE: TIMOTHY WHEELER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-4-2019 [\[15\]](#)

RABIN POURNAZARIAN

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

DISPOSITION: Continued to May 16, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully noticed motion to modify a chapter 13 plan. Debtor filed a response

on April 16, 2019. Doc. #23. The response states that debtor filed the necessary documents (doc. #21), which was the basis of trustee's objection. The trustee shall file and serve a reply, if any, by May 9, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 9, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

26. [18-15081](#)-B-13 **IN RE: OSCAR/MELISSA GARZA**
[WDO-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
2-5-2019 [\[17\]](#)

OSCAR GARZA/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 16, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation (doc. #72), this matter is continued to May 16, 2019 at 130 p.m.

27. [18-15081](#)-B-13 **IN RE: OSCAR/MELISSA GARZA**
[WDO-2](#)

MOTION TO CONFIRM PLAN
3-11-2019 [\[41\]](#)

OSCAR GARZA/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #61.

28. [16-11684](#)-B-13 **IN RE: REBECCA VILLA**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
3-27-2019 [\[27\]](#)

GABRIEL WADDELL

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded \$1,264.00 in fees and \$87.28 in costs.

29. [14-10193](#)-B-13 **IN RE: MARTA MATA AND GUSTAVO SEGURA**
[TCS-4](#)

MOTION FOR WAIVER OF CERTIFICATION UNDER 11 U.S.C. 1328
3-14-2019 [\[84\]](#)

MARTA MATA/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor's counsel asks the court to excuse co-debtor Gustavo Segura from being required to complete and file a certificate of completion of financial management course and directing the clerk's office to treat this case as it would if the debtor had. Doc. #84. Co-Debtor passed away prior to completing plan payments and is therefore unable to file the certificate. Doc. #87.

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

The court notes that co-debtor Marta Mata has completed the financial management course and that the plan has been completed. Doc. #91.

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, co-debtor Gustavo Segura is excused from completing and filing a certificate of completion of the financial management course. The clerk's office is to treat this case as it would if the debtor had filed a certificate of completion of the financial management course.