

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, May 16, 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. [19-10423](#)-B-12      **IN RE: KULWINDER SINGH AND BINDER KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION  
2-6-2019    [[1](#)]

DAVID JOHNSTON

NO RULING.

2. [19-10423](#)-B-12      **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[FRB-5](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
5-2-2019    [[71](#)]

FARM CREDIT SERVICES OF  
AMERICA, PCA/MV  
DAVID JOHNSTON  
GERRICK WARRINGTON/ATTY. FOR MV.

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.

This motion is GRANTED. Movant Farm Credit Services of America ("Movant") asks the court to extend the deadline to file a complaint objecting to dischargeability under 11 U.S.C. § 523 through and including May 31, 2019. Doc. #71. Federal Rule of Bankruptcy

Procedure 4007(c) states that "[O]n motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired."

The deadline to file such an objection to dischargeability is May 13, 2019. Doc. #9. This motion was filed on May 2, 2019. Doc. #71. The court finds cause exists to extend the deadline. Movant questioned debtors at the § 341 meeting held on March 25, 2019 about the crop proceeds. Doc. #73. Debtors were able to reproduce a one page document purporting to show the balance of a bank account where the proceeds were deposited. Id.

Movant has been diligent in trying to ascertain whether to file a complaint or not, but due to debtor's failure to provide the necessary documents to movant, movant has not been able to fully decide whether such an action is necessary. Nor has debtor filed a plan of reorganization, despite that deadline having passed. The court extends the deadline to and including May 31, 2019. The motion is GRANTED.

The court notes Movant's failure to comply with LBR 9004-2(c)(1), which requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration of Michael Gomez and an exhibit were combined into one document and not filed separately.

3. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT**  
[WW-10](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-2-2019    [\[192\]](#)

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
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 . . . unexpired lease 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).

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 non-residential real property lease, identified as the Medical Office Lease, effectively dated January 1, 2013, by and between the District and Coalinga Valley Health Clinics, Inc. to Coalinga Medical Center, LLC.

The 14 day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived.

4. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**  
[WW-8](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-2-2019    [\[180\]](#)

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
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 . . . unexpired lease 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).

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 non-residential real property lease, identified as the Office Lease Agreement, effectively dated April 11, 2005, and any amendments thereto, by and between the District and Unilab Corporation dba Quest Diagnostics, a Delaware Corporation to Coalinga Medical Center, LLC.

The 14 day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived.

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

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-2-2019    [\[186\]](#)

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
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 . . . unexpired lease 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).

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 non-residential real property lease, identified as the Lease Agreement, effectively dated June 27, 2012, by and between the District and Total Rental Care, Inc. to Coalinga Medical Center, LLC.

The 14 day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived.

6. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[CHW-1](#)

MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE  
4-22-2019    [\[1327\]](#)

TELNET-RX/MV  
RILEY WALTER  
CHARLES WU/ATTY. FOR MV.  
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.

7. [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.  
CONTINUED TO 5/30/19 PER ECF #1387

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

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

NO ORDER REQUIRED:        The court already issued an order. Doc. #1387.

8. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-101](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1343\]](#)

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."

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).

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 executory contract identified as the Stat Laboratory Services Agreement, effectively dated August 23, 2017, by and between the District and DVA Renal Healthcare, Inc. ("Contract").



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.

9. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-102](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1349\]](#)

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."

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).

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 executory contract identified as the Business Associate Agreement, effectively dated October 8, 2013, by and between the District and TELCOR, Inc. ("Contract").

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.

10. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-103](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1355\]](#)

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."

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).

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 executory contract identified as the letter of agreement, effectively dated March 7, 2017, by and between the District and Steve Clark & Associates, Inc. ("Contract").

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.

11. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-104](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1361\]](#)

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."

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).

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 executory contract identified as the Service Agreement, effectively dated September 22, 2018, by and between the District and PACS administration services ("Contract").

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.

12. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-105](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1367\]](#)

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 . . . unexpired lease 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).

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 non-residential real property lease, identified as the Commercial Lease, effectively dated March 1, 2011, and any extensions thereto, by and between the District and Heiskell Ranches, L.P. ("Lease").

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 Lease at the Closing Date.

13. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-106](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1373\]](#)

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."

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).

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 executory contract identified as the Master Services Agreement, effectively dated January 17, 2018, together with the executed Business Associate Agreement and associated letters of intent, by and between the District and Healthcare Resource Group ("Contract").

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.

14. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-107](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
5-1-2019    [\[1379\]](#)

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."

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).

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 Transfer Agreement, effectively dated May 19, 1997, by and between the District and Hanford Community Medical Center ("Contract").

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.

15. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-96](#)

OBJECTION TO CLAIM OF JAMES CALDERON, CLAIM NUMBER 10  
4-4-2019    [\[1290\]](#)

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

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

LBR 3007-1(b)(2) states that motions filed on less than 44 days' notice, but at least 30 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if

any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was served and filed on April 4, 2019 and set for hearing on May 16, 2019. Doc. #1291, 1293. May 16, 2019 is less than 44 days after April 4, 2019, and therefore this hearing was set on less than 44 days' notice under LBR 3007-1(b)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #1291. That is incorrect. Because the hearing was set on 30 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 44 days' notice, the language of LBR 3007-1(b)(2) needed to have been included in the notice.

16. [18-14901](#)-B-12      **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**  
[FRC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-13-2019    [[215](#)]

FARM CREDIT SERVICES OF  
AMERICA, PCA/MV  
JACOB EATON  
GERRICK WARRINGTON/ATTY. FOR MV.  
OST 5/14/19

NO RULING.



1:30 PM

1. [19-10804](#)-B-13     **IN RE: DENISE COX**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
4-25-2019    [[14](#)]

TIMOTHY SPRINGER

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

DISPOSITION:     Continued to June 13, 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 confirm 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 30, 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 June 6, 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 June 6, 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.

The court notes debtor's declaration in opposition. Doc. #21.

2. [18-13112](#)-B-13     **IN RE: RANDY/MEGAN MONTECINOS**  
[PBB-2](#)

MOTION TO MODIFY PLAN  
4-9-2019    [\[47\]](#)

RANDY MONTECINOS/MV  
PETER BUNTING  
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION:     Granted.

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

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

The chapter 13 trustee opposed the motion but later withdrew the opposition. Doc. #59.

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.

3. [19-11113](#)-B-13     **IN RE: FRANCISCO ESPINO AND MARIA DIAZ**  
[CJO-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.  
4-30-2019    [\[14\]](#)

BANK OF AMERICA, N.A./MV  
THOMAS GILLIS  
CHRISTINA O/ATTY. FOR MV.

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

DISPOSITION:     Sustained.

ORDER:             The court will issue the order.

Debtors filed non-opposition to this objection, stating that they "will file an Amended Plan." Doc. #17. Therefore the objection is SUSTAINED and no hearing is necessary.

4. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-8-2019    [\[66\]](#)

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

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

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). 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, with the exception of the debtor, 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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3), (4). 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. ##66, 68.

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: a Class 1 checklist with most recent mortgage statement, and accurate schedules and a chapter 13 plan. Doc. #66.

Debtor timely opposed, without evidence, stating that before the hearing on this motion he will provide the class 1 checklist with a most recent mortgage statement, complete and accurate schedules, and

an amended chapter 13 plan. Doc. #94. As of May 14, 2019, the court does not see that any schedules nor an amended plan have been filed.

These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The court finds that the debtor has had a reasonable time to cooperate, and has not done so.

For each of these reasons, unless Trustee withdraws the motion, the case is dismissed.

5. [18-10222](#)-B-13     **IN RE: DOMINIC BURRIEL**  
[MHM-6](#)

MOTION TO DISMISS CASE  
4-2-2019    [[171](#)]

MICHAEL MEYER/MV  
PETER FEAR  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion on May 7, 2019.  
Doc. #179.

6. [18-13527](#)-B-13     **IN RE: GREG/SHERRY KELLY**  
[CJO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-30-2019    [[146](#)]

LAKEVIEW LOAN SERVICING,  
LLC/MV  
PATRICK KAVANAGH  
CHRISTINA O/ATTY. FOR MV.

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 movant, Lakeview Loan Servicing, LLC, 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 at least two post-petition payments. The movant has produced evidence that debtor is delinquent at least \$3,446.05. Doc. #151.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

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

7. [19-10335](#)-B-13     **IN RE: PAUL/CARRIE COLVIN**  
[KL-1](#)

CONTINUED 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.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the objection. Doc. #35.

8. [18-13541](#)-B-13     **IN RE: MORGAN BROWN**  
[FW-2](#)

MOTION TO CONFIRM PLAN  
3-28-2019    [\[70\]](#)

MORGAN BROWN/MV  
GABRIEL WADDELL  
DISMISSED 4/9/19

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order dismissing the case has already been  
entered. Doc. #81.

9. [19-10141](#)-B-13     **IN RE: FRANK RECCHIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-23-2019    [\[55\]](#)

ERIC ESCAMILLA  
\$154.00 FINAL INSTALLMENT PAYMENT 5/1/19

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 May  
1, 2019. Therefore, the Order to Show Cause will be vacated.

10. [19-10141](#)-B-13     **IN RE: FRANK RECCHIO**  
[EPE-2](#)

MOTION TO CONFIRM PLAN  
4-4-2019    [\[38\]](#)

FRANK RECCHIO/MV  
ERIC ESCAMILLA  
RESPONSIVE PLEADING

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. The chapter 13 trustee ("Trustee") timely opposed confirmation on the grounds that debtor is delinquent at least \$4,530.50, which does not include a payment due on April 25, 2019 in the amount of \$4,691.01. Doc. #53. The plan can be confirmed if debtor is current on plan payments at the time of the hearing. The matter will be called to verify whether debtor is current or not. If debtor is current, the motion will be granted. If debtor remains delinquent, the motion will be denied without prejudice.

11. [19-10141](#)-B-13     **IN RE: FRANK RECCHIO**  
[MHM-1](#)

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

MICHAEL MEYER/MV  
ERIC ESCAMILLA

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. The debtor filed non-opposition on May 14, 2019.

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 debtor failed to file all pages of the most recent federal tax return, failed to file tax returns for the years 2016, 2017, and 2018, failed to file complete and accurate schedules A/B, and failed to confirm a chapter 13 plan. Accordingly, the case will be dismissed.

12. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[DMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA FRANCHISE TAX  
BOARD  
4-9-2019    [\[37\]](#)

CALIFORNIA FRANCHISE TAX  
BOARD/MV  
SHARLENE ROBERTS-CAUDLE  
XAVIER BECERRA/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. Debtor filed an amended plan.  
Doc. #70.

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

MOTION TO DISMISS CASE  
4-5-2019    [\[33\]](#)

STEVEN CHAVEZ/MV  
SHARLENE ROBERTS-CAUDLE

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

DISPOSITION:        Dropped from calendar.

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

14. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[SFR-3](#)

MOTION TO CONFIRM PLAN  
4-11-2019    [\[48\]](#)

STEVEN CHAVEZ/MV  
SHARLENE ROBERTS-CAUDLE  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #66.

15. [19-10556](#)-B-13     **IN RE: REBECCA FREITAS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-9-2019    [\[28\]](#)

MICHAEL MEYER/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #55.

16. [19-10556](#)-B-13     **IN RE: REBECCA FREITAS**  
[MHM-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
4-26-2019    [\[46\]](#)

DAVID JENKINS

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

DISPOSITION:                    Continued to June 13, 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 confirm 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 30, 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 June 6, 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 June 6, 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.

17. [19-11458](#)-B-13     **IN RE: ESTELLA CRUZ CORREA**  
[PK-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-18-2019    [\[14\]](#)

DVP, LP/MV  
PATRICK KAVANAGH/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") with regard to special procedures for stay relief motions in chapter 13.

LBR 4001-1(b) is the rule regarding additional procedures for motions for relief from the automatic stay in chapter 12 and 13 cases. That rule was not complied with in this motion. Therefore, the motion is DENIED WITHOUT PREJUDICE.

18. [18-12260](#)-B-13     **IN RE: ALVINA FISCHER**  
[JFL-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC  
6-14-2018    [\[8\]](#)

DITECH FINANCIAL LLC/MV  
RABIN POURNAZARIAN  
JAMES LEWIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

19. [18-12260](#)-B-13     **IN RE: ALVINA FISCHER**  
[PLG-1](#)

CONTINUED OBJECTION TO CLAIM OF DITECH FINANCIAL LLC, CLAIM  
NUMBER 1  
9-11-2018    [\[38\]](#)

ALVINA FISCHER/MV  
RABIN POURNAZARIAN  
RESPONSIVE PLEADING

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

DISPOSITION:                Dropped from calendar.

NO ORDER REQUIRED:        Movant withdrew the objection. Doc. #107.

20. [19-10563](#)-B-13     **IN RE: CARL/ATHENA FREBERG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-25-2019    [\[33\]](#)

MARK ZIMMERMAN

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

DISPOSITION:                Dropped as moot.

NO ORDER REQUIRED.

The case will be dismissed on the Ch. 13 Trustee's Motion [MHM-2]  
below.

21. [19-10563](#)-B-13     **IN RE: CARL/ATHENA FREBERG**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-9-2019    [\[28\]](#)

MICHAEL MEYER/MV  
MARK ZIMMERMAN

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 debtor failed to file tax returns for the year 2018. 11 U.S.C. § 1307(e). Accordingly, the case will be dismissed.

22. [19-10965](#)-B-13      **IN RE: GUADALUPE RAMIREZ**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
4-26-2019    [\[19\]](#)

SCOTT LYONS

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

DISPOSITION:      Continued to June 13, 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 confirm 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 30, 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 June 6, 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 June 6, 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.

23. [19-10567](#)-B-13     **IN RE: MARK ROKKE**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-9-2019    [\[24\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS

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 make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). The debtor failed to file tax returns for the year 2019. 11 U.S.C. § 1307(e). Accordingly, the case will be dismissed.

24. [19-10270](#)-B-13     **IN RE: MATTHEW STREETER**  
[MHM-3](#)

MOTION TO DISMISS CASE  
4-10-2019    [\[21\]](#)

MICHAEL MEYER/MV  
PETER BUNTING  
DISMISSED 4/26/19

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

The case was dismissed on April 26, 2019. Doc. #26.

25. [19-10872](#)-B-13     **IN RE: JOSE RAMIREZ**  
[JDR-1](#)

MOTION TO CONFIRM PLAN  
4-1-2019    [\[15\]](#)

JOSE RAMIREZ/MV  
JEFFREY ROWE

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.

The court notes movant's failure to comply with Local Rule of Practice 9004-2(c)(1). The notice included the plan as an exhibit A. Doc. #16. Failure to comply with this rule in the future will result in denying the motion without prejudice.

26. [14-13573](#)-B-13     **IN RE: GREGORY/HEATHER VITUCCI**  
[HDN-6](#)

CONTINUED OBJECTION TO CLAIM OF CALIFORNIA STATE BOARD OF  
EQUALIZATION, CLAIM NUMBER 9  
3-25-2019    [[125](#)]

GREGORY VITUCCI/MV  
HENRY NUNEZ  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the objection. Doc. #135.

27. [19-10873](#)-B-13     **IN RE: IVAN/RODELIA VILLA**  
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
4-11-2019    [[14](#)]

WELLS FARGO BANK, N.A./MV  
PETER BUNTING  
WENDY LOCKE/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.

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 Wells Fargo Bank, N.A. ("Creditor") objects to plan confirmation because the plan provides for Creditor's claim in Class 2 instead of Class 1. Doc. #14. As of May 14, 2019, Creditor has not yet filed a proof of claim.

Debtor responded, stating that they could fix Creditor's issue in the order confirming plan. Doc. #23. This matter will be called to allow Creditor to respond to debtor's response.



28. [19-10873](#)-B-13     **IN RE: IVAN/RODELIA VILLA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
4-26-2019    [\[18\]](#)

PETER BUNTING

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.

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, except the debtors, 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 chapter 13 trustee ("Trustee") objects to plan confirmation because the plan does not provide for all of debtors' projected disposable income to be applied to unsecured creditors under the plan. Doc. #18. See 11 U.S.C. § 1325(b)(1)(B).

Debtor responded, stating that a concurrently filed official forms 122C-1 and C-2 will address and correct this problem.

This matter will be called to allow Trustee to respond, and the court may continue the matter.

29. [19-10680](#)-B-13     **IN RE: TIMOTHY WHEELER**  
[MHM-1](#)

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

RABIN POURNAZARIAN  
RESPONSIVE PLEADING

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

DISPOSITION:               Overruled as moot.

ORDER:                      The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor filed an amended plan.  
Doc. ##34, 38.

30. [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 30, 2019 at 1:30 p.m.

ORDER:                The court will issue an order.

Respondent requests that this hearing be continued two weeks "to obtain a complete appraisal report as well as a signed declaration from the appraiser." Therefore this matter is continued to May 30, 2019 at 1:30 p.m.

31. [19-11090](#)-B-13     **IN RE: ANTONETTE WASHINGTON**  
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
4-30-2019    [\[33\]](#)

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV  
JENNIFER WONG/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.

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.

This objection is SUSTAINED. Creditor JP Morgan Chase Bank, National Association ("Creditor") objects to confirmation on the grounds that the plan does not provide for arrearages as well as ongoing monthly payments to Creditor. Doc. #33. Additionally, the plan is blank - the plan is simply void of any information. See doc. #11.

The court finds that the plan as proposed cannot be confirmed, not only for the reasons Creditor states but because the court cannot find that the plan was proposed in good faith as required by 11 U.S.C. § 1325(a)(3). The court finds that the plan was not proposed in good faith because the plan does not list any amount to be paid to unsecured creditors, nor does the plan list which creditors are to be paid. Id. Therefore, this objection is SUSTAINED.

32. [19-10794](#)-B-13     **IN RE: REBECCA GUERRA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
4-26-2019    [\[16\]](#)

SCOTT LYONS

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:          Movant withdrew the objection. Doc. #23.

33. [19-10794](#)-B-13     **IN RE: REBECCA GUERRA**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
4-12-2019    [\[12\]](#)

U.S. BANK NATIONAL  
ASSOCIATION/MV  
SCOTT LYONS  
SEAN FERRY/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.

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 U.S. Bank National Association ("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 and that

the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #12, claim #4.

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. #2. Creditor's proof of claim, filed April 9, 2019, states a claimed arrearage of \$37,191.35. 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 \$33,842.36. Doc. #2. Creditor's claim states arrears of \$37,191.35. 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.

Therefore, this objection is SUSTAINED.

34. [19-10994](#)-B-13     **IN RE: RAFAEL REYES AND GRACIELA GAMBOA**  
[FW-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES, INC.  
4-17-2019    [\[16\]](#)

RAFAEL REYES/MV  
GABRIEL WADDELL

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 2008 Acura TL 3.2. 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 "fair market value." Doc. #18. Therefore, this motion is DENIED WITHOUT PREJUDICE.

35. [19-10795](#)-B-13     **IN RE: KIM SCHOLAR**  
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON TRUST, NATIONAL  
ASSOCIATION  
4-25-2019    [\[32\]](#)

WILMINGTON TRUST, NATIONAL  
ASSOCIATION/MV  
DARLENE VIGIL/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.

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.

This objection is SUSTAINED. Creditor Wilmington Trust, National  
Association ("Creditor") objects to confirmation on the grounds that  
the plan does not provide for its claim. Doc. #32. Additionally, the  
plan is blank - the plan is simply void of any information. See doc.  
#14. The plan is also not in compliance with LBR 3015-1(a), which  
requires a specific form plan to be used.

The court finds that the plan as proposed cannot be sustained, not  
only for the reasons Creditor states but because the court cannot  
find that the plan was proposed in good faith as required by 11  
U.S.C. § 1325(a)(3). The court finds that the plan was not proposed  
in good faith because the plan does not list any amount to be paid  
to unsecured creditors, nor does the plan list which creditors are  
to be paid. Therefore, this objection is SUSTAINED.

36. [19-10795](#)-B-13     **IN RE: KIM SCHOLAR**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
4-25-2019    [\[25\]](#)

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.

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.

This objection is SUSTAINED. The chapter 13 trustee ("Trustee") objects to confirmation on numerous grounds, including but not limited to feasibility, liquidation, and disposable income. Trustee cannot narrow the issues or recommend confirmation however, because the schedules, plan, and statements are either incomplete or inaccurate. Doc. #25. The plan is also not in compliance with LBR 3015-1(a), which requires a specific form plan to be used.

The court finds that the plan as proposed cannot be sustained, not only for the reasons Trustee states but because the court cannot find that the plan was proposed in good faith as required by 11 U.S.C. § 1325(a)(3). The court finds that the plan was not proposed in good faith because the plan does not list any amount to be paid to unsecured creditors, nor does the plan list which creditors are to be paid. The plan is also not in compliance with LBR 3015-1(a). Therefore, this objection is SUSTAINED.

37. [19-11974](#)-B-13     **IN RE: JESUS/FATIMA AYALA**  
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-9-2019    [\[9\]](#)

JESUS AYALA/MV  
TIMOTHY SPRINGER  
OST 5/9/19

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

This Motion to Impose the Automatic Stay was properly set for hearing on an order shortening time and Local Rule of Practice 9014-1(f)(3). Doc. #8. 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.

Though this is motion was filed as a motion to extend the automatic stay, because two cases have been pending and were dismissed within the previous year, it is deemed a motion to impose the automatic stay.

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 May 8, 2019. Doc. #1. Debtor had two cases that were pending but dismissed in the past year, case no. 18-12761 (filed on July 6, 2018 and dismissed on September 14, 2018) and case no. 18-14569 (filed on November 10, 2018 and dismissed on April 12, 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 within the 1-year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtors' first case was dismissed for failure to provide necessary documents to the trustee's office. Debtors did not have an attorney in that case. Debtors' second case was dismissed because a vehicle was misclassified and debtors were therefore unable to confirm a plan. Debtors' attorney takes responsibility for their inability to confirm a modified plan in the second case. The reason for this filing, and the previous two filings, are because debtors' house is in foreclosure. Doc. #11. Debtors believe that this case will be successful because "we are starting afresh with all of the creditors in the right classes," and they have learned from the mistakes made in the previous cases. *Id.* No motions for relief were filed in the previous cases either.

The court notes however, that this case filed on May 8, 2019 is a skeletal filing. As of May 14, 2019, no chapter 13 plan or schedules have yet been filed in this case. Unless the necessary documents are filed by May 22, 2019, the case may be dismissed. Doc. #13.

If the most recent dismissed case's amended schedules I and J are any indication of what may be filed in this case, then both debtors are disabled and unemployed, and receive some assistance in the form of rent from a son and daughter and a son's vehicle payment. Their combined monthly net income was \$2,330.00, and the proposed plan payment of the most recently modified plan was that entire amount.

The most recent Schedules from the previously dismissed case show that their house is worth \$320,000.00, they exempted \$156,067.00, and the house's secured creditor has a claim of nearly \$164,000.00. The house was also classified in class 1, meaning that even upon confirmation creditor would need to file a motion for relief from stay if wanted to foreclose on its collateral.

The court is wary of debtors' financial position. If the previous case is any yardstick to tentatively measure this case, then debtors are beginning on rocky territory. Every penny of their net income



may be necessary to fund a plan, for up to five years. Debtors are not employed, which creates even more uncertainty when emergencies or unexpected expenses occur.

However, the court understands that the last two cases were dismissed due to counsel's mistake and that debtors were representing themselves. Debtors have not yet been able to confirm a plan that would save their home.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.