

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, June 13, 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. [18-13677](#)-B-9      **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[DJP-1](#)**

MOTION FOR APPOINTMENT OF OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS  
5-16-2019    [[207](#)]

BECKMAN COULTER, INC./MV  
RILEY WALTER  
DON POOL/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:              Continued to July 18, 2019 at 9:30 am. To be  
heard with the debtor's motion to disband the  
putative unsecured creditors' committee (WW-  
14).

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

This motion is CONTINUED to July 18, 2019 at 9:30 a.m. to be heard  
with the debtor's motion to disband the putative creditors'  
committee. The defaults of all noticed and served parties, except  
the United States Trustee and the debtor, are entered.

Movant Beckman Coulter, Inc. ("Beckman") asks the court to appoint  
an Official Committee of Unsecured Creditors and/or in the  
alternative ratify the Appointment of the Official Committee of

Unsecured Creditors previously appointed by the United States Trustee ("UST"). Doc. #210. The court and the parties have been referring to this committee as "the putative creditor's committee."

Beckman contends cause exists for the appointment of a creditors committee under 11 U.S.C. § 1102(a)(2) because debtor has reported having over 300 creditors and to date, over 100 proofs of claim have been filed, a third of which are individuals. Id.

The UST opposes because first, Beckman has not met its burden of proof by showing that it is not adequately represented by the committee the UST has already appointed, and second, Beckman's request that the court 'ratify' the UST's § 1102(a)(1) committee appointment improperly requests an advisory opinion.

Debtor Coalinga Regional Medical Center ("Debtor") opposes because first, the UST did not have the authority to appoint a committee under § 1102(a)(1) and second, Beckman has not met its evidentiary burden to show that the appointment of a committee is "necessary to assure adequate representation of creditors."

The court notes that Debtor's opposition is one day late. In reply, Beckman contends the late opposition should be disregarded.

The Debtor has filed a motion to disband the committee appointed (and re-appointed) by the UST (WW-14). That motion is scheduled for hearing July 18, 2019. That motion raises the issue that the UST did not have authority to appoint the committee under § 1102(a)(1). No party is required to file a response to that motion until early next month. This motion seeks ratification of the appointment of the putative creditors' committee as alternative relief or appointment of a committee under 1102 (a)(2) upon court order.

Federal Rule of Civil Procedure 42 applies in bankruptcy contested matters pursuant to Federal Rule of Bankruptcy Procedure 7042. The court may consolidate issues for hearing or trial and issue orders avoiding unnecessary costs and delay when dealing with common questions of law or fact. Fed. R. Civ. P. 42(a). There are common issues of law and fact here including:

- Does the UST have authority to appoint a creditor's committee in a chapter 9 case under § 1102(a)(1)?
- If not, should a committee be appointed under § 1102(a)(2)?
- Can the court ratify an appointment that is found improper under § 1102(a)(1)?
- If a committee is appointed, does a member's assertion of priority treatment for its claim disqualify their membership?

Dealing with these issues on two separate motions at different times will inevitably increase costs to all parties since the issues will need to be briefed and argued twice. Conflicting orders (or perceived conflicting orders) may lead to numerous appeals of the orders leading to unnecessary delay if the matters were heard separately.

Independently, case management decisions are discretionary with the court. GCB Communs., Inc. v. U.S.S. Communs., Inc., 650 F.3d 1257, 1262 (9th Cir. 2011); Khachikyan v. Hahn (In re Khachikyan), 335 B.R. 121, 125 (9th Cir. BAP 2005) [continuances are subject to the court's discretion]. Any ruling made on this motion would impact the debtor's motion. Opposition to the debtor's motion is not yet due and all parties have not fully ventilated the issues raised there or here. Also, the UST's position on this motion in part begs the question of their authority to appoint a creditor's committee in this case in the first place. That issue needs further refinement.

This motion is CONTINUED TO JULY 18, 2019.

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

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

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

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

DISPOSITION:        Continued to July 18, 2019 at 9:30 a.m.

ORDER:                The court will issue an order.

The debtor has filed a motion to vacate the appointment of the unsecured creditors' committee, set for hearing on July 18, 2019 at 9:30 a.m. Therefore this motion, which is related to the debtor's motion, is continued to that time and date.

4. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT  
[SWE-1](#)**

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

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

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

DISPOSITION:     Continued to July 18, 2019 at 9:30 a.m.

ORDER:             The court will issue an order.

The debtor has filed a motion to vacate the appointment of the unsecured creditors' committee, set for hearing on July 18, 2019 at 9:30 a.m. Therefore this motion, which is related to the debtor's motion, is continued to that time and date.

5. [18-13678](#)-B-11     **IN RE: VERSA MARKETING, INC.  
[RAC-3](#)**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP FOR  
RONALD A. CLIFFORD, CREDITOR COMM. ATY(S)  
5-16-2019    [\[393\]](#)

RILEY WALTER

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

DISPOSITION:     Conditionally granted.

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

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

The motion will be GRANTED. Counsel for the creditor's committee, The Law Office of Blakely LLP for Ronald A. Clifford, requests fees of \$16,737.50 and costs of \$526.38 for a total of \$17,263.88 for services rendered from December 8, 2018 through April 26, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Updated creditors of the Debtor regarding the status of the case, (2) Reviewed, commented, and appeared at hearing on the stipulation to use cash collateral, (3) Reviewed the monthly operating reports and performed various tasks related to the administration of the case, and (4) Reviewed the pleadings regarding PACA claims and procedures. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

The court did not see any consent from the creditor's committee to the fee application. The court conditionally granted the motion and Movant was awarded \$16,737.50 in fees and \$526.38 in costs if movant files a declaration showing consent from the committee. The declaration shall be filed not later than July 4, 2019. If the declaration is not filed by that date, or the committee does not approve the fees and costs, then the motion shall be denied without prejudice.

6. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**  
[WW-25](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM LAW  
GROUP FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)  
5-23-2019 [\[406\]](#)

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 Federal Rule of Bankruptcy Procedure 2002(a)(6) 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 motion will be GRANTED. Debtor's bankruptcy counsel, Walter Wilhelm Law Group, requests fees of \$11,926.00 and costs of \$1,957.32 for a total of \$13,883.32 for services rendered from March 12, 2019 through May 31, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Continued working on the use of cash collateral, (2) Identifying and rejecting executory contracts, (3) Reviewing all claims filed and preparing a claims analysis to determine which claims may be objectionable, (4) Filing fee applications and reviewing monthly operating reports, and (5) Beginning the work on a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$11,926.00 in fees and \$1,957.32 in costs.

7. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**  
[WW-26](#)

MOTION FOR COMPENSATION FOR TERENCE J. LONG, CONSULTANT(S)  
5-23-2019 [\[399\]](#)

TERENCE LONG/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 Federal Rule of Bankruptcy Procedure 2002(a)(6) 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 motion will be GRANTED. Debtor's consultant, Terence J. Long, requests fees of \$5,381.50 for services rendered from March 15, 2019 through May 31, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Case administration, (2) Financing/cash collections, and (3) Working on the plan and disclosure statement. The court finds the services

reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$5,381.50 in fees.

8. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[CHW-1](#)

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

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

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #1471.

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

MOTION FOR ORDER ENLARGING TIME TO FILE OPPOSITION AND TO FILE  
EVIDENTIARY OBJECTIONS BASED ON EXCUSABLE NEGLECT PURSUANT TO  
RULE 9006(B) (1) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE  
6-11-2019    [[264](#)]

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
RILEY WALTER  
OST 6/11/19

NO RULING.



1:30 PM

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

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

TIMOTHY SPRINGER  
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 a modified plan.  
Doc. #29.

2. [19-10405](#)-B-13     **IN RE: MICHAEL HOLLINQUEST**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-9-2019    [[27](#)]

MICHAEL MEYER/MV  
NICHOLAS WAJDA

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

DISPOSITION:        Granted.

ORDER:                The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 the debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and/or (c)(4). Accordingly, the case will be dismissed.

3. [19-10509](#)-B-13     **IN RE: ROBERT CLYBORNE**  
[SL-1](#)

MOTION TO VACATE DISMISSAL OF CASE  
5-28-2019    [\[46\]](#)

ROBERT CLYBORNE/MV  
STEPHEN LABIAK  
DISMISSED 05/20/2019

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. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

Debtor asks the court to vacate the dismissal entered on May 20, 2019 due to mistake or excusable neglect. The case was dismissed because debtor failed to timely pay installments according to the Order Approving Payment of Filing Fee in installments. Doc. #43. Debtor mistakenly believed that his ex-wife had paid the entire amount, however she only made a partial payment. Doc. #48.

The court does not know however if the rest of the filing fee has been paid. The matter will be called to find out if the remainder of the filing fee has been paid. If the fee has not been paid, the motion will be denied. If granted, the order shall provide that the order is without prejudice to any third party who has acted in reliance on the dismissal.

4. [14-11830](#)-B-13     **IN RE: NAPOLEON LEAL**  
[MHM-1](#)

MOTION TO DISMISS CASE  
5-6-2019    [\[48\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the trustee has requested dismissal under 11 U.S.C. § 1307(c)(6) and (c)(8) for material default by the debtor with respect to a term of a confirmed plan and termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan. Doc. #48.

Debtor has failed to make all the required payments under the plan. As of the 60th month of the plan, which was April 2019, debtor owes \$9,007.99 to pay all claims and trustee compensation. Doc. #50. Debtor timely responded, stating that the claims came in higher than expected and due to his very limited income, debtor was unable to increase the plan payment or to payoff the remaining balance within 60 months. Doc. #52.

Unfortunately, there is nothing the court can do in this matter. Plan section 1.03 states ". . . but in no event shall monthly payments continue for more than 60 months." Failing to comply with that plan section is a material default.

For the above reasons, this motion is GRANTED.

5. [19-11334](#)-B-13     **IN RE: HECTOR FLORES**  
[USA-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY INTERNAL REVENUE SERVICE  
5-21-2019    [\[17\]](#)

INTERNAL REVENUE SERVICE/MV  
TIMOTHY SPRINGER  
JEFFREY LODGE/ATTY. FOR MV.  
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. #22.

6. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MORGAN STANLEY PRIVATE BANK,  
NATIONAL ASSOCIATION  
5-28-2019    [\[81\]](#)

MORGAN STANLEY PRIVATE BANK, NATIONAL ASSOCIATION/MV  
SHARLENE ROBERTS-CAUDLE  
DIANA TORRES-BRITO/ATTY. FOR MV.

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

DISPOSITION:     Continued to July 18, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

The court deems this objection to confirmation as an opposition to debtor's fully noticed motion to confirm plan, doc. #67, SFR-4. Movant should have filed opposition to the motion to confirm plan, using the same docket control number (SFR-4) instead of filing an objection to confirmation of plan. A separately noticed objection with a separate docket control number is only appropriate in accordance with Local Rule of Practice 3015-1(c)(4). Debtor has filed three plans in this case, and the court believes, after looking at the date the objection was filed and the objection itself, that movant was attempting to oppose confirmation of the most recent modified plan.

Creditor Morgan Stanley Private Bank, National Association ("Creditor") 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 Creditor's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than July 4, 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. Creditor shall file and serve a reply, if any, by July 11, 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 July 11, 2019. If the debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated therein without a further hearing.

The court notes debtor's reply. Doc. #90.

7. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[RPZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CENLAR FEDERAL SAVINGS BANK  
5-30-2019     [\[85\]](#)

CENLAR FEDERAL SAVINGS BANK/MV  
SHARLENE ROBERTS-CAUDLE  
ROBERT ZAHRADKA/ATTY. FOR MV.

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

DISPOSITION:     Continued to July 18, 2019 at 1:30 p.m.

ORDER:     The court will issue an order.

The court deems this objection to confirmation as an opposition to debtor's fully noticed motion to confirm plan, doc. #67, SFR-4. Movant should have filed opposition to the motion to confirm plan, using the same docket control number (SFR-4) instead of filing an objection to confirmation of plan. A separately noticed objection with a separate docket control number is only appropriate in accordance with Local Rule of Practice 3015-1(c)(4). Debtor has filed three plans in this case, and the court believes, after looking at the date the objection was filed and the objection itself, that movant was attempting to oppose confirmation of the most recent modified plan.

Creditor Cenlar Federal Savings Bank ("Creditor") 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 Creditor's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than July 4, 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. Creditor shall file and serve a reply, if any, by July 11, 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 July 11, 2019. If the debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated therein without a further hearing.

The court notes debtor's reply. Doc. #90.

8. [19-10752](#)-B-13     **IN RE: STEVEN CHAVEZ**  
[SFR-4](#)

MOTION TO CONFIRM PLAN  
5-8-2019    [\[67\]](#)

STEVEN CHAVEZ/MV  
SHARLENE ROBERTS-CAUDLE

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

DISPOSITION:     Continued to July 18, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

Due to the procedural error of creditors Cenlar Federal Savings Bank and Morgan Stanley Private Bank, National Association, and their objections to confirmation being continued, this motion to confirm is also continued to July 18, 2019 at 1:30 p.m.

9. [19-11354](#)-B-13     **IN RE: JENNIFER DAVIS**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
5-17-2019    [\[20\]](#)

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

DISPOSITION:     Continued to July 18, 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 July 4, 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 July 11, 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 July 11, 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.

10. [19-10556](#)-B-13     **IN RE: REBECCA FREITAS**  
[MHM-4](#)

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

DAVID JENKINS  
DISMISSED 5/31/19

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. #70.

11. [19-10556](#)-B-13     **IN RE: REBECCA FREITAS**  
[MHM-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-10-2019    [\[52\]](#)

MICHAEL MEYER/MV  
DAVID JENKINS  
DISMISSED 5/31/19

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. #70.

12. [19-11357](#)-B-13     **IN RE: ROBERTO/VERONICA AYALA**  
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL  
5-15-2019    [\[18\]](#)

ROBERTO AYALA/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 the 2014 Dodge Ram 3500.

13. [19-11357](#)-B-13     **IN RE: ROBERTO/VERONICA AYALA**  
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES  
5-15-2019    [\[23\]](#)

ROBERTO AYALA/MV  
THOMAS GILLIS

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 motion is DENIED WITHOUT PREJUDICE.

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

14. [19-11362](#)-B-13     **IN RE: HEATHER DARPLI**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
5-17-2019    [\[19\]](#)

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

DISPOSITION:        Continued to July 18, 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 July 4, 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 July 11, 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 July 11, 2019. If the debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated therein without a further hearing.

15. [19-10965](#)-B-13     **IN RE: GUADALUPE RAMIREZ**  
[MHM-1](#)

CONTINUED 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 July 18, 2019 at 1:30 p.m.

NO ORDER REQUIRED:            The court already issued an order.

The court previously ruled on this objection, but the accompanying order was never sent. See doc. #25. Therefore the court is issuing a new order with changed dates.

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 July 4, 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 July 11, 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 July 11, 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.

16. [19-11472](#)-B-13     **IN RE: IGNACIO DALUDDUNG**  
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME RESOLUTIONS, INC.  
5-13-2019    [\[18\]](#)

REAL TIME RESOLUTIONS, INC./MV  
ARASTO FARSAD  
RENEE PARKER/ATTY. FOR MV.

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

DISPOSITION:                    Continued to July 3, 2019 at 1:30 p.m.

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

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another seven days after

completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 meeting has concluded, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

The court notes movant failed to comply with Local Rule of Practice ("LBR") 9004-2(c). LBR 9004-2(c)(1) requires that objections, exhibits, *inter alia*, to be filed as separate documents. Here, the objections and exhibit were combined into one document and not filed separately.

The court notes debtor's response. Doc. #28.

17. [19-12072](#)-B-13      **IN RE: ARACELI PADILLA**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
5-21-2019    [\[8\]](#)

ARACELI PADILLA/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 court will issue the order.

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

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

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 18-15121-B-13. That case was filed on December 27, 2018 and was dismissed on May 2, 2019 for failure to complete the filing fee installment payments. This case was filed on May 15, 2019 and the automatic stay will expire on June 14, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend 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) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith does not arise. If the previous case was dismissed because either (1) debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse (11 U.S.C. § 362(c)(3)(C)(i)(II)(aa)), (2) because debtor failed to provide adequate protection as ordered by the court (11 U.S.C. § 362(c)(3)(C)(i)(II)(bb)), (3) because debtor failed to perform the terms of a plan confirmed by the court (11 U.S.C. § 362(c)(3)(C)(i)(II)(cc)), or (4) because there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case, or any other reason to conclude that the later case will be concluded with a confirmed plan that will be fully performed, then there would be a presumption that this case was not filed in good faith.

However, none of those scenarios exist. The previous case was dismissed because debtor failed to pay the filing fee in a timely manner. Also, there has been a substantial change in the financial affairs of the debtor and there is good reason to conclude that this case will be concluded with a confirmed plan that will be fully performed.

Debtor states that during the pendency of the previous case, he was not working as many hours as was necessary. Doc. #10. Now though, debtor is past the probationary period at UPS, working 40 hours a week with overtime being offered and he has also paid the filing fee in full. *Id.* The court confirmed a plan in the previous case, and the debtor's schedules show that the proposed plan payment of \$300.00 is feasible. Doc. ##12, 13.

Even if there was a presumption of bad faith, based on the moving papers and the record as stated above, 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.

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.

18. [19-12072](#)-B-13      **IN RE: ARACELI PADILLA**  
[SL-2](#)

MOTION TO VALUE COLLATERAL OF SIMPLE CASH LOANS, INC.  
5-24-2019    [\[16\]](#)

ARACELI PADILLA/MV  
SCOTT LYONS

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).

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

Debtor asks the court to value a 2008 Toyota Tundra (or a 2018 Toyota Tundra, the motion and declaration are ambiguous) at \$9,737.00. Doc. #18, see ¶¶ 2 and 5. Debtor states that the debt was incurred on May 9, 2018, which is within 910 days of the petition date, May 15, 2019. This issue would not be a problem if the court was convinced that the creditor does not have a purchase money security interest in the vehicle.

But the evidence supporting the motion leaves the court unconvinced. Debtor's declaration simultaneously states that debtor "originally obtain[ed] the title loan . . . in May 9, 2018" and that "Simple Cash Loans, Inc., dba Montana Capital Car Title Loans, is the lien holder to which I currently owe \$10,449.09 on the title loan" but that the debt on the vehicle is "non-purchase money debt." Doc. #18. The declaration also describes the affected vehicle as both a 2008 and 2018 Toyota Tundra. The motion only describes a 2008 Toyota Tundra.

Debtor must clarify if the vehicle to be valued is 2008 Toyota Tundra or a 2018 Toyota Tundra, and how the debt described in the declaration is not a purchase money security interest. Though the evidence may suggest the affected interest is not PMSI, the debtor's evidence needs clarification.

If debtor can convince the court and no opposition is presented, the court may grant the motion.

19. [19-10476](#)-B-13     **IN RE: BRIAN NELSON**  
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
5-28-2019    [[26](#)]

THOMAS MOORE

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. #35.

20. [19-10181](#)-B-13     **IN RE: ARNULFO/LETICIA OLGUIN**  
[PBB-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
3-26-2019    [[27](#)]

ARNULFO OLGUIN/MV  
PETER BUNTING  
RESPONSIVE PLEADING

NO RULING.

21. [19-10982](#)-B-13     **IN RE: JERRY HILDRETH**  
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-10-2019    [\[23\]](#)

MICHAEL MEYER/MV  
NIMA VOKSHORI

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. #31.

22. [19-11188](#)-B-13     **IN RE: ESTEBAN ARIAS AND SOFIA HERNANDEZ**  
[KEH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BALBOA THRIFT & LOAN  
5-21-2019    [\[29\]](#)

BALBOA THRIFT & LOAN/MV  
THOMAS GILLIS  
KEITH HERRON/ATTY. FOR MV.

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").

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

23. [19-11090](#)-B-13     **IN RE: ANTONETTE WASHINGTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-28-2019    [\[41\]](#)

DISMISSED 5/31/19

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

DISPOSITION:                    Dropped as moot.

NO ORDER REQUIRED.

The case was dismissed on May 31, 2019. Doc. #44. Therefore, the OSC will be DROPPED AS MOOT.

24. [19-10794](#)-B-13     **IN RE: REBECCA GUERRA**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-9-2019    [\[19\]](#)

MICHAEL MEYER/MV  
SCOTT LYONS  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

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

25. [19-10795](#)-B-13     **IN RE: KIM SCHOLAR**  
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
5-9-2019    [\[37\]](#)

MICHAEL MEYER/MV  
DISMISSED 5/31/19

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. #46.



26. [17-14799](#)-B-13     **IN RE: CARRIE CLOUD**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-16-2019    [\[29\]](#)

TD AUTO FINANCE LLC/MV  
PETER BUNTING  
JENNIFER WANG/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.

The legal issues appear to include: whether cause exists to grant  
the relief requested.