



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 29, 2023
Department A – Courtroom #11
Fresno, California**

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2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

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

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-30-2023 [\[74\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
\$53.00 FINAL INSTALLMENT PAID 5/31/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

2. [19-10404](#)-A-13 **IN RE: MARIA VASQUEZ**
[MHM-5](#)

MOTION TO DISMISS CASE
5-31-2023 [\[69\]](#)

MICHAEL MEYER/MV
BENNY BARCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [22-10909](#)-A-13 **IN RE: JASON ATHERTON AND GENZZIA DOVIGI-ATHERTON**
[TCS-3](#)

MOTION TO REFINANCE
6-3-2023 [\[64\]](#)

GENZZIA DOVIGI-ATHERTON/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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 shall submit a proposed
order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

As a procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c) since DCN TCS-3 was used for this motion and related pleadings but had previously been used for an Ex Parte Motion for Turnover of Property of the Estate filed on July 18, 2022. Doc. #43. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the motion to refinance should have been assigned a Docket Control Number other than TCS-3.

As an informative matter, the movant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. The declarant checked Rule 5 Service § 6B2(1): Request for Special Notice box in Section 7 of the amended certificate of service filed in connection with this motion. Doc. #68. Nevertheless, the declarant did not mark that service was made on parties who requested special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 in Section 6 of the court's mandatory Certificate of Service form or attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form. The court cannot determine from the amended certificate of service filed whether creditors who have filed a Request for Special Notice were served with the amended notice of hearing. In the future, the declarant should correctly fill out Section 6 and 7 of the court's mandatory Certificate of Service form and attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case.

Jason Atherton and Genzzia Atherton (collectively, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to modify their existing mortgage. Doc. #64. Debtors seek to modify the mortgage on their primary residence located at 1652 Via Milano, Merced, California 95322 ("Residence"). Id. The modification will require Debtors to borrow \$311,355.00 with an interest rate of 5.25% for 30 years. Decl. of Jason Atherton, Doc. #66. The modification will also result in a monthly payment of \$2,427.00 with escrow. Id. Further, Debtors filed an amended plan that moves their mortgage payments from Class 1 to Class 4, and Debtors will make all of their mortgage payments in Class 4. Id. The monthly payment will not exceed \$2,500.00 and will be paid outside of Debtors' chapter 13 plan directly to their mortgage company. Id.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

It appears that motion was served and noticed properly. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence. The only security for the modification will be Debtors' Residence. Debtors' Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt.

Accordingly, pending any opposition at the hearing, this motion will be GRANTED. Debtors are authorized, but not required, to modify the existing mortgage in a manner consistent with the motion.

4. [23-10010](#)-A-13 **IN RE: PARMINDER SINGH AND RANJIT KAUR**
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
2-15-2023 [[27](#)]

THE BANK OF NEW YORK MELLON/MV
JERRY LOWE/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

NO RULING.

5. [23-10819](#)-A-13 **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BMW BANK OF NORTH AMERICA
5-19-2023 [[26](#)]

BMW BANK OF NORTH AMERICA/MV
PETER BUNTING/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The plan to which this objection applies was withdrawn on May 30, 2023. Doc. #35. The debtors filed a modified plan on May 30, 2023 (PBB-3, Doc. #30), with a motion to confirm the modified plan set for hearing on July 20, 2023 at 9:30 a.m. Doc. ##41-47.

6. [23-10819](#)-A-13 **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**
[PBB-2](#)

MOTION TO APPROVE LOAN MODIFICATION
5-30-2023 [[30](#)]

YUDIANA HERNANDEZ BERBER/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Juan Jose Berber Ramirez and Yudiana Hernandez Berber (collectively, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to modify their existing mortgage loan and subordinate mortgage to the U.S. Department of Housing and Urban Development ("HUD") in the amount of \$5,472.95. Doc. #30. Debtors seek to modify the mortgage on their primary residence located at 265 South Thomas Avenue, Kerman, California 93630 ("Residence"). Id. Debtors' application for a partial claim has been approved by M&T Bank and will grant HUD a partial claim of \$5,472.95, which will bear no interest and will be subordinate to M&T Bank's first position deed of trust. Decl. of Juan Jose Berber Ramirez, Doc. #32. After the modification, Debtors will be fully current on their loan through May 2023. Id. Debtors' first post-petition mortgage payment will come due June 1, 2023 in the amount of \$1,781.47. Id. at ¶ 7. No payments will become due to HUD on its subordinate mortgage until Debtors' first deed of trust has been paid off. Id. at ¶ 8. The monthly payment will not exceed \$2,500.00 and will be paid outside of Debtors' chapter 13 plan. Id. at ¶ 7 & ¶ 9.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

It appears that motion was served and noticed properly, and no timely written opposition was filed. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors' Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtors' Residence. The only security for the modification will be Debtors' Residence.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to modify the existing mortgage in a manner consistent with the motion.

7. [23-10819](#)-A-13 **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TD BANK, N.A.
5-8-2023 [\[16\]](#)

TD BANK, N.A./MV
PETER BUNTING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection to confirmation was withdrawn on June 27, 2023. Doc. #68.

8. [18-11832](#)-A-13 **IN RE: MANUEL/ALICE FLORES**
[MHM-4](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
5-25-2023 [\[116\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #119. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of

Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant to Rule 7004, the declarant should have attached the correct item.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Rule 3002.1 with respect to the claim held by USDA Rural Housing Service. Doc. #116. Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f), but USDA Rural Housing Service failed to respond. See Doc. #106.

Rule 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b) (5).

If the holder of a claim fails to provide any information as required by Rule 3002.1(g), Rule 3002.1(i) permits the court, after notice and a hearing, to preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. Rule 3002.1(i) (1).

The court finds that USDA Rural Housing Service failed to provide any information as required by Rule 3002.1(g) and will therefore preclude USDA Rural Housing Service from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in this case pursuant to Rule 3002.1(i) (1). The court also finds that the debtors have cured the default on the loan with USDA Rural Housing Service and that the debtors are current on their mortgage payments to USDA Rural Housing Service through March 2023.

Accordingly, this motion is GRANTED.

9. [22-12134](#)-A-13 **IN RE: GUADALUPE RAMIREZ**
[SL-2](#)

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTOR'S ATTORNEY(S)
5-31-2023 [\[29\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not

materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Scott Lyons ("Movant"), counsel for Guadalupe Maria Ramirez ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$8,097.50 and reimbursement for expenses in the amount of \$698.84 for services rendered from September 12, 2022 through May 30, 2023. Doc. #29. Debtor's confirmed plan provides, in addition to \$1,850.00 paid prior to filing the case, for \$12,500.00 in attorney's fees to be paid through the plan. Plan, Doc. #3; Doc. #29. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #29.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing Debtor's voluntary petition, schedules, and form 22-C; (2) preparing for and attending Debtor's 341 meeting with creditors; (3) communicating with Debtor and the chapter 13 trustee; (4) preparing a motion to extend the automatic stay; (5) preparing the fee application; and (6) general case administration. Ex. B, Doc. #31. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$8,097.50 and reimbursement for expenses in the amount of \$698.84 to be paid in a manner consistent with the terms of the confirmed plan.

10. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[NES-4](#)

MOTION TO CONFIRM PLAN
5-23-2023 [\[84\]](#)

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

NO RULING.

11. [23-10939](#)-A-13 **IN RE: LINDA BALTIMORE TODD**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-5-2023 [\[16\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
\$79.00 INSTALLMENT FEE PAID 6/5/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

12. [23-10549](#)-A-13 **IN RE: YESENIA MADRIGAL**
[SL-4](#)

MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
6-15-2023 [\[50\]](#)

YESENIA MADRIGAL/MV
SCOTT LYONS/ATTY. FOR DBT.

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 shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Yesenia Samantha Madrigal ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's 2017 Chevrolet Malibu, VIN: 1G1ZE5ST8HF178849 (the "Vehicle"), which is the collateral of Westlake Financial Services ("Creditor"). Doc. #50.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's

interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Vehicle was purchased more than 910 days before the filing of this case. Decl. of Yesenia Samantha Madrigal, Doc. #52. Debtor asserts a replacement value of the Vehicle of \$10,410.00 and asks the court for an order valuing the Vehicle at \$10,410.00. Id. Debtor is competent to testify as to the value of the Vehicle. Id. Creditor filed a proof of claim on April 18, 2023, which asserted a secured claim of \$18,368.35. Claim 2. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$10,410.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

13. [23-10755](#)-A-13 **IN RE: MICHAEL/CYNTHIA LOMONACO**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-6-2023 [\[33\]](#)

PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

14. [22-11562](#)-A-13 **IN RE: FRANCISCO LOPEZ JUAREZ AND VICKIE JUAREZ**
[SL-2](#)

MOTION TO MODIFY PLAN
5-22-2023 [\[56\]](#)

VICKIE JUAREZ/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at

least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As an informative matter, the certificate of service form was not completed correctly. In Section 6, the declarant marked that service was effectuated only by Rule 7004 Service. Doc. #61. However, the declarant did not correctly attach as Attachment 6A1 an appropriate list of persons served, including their name/capacity to receive service, and address. Instead, the declarant attached the correct documents required to serve by U.S. mail the parties in the Clerk's Matrix of Creditors and the parties who have filed a Request for Special Notice. Doc. #61. The declarant then failed to check boxes 6B(2)(a) and 6B(2)(b). In Section 6, the declarant should have checked the appropriate boxes under Section 6B2, not Section 6A. The declarant also incorrectly completed Section 7 of the court's mandatory Certificate of Service form. In Section 7, the declarant marked that service was effectuated by Rule 7004 Service only. Doc. #61. Instead, the declarant should have marked that service also was effectuated by Rule 5 Service if the movant intended to attach a copy of the Clerk's Matrix of Creditors and a copy of a list of the parties who have filed a Request for Special Notice.

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.

15. [22-10464](#)-A-13 **IN RE: BETTY MARTINEZ**
[BDB-2](#)

MOTION FOR HARDSHIP DISCHARGE
6-13-2023 [\[30\]](#)

BETTY MARTINEZ/MV
BENNY BARCO/ATTY. FOR DBT.

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 shall submit a proposed order after hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Jodie Biggs ("Representative"), the successor in interest to Betty Martinez ("Debtor"), the deceased debtor in this chapter 13 case, moves the court for a hardship discharge pursuant to 11 U.S.C. § 1328(b). Doc. #30.

Debtor filed this chapter 13 case on March 23, 2022. Doc. #1. Pursuant to Debtor's confirmed chapter 13 plan, Debtor was to make monthly payments of \$1,091.78 for 60 months. Plan, Doc. #8. Twelve of the 60 payments required under the plan have been paid. Doc. 30; Ex. A, Doc. #33. The Chapter 7 Liquidation Test requires that priority and general unsecured creditors receive a combined total of \$1,181.25. Decl. of Benny Barco, Doc. #32. Debtor is now deceased, and Representative has been substituted for Debtor. Id. According to Trustee's Notice of Default and Intent to Dismiss Case, as of June 5, 2023, payments are delinquent in the amount of \$2,183.56. Doc. #16.

Bankruptcy Code § 1328(b) permits the court to grant a hardship discharge to a debtor who has not completed plan payments if certain requirements are met. The hardship discharge may be granted only if:

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under § 1329 of this title is not practicable.

11 U.S.C. § 1328(b) (1)-(3). The moving party bears the burden of proof on all elements of section 1328(b). Roberts v. Boyajian (In re Roberts), 279 F.3d 91, 93 (1st Cir. 2002). The grant or denial of a request for a hardship discharge is within the discretion of the bankruptcy court. Id.

The court finds Representative has satisfied the first condition under § 1328(b). Here, Debtor made 12 plan payments up until and including a plan payment on March 8, 2023. Ex. A, Doc. #33. Debtor failed to complete future payments due to her death. Debtor's failure to complete plan payments is due to circumstances for which Debtor should not justly be held accountable.

The court finds the second condition under § 1328(b) also is met. Here, Debtor made a total of \$13,101.36 in plan payments from April 25, 2022 through March 8, 2023. Ex. A, Doc. #33. Debtor paid toward her plan more than the \$1,181.25 the unsecured creditors would have received from liquidation under Chapter 7. The value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of Debtor had been liquidated under chapter 7 on such date.

Finally, the court finds the third condition under § 1328(b) also is satisfied. Here, modification of the plan under 11 U.S.C. 1329 is not practicable because Debtor is deceased.

Because the court finds that Representative has met her burden of proof on all elements of § 1328(b), this motion is GRANTED.

Pursuant to Federal Rule of Bankruptcy Procedure 4007(d), the last day to file a complaint under § 523(a)(6) of the Bankruptcy Code is August 28, 2023. Not later than July 13, 2023, Representative's counsel or Debtor's counsel shall give notice to all creditors and file a proof of service so indicating.

16. [19-13086](#)-A-13 **IN RE: GARY/JANET BOTHUN**
[MHM-3](#)

MOTION TO DISMISS CASE
5-19-2023 [\[56\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on June 27, 2023. Doc. #68.

1. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[23-1022](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
4-24-2023 [[1](#)]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why the parties have not filed the discovery plan as required by the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on April 24, 2023. Doc. #5.

2. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[23-1022](#) [CAE-2](#)

ORDER TO SHOW CAUSE FOR FAILURE TO FILE TIMELY THE REQUIRED
CORPORATE DISCLOSURE STATEMENT
5-26-2023 [[16](#)]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC

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 missing corporate disclosure statement was filed on May 30, 2023. Doc. #18. Therefore, this order to show cause will be VACATED.

3. [21-11450](#)-A-7 **IN RE: ANTHONY FLORES**
[21-1036](#) [BGR-2](#)

MOTION TO CONTINUE PRE-TRIAL CONFERENCE RE: COMPLAINT
6-1-2023 [[45](#)]

SAWUSCH ET AL V. FLORES
JESSICA WELLINGTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant 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 defendant is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Plaintiffs Carole Sawusch, administrator of the Estate of Mark Sawusch, and Patsy Ann Sawusch, beneficiary of the Estate of Mark Sawusch (together, "Plaintiffs"), seek to have the court enter an order continuing the pre-trial conference currently scheduled for July 20, 2023 to May 30, 2024 and continuing the related deadlines to file pre-trial statements pursuant to Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9006(b)(1). Doc. #45.

Bankruptcy Rule 9006(b)(1) provides in relevant part that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may . . . order the period enlarged if the request therefor is made before the expiration of the period originally prescribed." Fed. R. Bankr. P. 9006(b)(1).

Plaintiffs seeks to have the court enter an order continuing the pre-trial conference because of the criminal indictment of Anthony David Flores ("Defendant") and Anna Rene Moore ("Moore") in state court. Doc. #45; Ex. 1-3, Doc. #48. Plaintiffs argue that Defendant and Moore are key witnesses in this adversary proceeding and Plaintiffs will be prejudiced if Defendant and Moore are unable to testify at trial due to their current incarceration. Doc. #45. Further, a 12-count indictment alleges that Defendant and Moore defrauded Mark Sawusch, M.D. ("Dr. Sawusch") out of more than \$2.7 million before his death and then attempted to defraud his estate out of at least an additional \$20 million after his death. Id. Plaintiffs contend that the issues in the criminal matter are almost identical to the issues in this adversary proceeding, and any judgment in the criminal matter will likely have preclusive effect in this adversary proceeding. Id. Further, on February 9, 2023, Defendant's counsel emailed David Seror and Jessica Wellington, counsel for Plaintiffs, informing them of Defendant's arrest and requesting that Plaintiffs agree to stipulate to stay this adversary proceeding pending resolution of the criminal matter. Decl. of Jessica S. Wellington, Doc. #47. After responding to Defendant's counsel stating that Plaintiffs agreed to enter into the requested stipulation and asking Defendant's counsel to prepare the stipulation, Plaintiffs' counsel did not receive a response. Wellington Decl., Doc. #47.

The court finds that there is cause shown to continue the pre-trial conference currently scheduled for July 20, 2023 to May 30, 2024 and continue the related deadlines to file pre-trial statements because the pending criminal matter against Defendant and Moore make them unable to testify at trial and may prejudice Plaintiffs.

Accordingly, the motion is GRANTED. The pre-trial conference currently scheduled for July 20, 2023 at 11:00 a.m. is continued to May 30, 2024 at 11:00 a.m., and the related deadlines to file pre-trial statements are also continued.

4. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

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

NICOLE V. T2M INVESTMENTS, LLC

NO RULING.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#) [CBC-7](#)

MOTION TO EXCLUDE EVIDENCE
6-7-2023 [[390](#)]

NICOLE V. T2M INVESTMENTS, LLC
CORY CHARTRAND/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion was mailed on June 7, 2023, with a hearing date set for June 29, 2023, which is less than 28 days from the date of mailing. Doc. #395. Pursuant to Local Rule of Practice 9014-1(f)(2)(A), motions in an adversary proceeding may not be set for hearing on less than 28 days' notice.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
4-7-2023 [[6](#)]

NICOLE V. RAMIREZ ET AL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to September 28, 2023 at 11:00 a.m.

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

Pursuant to the tentative ruling in matter #7 below, the court intends to stay this adversary proceeding until the trial scheduled for August 21-25, 2023, in Nicole v. T2M Investments, LLC, Adv. Proc. No. 21-1015, has been completed.

Accordingly, the court intends to continue the initial status conference in this adversary proceeding to September 28, 2023 at 11:00 a.m.

7. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CBC-1](#)

CONTINUED MOTION FOR ABSTENTION
5-5-2023 [[12](#)]

NICOLE V. RAMIREZ ET AL
CORY CHARTRAND/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and 9014-1(f)(2)(A). The plaintiff filed written opposition late on May 23, 2023, June 15, 2023, and June 23, 2023. Doc. ##44, 75, 78, 100, 102. For the reasons set forth below, the court is inclined to stay this adversary proceeding until the trial scheduled for August 21-25, 2023, in Nicole v. T2M Investments, LLC, Adv. Proc. No. 21-1015 ("First Adversary Proceeding"), has been completed.

Defendant T2M Investments, LLC ("T2M") moves the court for dismissal of the first amended complaint ("Complaint") filed in this adversary proceeding because the Complaint fails to state sufficient facts to constitute a claim against T2M or, at a minimum, to abstain from litigating the adversary proceeding initiated by the Complaint ("Second Adversary Proceeding") because the Second Adversary Proceeding is duplicative of the First Adversary Proceeding. Memo. P&A, Doc. #15.

Debtor Sylvia Nicole ("Plaintiff") filed the First Adversary Proceeding on March 8, 2021 against T2M and other defendants. Adv. Proc. No. 21-1015, Doc. #1. By a first amended complaint filed on July 8, 2021, Plaintiff asserts claims against T2M for breach of contract, contract fraud, mortgage fraud, conspiracy to commit fraud and contempt and seeks to have title to real property transferred to T2M pursuant to a settlement agreement returned to Plaintiff. Adv. Proc. No. 21-1015, Doc. #203. After numerous rounds of motion practice, T2M is the only defendant remaining in the First Adversary Proceeding. Adv. Proc. No. 21-1015, Doc. ##164, 171, 254.

On September 9, 2021, T2M and filed a countercomplaint against Plaintiff and other counter-defendants asserting claims for quiet title, breach of contract, specific performance, enforce settlement agreement and declaratory relief and seeks to have, among other things, title to the real property at issue quieted in favor of T2M. Adv. Proc. No. 21-1015, Doc. #261. At a pre-trial conference in the First Adversary Proceeding held on February 16, 2023, the parties agreed upon trial dates for the week of August 21, 2023. Adv. Proc. No. 21-1015, Doc. #369.

On March 27, 2023, Plaintiff initiated the Second Adversary Proceeding. Doc. #1. In the Second Adversary Proceeding, Plaintiff again seeks, among other things, to have the same real property that is the subject of the First Adversary Proceeding returned to Plaintiff. Doc. #6.

"District courts retain broad jurisdiction to control their dockets[.]" Adams v. Cal. Dep't of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007), overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880, 904 (2008). "After weighing the equities of the case, the district court may exercise its discretion to dismiss a duplicative later-filed action, to stay that action pending resolution of the previously filed action, to enjoin the parties from proceeding with it, or to consolidate both actions." Id. (citations omitted).

To determine whether a suit is duplicative, the court borrows the test for claim preclusion. Adams, 487 F.3d at 688. Specifically, the court examines "whether the causes of action and relief sought, as well as the parties or privies to the action, are the same." Id. at 689.

Here, the defendants in the two adversary proceedings are different and there are additional claims for relief that are not identical. Thus, the Second Adversary Proceeding is not wholly duplicative of the First Adversary Proceeding.

However, the court is inclined to stay the Second Adversary Proceeding pending resolution of the First Adversary Proceeding after weighing the equities of the case. The First Adversary Proceeding and the Second Adversary Proceeding have overlapping claims for relief in that both adversary proceedings seek to have this court determine which party or parties should have title to the same real property that is the subject of both adversary proceedings. Plaintiff and T2M agreed on the record at a pre-trial conference in the First Adversary Proceeding held in February 2023 to try the First Adversary Proceeding in August 2023. Moreover, trial in the First Adversary Proceeding can proceed before the court continues with the Second Adversary Proceeding.

Accordingly, T2M's motion is granted in part, and the Second Adversary Proceeding will be stayed pending resolution of the First Adversary Proceeding.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CBC-2](#)

CONTINUED MOTION TO STRIKE
5-5-2023 [\[18\]](#)

NICOLE V. RAMIREZ ET AL
CORY CHARTRAND/ATTY. FOR MV.
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 an order after the
hearing.

Pursuant to the tentative ruling in matter #7 above, the court intends to stay
this adversary proceeding until the trial scheduled for August 21-25, 2023, in
Nicole v. T2M Investments, LLC, Adv. Proc. No. 21-1015, has been completed.

Accordingly, the court will deny the motion to strike without prejudice to
another motion to strike being filed after the stay of this adversary
proceeding has been lifted.