

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 3, 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. [11-19905](#)-B-7 **IN RE: RICHARD MCINTYRE**
[JES-1](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE(S)
5-28-2019 [\[123\]](#)

JAMES SALVEN/MV
TIMOTHY SPRINGER
PETER FEAR/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 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. Chapter 7 trustee ("Trustee"), James Salven, requests fees of \$16,811.73 and costs of \$145.04 for a total of \$16,956.77 for services rendered.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee applications for various

professionals, (2) Administering claims, (3) Conducting the § 341 meeting of creditors, and (4) settling matters relating to product liability. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$16,811.73 in fees and \$145.04 in costs.

2. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[JCW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2018 [\[11\]](#)

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION/MV
DAVID JENKINS
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 4/16/19, RESPONSIVE PLEADING

NO RULING.

3. [18-13238](#)-B-7 **IN RE: DENISE DAWSON**
[JDR-5](#)

MOTION FOR ENTRY OF DISCHARGE
6-13-2019 [\[51\]](#)

DENISE DAWSON/MV
JEFFREY ROWE

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 granting the motion. The discharge order will be entered in due course.

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. On December 27, 2018, the court granted debtor's motion to extend discharge. Doc. #38. The entry of discharge was delayed until December 19, 2019 to allow debtor to file, serve, and prosecute an adversary proceeding. Id.

On June 11, 2019, that adversary proceeding was dismissed. Therefore, because the reason to extend the discharge is no longer applicable, the discharge shall be entered.

4. [19-11339](#)-B-7 **IN RE: JESSE ALVAREZ AND LEAH ROBLES**
[NFS-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-3-2019 [\[19\]](#)

BAYVIEW LOAN SERVICING, LLC/MV
JEFFREY MEISNER
NATHAN SMITH/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #30.

5. [19-12040](#)-B-7 **IN RE: LAURIE TAYLOR**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-29-2019 [\[10\]](#)

AMERICREDIT FINANCIAL
SERVICES, INC./MV
GLEN GATES
JENNIFER WANG/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice. Debtor filed non-opposition on June 5, 2019. Doc. #18. The trustee's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2016 Jeep Compass. Doc. #16. The collateral has a value of \$14,675.00 and debtor owes \$15,874.62. Id.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available

in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

6. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**
[RWR-4](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PETER L FEAR
5-8-2019 [\[55\]](#)

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

This motion was continued because the trustee was "contacted by counsel for a party who may wish to be heard at the time of the hearing and is unavailable to attend the hearing set for June 12, 2019 at 9:30 a.m." See doc. #68, 70.

The time to oppose was extended to June 17, 2019. No party timely opposed this motion. Infinity Select Insurance Company filed non-opposition on June 27, 2019. Doc. #79. Therefore the motion will be granted.

This motion is GRANTED. It appears from the moving papers that the has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;

- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of an agreement that allows two estates to hire one attorney to prosecute the bad faith and/or tortious injury action on behalf of two bankruptcy estates and share in any settlement pursuant to the terms set forth in the agreement. Doc. #55. Daniel M. Canchola and Mario Alberto Guerra are both debtors in the Eastern District of California and were named defendants in a wrongful death lawsuit. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is unknown, though the trustee believes there are "undisputed facts in evidence that weigh in favor of Debtor's success . . ."; collection is assumed to be easy as the action is against an insurance company and it is presumed that the insurance company has the assets to satisfy the judgment; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

7. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**
[RWR-5](#)

CONTINUED MOTION TO EMPLOY DAVID M. MOECK AS SPECIAL COUNSEL
5-8-2019 [\[62\]](#)

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

This motion was continued because the trustee was "contacted by counsel for a party who may wish to be heard at the time of the hearing and is unavailable to attend the hearing set for June 12, 2019 at 9:30 a.m." See doc. #69, 71.

The time to oppose was extended to June 17, 2019. No party opposed this motion. Infinity Select Insurance Company filed non-opposition on June 27, 2019. Doc. #80. Therefore the motion will be granted.

This motion is GRANTED. Pursuant to 11 U.S.C. § 327(e), the chapter 7 trustee ("Trustee") may employ, with the court's approval and for a specified special purpose, an attorney that has represented the debtor if it is in the best interest of the estate and if the attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

Trustee wishes to employ David M. Moeck, Esq. ("Counsel") as special counsel with respect to a potential bad faith and/or tortious injury claim against debtor's insurance company, Infinity Insurance.

Trustee asks that the court approve his employment as of March 27, 2019.

"Whether to grant or deny a nunc pro tunc application is committed to the discretion of the bankruptcy court." In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999) (citing Atkins v. Wain, 69 F.3d 970, 974 (9th Cir. 1995)). "Retroactive approval should be limited to situations in which 'exceptional circumstances' exist." In re THC Corp., 837 F.2d 389, 392 (9th Cir. 1988). For the court to find 'exceptional circumstances,' Movant must (1) satisfactorily explain their failure to receive prior judicial approval and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner. Id.

After review of the evidence, the court finds that 'exceptional circumstances' exist to justify nunc pro tunc employment. The first prong is satisfied because Trustee previously filed a Motion to Employ Special Counsel and supporting documents, bearing docket control number RWR-3, on March 28, 2019. Doc. ##45-50. However, due to a clerical error, the documents were not timely served.

The second prong is satisfied because through Counsel's services and his review of the facts and discussion with general counsel, Counsel believes that debtor has a valid claim for tortious injuries and potentially contractual damages suffered as a result of bad faith by the insurer. A judgment against the insurer could result in a greater distribution to unsecured creditors.

After review of the evidence, the court finds that Counsel does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Counsel is to be employed and the employment of Counsel is in the best interest of the estate. Bad faith and/or tortious injury cases can be complex and Counsel is "fully familiar with bad faith litigation." Doc. #65.

Trustee is authorized to employ Counsel for the purposes stated above and in the motion; the effective date of employment shall be March 27, 2019. Counsel shall be retroactively employed as of that date and the payment, if any, to which Counsel is entitled to shall be a 40% contingency fee, plus costs and expenses, as described in the Attorney-Client Contingent Fee Contract. Doc. #66.

8. [18-14955](#)-B-7 **IN RE: ROBERT/LINDA BRENNER**
[PFT-3](#)

MOTION TO SELL AND/OR MOTION TO PAY
6-5-2019 [\[36\]](#)

PETER FEAR/MV
SCOTT LYONS
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee ("Trustee") asks this court for authorization to sell 247 North Stevens, Farmersville, CA 93223 ("Estate Asset") to Hialys Souza ("Buyer"), subject to higher and better bids at the hearing, for \$119,000.00. The estimated net to the estate is \$16,639.98. Doc. #36.

Trustee employed Berkshire Hathaway HomeServices California Realty through Robert Case to serve as broker. The listing agreement provided for a commission of 6% to be split 50/50 with the purchaser's broker, should the purchase come via a broker. Buyer is represented by Logan Herrera with Keller Williams Realty and the 6% commission will be split 50/50 between Robert Casey and Logan Herrera, should the sale be completed.

It appears that the sale of the Estate Asset is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Any party wishing to overbid must appear at the hearing. Winning bidders must deposit into escrow an amount equal to 10% of the purchase price in certified funds no later than five business days after the auction and must close escrow within 30 days from conclusion of the hearing. Back-up bids will be taken and if a back-up bidder is notified that the prior bidder has failed to perform, the back-up bidder must deposit into escrow an amount equal to 10% of the purchase price in certified funds no later than five business days following conclusion of the auction and must close escrow within 30 days from notification that the prior bidder has failed to perform.

Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper LP ("Creditor") filed a response, though the response was filed one day late. The response requests that any order granting the motion prove that the "escrow holder disburse sale proceeds to pay secured creditor's lien in full and the amount owed under the Deed of Trust be fully paid." Doc. #44.

Trustee shall address Creditor's response at the hearing. The court may order that any order approving the sale contain a signature of creditor's counsel.

9. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[RWR-4](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JAMES E. SALVEN
5-8-2019 [\[73\]](#)

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

This motion was continued because the trustee was "contacted by counsel for a party who may wish to be heard at the time of the hearing and is unavailable to attend the hearing set for June 12, 2019 at 9:30 a.m." See doc. #80, 82.

The time to oppose was extended to June 17, 2019. No party opposed this motion. Infinity Select Insurance Company filed non-opposition on June 27, 2019. Doc. #90. Therefore the motion will be granted.

This motion is GRANTED. It appears from the moving papers that the has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and

- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of an agreement that allows two estates to hire one attorney to prosecute the bad faith and/or tortious injury action on behalf of the bankruptcy estates and share in any settlement pursuant to the terms set forth in the agreement. Doc. #55. Daniel M. Canchola and Mario Alberto Guerra are both debtors in the Eastern District of California and were named defendants in a wrongful death lawsuit. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is unknown, though the trustee believes there are "undisputed facts in evidence that weigh in favor of Debtor's success . . ."; collection is assumed to be easy as the action is against an insurance company and it is presumed that the insurance company has the assets to satisfy the judgment; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

10. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[RWR-5](#)

CONTINUED MOTION TO EMPLOY DAVID M. MOECK, ESQ. AS SPECIAL
COUNSEL
5-8-2019 [\[67\]](#)

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

This motion was continued because the trustee was "contacted by counsel for a party who may wish to be heard at the time of the hearing and is unavailable to attend the hearing set for June 12, 2019 at 9:30 a.m." See doc. #81, 83.

The time to oppose was extended to June 17, 2019. No party opposed this motion. Infinity Select Insurance Company filed non-opposition on June 27, 2019. Doc. #91. Therefore the motion will be granted.

This motion is GRANTED. Pursuant to 11 U.S.C. § 327(e), the chapter 7 trustee ("Trustee") may employ, with the court's approval and for a specified special purpose, an attorney that has represented the debtor if it is in the best interest of the estate and if the attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

Trustee wishes to employ David M. Moeck, Esq. ("Counsel") as special counsel with respect to a potential bad faith and/or tortious injury claim against debtor's insurance company, Infinity Insurance.

Trustee asks that the court approve his employment as of March 27, 2019.

"Whether to grant or deny a nunc pro tunc application is committed to the discretion of the bankruptcy court." In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999) (citing Atkins v. Wain, 69 F.3d 970, 974 (9th Cir. 1995)). "Retroactive approval should be limited to situations in which 'exceptional circumstances' exist." In re THC Corp., 837 F.2d 389, 392 (9th Cir. 1988). For the court to find 'exceptional circumstances,' Movant must (1) satisfactorily explain their failure to receive prior judicial approval and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner. Id.

After review of the evidence, the court finds that 'exceptional circumstances' exist to justify retroactive employment. The first prong is satisfied because Trustee previously filed a Motion to Employ Special Counsel and supporting documents, bearing docket control number RWR-3, on March 28, 2019. Doc. ##57-62. However, due to a clerical error, the documents were not timely served.

The second prong is satisfied because through Counsel's services and his review of the facts and discussion with general counsel, Counsel believes that debtor has a valid claim for tortious injuries and potentially contractual damages suffered as a result of bad faith by the insurer. A judgment against the insurer could result in a greater distribution to unsecured creditors.

After review of the evidence, the court finds that Counsel does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Counsel is to be employed and the employment of Counsel is in the best interest of the estate. Bad faith and/or tortious injury cases can be complex and Counsel is "fully familiar with bad faith litigation." Doc. #69.

Trustee is authorized to employ Counsel for the purposes stated above and in the motion; the effective date of employment shall be March 27, 2019. Counsel shall be employed retroactively to that date, and the payment, if any, to which Counsel is entitled to shall be a 40% contingency fee, plus costs and expenses, as described in the Attorney-Client Contingent Fee Contract. Doc. #71.

11. [19-11280](#)-B-7 **IN RE: DONOO HOCKETT**
[EPE-1](#)

MOTION TO EXTEND TIME AND/OR MOTION TO DELAY DISCHARGE
6-11-2019 [\[17\]](#)

DONOO HOCKETT/MV
ERIC ESCAMILLA

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 Bankruptcy Procedure 4008 requires reaffirmation agreements to be filed not later than 60 days after the first § 341 meeting of creditors. The rule also "at any time and in [the court's discretion]" allows the court to enlarge the time to file a reaffirmation agreement.

Federal Rule of Bankruptcy Procedure 4004(c)(2) allows the court to defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

The § 341 meeting was held on May 9, 2019, and no reaffirmation agreement was filed with the court within the 60 day deadline, which will end on July 8, 2019. Debtor states that he will not be able to file the reaffirmation agreement during that time. Doc. #19. Debtor's attorney "has been working with my mortgage lender and negotiating a reaffirmation agreement, but that additional time is needed to finalize these agreements." Id. Therefore the time to file a reaffirmation agreement is extended to and including August 2, 2019.

The entry of discharge is deferred until August 2, 2019, pursuant to the limitations under Fed. R. Bankr. P. 4004(c)(2). Debtor may further extend the time to defer entry of discharge on motion between this hearing and August 2, 2019.

The court, in its discretion, GRANTS the motion. Unless opposition is presented at the hearing, the court finds that no prejudice shall occur to any party in the granting in this motion. The order does not approve the reaffirmation agreement. That must be the subject of a separate hearing.

12. [19-12191](#)-B-7 **IN RE: JENNIFER CHAMBERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-7-2019 [\[11\]](#)

GRISELDA TORRES
\$335.00 FILING FEE PAID 6/10/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee was paid in full on June 10, 2019.

13. [19-12032](#)-B-7 **IN RE: ADAM/CHRISTINA RAMIREZ**
[JRL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-2019 [\[24\]](#)

DANIEL SCHOENBROD/MV
JERRY LOWE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The court first notes movant's failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration and exhibits were combined into one document and not filed separately. Future motions that fail to comply with this rule will be denied without prejudice.

Second, movant's motion, with no supporting memorandum of points and authorities, is borderline inadequate. Though movant's declaration contained barely enough information for the court to understand

exactly what relief and on what grounds movant was seeking, the motion's four case citations (only one of which is from any sort of binding authority) and two statute citations do not a motion make. The court will not search for and read case citations in order to glean a movant's intentions and motives. The motion does not even state whether this court has jurisdiction. The movant has the burden to explain to the court what they want and why they are entitled to it. Future motions that fail to do so will be denied without prejudice.

The movant, Daniel Schoenbrod, seeks relief from the automatic stay under § 362(d)(1) and (d)(2) in order to continue the unlawful detainer process against debtors. Doc. #27.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the unlawful detainer action is unrelated to this bankruptcy. The interests of other creditors will not be prejudiced because movant is seeking to evict debtors. The state court action is an unlawful detainer action, and not a matter the bankruptcy court should hear. The "balance of hurt" rests on movant, who has apparently not received rent due since May.

The court notes movant's counsel's supplemental declaration. Doc. #32.

This motion will be granted. The automatic stay will be modified only for the limited purpose of continuing with the state court action to liquidate the claim and to seek possession of the premises only. No collection proceedings (except proceedings authorized by law to restore possession) or further relief will be authorized without further order of the court.

10:00 AM

1. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
9-7-2018 [[1](#)]

RILEY WALTER

NO RULING.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION
9-30-2017 [[1](#)]

RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-110](#)

OBJECTION TO CLAIM OF JIAME CALDERON, CLAIM NUMBER 10
5-31-2019 [[1463](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing consistent with this ruling. The order will have no collateral estoppel or res judicata effect on the pending state court proceeding related to this claim.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3007-1(b)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 3007-1(b)(2). The court will issue an order if a further hearing is necessary.

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

Tulare Local Healthcare District dba Tulare Regional Medical Center ("Debtor") objects to the claim of Jiame Calderon ("Claimant"). The claim is for a pending wrongful death lawsuit. Claim. #10. The claim is for \$1,000,000.00. Id.

Debtor objects because "to the extent the asserted claim . . . is ultimately allowed by the trial court the claim will be provided for pursuant to the Debtor's malpractice insurance coverage through BETA Risk Management Authority." The claim is not secured and is a disputed, unliquidated and contingent claim.

Based on the evidence provided, and in the absence of opposition, the court SUSTAINS the objection and disallows Claimant's claim #10 in its entirety. This order shall not have any binding effect on the pending state court proceeding.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-111](#)

OBJECTION TO CLAIM OF IRON MOUNTAIN INFORMATION MANAGEMENT, LLC,
CLAIM NUMBER 227
5-31-2019 [\[1459\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3007-1(b)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 3007-1(b)(2). The court will issue an order if a further hearing is necessary.

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

Tulare Local Healthcare District dba Tulare Regional Medical Center ("Debtor") objects to the claim of Iron Mountain Information Management, LLC ("Claimant"). The claim is based on a warehouse

lien. Claim. #227. The claim is for \$3,598.51, \$880.00 of which is secured. Id.

Debtor objects because "to the extent the asserted claim . . . is ultimately allowed the claim is not entitled to secured status as the entire \$880.00 portion of the claim asserted as being secured has been paid in full. Doc. #1459. Debtor mailed a check payable to Claimant for \$880.00 to be applied to the secured portion of the claim, and the check cleared on April 16, 2019.

Based on the evidence provided, and in the absence of opposition, the court SUSTAINS the objection and disallows the Claimant's secured claim portion of claim #227 in its entirety without prejudice to the remaining balance being allowed as an unsecured claim.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-112](#)

OBJECTION TO CLAIM OF IBM CREDIT LLC, CLAIM NUMBER 49
6-3-2019 [\[1467\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3007-1(b)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 3007-1(b)(2). The court will issue an order if a further hearing is necessary.

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

Tulare Local Healthcare District dba Tulare Regional Medical Center ("Debtor") objects to the claim of IBM Credit LLC ("Claimant"). The claim is on account of a lease in place with Debtor. Claim. #49. The claim is for \$888,667.59. Id.

Debtor objects because the filed proof of claim is no longer correct or enforceable. Debtor and Claimant entered into a Settlement Agreement whereby Claimant's claim was bifurcated into a secured

claim for \$94,644.00 and an unsecured claim for \$794,023.59. Doc. #1467.

Based on the evidence provided, and in the absence of opposition, the court SUSTAINS the objection and allows Claimant's claim #49 as a secured claim in the amount of \$94,644.00 and an unsecured claim of \$794,023.59.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-95](#)

DISCLOSURE STATEMENT FILED BY DEBTOR TULARE LOCAL HEALTHCARE
DISTRICT
5-22-2019 [\[1441\]](#)

RILEY WALTER

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 42 days' notice as required by Local Rule of Practice ("LBR") 9014-1 and Federal Rule of Bankruptcy Procedure 2002(b). 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.

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b) (incorporated into chapter 9 by 11 U.S.C. § 901). Under 11 U.S.C. § 1125, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." In re Brotby, 303 B.R. 177, 193 (9th Cir. B.A.P. 2003) (citation omitted) (internal quotation marks omitted).

After review of the disclosure statement, and in the absence of opposition, the court finds that the disclosure statement contains "adequate information" as defined under 11 U.S.C. § 1125(a)(1). The court therefore approves the disclosure statement.

7. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WW-1](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR CREATION OF A
PACA TRUST ACCOUNT
11-15-2018 [[108](#)]

VERSA MARKETING, INC./MV
RILEY WALTER

NO RULING.

1:30 PM

1. 19-11801-B-13 IN RE: SHEREE ENGBRECHT

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-5-2019 [15]

MARK ZIMMERMAN

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

DISPOSITION: The OSC will be vacated.

NO ORDER REQUIRED. The OSC will be vacated.

The filing fees were brought current on June 26, 2019.

2. 19-12403-B-13 **IN RE: MARK ROKKE**
SL-1

MOTION TO EXTEND AUTOMATIC STAY
6-12-2019 [8]

MARK ROKKE/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. 19-10567. That case was filed on February 19, 2019 and was dismissed on May 17, 2019 for failure to make plan payments and file tax returns. This case was filed on June 5, 2019 and the automatic stay will expire on July 5, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay as 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 arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because 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)) and debtor failed to perform the terms of a plan confirmed by the court (11 U.S.C. § 362(c)(3)(C)(i)(II)(cc)).

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

Debtor states that his previous bankruptcy case was dismissed for failure to make plan payments. Doc. #10. He fell behind on utility payments and the utility companies were apparently threatening to terminate services, which debtor did not know at the time was illegal; however, debtor still made the payments and failed to make plan payments.

Debtor's likelihood of completing a plan of reorganization is high. Debtor is no longer behind on utility payments, will see increased

wages, and this plan payment is lower than the previous plan payment. Id.

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.

3. [19-10704](#)-B-13 **IN RE: VIRGINIA RAMIREZ**
[TOG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
4-11-2019 [[14](#)]

VIRGINIA RAMIREZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #41.

4. [19-10804](#)-B-13 **IN RE: DENISE COX**
[TCS-1](#)

CONTINUED MOTION TO CONFIRM PLAN
5-17-2019 [\[25\]](#)

DENISE COX/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The chapter 13 trustee withdrew his opposition on June 21, 2019. Doc. #44. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[FC-2](#)

MOTION TO CONFIRM PLAN
5-16-2019 [\[99\]](#)

FRANK CRUZ/MV
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 1, 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 18, 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 25, 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 25, 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.

6. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[MHM-4](#)

MOTION TO DISMISS CASE
5-21-2019 [\[109\]](#)

MICHAEL MEYER/MV

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

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

ORDER: The court will issue an order.

The basis for this motion was failure to confirm a chapter 13 plan and unreasonable delay that is prejudicial to creditors. The chapter 13 trustee objected to debtor's motion to confirm plan (matter #5 above, FC-2). That motion is continued to August 1, 2019 at 1:30 p.m. Therefore this motion to dismiss is continued to that date and time to be heard with the continued motion to confirm plan.

7. [10-11324](#)-B-13 **IN RE: EARL/DIONICIA PARKS**
[MHM-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
6-4-2019 [\[58\]](#)

GEOFFREY ADALIAN
DISCHARGED 7/1/13

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

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

NO ORDER REQUIRED: The court already issued an order. Doc. #67.

8. [18-15127](#)-B-13 **IN RE: FRANCISCO GUADRON AND MARIA CHAVOYA-**
GUADRON
[JRL-2](#)

AMENDED MOTION TO CONFIRM PLAN
5-29-2019 [\[41\]](#)

FRANCISCO GUADRON/MV
JERRY LOWE

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

9. [19-11429](#)-B-13 **IN RE: RHONDA RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-14-2019 [\[35\]](#)

ERIC ESCAMILLA
DISMISSED 6/18/19

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The case was dismissed on June 18, 2019. Doc. #38.

10. [19-11429](#)-B-13 **IN RE: RHONDA RAMIREZ**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE, LLC
5-20-2019 [\[21\]](#)

EXETER FINANCE, LLC/MV
ERIC ESCAMILLA
CHERYL SKIGIN/ATTY. FOR MV.
DISMISSED 6/18/19

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection OVERRULED AS MOOT. The case was dismissed on June 18, 2019. Doc. #38.

11. [19-11334](#)-B-13 **IN RE: HECTOR FLORES**
[TCS-1](#)

MOTION TO CONFIRM PLAN
5-22-2019 [\[20\]](#)

HECTOR FLORES/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 1, 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 18, 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 25, 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 25, 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.

12. [19-10335](#)-B-13 **IN RE: PAUL/CARRIE COLVIN**
[MAZ-1](#)

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
5-24-2019 [\[38\]](#)

PAUL COLVIN/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v.

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The debtor is competent to testify as to the value of the 2013 Chevrolet Malibu. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$10,425.00. 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. [19-11636](#)-B-13 **IN RE: TOM/HELEN EVANS**
[PBB-1](#)

MOTION TO CONFIRM PLAN
5-29-2019 [\[14\]](#)

TOM EVANS/MV
PETER BUNTING

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [19-12446](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
6-18-2019 [\[14\]](#)

CARLOS MOLINA/MV
PETER BUNTING

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. 18-15011. That case was filed on December 16, 2019 and was dismissed on the chapter 13 trustee's motion on May 31, 2019 for failure to confirm a chapter 13 plan. Debtor did not oppose the motion. This case was filed on June 10, 2019 and the automatic stay will expire on July 10, 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. The prior case was not dismissed because 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)) nor 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)).

Because the presumption of bad faith does not arise, the debtor has no burden to overcome this presumption. And unless opposition is presented at the hearing, the court finds that this case was filed in good faith.

When debtors filed the previous case, they did not know how much, if any, tax liability they would have for the year 2018. Doc. #16. After learning how much was owed, debtors' counsel informed debtors that they could not include the new tax debt in their plan, and they decided that they could not move forward with their prior case. *Id.* Debtor's filed this case to prevent repossession of their vehicle and to pay their tax debt. *Id.* Debtor's schedules I and J show an ability to make the plan payment. *Id.* The court finds that this case was filed in good faith.

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.

15. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[PLG-2](#)

MOTION TO CONFIRM PLAN
5-10-2019 [\[109\]](#)

ALVINA FISCHER/MV
RABIN POURNAZARIAN
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest except the Chapter 13 Trustee are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The chapter 13 trustee withdrew his opposition on June 27, 2019. Doc. #124. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

16. [19-11371](#)-B-13 **IN RE: RALPH/LINDA DEPINA**
[MAZ-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN
5-24-2019 [\[21\]](#)

RALPH DEPINA/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

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

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

The debtor is competent to testify as to the value of the 2007 Ford F150. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$8,325.00. 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.

17. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[AF-1](#)

MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC. AND/OR
MOTION TO AVOID LIEN OF REAL TIME RESOLUTIONS, INC.
5-7-2019 [\[10\]](#)

IGNACIO DALUDDUNG/MV
ARASTO FARSAD
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The court must first note procedural inaccuracies in both the motion
and the opposition.

First, movant does not comply with Local Rule of Practice ("LBR")
9004-2(d). This rule requires that exhibits have an exhibit index,
which the exhibits attached to the motion did not have.

Second, the opposition is in violation of LBR 9004-2(c)(1). This
rule requires that oppositions, exhibits, inter alia, be filed as
separate documents. The opposition here did not do that, and the
exhibits were filed together with the opposition. Doc. #16.

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 subject property.

18. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[RMP-1](#)

CONTINUED 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.
RESPONSIVE PLEADING

NO RULING.

19. [19-12075](#)-B-13 **IN RE: MARIA DEL ROCIO SAAVEDRA**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF PACIFIC SERVICES C.U.
5-23-2019 [\[10\]](#)

MARIA DEL ROCIO SAAVEDRA/MV
STEPHEN LABIAK

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(e)(2) requires a proof of service, in the form of a
certificate of service, to be filed with the Clerk of the court
concurrently with the pleadings or documents served, or not more
than three days after the papers are filed.

In this case, the proof of service filed was not for this case, nor
these debtors. Therefore this motion is DENIED WITHOUT PREJUDICE.

20. [19-10680](#)-B-13 **IN RE: TIMOTHY WHEELER**
[PLG-1](#)

MOTION TO CONFIRM PLAN
5-13-2019 [\[34\]](#)

TIMOTHY WHEELER/MV
RABIN POURNAZARIAN

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

21. [18-14481](#)-B-13 **IN RE: BETTY OCHOA**
[GEG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR A
STATEMENT THAT THE AUTOMATIC STAY DOES NOT APPLY TO A DIVISION
OF COMMUNITY PROPERTY BY A STATE COURT
6-3-2019 [\[46\]](#)

BETTY OCHOA/MV
GLEN GATES

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. The automatic
stay will be modified. No further relief is granted.

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 movant, debtor Betty Ochoa, seeks relief from the automatic stay
under 11 U.S.C. § 362(d)(1) and (d)(2) to proceed with a settlement
conference (and trial if needed) in a Fresno Superior Court case
regarding the division of real and personal property which is
allegedly community property.

When a movant prays for relief from the automatic stay to initiate
or continue non-bankruptcy court proceedings, a bankruptcy court
must consider the "Curtis factors" in making its decision. In re
Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant
factors in this case include:

- (1) whether the relief will result in a partial or complete
resolution of the issues;
- (2) the lack of any connection with or interference with the
bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a
fiduciary;

- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. The litigation in Fresno County Superior Court would not prejudice the interests of other creditors or interest parties. The balance of hurt lies on movant and allowing movant to continue with the settlement conference could provide guidance if those issues appear in the bankruptcy court regarding the alleged community property. Also, the Superior Court is well versed in matters of marital property division. It is consistent with judicial economy to allow the process to conclude in the Superior Court.

22. [18-15084](#)-B-13 **IN RE: ROBERT SANFORD**
[SL-2](#)

MOTION TO CONFIRM PLAN
5-16-2019 [\[53\]](#)

ROBERT SANFORD/MV
SCOTT LYONS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 1, 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 18, 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 25, 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 25, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

23. [19-11784](#)-B-13 **IN RE: FELICITAS DE CARRILLO**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CRB AUTO
5-25-2019 [\[14\]](#)

FELICITAS DE CARRILLO/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 debtor is competent to testify as to the value of the 2015 Chevrolet Cruze. However, the declaration does not contain the debtor's opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "fair market value." Therefore, this motion is DENIED WITHOUT PREJUDICE.

24. [18-10894](#)-B-13 **IN RE: JUAN REBOLLERO**
[TOG-3](#)

CONTINUED MOTION TO MODIFY PLAN
3-13-2019 [\[71\]](#)

JUAN REBOLLERO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #86.

25. [19-10994](#)-B-13 **IN RE: RAFAEL REYES AND GRACIELA GAMBOA**
[FW-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
6-4-2019 [\[23\]](#)

RAFAEL REYES/MV
GABRIEL WADDELL

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

DISPOSITION: Granted.

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

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

The debtor is competent to testify as to the value of the 2008 Acura TL Sedan 4D. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The

respondent's secured claim will be fixed at \$4,827.00. 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.

26. [19-11795](#)-B-13 **IN RE: CHRISTOPHER/REGINE DAVENPORT**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-7-2019 [\[28\]](#)

PETER BUNTING

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 has filed an amended plan. Doc. #36, PBB-2.

27. [17-14799](#)-B-13 **IN RE: CARRIE CLOUD**
[JHW-1](#)

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

TD AUTO FINANCE LLC/MV
PETER BUNTING
JENNIFER WANG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

28. [17-14799](#)-B-13 **IN RE: CARRIE CLOUD**
[PBB-1](#)

MOTION TO MODIFY PLAN
5-21-2019 [\[39\]](#)

CARRIE CLOUD/MV
PETER BUNTING

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

2:00 PM

1. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[19-1046](#)

STATUS CONFERENCE RE: COMPLAINT
5-1-2019 [\[1\]](#)

SALVEN V. THE UNITED STATES OF AMERICA DEPARTMENT OF THE TRE
PETER FEAR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[19-1039](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
4-23-2019 [\[12\]](#)

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
JAMES MICHEL/ATTY. FOR PL.
CONTINUED TO 7/17/19 PER ECF ORDER #54, RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 17, 2019 at 1:30 p.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #54.

3. [11-10171](#)-B-13 **IN RE: DWAYNE/RENEE KENNEDY**
[19-1020](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
6-17-2019 [\[46\]](#)

KENNEDY ET AL V. HSBC BANK NEVADA, N.A. ET AL
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Continued to August 14, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Plaintiff filed an amended complaint on June 17, 2019. Doc. #46.
This status conference is continued to August 14, 2019 at 1:30 p.m.
to give defendants an opportunity to respond to the amended
complaint.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1048](#)

STATUS CONFERENCE RE: COMPLAINT
5-3-2019 [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. TALYST INC.
RILEY WALTER/ATTY. FOR PL.

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

DISPOSITION: Continued to July 31, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Plaintiff filed a motion for entry of default judgment, set for hearing on July 31, 2019. This matter is continued to that date to be heard in conjunction with that motion.