

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 15, 2020
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. [20-11901](#)-B-13 **IN RE: PAUL/DARLENE HOLLAND**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL, INC.
6-10-2020 [\[30\]](#)

PAUL HOLLAND/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc.
#47.

2. [20-10104](#)-B-13 **IN RE: MARGARET GRAVELLE**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
6-1-2020 [\[30\]](#)

MICHAEL MEYER/MV
THOMAS MOORE/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 court will issue
the order.

This motion is GRANTED. The grounds of this motion to dismiss is that debtor has failed to confirm a chapter 13 plan. Doc. #30. The matter was continued to this calendar to be heard in conjunction with debtor's motion to confirm a plan. See matter #4, TAM-1.

Unless debtor is current at the hearing, the court intends to grant the chapter 13 trustee's ("Trustee") motion to dismiss, matter #3 below, MHM-3.

3. [20-10104](#)-B-13 **IN RE: MARGARET GRAVELLE**
[MHM-3](#)

MOTION TO DISMISS CASE
6-5-2020 [\[43\]](#)

MICHAEL MEYER/MV
THOMAS MOORE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless debtor is current on payments
 at the hearing.

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

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as
scheduled.

This motion is GRANTED. The chapter 13 trustee ("Trustee") requests
dismissal for being delinquent in the amount of \$4,499.00. Doc. #45.
Before this hearing another payment of \$1,571.00 will come due on
June 25, 2020. Id. Debtor timely opposed, alluding to the motion to
confirm an amended plan set for hearing on this calendar. See matter
#4 below, TAM-1.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case,
whichever is in the best interests of creditors and the estate, for
"cause". "A debtor's unjustified failure to expeditiously accomplish
any task required either to propose or to confirm a chapter 13 plan
may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v.
Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915
(B.A.P. 9th Cir. 2011).

The court finds that dismissal would be in the best interests of
creditors and the estate. Trustee has not asked for conversion and
it does not appear that conversion would be beneficial to the
unsecured creditors.

For the above reasons, unless debtor is current at the hearing, this
motion is GRANTED.

4. [20-10104](#)-B-13 **IN RE: MARGARET GRAVELLE**
[TAM-1](#)

MOTION TO CONFIRM PLAN
6-1-2020 [\[38\]](#)

MARGARET GRAVELLE/MV
THOMAS MOORE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion is DENIED. 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 chapter 13 trustee ("Trustee") opposes plan confirmation because debtor is delinquent at least \$4,499.00. Doc. #50. Prior to this hearing another payment in the amount of \$1,571.00 will come due. Id.

Unless debtor is current at the hearing, the motion is denied. If debtor is current, then Trustee's objection will be overruled and the motion will be granted.

5. [16-13305](#)-B-13 **IN RE: JAMES MUNRO**
[RMP-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH JAMES KENNETH MUNRO, JR.
6-15-2020 [\[70\]](#)

REAL TIME RESOLUTIONS, INC./MV
PETER BUNTING/ATTY. FOR DBT.
RENEE PARKER/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. 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 court must first address movant's procedural error. The motion failed to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion and exhibit were combined into one document and not filed separately.

Movant Real Time Resolutions, Inc. ("Movant") has not 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.

Nor is the court convinced that Movant may bring this motion before the court under the Federal Rules of Bankruptcy Procedure.

On a motion by the *trustee* and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Absent from Rule 9019 is standing for the debtor to seek such approval. Typically, only the trustee may file a motion to approve a compromise or settlement.

Though 11 U.S.C. § 1303 does not expressly grant chapter 13 debtors standing to prosecute and settle claims, other courts have applied it to allow these claims to continue. The Second Circuit has stated, "we conclude that a Chapter 13 debtor, unlike a Chapter 7 debtor, has standing to litigate causes of action that are not part of a case under title 11." Olick v. Parker & Parsley Petroleum Co., 145 F.3d 513, 515 (2d Cir. 1998)

The Second Circuit reasoned, "[t]he legislative history of § 1303, which sets out the exclusive rights of a Chapter 13 debtor, supports the holding that a Chapter 13 debtor's standing is different." Olick, 145 F.3d 513 at 516. "Both the House of Representatives and Senate floor managers of the Uniform Law on Bankruptcies, Pub.L. No. 95-598 (1978), stated that:

Section 1303 . . . specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although Section [323] is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued."

Olick, 145 F.3d 513 at 516 citing 124 Cong. Rec. H. 11,106 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards); S. 17,423 (daily ed. Oct. 5, 1978) (remarks of Sen. DeConcini).

Ninth Circuit courts have applied Olick's reasoning and agreed that chapter 13 debtors "have standing to pursue claims against others when those claims belong to the bankruptcy estate because 'the reality of a filing under Chapter 13 is that the debtors are the true representatives of the estate and should be given the broad latitude essential to control the progress of their case.'" Donato v. Metro. Life Ins. Co., 230 B.R. 418, 425 (N.D. Cal. 1999) (quoting Olick, 145 F.3d 513 at 516). The court also favorably cited the Third Circuit's reasoning that a chapter 13 debtor could continue to prosecute prepetition claims after filing because "an essential feature of a Chapter 13 case is that the debtor retains possession of and may use all the property of his estate, including his prepetition causes of action . . ." Donato, 230 B.R. 418 at 425 (citing Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1209 at n.2 (3rd Cir. 1991)).

Regardless, the motion is denied because Movant has not performed the legal analysis to allow the court to make the findings necessary to grant the requested relief.

6. [15-12222](#)-B-13 **IN RE: NORMAN/DOLORES PHILLIPS**
[SLL-2](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE
SECTION 1328 CERTIFICATE REQUIREMENT, AND APPOINTMENT OF
REPRESENTATIVE AS TO DEBTOR
6-8-2020 [\[48\]](#)

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

This motion is GRANTED. Debtor's counsel asks the court to excuse debtor Norman Phillips from completing the post-petition education requirement under 11 U.S.C. § 1328(g), for discharge of the estate of Norman Phillips, and for waiver of the certification requirements for entry of discharge in a chapter 13 case. Doc. #48. Debtor passed away on January 31, 2017 and is therefore unable to complete the above requirements. Id.

Federal Rule of Bankruptcy Procedure 1016 provides:

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

and be concluded in the same manner, so far as possible,
as though the death or incompetency had not occurred.

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, debtor Norman Phillips is excused from completing the post-petition education requirement under 11 U.S.C. § 1328(g), for discharge of the estate of Norman Phillips, and for waiver of the certification requirements for entry of discharge in a chapter 13 case.

7. [19-13328](#)-B-13 **IN RE: LARRY/DOLORES SYRA**
[MHM-3](#)

MOTION TO DISMISS CASE
6-5-2020 [\[66\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtors failed to make all payments due under the plan (11 U.S.C. § 1307(c)(1) and (c)(4)). Accordingly, the case will be dismissed.

8. [19-10140](#)-B-13 **IN RE: KENNETH/PAULANNA INGLE**
[SL-2](#)

MOTION TO MODIFY PLAN
6-5-2020 [\[43\]](#)

KENNETH INGLE/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 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. [20-10740](#)-B-13 **IN RE: GUILLERMO DE LA ISLA**
[JBC-2](#)

MOTION TO VALUE COLLATERAL OF HARLEY-DAVIDSON CREDIT CORPORATION
6-17-2020 [\[32\]](#)

GUILLERMO DE LA ISLA/MV
JAMES CANALEZ/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 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 is GRANTED. 11 U.S.C. § 1325(a)(*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

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."

11 U.S.C. § 506(a)(2) 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" 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."

Debtor asks the court for an order valuing a 2015 Harley Davidson FLS Softail ("Vehicle") at \$12,405.00. Doc. #34. The Vehicle is encumbered by a purchase-money security interest in favor of creditor Harley-Davidson Credit Corp. ("Creditor"). Debtor purchased the Vehicle on August 21, 2016, which is more than 910 days preceding the petition filing date. Debtor's declaration states that the Vehicle was acquired for debtor's personal use. § 1325(a)(*) is not at issue and § 506 is applicable.

Debtor's declaration states the replacement value of the Vehicle is \$12,405.00. Doc. #34. Creditor's claim states the amount owed to be \$17,268.88. Claim #6.

The debtor is competent to testify as to the value of the Vehicle. 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). Creditor's secured claim will be fixed at \$12,405.00. 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.

10. [20-10547](#)-B-13 **IN RE: CLAYTON/KIMBERLY WHITE**
[MHM-2](#)

MOTION TO DISMISS CASE
6-9-2020 [\[47\]](#)

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtors failed to make all payments due under the plan (11

U.S.C. § 1307(c)(1) and (c)(4)). Accordingly, the case will be dismissed.

11. [15-10849](#)-B-13 **IN RE: ERIC SANBRANO**
[TCS-2](#)

CONTINUED MOTION TO AVOID LIEN OF STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY
3-30-2020 [\[35\]](#)

ERIC SANBRANO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [20-10550](#)-B-13 **IN RE: RICARDO GONZALEZ AND VERONICA JUAREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
6-9-2020 [\[43\]](#)

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #50.

13. [20-10556](#)-B-13 **IN RE: DEBRA DURAN**
[MHM-1](#)

MOTION TO DISMISS CASE
6-8-2020 [\[46\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made

applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to make all payments due under the plan (11 U.S.C. § 1307(c)(1) and (c)(4)). Accordingly, the case will be dismissed.

14. [20-11656](#)-B-13 **IN RE: ANTONIO VENEGAS AND CLAUDIA NUNO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-16-2020 [\[15\]](#)

MARK HANNON/ATTY. FOR DBT.
\$69.00 FINAL INSTALLMENT PAYMENT PAID ON 6/26/20

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. The debtors made a payment of \$241.00 on June 25, 2020 and a final payment of \$69.00 on June 26, 2020. Accordingly, the Order to Show Cause will be vacated.

15. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[NDK-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF TIMOTHY C. SPRINGER
FOR NANCY D. KLEPAC, DEBTORS ATTORNEY(S)
6-15-2020 [\[182\]](#)

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

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

This motion is GRANTED. The court has reviewed the fee application and will approve \$4,455.00 in fees to movant and costs of \$10.90 are approved. But applicant has agreed only \$2,000.00 will be paid through the Plan.

16. [20-11157](#)-B-13 **IN RE: JUAN ARECHIGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-29-2020 [\[24\]](#)

MARK HANNON/ATTY. FOR DBT.
\$154.00 FINAL INSTALLMENT PAYMENT 6/29/20

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. The debtor made a payment of \$154.00 on June 29, 2020. Accordingly, the Order to Show Cause will be vacated.

17. [19-15396](#)-B-13 **IN RE: JUAN/MARYLOU BARRAGAN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
6-2-2020 [\[30\]](#)

MICHAEL MEYER/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. court will issue the
order.

This motion was continued to allow debtor time to submit an order
for the court's signature on debtor's motion to value collateral,
SL-1. As of July 13, 2020, no order has been entered on that matter.
This matter will be called to verify the status of the order.

18. [20-10152](#)-B-13 **IN RE: RANDY/EUFEMIA BROWN**
[MHM-3](#)

FORBEARANCE STATUS CONFERENCE RE: NOTICE OF MORTGAGE PAYMENT
CHANGE
7-8-2020 [\[73\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

19. [20-10547](#)-B-13 **IN RE: CLAYTON/KIMBERLY WHITE**
[MHM-3](#)

FORBEARANCE STATUS CONFERENCE RE: NOTICE OF MORTGAGE PAYMENT
CHANGE
7-8-2020 [\[51\]](#)

MICHAEL MEYER/MV
PETER BUNTING/ATTY. FOR DBT.
JACKY WANG/ATTY. FOR MV.

NO RULING.

11:00 AM

1. [20-10501](#)-B-7 **IN RE: ANDRES BRAMBILA**
[20-1031](#)

STATUS CONFERENCE RE: COMPLAINT
5-14-2020 [\[1\]](#)

DANIEL V. BRAMBILA
CHRISTOPHER SEYMOUR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [19-15302](#)-B-7 **IN RE: LONELL GOODMAN**
[20-1005](#) [TCS-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
6-15-2020 [\[23\]](#)

GOODMAN, JR. V. BEST SERVICE COMPANY, INC.
TIMOTHY SPRINGER/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 is GRANTED. In accordance with Federal Rule of Civil Procedure 55 (made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055), default judgment is entered against Defendant. Defendant's default was entered on June 8, 2020. Doc. #16. Defendant is ordered to return \$698.89 to Plaintiff.

3. [11-63503](#)-B-7 **IN RE: FRANK/ALICIA ITALIANE**
[12-1053](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
10-18-2012 [\[21\]](#)

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE
HAMID RAFATJOO/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [11-63503](#)-B-7 **IN RE: FRANK/ALICIA ITALIANE**
[12-1053](#) [CHC-1](#)

MOTION FOR SUMMARY JUDGMENT
6-1-2020 [\[115\]](#)

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE
HAMID RAFATJOO/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

5. [11-63503](#)-B-7 **IN RE: FRANK/ALICIA ITALIANE**
[12-1053](#) [HRR-5](#)

MOTION TO STRIKE
5-26-2020 [\[110\]](#)

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE
HAMID RAFATJOO/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part. Defendant
shall file an amended answer within 14 days of
entry of the order on this motion.

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

This motion is GRANTED IN PART and DENIED IN PART.

Plaintiffs ask the court to strike the answer in its entirety as
untimely filed, or in the alternative, to strike each of the
affirmative defenses as insufficient pursuant to Federal Rule of

Civil Procedure 8(c)(1), as made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7008.¹

Defendant opposed, albeit untimely. The opposition was to be filed on or before July 1, 2020. Doc. #161. The opposition was filed on July 2, 2020. Plaintiff did not reply.

"Motions to strike are disfavored, and the remedy of striking a pleading should generally be granted only to avoid prejudice to the moving party or when it is clear that the matter sought to be stricken could have no possible bearing on the subject matter of the litigation." Wolk v. Green, 516 F.Supp.2d. 1121, 1134 (N.D. Cal. 2007). "Cases should be decided upon their merit whenever reasonably possible." Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986).

The court is not persuaded that the answer should be entirely stricken. Though the answer was filed almost eight years after the first amended complaint ("FAC") was filed, plaintiffs never made a request for entry of default. The FAC was filed on October 18, 2012. Doc. #21. Defendant filed their answer on May 5, 2020. Doc. #108. Plaintiff argues that the time to file an answer ended on September 11, 2019. Doc. #112. Regardless of when the time expired, it is obvious the answer is late - defendant admits as much. Doc. #178.

Between the time the FAC was filed, numerous opportunities arose for Plaintiffs to make a default request. Plaintiffs cannot request this kind of relief without clean hands. To ask the court to strike the answer in its entirety now is not persuasive. As stated in the opposition, it appears that the late-filed answer was an honest mistake. Defendant's counsel joined late in the proceedings, was not apprised of the failure to answer the FAC by prior counsel, and "in an abundance of caution," filed the answer to the FAC. Doc. #178. Also, litigation of this matter has been effectively stayed for years so the plaintiffs and defendant could wind their way through state courts.

Plaintiffs have not shown what prejudice, if any, would occur if the case were to proceed. Indeed, Plaintiffs have filed a motion for summary judgment which may be some indication that the case may be decided on its merits. See CHC-1.

The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Civil Rule 12(f) (made applicable by Rule 7012(b)). "Rather, a defense is an affirmative defense if it will defeat the plaintiff's claim even where the plaintiff has stated a prima facie case for recovery under the applicable law." Quintana v. Baca, 233 F.R.D. 562, 564 (C.D. Cal. 2005). A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense. Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1088 (9th Cir. 2002) (citing Flav-O-Rich v. Rawson Food Service, Inc. (In re Rawson Food Service, Inc.), 846 F.2d 1343, 1349 (11th Cir. 1988)).

¹ Future references to the Federal Rules of Civil Procedure will be noted by "Civil Rule." Future references to the Federal Rules of Bankruptcy Procedure will be noted by "Rule."

The Ninth Circuit has determined that affirmative defenses must meet the "fair notice" standard when evaluating motions to strike affirmative defenses. See Kohler v. Flava Enters., 779 F.3d 1016, 1019 (9th Cir. 2015) ("the 'fair notice' required by the pleading standards only requires describing the defense in "general terms"). "Although fair notice is a low bar that does not require great detail, it does require a defendant to provide some factual basis for its affirmative defenses." Bird v. Zuniga, 2016 WL 7912005, *2 (E.D. Cal. Nov. 30, 2016) (citation omitted). The third, fourth, fifth, sixth and eighth affirmative defenses will be stricken with leave to amend.

The first affirmative defense is an allegation that that the FAC fails to state a claim upon which relief can be granted. Civil Rule 12 (b) provides this defense may be raised in a responsive pleading or by motion. That is grounds for dismissal under Civil Rule 12(b)(6). It is not stricken.

The second affirmative defense is sufficiently pled and gives fair notice to Plaintiffs. It is not stricken.

The third affirmative defense is blanket statement about defendant's knowledge. This does not give fair notice to Plaintiffs that will defeat Plaintiffs' prima facie case. It is stricken.

The fourth affirmative defense does not give fair notice to Plaintiffs. It merely states that Plaintiffs' FAC is barred by the doctrine of unclean hands. More specific facts are needed to at least inform Plaintiffs about what actions make their "hands unclean." It is stricken.

The fifth affirmative defense, which states Defendant exercised good faith and good care in its actions or interactions with respect to the matters alleged in the FAC, is not a defense. It is merely a general statement that essentially Defendant did no wrong. It is stricken. Those does not give fair notice that will defeat the plaintiff's claim even where the plaintiff has stated a prima facie case for recovery under the applicable law.

The sixth affirmative defense is stricken because it does not give fair notice to Plaintiffs. More specific facts need to be pled to show what steps could have been taken to mitigate damages. It is stricken.

The seventh affirmative defense is sufficiently pled and gives fair notice to Plaintiffs. It is not stricken.

The eighth affirmative defense is not an affirmative defense, but a reservation of rights to amend affirmative defenses that may be later discovered. This is not an affirmative defense, and the court may allow the amendment of the answer in the future if needed.

The motion to strike the answer in its entirety is DENIED and the motion to strike the affirmative defenses is GRANTED IN PART and DENIED IN PART. Defendant shall file and serve an amended answer

within 14 days of entry of the order on this motion. Failure to do so will result in an order to show cause why judgment should not be entered in Plaintiffs' favor.

6. [18-14323](#)-B-7 **IN RE: SYLVIA SPEAKMAN**
[19-1028](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-19-2019 [\[1\]](#)

YOUNG V. SPEAKMAN ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

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

7. [19-15246](#)-B-7 **IN RE: ANDREA CASTILLO**
[20-1016](#)

STATUS CONFERENCE RE: COMPLAINT
3-12-2020 [\[1\]](#)

SEMPER V. CASTILLO
BRIAN WHELAN/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

A new summons was issued on July 14, 2020. Doc. #12. The re-issued summons sets a status conference hearing set for September 23, 2020 at 11:00 a.m. Therefore this status conference is dropped from calendar.

8. [19-13048](#)-B-7 **IN RE: CRAIG BREWER**
[19-1103](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-2-2019 [\[1\]](#)

MACLOVIO V. BREWER
DENIS DELJA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 29, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Defendant has filed and set for hearing a motion to quash on July 29, 2020 at 11:00 a.m. Therefore, the status conference is continued to that date and time.

9. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[19-1116](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING
6-16-2020 [\[20\]](#)

MARTINES ET AL V. VIVINT SOLAR

NO RULING.

10. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[19-1128](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-26-2019 [\[1\]](#)

BROWN V. HUDSON
GLEN GATES/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

11. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
[20-1030](#)

STATUS CONFERENCE RE: COMPLAINT
5-12-2020 [\[1\]](#)

SVENHARD'S SWEDISH BAKERY V. BANK OF AMERICA, N.A.
DERRICK TALERICO/ATTY. FOR PL.
CASE TRANSFERRED TO SACRAMENTO PER ECF ORDER #10

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order transferring the case has already
been entered. Doc. #10.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1115](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-14-2019 [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. SMITH, MD
MICHAEL WILHELM/ATTY. FOR PL.
DISMISSED 3/5/20. RESPONSIVE PLEADING.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #20.