UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 16, 2020
Place: Department A – Courtroom #11
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.

9:00 AM

1. 20-10100-A-12 **IN RE: TRANQUILITY PISTACHIO, LLC**
MHM-1

MOTION TO DISMISS CASE
6-22-2020 [231]

MICHAEL MEYER/MV
DISMISSED 6/29/20

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on June 29, 2020. Doc. #240.

2. 20-10206-A-13 **IN RE: DIEGO/RAQUELA ROMO**
MHM-3

CONTINUED MOTION TO DISMISS CASE
5-18-2020 [35]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The Chapter 13 trustee moved to dismiss this case under 11 U.S.C. § 1307(c)(1) based on the debtors' unreasonable delay and § 1307(c) for failure to confirm a plan. Doc. #35. The debtors filed a response on June 8, 2020, opposing dismissal because the debtors had filed a motion to confirm a Chapter 13 plan set for hearing on July 16, 2020. Doc. #49, see also Doc. #44. This matter came for hearing on June 25, 2020, which the court continued to track with the debtors' motion to confirm plan. Doc. ##52, 55. The Chapter 13 trustee's motion will be denied as moot on the grounds that the debtors' motion to confirm plan is granted.

3. 20-10206-A-13 **IN RE: DIEGO/RAQUELA ROMO**
TAM-1

MOTION TO CONFIRM PLAN
6-2-2020 [44]

DIEGO ROMO/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 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.

4. 20-10608-A-13 **IN RE: TRISHALL WASHINGTON**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [33]

MICHAEL MEYER/MV

NO RULING

5. 20-11408-A-13 **IN RE: DOMINGO/TAMARA GARZA**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [21]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

The trustee withdrew the motion on July 10, 2020. Doc. #29.

6. 20-10509-A-13 **IN RE: EDDIE CALDWELL**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [26]

MICHAEL MEYER/MV

NO RULING

7. 14-13417-A-12 **IN RE: DIMAS/ROSA COELHO**
TCS-13

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
5-4-2020 [174]

DIMAS COELHO/MV
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

In reviewing this motion, the court has deemed this to be substantively the same motion as matter #8 below. Therefore, the court is dropping this matter from calendar.

8. 14-13417-A-12 **IN RE: DIMAS/ROSA COELHO**
TCS-13

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
6-10-2020 [184]

DIMAS COELHO/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an 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.

Dimas and Rosa Coelho (collectively, the "Debtors") filed a Chapter 12 bankruptcy case on July 6, 2014. Doc. #1. The Debtors received their discharge on March 6, 2018, and their Chapter 12 case closed on March 20, 2018. Doc. ##151, 153.

On June 19, 2019, the Debtors filed an *ex parte* motion to reopen their case to pursue enforcement of the discharge injunction pursuant to 11 U.S.C. § 524 against one of the Debtors' creditors, Seterus, Inc., which the court granted. Doc. ##157, 158; see also Doc. #159. In or about August 2019, Nationstar Mortgage LLC, successor by merger to Seterus, Inc. and doing business as Mr. Cooper ("Nationstar"), and Federal National Mortgage Association (collectively, "Creditors") and the Debtors reached a settlement agreement regarding Creditors' alleged efforts to collect discharged debt. See Doc. #169; see also Doc. #192, Ex. D. The Debtors' Chapter 12 case was closed again on October 2, 2019. See Doc. #171.

The court notes that Dimas Coelho filed a separate, individual Chapter 13 case on August 31, 2018, currently pending before Judge René Lastreto II as Case No. 18-13595.

On May 4, 2020, the Debtors' Chapter 12 case was reopened again on the Debtors' *ex parte* motion. Doc. ##172, 173. On June 10, 2020, the Debtors filed the *Motion Seeking Contempt with Monetary Sanctions for Violation of Discharge Injunction Through Breach of the Settlement Contract* (the "Motion"), supported by the declaration of Dimas Coelho, and served on Creditors. Doc. ##184, 186, 188. The Motion alleges that the Debtors continued to receive home loan statements from Nationstar showing a pre-petition arrearage despite the settlement agreement, and therefore seek an award of actual and punitive damages, sanctions in the amount of $86,000.00 plus attorney's fees and costs, and any other relief the court deems proper. Doc. ##184, 186. Creditors filed a timely opposition to the Motion. Doc. #189. The Debtors timely replied. Doc. #191.

The Debtors seek relief from Creditors' alleged violations of 11 U.S.C. § 524(a), but the Motion provides no citation to the legal grounds pursuant to which the Debtors ask the court to sanction Creditors for contempt. See Doc. #184. LBR 9014-1(d)(3)(A) requires a motion to "set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." In reply to Creditors' opposition, the Debtors state that "[t]here are numerous cases stating that a creditor is responsible for its computer problems when dealing with violations of the automatic stay and the discharge injunction," but do not provide citations to any such decisions. See Doc. #194.

The bankruptcy court has civil contempt powers pursuant to 11 U.S.C. § 105(a). Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1196 (9th Cir. 2003)("Civil contempt authority allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction)."). Under Section 105(a) of the Bankruptcy Code, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. A bankruptcy discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor[.]" 11 U.S.C. § 524(a)(2). Together, Sections 524(a)(2) and 105(a) authorize the court to impose civil contempt sanctions for violation of the discharge order. When a party acts in violation of a debtor's discharge, the court may award the debtor "compensatory damages, attorneys fees, and [coerce] the offending creditor's compliance with the discharge injunction." See Walls v. Wells Fargo Bank, 276 F.3d 502, 507 (9th Cir. 2002). Relatively mild, non-compensatory fines against the offending creditor may also be necessary in some circumstances. Dyer, 322 F.3d at 1193-94.

The Debtors seek an award of actual and punitive damages, sanctions in the amount of $86,000.00 plus attorney's fees and costs, and any other relief the court deems proper, but do not explain how they arrived at their demand of $86,000.00. The declaration of Dimas Coelho states that their out of pocket costs are "minimal around $40.00 for gas and $5,000.00 to [their] attorney," but do not include any receipts, invoices or timeslips. See Doc. #186, Decl. of Dimas Coelho ¶ 40.

To establish a violation of 11 U.S.C. § 524, the debtor must prove that the creditor willfully violated the discharge injunction. In the Ninth Circuit, courts have applied a two-part test to determine whether a party's violation was willful: (1) did the alleged offending party know that the discharge injunction applied; and (2) did such party intend the actions that violated the discharge injunction? See, e.g., Nash v. Clark Cnty. Dist. Attorney's Office (In re Nash), 464 B.R. 874, 880 (B.A.P. 9th Cir. 2012)(citing Espinosa v. United Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008), aff'd, 559 U.S. 260 (2010)); Zilog, Inc. v. Corning

(In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006). The party seeking sanctions for contempt has the burden of proving, by clear and convincing evidence, that the offending party violated the order and sanctions are justified. Zilog, 450 F.3d at 1007.

In considering the first prong of test, the Supreme Court recently held that a bankruptcy court may hold a creditor in civil contempt for violating a discharge order "if there is no fair ground of doubt as to whether the order barred the creditor's conduct." In other words, the Supreme Court held that "civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." Taggart v. Lorenzen, 139 S. Ct. 1795, 1800 (2019).

There is no dispute that the Debtors received a discharge, and Creditors knew of it. However, the Supreme Court explicitly refused to adopt a strict-liability standard that would permit a finding of civil contempt if the creditor was aware of the discharge order and intended the actions that violated the order, regardless of whether there was a reasonable basis for concluding that the creditor's conduct did not violate the order. Taggart, 139 S. Ct. at 1803-04.

Turning to the second prong, "the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact complied with the order at issue." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 (B.A.P. 9th Cir. 2016)(quoting Rosales v. Wallace (In re Wallace), 2012 Bankr. LEXIS 2934 (B.A.P. 9th Cir. 2012)); see also Bassett v. Am. Gen. Fin. (In re Bassett), 255 B.R. 747, 758 (B.A.P. 9th Cir. 2000), rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002) (stating that courts have applied an objective test in determining whether an injunction should be enforced via contempt power); Dyer, 322 F.3d at 1191 (noting that a "willful violation" does not require a specific intent to violate the automatic stay).

Before the court considers whether Creditors should be sanctioned for violating the Debtors' discharge order, the court will first determine whether Creditors' communications to the Debtors are prohibited debt collection under 11 U.S.C. § 524.

The settlement agreement, attested to by Jill Cruz, assistant secretary at Nationstar, provides in relevant part that effective August 1, 2019, the Debtors would make monthly principal payments and escrow payments in the amount of $1,472.52; Nationstar would forgive all outstanding escrow shortage as of July 16, 2019, Nationstar would deem the Debtors current and due for August 1, 2019, and the unpaid principal balance on the Debtor's loan would be $188,377.34. Doc. ##191; 192, Ex. D. In exchange, the Debtors agreed to withdraw their motion for contempt with prejudice; released Creditors from all claims, known and unknown, relating to Creditors' alleged efforts to collect discharged debt that were the subject of that earlier motion for contempt; and covenanted not to sue Creditors based on these alleged violations of the discharge injunction. Id. Pursuant to this settlement agreement, the Debtors withdrew their earlier motion for contempt with prejudice and waived

all claims against Creditors for alleged violations of the discharge injunction prior to August 15, 2019.

The Debtors allege that following the settlement agreement, the Debtors continued to receive statements about their home loan that showed a pre-petition arrearage. Doc. #184. In the Debtors' reply to Creditors' opposition, the Debtors suggest that they received nine monthly statements displaying a pre-petition arrearage, but the Debtors submitted copies of only three monthly statements dated January 8, 2020, February 6, 2020, and March 3, 2020. Doc. #187, Ex. B. The court notes that while the Debtors filed exhibits in support of the Motion, including (1) the settlement agreement between the Debtors and Creditors, and (2) three monthly statements dated January 8, 2020, February 6, 2020, and March 3, 2020 (Doc. #187), as a threshold matter, there is no attestation as to the accuracy of these documents in Dimas Coelho's (or any other) declaration. See Doc. #186.

Assuming the copies of the three monthly statements are true and correct, and after reviewing these documents, the court does not find the monthly "Informational Statements" from Nationstar to be an attempt to collect discharged debt. By its terms, 11 U.S.C. § 524(a) expressly prohibits affirmative acts by a creditor to *collect* a discharged debt from a debtor. Each monthly statement includes a prominent disclaimer at the top of the page: "Our records show that you are a debtor in bankruptcy. *We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.* If you want to stop receiving these statements, please contact us in writing at the address on the following page." See Doc. #187, Ex. B (emphasis added). And where the pre-petition arrearage appears, in the box entitled "Summary of Amounts Past Due Before Bankruptcy Filing (Pre-Petition Arrearage)," a notice states: "This box shows amounts that were past due when you filed for bankruptcy. It may also include other allowed amounts on your mortgage loan. The Trustee is sending us the payments shown here. *These are separate from your regular monthly mortgage payments.*" See id. (emphasis added). On each of the statements presented, the summary of pre-petition arrearage states that the total due at the time of the Debtors' bankruptcy filing was $5,332.39. See id. The court recognizes how the Debtors might be confused when the summary also states that the "current balance" of the pre-petition arrearage is $5,332.39 and lists no amount applied to claim arrears in the last month or in total. See id. However, the court does not find these statements to be an attempt by Creditors to collect on any pre-petition arrearage from the Debtors personally. The box at the very top of each statement lists the "total payment amount" as only $1,472.52, which is precisely the monthly principal payments and escrow payments the Debtors agreed to in the settlement agreement with Creditors. See id.

Nationstar contends in its opposition that it has not made any attempts to collect the pre-petition arrearage or instituted foreclosure proceedings against the Debtors' residence that is the subject of the home loan. Doc. #191, Decl. of Jill Cruz ¶ 10. Except for characterizing the monthly statements as attempts by Creditors to collect discharged debt – which the court finds it was not, the

Debtors do not testify to any other actions by Creditors after entering into the settlement agreement to collect on the pre-petition arrearage displayed on the statements. See Doc. #186, Coelho Decl. Nationstar states that it adjusted its servicing system in accordance with the terms of the settlement agreement, but the system continued to inadvertently populate the "Summary of Amounts Past Due Before Bankruptcy Filing (Pre-Petition Arrearage)" box with dated information that reflected the amount of $5,332.39. Doc. #191, Cruz Decl. ¶ 10. Nationstar states further that upon learning of this error by way of the Debtors filing this Motion, Nationstar immediately corrected its system so that forthcoming statements will not show a pre-petition arrearage balance. Id. at ¶ 11.

In the Debtors' reply to Nationstar's opposition, the Debtors acknowledge the May 2020 statement was "correct." Doc. #194. However, the Debtors state that the June 2020 statement showed the Debtors were "delinquent" by $11,780.16. Id. The Debtors have not submitted the May and June 2020 statements as evidence, or filed any declaration attesting to these facts or any copies of documents as true and correct. Nationstar explains that the June 2020 statement was the result of another system error that retrieved information from Dimas Coelho's pending Chapter 13 case, which has been corrected. Doc. #191, Cruz Decl. ¶ 12. Further, Nationstar states that its counsel promptly advised the Debtors' counsel that the payment amount showing on the June 2020 was in error and should not happen again. Id. Taken in context, the court finds that Nationstar has taken reasonable steps to effectuate the terms of the settlement agreement once it received notice of the issues on the Debtors' monthly statements.

In order to find that sanctions are appropriate in this case, the court would have to hold that "there is no objectively reasonable basis for concluding that [Nationstar's] conduct might be lawful." Taggart, 139 S. Ct. at 1800. With more than a "fair ground of doubt," as to whether Nationstar's sending of monthly informational statements that inadvertently displayed a pre-petition arrearage or an incorrect payment amount, which Nationstar says it never made any attempts to collect, the court holds that sanctions would be inappropriate.

Accordingly, this Motion is DENIED.

9. 20-10739-A-13 **IN RE: DONNA REYNA**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [41]

MICHAEL MEYER/MV
DISMISSED 6/29/20

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on June 29, 2020. Doc. #49.

10. 19-13341-A-13 **IN RE: GARY/JENNIFER FOX**
FW-1

MOTION TO AVOID LIEN OF ATLANTIC CASUALTY INSURANCE COMPANY
6-10-2020 [32]

GARY FOX/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied Without Prejudice.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). No opposition has been filed. However, constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Debtors Gary Allen Fox and Jennifer Anne Fox (collectively, the "Debtors") move to avoid the judicial lien of Atlantic Casualty Insurance Company ("Atlantic Casualty").

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003)(quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994)).

A judgment was entered against Jennifer Anne Fox in favor of Humphrey Station Restaurant and Bar ("Humphrey Station") in the sum of $37,197.07 on April 12, 2019. Doc. #35, Ex. A. An abstract of judgment was recorded with Fresno County on May 31, 2019. Id. The judicial lien attached to the Debtors' residential real property commonly known as 5774 North Orchard Street, Fresno, California 93710 (the "Property"). The Debtors allege that Atlantic Casualty is the holder of the judgment obtained by Humphrey Station and the amount owing was $38,399.61 as of the petition date of August 5, 2019, Doc. #34. However, the abstract of judgment lists only Humphrey Station as the judgment creditor, and the Debtors did not include any evidence that demonstrates an assignment of the judgment to Atlantic Casualty or any other party. See Doc. #35, Ex. A.

Because there is no evidence demonstrating that Atlantic Casualty holds the judgment lien to be avoided, the motion will be denied without prejudice.

The court also notes that, like other 11 U.S.C. § 522(f)(1) lien avoidance matters that have come before the court, the Debtors include the cost of a hypothetical sale to reduce the apparent value of their interest in the Property. The Debtors believe the market value of the Property is $180,000.00, but deduct an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at $165,600.00 on their Schedules and for this motion.

However, this approach is contrary to In re Aslanyan, in which Judge McManus held, "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." 2017 Bankr. LEXIS 4363, at *4 (Bankr. E.D. Cal 2017)(citing In re Wolmer, 494 B.R. 783, 784 (Bankr. D. Conn. 2013); In re Barrett, 370 B.R. 1, 3 (Bankr. D. Me. 2007)("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien."); In re Sheth, 225 B.R. 913 918-19 (Bankr. N.D. Ill. 1998); In re Sumerell, 194 B.R. 818, 827 (Bankr. E.D. Tenn 1996); In re Abrahimzadeh, 162 B.R. 676, 678 (Bankr. N.J. 1994), In re Yackel, 114 B.R. 349, 351 (Bankr. N.D.N.Y 1990)).

Eliminating the Debtors' deduction of 8% estimated cost of sale could leave some equity to support the judicial lien:

Amount of Judicial Lien		$38,399.61
Total amount of all other liens on the Property	+	$168,707.17
Scheduled amount of the Debtors' exemption	+	$100.00
Value of the Debtors' interest in the Property in the absence of liens	-	$180,000.00
Extent of impairment of the Debtors' exemption in the Property	=	($27,206.78)
Amount of Judicial Lien remaining on the Property		$11,192.83

As a practical matter, however, the Debtors would be able to avoid the judicial lien entirely even if the court rejected the Debtors attempt to deduct the estimated cost of sale when determining lien avoidability under 11 U.S.C. § 522(f)(1). The Debtors are entitled to exempt up to $29,275.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). The Debtors made a claim of exemption of only $100.00.

Assuming the full claim of exemption and no deduction for cost of sale, the extent of the impairment is greater than the amount of the judicial lien:

Amount of Judicial Lien		$38,399.61
Total amount of all other liens on the Property	+	$168,707.17

Full amount of the Debtors' exemption	+	$29,275.00
Value of the Debtors' interest in the Property in the absence of liens	-	$180,000.00
Extent of impairment of the Debtors' exemption in the Property	=	($56,381.78)

This motion is DENIED WITHOUT PREJUDICE.

11. 19-13341-A-13 **IN RE: GARY/JENNIFER FOX**
FW-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
6-5-2020 [27]

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.

In this Chapter 13 case, Fear Waddell, P.C., attorneys for debtors Gary Allen Fox and Jennifer Anne Fox, has applied for an allowance of interim compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of $4,534.00 and reimbursement of expenses in the amount of $334.15, totaling $4,868.15, for services rendered from May 14, 2019 through May 20, 2020. Doc. #27.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See

id. § 330(a)(3). The services rendered for the relevant time period of this application include, without limitation, pre-petition counseling and fact gathering; preparing and filing of the voluntary petition, schedules, and amendments thereto; and preparing, filing, and getting the Chapter 13 plan confirmed. Doc. #29. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

This motion is GRANTED. The applicant is awarded $4,534.00 in fees and $334.15 in costs to be paid in a manner consistent with the terms of the confirmed plan.

12. 20-11243-A-13 **IN RE: ARTHUR/SONIA PINA**
MHM-2

MOTION TO DISGORGE FEES
6-15-2020 [23]

MICHAEL MEYER/MV
DISMISSED 6/15/20

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Require disgorgement of $2,000.00 from debtors' counsel.

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 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). 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.

The motion will be GRANTED to the extent of requiring disgorgement of $2,000.00 in attorneys' fees received pre-petition.

The Chapter 13 trustee moved to disgorge fees paid to counsel for Arthur Luis Pina and Sonia Pina (collectively, the "Debtors") on the grounds that Debtors' counsel, Thomas A. Moore ("Mr. Moore"), was paid $4,000.00 for the entire chapter 13 case prior to the filing of the Debtors' Chapter 13 bankruptcy case; however, the Debtors' bankruptcy case was dismissed prior to confirmation of a Chapter 13 plan. Doc.#23. Mr. Moore elected to be paid pursuant to LBR 2016-1(c). Doc. #2. LBR 2016-1(c)(4) permits an attorney to receive fifty percent (50%) of the total fee the debtor agreed to pay if an

attorney elects to be compensated pursuant to LBR 2016-1(c) and the bankruptcy case is dismissed prior to confirmation of a plan.

Here, the Debtors' Chapter 13 case was filed with complete schedules and other necessary documents, including a Chapter 13 plan. However, the Debtors' bankruptcy case was dismissed prior to confirmation of the plan for the failure of the Debtors to appear at the scheduled 341 meeting of creditors. Doc. ##17, 27.

The court finds that 50% of the total fees paid by the Debtors for the filing of their Chapter 13 bankruptcy case to be reasonable compensation pursuant to LBR 2016-1(c)(4) because the petition was filed with full schedules and other necessary documents, including a Chapter 13 plan. Mr. Moore is ordered to refund $2,000.00 to the Debtor within 30 days of the entry of an order granting the motion.

13. 15-10847-A-13 **IN RE: RONALD/DOLORES SANDERS**
MHM-1

CONTINUED MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
5-13-2020 [57]

MICHAEL MEYER/MV

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

DISPOSITION: Continued to September 3, 2020 at 9:30 a.m.

NO ORDER REQUIRED

A stipulation to continue the motion for determination of final cure payment to September 3, 2020 at 9:30 a.m. was submitted to the court, and an order approving that stipulation was entered on July 8, 2020. Doc. #70.

14. 20-11453-A-13 **IN RE: GLORIA ROBLES**
EMM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
6-9-2020 [25]

LAKEVIEW LOAN SERVICING, LLC/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Lakeview Loan Servicing, LLC ("Secured Creditor") objected to confirmation of the debtor's Chapter 13 plan pursuant to 11 U.S.C. §§ 1322(b)(5) and 1325(a)(5)(B)(ii) on the grounds that the plan fails to state the pre-petition arrears of approximately $3,591.29 owed to Secured Creditor, provide for the cure of pre-petition arrears, and provide for any ongoing monthly payment amount to go towards the pre-petition arrears. Doc. #25. The debtor's plan listed Secured Creditor's subservicer Loancare LLC with only a Class 4 secured claim that the debtor would pay directly, without providing for Secured Creditor's arrears in Class 1. See Doc. #14. At the time this matter came for hearing on June 25, 2020, Secured Creditor had not filed a proof of claim in this case so this matter was continued. See Doc. ##30, 31, 32. The claims bar date was June 29, 2020. See Doc. #18.

On June 29, 2020, Secured Creditor filed a proof of claim secured by the debtor's residence in the total amount of $193,094.88, including arrears of $3,591.29. See Claim #9. Federal Rule of Bankruptcy Procedure 3001(f) provides that the execution and filing of a proof of claim is *prima facie* evidence of the validity and amount of the claim. The debtor has not filed an objection, if any, to Secured Creditor's proof of claim. Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. See Doc. #14. Further, section 3.07(b)(2) of the plan requires that the payment be adjusted accordingly for a Class 1 claim. The debtor's plan cannot be confirmed because it fails to provide for any arrears owed to Secured Creditor. See id.

15. 20-10555-A-13 **IN RE: NANCY JERKOVICH**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [35]

MICHAEL MEYER/MV
DISMISSED 7/2/20

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on July 2, 2020. Doc. #43.

16. 20-10865-A-13 **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA SEVILLA DE MONTEJANO**
JWC-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2020 [66]

BMO HARRIS BANK N.A./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.

BMO Harris Bank N.A. ("Creditor") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Utility Dry Vans Trailer (the "Property"). Doc. #66.

Section 362(d)(1) of the Bankruptcy Code allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

There has been no opposition to this motion. After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors defaulted on their monthly installment payments on or about October 1, 2019, were in arrears of $21,930.46 on the petition date of March 6, 2020, and have failed to make any post-petition payments to Creditor. Doc. #68. The court notes that section 3.09 of the debtors' modified Chapter 13 plan provides for the surrender of the Property. See Doc. #50.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §362(d)(1) to permit Creditor to enforce its remedies against the Property pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be ordered waived because the debtors have failed to make pre-petition and any post-petition payments to Creditor, and the Property continues to depreciate. No other relief is awarded.

17. 20-10575-A-13 **IN RE: JUDY BURDEN**
BDB-2

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA INC.
6-10-2020 [48]

JUDY BURDEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the debtor can satisfactorily explain the discrepancy in the replacement value of the vehicle.

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 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). However, constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

Judy Burden (the "Debtor"), the debtor in this Chapter 13 case, moves the court for an order valuing the Debtor's vehicle, a 2016 Hyundai Elantra (the "Vehicle"), which is the collateral of Santander Consumer, USA, Inc. ("Creditor"). Doc. #48. Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or

household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. §506(a)(2).

The Debtor seeks an order valuing the Vehicle at $7,750.00. Doc. #48. The Debtor purchased the Vehicle on or about October 15, 2015, which is more than 910 days preceding the petition date. Doc. #51. 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).

The motion states that the "Debtor's opinion of the collateral's 'replacement value's [as defined and limited by section 506(a)(2)] is $13,025.00." Doc. #48, ¶ 4. However, the motion goes on to state that the "Debtor's opinion is based on the age and condition of the vehicle, as well as a valuation from NADA GUIDE VALUE, which places a retail value of $7,750.00." Id. The Debtor's declaration and exhibit in support of the motion refer only to the $7,750.00 valuation and makes no reference to the $13,025.00 value referenced in the motion. See Doc. ##50, 51. The Debtor should explain this discrepancy.

If the Debtor can explain the discrepancy in the replacement values satisfactorily, this motion will be granted and Creditor's secured claim will be fixed at the replacement value. A 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.

18. 20-10575-A-13 **IN RE: JUDY BURDEN**
BDB-3

MOTION TO CONFIRM PLAN
6-10-2020 [53]

JUDY BURDEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the debtor's motion to value collateral of Santander Consumer USA Inc. is granted in the amount provided for in the plan.

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. 200s6). 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.

Pursuant to LBR 3015-1(i), "[i]f a proposed plan will reduce or eliminate a secured claim based on the value of its collateral[,]" the hearing on the valuation motion "must be concluded before or in conjunction with the confirmation of the plan." Because the motion to value the collateral of Santander Consumer USA Inc. set for hearing on this calendar, the confirmation hearing also will be heard. If the valuation motion is granted in the value set forth in the debtor's plan, the confirmation will be 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.

19. 20-10575-A-13 **IN RE: JUDY BURDEN**
MHM-1

CONTINUED MOTION TO DISMISS CASE
6-1-2020 [40]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: Movant withdrew the motion.

The trustee withdrew the motion on July 13, 2020. Doc. #61.

20. 19-14177-A-13 **IN RE: RUBEN CHAVEZ**
FEC-1

MOTION TO VACATE DISMISSAL OF CASE
6-11-2020 [25]

RUBEN CHAVEZ/MV
CLOSED 12/10/2019; DEBTOR DISMISSED 10/21/2019

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Constitutional due process requires that the movant make a *prima facie* showing that he is 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 (B.A.P. 9th Cir. 2014) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

This motion is DENIED WITHOUT PREJUDICE.

Rubin Chavez (the "Debtor") filed a voluntary petition for relief in *pro per* on October 2, 2019. See Doc. #1. On October 21, 2019, the court dismissed the Debtor's Chapter 13 case for failure to timely file documents, including but not limited to schedules, statements, and a plan. See Doc. #11. This case was closed on December 10, 2019. See Doc. #22. The Debtor filed a prior motion seeking to vacate the order of dismissal on March 16, 2020. See Doc. #21. The court denied that motion without prejudice and ordered that the Debtor may request a hearing following Local Rule of Practice ("LBR") 9014-1, with notice to all creditors. See Doc. #22.

The Debtor moves again for this court to vacate the order dismissing his Chapter 13 case. Doc. #25. However, the Debtor's second "motion" seeking to vacate the order of dismissal includes several procedural and substantive deficiencies, despite the court's order to follow LBR 9014-1. Therefore, this "motion" will not be granted. It appears the Debtor is not represented by counsel. The Debtor is afforded some leniency because he is in *pro per*, but the Debtor still must comply with procedural requirements. "[W]e have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." McNeil v. U.S., 508 U.S. 106, 113 (1993); see also Rasidescu v. Midland Credit Management, Inc., 435 F. Supp. 2d 1090 (S.D. Cal. 2006)(dismissing a pro se plaintiff's complaint for failing to plead fraud with adequate specificity).

Despite these procedural and substantive errors, the court must treat pro se litigants "with great leniency when evaluating compliance with the technical rules of civil procedure." Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing Draper v. Coombs, 795 F.2d 915, 924 (9th Cir. 1986)). "Thus, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity amend effectively." Ferdik, 963 F.2d at 1261 (citing Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987)).

First, the "motion" filed with the court provides notice only that the "debtor has filed an application to vacate order of dismissal in this bankruptcy case." Doc. #25. There is no separate application filed with the court's electronic case files, as referenced in the Debtor's filing at Docket #25. Instead, the filing is styled as a "notice of motion and opportunity to object" and "certificate of service" combined into one document and not filed separately. LBR 9004-2(c)(1) requires that "[m]otions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings" to be filed as separate documents.

Relatedly, it appears the Debtor had to file an amended "notice of motion and opportunity to object" at Docket #29 because the original filing at Docket #25 was set for the wrong calendar. The original and amended filings are substantially the same except for a correction in the hearing time. The amended filing also combined the "notice of motion and opportunity to object" and "certificate of service."

Second, the Debtor's filing at Docket #25 lacks any citation to the factual and legal grounds that might entitle the Debtor to the relief he seeks, and therefore does not comply with the requirements of LBR 9014-1(d)(3)(A). LBR 9014-1(d)(3)(A) requires a motion to "set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability."

Third, the Debtor's filing at Docket #25 purports to give notice of the "motion" and "opportunity to object" pursuant to "B.L.R. 9014-1(b)(3)." The Local Rules of Practice for the United States Bankruptcy Court for the Eastern District of California do not have a Rule "9014-1(b)(3)." Consequently, the Debtor's purported notice of respondents' opportunity to object incorrectly states that "[a]ny objections to the requested relief, or a request for hearing on the matter, must be filed party [sic] within 21 days of mailing the notice." In the Eastern District, a motion set on 28 days' notice pursuant to LBR 9014-1(f)(1) provides that "[o]pposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding 47 the date or continued date of the hearing." A motion set on at least 14 days' notice pursuant to LBR 9014-1(f)(2) provides that "no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion."

Fourth, the Debtor's "notice of opportunity to object" does not include the requisite language at LBR 9014-1(d)(3)(B)(iii) advising "respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after

4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing."

Fifth, it appears from the Debtor's certificate of service that the Debtor served notice of the "motion" on only Sam Chandra, counsel for Breckenidge Property Fund 2016, LLC. In a motion filed by a debtor to reopen a case, LBR 5010-1 requires that "notice of the motion shall be given to the United States Trustee, former trustee, and, if the debtor is represented in the reopened case by an attorney other than original counsel, to debtor's former counsel, prior to or concurrently with the filing of the motion." The court's order entered at Docket #21 required notice to *all* creditors. The master address list submitted and verified by the Debtor in this case listed several other parties in interest, including Wells Fargo Bank, N.A.; and Barrett, Daffin, Frappier, Treder & Weiss. See Doc. #4. Additionally, Cavalry SPV I, LLC as assignee of Synchrony Bank/Lowe's had filed a proof of claim prior to the close of the Debtor's bankruptcy case. See Claim #1.

Sixth, LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). The DCN "shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case." These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

Accordingly, this motion is DENIED WITHOUT PREJUDICE. The court urges the Debtor to consult the Local Rules of Practice for the United States Bankruptcy Court for the Eastern District of California, available for viewing at http://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRules2018.pdf, and/or retain an attorney to represent him in this case.

21. 20-11190-A-13 **IN RE: SAMUEL/KERI CASTILLO**
SAH-1

CONTINUED STATUS CONFERENCE RE: MOTION TO VALUE COLLATERAL OF US BANK
4-10-2020 [20]

SAMUEL CASTILLO/MV
RESPONSIVE PLEADING

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

DISPOSITION: Granted with a valuation as agreed of $10,000.00.

ORDER: The moving party shall submit a stipulation and order with the terms of the agreement signed off by U.S. Bank National Association.

Based on the representations in the joint status report filed on June 17, 2020, the parties have negotiated an agreed upon value of $10,000.00 for the 2015 Hyundai Sonata. Doc. #52. A stipulation and order memorializing the settlement needs to be submitted to the court to resolve this motion fully.

22. 20-10591-A-13 **IN RE: MARIA LUNA MANZO**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [34]

MICHAEL MEYER/MV

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 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.

23. 20-10591-A-13 **IN RE: MARIA LUNA MANZO**
MHM-2

MOTION TO DISMISS CASE
6-15-2020 [41]

MICHAEL MEYER/MV

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case will be dismissed on the trustee's motion, Docket Control Number MHM-1, #22 above. Therefore, this motion will be denied as moot.

24. 20-10691-A-13 **IN RE: JENNIFER SCHULTZ**
MHM-1

MOTION TO DISMISS CASE
6-4-2020 [21]

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 12, 2020 at 3:00 p.m.

ORDER: The court will issue an order.

The Chapter 13 trustee moves to dismiss this case under 11 U.S.C. § 1307(c)(1) based on the debtor's unreasonable delay and § 1307(c)(1) and (4) for failure to make all plan payments. Doc. #21. The debtor filed a response on July 1, 2020, opposing dismissal. Due to a change of income, the debtor filed a modified plan that is set for hearing on August 12, 2020 at 3:00 p.m. Doc. ##27, 28, 29. Accordingly, the trustee's motion will be continued to track with the debtor's motion to confirm the modified plan.

9:15 AM

1. 19-13831-A-13 **IN RE: JESUS/NEREYDA PEREZ**
19-1125

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-16-2019 [1]

PEREZ ET AL V. MEDI-CAL ACCESS
PROGRAM ET AL

NO RULING

2. 19-13831-A-13 **IN RE: JESUS/NEREYDA PEREZ**
19-1125

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
6-5-2020 [30]

PEREZ ET AL V. MEDI-CAL ACCESS
PROGRAM ET AL

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 matter was fully noticed in compliance with Local Rule of Practice ("LBR") 9014-1(f)(1), and Plaintiffs have filed a statement of no opposition to the dismissal of their claim for punitive damages. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure ("FRCP") 55, made applicable by Federal Rule of Bankruptcy Procedure ("FRBP") 7055, governs default matters. 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.

Defendant Medi-Cal Access Program ("Defendant") timely filed a motion to dismiss Plaintiffs' claim for punitive damages with prejudice, within 30 days of the re-issuance of the summons, pursuant to FRCP 12(b)(6), made applicable to this adversary proceeding by FRBP 7012(b). Doc. #31. Defendant is a part of a California state department or agency, is an instrumentality of the State of California, and is therefore a "governmental unit" within the meaning of 11 U.S.C. § 101(27). Section 106(a)(3) of the Bankruptcy Code bars the bankruptcy court from awarding punitive damages against a governmental unit in actions for violation of the automatic stay. See Hunsaker v. United States, 902 F.3d 963, 968

(9th Cir. 2018). Therefore, Plaintiffs fail to state a claim for punitive damages. Plaintiffs have filed a statement of no opposition to the dismissal of their claim for punitive damages. Doc. #32.

FRCP 12(a)(4), made applicable by FRBP 7012(b), provides that a motion under FRCP 12 alters the time period within which a defendant must file a responsive pleading. Fed. R. Civ. P. 12(a)(4). If the court denies (or partially denies) a motion to dismiss, the moving party must file a responsive pleading within 14 days after receiving notice of the court's action. Id. The majority of courts have held that FRCP 12(a)(4) also applies to a partial motion under FRCP 12(b) and tolls the time period for filing an answer to all claims in the complaint, not just the claims for which the motion seeks dismissal. See Talbot v. Sentinel Ins. Co., Ltd., 2012 U.S. Dist. LEXIS 43340, at *9-10 (D. Nev. Mar. 29, 2012)(citing cases).

Accordingly, the motion is GRANTED. Plaintiffs' claim for punitive damages against Defendant is dismissed with prejudice.

It is further ordered that Defendant shall file an answer to the complaint within 14 days following the court's decision on its motion to dismiss, or no later than July 30, 2020.