



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Wednesday, July 26, 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [23-11116](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
6-23-2023 [[31](#)]

WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

NO RULING.

Wells Fargo Bank, N.A. ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Humberto Crispin Vidales and Nancy E. Garcia Vidales (collectively "Debtors") on May 25, 2023. Doc. #31.

Debtors filed a written response. Doc. #40.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled.

Creditor objects for two reasons. First, the proposed plan does not provide for curing of the \$7,346.81 pre-petition arrearage owed to Creditor as required by 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B). Doc. #31. Creditor says that it must receive a minimum payment of \$122.45 per month to cure the arrearage in 60 months.

Second, the plan provides for regular payments of \$3,700.00 per month to the trustee. Doc. #3. According to the schedules, Debtors have exactly \$3,700.00 in monthly net income. Doc. #1. Debtors do not have sufficient funds to increase the Class 4 payment to Creditor, and therefore, Creditor contends that the plan is not feasible. Doc. #31.

In response, Debtors claim that Creditor's objection is effectively asserting that its claim should be listed in Class 1 rather than Class 4. Doc. #40. Debtors contend that they were current on their mortgage until the mortgage company ceased accepting their payments. On this basis, Debtors argue that the claim should be paid in Class 4. Debtors suggest that an evidentiary hearing may be required to determine whether Creditor's claim can be classified in Class 4. *Id.*

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. Doc. #3. Creditor's claim is secured by a deed of trust encumbering real property located at 15821 W. B St., Kerman, CA 93630 and states an arrearage of \$7,346.81. Claim No. 12-1. The proposed plan lists Creditor's claim in Class 4 whereby Creditor will be paid monthly payments of \$1,301.00 directly from the Debtors. Doc. #3. If confirmed, the plan terminates the automatic stay for Class 4

creditors. *Id.* § 3.11. Debtors may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Creditor will have stay relief. If the plan is modified, then this objection may be moot. Creditor's objection is based on two documents. First, the proof of claim which shows an arrearage and Debtors' *Schedules I & J*. The court will take judicial notice under Fed. R. Evid. 201(b) of the documents as showing that Creditor claims there is an arrearage. Further, based on the Debtors' schedules, additional payments as claimed by Creditor may not be feasible. Debtors presented no evidence.

The court disagrees with the Debtors that an evidentiary hearing on classification is necessary. Rather, an evidentiary hearing on an eventual claim objection would be the appropriate forum for Debtors to challenge whether an arrearage is owed Creditor.

This objection will be called and proceed as scheduled.

2. [23-11116](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
6-28-2023 [[35](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Humberto Crispin Vidales and Nancy E. Garcia Vidales (collectively "Debtors") on May 25, 2023. Doc. #35.

Debtors filed a written response. Doc. #38.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled.

Trustee objects under 11 U.S.C. § 1325(a)(5)(B)(ii) because the plan fails to provide for the value of property to be distributed under the plan on account of each allowed amount of each secured claim. Doc. #35. Specifically, the plan lists the claim of Wells Fargo Bank, N.A. ("Wells Fargo") as a non-delinquent Class 4 mortgage claim. Doc. #3. However, Wells Fargo's Proof of Claim No. 12-1 lists pre-petition mortgage arrears of \$7,346.81. Wells Fargo's objection to confirmation is the subject of matter #1 above. JCW-1. Therefore, Trustee contends Debtors misclassified Wells Fargo in Class 4 instead of Class 1 and the plan fails to pay the pre-petition mortgage arrears pursuant to Claim 12.

In response, Debtors claim that Wells Fargo's claim should be listed in Class 1 rather than Class 4. Doc. #38. Debtors contend that they were current on their mortgage until the mortgage company ceased accepting their payments. On this basis, Debtors argue that the claim should be paid in Class 4. Debtors suggest that an evidentiary hearing may be required to determine whether Wells Fargo's claim can be classified in Class 4. *Id.*

As noted in #2 above, the court disagrees that an evidentiary hearing on the issue of classification is appropriate. The real issue (besides feasibility) is whether there is an arrearage owed Wells Fargo. That can be determined in the context of a properly made claim objection.

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. Doc. #3. Wells Fargo's claim is secured by a deed of trust encumbering real property located at 15821 W. B St., Kerman, CA 93630 and states an arrearage of \$7,346.81. Claim No. 12-1. The proposed plan lists Wells Fargo's claim in Class 4 whereby Wells Fargo will be paid monthly payments of \$1,301.00 directly from the Debtors. Doc. #3. If confirmed, the plan terminates the automatic stay for Class 4 creditors. *Id.* § 3.11. Debtors may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Wells Fargo will have stay relief. If the plan is modified, then this objection may be moot.

This objection will be called and proceed as scheduled.

3. [23-11116](#)-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF LVNV FUNDING LLC
6-22-2023 [[26](#)]

NANCY VIDALES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Humberto Crispin Vidales and Nancy E. Garcia Vidales (collectively "Debtors") move for an order valuing a 2019 GMC Sierra SLT SB 1500 crew cab ("Vehicle") at \$37,397.00 under 11 U.S.C. § 506(a). Doc. #26. Vehicle is encumbered by a purchase money security interest in favor of LVNV Funding, LLC ("Creditor").¹ *Id.*; *cf.* Proof of Claim No. 10-1.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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.

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."

Section 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 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."

Here, Debtors borrowed money from Creditor to purchase Vehicle on or about February 24, 2019, which is more than 910 days preceding the May 25, 2023 petition date. Doc. #28; Claim 10 at 6-7. Thus, the elements of § 1325(a)(*) are not met and § 506 is applicable.

Joint debtor Humberto Vidales declares Vehicle has a replacement value of \$37,397.00. Doc. #28. 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. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$37,397.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

¹ Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor's CEO/CFO at Creditor's headquarters and at the address listed in Creditor's proof of claim on June 22, 2023. Doc. #30.

4. 23-11116-B-13 **IN RE: HUMBERTO/NANCY VIDALES**
TCS-3

MOTION TO VALUE COLLATERAL OF WESTAMERICA BANK
6-22-2023 [[21](#)]

NANCY VIDALES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Humberto Crispin Vidales and Nancy E. Garcia Vidales (collectively "Debtors") move for an order valuing a 2017 Ford Explorer 4WD Sport ("Vehicle") at \$16,738.00 under 11 U.S.C. § 506(a). Doc. #21. Vehicle is encumbered by a purchase money security interest in favor of Westamerica Bank ("Creditor").² *Id.* Creditor has not filed a proof of claim.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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.

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."

Section 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 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.

Here, Debtors borrowed money from Creditor to purchase Vehicle in or about October 2016, which is more than 910 days preceding the May 25, 2023 petition date. Doc. #23. Thus, the elements of § 1325(a) (*) are not met and § 506 is applicable.

Joint debtor Humberto Vidales declares Vehicle has a replacement value of \$16,738.00. *Id.* 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. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$16,738.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

² Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(h) and (i) by serving Creditor's CEO/CFO at Creditor's headquarters via certified mail on June 22, 2023. Doc. #25.

5. [23-10827](#)-B-13 **IN RE: MIGUEL/AMY AVILA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-29-2023 [[20](#)]

T. O'TOOLE/ATTY. FOR DBT.
\$78.00 FINAL INSTALLMENT PAYMENT 7/6/23

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 have been paid in full.
Accordingly, the order to show cause will be VACATED.

6. [19-13329](#)-B-13 **IN RE: SALLY REYES**
[TCS-4](#)

MOTION TO MODIFY PLAN
6-21-2023 [[93](#)]

SALLY REYES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 6/22/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on June 22, 2023.
Doc. #101. Accordingly, this motion will be DENIED AS MOOT.

7. [23-10531](#)-B-13 **IN RE: AARON/LINDA FORD**
[PBB-2](#)

OBJECTION TO CLAIM OF SHERWOOD MANAGEMENT COMPANY, CLAIM
NUMBER 9
5-31-2023 [[25](#)]

LINDA FORD/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Aaron Damone Ford, Sr., and Linda Fae Ford (collectively "Debtors")
object to Proof of Claim No. 9-1 filed by Sherwood Management Company
Inc. dba Daniel's Jewelers ("Claimant") on May 9, 2023 in the amount
of \$380.84.³ Doc. #25; Claim 9.

No party in interest timely filed written opposition. This objection
will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by
Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of Claimant,
the creditors, the chapter 13 trustee, 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 sustaining of the objection. *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 objecting 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 amounts of damages).
Televideo Sys., 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
objecting party has done here.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a
proof of claim filed under section 501, is deemed allowed unless a
party in interest objects.

Fed. R. Bankr. P. ("Rule") 3001(f) states that a proof of claim
executed and filed in accordance with these rules shall constitute
prima facie evidence of the validity and amount of the claim. If a
party objects to a proof of claim, the burden of proof is on the

objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

To "defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" *Id.* at 1039. "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." *Id.*

Here, Claim 9 asserts that it is secured by a pair of 25MM Gold Diamond Hoops ("Collateral") in the amount of \$380.84. Claim 9. Joint debtor Linda Fae Ford acknowledges that the Collateral was purchased from Claimant on or about December 28, 2012. Doc. #27. However, when Debtors hosted a Superbowl party on February 12, 2023, the Collateral, as well as several other items, were stolen. *Id.* Debtors included as an exhibit a copy of an incident report from the Visalia Police Department dated February 14, 2023. *Ex. B*, Doc. #28.

Since the Collateral securing Claim 9 was stolen, Debtors ask to reclassify Claim 9 in its entirety from secured to a general unsecured claim. Debtors have presented evidence that the Collateral securing Claim 9 was stolen. Claimant was properly served on at least 44 days' notice and did not file any opposition.

Accordingly, Proof of Claim No. 9-1 filed by Claimant Sherwood Management Company Inc. dba Daniel's Jewelers on May 9, 2023 in the amount of \$380.84 will be reclassified in its entirety from secured to a general unsecured claim.

³ Debtors complied with Rules 3007(a)(2) and 7004(b)(3) by serving Claimant's registered agent for service of process and Claimant at the name and address listed in Claim 9 via first class mail on May 31, 2023. Doc. #29.

8. [22-11934](#)-B-13 **IN RE: JOSE HERNANDEZ**
[TCS-3](#)

CONTINUED MOTION TO CONFIRM PLAN
5-16-2023 [[58](#)]

JOSE HERNANDEZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DISMISSED 06/29/2023

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The court entered an order dismissing this case on June 29, 2023. Doc. #78. Accordingly, this motion will be DENIED AS MOOT.

9. [23-11047](#)-B-13 **IN RE: JOSE VERA AND ROSA LEON DE VERA**
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES,
LLC
6-23-2023 [[14](#)]

PENNYMAC LOAN SERVICES, LLC/MV
STEPHEN LABIAK/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Continued to August 23, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

PennyMac Loan Services, LLC ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Jose Antonio Vera and Rosa Leon De Vera (collectively "Debtors") on May 17, 2023 under 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B) because the plan fails to promptly cure the pre-petition arrears owed on Creditor's secured claim. Doc. #14. Specifically, the plan lists Creditor PennyMac as a non-delinquent Class 4 mortgage claim. Doc. #3. However, Creditor's Proof of Claim No. 6-1 lists pre-petition mortgage arrears of \$3,122.01, which Creditor asserts is \$3,113.34 as of the date of this objection. Therefore, Creditor contends that Debtors misclassified it in Class 4 instead of Class 1 and the plan fails to pay the pre-petition mortgage arrears pursuant to Creditor's Claim 6. Doc. #14.

This objection will be CONTINUED to August 23, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than August 9, 2023. The response shall specifically address each issue raised in Creditor's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Creditor shall file and serve a reply, if any, by August 16, 2023.

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than August 16, 2023. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

10. [23-11047](#)-B-13 **IN RE: JOSE VERA AND ROSA LEON DE VERA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
6-28-2023 [\[17\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 23, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed by Jose Antonio Vera and Rosa Leon De Vera (collectively "Debtors") on May 17, 2023 under 11 U.S.C. § 1325(a)(5)(B)(ii) because the plan fails to provide for the value of property to be distributed under the plan on account of each allowed secured claim. Doc. #17. Specifically, the plan lists secured creditor PennyMac as a non-delinquent Class 4 mortgage claim. Doc. #3. However, PennyMac's Proof of Claim No. 6-1 lists pre-petition mortgage arrears of \$3,122.01. PennyMac's objection to confirmation is the subject of matter #9 above. CJK-1. Therefore, Trustee contends that Debtors misclassified PennyMac in Class 4 instead of Class 1 and the plan fails to pay the pre-petition mortgage arrears pursuant to Claim 6. Doc. #17.

This objection will be CONTINUED to August 23, 2023 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or the Trustee's objection to confirmation is withdrawn, the Debtors shall file and serve a written response to the objection not later than August 9, 2023. The response shall specifically address each issue raised in Trustee's objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by August 16, 2023.

If the Debtors elect to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than August 16, 2023. If the Debtors do not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

11. [22-12149](#)-B-13 **IN RE: BEVERLY TAYLOR**
[WLG-1](#)

MOTION TO MODIFY PLAN
6-9-2023 [\[25\]](#)

BEVERLY TAYLOR/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Beverly Carol Taylor ("Debtor") moves for an order confirming the [First] Amended Chapter 13 Plan dated June 9, 2023 ("First Amended Plan"). Doc. #25.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected. Doc. #48.

On July 19, 2023, Debtor filed a [Second] Amended Chapter 13 Plan ("Second Amended Plan"), which is currently set for hearing on August 23, 2023. Docs. ##52-56. Since Debtor filed the Second Amended Plan, the motion to confirm the First Amended Plan will be DENIED AS MOOT.

As an informative matter, the Second Amended Plan, motion, and supporting documents do not comply with the Local Rules of Practice ("LBR"). LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a 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. 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. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, the First Amended Plan, Second Amended Plan, and their respective motions and supporting documents all use the same WLG-1 DCN. The Second Amended Plan is a separate matter, and therefore, it must be filed under a new, unused DCN. Without corrective action, it may be subject to denial without prejudice.

12. [22-12149](#)-B-13 **IN RE: BEVERLY TAYLOR**
[WLG-2](#)

MOTION FOR ALLOWANCE OF LATE FILED PROOF OF CLAIMS AS TIMELY
FILED
6-9-2023 [[31](#)]

BEVERLY TAYLOR/MV
MICHAEL REID/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; denied as moot in part.

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

Beverly Carol Taylor ("Debtor") moves for an order allowing untimely
Proof of Claim No. 10-1 in the amount of \$2,901.23 filed by Pacific
Gas & Electric Company ("PG&E") on June 9, 2023. Doc. #31.

No party in interest timely filed written opposition. This motion will
be GRANTED IN PART and DENIED AS MOOT IN PART.

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 chapter 13 trustee, 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 amounts of damages). *Televideo Sys.,
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.

Fed. R. Bankr. P. ("Rule") 3002(c) requires creditors to file a proof
of claim 70 days after the order for relief in a chapter 7, 12, or 13
case. Governmental entities have 180 days to file a proof of claim. If
a creditor does not timely file a proof of claim, Rule 3004 permits
the debtor or trustee to file such claim within 30 days after the
expiration of the time for claims as prescribed in Rule 3002(c).

Under LBR 3004-1, if a creditor fails to file a proof of claim within
the time required by Rule 3002(c) or 11 U.S.C. § 502, the debtor or
the trustee may file a proof of claim on behalf of the creditor under

Rule 3004. The time for filing such a claim is extended to 60 days after service on the debtor and the debtor's attorney, if any, of the *Notice of Filed Claims* as required by LBR 3007-1(d) (2).

Here, Debtor filed chapter 13 bankruptcy on December 19, 2022. Doc. #1. Under Rule 3002(c), the deadline to file a proof of claim was February 27, 2023 for creditors and June 20, 2023 for governmental units.

The chapter 13 trustee filed and served the *Notice of Filed Claims* on July 19, 2023, which listed the above deadlines for filing proofs of claim. Docs. ##50-51. Additionally, it notes that the 60-day deadline for Debtor to file claims is September 17, 2023. *Id.* Debtor filed a claim on behalf of PG&E on June 9, 2023. Claim 10-1.

Debtor indicates that the debt owed to PG&E was inadvertently left out of the original schedules, so PG&E was not promptly notified of the bankruptcy filing. Doc. #34. As a result, Debtor asks to extend the deadline for PG&E to file a proof of claim under Rule 9006(b) (1) and the doctrine of excusable neglect.

This motion will be GRANTED IN PART and DENIED AS MOOT IN PART. The court declines the request to extend the deadline for PG&E to file a proof of claim under Rule 9006 and the doctrine of excusable neglect. Debtor timely filed Claim 10 on behalf of PG&E pursuant to LBR 3004-1 and the trustee's *Notice of Filed Claims*, so enlargement of the time to file such a claim so is not necessary. On this basis, the motion is DENIED AS MOOT IN PART. With respect to allowing Claim 10 filed by Debtor on behalf of PG&E, this motion will be GRANTED IN PART.

13. [19-11856](#)-B-13 **IN RE: JAIME BRYAN**
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E SCHWARTZ, DEBTORS
ATTORNEY(S)
6-14-2023 [\[31\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule").

Here, the certificate of service indicates only the debtor, chapter 13 trustee, the Office of the U.S. Trustee, and Robert Williams were served notice of this motion. Doc. #34. Rule 2002(a) (6) requires 21

days' notice by mail to all creditors of a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000. Even the limited noticing rules, LBR 2002-3 and Rule 2002(h)(1), require creditors with filed claims to be served. Even if this were a limited noticing motion, the applicant did not check the limited noticing box in Section 3. *Id.*

14. [17-10466](#)-B-13 **IN RE: RUBY LOMAS**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
6-16-2023 [\[61\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") moves for an order determining: (1) Ruby L. Lomas ("Debtor") has cured the default with respect to a loan repayment and security agreement dated February 22, 2021 secured by a deed of trust on real property located at 1419 W. Buena Vista Avenue, Visalia, CA 93291 ("Property") in favor of U.S. Bank Trust National Association as Trustee of LSF9 Master Participation Trust ("Creditor"); (2) all post-petition payments due and owing as of March 2017 through April 2023 have been paid; and (3) the second Tax Advance for \$2,624.97 is waived by Creditor for its failure to file a post-petition fee notice in violation of Fed. R. Bankr. P. ("Rule") 3002.1(c) and (i). Doc. #61; *cf.*, Claim No. 1-1.

Creditor responded. Doc. #68.

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 except Creditor 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 except Creditor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Rule 3002.1(f) requires the trustee, within 30 days after completion of payments under the plan, to file and serve on the claim holder, debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on a claim.

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

Rule 3002.1(h) provides, on motion by the trustee filed within 21 days after service of the statement under subdivision (g), the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required post-petition amounts. Trustee filed a *Notice of Final Cure Payment* pursuant to Rule 3002.1(f) on May 17, 2023. Doc. #53. Creditor provided Trustee with a Rule 3002.1(g) response on May 30, 2023. Docket generally. According to the response, the total post-petition payment due is \$5,895.40, which consists of "PPFN filed on September 9, 2020" in the amount of \$3,286.76 and Tax Advances paid on August 11, 2022 in the amount of \$2,624.97, less funds in the suspense account in the amount of \$16.33." *Id.*

The record shows that Debtor has cured the default on the loan with Creditor and is current on mortgage payments through April 27, 2023. Doc. #63. Trustee indicates that his office has paid a total of \$43,737.45 towards the post-petition mortgage payment, \$27,761.73 towards the pre-petition arrearage claim, and \$7.70 in late fees. *Id.*

Creditor's response acknowledges that its *Notice of Fees* was not timely filed in accordance with Rule 3002.1(c) and (i) for tax advances made in the amount of \$2,624.97 on behalf of Debtors. Doc. #68. Creditor has re-reviewed the accounting and determined the Trustee's assertions are correct regarding the payments made under Class 1. As a result, Creditor concurs that all pre-petition arrears are paid in full and Debtors are current with their post-petition payments through April 2023. *Id.* Creditor will file an *Amended Response* to the *Notice of Final Cure* with the corrected payment history. *Id.*

This matter will be called as scheduled. The court is inclined to GRANT this motion. Pursuant to Rule 3002.1(i), Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the *Notice of Final Cure* under Rule 3002.1(g). Debtor has cured the default and are current on mortgage payments through April 2023 and Creditor's second Tax Advance of \$2,624.97 is waived for failure to file a post-petition fee notice as required by Rule 3002.1(c) and (i).

15. [23-10075](#)-B-13 **IN RE: REFUJIO GUILLEN**
[NUU-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2023 [[91](#)]

BETTY HOLTSNIDER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHINONYE UGORJI/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Edward Holtsnider and Betty Holtsnider (collectively "Movants") seek relief from the automatic stay under 11 U.S.C. § 362 with respect to real property located at 44919 Deer Creek Mill Road, California Hot Springs, California ("Property"). Doc. #91.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, neither the original nor the amended notices contained the above disclosures. Docs. #92, #98.

Second, LBR 7005-1 requires service of pleadings and other documents in all proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").⁴ Unless six or fewer parties in interest are served, the Official Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d). Here, there are no matrices attached listing the parties served as required by LBR 7005-(d). Docs. #96, #99.

Third, LBR 4001-1(a)(3) requires the movant to file and serve as a separate document a completed Form EDC 3-468, *Relief from Stay Summary*

Sheet ("Summary Sheet"), in all motions for relief from stay. Here, Movant did not serve and file a Summary Sheet.

For the above reasons, the motion will be DENIED WITHOUT PREJUDICE.

⁴ The Official Form and related information can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateofServiceForm> (visited July 18, 2023).

16. [23-10377](#)-B-13 **IN RE: LISA ELLIOTT**
 [MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
5-15-2023 [\[32\]](#)

CHRISTIE LEE/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was originally heard on June 28, 2023. Doc. #41.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to confirmation of the *[Second] Amended Chapter 13 Plan* filed by Lisa Elliott ("Debtor") on April 4, 2023 under 11 U.S.C. § 1325(a)(1) and (a)(9) because the plan fails to comply with all provisions of chapter 13 and other applicable provisions of title 11 and Debtor has not filed all applicable tax returns. Doc. #32. At that time, Trustee had not concluded the § 341 meeting of creditors and reserved the right to supplement this objection based on Debtor's testimony at the continued meeting. *Id.*

The court continued this objection to July 26, 2023. Docs. ##41-42. Debtor was directed to file and serve a written response to the objection not later than July 12, 2023, or file a confirmable, modified plan in lieu of a response not later than July 19, 2023, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection.

17. [23-10377](#)-B-13 **IN RE: LISA ELLIOTT**
[MHM-2](#)

MOTION TO DISMISS CASE
6-23-2023 [\[37\]](#)

CHRISTIE LEE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and (c)(4), 1308(a), and 341 for unreasonable delay by the debtor that is prejudicial to creditors, failure to appear and testify at the 341 meeting of creditors, failure file tax returns, and failure to set a plan for hearing with notice to creditors. Doc #37. Lisa Elliott ("Debtor") did not oppose.

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

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 amounts of damages). *Televideo Sys., 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.

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). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay.

The record shows that there has been unreasonable delay by Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Debtor failed to set a plan for hearing with notice to creditors, failed to appear and testify at the 341 meeting of creditors, and failed to file 2022 tax returns as required by 11 U.S.C. § 1308(a). Doc. #39.

In addition, the Trustee has reviewed the schedules and determined that this case has a liquidation value of \$4,785.00 after trustee compensation if the case were converted to chapter 7. *Id.* This amount is comprised of the non-exempt equity in Debtor's 2012 GMC Terrain. *Id.* The liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, best serves the interests of creditors and the estate.

Accordingly, this motion will be GRANTED and the case will be dismissed.

18. [23-10992](#)-B-13 **IN RE: ANGELITA MARQUEZ**
[JNV-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-27-2023 [\[18\]](#)

EZEQUIEL MARQUEZ/MV
PETER BUNTING/ATTY. FOR DBT.
JUSTIN VECCHIARELLI/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Movant Ezequiel Marquez withdrew this motion for relief from the automatic stay on July 5, 2023. Doc. #33. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

19. [23-10099](#)-B-13 **IN RE: ANGELA MCPHETRIDGE**
[MHM-2](#)

MOTION TO DISMISS CASE
6-21-2023 [\[72\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to make all payments due under the plan. Doc. #72. Angela A. McPhentridge ("Debtor") did not oppose.

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

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 amounts of damages). *Televideo Sys., 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.

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). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay.

The record shows that there has been unreasonable delay by Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) because Debtor

failed to make timely plan payments. As of June 21, 2023, Debtor is delinquent in the amount of \$4,805.12. Doc. #74. Before this hearing, two plan payments of \$3,829.56 will also come due. *Id.*

In addition, Trustee has reviewed the schedules and determined that this case has a liquidation value of \$2,139.41 after trustee compensation if the case were converted to chapter 7. *Id.* This amount is comprised of the value of Debtor's 1989 Silverado and funds on hand in checking and savings accounts at time of filing. *Id.* The liquidation value of this case is *de minimis*. Therefore, dismissal, rather than conversion, best serves the interests of creditors and the estate.

Accordingly, this motion will be GRANTED and the case will be dismissed.

11:00 AM

1. [22-12102](#)-B-13 **IN RE: ALAN BABB**
[23-1025](#) [GB-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
6-13-2023 [\[5\]](#)

BABB V. SN SERVICING CORPORATION ET AL
MARISOL NAGATA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

SN Servicing Corporation, Prestige Default Services, LLC, and U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust (collectively "Defendants") move to dismiss this adversary proceeding under Fed. R. Civ. P. ("Civ. Rule") 12(b)(6), as incorporated by Fed. R. Bankr. P. ("Rule") 7012, for failure to state a claim upon which relief can be granted. Doc. #5.

Debtor Alan Lee Babb ("Plaintiff") filed a response on July 21, 2023, but it was not timely filed by the July 12, 2023 deadline. Doc. #12. Plaintiff also filed motions to impose the automatic stay and to shorten the time to file a response. Docs. ##13-14. The court intends to STRIKE Plaintiff's opposition as untimely and DENY the motions to impose the automatic stay and shorten time.

This matter will be called as scheduled. The court intends to GRANT this motion and DISMISS THE ADVERSARY PROCEEDING WITHOUT PREJUDICE and WITHOUT LEAVE TO AMEND.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), Plaintiff's failure 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 sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, Plaintiff's default is entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., 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 objecting party has done here.

As an informative matter, the motion does not comply with the local rules. The motion contains an attached memorandum of points and authorities. Under LBR 9014-1(d)(4), a motion and memorandum of points and authorities may be combined into a single document provided that it does not exceed six pages in length. Here, the combined motion and memorandum of points and authorities is 12 pages, and therefore, should have been filed as two separate documents. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters.

REQUEST FOR JUDICIAL NOTICE

Defendant asks the court to take judicial notice of copies of the docket in other bankruptcy cases and various recorded documents. Docs. ##8-9. The court may take judicial notice of all documents and other pleadings filed in this case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

BACKGROUND

In or around October 2003, Plaintiff obtained a \$65,000 loan from Washington Mutual Bank, FA that was secured against real property located at 3708 Sue Lin Way, Bakersfield, CA 93309 ("Property") by a deed of trust recorded in Kern County on October 15, 2003. *Ex. A*, Doc. #8. The deed of trust was assigned as follows: (a) to JP Morgan Chase Bank in November 2012, (b) to Federal National Mortgage Association in September of 2016, (c) to MTLGQ Investors, LP in March of 2018, and (d) to U.S. Bank National Association, as Trustee of the Chalet Series IV Trust in April 2020. *Exs. B-E, id.*

A *Notice of Default* was recorded on October 30, 2017, which indicated that Plaintiff was past due on the loan in the amount of \$6,713.13 as of October 27, 2017. *Ex. F, id.* Plaintiff failed to cure the default and a *Notice of Trustee's Sale* was recorded on March 16, 2021. *Ex. G, id.* Defendant Prestige Default Services, LLC was substituted as the trustee under the deed of trust. *Ex. H, id.*

In October of 2018, Plaintiff executed a grant deed transferring an interest in the Property from Plaintiff to Plaintiff, Michelle Valencia, and Marcella Marquez as tenants in common. *Ex. N, id.* The grant deed was recorded in Kern County on October 19, 2018. *Id.*

Meanwhile, between 2010 and 2022, there have been nine bankruptcy cases purporting to affect Property:

1. Case No. 10-63437: Chapter 7 filed by Plaintiff on November 19, 2010 and terminated on March 25, 2011;

2. Case No. 17-10851: Chapter 13 filed by Plaintiff on March 10, 2017 and dismissed on March 28, 2017;
3. Case No. 17-11868: Chapter 13 filed by Plaintiff on May 12, 2017 and dismissed on August 4, 2017;
4. Case No. 18-10499: Chapter 13 filed by Plaintiff on February 16, 2018 and dismissed on May 7, 2018;
5. Case No. 18-12467: Chapter 13 filed by Plaintiff on June 19, 2018 and dismissed on September 7, 2018;
6. Case No. 21-11929: Chapter 13 filed by Michelle Valencia on August 2, 2021 and dismissed October 6, 2021;
7. Case No. 21-12816: Chapter 13 filed by Michelle Valencia on December 17, 2021 and dismissed on January 4, 2022;
8. Case No. 22-10377: Chapter 13 filed by Marcella Marquez on March 11, 2022 and dismissed on July 11, 2022; and
9. Case No. 22-12102: Chapter 13 case filed by Plaintiff on December 12, 2022 and dismissed on March 10, 2023.

Exs. I-M, O-P, S, id. In the eighth bankruptcy case, Defendant US Bank filed a motion for relief from stay. *Ex. Q, id.* The court granted the motion on July 7, 2022 and provided *in rem* relief from stay under 11 U.S.C. § 362(d)(4). *Id.* An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order. The order was recorded in Kern County on July 20, 2022. *Ex. R, id.* Therefore, the automatic stay will not go into effect against Property in any bankruptcy case filed on or before July 7, 2024.

Property was sold at a foreclosure sale on December 14, 2022 to Cobra 28, No 8, LP. *Ex. T, id.* The *Trustee's Deed Upon Sale* was recorded on February 6, 2023. *Id.*

On May 15, 2023, Plaintiff initiated this adversary proceeding against Defendants contending that Defendants were barred from conducting the foreclosure sale because Plaintiff was protected by the automatic stay under § 362. Doc. #1. Defendants now bring this motion to dismiss. Doc. #5.

In response, Plaintiff argues that Defendants did not comply with state law by notifying Plaintiff that there was an *in rem* order in place prior to Plaintiff's filing of the bankruptcy petition. Doc. #12. Plaintiff claims that the *in rem* order was filed under the prior debtor's name, Marcella Marques, and not Plaintiff's. Thus, there was no way for Plaintiff to have received notice even through a title search.

However, the *in rem* order was recorded in Kern County on July 20, 2022 against the Property. *Ex. R, Doc. #10.* It appears that Plaintiff should have been able to locate the *in rem* order through a title search of the Property. Additionally, Plaintiff was served the motion for stay relief, notice, and supporting documents in the Marquez bankruptcy case on April 25, 2022. See Case No. 22-10377, Doc. #36.

The court will inquire at the hearing whether the *in rem* order was recorded specifically against the Property.

DISCUSSION

Civ. Rule 12(b)(6) is applicable to adversary proceedings under Rule 7012(b) and allows the court to dismiss for "failure to state a claim upon which relief can be granted." Courts may dismiss a complaint if it "fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016), citing *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010); *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). To survive a motion to dismiss under Civil Rule 12(b)(6) "a complaint must contain sufficient factual matter accepted as true to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A court should assume the veracity of the factual allegations "and then determine whether they plausibly give rise to an entitlement of relief." *Iqbal*, 556 U.S. at 679. This plausibility standard is not a probability requirement, but it does ask for more than a mere possibility; if a complaint pleads facts "merely consistent with" a theory of liability it falls short of "the line between possibility and plausibility." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 557).

When considering dismissal, all material facts alleged in the complaint are to be taken as true and viewed in the light most favorable to the plaintiff. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). "[T]he tenet that a court must accept as true all allegations in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 662, citing *Twombly*, 550 U.S. at 555. The court may also draw on its "judicial experience and common sense." *Id.* at 679.

Though the complaint did not attach the *in rem* order, the court may consider documents whose authenticity is not in question, and upon which the complaint necessarily relies, but which are not attached to the complaint on a motion to dismiss. *See, Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). The Ninth Circuit has "extended the 'incorporation by reference' doctrine to situations in which the plaintiff's claim depends on the contents of the document, the defendant attaches the document to the motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint." *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

Plaintiff here depends on the existence of the automatic stay and orders related thereto as the basis for the claim. The July 7, 2022 order granting *in rem* stay relief is critical to the claim. Movants

attached the order as part of its Request for Judicial Notice. Plaintiff did not timely respond to the motion and did not question the authenticity of the order.

Here, the automatic stay did not go into effect with respect to Property when this bankruptcy case was filed because Property was subject to the *in rem* stay relief order entered under 11 U.S.C. § 362(d)(4). Unless the order is vacated, the automatic stay will not arise with respect to Property in any bankruptcy involving Property until after July 7, 2024. *Ex. Q*, Doc. #10.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion and DISMISS THE CASE WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND.

2. [23-10029](#)-B-7 **IN RE: LOUIS/AMY GENARO**
[23-1020](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-6-2023 [\[1\]](#)

GENARO V. AMERICAN EXPRESS NATIONAL BANK
TIMOTHY SPRINGER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

On July 19, 2023, the court entered an order dismissing this adversary proceeding with prejudice. Doc. #32. Accordingly, the status conference will be dropped and taken off calendar. This adversary proceeding may be administratively closed when appropriate.