

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, August 1, 2019  
Place: Department B – Courtroom #13  
Fresno, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

**9:30 AM**

1. [19-10423](#)-B-12      **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[FW-2](#)

MOTION TO CONFIRM CHAPTER 12 PLAN  
6-24-2019    [\[118\]](#)

KULWINDER SINGH/MV  
DAVID JOHNSTON  
RESPONSIVE PLEADING

NO RULING EXCEPT STRIKING THE LATE OPPOSITION.

Creditor John Deere Construction and Forestry Company ("Deere") has filed detailed objections to the debtors' fully noticed motion to confirm a chapter 12 plan.

Creditor Farm Credit Services of America, PCA, the chapter 12 debtor, and the chapter 12 trustee have stipulated to "suspend" and possibly extend the deadlines to oppose confirmation and to reply to any opposition. Doc. #144. The stipulation is not specific as to dates for the continued hearing or the response deadlines.

Creditor David E. Jensen and Sherri E. Jensen Trust UDT ("Jensen Trust") served and filed opposition on July 22, 2019, four days late. The court takes judicial notice of docket numbers 119 and 123, debtor's notice of the hearing and the certificate of service showing that the notice was served on the Jensen Trust and the trust's counsel. Jensen Trust did not request leave to file late opposition, nor provided any reason as to why the opposition was late. Doc. #153 Therefore, the Jensen Trust opposition is stricken under Local Rule of Practice 9014-1(1).

The court finds "cause" to continue the confirmation hearing under 11 U.S.C. § 1224, if necessary, since the Trustee and the debtors' primary creditor have stipulated to a suspension of response and reply deadlines. Also, based on Deere's opposition, there is a question as to why that creditor was omitted from the schedules suggesting the schedules may need to be amended. Third, the court is not convinced the Plan is feasible given the omission of the Deere creditor and the apparent remaining issues with the Jensen Trust.

At the hearing, the parties should be prepared to discuss the schedule for further confirmation litigation in this case.

The court notes debtors' reply. Doc. #155.

2. [18-13677](#)-B-9      **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT**

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

RILEY WALTER

NO RULING.

1:30 PM

1. [19-12900](#)-B-13     **IN RE: REBECCA FREITAS**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-11-2019    [\[9\]](#)

REBECCA FREITAS/MV  
STEPHEN LABIAK

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-10556. That case was filed on February 16, 2019 and was dismissed on May 31, 2019 for failure file tax returns. This case was filed on July 5, 2019 and the automatic stay will expire on August 4, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

Based on the moving papers and the record, the court is not persuaded that the presumption has been rebutted, and it intends to deny the motion.

Debtor's previous case was dismissed for failure to file tax returns prior to filing bankruptcy. Debtor states that she and her husband are separated and was "unable to get him to cooperate with me so that we could get the taxes filed on time." Doc. #11. In her declaration debtor never states that the tax returns have now been filed. Unless the taxes are filed, this case will meet the same fate as the previously dismissed case. Debtor's intentions appear to be good and genuine, but the court has not been presented with clear and convincing evidence to overcome the presumption of bad faith.

In addition to the below defects, the notice of hearing contains incomplete sentences. The motion states the conclusion the debtor was in good faith with no statement as to why. Even though this debtor apparently has reasons to file the case, that is not the same as proof of good faith.

The court notes that the debtor's notice of hearing was not in compliance with the LBR. First, the notice did not contain the language of LBR 9014-1(d)(3)(B)(iii). Second, the notice did not explain how any of the respondents could oppose the motion. See LBR 9014-1(f).

The court takes judicial notice of the fact the meeting of creditors is not scheduled until August 6, 2019 which is after this hearing is scheduled. Under 11 U.S.C. § 1308(b), the Trustee may hold the creditors' meeting open to accommodate the debtor's filing of tax returns for a specified period and the court can, with proper findings, extend any date the Trustee sets to continue the meeting. But, here, the Trustee has not stated an intention to hold the meeting open and there is nothing in the record suggesting holding the meeting open will change anything.

The motion is DENIED.

2. [18-13602](#)-B-13     **IN RE: RAMIRO/ENEDELIA SANCHEZ**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2019    [\[85\]](#)

FEDERAL HOME LOAN MORTGAGE  
CORPORATION/MV  
THOMAS GILLIS  
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

This motion is DENIED AS MOOT. Debtor's chapter 13 plan was confirmed on July 9, 2019. Doc. #91. Movant's collateral is in class 4 of the plan. Plan section 3.11 states that "[U]pon confirmation of the plan, the automatic stay . . . [is] . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Doc. #58. Movant's declaration states that debtors have failed to make two post-petition payments. Doc. #88. Debtors have not opposed this motion.

The confirmed chapter 13 plan controls and the automatic stay under 11 U.S.C. § 362 has been modified to allow movant to exercise its rights as to its collateral without a court order. Therefore the motion is DENIED AS MOOT since no further order is necessary.

3. [19-10704](#)-B-13     **IN RE: VIRGINIA RAMIREZ**  
[TOG-4](#)

MOTION TO CONFIRM PLAN  
6-25-2019    [\[43\]](#)

VIRGINIA RAMIREZ/MV  
THOMAS GILLIS

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. [19-12204](#)-B-13      **IN RE: PAUL FREDERICK**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-27-2019    [\[19\]](#)

JOEL WINTER

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

DISPOSITION:      Granted.

ORDER:              The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors. The debtor failed to provide the trustee with the required documentation pursuant to 11 U.S.C. § 521(e)(2)(A)(B). Accordingly, the case will be dismissed.

5. [19-11113](#)-B-13     **IN RE: FRANCISCO ESPINO AND MARIA DIAZ**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-24-2019    [\[31\]](#)

MICHAEL MEYER/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to September 12, 2019 at 1:30 p.m.

ORDER:                The court will issue an order.

This matter is continued to September 12, 2019 at 1:30 p.m. to be heard in conjunction with debtors' motion to confirm plan, TOG-3.

6. [19-11113](#)-B-13     **IN RE: FRANCISCO ESPINO AND MARIA DIAZ**  
[TOG-1](#)

MOTION TO CONFIRM PLAN  
6-27-2019    [\[37\]](#)

FRANCISCO ESPINO/MV  
THOMAS GILLIS  
RESPONSIVE PLEADING

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

DISPOSITION:        Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #59.

7. [19-11113](#)-B-13     **IN RE: FRANCISCO ESPINO AND MARIA DIAZ**  
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE  
7-2-2019    [\[44\]](#)

FRANCISCO ESPINO/MV  
THOMAS GILLIS

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

DISPOSITION:        Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in



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

The motion is GRANTED. 11 U.S.C. § 1325(a)(\*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle acquired for the personal use of the debtor at its current amount, as opposed to the amount due on the loan, when the loan is secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of the filing.

Debtor asks the court for an order valuing a 2011 BMW 351 at \$12,548.00. Doc. #44. Creditor Regional Acceptance Corporation's ("Creditor") claim states the amount owed to be \$21,470.42. Claim #2. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$12,548.00. Doc. #46. Debtor incurred the debt more than 910 days before debtor filed this case. Id.

The debtor is competent to testify as to the value of the 2011 BMW 351. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$12,548.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

8. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[FC-2](#)

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

FRANK CRUZ/MV  
FRANK CRUZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

This motion is DENIED AS MOOT. Debtor filed an amended plan. Doc. #145, TCS-2.

9. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[MHM-4](#)

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

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to August 29, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

This matter is continued to August 29, 2019 to be heard in conjunction with debtor's motion to confirm plan, TCS-2.

10. [19-11922](#)-B-13     **IN RE: KARLA JUDKINS**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-24-2019    [\[20\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor filed an amended schedule C on June 25, 2019. Doc. #23.

11. [19-12923](#)-B-13     **IN RE: JOHN HERNANDEZ**  
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-11-2019    [\[8\]](#)

JOHN HERNANDEZ/MV  
SCOTT LYONS

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11439. That case was filed on April 10, 2019 and was dismissed on June 15, 2019 for failure to file documents with the chapter 13 trustee's office and to appear at the § 341 meeting. This case was filed on July 8, 2019 and the automatic stay will expire on August 7, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad

faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them ‘instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.” Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa).

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

Debtor’s previous case was dismissed for failure to appear at the § 341 meeting of creditors and for failure to provide debtor’s most recently-filed tax returns and other necessary documents. Doc. #9. Debtor has since filed the necessary documents and made lifestyle changes in order to fund a chapter 13 plan. Id.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f) (2). The court will issue an order.

12. [10-11324](#)-B-13     **IN RE: EARL/DIONICIA PARKS**  
[MHM-1](#)

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

GEOFFREY ADALIAN  
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 court will issue  
the order.

This motion is GRANTED.

The chapter 13 trustee ("Trustee") asks this court to convert this case to chapter 7 under 11 U.S.C. § 1307(c) for bad faith. Trustee alleges that joint debtor Dionicia J. Parks ("Debtor") did not disclose the fact that they had a claim for a pelvic mesh class action lawsuit pre-petition. Doc. #58.

Debtor received their discharge on July 1, 2013. Debtor filed another chapter 13 petition in 2017, that was voluntary dismissed that same year. Case no. 17-11524. Trustee states that they received correspondence from Carolyn G. Anderson of Zimmerman Reed, LLP regarding Debtor's pelvic mesh settlement resulting from injuries sustained in 2008 and 2017. Doc. #58. Debtor is apparently supposed to receive an award of \$97,616.35. Id.

Debtor filed a response agreeing to conversion to chapter 7 "but with no finding of bad faith or unreasonable delay." Doc. #69. Debtor states that Debtor did not know she had a claim prior to filing bankruptcy and because "she had very little communication from the class action attorneys she assumed her claim would not result in a settlement until she was notified in October 2018" when she was notified. Id.

This matter will be called to allow Trustee to respond to Debtor's offer.

13. [19-12128](#)-B-13     **IN RE: JULIAN/GLORIA TORRES**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-27-2019    [\[26\]](#)

MICHAEL MEYER/MV  
NIMA VOKSHORI  
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 court will issue the order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted for cause shown.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The chapter 13 trustee ("Trustee") alleges that the debtors failed to file the §521(a)(1)(B)(v) statement, failed to file tax returns, failed to set a plan for hearing with notice to creditors, and failed to file complete schedules A/B, H, and statement of financial affairs. Doc. #26.

The debtors responded, stating that they filed the § 521(a)(1)(B)(v) statement, tax returns, have a plan confirmation hearing set, and have filed the schedules and statement of financial affairs. Doc. #40. The exhibit attached to the motion is a receipt for certified mail sent to the IRS. Doc. #42. The court takes judicial notice that a motion to confirm a chapter 13 plan is set for September 12, 2019 (doc. #36, NSV-1), and amended schedules A/B, and H were filed on July 3 and July 9, 2019. Doc. ##34, 35.

The court finds however, that failure to file the § 521(a)(1)(B)(v) statement does not result in an automatic dismissal. 11 U.S.C. § 521(a)(1)(B)(v) provides that unless otherwise ordered by the court, the debtor must file: "a statement of the amount of monthly net income, itemized to show how the amount is calculated. . ." The 2005-2007 Committee Note for Schedule I states, in part: "A new subtotal line for income from sources other than as an employee and a new 'average monthly income' line will enable this form to be used in conjunction with Schedule J to satisfy the requirements of §521(a)(1)(B)(v), which was added to the Code by BAPCPA." The "average monthly income" line does not appear on current forms 106I and 106J which were part of a form's modernization project. But the Committee Notes accompanying 2013, 2014 and 2015 forms changes do not alter the 2005-2007 Notes. Line 12 of Official Form 106I and Line 23c of Official Form 106J seem to provide the statement of monthly net income and other parts of the forms provide how it is calculated. The debtors provided that information.

The court is not persuaded in this case that any failure to file the information within 45 days of the petition date automatically results in dismissal. In the ninth circuit, the bankruptcy court has discretion to waive the § 521(a)(1) filing requirement even after the forty-five-day filing deadline set forth in § 521(a)(1) has passed. Wirum v. Warren (In re Warren), 568 F.3d 1113, 1117 (9th Cir. 2009). The court does not waive the requirement in this case, but dismissal of this case is not on the ground that it was "automatic."

The court however cannot confirm the accuracy of the amended schedules. The Trustee has not withdrawn the motion suggesting the listed deficiencies have not be corrected. Therefore, unless this motion is withdrawn prior to or at the hearing, the court intends to GRANT this motion.

14. [19-12128](#)-B-13     **IN RE: JULIAN/GLORIA TORRES**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-1-2019    [[30](#)]

MICHAEL MEYER/MV  
NIMA VOKSHORI

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor filed an amended schedule C on July 3, 2019. Doc. #34.

15. [19-11334](#)-B-13     **IN RE: HECTOR FLORES**  
[TCS-1](#)

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

HECTOR FLORES/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied.

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

This motion is DENIED. By prior order of the court (doc. #36), debtor had until either July 18, 2019 to file a written response to the chapter 13 trustee's opposition, or in lieu of a written response, to file, serve, and set for hearing an amended, confirmable plan by July 25, 2019. Debtor did neither. Therefore the motion is DENIED.

16. [19-11951](#)-B-13     **IN RE: JOYCE FITZPATRICK**  
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC  
7-1-2019    [\[13\]](#)

JOYCE FITZPATRICK/MV  
PETER BUNTING

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

DISPOSITION:     Granted.

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

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



1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion is GRANTED. 11 U.S.C. § 1325(a) (\*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle acquired for the personal use of the debtor at its current amount, as opposed to the amount due on the loan, when the loan is secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of the filing.

Debtor asks the court for an order valuing a 2012 Inifiniti G37 at \$10,138.00. Doc. #13. Creditor Carmax Business Services, LLC's ("Creditor") claim states the amount owed to be \$22,567.95. Claim #1. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$10,138.00. Doc. #15. Debtor incurred the debt on February 11, 2015. Id. That date is more than 910 days before debtor filed this case.

The debtor is competent to testify as to the value of the 2012 Inifniti G37. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$10,138.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

17. [19-12058](#)-B-13     **IN RE: RICHARD/DAWN MARTINES**  
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-1-2019    [\[24\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

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

DISPOSITION:     Sustained.

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

This objection 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 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 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 objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on June 26, 2019 and this objection was filed on July 1, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee makes three objections.

First, according to Schedule A/B, line 3.2, Debtors own a 2015 GMC Yukon XL SLT valued at \$35,740.00. Doc. #1. According to Schedule A/B, "[f]unds from personal injury settlement were used to purchase vehicle." Id. Debtors' exempt the 2015 GMC Yukon XL SLT under California Code of Civil Procedure § 704.140. Id.

Second, schedule A/B, line 24, lists "State Farm Unf Transfer Minor Act for education (Personal Injury Settlement was used to purchase this)," valued at \$5,785.00. Debtors exempt the "State Farm Unf Transfer Minor Act" under C.C.P. § 704.140, in the amount of \$5,785.00.

Third, schedule A/B, line 21, lists "IRA: State Farm" valued at \$8,000.00. Debtors exempt the IRA under C.C.P. § 704.115(a)(1) & (2), (b).

C.C.P. § 704.140 provides:

"(a) . . . a cause of action for personal injury is exempt without making a claim.  
(b) . . . an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor . . . ."

Here, based on Debtors' Schedules, Debtors used funds from a personal injury settlement to purchase the 2015 GMC Yukon XL SLT. C.C.P. § 703.080 does permit the tracing of exempt funds however, exempt funds only remain exempt "to the extent that it can be traced into **deposit accounts or in the form of cash or its equivalent.**" C.C.P. § 703.080(a) (emphasis added).

It is Debtors' burden to demonstrate that personal injury settlement funds were used to purchase the 2015 GMC Yukon XL SLT and that the 2015 GMC Yukon XL SLT is a deposit account or is a form of cash or its equivalent. See C.C.P. § 703.080(b); see also In re Miller, No. 16-12687-B-7, 2018 WL 878841 (Bankr. E.D. Cal. Feb. 12, 2018) (finding that retirement funds lost their exempt status when they were used to purchase real property).

In addition, Schedule A/B, line 24, lists "State Farm Unf Transfer Minor Act for education (Personal Injury Settlement was used to purchase this)", valued at \$5,785.00. Since the personal injury settlement was not provided to the Trustee, the Trustee is unable to verify whether the above account was created with personal injury funds awarded to a minor child. Thus, the Trustee is unable to determine whether this asset is property of the bankruptcy estate.

It is Debtors' burden to demonstrate that the personal injury settlement award was used to fund the "State Farm Unf Transfer Minor Act for education" and that the "State Farm Unf Transfer Minor Act for education" is a deposit account or is a form of cash or its equivalent. See C.C.P. § 703.080(b);

Finally, the Trustee requests copies of the State Farm IRA formation documents and statements, listed on Schedule A/B, line 21, to verify that the IRA qualifies as a retirement IRA under the Internal Revenue Code of 1986, as required by C.C.P. § 704.115.

The court finds that the trustee is correct, and in the absence of any objection or opposing evidence, SUSTAINS the trustee's objection.

18. [19-11859](#)-B-13     **IN RE: JOSHUA BOVARD**  
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-1-2019    [\[29\]](#)

MICHAEL MEYER/MV  
PETER FEAR

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor filed an amended schedule C on July 18, 2019. Doc. #32.

19. [19-12061](#)-B-13     **IN RE: VINCENT/DEBORAH FRASCONA**  
[WLG-1](#)

MOTION TO CONFIRM PLAN  
6-26-2019    [\[17\]](#)

VINCENT FRASCONA/MV  
NICHOLAS WAJDA

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.

20. [19-11463](#)-B-13     **IN RE: CHATBANT SROW**  
[MHM-5](#)

MOTION TO DISMISS CASE  
6-27-2019    [\[36\]](#)

MICHAEL MEYER/MV  
JERRY LOWE

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order dismissing the case has already been entered. Doc. #45.

21. [19-12163](#)-B-13     **IN RE: JACINTO/DEE'ANNA OROSCO**  
[MHM-2](#)

MOTION TO DISMISS CASE  
6-26-2019    [\[23\]](#)

MICHAEL MEYER/MV  
TIMOTHY DUCAR  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Denied.

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

This motion is DENIED. 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.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to appear at the § 341 meeting, file schedule H, and file form 122C-1. Doc. #23. Debtors timely opposed, stating that they appeared at the continued § 341 meeting and have filed the missing documents. The court takes judicial notice of amended schedule H and form 122C-1. Doc. #31, 38.

Unless the trustee can point to an omission by the debtors, the court finds that the record shows that the debtors have cured the deficiencies outlined in the trustee's motion. The motion is DENIED.

22. [19-12265](#)-B-13     **IN RE: ISAIAS HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-8-2019    [\[16\]](#)

THOMAS GILLIS  
FINAL INSTALLMENT PAYMENT OF \$310.00 ON 7/11/19

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

The record shows that the installment fees now due were paid in full on July 11, 2019.

23. [19-11973](#)-B-13     **IN RE: JOSE GONZALEZ**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
7-1-2019    [\[15\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Overruled.

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") 9014-1(f)(1) and will proceed as scheduled.

This objection is OVERRULED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on June 26, 2019 and this objection was filed on July 1, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under

[relevant California law] and the extent to which that exemption applies."

Debtor owns two vehicles, a 2001 Dodge Dakota and a 2009 Ford E-150. Doc. #1. Debtor exempted the entire value of the Ford E-150 under California Code of Civil Procedure § 704.060 and nearly all of the Dodge Dakota under C.C.P. § 704.010.

Section 704.060 provides for the exemption of "tools, implements . . . equipment, one commercial motor vehicle . . ." if the combined equity does not exceed \$8,725.00 "if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood." Subsection (c) provides that a motor vehicle cannot be exempted under this section "if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section."

The debtor opposed, stating that he cannot use the Dakota for business because (1) the E-150 is used solely for business and the equipment used is truck mounted and cannot be transferred from vehicle to vehicle, (2) the equipment stored and used in the E-150 would be exposed to the elements if stored in Dakota and could break, and (3) the usable space of the Dakota is not large enough to store the equipment. Doc. #18. Debtor also included pictures of the vehicles. Doc. #19.

Unless the trustee withdraws this objection, based on the available evidence, the court finds that the Dodge Dakota is not reasonably adequate for use in the debtor's trade, business, or profession, and that the Ford E-150 is reasonably necessary to and actually used by the judgment debtor in the exercise of a trade, business, or profession by which the judgment debtor earns a livelihood. This objection is OVERRULED.

24. [19-12878](#)-B-13     **IN RE: MICHAEL/SALENA NOWAK**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
7-15-2019    [\[13\]](#)

MICHAEL NOWAK/MV  
PETER BUNTING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR")

9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11037. That case was filed on March 19, 2019 and was dismissed on May 10, 2019 voluntarily by the debtors. This case was filed on July 3, 2019 and the automatic stay will expire on August 2, 2019.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith does not arise. Debtor's previous case was dismissed voluntarily, though there was a pending motion to dismiss by the chapter 13 trustee. Unless opposition is presented at the hearing, the court finds that this case was filed in good faith. Debtors dismissed the previous case because they believed they would be able to settle their debts outside of bankruptcy. Doc. #15. While they were successful in some areas, other creditors would not be able to agree with the debtors. Debtors



have paid all fees and filed necessary schedules, and appear to be able to complete a chapter 13 plan.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

25. [19-11879](#)-B-13     **IN RE: ANDREW ARAGON**  
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES,  
INC.  
6-30-2019    [\[14\]](#)

ANDREW ARAGON/MV  
TIMOTHY SPRINGER

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

DISPOSITION:     Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The motion is DENIED WITHOUT PREJUDICE.

The declaration does not contain the debtor's opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "value," which is not specific enough. Doc. #16.

Therefore, this motion is DENIED WITHOUT PREJUDICE.

26. [19-11680](#)-B-13     **IN RE: JULIO/JENNIFER ALVARICO**  
[SL-1](#)

MOTION TO VALUE COLLATERAL OF SAFE 1 CREDIT UNION  
7-12-2019    [\[20\]](#)

JULIO ALVARICO/MV  
SCOTT LYONS

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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

The motion is GRANTED. 11 U.S.C. § 1325(a)(\*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle acquired for the personal use of the debtor at its current amount, as opposed to the amount due on the loan, when the loan is secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of the filing.

Debtors ask the court for an order valuing a 2012 Nissan Quest at \$5,982.00. Doc. #20. Creditor Safe 1 Credit Union's ("Creditor") claim states the amount owed to be \$8,519.98. Claim #1. Debtors' declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$5,982.00. Doc. #23. Debtors incurred the debt on September 8, 2016. Id. That date is more than 910 days before debtor filed this case.

The debtor is competent to testify as to the value of the 2012 Nissan Quest. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$5,982.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

27. [19-12280](#)-B-13      **IN RE: MARGARITO/GUADALUPE VILLEGAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-8-2019    [\[15\]](#)

THOMAS GILLIS

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                The minutes of the hearing will be the court's findings and conclusions.

ORDER:                        The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

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

28. [15-12681](#)-B-13      **IN RE: MICHAEL/YVONNE MIRIGIAN**  
[MHM-1](#)

MOTION TO MODIFY PLAN  
6-21-2019    [\[38\]](#)

MICHAEL MEYER/MV  
DAVID JENKINS  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                This matter will proceed as a scheduling conference.

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

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether the debtors have acquired their share of the trust assets

The legal issues appear to include: whether the proposed plan complies with the bankruptcy code.

29. [18-15084](#)-B-13     **IN RE: ROBERT SANFORD**  
[SL-2](#)

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

ROBERT SANFORD/MV  
SCOTT LYONS  
RESPONSIVE PLEADING

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

DISPOSITION:        Granted.

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

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

This motion is GRANTED. The chapter 13 trustee withdrew his opposition on July 22, 2019. Doc. #69. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

30. [19-12288](#)-B-13     **IN RE: EDWARD/NIKKI TREADWAY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-8-2019    [\[24\]](#)

SUSAN HEMB  
INSTALLMENT PAYMENT OF \$100.00 ON 7/8/19

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

The record shows that the installment fees now due have been paid.  
Installment payment of \$100.00 was received on July 8, 2019.

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

31. [19-12288](#)-B-13     **IN RE: EDWARD/NIKKI TREADWAY**  
    [SAH-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, NATIONAL  
ASSOCIATION  
6-19-2019    [\[13\]](#)

EDWARD TREADWAY/MV  
SUSAN HEMB

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

DISPOSITION:        Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process  
requires that the movant make a *prima facie* showing that they are  
entitled to the relief sought. Here, the moving papers do not  
present "sufficient factual matter, accepted as true, to 'state a  
claim to relief that is plausible on its face.'" In re Tracht Gut,  
LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v.  
Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly,  
550 U.S. 544, 570 (2007).

The motion is DENIED WITHOUT PREJUDICE.

The declaration does not contain the debtor's opinion of the  
relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be

"replacement value," not "current value" or "value," which is not specific enough. Doc. #16.

Therefore, this motion is DENIED WITHOUT PREJUDICE.

32. [19-12388](#)-B-13     **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-10-2019    [\[16\]](#)

DAVID JENKINS  
FINAL INSTALLMENT PAYMENT OF \$310.00 ON 7/12/19

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

DISPOSITION:     The OSC will be vacated.

ORDER:             The court will issue an order.

The record shows that the installment fees now due were paid in full on July 12, 2019.

33. [18-10894](#)-B-13     **IN RE: JUAN REBOLLERO**  
[TOG-4](#)

MOTION TO MODIFY PLAN  
6-21-2019    [\[88\]](#)

JUAN REBOLLERO/MV  
THOMAS GILLIS

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.

34. [19-11795](#)-B-13     **IN RE: CHRISTOPHER/REGINE DAVENPORT**  
[PBB-2](#)

MOTION TO CONFIRM PLAN  
6-18-2019    [\[34\]](#)

CHRISTOPHER DAVENPORT/MV  
PETER BUNTING

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

DISPOSITION:     Granted.

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

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

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

35. [19-11795](#)-B-13      **IN RE: CHRISTOPHER/REGINE DAVENPORT**  
[PBB-3](#)

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA  
6-19-2019    [\[41\]](#)

CHRISTOPHER DAVENPORT/MV  
PETER BUNTING

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

DISPOSITION:      Granted.

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

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

This motion is GRANTED. In 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). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 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 the debtor in favor of Creditors Bureau USA in the sum of \$2,409.64 on May 5, 2017. Doc. #44. The abstract of judgment was recorded with Fresno County on May 22, 2017. Id. That lien attached to the debtor's interest in a residential real property in Clovis, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$305,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$223,041.12 on that same date, consisting of a first deed of trust in favor of Lakeview Loan Servicing and a tax lien in favor of the Internal Revenue Service.



Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000.00. Doc. #1, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

36. [19-11857](#)-B-13     **IN RE: THERESE DOZIER**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
6-14-2019    [\[25\]](#)

MICHAEL MEYER/MV  
NEIL SCHWARTZ

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #45.

37. [13-11337](#)-B-13     **IN RE: GREGORY/KARAN CARVER**  
[TCS-3](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR  
VIOLATION OF THE DISCHARGE INJUNCTION  
3-18-2019    [\[84\]](#)

GREGORY CARVER/MV  
TIMOTHY SPRINGER

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

DISPOSITION:                    Dropped from calendar.

ORDER:                            The parties shall submit an order to the court  
within seven days of this hearing.

38. [14-11111](#)-B-13     **IN RE: PHILLIP/MARNIE HAMILTON**  
[TCS-8](#)

MOTION TO INCUR DEBT  
7-18-2019    [\[166\]](#)

PHILLIP HAMILTON/MV  
TIMOTHY SPRINGER

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

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

This motion is GRANTED. Debtors want to borrow \$39,500 to buy a 2018 Chevy Suburban. Debtors have been approved for that amount at 10.49%. The monthly payment would be \$734.00 per month, and the debt would be secured by the vehicle. Debtors have completed their plan payments.

Unless opposition is presented at the hearing, the court intends to GRANT the motion.