

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, August 15, 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**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
2-6-2019 [\[1\]](#)

DAVID JOHNSTON

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

DISPOSITION: The Plan having been confirmed August 7, 2019 (doc. #166) the status conference will be dropped from calendar.

ORDER: The court will issue the order.

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-2019 [\[137\]](#)

VW CREDIT LEASING, LTD./MV
DAVID JOHNSTON
ERICA LOFTIS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-

mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, VW Credit Leasing, LTD., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2015 VW Jetta. Doc. #137.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to pay the amount due under the lease. The movant has produced evidence that the lease matured prepetition on November 20, 2017 and debtors owe \$18,485.24. Doc. ##140, 141. Debtors did not oppose. Also, the Plan confirmed August 7, 2019 (doc. #166) provides for the rejection of unexpired leases. Sec. 3.01

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the vehicle is depreciating in value.

3. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[FW-3](#)

MOTION TO PAY
7-9-2019 [[128](#)]

KULWINDER SINGH/MV
DAVID JOHNSTON

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.

Movant Fear Waddell, P.C., general co-counsel to debtors, asks the court for an order authorizing debtors to pay Fear Waddell a \$10,000.00 retainer which Fear Waddell will hold pending approval of attorney fees and costs by the court. Doc. #128. Debtor has thus far deposited \$4,600.00 into Fear Waddell's attorney-client trust account. Id. The motion received no opposition.

The court finds the proposed arrangement reasonable since the court will approve fees before payment from the trust account is authorized. There is a legitimate business reason to authorize the use of property of the estate since the Fear Waddell firm was retained post-petition and have not received monies before the petition was filed.

Therefore, the motion is GRANTED.

4. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WJH-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM LAW
GROUP FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
7-25-2019 [\[463\]](#)

RILEY WALTER

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 Federal Rule of Bankruptcy Procedure 2002(a)(6) 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 will be GRANTED. Debtor's bankruptcy counsel, the Law Office of Walter Wilhelm Law Group for Riley C. Walter, requests fees of \$10,597.50 and costs of \$1,073.37 for a total of \$11,670.87 for services rendered from May 14, 2019 through June 30, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Advising debtor about the administration of its chapter 11 case and its duties as debtor-in-possession, (2) Working with the debtor and Terence Long relative to the Monthly Operating Reports, (3) Financing and advising debtor's principals about the use of cash collateral, (4) Working on the complaint against West Liberty Foods, and (5) Beginning the work on a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$10,597.50 in fees and \$1,073.37 in costs.

5. [18-13678](#)-B-11 **IN RE: VERSA MARKETING, INC.**
[WJH-4](#)

MOTION FOR COMPENSATION FOR TERENCE J. LONG, CONSULTANT(S)
7-25-2019 [470](#)

TERENCE LONG/MV
RILEY WALTER

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 Federal Rule of Bankruptcy Procedure 2002(a)(6) 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 will be GRANTED. Debtor's consultant, Terence J. Long, requests fees of \$5,499.00 for services rendered from May 10, 2019 through July 24, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Case administration, (2) Financing and cash collections, (3) Fee and

employment applications, (4) Claims administration and objections, and (5) working on the plan and disclosure statement. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$5,499.00 in fees.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[SLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-15-2019 [\[1550\]](#)

JUANITA CABRERA/MV
RILEY WALTER
STEPHEN LABIAK/ATTY. FOR MV.
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 will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The movant, Juanita Cabrera ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) in order to dismiss debtor Tulare Local Healthcare District dba Tulare Regional Medical Center ("Debtor" or "TRMC") from an action in Tulare County Superior Court. Doc. #1550.

About seven months before this Chapter 9 case began, Movant filed two lawsuits against Debtor, Healthcare Conglomerate Associates LLC ("HCCA"), and Drs. Paul Gupta and Robert Kollen in Tulare County Superior Court ("State Court Action"). The cases were consolidated. The movant's claim is for medical negligence from injuries stemming from a surgical sponge allegedly left inside movant after medical procedures at the debtor's hospital.

About 10 months ago, Movant sought to dismiss Debtor from the State Court Action. HCCA and other defendants opposed the dismissal and the Superior Court denied the motion finding that stay relief from the bankruptcy court was needed. Last February, Dr. Gupta and Movant reached a settlement that was approved by the Superior Court. Movant has stated that they will only be looking to Dr. Kollen and HCCA for recovery in the State Court Action and any recovery against Debtor will be through the claim procedure in the bankruptcy court. Movant argues cause exists under § 362(d)(1) supported by the factors outlined in In re Sonnax Industries, Inc., 907 F.2d 1280, 1285 (2d Cir. 1990). Doc. #1550.

Debtor timely opposed, stating Movant was not entitled to stay relief because Movant could not show "extraordinary circumstances" to justify relief. Specifically, Debtor plans to file an objection to Movant's claim, Debtor's Plan of Adjustment has been proposed which will pay a percentage of the claim and "if the stay were vacated [Debtor] would have to pay out the \$100,000 deductible which is greater in amount than [Movant] will receive under the plan," thereby prejudicing debtor, and lifting the stay here would mean Movant "would receive a better treatment than other unsecured creditors." Doc. #1569.

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

First, Debtor's opposition assumes that the movant wants to proceed against the debtor in Superior Court. Rather, movant wants stay relief for the sole purpose of *dismissing* the debtor from the State Court Action. Debtor's opposition seems to argue for that result, which is what movant says she is seeking to accomplish: resolution of any remaining claim against the debtor in the bankruptcy case.

Second, this court could not liquidate the personal injury claim asserted by movant without consent from all parties. 28 U.S.C. § 157(b)(2)(B). The court assumes, without deciding, that both movant and the debtor have at least impliedly consented but that remains to be litigated, apparently.

Third, the negative effects of granting stay relief urged by the debtor seem non-existent. The Debtor argues that allowing the personal injury case to proceed in Superior Court - against Dr. Kollen and HCCA if this motion is granted - will cause the Debtor to have two pernicious problems: indemnification of HCCA and payment of \$100,000.00 in "deductible" legal expenses under an insurance policy. HCCA and the debtor have resolved their differences and HCCA has withdrawn the claims they filed in this case. Judicial Notice taken under Federal Rule of Evidence 201. So, there is either a post-petition agreement to indemnify for which the debtor and HCCA have already bargained, or any pre-petition indemnity obligation is resolved.

The deductible also appears to be a non-issue. The debtor may have already incurred some deductible liability to date and the debtor's opposition is devoid of any evidence as to how that deductible has been or continues to be paid. There are other parties covered by the same policy who are still in the State Court Action. Neither Dr. Gupta nor Dr. Kollen has filed a claim in the case so any indemnity obligation of the District to them is not allowed. Also, if the debtor is going to object to movant's claim will the deductible be at issue then, as well? So, no greater "harm" is suffered by the debtor under either scenario. The debtor does not meet its burden on this issue either.

Fourth, the remaining parties in the State Court Action (HCCA and Dr. Kollen) are not protected by the automatic stay. If the debtor is dismissed from the State Court Action, there is no impediment to movant litigating her claims against the remaining parties. No party has filed an action asking for an injunction to protect the remaining defendants.

Fifth, debtor's "extraordinary circumstances" argument is not applicable or persuasive, here. Debtor argues that unless "extraordinary circumstances" exist, stay relief is not warranted. Debtor cites In re Residential Capital, LLC, 501 BR 624, 643-44 (Bankr. S.D.N.Y. 2013). Residential Capital relied on controlling second circuit authority, Sonnax Indus. Inc. v. Tri Component Prods. Corp (In re Sonnax Indus. Inc.), 907 F. 2d 1280, 1286 (2d Cir. 1996) for the various factors to be reviewed when stay relief is requested to pursue litigation other than in the bankruptcy court. But Residential Capital involved a request for stay relief to pursue an appeal which was pending when the bankruptcy case was filed. Not, as in this case, a request for relief to dismiss the debtor from pending litigation. Also, Residential Capital did not involve a claim for personal injury.

Sixth, even if relevant, the application of the factors dealing with stay relief in litigation situations militate in favor of granting relief. The twelve *Sonnax* factors are identical to the *Curtis* factors. When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

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

(12) the impact of the stay on the parties and the "balance of hurt"

The first factor weighs in favor of granting relief because relief from the stay would result in a resolution of the issues for the remaining parties to the State Court Action. The indemnification issue has been discussed above. Debtor and movant are going to litigate movant's claim against the debtor in this court so if not favoring granting the motion the factor is neutral.

The second factor weighs in favor of granting relief because the State Court Action is not connected to nor would seemingly interfere with the bankruptcy case when the debtor is dismissed. The indemnity and "deductible" issues are not problems now.

The third and fourth factors are not at issue.

The fifth factor weighs in favor of granting relief. Debtor's insurance appears to be able to pay any damages and it covers the remaining defendants. There may be a deductible, but this motion does not envision further involvement by the debtor in the State Court Action. Since the debtor in opposition references the claim adjudication in this court, this factor does not support denial of relief.

The sixth factor weighs in favor of granting relief. According to Debtor, Debtor may be a conduit for the proceeds in question due to the insurance policy. The State Court Action involves third parties.

The seventh factor weighs in favor of granting relief because Movant's case will not prejudice other creditors if the debtor is dismissed. Debtor has not established how dismissal from the state court litigation and litigating the claim in this court (assuming the parties consent) will prejudice creditors any more than objecting to any other claim.

The eighth and ninth factors are inapplicable.

The tenth factor weighs in favor of granting relief because two non-debtor defendants are not subject to this court's jurisdiction.

The eleventh factor is neutral. The motion, if granted, will result in dismissal of the debtor from the State Court Action. While the case pending in superior court is not very far along, the prosecution of that case will not affect the debtor in any way.

The twelfth factor weighs in favor of granting relief because lifting the stay will allow Movant's case to continue moving forward to resolution. The debtor has filed a Plan of Adjustment and is, if the Plan is confirmed, going to object to claims including movant's claim. Movant is apparently aware of that and wants the court to determine whether the claim against the Debtor is allowed.

After review of this case's docket, there have been approximately 14 motions for stay relief, including this motion, filed against Debtor. The overwhelming majority of the motions were resolved by stipulation. Of the 14 stay relief motions, approximately five had

facts like this motion: medical malpractice claims and pre-petition state court litigation. Specifically, matters ASM-1, JAB-1, ABS-1, KBK-1, and WW-31.

The parties stipulated to relief in three of those matters. ASM-1 and JAB-1 were heard by the court and granted. In at least two of those matters (and another stay relief matter with different facts, DLM-2), the creditor seeking stay relief waived the first \$100,000.00 of any money recovery ordered by the court, ostensibly to provide for Debtor's \$100,000.00 deductible.

The only differences there appear to be now are that (1) Debtor's plan of reorganization has been filed, and (2) Movant asks the court for stay modification to dismiss Debtor from the State Court Action specifically, as opposed to a general prayer to lift the stay to allow the action to proceed to conclusion. The movant's claim against the debtors will be adjudicated in this court (if the parties consent) which is what debtor urges in opposition to the motion.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) only for the limited purpose of permitting movant to dismiss the debtor from the State Court Action.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-108](#)

OBJECTION TO CLAIM OF SOUTHERN INYO HEALTHCARE DISTRICT, CLAIM
NUMBER 235 AND 238
5-6-2019 [\[1392\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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

DISPOSITION: Continued to September 26, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #1582.

The parties stipulated to continue the matter to September 26, 2019 at 9:30 a.m. Southern Inyo Health District shall file and serve written opposition, if any, by September 12, 2019. Debtor's reply, if any, shall be filed and served not later than September 19, 2019.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-95](#)

CONFIRMATION HEARING RE: CHAPTER 9 PLAN
5-22-2019 [[1440](#)]

RILEY WALTER

NO RULING.

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1052](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
5-28-2019 [[1](#)]

TULARE LOCAL HEALTH CARE DISTRICT V. GREENE ET AL
RILEY WALTER/ATTY. FOR PL.

NO RULING.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1052](#)

CONTINUED STATUS CONFERENCE RE: CROSSCLAIM
6-4-2019 [[7](#)]

TULARE LOCAL HEALTH CARE DISTRICT V. GREENE ET AL
PETER FASHING/ATTY. FOR PL.

NO RULING.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1052](#) [WW-1](#)

CONTINUED AMENDED MOTION FOR REMAND
6-17-2019 [\[17\]](#)

TULARE LOCAL HEALTH CARE DISTRICT V. GREENE ET AL
RILEY WALTER/ATTY. FOR MV.
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
will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice
("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion is GRANTED. The case shall be remanded back to the
Tulare County Superior Court.

Debtor-Plaintiff ("Plaintiff" or "TRMC") asks this court to remand
this adversary proceeding, removed by defendants Baker & Hostetler
LLP ("B&H") and Bruce Greene, Esq. ("Greene") (collectively
"Defendants") on equitable grounds.

Defendants timely opposed. Doc. #23. The court notes joinders by
cross-defendants Healthcare Conglomerate Associates, LLC ("HCCA")
and Yorai "Benny" Benzeevi (collectively "Cross-Defendants"). Doc.
#42. The joinder however was not timely filed and Cross-Defendants
did not seek leave to file late opposition. The joinder will be
stricken under LBR 9014-1(l).

28 U.S.C. § 1452(b) states

The court to which such claim or cause of action is
removed may remand such claim or cause of action on any
equitable ground. An order entered under this subsection
remanding a claim or cause of action, or a decision to
not remand, is not reviewable by appeal or otherwise by
the court of appeals under section 158(d), 1291, or 1292
of this title or by the Supreme Court of the United
States under section 1254 of this title.

"[28 U.S.C. § 1452(b)] gives the bankruptcy court a broad grant of
authority to remand a previously removed claim for relief 'on any
equitable ground.'" Nilsen v. Nilsen (In re Cedar Funding, Inc.),
419 B.R. 807, 820 (9th Cir. BAP 2009). "The 'any equitable ground'
standard is an unusually broad grant of authority; it subsumes and
reaches beyond all of the reasons for remand under the nonbankruptcy
removal statutes." In re Roman Catholic Bishop, 374 B.R. 756, 761
(Bankr. S.D. Cal. 2007) (citing In re McCarthy, 230 B.R. 414, 417
(9th Cir. BAP 1999)). The BAP referenced fourteen factors for courts

to consider when deciding whether to remand. In re Cedar Funding, Inc. at 821 (citing Citigroup, Inc. v. Pac. Inv. Mgmt. Co. (In re Enron Corp.), 296 B.R. 505, 508 n.2 (C.D. Cal. 2003)).

The fourteen factors are

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other non-bankruptcy proceeding;
- (5) jurisdictional basis, if any, other than § 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of non-debtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

These factors assist a court's remand decision; they do not control it. In re Roman Catholic Bishop, 374 B.R. at 762.

In McCarthy v. Prince (In re McCarthy), 230 B.R. 414 (9th Cir. BAP 1999), the Ninth Circuit Bankruptcy Appellate Panel ("BAP") affirmed the bankruptcy court's decision to remand the case on several simple grounds. First, that all counts in the complaint were grounded upon state law and "[s]tate courts are, by definition, fully competent to resolve disputes governed by state law". Second, that federal jurisdiction was not exclusive. Third, that the claims were asserted against a non-debtor party. Fourth, that the outcome of the action was not likely to impair the ability of the trustee to distribute the estate property.

Factors one, two, five, six, eight, eleven, twelve, thirteen, and fourteen weigh in favor of remand. The court finds that equitable grounds exist to remand the case back to the Tulare County Superior Court.

Remand will not affect the efficient administration of the case. The debtor filed the action in Superior Court. The debtor has proposed a Plan of Adjustment. If confirmed, the performance of the debtor under the Plan will not be affected since the debtor contemplates pursuit of the claim on behalf of the debtor under the Plan.

State law issues predominate over bankruptcy issues - the five causes of action in the complaint are for breaches of fiduciary duty

and contract, professional negligence, and damages for fraud, none of which are specifically bankruptcy issues. No claims arise under or arise in Title Eleven.

There is no jurisdictional basis for this court to decide the matter independent of 28 U.S.C. § 1334. The provision applicable is "related to" jurisdiction. To be sure, this is a very broad grant of authority. In this circuit "related to" jurisdiction encompasses matters that could conceivably have any effect on the estate being administered in bankruptcy. In re Feitz, 852 F.2d 455, 457 (9th Cir. 1988); Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013)).

Here, there is no "estate" as it is a Chapter 9 case. So, the issue is whether this claim would have any conceivable effect on property of the debtor. 11 U.S.C. § 902(1). Granted, the outcome of the litigation could have a conceivable effect but, there are at least three factors suggesting the "effect" is minimal and any effect does not militate against remand. One - The debtor brought this action in the Tulare County Superior Court thereby choosing the forum. Two - the issues raised are "non-core" meaning any party could ask to withdraw the reference of the proceeding and this court cannot finally decide the matter without the parties' consent. Three - the Plan of Adjustment, if confirmed, contemplates the pursuit of this litigation.

The proceeding is remote to the issues in this bankruptcy case. The claims asserted are not bankruptcy related matters. There are many non-debtor parties named in the case. The remoteness is evidenced by the fact that three of the five defendants have not joined in Defendants' notice of removal, and one of those three contests the jurisdiction of this court over this matter.

It is not feasible to sever state law claims from core bankruptcy matters and allow state court judgments to be enforced in the bankruptcy court. There are several non-debtor defendants named in the action and it would be prejudicial to them to have this court hear the matter. The action itself only raises state law claims. No bankruptcy claim is raised in the complaint.

A right to a jury trial exists. The claims asserted in the complaint are for damages. The theories of recovery are "legal" in nature. There is a right to a jury trial

Remanding the proceeding is consistent with interests of comity. There is no question the Tulare County Superior Court has jurisdiction over this matter, and judicial economy will be better preserved by having all parties participate in one forum.

Contrary to Defendants' claims, the Tulare County Superior Court's familiarity and understanding of the facts of this adversary proceeding are the same or similar to this court's. Despite having had several other proceedings (some of which were removed by the Debtor) filed in this court, they have all settled with little to no court involvement. The evidence relating to claims in this adversary proceeding provided to this court is minimal and was provided in

connection with unrelated litigation earlier in the case. Substantive motions were either withdrawn or settled before the court had an opportunity to rule on them. The court is of course familiar with Debtor's case generally and the many bankruptcy issues affecting the case throughout its history. But the claims made in the complaint in this case are a different matter.

Finally, there is a risk of prejudice to the other parties to this litigation if the proceeding is not remanded. There can be substantial delays in this court just determining whether the proceeding will be heard by the District Court or not and what portion of the case is heard by this court, or not. Plus, the state law applicable to the claims is regularly applied by the Superior Court. There is not uniform support for this matter to be heard in this court by the parties to the litigation.

Even if there is "related-to" jurisdiction, the fact remains that equitable grounds exist to grant this motion for remand. This motion is GRANTED.

12. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[WJH-3](#)**

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-1-2019 [\[335\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER

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.

Debtor Coalinga Regional Medical Center, a California local healthcare district ("Debtor") asks the court for authorization to reject certain nine executory contracts ("Designated Contracts").

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may . . . reject any executory contract"

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to reject is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the Designated Contracts as listed in Exhibit A, doc. #338.

Any claim based on this motion shall be filed on or before November 14, 2019 provided notice of the order rejecting this contract is served on the other parties to the contracts on or before August 22, 2019.

1:30 PM

1. [19-11801](#)-B-13 **IN RE: SHEREE ENGBRECHT**
[MHM-3](#)

MOTION TO DISMISS CASE
7-17-2019 [\[33\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
DISMISSED 7/23/19

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. #39.

2. [19-10305](#)-B-13 **IN RE: RUBEN/MARIA QUINTANILLA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-10-2019 [\[27\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to confirm a Chapter 13 Plan. Accordingly, the case will be dismissed.

3. [19-13111](#)-B-13 **IN RE: DALE/MICHELLE SEAMONS**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
7-30-2019 [9](#)

DALE SEAMONS/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 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. 15-11526. That case was filed on April 20, 2015 and was dismissed on December 17, 2018 for failure to make plan payments. This case was filed on July 22, 2019 and the automatic stay will expire on August 21, 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 perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

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

Debtors were in chapter 13 bankruptcy for nearly four years when the case was dismissed for failure to make plan payments. Debtors fell behind in making payments because debtor Michelle Seamons fell sick and was unable to work. Doc. #11. Debtors were unable to modify their plan prior to the case being dismissed. Id. Debtors are now confident that they will be able to complete a chapter 13 plan because their proposed payment has been lowered.

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.

4. [19-11512](#)-B-13 **IN RE: TEOFILO/CHRISTY RODRIGUEZ**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-18-2019 [\[43\]](#)

STEPHEN LABIAK
RESPONSIVE PLEADING

NO RULING

5. [19-13013](#)-B-13 **IN RE: FREDDY HERNANDEZ**
[BRL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF
FROM CO-DEBTOR STAY, MOTION FOR ADEQUATE PROTECTION
7-23-2019 [\[13\]](#)

LEK SERVICE CORP./MV
BENJAMIN LEVINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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 movant, LEK Service Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 467 W. Magnolia Avenue in Hanford, California. This bankruptcy case was dismissed August 5, 2019. Doc. #22. So, the automatic stay terminated by operation of law as of August 5, 2019. 11 U.S.C. § 362(c)(1), (2)(B).

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (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.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

On or about June 17, 2013, Freddy Hernandez ("Debtor") and his wife, Caroline Hernandez, along with Cecilio Gonzales and his wife KC Gonzales (collectively the "Gonzaleses"), obtained a loan from Creditor's predecessor, executing and delivering to Creditor's predecessor a promissory note in the principal amount of \$108,500.00. Doc. #15. The promissory note was secured by a first deed of trust on the subject property, with the original lender as the beneficiary under the trust. Id. The note and deed of trust were assigned to Movant in September 2018. Doc. #16.

Debtor and the other obligors originally defaulted on Movant's obligation by failing to make payments due September 1, 2017, and all payments thereafter. Additionally, Debtor and the other obligors failed to provide proof of insurance for the Property and Movant had to obtain forced-place insurance to protect its interest in the Property. Even further, Debtor and the other obligors failed to pay property taxes for the Property and the property tax delinquency exceeds \$11,800.00. PLM Lender Services, Inc. ("PLM"), Movant's servicing agent, attempted to sell the property at a foreclosure sale on June 18, 2019, but debtor filed a pro se skeletal chapter 13 petition the day prior. See case no. 19-12596. The case was eventually dismissed for failing to file schedules, a plan, and other documents.

Debtor then filed this case, and likewise the case was dismissed on August 5, 2019 for failure to file schedules and other documents. Doc. #22. The debtor has sought and received orders in both cases permitting payment of filing fees in installments. Also, no motion was made in this case to extend the automatic stay. This evidences that this case was filed for the purpose of delay or hinder movant's rights.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the real property located at 467 Magnolia Avenue, Hanford, California without the consent of the secured creditor or court approval; or multiple bankruptcy filings affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

No other relief shall be granted since the automatic stay is no longer in effect. The motion is GRANTED, in part.

6. [18-12133](#)-B-13 **IN RE: YOLANDA RODRIGUEZ**
[TCS-1](#)

MOTION TO MODIFY PLAN
7-9-2019 [\[41\]](#)

YOLANDA RODRIGUEZ/MV
TIMOTHY SPRINGER

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.

7. [19-12236](#)-B-13 **IN RE: GABRIEL/SANDRA AYALA**
[JM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LENDMARK FINANCIAL SERVICES,
LLC
7-23-2019 [\[15\]](#)

LENDMARK FINANCIAL SERVICES, LLC/MV
PETER BUNTING
DONALD DUNNING/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection is SUSTAINED.

The court must first note movant's procedural errors. The notice of hearing did not comply with Local Rule of Practice 9014-1(f)(2), 9014-1(d)(3) and potentially others. Because debtor responded, the court has decided to take the objection up on its merits. However, failure to comply with the Local Rules of Practice, whether or not a response is provided, may result in the matter being dismissed without prejudice.

Creditor Lendmark Financial Services, LLC ("Creditor") objects to confirmation because the plan fails to provide for the curing of a default and maintenance payments on a secured claim on which final payment is due after the proposed final payment under the plan. 11 U.S.C. § 1322(b)(5). Creditor's collateral is classified in Class 2(B), claims reduced based on value of collateral. Doc. #2.

Debtor responded, stating, inter alia, that a motion to value the collateral is unnecessary. Doc. #20. Debtors do not explicitly state why a motion to value is unnecessary, but plan section 3.08(c) does. That section states that "[D]ebtor may reduce the claim amount to the value of the collateral securing it by filing, serving, setting for hearing, and prevailing on a motion to determine the value of that collateral." As of August 13, 2019, no such motion has been filed, served, set for hearing, or prevailed on.

Lendmark's claim sets forth what is owed. Based on debtors' response, there is equity in the collateral since an IRS claim is less than anticipated. Also, the debtors will consent to payment of the creditor in full. The plan may need amendment unless the matter can be resolved in a confirmation order.

Therefore this objection is SUSTAINED.

8. [18-12542](#)-B-13 **IN RE: ISABEL SANCHEZ**
[TCS-3](#)

MOTION TO CONFIRM PLAN
7-10-2019 [\[97\]](#)

ISABEL SANCHEZ/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

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

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

9. [19-12449](#)-B-13 **IN RE: CONSTANCE LYONS**

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
7-1-2019 [\[14\]](#)

THE BANK OF NEW YORK MELLON/MV
ERICA LOFTIS/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This objection is OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This objection did not have a DCN. Therefore the objection is OVERRULED WITHOUT PREJUDICE.

10. [19-12449](#)-B-13 **IN RE: CONSTANCE LYONS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-18-2019 [\[18\]](#)

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

DISPOSITION: Continued to September 26, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The continued § 341 meeting will be held on August 27, 2019. The chapter 13 trustee asks that the objection be continued to a date after the continued § 341 meeting so he can file a complete objection. Therefore, this matter is continued to September 26, 2019 at 1:30 p.m.

11. [14-14551](#)-B-13 **IN RE: VIRGINIA CULLY**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-16-2019 [\[37\]](#)

VIRGINIA CULLY/MV
PETER FEAR

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. Movant is awarded \$2,886.50 in fees and \$436.67 in costs.

12. [19-12351](#)-B-13 **IN RE: ERICA GOMEZ**
[EMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING,
LLC
7-23-2019 [\[30\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
THOMAS GILLIS
ERIN MCCARTNEY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Creditor Lakeview Loan Servicing, LLC ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor and that the plan is not feasible. Doc. #30, claim #7.

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. #2. Creditor's proof of claim, filed August 1, 2019, states a claimed arrearage of \$34,366.11. This claim is classified in class 1 - paid by the chapter 13 trustee. Plan section 3.07(b)(2) states that if a Class 1 creditor's proof of claim demands a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly.

Debtors' plan understates the amount of arrears. The plan states arrears of \$20,205.06. Doc. #2. Creditor's claim states arrears of \$34,366.11. Though plan section 3.02 provides that the proof of claim, and not the plan itself, that determines the amount that will be repaid, section 3.07(b)(2) requires that the payment be adjusted accordingly for a class 1 claim.

Therefore, this objection is SUSTAINED.

13. [19-12351](#)-B-13 **IN RE: ERICA GOMEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
7-17-2019 [\[24\]](#)

MICHAEL MEYER/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 on August 9, 2019 (Doc. #41).

14. [19-12554](#)-B-13 **IN RE: RAFAELA GARZA THOMAS**
[MHM-1](#)

MOTION TO DISMISS CASE
7-17-2019 [\[17\]](#)

MICHAEL MEYER/MV
SCOTT LYONS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

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

15. [18-11457](#)-B-13 **IN RE: GREGG/WENDY SCHOFIELD**
[PBB-3](#)

MOTION TO MODIFY PLAN
6-25-2019 [\[68\]](#)

GREGG SCHOFIELD/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.

16. [19-11357](#)-B-13 **IN RE: ROBERTO/VERONICA AYALA**
[MHM-3](#)

MOTION TO DISMISS CASE
7-16-2019 [\[56\]](#)

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.

The chapter 13 trustee asks the court to dismiss this case for debtor's failure to confirm a chapter 13 plan. Doc. #56.

Debtor timely opposed, stating that a confirmation hearing is set for September 12, 2019 at 1:30 p.m. Doc. #67. Therefore this motion is continued to September 12, 2019 at 1:30 p.m. to be heard in conjunction with the confirmation hearing. If the plan is confirmed, this motion will be denied. If the plan is confirmed, the motion may be granted.

17. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
6-26-2019 [\[15\]](#)

TIMOTHY SPRINGER

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

DISPOSITION: Sustained.

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

This objection is SUSTAINED. Under the court's previous order (doc.
#30), debtor had either until August 1, 2019 to file and serve a
written response to the chapter 13 trustee's objection, or until
August 8, 2019 to file, serve, and set for a hearing a confirmable,
modified plan. Debtor did neither, and the objection is SUSTAINED.

18. [19-11859](#)-B-13 **IN RE: JOSHUA BOVARD**
[FW-1](#)

MOTION TO CONFIRM PLAN
6-25-2019 [\[20\]](#)

JOSHUA BOVARD/MV
PETER FEAR

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.

19. [19-10161](#)-B-13 **IN RE: ISMAEL SALAS**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY
7-10-2019 [\[36\]](#)

NEIL SCHWARTZ

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 court notes movant's procedural error. LBR 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion and exhibits were combined into one document and not filed separately. Failure to comply with this rule in the future will result in the motion being denied without prejudice.

This motion is GRANTED. Movant is awarded \$7,200.00 in fees and \$393.00 in expenses.

20. [19-12361](#)-B-13 **IN RE: ANITA WASHINGTON**
[NFS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES, LLC
7-23-2019 [\[15\]](#)

PENNYMAC LOAN SERVICES, LLC/MV
TIMOTHY SPRINGER
NATHAN SMITH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This objection is OVERRULED 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).

Creditor PennyMac Loan Services, LLC's ("Creditor") objection is that the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor and that the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325. Doc. #15.

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. #4. Creditor filed a claim on August 9, 2019. The claim states the arrearage owed is \$1,121.88. This claim is classified in class 4 - paid directly by debtor. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11. The debtor 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.

Therefore, this objection is OVERRULED WITHOUT PREJUDICE.

21. [19-11265](#)-B-13 **IN RE: MARTIN/SUSANA SANCHEZ**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
7-3-2019 [\[46\]](#)

MARTIN SANCHEZ/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

22. [19-12265](#)-B-13 **IN RE: ISAIAS HERNANDEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-18-2019 [\[18\]](#)

THOMAS GILLIS

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

DISPOSITION: Continued to September 26, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's

opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than September 12, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by September 19, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 19, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

23. [19-12365](#)-B-13 **IN RE: SCOTT PARSONS**
[MHM-1](#)

MOTION TO DISMISS CASE
7-17-2019 [\[14\]](#)

MICHAEL MEYER/MV
DAVID JENKINS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #21.

24. [14-13666](#)-B-13 **IN RE: JOE/ROWENA GARCIA**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-11-2019 [\[85\]](#)

PETER FEAR

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. Movant is awarded \$5,166.50 in fees and \$198.41 in expenses.

25. [19-10468](#)-B-13 **IN RE: RENEE FONTES**
[JRL-1](#)

OBJECTION TO CLAIM OF STATE NATIONAL COMPANIES, CLAIM NUMBER 9
7-18-2019 [\[25\]](#)

RENEE FONTES/MV
JERRY LOWE

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

DISPOSITION: Overruled without prejudice.

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

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

LBR 3007-1(b) requires objections to claims be set on at least 30 days notice. This objection was filed and served on July 18, 2019. Doc. #28. The objection was set for hearing on August 15, 2019, which is less than 30 days. Therefore the objection did not comply with the local rule and the objection is OVERRULED WITHOUT PREJUDICE.

26. [16-11470](#)-B-13 **IN RE: JOSHUA/BRANDY BARKLEY**
[TCS-4](#)

MOTION TO VACATE DISMISSAL OF CASE
7-31-2019 [\[88\]](#)

JOSHUA BARKLEY/MV
TIMOTHY SPRINGER
DISMISSED: 07/17/2019

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

This case was dismissed on July 20, 2019 for failure to make plan payments. Debtors were required to catch up their plan payments by June 28, 2019 under the Notice of Default filed by the Chapter 13 trustee ("Trustee"). Debtors made the payment on June 26, 2019 through MoneyGram, but it was not credited until July 3, 2019. Debtors will have made all the plan payments once the last payment is credited.

The court finds that vacating the dismissal order is warranted for excusable neglect on the part of the debtors. The payment was made prior to the deadline, but was not credited until after the deadline. The debtors made a good-faith effort to comply with the Trustee's Notice of Default and complete their chapter 13 plan. Therefore this motion is GRANTED.

27. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[AF-1](#)

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

IGNACIO DALUDDUNG/MV
ARASTO FARSAD
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #63.

28. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[RMP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY REAL TIME
RESOLUTIONS, INC.
5-13-2019 [\[18\]](#)

REAL TIME RESOLUTIONS, INC./MV
ARASTO FARSAD
RENEE PARKER/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #61.

29. [19-11974](#)-B-13 **IN RE: JESUS/FATIMA AYALA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-10-2019 [\[26\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #31.

30. [19-12075](#)-B-13 **IN RE: MARIA DEL ROCIO SAAVEDRA**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF PACIFIC SERVICES C.U.
7-9-2019 [\[26\]](#)

MARIA DEL ROCIO SAAVEDRA/MV
STEPHEN LABIAK

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 GMC Terrain at \$9,850.00. Doc. #26. Creditor Pacific Services C.R.'s ("Creditor") claim states the amount owed to be \$17,421.33. Claim #2. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$9,850.00. Doc. #28. Debtor incurred the debt on August 17, 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 GMC Terrain. 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 \$9,850.00. 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.

31. [19-12279](#)-B-13 **IN RE: MELISSA SIMS**
[MHM-2](#)

MOTION TO DISMISS CASE
7-17-2019 [\[16\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #31.

32. [19-10680](#)-B-13 **IN RE: TIMOTHY WHEELER**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-12-2019 [\[44\]](#)

USB LEASING LT/MV
RABIN POURNAZARIAN
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #53.

33. [19-12280](#)-B-13 **IN RE: MARGARITO/GUADALUPE VILLEGAS**
[MHM-2](#)

MOTION TO DISMISS CASE
7-17-2019 [\[20\]](#)

MICHAEL MEYER/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. #34.

34. [19-12288](#)-B-13 **IN RE: EDWARD/NIKKI TREADWAY**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-18-2019 [\[26\]](#)

SUSAN HEMB

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. On August 8, 2019, the debtors withdrew the proposed Plan. Doc. #53. They also filed a motion to confirm a modified plan; it is scheduled to be heard September 26, 2019 at 1:30 pm. Docs. #54-57.

35. [19-12388](#)-B-13 **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**
[DRJ-2](#)

MOTION TO VALUE COLLATERAL OF WEST COAST CAPITAL GROUP, INC.
AND/OR MOTION TO VALUE COLLATERAL OF JOHN COONIS
7-18-2019 [\[25\]](#)

CHRISTOPHER MILAUCKAS/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: the value of debtor's residence.

36. [19-12388](#)-B-13 **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-18-2019 [\[18\]](#)

DAVID JENKINS

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Dropped from calendar.
NO ORDER REQUIRED: Movant withdrew the objection. Doc. #53.

37. [19-12388](#)-B-13 **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**
[MHM-2](#)

MOTION TO DISMISS CASE
7-18-2019 [\[21\]](#)

MICHAEL MEYER/MV
DAVID JENKINS

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Dropped from calendar.
NO ORDER REQUIRED: Movant withdrew the motion. Doc. #51.

38. [19-12388](#)-B-13 **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**
[MWP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WEST COAST CAPITAL GROUP,
INC. AND/OR OBJECTION TO CONFIRMATION OF PLAN BY JOHN COONIS
7-22-2019 [\[33\]](#)

WEST COAST CAPITAL GROUP, INC./MV
DAVID JENKINS
MARTIN PHILLIPS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Overruled without prejudice.
ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-
1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing
requirements, requires movants to notify respondents that they can
determine whether the matter has been resolved without oral argument
or if the court has issued a tentative ruling by checking the

Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Even if the objection complied with the local rules, it would be overruled. The assumption in the objection is that the court will accept West Coast's and Mr. Coonis' objections and the objections are based on speculation. If the court agrees with West Coast's and Coonis' valuation, the Plan is likely not feasible. On the other hand, if the debtors' valuation is correct, the Plan is likely feasible.

39. [19-12190](#)-B-13 **IN RE: CHRISTOPHER/ROBYN NELSON**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHEAL
H. MEYER
6-26-2019 [\[18\]](#)

DAVID JENKINS

NO RULING.

Pursuant to the court's order (doc. #22), debtor timely responded, stating they filed and served on the chapter 13 trustee ("Trustee") amended Schedules A, B, C, and Form 122C. Doc. #24. The court takes judicial notice of those amended schedules and forms. See doc. ##26, 27. Debtors state that therefore the objections raised by Trustee have been resolved. Trustee has not withdrawn the objection.

This matter will be called so Trustee can respond to Debtors' opposition.

40. [18-13694](#)-B-13 **IN RE: ADRIAN/MARISELA PALAFOX**
[ALG-6](#)

MOTION TO MODIFY PLAN
6-25-2019 [\[72\]](#)

ADRIAN PALAFOX/MV
JANINE ESQUIVEL OJI
JANINE ESQUIVEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

41. [19-12900](#)-B-13 **IN RE: REBECCA FREITAS**
[SL-1](#)

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

REBECCA FREITAS/MV
STEPHEN LABIAK
CONTINUED TO 8/15/19

NO RULING.

42. [19-12163](#)-B-13 **IN RE: JACINTO/DEE'ANNA OROSCO**
[MHM-2](#)

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

MICHAEL MEYER/MV
TIMOTHY DUCAR
CONTINUED TO 8/15/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #49.

43. [19-12633](#)-B-13 **IN RE: PRISCILLA VELOZ**
[YG-1](#)

STATUS CONFERENCE RE: MOTION TO EXTEND AUTOMATIC STAY
6-25-2019 [[9](#)]

PRISCILLA VELOZ/MV
YELENA GUREVICH

NO RULING.