

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, August 29, 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. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WJH-4](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-15-2019 [\[342\]](#)

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 ("Debtor") asks the court for authorization to reject the list of designated executory contracts in exhibit A. Doc. #345.

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

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 contracts contained in exhibit A attached to the motion.

Any claim based on this motion shall be filed on or before November 21, 2019 provided notice of the order rejecting this contract is served on the other parties to this contract on or before September 5, 2019.

2. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[WJH-5](#)**

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-15-2019 [\[347\]](#)

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 ("Debtor") asks the court for authorization to reject the list of designated executory contracts in exhibit A. Doc. #350.

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

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 contracts contained in exhibit A attached to the motion.

Any claim based on this motion shall be filed on or before November 21, 2019 provided notice of the order rejecting this contract is served on the other parties to this contract on or before September 5, 2019.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION
9-30-2017 [[1](#)]

RILEY WALTER
RESPONSIVE PLEADING

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Vacate status conference.

ORDER: Order preparation determined at the hearing.

A Plan of Adjustment has been confirmed in this case. The court has reviewed the status report filed by the debtor. There does not appear to be a reason to continue scheduling status conferences. The matters that debtor predicts will be occurring soon either will result in their own conference schedule or are not going to be before this court. At the hearing, the court will ask those participating their views on vacating the status conference.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[FW-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
8-1-2019 [\[1571\]](#)

SIEMENS MEDICAL SOLUTIONS USA, INC./MV
RILEY WALTER
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 12, 2019 at 9:30 a.m.

ORDER: The court will issue an order.

The parties have stipulated to continue the hearing to allow time for discovery. Doc. #1626. The hearing on December 12, 2019 will be a scheduling conference if the matter is not resolved.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-6](#)

MOTION TO BORROW, MOTION TO GIVE SECURITY, MOTION FOR ADEQUATE PROTECTION
7-17-2019 [\[1556\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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. Debtor is authorized, but not required, to borrow up to \$178,000.00 from FIRST Insurance Funding ("First") and to grant to FIRST the security interests described in the motion and to provide the adequate protection described in the motion.

1:30 PM

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

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-8-2019 [\[24\]](#)

STEPHEN LABIAK

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 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.

The court has reviewed debtors reply. Doc. #40. It is unsupported by evidence and contains speculation. The above schedule will give the parties the opportunity to fully address feasibility concerns.

2. [19-12304](#)-B-13 **IN RE: ARTURO CISNEROS**
[MHM-1](#)

MOTION TO DISMISS CASE
7-10-2019 [\[14\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

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. The debtor has failed to make all payments due under the plan. (11 U.S.C. § 1307(c)(1) and/or (c)(4)). Accordingly, the case will be dismissed.

3. [19-13306](#)-B-13 **IN RE: SATIN BRUFF**
[TGF-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-12-2019 [\[11\]](#)

SATIN BRUFF/MV
VINCENT GORSKI

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. 17-11307. That case was filed on April 5, 2017 and was dismissed on November 16, 2018 for failure to make plan payments. This case was filed on July 31, 2019 and the automatic stay will expire on August 30, 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.

Debtor received a "Notice of Default and Intent to Dismiss Case" on October 2, 2018 from the chapter 13 trustee's office. Doc. #13. One of the options to cure the default was no pay \$3,110.32 not later than October 31, 2018. Debtor sent \$3,111.00 through TFS Nationwide Billpay on October 29, 2018, but the payment was not received until November 1, 2018, one day after the deadline contained in the chapter 13 trustee's notice. Id.

Debtor did not understand at the time that there could be up to a five day business day delay from the time a payment is initiated and deposited into the trustee's account. However, Debtor does not understand that and "will make sure that [their] payments are initiated prior to the applicable cut off dates and allow for five business days of processing." 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.

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

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

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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.

This motion was continued to be heard in conjunction with debtor's motion to confirm plan, TCS-2, matter #5 below. That motion is being continued to September 26, 2019 to allow the debtor to respond to the chapter 13 trustee's opposition to confirmation. Therefore this motion is continued to September 26, 2019 at 1:30 p.m. to be heard in conjunction with debtor's continued motion to confirm plan.

5. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[TCS-2](#)

MOTION TO CONFIRM PLAN
7-23-2019 [\[143\]](#)

FRANK CRUZ/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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 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.

The court has received and reviewed two declarations from the debtor filed August 26, 2019: a declaration in support of plan confirmation and a declaration in support "Of Motion to Shorten Time." Both were filed very late and are unnecessary under Local Rule of Practice 3015-1(c). The first declaration includes statements that debtor can make a slight payment increase until Month 27 and that debtor has a private money loan that will help fund the Plan from month 27. Presumably, the second declaration is an incomplete (and misnamed) attempt to seek leave to file a late pleading. Permission is granted but that does not change this court's final ruling.

This ruling continues the hearing to allow time for a complete response to the objection or a decision to modify the Plan. The debtor, his counsel, and the Trustee's office are encouraged to attempt to reach an agreed form of order confirming Plan, if possible.

6. [19-12717](#)-B-13 **IN RE: CARLOS SOTO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-8-2019 [\[15\]](#)

PETER BUNTING

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 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.

7. [19-12719](#)-B-13 **IN RE: ROBERTO CHAVEZ AND SOLEDAD DE CHAVEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-12-2019 [\[17\]](#)

THOMAS GILLIS

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' chapter 13 plan. The debtor, through counsel, filed a non-opposition. Doc. #25. The debtors state they will file a modified plan and ask that it be confirmed.

So, this objection is SUSTAINED.

8. [19-12719](#)-B-13 **IN RE: ROBERTO CHAVEZ AND SOLEDAD DE CHAVEZ**
[NFS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES, LLC
8-13-2019 [\[22\]](#)

PENNYMAC LOAN SERVICES, LLC/MV
THOMAS GILLIS
NATHAN SMITH/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

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

9. [18-13633](#)-B-13 **IN RE: STEVEN/AURORA COCIO**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
7-1-2019 [\[33\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 objection is SUSTAINED.

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

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was on May 13, 2009, which is well past the two and four year mark in the statutes of limitations.

Therefore, claim no. 1 filed by Cavalry SPV I, LLC is disallowed in its entirety.

10. [18-13633](#)-B-13 **IN RE: STEVEN/AURORA COCIO**
[MHM-2](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 2
7-1-2019 [\[37\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 objection is SUSTAINED.

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

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was on November 13, 2009, which is well past the two and four year mark in the statutes of limitations.

Therefore, claim no. 2 filed by Cavalry SPV I, LLC is disallowed in its entirety.

11. [19-11334](#)-B-13 **IN RE: HECTOR FLORES**
[MHM-1](#)

MOTION TO DISMISS CASE
7-9-2019 [\[37\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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. The debtor has failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and/or (c)(4). Accordingly, the case will be dismissed.

12. [19-10641](#)-B-13 **IN RE: MARTIN FLORES**
[PBB-1](#)

MOTION TO MODIFY PLAN
7-15-2019 [\[25\]](#)

MARTIN FLORES/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.

13. [19-13342](#)-B-13 **IN RE: LINDA GLOSSOP**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-15-2019 [\[8\]](#)

LINDA GLOSSOP/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. 1-11510. That case was filed on April 15, 2019 and was dismissed on July 24, 2019 for failure to appear at the § 341 meeting of creditors and failure to file income tax returns for the years 2016 through 2018. This case was filed on August 5, 2019 and the automatic stay will expire on September 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).

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 has already prepared her tax returns for the years 2016 and 2018, and has stated that she "expect[s] to have [her] 2017 income tax returns" before this hearing. Since debtor retired her only source of income was "Social Security retirement and pension" and did not believe it was necessary to file income tax returns. Doc. #10. The court finds that this case has been filed in good faith. Debtor has paid all fees due at the time of filing, completed all necessary schedules and has filed a chapter 13 plan. *Id.* The schedules show an ability to make the proposed plan payment.

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.

14. [19-12845](#)-B-13 **IN RE: WILLIAM GILSTRAP**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-5-2019 [\[17\]](#)

MARK ZIMMERMAN
\$310.00 FINAL INSTALLMENT PAYMENT 8/6/19

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 fees have been paid in full on August 6, 2019. Therefore, the OSC will be vacated.

15. [19-12449](#)-B-13 **IN RE: CONSTANCE LYONS**
[MHM-3](#)

MOTION TO DISMISS CASE
7-25-2019 [\[27\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 and failed to provide the trustee with all of the required documentation. Debtor's plan was incomplete, and the debtor failed to provide the Credit Counseling Certificate. Accordingly, the case will be dismissed.

16. [18-14060](#)-B-13 **IN RE: SCOTTIE/CHRISTINA NABORS**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
7-19-2019 [\[38\]](#)

GABRIEL WADDELL

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/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 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 \$2,534.00 in fees and \$344.22 in costs.

17. [19-12163](#)-B-13 **IN RE: JACINTO/DEE'ANNA OROSCO**
[MHM-3](#)

MOTION TO CONFIRM PLAN
7-23-2019 [\[40\]](#)

JACINTO OROSCO/MV
TIMOTHY DUCAR

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.

18. [19-12663](#)-B-13 **IN RE: OLIVIA GARCIA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-8-2019 [\[20\]](#)

DAVID JENKINS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: To be determined at the hearing.

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

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

The chapter 13 trustee ("Trustee") objections to confirmation on three grounds: first, that the plan fails to comply with 11 U.S.C. § 1322(a); second, that the plan fails to comply with 11 U.S.C. § 1325(a)(4), and; third, that the plan does not provide for all of debtor's projected disposable income to be applied to unsecured creditors under the plan under 11 U.S.C. § 1325(b)(1)(B). Doc. #20.

Debtor responded, stating that after providing the requested tax analysis and amending and filing schedules A,B,C,I, and J, the issues Trustee raises should be resolved.

This matter will be called to allow Trustee to respond to debtor's response. If Trustee is satisfied, the objection may be overruled. If Trustee needs more time to evaluate the amended schedules and tax analysis, or is dissatisfied with debtor's evidence, the objection may be continued.

19. [19-12265](#)-B-13 **IN RE: ISAIAS HERNANDEZ**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-29-2019 [\[21\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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 amended schedule C. Doc. #28.

20. [19-11768](#)-B-13 **IN RE: LISA THAI**
[LR-2](#)

MOTION TO CONFIRM PLAN
7-17-2019 [\[23\]](#)

LISA THAI/MV
LAUREN RODE
RESPONSIVE PLEADING

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.

21. [19-12468](#)-B-13 **IN RE: JAMES ZOPPE**
[MHM-2](#)

MOTION TO DISMISS CASE
7-26-2019 [\[21\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 provide the trustee with all of the required documentation. Debtor failed to file complete and accurate Schedules, failed to file the correct form of Chapter 13 Plan, failed to provide Credit Counseling Certificate, and the debtor is ineligible to be a debtor in a Chapter 13 bankruptcy. Accordingly, the case will be dismissed.

22. [19-12670](#)-B-13 **IN RE: CALLETANO SANDOVAL AND NANCY AGUAYO**
[TOG-2](#)

MOTION TO CONFIRM PLAN
7-22-2019 [\[23\]](#)

CALLETANO SANDOVAL/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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 chapter 13 trustee ("Trustee") timely filed opposition to this motion. At the time of Trustee's opposition (filed July 31, 2019, not due until August 14, 2019), the § 341 meeting had not yet been concluded. The § 341 meeting was concluded on August 6, 2019.

On August 19, 2019, Trustee filed a motion to dismiss, set for hearing on September 26, 2019. See MHM-1, doc. #32. The dismissal motion raises many issues relating to the debtors' alleged failure to provide requested documentation to the Trustee including pay advices and information about a business. So, this motion is continued to that same date to be heard in conjunction with Trustee's motion to dismiss.

23. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[FW-4](#)

MOTION TO MODIFY PLAN
7-9-2019 [\[95\]](#)

LAURIE BUDRE/MV
GABRIEL WADDELL

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.

24. [19-12072](#)-B-13 **IN RE: ARACELI PADILLA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-30-2019 [\[32\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

This motion is continued to September 12, 2019 at 1:30 p.m. The chapter 13 trustee ("Trustee") asks the court to dismiss the case under 11 U.S.C. § 1307(c) for failure to confirm a chapter 13 plan. Doc. #32. The declaration included with the motion states that Trustee "cannot submit the Order Confirming Plan . . . until an **order is entered** valuing the 2008 Toyota Tundra held by Simple Cash Loans, Inc., dba Montana Capital Car Title Loans." Doc. #34.

The motion requesting such an order is tentatively granted below, matter #25, SL-3. If the motion is granted, then this motion is continued to the above date to allow debtor's counsel to submit the confirming order to chambers for Judge's signature. If the order is entered prior to the above continued hearing date, Trustee shall withdraw this motion. If the order is not submitted, the matter will be called at the continued hearing date and debtor's counsel must explain to the court why an order was not submitted to the court.

25. [19-12072](#)-B-13 **IN RE: ARACELI PADILLA**
[SL-3](#)

MOTION TO VALUE COLLATERAL OF SIMPLE CASH LOANS, INC.
8-13-2019 [\[37\]](#)

ARACELI PADILLA/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.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle at its current amount, as opposed to the amount due on the loan where the vehicle is the security on the loan. A purchase money security interest lien secured by a motor vehicle cannot be stripped down to the vehicle's value if, inter alia, the debt was incurred within a 910 day period preceding the date of the petition.

Debtor asks the court for an order valuing a 2008 Toyota Tundra at \$9,737.00. Doc. #37. Debtor states that the debt was incurred on May 6, 2018, which is within 910 days of the petition date, May 15, 2019. This issue would not be a problem if the court was persuaded that the creditor does not have a purchase money security interest in the vehicle.

But the evidence supporting the motion leaves the court perplexed. This is the second time debtor has made this motion.

Debtor bought the vehicle with cash from Jose Padilla, debtor's brother in law. Doc. #39. Debtor bought the vehicle because Jose Padilla "was unable to afford the original purchase money loan on the vehicle and stood to lose it. I took over the payments and paid it off, and Jose Padilla granted me title on November 18, 2017." Id.

Debtor then obtained a title loan from creditor Simple Cash Loans, Inc., dba Montana Capital Car Title Loans ("Creditor"). Debtor's declaration states that debtor filed this petition "more than 365 days after the purchase money debt on the subject was incurred." Doc. #39.

Creditor's claim, claim #7, states that the basis of the claim is "non-purchase money secured loan."

Debtor must clarify whether the debt is a "purchase money debt" as stated in the declaration or a non-purchase money secured loan as stated in the claim and the motion.

If debtor can prove to the court and no opposition is presented, the court may grant the motion.

26. [18-14877](#)-B-13 **IN RE: SAUL OCHOA**
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY
7-25-2019 [\[38\]](#)

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.

This motion is GRANTED. Movant is awarded \$8,175.00 in fees and \$393.00 in costs.

27. [19-11879](#)-B-13 **IN RE: ANDREW ARAGON**
[MHM-1](#)

MOTION TO DISMISS CASE
7-10-2019 [\[19\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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. The debtor has failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and/or (c)(4). Accordingly, the case will be dismissed.

28. [19-13082](#)-B-13 **IN RE: DAVID GROVES**
[BP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF
FROM CO-DEBTOR STAY
8-13-2019 [\[14\]](#)

THE GOLDEN 1 CREDIT UNION/MV
JEFFREY MEISNER
VALERIE PEO/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") about special procedures for stay relief motions in chapter 13.

LBR 4001-1(b)(1) is the rule regarding additional procedures for motions for relief from the automatic stay in chapter 13 cases. That rule was not complied with in this motion. Therefore, the motion is DENIED WITHOUT PREJUDICE.

29. [19-12887](#)-B-13 **IN RE: MOISES/JACQUELINE ARCE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-12-2019 [\[27\]](#)

MARK ZIMMERMAN

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.

30. [19-12288](#)-B-13 **IN RE: EDWARD/NIKKI TREADWAY**
[SAH-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, NATIONAL ASSOCIATION
7-31-2019 [\[30\]](#)

EDWARD TREADWAY/MV
SUSAN HEMB

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 2016 Jeep Compass at \$13,875.00. Doc. #30. Creditor Wells Fargo Bank N.A., d/b/a/ Wells Fargo Auto's ("Creditor") claim states the amount owed to be \$21,989.83. Claim #14. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$13,875.00. Doc. #32. Debtor incurred the debt on October 14, 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 2016 Jeep Compass. 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 \$13,875.00. 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. [19-11294](#)-B-13 **IN RE: MICHAEL/CECELIA BLANCO**
[MHM-3](#)

CONTINUED MOTION TO DISGORGE FEES
5-30-2019 [\[28\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET
DISMISSED 07/03/19; RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

ORDER: The court will issue the order.

The Chapter 13 Trustee filed this motion asking the court to issue an Order for Attorney Phillip Gillet ("Attorney") to Show Cause why he should not be ordered to disgorge most of the fees he received from the debtors in this case. The first hearing was held July 2, 2019 at the Bakersfield Session of this court. The court issued a briefing/evidence schedule at that hearing (doc. #45) and continued the hearing to August 29, 2019.

Since then, this case was dismissed and a new case assigned to Judge Clement was filed by Attorney for these debtors, case no. 19-13308

("Second Case"). Both Attorney and Trustee have filed additional documents in connection with this motion. The court has reviewed them.

In this case, Attorney received a \$2,000.00 retainer. Doc. #11, 42. Attorney's Rule 2016(b) Disclosure in this case described the \$2,000.00 as a "flat fee" including specific services of preparing the schedules, statement of affairs and other "documents with the initial filing", specifying the number of calls from his client and creditors and appearing at the meeting of creditors. Other services not covered by "the flat fee" were to be billed at either \$330.00 or \$360.00 per hour - the disclosure was ambiguous as to hourly rate.

The Statement of Financial Affairs and the Rule 2016(b) Disclosure in the second case tell a different story. A \$2,000.00 payment to attorney is identified in the Statement of Financial Affairs as being from this case and no additional funds were paid to Attorney for the Second Case. Second case, doc. #1. The Second Case's 2016(b) Disclosure is consistent in declaring no retainer was paid. The Disclosure goes on to describe the specific services included in the "transferred" retainer and states the billing rate for other services at \$360.00 per hour. Id.

In sum, the schedules in both cases portray that Attorney received a \$2,000.00 retainer in this case. But the retainer was apparently applied by Attorney to the second case without a deduction for any services performed by Attorney in this case.

Trustee contends Attorney should disgorge (presumably to the debtors since the case is dismissed) most of the retainer paid in this case. The \$2,000.00 retainer far exceeded the reasonable value of Attorney's services in this case, Trustee argues, because Trustee did not receive all required documents from the debtors before the meeting of creditors on May 21, 2019 as required by 11 U.S.C. § 521. The debtors who appeared at that meeting with "stand-in" counsel apparently testified they gave the documents to Attorney long before the creditor's meeting. Doc. #28. Since this court dismissed the case for reasons including failure to timely provide the documents, Trustee continues, the only benefit the debtors received from the services was the three to four months of the automatic stay the filing provided. Since the stay arises upon filing the petition, and a petition preparer in this district would receive \$125.00 for preparing schedules, Trustee reasons, Attorney should disgorge \$1,875.00 of the \$2,000.00 retainer. Doc. #55.

Attorney opposes raising two arguments. First, the failure to timely provide the documents was inadvertent. Attorney's paralegal had difficulty uploading the documents to the Trustee's website and when the follow up email by the paralegal sending the documents to Trustee had the wrong email address, the problem was compounded. Upon learning of the omission, Attorney promptly provided the documents to the Trustee after the creditors meeting. Doc. #32). Second, the fees charged are reasonable. Attorney filed a declaration supporting an invoice which shows almost \$3,300.00 of time spent by Attorney and paralegal through April 26, 2019 - nearly one month before the creditor's meeting. The declaration also sets

forth Attorney's experience as a bankruptcy practitioner which is uncontested by Trustee. Doc. #53. Attorney also forecasts that the debtors would continue to retain him if this case is dismissed and another filed and Attorney's fee application in the second case will address the issues.

After case dismissal, the bankruptcy court retains jurisdiction over awards of fees. St. Angelo v. Vict. Farms, 38 F.3d 1525, 1533 (9th Cir. 1994) (superseded by statute on other grounds). But the court also has discretion not to exercise jurisdiction over ancillary matters. Elias v. United States Tr., 188 F.3d 1160, 1162 (9th Cir. 1999).

11 U.S.C. § 329(b) gives the court discretion to cancel any agreement between the debtor and the attorney representing the debtor and order the return of any payment made to the extent compensation "exceeds the reasonable value" of the attorney's services. See, In re Alvarado, 496 B.R. 200, 212-13 (N.D. Cal. 2013). 11 U.S.C. § 330 provides the factors a court should consider in determining reasonable compensation. In Chapter 13 matters, the "reasonableness" inquiry focuses on whether the services reasonably benefit the debtor and the necessity of the services. In re Pedersen, 229 B.R. 445, 448 (Bankr. E.D. Cal. 1999). It is also well settled that even if debtor and counsel label an initial payment "retainer" in their agreement, no fees can properly be deducted from the retainer for post-petition services without approval of the court in the fee application process. In re C & P Auto Transp., Inc., 94 B.R. 682, 686-89 (Bankr. E.D. Cal. 1988).

Trustee has a point here. But the argument is a false equivalent. True, a petition preparer could prepare the needed documents and if the debtor filed the case and paid the fee, the automatic stay does arise. That does not mean that is all the benefit the debtors received by Attorney's representation. The invoice shows some counseling which a petition preparer is not allowed to provide and review of documents by an experienced practitioner before the schedules and petition were filed.

Attorney's opposition is in one way irrelevant - the case is dismissed. So, the inadvertence does not significantly affect the reasonableness inquiry. In another way, the opposition is unpersuasive. The fact that Attorney can show nearly \$3,300.00 of time spent on debtors' matter in this case begs the question when reviewing the invoice: if the information was provided to Attorney and Attorney did not provide the information to Trustee in time, what part of the fee is unreasonable? All of it - since the case was dismissed? Only part of the fee? About \$1,100.00 of Attorney time is unrelated to the document mishap. Over \$550.00 of paralegal time was spent on the matter unrelated to clerical tasks. That is almost \$1,700.00 of the \$2,000.00 retainer.

After considering this matter, the court DENIES the motion as moot. One reason are these practicalities: these debtors are in a second case; Attorney is representing these debtors in that case; debtors have continued with Attorney representing them despite the dismissal of this case; Attorney's disclosures show the "transfer" of the

retainer to this case without deduction. A second reason is any order the court would now make is either meaningless – debtors have chosen their counsel in the second case – or would harm the debtors – they are in a second case at no additional cost. This situation appears to be no longer a case in controversy given post dismissal events and the court will not provide advisory opinions.

The court is making no findings the fees charged debtors were or were not reasonable. If the fee application in the second case raises an issue, the bankruptcy court can assess the reasonableness of the fee in the second case. If the bankruptcy court in the second case is asked to evaluate the reasonableness of the services in this case, the court is invited to review the minutes of this hearing and any part of the record of this case.

The motion is DENIED AS MOOT.