

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, September 5, 2019
Place: Department B – 510 19th Street
Bakersfield, 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.

9:00 AM

1. [19-12301](#)-B-13 **IN RE: TRINIDAD CASTRO AND ERIKA JACOBO**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-2-2019 [\[21\]](#)

MICHAEL MEYER/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

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

2. [19-12401](#)-B-13 **IN RE: JULIO/VERONICA CONTRERAS**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-2-2019 [\[14\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

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

This objection is OVERRULED.

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

In this case, the § 341 meeting was concluded on July 23, 2019 and this objection was filed on August 2, 2019, which is within the 30 day timeframe.

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

The chapter 13 trustee ("Trustee") objects to the debtors exemption under California Code of Civil Procedure § 704.060. Doc. #14. Debtor exempts a 1998 Ford Van in the amount of \$500.00 and carpet cleaning tools and equipment in the amount of \$12,000.00. Id., Schedule C, doc. #1. The total exemptions under § 704.060 were \$12,500.00.

C.C.P. § 704.060 provides

(a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) [\$8,725.00], if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood . . .

(3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by which both earn a livelihood"

According to Schedule I, joint debtor (debtor's wife) works as an Office Manager at "Gateway Family Dentistry." Doc. #1, Schedule I. Trustee therefore objects because the amount exempted exceeds what is allotted to debtor.

Debtor timely opposed, stating that debtor's wife does in fact work alongside debtor in the carpet cleaning business. Joint debtor's declaration states that she assists her husband after working her full time job and on her days off, as well as assisting with bookkeeping and ordering supplies. Doc. #19.

In accordance with the statute, the court finds that the \$12,800.00 exempted under C.C.P. § 704.060 is reasonably necessary to and actually used by the judgment debtor and spouse in the exercise of the same trade, business, or profession by which both earn a livelihood. Though assisting her husband may not be her day job, debtor's wife is working in the business by which they both earn a livelihood. Even though Ms. Contreras works in the carpet cleaning business part time, her services, according to her declaration, help

maintain the business without hiring another employee. There is no contrary evidence.

The court finds the debtors have met their burden here. The objection is OVERRULED.

3. 19-12504-B-13 **IN RE: PEGGY JAMES**
AP-1

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
7-30-2019 [26]

THE BANK OF NEW YORK MELLON/MV
ROBERT WILLIAMS
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection is OVERRULED unless SUSTAINED based on the results of another motion.

Creditor The Bank of New York Mellon f/k/a/ The Bank of New York as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S6's ("Creditor") objection is that the plan is not feasible because the plan's treatment of Creditor's claim requires the successful prosecution of a motion to value Creditor's collateral, which has not occurred yet. Doc. #26.

Debtor responded, stating that they have filed a motion to value, set on this same day. Doc. #42, see RSW-1, matter #5 below. That motion is tentatively granted subject to a party appearing and opposing the motion.

If RSW-1 is granted at the hearing, then this objection will be overruled. If RSW-1 is denied at the hearing, then this objection will be sustained.

4. [19-12504](#)-B-13 **IN RE: PEGGY JAMES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-25-2019 [\[16\]](#)

ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection is OVERRULED.

The chapter 13 trustee ("Trustee") objects to confirmation under 11 U.S.C. §§ 1322(b)(2), (c)(2), and 1325(a)(5). Specifically, Trustee questions whether Section 1322(c)(2) permits Debtor to bifurcate the secured claim of Bank of New York Mellon as Trustee for asset-backed securities which is serviced by Nationstar Mortgage LLC dba Mr. Cooper ("Mr. Cooper") and cramdown the unsecured portion of the loan."

Debtor resides at 13701 Blossom Ridge Dr., Bakersfield, CA (hereinafter the "Blossom Property"). See doc. #1. Schedule A/B lists the value of the Blossom Property at \$225,000.00. There is a first deed of trust, with Bank of America, in the amount of \$196,799.00, and second deed of trust with Mr. Cooper in the amount of \$49,669.00. See schedule D, doc. #1. The plan provides for Mr. Cooper as a Class 2 creditor whose claim is reduced based on the value of the collateral. The plan term is 36 months. The plan proposes paying the secured claim valued at \$28,201 plus interest of 4% per year during the life of the plan.

The Trustee filed a general objection (doc. #16) claiming the debtor's failure to provide certain information precluded the Trustee from recommending confirmation. The debtor responded claiming the Trustee had enough time to review the information provided. Doc. #29.

On July 29, 2019, Mr. Cooper filed a proof of claim. See claim #1. According to the Note filed with the proof of claim, the loan originated with another lender in August 2006 and matures on September 1, 2021. September 2021 is month 27 of the plan. A "balloon payment" is due in September 2021 under the note.

On July 30, 2019, Mr. Cooper filed an objection to confirmation on the ground that Debtor has yet to file a motion to value and as a result the plan is not feasible. See AP-1, doc. #26.

Then, the Trustee filed a "reply" (doc. #35) supporting the Trustee's confirmation objection first raising the only remaining issue: the ability of the debtor to bifurcate Mr. Cooper's claim even though the collateral for the claim is the debtor's principal residence. See 11 U.S.C. § 1322(b)(2).

First, the remaining issue has not been briefed by the debtor since the trustee first raised it in the Trustee's reply which is not the time to raise new arguments. The debtor may ask for the opportunity to brief the issue.

Second, the trustee's objection (which is now apparently a question) will be overruled here. Generally, chapter 13 debtors may not modify the rights of holders of claims secured solely by a security interest in real property that is the debtor's principal residence. 11 U.S.C. § 1322(b)(2) states "[s]ubject to subsections (a) and (c) of this section, the plan may modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence"

But as an apparent "exception to the exception," 11 U.S.C. § 1322(c)(2) states

Notwithstanding subsection (b)(2) and applicable nonbankruptcy law - in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to [11 U.S.C. § 1325(a)(5)].

11 U.S.C. § 1325(a)(5)(B)(ii) states that the court shall confirm a plan if

With respect to each allowed secured claim provided for by the plan . . . the plan provides that . . . the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim.

The court must therefore determine whether the subject claim is (1) secured, (2) by real property that is the debtor's residence, (3) which claim matures before the date on which the final payment under the plan is due, and if so, then the plan can be confirmed if "the plan provides . . . that the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim," otherwise known as a cramdown.

No party has contested whether the subject claim is secured by real property that is the debtor's residence and that the obligation matures before the date on which the final payment under the plan is due. Mr. Cooper's claim states that the claim is secured by the debtor's principal residence. The Note attached to the claim states

that the final payment is due not later than September 1, 2021. See claim #1. Here, "the final payment under the plan is due" June 2022. See doc. #4, section 2.03.

Before the enactment of § 1322 (c) by the Bankruptcy Reform Act of 1994, § 1322(b) (2) prevented chapter 13 debtors from modifying claims only secured by the debtor's principal residence. The Supreme Court in Nobelman v. Am. Sav. Bank, 508 U.S. 324 (1993) held the rights of a secured claimant cannot be modified if the collateral is the debtor's residence in a chapter 13 plan.

In 1994, § 1322 (c) was added though the authorities since have not uniformly stated Nobelman was overruled. Before 1994, the Ninth Circuit in In re Seidel, 752 F.2d 1382 (9th Cir. 1985) was consistent with Nobelman. But, nearly 15 years ago, the bankruptcy appellate panel, in dicta, questioned Seidel's vitality since § 1322(c) was added. Wells Fargo Bank Nw., N.A. v. Yett (In re Yett), 306 B.R. 287, 292 (B.A.P. 9th Cir. 2004).

The language in the bankruptcy code is clear and unambiguous. 11 U.S.C. § 1322(c) (2) provides an exception to § 1322(b) (2) if the plan conforms with § 1325(a) (5). See also In re Bagne, 219 B.R. 272, 277 (Bankr. E.D. Cal. 1998). Here, the Plan proposes to value the claim and pay the secured claim plus 4% interest. There is no objection to the proposed interest rate.

The loan in question here originated in 2006 - well after the effective date of § 1322(c). P.L. 103-394, Title VII, § 702, 108 Stat. 392.

Also, the Ninth Circuit has long held after valuation of collateral, fully unsecured claims with the sole collateral being the debtor's residence can be "stripped off." Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); Lam v. Inv'rs Thrift (In re Lam), 211 B.R. 36, 41-42 (B.A.P. 9th Cir. 1997).

Finally, the weight of authority seems to support what the debtor is proposing here provided the interest is market rate. See Am. Gen. Fin., Inc. v. Paschen (In re Paschen), 296 F.3d 1203 (11th Cir. 2000) quoting In re Tanner, 217 F.3d 1357, 1358 n. 5 (11th Cir. 2000); In re Jones, 188 B.R. 281 (Bankr. D. Or. 1995).

The court finds that the plan, as proposed currently, does conform with §§ 1322 and 1325(a) (5). Therefore, this objection is OVERRULED.

5. [19-12504](#)-B-13 **IN RE: PEGGY JAMES**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF MR. COOPER
8-19-2019 [\[37\]](#)

PEGGY JAMES/MV
ROBERT WILLIAMS

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. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be partially unsecured. The value of the second deed of trust, held by respondent, is supported by home-equity in the amount of \$29,926.50, which will be paid in the plan as secured debt. The balance, \$19,713.74, will be allowed as a general unsecured claim, which are proposed to be paid 0% in the plan. The debtor may proceed to obtain relief from this lien upon completion of the necessary requirements under applicable law. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

The court notes creditor The Bank of New York Mellon's opposition, filed August 29, 2019. Doc. #44. The court believes that part 1 of section 2 of the opposition is addressed in the court's ruling in matter #4, MHM-1 above. Parts 2 and 3 of section 2 may be further addressed at the hearing. At the hearing, the parties must address the value of the subject property and interest rate.

6. [19-12724](#)-B-13 **IN RE: RICHARD/KATHLEEN KOHLER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-20-2019 [\[17\]](#)

RABIN POURNAZARIAN

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

DISPOSITION: Continued to October 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to plan confirmation. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than September 18, 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 debtors' position. The trustee shall file and serve a reply, if any, by September 25, 2019.

If the debtors elect 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 25, 2019. If the debtors do 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 notes debtor's response. Doc. #26.

7. [19-11632](#)-B-13 **IN RE: GREGORY BATSCH**
[RSW-1](#)

MOTION TO CONFIRM PLAN
8-1-2019 [\[27\]](#)

GREGORY BATSCH/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. The chapter 13 trustee withdrew his opposition on August 30, 2019. Doc. #37.

8. [19-10948](#)-B-13 **IN RE: AIMEE MOREHEAD**
[MHM-2](#)

MOTION TO DISMISS CASE
8-2-2019 [\[38\]](#)

AIMEE MOREHEAD/MV
ROBERT WILLIAMS

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

9. [17-12561](#)-B-13 **IN RE: VICTOR/KARLA MOORE**
[PK-7](#)

MOTION TO MODIFY PLAN
7-5-2019 [\[116\]](#)

VICTOR MOORE/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' 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 debtors shall file and serve a written response not later than September 18, 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 debtors' position. The trustee shall file and serve a reply, if any, by September 25, 2019.

If the debtors elect 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 25, 2019. If the debtors do 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.

10. [19-12366](#)-B-13 **IN RE: CLINT/JUDITH HARRISON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-26-2019 [\[19\]](#)

ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #26.

11. [19-12368](#)-B-13 **IN RE: JONATHAN LEACH**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
8-23-2019 [\[15\]](#)

JONATHAN LEACH/MV
ROBERT WILLIAMS

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE. This motion was served and filed on less than 14 days' notice without an order shortening time, in violation of Local Rule of Practice 9014-1(f) (3).

12. [19-12468](#)-B-13 **IN RE: JAMES ZOPPE**
[MHM-1](#)

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

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. The case was dismissed August 29, 2019.

13. [19-12886](#)-B-13 **IN RE: RAYMOND/DEBORAH MARTIN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-16-2019 [\[19\]](#)

RICHARD STURDEVANT

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

DISPOSITION: Continued to October 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to plan confirmation. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than September 18, 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 debtors' position. The trustee shall file and serve a reply, if any, by September 25, 2019.

If the debtors elect 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 25, 2019. If the debtors do 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.

14. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[KR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CHALLENGE FINANCIAL
SERVICES
8-19-2019 [\[18\]](#)

CHALLENGE FINANCIAL SERVICES/MV
RICHARD STURDEVANT
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED 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.

15. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-20-2019 [\[24\]](#)

RICHARD STURDEVANT

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

DISPOSITION: Continued to October 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to plan confirmation. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than September 18, 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 debtors' position. The trustee shall file and serve a reply, if any, by September 25, 2019.

If the debtors elect 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 25, 2019. If the debtors do 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.

16. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-20-2019 [\[27\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
RICHARD STURDEVANT
SEAN FERRY/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 Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT3, Asset-Backed Certificates, Series 2006-OPT3 ("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 does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #27, claim #9.

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. #10. Creditor's proof of claim, filed August 20, 2019, states a claimed arrearage of \$26,012.46. 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 \$18,260.00. Doc. #10. Creditor's claim states arrears of \$26,012.46. 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.

17. [19-12896](#)-B-13 **IN RE: ANDREA EYRE**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-20-2019 [[13](#)]

ROBERT WILLIAMS

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

DISPOSITION: Dropped from calendar.

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

18. [18-12897](#)-B-13 **IN RE: JENNIFER SHELL**
[PK-3](#)

MOTION TO MODIFY PLAN
7-5-2019 [\[45\]](#)

JENNIFER SHELL/MV
PATRICK KAVANAGH
OPPOSITION WITHDRAWN

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. The chapter 13 trustee withdrew his opposition. Doc. #58.

10:00 AM

1. [19-11303](#)-B-7 **IN RE: HENDY MONTTOYA-OBESO AND FIDENCIA GARCIA DE MONTTOYA**
[JSP-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
7-8-2019 [\[17\]](#)

HENDY MONTTOYA-OBESO/MV
JOSEPH PEARL

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

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$5,899.55 on April 6, 2018. Doc. #20. The abstract of judgment was recorded with Kern County on April 25, 2018. Id. That lien attached to the debtor's interest in a residential real property in Shafter, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had

an approximate value of \$221,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$151,326.00 on that same date, consisting of a first deed of trust in favor of Dovenmuehle Mortgage, Inc. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$69,674.00. Doc. #1, Schedule C.

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

2. [19-12208](#)-B-7 **IN RE: JORGE/RACHEL CERPA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-12-2019 [\[10\]](#)

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ
JENNIFER WANG/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2016 Nissan Altima. Doc. #15. The collateral has a value of \$14,425.00 and debtor owes \$20,523.03. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the movant's possession and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

3. [19-12129](#)-B-7 **IN RE: KAITLIN CALVIN**
[ETL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-18-2019 [\[14\]](#)

VW CREDIT, INC./MV
R. BELL
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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2016 Audi A4 2.0T. Doc. #19. The collateral has a value of \$19,050.00 and debtor owes \$30,759.98. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

4. [17-14133](#)-B-7 **IN RE: BENJAMIN HARRIS**
[AP-1](#)

MOTION TO APPROVE LOAN MODIFICATION
7-26-2019 [\[115\]](#)

BANK OF AMERICA, NA/MV
ROBERT WILLIAMS
WENDY LOCKE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

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

This motion is GRANTED IN PART and DENIED IN PART. Debtor is authorized, but not required, to enter into and finalize the Loan Modification Agreement as described in the motion, and for movant to record the agreement with the appropriate county recorder's office.

The prayer in the motion included a request for movant to "retain[s] the right of final approval of the . . . loan modification and movant retains the right to re-instate its claim in the event the loan modification is not finalized." The court DENIES this relief if the modification terms differ from those described in the motion.

5. [19-12736](#)-B-7 **IN RE: LATISHA ELIJAH**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
6-26-2019 [\[5\]](#)

LATISHA ELIJAH/MV

NO RULING.

Debtor's application is incomplete and does not include income information. Debtor must appear and explain to the court why the application is incomplete.

6. [18-12238](#)-B-7 **IN RE: DOMINIC/TINA PALACIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-19-2019 [\[27\]](#)

JOSEPH PEARL

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

Based on the declaration of Debtors' counsel, Joseph S. Pearl, filed on August 27, 2019 (doc. #29), the court will vacate the OSC.

The record reflects that Debtors' counsel filed Amended Schedules E/F, and an Amended Verification and Master Address List, on August 1, 2019, adding one creditor (Docs #21 and 23). The required amendment fee of \$31 was paid on that same date. On August 5, 2019, it appears the Debtors filed the same Amended Schedules E/F, and Amended Verification and Master Address List, adding the same creditor without paying the required amendment fee (Docs #23 and 24). The Court finds that no additional creditor was added and thereby finds that no fee is due for the amendment filed on August 5, 2019. Therefore, the OSC will be VACATED.

7. [12-14078](#)-B-7 **IN RE: FERNANDO VEGA AND MARIA GARCIA DE VEGA**
[LNH-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN DENATALE
GOLDNER FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
8-13-2019 [\[100\]](#)

JOSEPH PEARL

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(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. The chapter 7 trustee's ("Trustee") general counsel, The Law Office of Klein, Denatale, Goldner, Cooper, Rosenlieb and Kimball, LLP ("KDG") and Lisa Noxon Holder, PC ("Holder"), requests fees of \$5,165.00 and \$3,599.00, and costs of \$14.35 and \$129.44, for a total of \$5,179.35 to KDG and \$3,728.44 to Holder for services rendered from October 24, 2017 through July 18, 2018 and August 3, 2018 through March 22, 2019, respectively.

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) Assisting Trustee in objecting to debtors' claim of exemptions regarding pre-petition litigation, (2) Compromising and settling on the aforementioned pre-petition litigation claim, and (3) Preparing and filing employment and fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

KDG shall be awarded \$5,165 in fees and \$14.35 in costs; Holder shall be awarded \$3,599.00 in fees and \$129.44 in costs.

8. [19-13089](#)-B-7 **IN RE: CHRISTIAN RANGEL**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-8-2019 [\[9\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
ROBERT WILLIAMS
AUSTIN NAGEL/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2014 Toyota Corolla. Doc. #13. The collateral has a value of \$9,875.00 and debtor owes \$13,665.88. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the movant's possession and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

10:30 AM

1. [19-12954](#)-B-12 **IN RE: EVELYN RAQUEDAN**

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
7-10-2019 [[1](#)]

PHILLIP GILLET

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. #26.

2. [19-12954](#)-B-12 **IN RE: EVELYN RAQUEDAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-15-2019 [[22](#)]

PHILLIP GILLET

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. #26.

3. [18-14663](#)-B-11 **IN RE: 3MB, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-19-2018 [[1](#)]

LEONARD WELSH

NO RULING.

4. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-10](#)

CONTINUED OBJECTION TO CLAIM OF US BANK NATIONAL ASSOCIATION,
CLAIM NUMBER 1
6-18-2019 [[171](#)]

3MB, LLC/MV
LEONARD WELSH
RESPONSIVE PLEADING

NO RULING.

5. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-14](#)

JOINT CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR 3MB, LLC,
CREDITOR U.S. BANK NATIONAL ASSOCIATION
7-25-2019 [[223](#)]

LEONARD WELSH

NO RULING

11:00 AM

1. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-25-2018 [[1](#)]

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
RESPONSIVE PLEADING

NO RULING.