

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, September 13, 2018
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. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-44](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-16-2018 [[718](#)]

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, except Lawley's Inc., 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. 11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume...any...unexpired lease 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).

The presumption has not been rebutted, and so the court finds that the debtor-in-possession's decision to reject the four contracts designated in the attached exhibit is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to reject the contract with Parul Gupta, M.D. and the three contracts with Gupta-Kumar Medical Practice Associates, Inc. Under Federal Rule of Bankruptcy Procedure 3002(c)(4), Parul Gupta, M.C. and Gupta-Kumar Medical Practice Assoc., Inc. shall have through and including November 16, 2018 to file a proof of claim for any claim arising from the rejection of the contracts. The order shall conspicuously provide notice of the claim filing deadline under the order to all contracting parties.

1:30 PM

1. [18-12205](#)-B-13 **IN RE: DEQUAN/ALEXIS KELSEY**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
7-17-2018 [[13](#)]

MICHAEL MEYER/MV
JOEL WINTER
DISMISSED 8/24/18

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. Doc. #34.

2. [17-10507](#)-B-13 **IN RE: KRYSTAL WEDEKIND**
[FW-4](#)

MOTION TO MODIFY PLAN
7-26-2018 [[56](#)]

KRYSTAL WEDEKIND/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.

3. [18-13218](#)-B-13 **IN RE: VAN LAI**
[18-1056](#)

MOTION FOR TEMPORARY RESTRAINING ORDER
8-30-2018 [6]

LAI V. T2M INVESTMENTS, LLC ET
AL
VAN LAI/ATTY. FOR MV.

NO RULING.

The court notes that movant failed to comply with many of the Local Rules of Practice ("LBR") for the Eastern District of California Bankruptcy Court.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, there is no Docket Control Number ("DCN") as required by LBR 9014-1(c). The motion and accompanying documents do not contain a DCN.

Second, LBR 9014-1(f)(2) requires movants to notify respondents that motions served and filed on less than 28 days' notice do not require written opposition to be filed and served. The notice did not state that.

Third, 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. The notice did not include this language.

Fourth, LBR 9004-2(c)(1) requires that motions, proofs of service, *inter alia*, to be filed as separate documents. Here, the motion and proof of service were combined into one document and not filed separately.

Fifth, there was no evidence included as required by LBR 9014-1(d)(1).

4. [18-13218](#)-B-13 **IN RE: VAN LAI**

MOTION TO RECONSIDER
8-24-2018 [[49](#)]

VAN LAI/MV

NO RULING.

The court notes that movant failed to comply with many of the Local Rules of Practice ("LBR") for the Eastern District of California Bankruptcy Court.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, there is no Docket Control Number ("DCN") as required by LBR 9014-1(c). The motion and accompanying documents do not contain a DCN.

Second, LBR 9014-1(f)(2) requires movants to notify respondents that motions served and filed on less than 28 days' notice do not require written opposition to be filed and served. The notice did not state that.

Third, 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. The notice did not include this language.

Fourth, there was no evidence included as required by LBR 9014-1(d)(1).

MOTION TO SELL
8-27-2018 [\[55\]](#)

VAN LAI/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

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

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, there is no Docket Control Number ("DCN") as required by LBR 9014-1(c). The motion and accompanying documents do not contain a DCN.

Second, LBR 9014-1(f)(2) requires movants to notify respondents that motions served and filed on less than 28 days' notice do not require written opposition to be filed and served. The notice did not state that.

Third, 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. The notice did not include this language.

Fourth, LBR 9004-2(c)(1) requires that motions, proofs of service, *inter alia*, to be filed as separate documents. Here, the motion and

proof of service were combined into one document and not filed separately.

Fifth, Fed. R. Bankr. P. 2002(a)(2) requires at least 21 days' notice on motions to sell, unless the court shortens the time. The court did not issue an order shortening time in this matter, and movant did not give at least 21 days' notice.

Lastly, though debtor has submitted some evidence in the form of a "pre-Qualification Letter" ("PQL") for Jonathan Lagman, she has not submitted any competent evidence in support of her motion. First, the PQL is hearsay (Federal Rule of Evidence 801). Second, the PQL states that it expires on September 14, 2018, the day after this hearing. Third, the PQL does not reflect the subject property. Doc. #74. Debtor's declaration states that she opened an escrow account with North American Title, yet none of the attached exhibits support that contention. The other evidence debtor offers apart from the PQL is her chapter 13 plan, which does not support this motion to sell. Despite the respondent's best efforts, their attached evidence is hearsay (Fed. R. Evid. 801) and without foundation. Doc. #70. The "MLS Listing of Property" shows that as of September 4, 2018, debtor withdrew or cancelled the sale on August 28, 2018. *Id.*

This motion is DENIED WITHOUT PREJUDICE. Debtor has not met her burden of persuasion, proof, and the motion is procedurally insufficient.

6. [18-13218](#)-B-13 **IN RE: VAN LAI**
[SSA-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2018 [\[16\]](#)

T2M INVESTMENTS LLC/MV
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue the order under 11 U.S.C.
 § 362(j).

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

The court notes that the caption of the Notice gives the correct hearing date and time, but the body of the notice states that the hearing "is scheduled for May 24, 2018 at 9:00 a.m." Doc. #17. But because debtor timely opposed, any objection that could be raised by that error has effectively been waived.

This motion is GRANTED IN PART and DENIED AS MOOT IN PART. It is denied as moot because by operation of law, the automatic stay

expired on September 5, 2018. See 11 U.S.C. § 362(c)(3)(A). It is GRANTED IN PART because the court will issue an order confirming that the automatic stay has been terminated pursuant to 11 U.S.C. § 362(j).

11 U.S.C. § 362(j) states "[o]n request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated."

Debtor filed a previous bankruptcy case in the Eastern District of California on March 23, 2018 (Case No. 18-11029) which was dismissed on June 4, 2018. Debtor filed this bankruptcy case on March 23, 2018 (doc. #79).

In cases where an individual debtor has already filed a chapter 13 case, and within one year after dismissal files for chapter 13 relief again, the automatic stay expires after 30 days. 11 U.S.C. § 362(c)(3)(A). Under 11 U.S.C. § 362(c)(3)(B) however, the court may extend the automatic stay if notice and a hearing are completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. The debtor timely requested such relief, but debtor's motion was denied. Doc. #53.

The court notes debtor's opposition (doc. #54) and movant's reply (Doc. #62). But the automatic stay is not in effect and the court is unable to impose it.

This motion will be DEEMED AS A REQUEST UNDER § 362(j) FOR AN ORDER CONFIRMING THAT THE AUTOMATIC STAY HAS BEEN TERMINATED UNDER § 362(c)(3)(A).

7. [18-13218](#)-B-13 **IN RE: VAN LAI**
[SSA-2](#)

MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, CREDITORS
ATTORNEY(S)
8-17-2018 [[27](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

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

This motion is not yet ripe. 11 U.S.C. § 506(b) permits an oversecured creditor to obtain "any reasonable fees, costs, or charges provided for under the agreement . . . under which such claim arose."

The court takes note of the agreement (doc. #33), but without a claim from the creditors, the court is unable to determine whether the creditors are oversecured. Therefore, this motion is DENIED WITHOUT PREJUDICE.

8. [16-12019](#)-B-13 **IN RE: MARIO/ESBEYDY MARTINEZ**
[PLG-3](#)

MOTION TO MODIFY PLAN
7-30-2018 [[63](#)]

MARIO MARTINEZ/MV
RABIN POURNAZARIAN
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Deemed withdrawn. Doc. #73.

9. [16-12421](#)-B-13 **IN RE: INEZ SEARS**
[TCS-4](#)

MOTION TO MODIFY PLAN
8-6-2018 [[69](#)]

INEZ SEARS/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 17, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on October 17, 2018 at 9:30 a.m. The court will issue an order. No appearance is necessary.

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 October 3, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or

The legal issues appear to include: whether the debtor's three trucks qualify for the exemptions listed on Schedule C; whether the trucks are "reasonably adequate for use in the trade, business, or profession" as used in California Code of Civil Procedure § 704.060(c).

12. [17-11523](#)-B-13 **IN RE: TRINIDAD LOPEZ**
[DRJ-2](#)

MOTION TO MODIFY PLAN
8-6-2018 [[21](#)]

TRINIDAD LOPEZ/MV
DAVID JENKINS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

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

13. [18-12023](#)-B-13 **IN RE: CARLOS PADILLA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-1-2018 [[34](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing, the court intends to deny the motion to dismiss. The court will convert the case to Chapter 7.

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

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). Therefore, the defaults of the above-mentioned parties in interest are entered 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 schedules reveal that the debtor has interest in a trust which owns real estate. Based on the schedules, the court estimates that his interest has a value of \$855,417.00. This may be available to creditors with unsecured claims. Accordingly, the case will be converted to chapter 7. 11 U.S.C. § 1307(c).

14. [18-11825](#)-B-13 **IN RE: JESSICA RAMOS**
[PLC-1](#)

CONTINUED MOTION TO CONFIRM PLAN
6-29-2018 [\[23\]](#)

JESSICA RAMOS/MV
PETER CIANCHETTA
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

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

By prior order of the court, this motion was continued to allow the debtor an opportunity to rebut the trustee's opposition. Doc. #39. Trustee objected to plan confirmation on the grounds of feasibility. Doc. #33. Essentially, without the aid of debtor's boyfriend, debtor will not be able to make the necessary plan payment. *Id.*

In her reply, debtor still does not sufficiently show feasibility. She states in her declaration that she quit her job to "roll over [her] 401k" and pay off the house entirely, but the lienholder stated he "was selling [her] house" and there were buyers that called her asking to see the property. Doc. #43. She states that she will use all of the money from her IRA to make the chapter 13 plan payments and get another job, if necessary.

The court takes judicial notice of the fact that Schedule A shows an IRA account with a balance of \$38,955.91 as of the petition date, and Schedule D shows the claim of the residence's lienholders is \$32,000.00. Doc. #1. As of September 10, 2018, lienholders have not yet filed a proof of claim.

However, debtor's last schedule I filed on June 29, 2018 shows that she is unemployed and the overwhelming majority of her income comes from contributions from family and her boyfriend. Doc. #21. Without that income, debtor would have no funds with which to make plan payments. Another problem is that the court has received no evidence from debtor's boyfriend about his employment, current wages, job stability, future plans, etc. that may convince the court of the boyfriend's commitment to aiding debtor.

The court does not have enough evidence to confirm the plan on feasibility grounds. Therefore, this motion is DENIED WITHOUT PREJUDICE.

15. [18-12133](#)-B-13 **IN RE: YOLANDA RODRIGUEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
8-1-2018 [[23](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

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

16. [18-12633](#)-B-13 **IN RE: LUIS/LINDA PANAMENO**
[MHM-2](#)

MOTION TO DISMISS CASE
8-8-2018 [[19](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #32.

17. [17-12934](#)-B-13 **IN RE: FLORENCIO LOPEZ**
[PBB-1](#)

MOTION TO MODIFY PLAN
7-31-2018 [\[22\]](#)

FLORENCIO LOPEZ/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.

18. [18-11338](#)-B-13 **IN RE: ISMAEL/MARIA PARAMO**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H.
MEYER
7-17-2018 [\[39\]](#)

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. The debtor filed an amended plan. Doc. ##43, 50.

19. [18-12439](#)-B-13 **IN RE: JOSE MERAS**
[MHM-2](#)

MOTION TO DISMISS CASE
8-8-2018 [[22](#)]

MICHAEL MEYER/MV
PETER BUNTING

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

DISPOSITION: Granted.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

20. [18-12542](#)-B-13 **IN RE: ISABEL SANCHEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
8-9-2018 [[24](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 27, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion is continued to September 27, 2018 at 1:30 p.m. The grounds for this motion is that debtor failed to attend the § 341 meeting of creditors and has not provided the requested documents to the chapter 13 trustee's office. Doc. #24. Debtor timely responded, though without any evidence, stating that she would appear at the continued meeting on September 18, 2018 and provide those documents to the trustee's office no later than September 4, 2018. Doc. #30.

If debtor does not appear at the § 341 meeting and/or provide the requested documents, then the trustee may submit an ex-parte application for dismissal on those grounds and that application will be granted.

21. [18-12246](#)-B-13 **IN RE: CHARLES/MICHAELA GIBBS**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-26-2018 [[24](#)]

MICHAEL MEYER/MV
PHILLIP GILLET
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

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

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

Based on the record, the factual issues appear to include: the value of the property claimed exempt (guns and ammunition).

The legal issues appear to include: whether debtors must specify a dollar amount exemption on Schedule C.

22. [18-12347](#)-B-13 **IN RE: FARID/IRMA CASTANEDA**
[MHM-2](#)

MOTION TO DISMISS CASE
7-27-2018 [[21](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #28.

23. [17-12952](#)-B-13 **IN RE: JOE/ANNA TRIGO**
[PBB-2](#)

MOTION TO MODIFY PLAN
8-3-2018 [[38](#)]

JOE TRIGO/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.

24. [11-61153](#)-B-13 **IN RE: VIRGINIA FRANKLIN**
[TCS-4](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
8-30-2018 [\[64\]](#)

VIRGINIA FRANKLIN/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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 Citibank (South Dakota) N.A. in the sum of \$4,147.01 on January 27, 2011. Doc. #67. The abstract of judgment was recorded with Fresno County on March 16, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, 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 \$110,800.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$94,218.00 on that same date, consisting of a first deed of trust in favor of Chase bank.

Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$16,582.00. Doc. #1.

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).

25. [11-61153](#)-B-13 **IN RE: VIRGINIA FRANKLIN**
[TCS-5](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
8-30-2018 [\[69\]](#)

VIRGINIA FRANKLIN/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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 Citibank (South Dakota) N.A. in the sum of \$3,385.33 on February 16, 2011. Doc. #72. The abstract of judgment was recorded with Fresno County on March 30, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, 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 \$110,800.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$94,218.00 on that same date, consisting of a first deed of trust in favor of Chase bank.

Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$16,582.00. Doc. #1.

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).

26. [18-13354](#)-B-13 **IN RE: DAHNE FRAKER**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-29-2018 [[12](#)]

DAHNE FRAKER/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by 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.

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.

This case was filed on August 17, 2018 and the automatic stay will expire on September 16, 2018. 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).

In this case the presumption of bad faith does not arise because none of the reasons stated in 11 U.S.C. § 362(c)(3)(C) exist in this case. The previous case was dismissed for unreasonable delay that was prejudicial to creditors because debtor failed to confirm a chapter 13 plan. Case no. 18-10749, doc. ##13, 23. In her declaration, debtor states that her case was dismissed because she could not successfully prosecute a motion to value collateral because she did not sign the declaration, and the motion could not be filed. Doc. #14. In her previous case, debtor made all the required plan payments while the case was active. *Id.*

The debtor's declaration says her situation has changed because she has prepared all of her documents before filing this case. *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.

27. [17-14856](#)-B-13 **IN RE: BRIAN/KARI COLEMAN**
[SL-3](#)

MOTION TO INCUR DEBT
8-20-2018 [\[68\]](#)

BRIAN COLEMAN/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)(3) and an order shortening time (doc. #48) 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. After review of the attached evidence, the court finds that debtors are able to make the monthly payment for the purchase of a new vehicle. Both the interest rate (21.5%) and length of term (42 months) are unfavorable. The motion would be denied except the debtors require two incomes to make the plan payment and otherwise pay living expenses. The total financing may not exceed \$12,120.00. Debtors are authorized but not required to incur further debt in order to purchase a new or used vehicle with a monthly payment not greater than \$416.16. Should the debtors' budget prevent maintenance of current plan payment, debtors shall continue making plan payments until the plan is modified.

28. [18-12357](#)-B-13 **IN RE: ANGEL RODRIGUEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
7-27-2018 [\[28\]](#)

MICHAEL MEYER/MV
SCOTT LYONS

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 record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to appear at the schedule § 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 524(a)(3) and (4). Accordingly, the case will be dismissed.

29. [18-12260](#)-B-13 **IN RE: ALVINA FISCHER**
[JFL-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CONFIRMATION OF
PLAN BY DITECH FINANCIAL LLC
6-14-2018 [[8](#)]

DITECH FINANCIAL LLC/MV
RABIN POURNAZARIAN
JAMES LEWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

30. [18-12761](#)-B-13 **IN RE: JESUS/FATIMA AYALA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-10-2018 [[24](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: None.

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

31. [18-12564](#)-B-13 **IN RE: EFREN SOLIS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
8-13-2018 [[19](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN
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 filed an amended plan on August 17, 2018. Doc. #31.

32. [18-12564](#)-B-13 **IN RE: EFREN SOLIS**
[MHM-2](#)

MOTION TO DISMISS CASE
8-13-2018 [[23](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #39.

33. [18-11865](#)-B-13 **IN RE: GERALD SANDERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-13-2018 [[60](#)]

ERIC ESCAMILLA
\$140.00 INSTALLMENT FEE PAID 8/20/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: None.

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

This matter will proceed as scheduled. The debtor has paid the required installment fee for this Order to Show Cause on August 20, 2018, although this is the second Order to Show Cause issued for a late payment in this case. The debtor has a remaining fee due of \$13.00 to be received by the court no later than September 6, 2018. To date the remaining balance has not been paid. Debtor's counsel shall appear and show cause why this case should not be dismissed for failure to pay the filing fee.

34. [18-12366](#)-B-13 **IN RE: LAURENCE/TUESDAY SHANNON**
[MHM-1](#)

MOTION TO DISMISS CASE
7-30-2018 [\[30\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #54.

35. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[FW-1](#)

MOTION TO CONFIRM PLAN
7-30-2018 [\[35\]](#)

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.

36. [18-10875](#)-B-13 **IN RE: MICHAEL CHAPMAN**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
6-25-2018 [\[31\]](#)

PATRICK KAVANAGH
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. This objection was continued to allow
debtor to submit further evidence.

The debtor has produced evidence showing that the deed the trustee
relies on, the deed from Michael and Debra Chapman to the trust is a
"wild deed." A "wild deed" is one that is not in the chain of title
and that is granted from a person who did not have legal title to
the property. See, e.g. People v. Denman, 218 Cal.App.4th 800.

Because the debtor never had legal title to the property, it cannot
be property of the estate. Because it cannot be property of the
estate, it would not be liquidated in a chapter 7 and therefore
unnecessary for a liquidation analysis under 11 U.S.C. § 1325(a)(4).

37. [18-11375](#)-B-13 **IN RE: ERIC RUBIO**
[MHM-3](#)

MOTION TO DISMISS CASE
8-6-2018 [\[43\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

This motion is DENIED AS MOOT.

The grounds of this motion were unreasonable delay that was
prejudicial to creditors for failure to confirm a chapter 13 plan.
The trustee's declaration stated that the trustee's office "cannot

submit the Order Confirming Plan . . . until an order is entered valuing the 1990 Nissan 300ZX held by Phoenix Title Loans." Doc. #45.

A motion valuing the 1990 Nissan 300ZX, TCS-1, matter #38 below, is granted. Therefore the grounds of trustee's motion are moot, and this motion shall be denied as moot.

38. [18-11375](#)-B-13 **IN RE: ERIC RUBIO**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF PHOENIX TITLE LOANS, INC.
7-27-2018 [\[38\]](#)

ERIC RUBIO/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 debtor is competent to testify as to the value of the 1990 Nissan 300ZX. 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). The respondent's secured claim will be fixed at \$1,653.00. 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.

39. [18-13481](#)-B-13 **IN RE: JAVIER VELIZ**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-30-2018 [\[8\]](#)

JAVIER VELIZ/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 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.

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.

This case was filed on August 24, 2018 and the automatic stay will expire on September 23, 2018. 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 (9th Cir. BAP 2016) (citations omitted).

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 on the grounds that the 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's previous case was filed on December 9, 2015 and dismissed on April 16, 2018 for failure to make plan payments. Doc. #10. Debtor claims he fell behind on plan payments due to a gambling addiction. Debtor has since started attending Gamblers Anonymous and has not gambled since January 4, 2018. *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.

40. [13-12985](#)-B-13 **IN RE: OSWALDO BARAJAS AND ERICA CARDENAS-NAVA**
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
7-27-2018 [[118](#)]

MICHAEL MEYER/MV
GARY HUSS

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.

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

Fed. R. Bankr. P. 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

The record shows that the debtors have cured the default on the loan with JPMorgan Chase Bank, N.A. and are current on mortgage payments to the same through April 2018. Therefore, this motion is GRANTED.

41. [13-12985](#)-B-13 **IN RE: OSWALDO BARAJAS AND ERICA CARDENAS-NAVA**
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
7-27-2018 [[122](#)]

MICHAEL MEYER/MV
GARY HUSS

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.

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

Fed. R. Bankr. P. 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

The record shows that the debtors have cured the default on the loan with LoanCare, LLC and are current on mortgage payments to the same through April 2018. Therefore, this motion is GRANTED.

42. [18-11489](#)-B-13 IN RE: GUILLERMO/ANDREA VILLEGAS

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-20-2018 [37]

THOMAS GILLIS
\$77.00 FINAL INSTALLMENT PAID 8/20/18

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

DISPOSITION: The OSC will be vacated.

NO ORDER REQUIRED. The OSC will be vacated.

The record shows that the final installment fee was paid on August 20, 2018. Therefore, this order will be vacated.

43. [18-12292](#)-B-13 **IN RE: FELIPE MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
7-30-2018 [\[37\]](#)

MICHAEL MEYER/MV
HENRY NUNEZ
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case was dismissed on September 5, 2018. Doc. #54.

44. [18-11697](#)-B-13 **IN RE: JOSE MUNOZ JR. AND DEBORAH MUNOZ**
[SL-4](#)

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
8-9-2018 [\[59\]](#)

JOSE MUNOZ JR./MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

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

The debtor provided the declaration of Michael Brown, who has presented himself as an expert capable of valuing the 2012 Chevrolet

Malibu. Doc. #61. The court finds Mr. Brown's declaration persuasive and admits it as expert evidence under Federal Rule of Evidence 702. The respondent's secured claim will be fixed at \$8,125.00. 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.

45. [18-11697](#)-B-13 **IN RE: JOSE MUNOZ JR. AND DEBORAH MUNOZ**
[SL-5](#)

MOTION TO CONFIRM PLAN
8-7-2018 [[52](#)]

JOSE MUNOZ JR./MV
STEPHEN LABIAK

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

46. [18-12397](#)-B-13 **IN RE: EDWARD SANTIAGO**
[MHM-2](#)

MOTION TO DISMISS CASE
8-2-2018 [[21](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA
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 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, except the debtor, are entered and the matter will be resolved without oral argument.

The grounds of this motion are that debtor has failed to provide necessary and requested documents to the trustee's office as required under 11 U.S.C. § 521(a)(3), (4). Doc. #21. Debtor timely filed an opposition, stating that debtor would provide the requested documents "by the hearing date." Doc. #27.

If the debtor does provide the necessary documents as requested by the trustee prior to the hearing date, then trustee shall withdraw the motion. If debtor does not, then the motion shall be granted on the grounds stated therein.