

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, September 26, 2019
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [18-13677](#)-B-9 IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT
[DJP-1](#)

CONTINUED MOTION FOR APPOINTMENT OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
5-16-2019 [[207](#)]

BECKMAN COULTER, INC./MV
RILEY WALTER
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 10, 2019 at 9:30 a.m.

ORDER: The court will issue an order.

2. [18-13677](#)-B-9 IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT
[FRB-1](#)

CONTINUED MOTION TO EMPLOY MICHAEL J. GOMEZ AS SPECIAL COUNSEL
3-25-2019 [[127](#)]

ELITECARE MEDICAL STAFFING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 10, 2019 at 9:30 a.m.

ORDER: The court will issue an order.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[SWE-1](#)

CONTINUED MOTION TO EMPLOY ROBERT S. MARTICELLO AS ATTORNEY(S)
3-22-2019 [\[122\]](#)

ELITECARE MEDICAL STAFFING, INC./MV
RILEY WALTER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 10, 2019 at 9:30 a.m.

ORDER: The court will issue an order.

4. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WJH-1](#)

CONTINUED DISCLOSURE STATEMENT FILED BY DEBTOR COALINGA REGIONAL
MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT
7-31-2019 [\[328\]](#)

RILEY WALTER

NO RULING.

The court notes the debtor intends to request to continue this
hearing. Doc. #389.

5. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[WW-14](#)

CONTINUED MOTION TO VACATE
5-24-2019 [\[221\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

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

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

JUANITA CABRERA/MV
RILEY WALTER
STEPHEN LABIAK/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

The court notes this matter is apparently resolved. Doc. #1642.

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

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

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER
CONTINUED TO 10/23/19 PER ECF ORDER #1619

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

DISPOSITION: Continued to October 23, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #1619.

8. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[WW-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION TO
BORROW
5-2-2018 [\[64\]](#)

GREGORY TE VELDE/MV
MICHAEL COLLINS

NO RULING.

1:30 PM

1. [19-12900](#)-B-7 **IN RE: REBECCA FREITAS**
[MHM-1](#)

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

STEPHEN LABIAK
CASE CONVERTED TO CH 7 9/12/19

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 converted the case to chapter 7 on September 12, 2019. Doc. #52.

2. [19-13005](#)-B-13 **IN RE: ENERSTO OROZCO**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
9-4-2019 [\[18\]](#)

CAPITAL ONE AUTO FINANCE/MV
SCOTT LYONS
CHERYL SKIGIN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

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

The court notes movant's failure to comply with Local Rule of Practice 3015-1(c)(4). This rule states that objections to plan confirmation "must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date

set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a)." The § 341 meeting concluded on August 27, 2019. This objection was filed and served on September 4, 2019. September 4, 2019 is eight days after August 27, 2019, and the objection is therefore late. Failure to comply with this rule in the future will result in the objection being overruled.

Creditor Capital One Auto Finance, a division of Capital One, N.A.'s ("Creditor") objection is that the plan does not account for the entire amount of their claim. Doc. #18, claim #5. Creditor holds a security interest in a 2011 Ford F150. Creditor's claim is in the amount of \$30,526.68. Creditor's claim is in class 2A of the plan. Doc. #10. The plan states the amount of the claim is \$29,825.00, approximately \$700.00 lower than Creditor's claim.

Debtor responded, asking the court to overrule the objection as moot based on section 3.02 of the plan, or in the alternative, fix the needed increase in order to correct the error in the order confirming plan. Doc. #23.

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. The debtor may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Debtor may not receive their discharge at the end of the plan. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED.

3. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[TCS-2](#)

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

FRANK CRUZ/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING 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 chapter 13 trustee withdrew his opposition on August 29, 2019. Doc. #166. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [19-12717](#)-B-13 **IN RE: CARLOS SOTO**
[MHM-1](#)

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

PETER BUNTING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor withdrew the plan. Doc. #25.

5. [19-12719](#)-B-13 **IN RE: ROBERTO CHAVEZ AND SOLEDAD DE CHAVEZ**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-23-2019 [\[27\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

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

6. [19-12934](#)-B-13 **IN RE: SYLVIA NICOLE
[SSA-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY T2M INVESTMENTS, LLC
9-3-2019 [\[30\]](#)

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

NO RULING.

7. [19-12449](#)-B-13 **IN RE: CONSTANCE LYONS
[ETL-1](#)**

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
8-28-2019 [\[36\]](#)

THE BANK OF NEW YORK MELLON/MV
ERICA LOFTIS/ATTY. FOR MV.
CASE DISMISSED 8/30/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #41.

8. [19-12449](#)-B-13 **IN RE: CONSTANCE LYONS
[MHM-1](#)**

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

CASE DISMISSED 8/30/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #41.

9. [19-13152](#)-B-13 **IN RE: GUILLERMO DE LA ISLA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-29-2019 [\[24\]](#)

JAMES CANALEZ

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

DISPOSITION: Continued to October 23, 2019 at 1:30 p.m. or
 overruled as moot if the case is dismissed (see
 matter #10, MHM-2, below).

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's plan confirmation. 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 9, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by October 16, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than October 16, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

If the chapter 13 trustee's motion to dismiss (MHM-2) is granted, this objection will be overruled as moot.

10. [19-13152](#)-B-13 **IN RE: GUILLERMO DE LA ISLA**
[MHM-2](#)

MOTION TO DISMISS CASE
8-29-2019 [\[27\]](#)

MICHAEL MEYER/MV
JAMES CANALEZ

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to provide the trustee with all of the required documentation. Accordingly, the case will be dismissed.

11. [19-13152](#)-B-13 **IN RE: GUILLERMO DE LA ISLA**
[STH-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON
8-22-2019 [\[20\]](#)

HARLEY-DAVIDSON/MV
JAMES CANALEZ
STEPHEN HICKLIN/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

12. [19-12554](#)-B-13 **IN RE: RAFAELA GARZA THOMAS**
[SL-1](#)

CONTINUED HEARING RE: MOTION TO CONFIRM PLAN
7-30-2019 [\[23\]](#)

RAFAELA GARZA THOMAS/MV
SCOTT LYONS
RESPONSIVE PLEADING

NO RULING.

13. [19-12554](#)-B-13 **IN RE: RAFAELA GARZA THOMAS**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF BANK OF THE WEST
9-11-2019 [\[44\]](#)

RAFAELA GARZA THOMAS/MV
SCOTT LYONS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

Debtor asks the court for an order valuing a 2015 Kia Sportage at \$12,801.00. Doc. #44. Creditor Bank of the West's ("Creditor") claim states the amount owed to be \$14,852.49. Claim #3. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$12,801.00. Doc. #47. Debtor incurred the debt on October 9, 2015. Id. That date is more than 910 days before debtor filed this case.

The debtor is competent to testify as to the value of the 2015 Kia Sportage. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual

Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).
Creditor's secured claim will be fixed at \$12,801.00. 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.

14. [19-12957](#)-B-13 **IN RE: MARIA BATRES AND ISABEL CRUZ VARGAS**
[ASW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
8-22-2019 [\[20\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
ERIC ESCAMILLA
DANIEL FUJIMOTO/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 U.S. Bank National Association, as trustee, on behalf of the holders of the Credit Suisse First Boston Mortgage Securities Corp. Home Equity Pass Through Certificates, Series, 2006-8 ("Creditor") objects to plan confirmation because the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor and that the plan is not feasible. Doc. #20.

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. #15. Creditor filed its proof of claim on September 19, 2019. Claim #5. The claim shows the arrearage amount to be \$31,002.34.

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 \$25,000.00. Doc. #15. Creditor's claim states arrears of \$31,002.34. 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.

15. [19-12265](#)-B-13 **IN RE: ISAIAS HERNANDEZ**
[MHM-1](#)

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

THOMAS GILLIS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #52.

16. [19-12265](#)-B-13 **IN RE: ISAIAS HERNANDEZ**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-29-2019 [[35](#)]

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 objection. Doc. #54.

17. [19-12667](#)-B-13 **IN RE: TERIKA HENDRIX**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-26-2019 [\[27\]](#)

CASE DISMISSED 9/12/19

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED. The court will issue an order.

An order dismissing the case was entered on September 12, 2019 (doc. #30). The OSC will be DROPPED AS MOOT. No appearance is necessary.

18. [19-13167](#)-B-13 **IN RE: AURORA FERRELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-29-2019 [\[16\]](#)

PETER BUNTING

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

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

19. [19-13167](#)-B-13 **IN RE: AURORA FERRELL**
[MHM-2](#)

MOTION TO DISMISS CASE
8-29-2019 [\[20\]](#)

MICHAEL MEYER/MV
PETER BUNTING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

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

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

The record shows that the debtors have failed to appear at the scheduled 341 meeting of creditors. On August 27, 2019. Doc. #22. The meeting was continued to September 18, 2019 at 11:00 a.m. Debtor did not appear at the continued meeting, but the court notes that counsel appeared at both meetings. Accordingly, the case will be dismissed.

20. [19-10468](#)-B-13 **IN RE: RENEE FONTES**
[JRL-2](#)

OBJECTION TO CLAIM OF STATE NATIONAL COMPANIES, CLAIM NUMBER 9
8-21-2019 [\[31\]](#)

RENEE FONTES/MV
JERRY LOWE

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

LBR 3007-1(b) contains the time requirements for setting objections to claims for hearing. The minimum amount of time is 30 days' notice (LBR 3007-1(b)(2)). Hearings set on 44 days' notice require the claimant to file written opposition, if the claimant intends to oppose, at least 14 days before the hearing. See LBR 3007-1(b)(1). Hearings set on 30 days' notice do not require the claimant to file written opposition. If claimant wants to present opposition, it "shall be presented at the hearing on the objection." See LBR 3007-1(b)(2).

This objection was filed and served on August 21, 2019 and set for hearing on September 26, 2019. Doc. #32, 34. September 26, 2019 is less than 44 days after August 21, 2019, 2018, and therefore this hearing was set on less than 44 days' notice under LBR 3007-1(b)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #32. That is incorrect. Because the hearing was set on less than 44 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 44 days' notice, the language of LBR 3007-1(b)(2) needed to have been included in the notice.

21. [19-11768](#)-B-13 **IN RE: LISA THAI**
[LR-2](#)

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

LISA THAI/MV
LAUREN RODE
RESPONSIVE PLEADING 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 chapter 13 trustee withdrew his opposition on September 9, 2019. Doc. #44. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

22. [19-13469](#)-B-13 **IN RE: ADOLFO ORDAZ**
[KAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
9-9-2019 [\[18\]](#)

ANCHOR ASSETS V, LLC/MV
KELSEY SEIB/ATTY. FOR MV.
CASE DISMISSED 9/13/19

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 13, 2019. Doc. #24. 11 U.S.C. § 362(c)(2)(B). The court is alternatively unable to grant the requested alternative relief, an order confirming that the stay is not in effect, because only 11 U.S.C. § 362(j) gives the court that authority, and 11 U.S.C. § 362(c) is not applicable in this case. The case is dismissed and the stay is not in effect.

23. [19-12670](#)-B-13 **IN RE: CALLETANO SANDOVAL AND NANCY AGUAYO**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-23-2019 [\[40\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #52.

24. [19-12670](#)-B-13 **IN RE: CALLETANO SANDOVAL AND NANCY AGUAYO**
[TOG-2](#)

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

CALLETANO SANDOVAL/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The chapter 13 trustee withdrew his opposition to confirmation on September 17, 2019. Doc. #54. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

25. [19-12280](#)-B-13 **IN RE: MARGARITO/GUADALUPE VILLEGAS**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
8-12-2019 [\[36\]](#)

MARGARITO VILLEGAS/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

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

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

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

Debtor asks the court for an order valuing a 2013 Chevrolet Spark at \$3,721.00. Doc. #36. Creditor Westlake Financial Services' ("Creditor") claim states the amount owed to be \$9,209.05. Claim #1. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$3,721.00. Doc. #38. Debtor incurred the debt more than 910 days before debtor filed this case. Id.

The debtor is competent to testify as to the value of the 2013 Chevrolet Spark. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's secured claim will be fixed at \$3,721.00. 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.

26. [19-13082](#)-B-13 **IN RE: DAVID GROVES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
8-29-2019 [\[21\]](#)

JEFFREY MEISNER

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 a modified plan.
See JMM-001.

27. [19-12886](#)-B-13 **IN RE: RAYMOND/DEBORAH MARTIN**
[MHM-2](#)

MOTION TO DISMISS CASE
8-16-2019 [\[22\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 17,
2019. Doc. #40.

28. [19-12288](#)-B-13 **IN RE: EDWARD/NIKKI TREADWAY**
[SAH-4](#)

MOTION TO CONFIRM PLAN
8-8-2019 [\[54\]](#)

EDWARD TREADWAY/MV
SUSAN HEMB
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 23, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully
notice 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 9, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by October 16, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than October 16, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

29. [19-12791](#)-B-13 **IN RE: ROBINSON/MARIA POLANCO**
[MHM-2](#)

MOTION TO DISMISS CASE
8-21-2019 [\[30\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion on September 17, 2019, Doc. #62.

30. [14-10193](#)-B-13 **IN RE: MARTA MATA AND GUSTAVO SEGURA**
[TCS-6](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF
THE DISCHARGE INJUNCTION
8-14-2019 [\[114\]](#)

MARTA MATA/MV
TIMOTHY SPRINGER
CONTINUED TO 10/17/19 PER ECF ORDER #122

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

DISPOSITION: Continued to October 17, 2019 at 1:30 p.m.

NO ORDER REQUIRED: The court previously issued an order. Doc. #122.

31. [19-13835](#)-B-13 **IN RE: JOSE VITOLAS**
[JBC-1](#)

MOTION TO EXTEND AUTOMATIC STAY
9-18-2019 [\[17\]](#)

JOSE VITOLAS/MV
JAMES CANALEZ
OST 9/19/19

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f) (3) and an order shortening time. Doc. #21. Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11913. That case was filed on May 3, 2019 and was dismissed on July 24, 2019 for unreasonable delay that is prejudicial to creditors for failure to file necessary and requested documents under LBR 3015-1. This case was filed on September 5, 2019 and the automatic stay will expire on October 5, 2019.

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

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

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

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

Debtor's previous case was dismissed because debtor failed to provide the chapter 13 trustee with the Class 1 checklist with most recent mortgage statement, and a completed authorization to release information, as required by LBR 3015-1. However, this case has apparently been filed "as a complete Chapter 13 bankruptcy filing with all schedules, forms and chapter 13 plan" Doc. #19. Debtor has filed bankruptcy to stop a foreclosure sale on his residence and to repay mortgage arrears on said residence. *Id.* It appears from the schedules and the proposed plan that debtor will be able to make plan payments and complete a chapter 13 plan.

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