



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, October 17, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of 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, and all parties will need to appear at the hearing unless otherwise ordered. 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. [24-12503](#)-A-13 **IN RE: STANLEY KRUSZEWSKI AND STEVEE LOPEZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
9-26-2024 [[12](#)]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 21, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

On August 27, 2024, Stanley A. Kruszewski and Stevee A. Lopez (together, "Debtors") filed a voluntary petition under chapter 13 and a chapter 13 plan ("Plan"). Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) Debtors have failed to timely provide the required documents to Trustee; (2) the Plan provides for the payment of fees in excess of the fixed compensation allowed in Local Rule of Practice 2016-1(c); and (3) the meeting of creditors has yet to be concluded. Doc. #12. Debtors' 341 meeting of creditors has been continued to October 22, 2024 at 11:00 a.m. See court docket entry entered on September 24, 2024.

This objection will be continued to November 21, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than November 7, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by November 14, 2024.

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 14, 2024. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

2. [24-11307](#)-A-13 **IN RE: MARK SCHADE AND ELIZABETH ELLSTON**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-19-2024 [[60](#)]

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION
9-13-2024 [\[49\]](#)

ELIZABETH ELLSTON/MV
PETER BUNTING/ATTY. FOR DBT.

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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Mark Arthur Schade and Elizabeth Tommie Leigh Ellston (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the Debtors' 2013 Sandpiper M-35ROK RV ("Vehicle"), which is the collateral of Golden 1 Credit Union ("Creditor"). Doc. #49; Decl. of Peter B. Bunting, Doc. #51.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

The Vehicle was purchased more than 910 days before the filing of this case. Ex. A, Doc. #52. Creditor filed a proof of claim on August 2, 2024, which asserts \$20,000.00 as the secured portion of Creditor's claim. Claim 1. Debtors

agree with the \$20,000.00 value for the Vehicle asserted by Creditor. Bunting Decl., Doc. #51.

The motion is GRANTED. Creditor's secured claim will be fixed at \$20,000.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

4. [24-11307](#)-A-13 **IN RE: MARK SCHADE AND ELIZABETH ELLSTON**
[PBB-4](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
9-16-2024 [\[55\]](#)

ELIZABETH ELLSTON/MV
PETER BUNTING/ATTY. FOR DBT.

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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Mark Arthur Schade and Elizabeth Tommie Leigh Ellston (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the Debtors' hot tub ("Property"), which is the collateral of Wells Fargo Bank, N.A. ("Creditor"). Doc. #55; Decl. of Mark Arthur Schade, Doc. #57.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes"

means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert the Property was purchased more than one year before the filing of this case and that the loan is a purchase money security interest. Doc. #55; Schade Decl., Doc. #57. Debtors assert a replacement value of the Property of \$500.00 and ask the court for an order valuing the Property at \$500.00. Id. Debtors are competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$500.00. 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.

5. [24-12327](#)-A-13 **IN RE: ROBERT NAVARRA AND GEMMA CASIANO-NAVARRA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-27-2024 [\[19\]](#)

LILIAN TSANG/MV
PETER SAUER/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 21, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

On August 13, 2024, Robert Michael Martinez Navarra and Gemma Casiano-Navarra (together, "Debtors") filed a voluntary petition under chapter 13 and a chapter 13 plan ("Plan"). Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because, based on the testimony of debtor Gemma Casiano-Navarra, Ms. Casiano-Navarra is no longer employed at US Bank and has recently started employment at BMO Bank. Doc. #19. Trustee requires pay advices from BMO Bank as those pay advices become available as well as amended Schedules I and J before Trustee can determine whether the Plan is feasible and proposed in good faith. Id.

This objection will be continued to November 21, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than November 7, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by November 14, 2024.

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 14, 2024. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

6. [24-12339](#)-A-13 **IN RE: LAURIE MATA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-26-2024 [[29](#)]

LILIAN TSANG/MV
JOSHUA STERNBERG/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on October 10, 2024. Doc. #34.
Therefore, this objection is OVERRULED AS MOOT.

7. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**

CONTINUED NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS
5-17-2024 [[111](#)]

SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 31, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

On October 8, 2024, the court issued an order continuing the hearing on the
debtor's objection to October 31, 2024 at 9:30 a.m. Doc. #155.

8. [23-10947](#)-A-13 **IN RE: SONIA LOPEZ**
[SDS-5](#)

MOTION TO MODIFY PLAN
9-3-2024 [[130](#)]

SONIA LOPEZ/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

On September 24, 2024, the debtor filed and set for hearing a motion for
confirmation of a fifth modified plan (SDS-6). Doc. ##147-152. Therefore, this
motion is DROPPED AS MOOT.

9. [24-12359](#)-A-13 **IN RE: JUAN GONZALEZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-26-2024 [\[15\]](#)

LILIAN TSANG/MV
JOSHUA STERNBERG/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 21, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

On August 14, 2024, Juan F. Gonzalez ("Debtor") filed a voluntary petition under chapter 13 and a chapter 13 plan ("Plan"). Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because the meeting of creditors has yet to be concluded. Doc. #15. Debtor's 341 meeting of creditors has been continued to October 22, 2024 at 1:00 p.m. See court docket entry entered on September 25, 2024.

This objection will be continued to November 21, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than November 7, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by November 14, 2024.

If 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 November 14, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

10. [24-12361](#)-A-13 **IN RE: EDWARD/CRYSTAL PEREZ**
[NLG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
9-30-2024 [\[15\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

NO RULING.

11. [24-12462](#)-A-13 **IN RE: JAMES/NINA JESSOP**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
10-1-2024 [\[14\]](#)

SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtors filed a first amended plan on October 16, 2024 (SDS-1, Doc. #24), with a motion to confirm that plan set for hearing on December 12, 2024 at 9:30 a.m. Doc. ##21-24.

12. [24-12383](#)-A-13 **IN RE: RICHARD BRANDT**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
10-1-2024 [\[15\]](#)

SUSAN SILVEIRA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

As an informative matter, the chapter 13 plan (Doc. #7) was filed as a fillable version of the court's mandatory form (EDC Form 3-080, rev. 11/19/18) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, counsel for the debtor should print the completed chapter 13 plan form prior to filing and not file the fillable version.

Richard Brandt ("Debtor") filed his chapter 13 plan ("Plan") on August 16, 2024. Doc. #7. In Section 3.05 of the Plan, Debtor's counsel selected filing and serving a motion to approve payment of attorneys' fees in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016 and 2017, and LBR 2016-1(b) instead of permitting payment of attorneys' fees by complying with LBR 2016-1(c). Id. According to Debtor's counsel, Debtor's counsel intended to check the box for payment of attorneys' fees by complying with LBR 2016-1(c)

instead of selecting to file and serve a motion for fees and expenses pursuant to LBR 2016-1(b). Doc. ##18, 21.

LBR 2016-1(e) provides that the debtor's counsel shall elect compensation under LBR 2016-1(b) or LBR 2016-1(c) in the first chapter 13 plan filed, i.e., chapter 13 plan § 3.05, EDC 3-080. Any failure to elect compensation in the first chapter 13 plan filed shall be deemed an election to seek compensation and expenses under LBR 2016-1(b). Except as provided in Federal Rule of Civil Procedure ("Rule") 60, made applicable to this case by Federal Rule of Bankruptcy Procedure 9024, that election, or failure to elect, is irrevocable. LBR 2016-1(e).

Lilian G. Tsang, chapter 13 trustee ("Trustee"), objects to the confirmation of the Plan on the grounds that an election pursuant to LBR 2016-1(e) requires relief under Rule 60, which has not been done in this case, and the election on how to receive compensation cannot be changed in an order confirming a plan. Doc. #18. In response to Trustee's objection, Debtor's counsel asserts that the checking of the wrong box in Section 3.05 of the Plan was a clerical mistake/oversight made while preparing the Plan and submits that the error of checking the wrong box can be corrected by the court in the order confirming the Plan pursuant to Rule 60(a). Doc. #20.

Rule 60(a) allows the court to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Rule 60(a) "finds application where the record makes apparent that the court intended one thing but by merely clerical mistake or oversight did another." United States v. Kellogg (In re West Tex. Mktg. Corp.), 12 F.3d 497, 503 (5th Cir. 1994) (citations omitted). "The rule allows courts to modify their judgment in order to insure that the record reflects the actual intentions of the court and the parties." Id. at 504.

Here, the court did not make the election on how to receive compensation under the Plan; that election was made by Debtor's counsel. Therefore, it is not apparent on the record "that the court intended one thing but by merely clerical mistake or oversight did another," so Rule 60(a) does not apply. The relief to alter the election of Debtor's counsel in Section 3.05 of the Plan can only be granted under Rule 60(b), which relief has not been sought yet. Additionally, a new election under Section 3.05 of the Plan cannot be done through the order confirming the plan, as requested by Debtor's counsel. If Debtor's counsel seeks to have attorneys' fees paid pursuant to LBR 2016-1(c) instead of LBR 2016-1(b), a motion pursuant to Rule 60(b) as well as a new chapter 13 plan must be filed, noticed and set for hearing.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

1. [23-12328](#)-A-7 **IN RE: RUSTY PITTS**
[23-1056](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-27-2023 [[1](#)]

YOUNG V. PITTS
KEITH CABLE/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

As a procedural matter, the certificate of service filed in connection with the plaintiff's status report does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form. The court encourages counsel for the plaintiff to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

2. [21-11450](#)-A-7 **IN RE: ANTHONY FLORES**
[21-1036](#) [BGR-4](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-18-2024 [[61](#)]

SAWUSCH ET AL V. FLORES
JESSICA WELLINGTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendant 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Anthony David Flores ("Defendant") is the chapter 7 debtor and defendant in this adversary proceeding. Complaint, Doc. #1. Carol Sawusch, administrator of

the Estate of Mark Sawusch, and Patsy Ann Sawusch, beneficiary of the Estate of Mark Sawusch (together, "Plaintiffs"), move to dismiss this adversary proceeding pursuant to Federal Rule of Civil Procedure ("Rule") 41(a)(2). Doc. #61. Rule 41 is made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7041.

On August 24, 2021, Plaintiffs commenced this adversary proceeding against Defendant to determine nondischargeability of a debt pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6). Doc. #1. Specifically, Plaintiffs allege that pre-petition Defendant and Anna Rene Moore ("Moore") made numerous misrepresentations to Dr. Mark Sawusch, who suffered from a mental illness, to induce Dr. Sawusch to sign powers of attorney to grant Defendant control over Dr. Sawusch's finances. Compl. ¶¶ 55-56, Doc. #1. After obtaining power of attorney, Defendant transferred approximately \$3.1 million of Dr. Sawusch's funds to Defendant and Moore. Compl. ¶¶ 33-39, Doc. #1. Through a state court action, approximately \$2.1 million was returned to the state court receiver but the balance has yet to be returned to Dr. Sawusch's estate. Compl. ¶ 48, Doc. #1. Defendant answered the complaint on October 8, 2021. Doc. #9.

In December 2022, Defendant was charged in a 12-count indictment pending in the United States District Court for the Central District of California, Case No. 2:22-cr-00593-PA. Exs. 1 & 5, Doc. #64. The indictment alleged that Defendant and Moore defrauded Dr. Sawusch out of more than \$2.7 million before Dr. Sawusch's death and attempted to defraud Dr. Sawusch's estate out of an additional \$20 million after Dr. Sawusch's death. Id.

On October 19, 2023, Defendant plead guilty to nine of the twelve counts in the indictment. Exs. 2 & 3, Doc. #64. On June 17, 2024, the district court entered its sentencing judgment and probation/commitment order where the district court ordered Defendant to pay restitution in the amount of \$1 million. Ex. 4, Doc. #64.

Rule 41(a)(2) provides that except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. Unless the order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice. Fed. R. Civ. P. 41(a)(2). Rule 41(a)(1)(A) provides that a plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves an answer of a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. Fed. R. Civ. P. 41(a)(1)(A).

Here, Defendant has been ordered to pay Plaintiffs \$1 million in restitution, which is not dischargeable pursuant to 11 U.S.C. § 523(a)(13), making this adversary proceeding moot. Doc. #61; Decl. of Jessica S. Wellington, Doc. #63. Because Defendant filed an answer to this Complaint, Plaintiffs cannot voluntarily dismiss this adversary proceeding without a court order unless Defendant stipulates to dismissal. Fed. R. Civ. P. 41(a)(1)(A). Defendant is currently incarcerated, and Plaintiffs seek dismissal pursuant to Rule 41(a)(2) instead of obtaining a stipulated dismissal of this adversary proceeding. Doc. #61.

Accordingly, this motion is GRANTED, and this adversary proceeding is dismissed.

3. [23-12163](#)-A-7 **IN RE: THRIVE SPORTS INC.**
[24-1015](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-11-2024 [\[1\]](#)

FEAR V. EAGLE MOUNTAIN CASINO

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

DISPOSITION: Continued to February 13, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the notice of settlement and stipulation filed on October 10, 2024 (Doc. #53), the status conference is continued to February 13, 2025 at 11:00 a.m. The parties shall file either joint or unilateral status report(s) not later than February 6, 2025.

4. [23-12163](#)-A-7 **IN RE: THRIVE SPORTS INC.**
[24-1015](#) [WAS-4](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-1-2024 [\[23\]](#)

FEAR V. EAGLE MOUNTAIN CASINO
RACHEAL WHITE HAWK/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 13, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the notice of settlement and stipulation to continue the hearing on this motion filed on October 10, 2024 (Doc. #53), the hearing on this motion is continued to February 13, 2025 at 11:00 a.m. Any reply to the plaintiff's opposition shall be filed and served not later than February 6, 2025.

5. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[24-1027](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-21-2024 [\[1\]](#)

LA HACIENDA MOBILE ESTATES, LLC V. CITY OF FRESNO ET AL
ADAM BOLT/ATTY. FOR PL.

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

DISPOSITION: Continued to November 21, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

Because the parties have stipulated to extend the time for the defendants to respond to the complaint (Doc. #19), the status conference is continued to November 21, 2024 at 11:00 a.m.

6. [23-12893](#)-A-7 **IN RE: RAYMOND HERNANDEZ**
[24-1008](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-19-2024 [[1](#)]

FEAR V. HERNANDEZ
GABRIEL WADDELL/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A default judgment in favor of the plaintiff was entered on September 30, 2024. Doc. #33. Accordingly, this status conference is dropped from calendar. This adversary may be administratively closed when appropriate.

7. [22-11499](#)-A-7 **IN RE: STEVEN HARO**
[22-1026](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
3-26-2024 [[66](#)]

HIGH BAND CONSTRUCTION INC. V. HARO ET AL
BRENT MEYER/ATTY. FOR PL.
DISMISSED 9/12/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on September 12, 2024. Doc. #91. Therefore, the status conference is dropped from calendar. This adversary may be administratively closed when appropriate.