

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, October 20, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [22-11116](#)-A-13 **IN RE: THEDFORD JONES**
[MJB-1](#)

CONTINUED OBJECTION TO CLAIM OF DENISE BALESTIER, CLAIM NUMBER 5
8-30-2022 [[25](#)]

THEDFORD JONES/MV
MICHAEL BERGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [22-11116](#)-A-13 **IN RE: THEDFORD JONES**
[SAH-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DENISE BALESTIER
8-15-2022 [[22](#)]

DENISE BALESTIER/MV
MICHAEL BERGER/ATTY. FOR DBT.
SUSAN HEMB/ATTY. FOR MV.

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 a second amended plan on October 6, 2022 (MJB-2, Doc. #54), with a motion to confirm the second amended plan set for hearing on November 17, 2022 at 9:30 a.m. Doc. ##52-55.

3. [22-11116](#)-A-13 **IN RE: THEDFORD JONES**
[SAH-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY DENISE BALESTIER
10-3-2022 [[44](#)]

DENISE BALESTIER/MV
MICHAEL BERGER/ATTY. FOR DBT.
SUSAN HEMB/ATTY. FOR MV.

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 a second amended plan on October 6, 2022 (MJB-2, Doc. #54), with a motion to confirm the second amended plan set for hearing on November 17, 2022 at 9:30 a.m. Doc. ##52-55.

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
9-8-2022 [\[25\]](#)

STEPHEN LABIAK/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 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 movant has done here.

Stephen L. Labiak ("Movant"), counsel for Timothy Pierce ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$2,353.00 for services rendered from May 2, 2022 through September 6, 2022. Doc. #25. Debtor's confirmed plan provides, in addition to \$500.00 paid prior to filing the case, for \$6,100.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 22. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Decl. of Timothy Pierce, Doc. #29.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's chapter 13 plan; (2) resolving an issue about a past car accident; (3) preparing for and attending the 341 meeting of creditors; (4) preparing the fee application; and (5) general case administration. Exs. A, B, & C, Doc. #28. The court finds that the compensation sought is reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$2,353.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[TCS-1](#)

MOTION TO CONFIRM PLAN
9-7-2022 [\[41\]](#)

CHRISTOPHER RENNA/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 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.

6. [22-11228](#)-A-13 **IN RE: VERO BONOAN**
[PLG-1](#)

MOTION TO CONFIRM PLAN
8-30-2022 [\[16\]](#)

VERO BONOAN/MV
STEVEN ALPERT/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 movant has done here.

As a procedural matter, while the Notice of Hearing and Amended Notice of Hearing filed in connection with this motion provided names and addresses of persons who must be served with any opposition as required by LBR 9014-1(d)(3)(B)(i), the names and addresses listed also should have included the chapter 13 trustee.

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.

7. [18-11832](#)-A-13 **IN RE: MANUEL/ALICE FLORES**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
8-10-2022 [[61](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

8. [18-11832](#)-A-13 **IN RE: MANUEL/ALICE FLORES**
[TCS-2](#)

MOTION TO MODIFY PLAN
9-7-2022 [[66](#)]

ALICE FLORES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on October 17, 2022. Doc. #83.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR
LEONARD K. WELSH, DEBTORS ATTORNEY(S)
9-20-2022 [\[38\]](#)

LEONARD WELSH/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 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 movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for Denise Thomas ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$2,760.00 and reimbursement for expenses in the amount of \$18.43 for services rendered from September 1, 2020 through August 31, 2022. Doc. #38. Debtor's confirmed plan provides, in addition to \$1,391.00 paid prior to filing the case, for \$6,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##2, 38. One prior fee application has been approved authorizing interim compensation in the amount of \$1,887.50 and reimbursement of expenses in the amount of \$9.45. Doc. #33. Debtor consents to the amount requested in Movant's application. Decl. of Denise Thomas, Doc. #40.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing ex parte motion for authority to borrow money to purchase motor vehicle; (2) advising the debtor about proof of claims filed by creditors in case; (3) preparing and filing notice of entry confirming plan; (4) preparing the fee application; and (5) general case administration. Decl. of Leonard K. Welsh, Ex. B, Doc. #41. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$2,760.00 and reimbursement for expenses in the amount of \$18.43 to be paid in a manner consistent with the terms of the confirmed plan.

10. [22-11438](#)-A-13 **IN RE: KRISTINE KYUTUNYAN**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-9-2022 [8]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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 an order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Kristine A. Kyutunyan Singh ("Debtor"), objects to Debtor's claims of exemption under California Code of Civil Procedure ("C.C.P.") § 703.140(b) because Debtor, a married individual filing without her spouse, is required by C.C.P. § 703.140(a)(2) to file a spousal waiver. Obj., Doc. #8.

The failure of the debtor 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). However, while no timely written response was filed, on October 14, 2022, the Debtor and her spouse filed a Spousal Waiver of Right to Claim Exemptions Pursuant to C.C.P. § 703.140(a)(2) ("Waiver"), which fully satisfies Trustee's objection to Debtor's claimed exemptions. Doc. #15.

Accordingly, based on the filing of the Waiver, Trustee's objection will be OVERRULED.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-15-2022 [\[16\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed a statement of non-opposition on September 28, 2022. Doc. #26. The failure of the chapter 13 trustee and the U.S. Trustee 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, AmeriCredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2014 Hyundai Elantra ("Vehicle"). Doc. #16.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor failed to make at least three complete pre-petition payments. Movant has produced evidence that debtor is delinquent for the entire balance of \$15,315.26 due under the contract, Movant recovered the vehicle pre-petition on July 26, 20022, and the debtor's proposed chapter 13 plan does not include the Vehicle. Exs., A, C, & D, Doc. #21.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor failed to make at least three pre-petition payments to Movant and the Vehicle is a depreciating asset.

12. [22-11043](#)-A-13 **IN RE: JORGE ROACHO**
[DAB-1](#)

MOTION TO CONFIRM PLAN
9-15-2022 [[33](#)]

JORGE ROACHO/MV
DAVID BOONE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

13. [21-10856](#)-A-13 **IN RE: MARK/AMELIA CAVE**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
6-13-2022 [[85](#)]

MICHAEL MEYER/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

14. [21-10856](#)-A-13 **IN RE: MARK/AMELIA CAVE**
[SL-7](#)

MOTION TO MODIFY PLAN
9-1-2022 [[109](#)]

AMELIA CAVE/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO DISMISS CASE
9-19-2022 [\[27\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #27. Specifically, Trustee asks the court to dismiss this case for the failure of the debtor to:

- (1) Provide Trustee with any requested documents.
- (2) File complete and accurate schedules and statements as required under 11 U.S.C § 521 and/or Federal Rule of Bankruptcy Procedure. The debtor's Schedule C lists no exemptions, her Schedule E/F does not list all debts, her Schedule J lists no food or housekeeping expenses, and the debtor's plan is mostly blank.
- (3) Set for hearing a motion to confirm a plan with notice to creditors.

Doc. #29. The debtor did file timely written opposition.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor has failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(1) to dismiss this case as the

debtor has failed to file complete and accurate schedules as well as set for hearing a motion to confirm her plan with notice to creditors.

Because it is likely that there is little non-exempt property if the debtor were to claim available exemptions, the court finds that dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

16. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[SN-13](#)

OBJECTION TO CLAIM OF MERCED COUNTY TAX COLLECTOR, CLAIM NUMBER 4
8-24-2022 [[439](#)]

SYLVIA NICOLE/MV

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

This matter is OVERRULED WITHOUT PREJUDICE for improper notice.

This objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). The Notice of Hearing provided that written opposition could be filed on or before the date of the hearing, October 20, 2022. However, LBR 3007-1(b)(1) requires that written opposition be filed and served at least 14 days prior to the hearing, not by the date of the hearing.

In addition, the Notice of Hearing filed in connection with this objection to claim does not comply with LBR 9014-1(d)(3)(B)(ii), which requires the notice to advise potential respondents that the failure to file timely written opposition may result in the objection to claim being sustained without oral argument and the striking of untimely written opposition if written opposition is required.

Finally, the Notice of Hearing filed in connection with this objection to claim also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-9-2022 [\[15\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Sustained.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 sustaining of the objection. 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 default of the debtor is 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 movant has done here.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Thurman Leroy Rogers, Jr. ("Debtor"), objects to Debtor's claims of exemption in Debtor's assets. Doc. #15. Debtor claims an exemption in his primary residence under 11 U.S.C. § 522(b)(3) and in his work truck under 11 U.S.C. § 522(d)(2), claiming both exemptions at 100% of fair market value, up to any applicable statutory limit. Schedule C, Doc. #9. Debtor has not responded to Trustee's objection.

Debtor cannot elect exemptions under 11 U.S.C. § 522 because California has opted out of the federal exemption scheme. Section 522 of the Bankruptcy Code "provides a default list of exemptions, but allows states to opt out of the federal scheme and define their own exemptions." Phillips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018). California has opted out of the federal system and the validity of exemptions are controlled by California law. Cal. Civ. Proc. Code § 703.130; Gilman, 887 F.3d at 964; Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). "A California debtor in bankruptcy must elect between two sets of exemptions under California law, one which applies to debtors generally and the other which applies to debtors in bankruptcy." Wolfson v. Watts (In re Watts), 298 F.3d 1077, 1080 (9th Cir. 2002); C.C.P. § 703.140(a).

Accordingly, Trustee's objection will be SUSTAINED.

18. [22-11395](#)-A-13 **IN RE: GLORIA GARCIA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-3-2022 [\[13\]](#)

STEPHEN LABIAK/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 is OVERRULED AS MOOT. The debtor filed a first amended plan on October 10, 2022 (SLL-1, Doc. #21), with a motion to confirm the first amended plan set for hearing on November 17, 2022 at 9:30 a.m. Doc. ##19-24.

19. [20-13597](#)-A-13 **IN RE: GARY GEORGE**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2022 [\[40\]](#)

TOYOTA LEASE TRUST/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

20. [18-11599](#)-A-13 **IN RE: SILVIA ABARCA**
[HDN-2](#)

MOTION FOR COMPENSATION FOR HENRY D. NUNEZ, DEBTORS ATTORNEY(S)
9-1-2022 [\[53\]](#)

SILVIA ABARCA/MV
HENRY NUNEZ/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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 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 movant has done here.

Henry D. Nunez. ("Movant"), counsel for Silvia Suzzette Abarca ("Debtor"), the debtor in this chapter 13 case, requests allowance of final compensation in the amount of \$6,000.00 for services rendered from April 24, 2018 through September 1, 2022. Doc. ##53, 55. Debtor's confirmed plan provides for \$6,000.00 in attorney's fees. Plan, Doc. #1, 55.

While Movant intended to be paid a fixed fee pursuant to LBR 2016-1(c), the order confirming Debtor's plan provides "that the debtor's attorney will seek approval of his fees by filing and serving an application in compliance with U.S.C. sections 329 and 330, and Fed. R. Bankr. P. 2002, 2016 and 2017." Order, Doc. #33. The court treats this motion as an application for final approval of attorneys' fees in the amount of \$6,000.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant provided services consistent with LBR 2016-1(c) for a business bankruptcy case, and the court finds that the compensation sought is reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows compensation requested by this motion in the amount of \$6,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

1. [22-10113](#)-A-7 **IN RE: ANTHONY LOPEZ**
[22-1013](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-6-2022 [1]

THE GOLDEN 1 CREDIT UNION V. LOPEZ
KAREL ROCHA/ATTY. FOR PL.

NO RULING.

2. [22-10113](#)-A-7 **IN RE: ANTHONY LOPEZ**
[22-1013](#) [KR-2](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-16-2022 [28]

THE GOLDEN 1 CREDIT UNION V. LOPEZ
KAREL ROCHA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The Golden 1 Credit Union ("Plaintiff") moves for entry of default judgment against defendant Anthony Lopez ("Defendant") pursuant to Federal Rule of Civil Procedure ("Rule") 55, made applicable to this adversary proceeding through Federal Rule of Bankruptcy Procedure 7055. Doc. #28. Plaintiff seeks default judgment against Defendant under 11 U.S.C. § 523(a)(2)(A) on the ground that Defendant knowingly and intentionally misrepresented that he would make monthly payments for the purchase of a 2017 Ram 1500 ("Vehicle") pursuant to a written Retail Installment Sale Contract ("Contract") that secured a loan from Plaintiff to purchase the Vehicle. By the motion, Plaintiff seeks a default judgment in the amount of \$32,049.35, plus interest, costs, and reasonable attorney's fees. Id. For the reasons set forth below, the court is inclined to DENY Plaintiff's motion for entry of default judgment.

The court entered Defendant's default on July 21, 2022. Doc. #17. Because Defendant's default has been entered, the court will take the factual allegations of the complaint, except those relating to the amount of damages, as true. See Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-918 (9th Cir. 1987).

Facts

As alleged in the complaint, on or about April 26, 2020, Defendant, for valuable consideration, made, executed, and delivered the Contract to

Porterville Chrysler Jeep Dodge. Complaint ¶ 5, Doc. #1. Plaintiff is the current holder of the Contract. Id. ¶ 8. Pursuant to the Contract, Defendant agreed to pay for the Vehicle by making monthly payments to Plaintiff until the Vehicle was paid in full. Ex. 1, Doc. #31. On or about June 10, 2020, and continuing thereafter, Defendant defaulted in the terms, conditions, and covenants of the Contract by failing to make the monthly payments due and owing. Decl. of Karl Williams, Doc. #30. Plaintiff believes and alleges that Defendant intended to effectuate a fraud when Defendant made the loan application. Complaint ¶ 27, Doc. #1.

Legal Standard for Default Judgment

"After entry of default, the Court has discretion to grant default judgment on the merits of the case." Andrade v. Arby's Restaurant Group, Inc., 225 F. Supp. 3d 1115, 1127 (N.D. Cal. 2016) (first citing Rule 55(b); and then citing Aldabev. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)).

Under Rule 55, "the court may require a plaintiff to demonstrate a *prima facie* case by competent evidence in a prove-up trial to obtain a default judgment." Lu v. Liu (In re Liu), 282 B.R. 904, 907 (Bankr. C.D. Cal. 2002). The court has wide discretion under Rule 55 to consider whether the evidence presented supports a claim and warrants judgment for the plaintiff." Id.; see also, Televideo, 826 F.2d at 917.

"Bankruptcy courts frequently exercise their discretion to require that a plaintiff prove up a *prima facie* case when a plaintiff creditor seeks default judgment against a defendant debtor who has failed to answer a §523 non-dischargeability claim." Liu, 282 B.R. at 907-08 (citations omitted). "A bankruptcy court's consideration of the evidence required to establish the 'truth of any averment' under Fed. R. Civ. P. 55 necessarily includes evidence regarding issues of intent in a §523(a)(2)(A) context." Beltran v. Beltran (In re Beltran), 182 B.R. 820, 824 (B.A.P. 9th Cir. 1995); e.g., Cashco Fin. Servs. v. McGee (In re McGee), 359 B.R. 764 (B.A.P. 9th Cir. 2006).

"In a non-dischargeability action under §523(a), the creditor has the burden of proving all the elements of its claim by a preponderance of the evidence. Exceptions to discharge are strictly construed against an objecting creditor and in favor of the debtor to effectuate the fresh start policies under the Bankruptcy Code." Cardenas v. Shannon (In re Shannon), 553 B.R. 380, 388 (B.A.P. 9th Cir. 2016).

Claims for Relief Under 11 U.S.C. §523(a)(2)(A)

Plaintiff asserts that Defendant intended to defraud Plaintiff when Defendant secured a loan to purchase the Vehicle, failed to make a single payment on the loan, filed for bankruptcy thereafter, and then failed to respond to this adversary proceeding. Doc. #28. However, after reviewing the evidence submitted by Plaintiff, the court finds that Plaintiff has not presented sufficient evidence to support the *prima facie* §523(a)(2) claim and entry of default judgment is not warranted.

"A creditor seeking to except a debt from discharge under §523(a)(2)(A) based on false representations bears the burden of proving by a preponderance of the evidence five elements: (1) misrepresentation(s), fraudulent omission(s), or deceptive conduct; (2) knowledge of the falsity or deceptiveness of such representation(s), omission(s), or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor; and (5) damage to the creditor proximately caused by its reliance." Cardenas v. Shannon (In re Shannon),

553 B.R. 380, 388 (B.A.P. 9th Cir. 2016) (first citing Ghomeshi v. Sabban (In re Sabban), 600 F. 3d 1219, 1222 (9th Cir. 2010); and then citing Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009)).

The intent to deceive requirement may be established by showing "either actual knowledge of the falsity of a statement, or reckless disregard for its truth." In re Grabau, 151 B.R. 227, 234 (N.D. Cal. 1993) (quoting In re Houtman, 568 F.2d 651, 656 (9th Cir. 1978)). Intent to deceive can be inferred from the totality of the surrounding circumstances. See In re Dakota, 284 B.R. 711, 721 (Bankr. N.D. Cal. 2002) (citing to Anastas v. Am. Sav. Bank (In re Anastas), 94 F.3d 1280, 1282 (9th Cir.1996)). Intent to deceive also can be inferred from surrounding circumstances or inferences from a course of conduct. See Cowen v. Kennedy (In re Kennedy), 108 F.3d 1015, 1018 (9th Cir. 1997).

For a representation regarding future performance to be actionable under § 523(a)(2)(A), a debtor must lack an intent to perform when the promise was made. See Donaldson v. Hayes (In re Hayes), 315 B.R. 579, 587 (Bankr. C.D. Cal. 2004) (citing Anastas, 94 F.3d at 1285). A mere failure to fulfill a promise to pay a debt is not fraudulent as to render the debt non-dischargeable, absent proof that the promise was made with the intent not to pay or knowing that payment would be impossible. See Citibank (S.D.) N.A. v. Lee (In re Lee), 186 B.R. 695, 699 (B.A.P. 9th Cir. 1995).

Plaintiff's evidence does not demonstrate that Defendant intended to deceive Plaintiff. In In re Dakota, 284 B.R. 711, 721 (Bankr. N.D. Cal. 2002), cited by Plaintiff, the bankruptcy court did not find intent to deceive when a debtor, who was an officer and director of a corporation, failed to disclose his plans to start a competing business once he left that corporation's employment. The bankruptcy court held that debtor's failure to disclose information was not fraudulent concealment of material facts since the debtor's non-disclosure was not harmful to the corporation and there was no evidence that debtor purposely concealed his plans to start his own business. Dakota, 284 B.R. at 723. Similarly, in Hayes, the bankruptcy court did not find an intent to deceive when a debtor entered into a contract to purchase a business for a sum of \$250,000 and agreed to make a series of payments to the former owner over an 83-month term, but then failed to make all the payments as promised under the agreement. Hayes, 315 B.R. at 587. The Hayes court aptly stated that "a mere failure to fulfill a promise to pay a debt is not fraudulent as to render the debt non-dischargeable, absent proof that the promise was made with the intent not to pay or knowing that payment would be impossible" Id. at 587 (citing Lee, 186 B.R. at 699).

In Anastas, the Ninth Circuit did not find that a debtor had the intent to deceive a bank by not paying his credit card bill when there was no evidence of his intent not to repay the bank, aside from his hopeless financial condition. Anastas, 94 F.3d at 1287. The Ninth Circuit relied on debtor's testimony that he always possessed the intent to pay his credit card bill, but he had a gambling addiction that led him into unexpected financial circumstances. Id. The Ninth Circuit also relied on the fact that the debtor incurred the credit card charges at issue over a six-month period during which the debtor always made his monthly payments and contacted the bank to work out alternative arrangement for repaying his credit card debt. Id.

In Kennedy, the Ninth Circuit found that a debtor who was a real estate broker intended to deceive home purchasers based on the totality of circumstances where there was evidence that the debtor made several representations to home purchasers that their home would be a showplace, but that construction foreman and workers employed by the debtor were not qualified for the construction job. Kennedy, 108 F.3d at 1018. The Ninth Circuit found the testimony of a

construction foreman reliable where the construction foreman stated that he and "the other two workers ... were not qualified for the construction job and that the work was 'trash' compared to other custom homes." Id.

In this case, the only evidence presented by Plaintiff in support of Defendant's intent to deceive is that Defendant signed the Contract and, to date, Defendant has not made a single payment on the Contract. Unlike the cases relied on by Plaintiff, there is no additional supporting circumstantial evidence of Defendant's intent to deceive Plaintiff at the time Defendant signed the Contract other than Defendant's subsequent default on the loan. The mere failure by Defendant to fulfill a promise to pay a debt is not fraudulent as to render the debt non-dischargeable, absent proof that the promise was made with the intent not to pay or knowing that payment would be impossible. Lee, 186 B.R. at 699.

Based on the evidence presented in the motion, the court finds that Plaintiff has not met its burden of showing a *prima facie* case for entry of default judgment against Defendant. Plaintiff's request for default judgment against Defendant pursuant to 11 U.S.C. § 523(a)(2)(A) is denied.

3. [22-10826](#)-A-13 **IN RE: CHRISTOPHER RENNA**
[22-1016](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-11-2022 [\[1\]](#)

LIMA V. RENNA
HENRY NUNEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 1, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the declaration regarding the status conference (Doc. #10), the status conference will be continued to December 1, 2022, at 11:00 a.m.

4. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [\[1\]](#)

DE CASTAING ET AL V. MALDONADO-RAMIREZ ET AL
ROBERT RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [19-13871](#)-A-7 **IN RE: JENNA LONG**
[22-1009](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
6-2-2022 [[11](#)]

LONG V. U.S. DEPARTMENT OF EDUCATION ET AL
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 17, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

The status conference will be continued to November 17, 2022 at 11:00 a.m. to
be heard with the motion to dismiss.