

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 18, 2021
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.

1. [16-14100](#)-A-13 **IN RE: TIMOTHY HUTCH**
[DRJ-3](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
10-19-2021 [\[52\]](#)

DAVID JENKINS/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.

David R. Jenkins ("Movant"), counsel for Timothy E. Hutch ("Debtor"), the debtor in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of \$6,000.00 for services rendered from October 3, 2016 through October 15, 2021. Doc. #52. Debtor's confirmed plan provides for \$6,000.00 in additional attorney's fees. Plan, Doc. ##32, 40. No prior fee applications have been submitted.

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) pre-petition consultation and fact gathering; (2) case administration; (3) original and modified plan, hearings, and objections; and (4) claims administration. Exs., Doc. #54. 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 a final basis compensation and reimbursement for expenses in the amount of \$6,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION TO DISMISS CASE
10-21-2021 [\[18\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue the 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 28 days' notice as required by 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 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 for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtor has failed to provide a Credit Counseling Certificate (11 U.S.C. § 109(h)). Doc. #18. The debtor did not file written opposition.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Collette M.A. Davidson ("Debtor") filed for relief under chapter 13 of the Bankruptcy Code on September 14, 2021. Doc. #1. Debtor has not filed a certificate showing that she received credit counseling before Debtor filed her bankruptcy petition. The Bankruptcy Code allows the debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtor has not requested a waiver of the § 109(h)(1) requirements and, because Debtor did not receive credit counseling prior to filing her bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor pursuant to § 109(h).

Further, 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 debtor that is prejudicial to creditors and 11 U.S.C. § 109(h) for failing to complete credit counseling timely.

Accordingly, this motion will be GRANTED. The case will be dismissed.

3. [19-11515](#)-A-13 **IN RE: KARL KENNEL**
[GR-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-21-2021 [\[81\]](#)

CELTIC BANK CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
KATHRYN CATHERWOOD/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 27, 2022 at 9:30 a.m.

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on November 4, 2021. Doc. #87. The moving party replied on November 8, 2021. Doc. #91. 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). Therefore, the defaults of the non-responding parties in interest are entered.

On January 8, 2021, this court granted Celtic Bank Corporation ("Creditor") relief from the automatic stay to permit Creditor "to exercise its available legal and contractual remedies with respect to Debtor's personal guaranty as described in the Motion, including but not limited to filing a state court action to enforce Debtor's personal guaranty, obtaining a judgment, and prosecuting any appeals to final judgment." Order ¶ 3, Doc. #63. However, Creditor was not granted relief from the automatic stay "without further order of the Court, to collect or take other enforcement action on any final judgment against the Debtor." Id. Creditor now seeks relief from the automatic stay for cause pursuant to 11 U.S.C. § 362(d) to enforce and collect upon the default judgment entered in Creditor's favor by the state court. Doc. #81; Ex. A, Doc. #83.

Karl Elliot Kennel ("Debtor"), the chapter 13 debtor, opposes relief from the automatic stay on the ground that Debtor has moved to vacate and set aside the default judgment in the state court proceedings. Doc. #87; Ex. A, Doc. #89. Alternatively, Debtor requests the hearing on this motion be continued to a date after Debtor's state-court motion is heard by the state court. Doc. #87.

The court is inclined to grant Debtor's request for a continuance. The evidence submitted by Creditor and Debtor demonstrate that Creditor obtained a default judgment against Debtor on October 8, 2021. Ex. A, Doc. #83. On November 4, 2021, Debtor moved to vacate and set aside the default judgment in the state

court proceeding. Ex. A, Doc. #89. It appears Debtor's motion to vacate was filed timely, and the hearing on that motion is scheduled for December 30, 2021. Id. Creditor is presently free to continue taking any action necessary to arrive at a final judgment, including defending against Debtor's motion to vacate and set aside the entry of default. Further, this court has previously ordered that Creditor's claim against Debtor is not subject to any discharge in this bankruptcy case. Order ¶ 2, Doc. #63. Pursuant to Debtor's confirmed chapter 13 plan, property of the estate has not reverted in Debtor. Plan ¶ 6.01, Doc. #73. Therefore, court authorization is required before Debtor can dispose of any estate property.

Continuing this hearing to January 27, 2022 will assist in the expedient and orderly administration of this bankruptcy case and will not prejudice creditors or the estate. No later than January 20, 2022, the parties shall supplement the record to inform the court of the status of the state court proceedings.

4. [18-14316](#)-A-13 **IN RE: ALLISON HOPKINS**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
10-18-2021 [\[37\]](#)

GABRIEL WADDELL/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 debtors, 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.

Fear Waddell, P.C. ("Movant"), counsel for Allison Marie Hopkins ("Debtor"), the debtor in this chapter 13 case, requests allowance of interim compensation in the amount of \$3,255.00 and reimbursement for expenses in the amount of \$112.85 for services rendered from August 1, 2019 through September 30, 2021. Doc. #37. Debtor's confirmed plan provides for \$20,000.00 in additional attorney's fees. Plan, Doc. ##2, 15. One prior fee application in the amount of \$3,813.33 has been approved. Doc. #24.

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) fee applications; (2) case administration and communications with Debtor; (3) original plan, hearings, and confirmation; and (4) claims administration. Exs., Doc. #39. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$3,255.00 and reimbursement for expenses in the amount of \$112.85 to be paid in a manner consistent with the terms of the confirmed plan.

5. [20-13027](#)-A-13 **IN RE: MICHAEL/BETTY SOLIS**
[PBB-1](#)

MOTION TO MODIFY PLAN
10-8-2021 [\[30\]](#)

BETTY SOLIS/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 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. [18-13528](#)-A-13 **IN RE: JUANITA HINES**
[EPE-2](#)

MOTION TO MODIFY PLAN
10-5-2021 [\[38\]](#)

JUANITA HINES/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee timely opposed this motion on October 28, 2021 but withdrew the opposition on November 15, 2021. Doc. #43; Doc. #49. 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.

7. [21-10840](#)-A-13 **IN RE: HECTOR/DESIREE FLORES**
[TCS-1](#)

CONTINUED MOTION TO MODIFY PLAN
9-1-2021 [\[22\]](#)

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

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors Hector Manuel Flores and Desiree Michele Flores (collectively, "Debtors") filed and served this motion to confirm the first modified chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and

set for hearing on October 14, 2021. Doc. ##22-28. The chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #29. The court continued this matter to November 18, 2021 and ordered Debtors to file and serve a written response to Trustee's objection by October 28, 2021; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by November 4, 2021. Doc. #31.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtors' motion to confirm their first modified chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

8. [20-11944](#)-A-13 **IN RE: CHAD/ALLISON GILLIES**
[NES-5](#)

MOTION TO INCUR DEBT
10-12-2021 [\[74\]](#)

ALLISON GILLIES/MV
NEIL SCHWARTZ/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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel for the debtors 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.

Chad Mitchell Gillies and Allison Marie Gillies (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing

Debtors to pay \$7,000 cash for a 2007 Toyota Camry ("Vehicle"). Doc. #74. Pursuant to Debtors' confirmed chapter 13 plan, property of Debtors did not revert in Debtors upon confirmation of the plan. Plan ¶ 6.01, Doc. #52.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed, and no opposition has been filed. Debtors' confirmed plan pays a 100% dividend to unsecured claims. Plan ¶ 3.14, Doc. #52. Debtors assert that \$7,000 is a fair market price for the Vehicle and that the sale is an arm's length transaction. Doc. #76. There is no indication that Debtors are delinquent on plan payments.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to purchase the Vehicle in accordance with the motion.

9. [20-11944](#)-A-13 **IN RE: CHAD/ALLISON GILLIES**
[NES-6](#)

MOTION TO SELL
10-12-2021 [\[70\]](#)

ALLISON GILLIES/MV
NEIL SCHWARTZ/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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel for the debtors 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.

Chad Mitchell Gillies and Allison Marie Gillies (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to sell their 2008 Ford Mustang ("Vehicle") for \$7,000 cash. Doc. #70. Pursuant to Debtors' confirmed chapter 13 plan, property of Debtors did not revert in Debtors upon confirmation of the plan. Plan ¶ 6.01, Doc. #52.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed, and no opposition has been filed. Debtors' confirmed plan pays a 100% dividend to unsecured claims. Plan ¶ 3.14, Doc. #52. Debtors assert that \$7,000 is a fair market price for the Vehicle and that the sale is an arm's length transaction. Doc. #72.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to sell the Vehicle in accordance with the motion.

10. [20-13857](#)-A-13 **IN RE: KENNETH HOOVER**
[PBB-3](#)

MOTION TO INCUR DEBT
11-3-2021 [\[47\]](#)

KENNETH HOOVER/MV
PETER BUNTING/ATTY. FOR DBT.

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 shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The chapter 13 trustee ("Trustee") filed comments on November 10, 2021, though raised no objection. Doc. #53. 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.

Kenneth Albert Hoover ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to incur new debt. Doc. #47. Debtor desires to finance the purchase of a 2017 Lexus CT 200H with 39,162 miles. Doc. #49. Debtor's current vehicle is in need of major repair. Doc. #49. To purchase the new vehicle, Debtor will finance \$34,317.59 with 12.49% interest for a monthly payment of \$683.18. Doc. #49.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those

creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtor is not current on his chapter 13 plan payments or that the chapter 13 plan is in default. Debtor filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living expenses, and the new debt. The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of Debtor. The only security for the new debt will be the motor vehicle to be purchased by Debtor. While Trustee's comments are well taken, the court will not take any action based on comments absent an objection and argument at hearing.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtor is authorized, but not required, to purchase a vehicle in a manner consistent with the motion.

11. [19-14977](#)-A-13 **IN RE: JOSE/MARIA CHAVARRIA**
[MAZ-4](#)

CONTINUED MOTION TO SELL
9-17-2021 [\[76\]](#)

MARIA CHAVARRIA/MV
MARK ZIMMERMAN/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). At the initial hearing on October 21, 2021, the court continued the hearing on this motion to November 18, 2021 at 9:30 a.m. 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.

Jose L. Chavarria and Maria L. Chavarria (together, "Debtors"), the chapter 13 debtors, move to sell real property commonly referred to as 841 Fairway Avenue, Lemoore, CA 93245 (the "Property") free and clear of liens. Doc. #76. Debtors confirmed a second modified plan on February 17, 2021 (the "Plan"). Doc. #72, #75.

Section 1303 gives the chapter 13 debtor "the rights and powers of a trustee" under § 363(b), (d), (e), (f), and (l). 11 U.S.C. § 1303. Debtors' Plan does not revest property of the estate in Debtors upon confirmation of the plan, so the Property remains property of the estate. Plan ¶ 6.01, Doc. #72.

Pursuant to § 363(b)(1), the chapter 13 debtor, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)).

Joint debtor Jose L. Chavarria states that Debtors received an offer from TDS Holdings LLC to sell the Property for \$315,000. Decl. of Jose L. Chavarria, Doc. #78. Jose Chavarria believes that the sale of the Property is in Debtors' best interest and in the best interest of the estate. The sale of the Property will result in payment in full to Selene Finance LP, the holder of the first deed of trust on the Property. Decl., Doc. #78. Debtors will use remaining proceeds to pay off creditors and/or reduce Plan payments. Decl., Doc. #78. Debtors expect to pay a real estate commission of \$3,150. Decl., Doc. #78. Jose Chavarria believes that the offer from TDS Holdings LLC is fair and reasonable and results from a fair price. Decl., Doc. #78.

The court finds that the sale of the Property is in the best interests of the estate resulting from a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

In addition to the requirements of § 363(b), to sell property of the estate free and clear of liens Debtors must satisfy the requirements of 11 U.S.C. § 363(f). Debtors may sell property under § 363(b) free and clear of any interest of an entity other than the estate only if: (1) applicable nonbankruptcy law permits the sale; (2) such entity consents; (3) the interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is in bona fide dispute; or (5) the entity could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f).

Debtors believe that the Property is subject to a lien in favor of Selene Finance LP, the holder of a first deed of trust. Decl., Doc. #78. On November 8, 2021, Debtors submitted a payoff statement valid through November 30, 2021 indicating a loan payoff amount to Selene Finance of \$255,937.63. Doc. ##86-87. The sale price of \$315,000 is greater than the value of the lien.

Accordingly, this motion is GRANTED. Debtors are authorized to sell the Property in the manner consistent with the motion.

CONTINUED MOTION TO DISMISS CASE
9-22-2021 [\[224\]](#)

MICHAEL MEYER/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This case will be converted to chapter 7.

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 to dismiss was originally filed by the chapter 13 trustee ("Trustee") on September 22, 2021 and set for hearing on October 21, 2021 at 9:30 a.m. Doc. #224-227. Trustee moved to dismiss for: (1) unreasonable delay by the debtor that is prejudicial to creditors under § 1307(c)(1); and (2) failure to confirm a chapter 13 plan under § 1307(c). Doc. #224. The debtor filed opposition on November 3, 2021. Doc. #266.

The hearing on this matter was continued to November 18, 2021 to track with the hearing on the motion to confirm the third modified plan filed by Sylvia Nicole ("Debtor"), the debtor in this chapter 13 case. Doc. #245. Debtor filed the bankruptcy petition on January 5, 2021 and has yet to confirm a chapter 13 plan. Debtor has filed four different plans in this case, none of which have been confirmable. Decl. of Kelsey Seib, Doc. #226. Debtor's third modified chapter 13 plan, the fifth chapter 13 plan filed by Debtor, is set for hearing on November 18, calendar matter number 13 below.

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. "Section 1307(c) . . . establish[es] a two-step analysis for dealing with questions of conversion and dismissal. First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citations omitted).

Turning to the determination of 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). Based on the facts before this court, the court finds there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and for failing to confirm a chapter 13 plan.

Debtor filed the voluntary petition for relief under chapter 13 of the Bankruptcy Code on January 5, 2021. Doc. #1. Debtor filed the first plan on February 2, 2021. Objections to plan confirmation were raised, but were overruled as moot after Debtor filed a second chapter 13 plan on May 18, 2021. See Doc. #119. On June 3, 2021, Debtor filed another chapter 13 plan, captioned as the First Amended Chapter 13 Plan, in response to criticism that the May 18 plan did not use the correct form. Trustee and creditor T2M Investments LLC

("T2M") objected to confirmation. Trustee primarily objected because Debtor would not be able to make plan payments due to Debtor's failure to account for a \$15,000 allowed claim. Doc. #158. T2M objected on the grounds that the plan was not submitted in good faith and because the plan failed to provide for or consider T2M's claims. Doc. #136. The objections were denied as moot without oral argument after Debtor filed another modified plan on July 14, 2021. See Doc. #178. The July 14 plan, captioned as the Second Amended Chapter 13 Plan, again resulted in objections by Trustee and T2M. Trustee's objection stated that Debtor was unable to make plan payments and that the plan provided for administrative expenses although there were no administrative expenses. T2M's objections were largely the same as before. Debtor withdrew the motion to confirm the second amended plan on September 15, 2021. Doc. #214.

On September 22, 2021, Debtor filed another chapter 13 plan, captioned as the Third Amended Chapter 13 Plan, which again has drawn objections from Trustee and T2M. Doc. #218. In her current Plan, Debtor lists secured claims totaling \$2,045, priority claims totaling approximately \$1,477.11, and unsecured claims totaling approximately \$264.24. Plan, Doc. #218. Trustee again objects because Debtor is delinquent in Plan payments and does not have adequate income to make up delinquent plan payments based on the increase in monthly plan payments under Debtor's current plan. T2M's objections are largely unaltered. Based on the objections raised, it appears unlikely that the proposed plan will be confirmed. Over the course of the past ten months, Debtor has been unable to propose a confirmable plan.

Having found cause to act, the court must consider whether dismissal, rather than conversion, is in the best interests of creditors and the estate. Nelson, 343 B.R. at 675. Although Trustee's motion specifically requests dismissal of Debtor's chapter 13 case and does not address conversion, § 1307(c) requires the court to consider what course of action is in the best interests of creditors and the estate. 11 U.S.C. § 1307(c); Nelson, 343 B.R. at 675.

The court is inclined to find that conversion to chapter 7, rather than dismissal, would be in the best interests of creditors and the estate. On March 8, 2021, Debtor sued T2M asserting claims regarding real property allegedly owned by Debtor. See Adv. Proc. No. 21-1015. That adversary proceeding remains in the pleading stage. Based on the current status of Debtor's bankruptcy case, the court finds that conversion to chapter 7 and appointment of a chapter 7 trustee will assist in the resolution of claims asserted by and against Debtor, including in the adversary proceeding filed against T2M. Further, a chapter 7 trustee will have statutory authority to avoid certain transfers, sell property of the estate, and settle claims for the benefit of creditors and the estate. Debtor only seeks to exempt a single piece of real property. Doc. #230. Both Trustee and T2M have filed objections to Debtor's claims of exemption that remain pending, and Debtor is not yet entitled to her claimed exemption. Doc. ## 248, 263. Based on the outcome of the adversary proceeding against T2M and the objections to exemptions, there may be sufficient assets in the estate to pay all creditors in full in a chapter 7 case. Because conversion was not part of the relief sought in Trustee's motion or addressed in that motion, the court will allow argument from interested parties at the hearing on the issue of whether conversion rather than dismissal is in the best interests of creditors and the estate. See Tennant v. Rojas (In re Tennant), 318 B.R. 860, 870 (B.A.P. 9th Cir. 2004).

Accordingly, if Debtor is unable to confirm the third modified plan (calendar matter number 13 below) and subject to opposition to conversion presented at the hearing, the court is inclined to convert this case to chapter 7.

MOTION TO CONFIRM PLAN
9-22-2021 [[220](#)]

SYLVIA NICOLE/MV
RESPONSIVE PLEADING

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the third amended chapter 13 plan. Tr.'s Opp'n, Doc. #261. T2M Investments LLC ("Creditor") filed an objection to plan confirmation on October 25, 2021. Doc. #255. The failure of other 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). Therefore, the defaults of the non-responding parties in interest are entered. The court is inclined to deny the motion based on the opposition filed by Trustee. This matter will proceed as scheduled.

On September 22, 2021, Sylvia Nicole ("Debtor") filed a third amended plan and set the confirmation hearing for November 18, 2021 (the "Plan"). Doc. ##218-223. The Plan calls for monthly payments of \$188 for 60 months. Plan ¶ 2.01, Doc. #218. Debtor is not represented by counsel and the Plan does not provide for payment of any attorney fees. The only secured creditor provided for in the Plan is Merced County Property Tax, listed in Class 2(A), which will receive a monthly dividend of \$64.76. Plan ¶ 3.08, Doc. #218. The Plan estimates priority claims totaling \$1,477.11. Plan ¶ 3.12, Doc. #218. The Plan calls for a 100% dividend to nonpriority unsecured creditors, with estimated claims totaling approximately \$264.24. Plan ¶ 3.14, Doc. #218. There are no nonstandard provisions.

Trustee's Objections to Plan Confirmation

Trustee opposes confirmation of the Plan because Debtor will not be able to make all payments under the plan and comply with the plan, citing 11 U.S.C. § 1325(a)(6). Doc. #261. Debtor bears the burden of proof on each element of confirmation by a preponderance of the evidence. In re Lavilla, 425 B.R. 572, 576 (Bankr. E.D. Cal. 2010).

Section 1325(a)(6) of the Bankruptcy Code requires the court to confirm a plan if "the debtor will be able to make all payments under the plan and to comply with the plan." 11 U.S.C. § 1325(a)(6). Trustee contends that the plan is not confirmable because Debtor is already delinquent in plan payments through October 2021.

Section 1325(a)(6) requires "proof that the debtor will 'be able to make all payments under the plan and to comply with the plan.'" In re Gavia, 24 B.R.

573, 574 (B.A.P. 9th Cir. 1982) (quoting 11 U.S.C. § 1325(a)(6)). Debtor is already delinquent in Plan payments. Under the terms of the Third Amended Chapter 13 Plan, Debtor is to make monthly payments of \$188 per month. Doc. #218. Because the Plan does not state on what date the increased payments provided for in the Plan were to start, the Plan increased payments starting in month 1, so Debtor owed \$188 starting month 1. However, Debtor's first plan provided for monthly plan payments of \$100 (Doc. #16), her second plan provided for monthly plan payments of \$100 (Doc. #113), her third plan provided for monthly plan payments of \$100 (Doc. #125), and her fourth plan provided for monthly plan payments of \$150 (Doc. #173). Because prior plans had monthly payments of less than \$188 per month, Debtor is currently \$128 delinquent in plan payments through October 2021, even though Debtor filed documents showing that Debtor forwarded two \$188 plan payments to Trustee. Doc. ##261, 272. Debtor's amended Schedule J shows that Debtor's monthly net income is \$188. Doc. #213. Based on Debtor's current delinquency and monthly net income, Debtor has not shown an ability to make all payments due under the Plan.

Accordingly, the court finds that Debtor will not be able to make payments under the Plan and comply with the Plan and Trustee's objection will be SUSTAINED.

Creditor's Objection to Confirmation

Creditor objects to confirmation of the Plan for a number of reasons. As an initial matter, Creditor requests this court take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of the requested documents, but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

Creditor first objects to Plan confirmation because Debtor, through the Plan, fails to provide for the inclusion or enforcement of a pre-petition settlement agreement Creditor contends is an executory contract. Doc. #255. Without deciding whether the settlement agreement is an executory contract, Creditor's first objection will be OVERRULED because the Plan does treat executory contracts. Section 4 of the Plan is titled Executory Contracts and Unexpired Leases. Doc. #218. "Any executory contract or unexpired lease not listed in the table [contained in the Plan] is rejected." Plan ¶ 4.02, Doc. #218. The table in the Plan states "None" and does not list Creditor's settlement agreement. Id. Accordingly, to the extent there is an executory contract between Creditor and Debtor, it will be rejected upon Plan confirmation.

Section 365(g) of the Bankruptcy Code provides that the rejection of an executory contract constitutes a breach of such contract immediately before the petition date. 11 U.S.C. § 365(g)(1); In re Aslan, 909 F.2d 367 (9th Cir. 1990). To the extent the settlement agreement is an executory contract, upon confirmation of the Plan Debtor will be deemed to have breached such contract prior to the January 5, 2021 petition date. Therefore, Creditor's first objection is OVERRULED because the Plan calls for the rejection of any executory contract not listed in the Plan, and thus seeks to reject the settlement agreement. Pursuant to Federal Rule of Bankruptcy Procedure 3002(c)(4), Creditor will be permitted to file a claim arising from the rejection of an executory contract not later than 70 days after confirmation of the Plan.

Creditor's second objection appears to be based on money owed under a fully matured note and deed of trust. However, in a chapter 13 case, a creditor who seeks to participate in the distribution of the debtor's assets must file a proof of claim. Spokane Law Enf't Fed. Credit Union v. Barker (In re Barker), 839 F.3d 1189, 1195 (9th Cir. 2016). Creditor has not filed a proof of claim in this case. However, should the Plan be confirmed and the settlement agreement rejected, Creditor will have an opportunity to submit a proof of claim arising from the rejection of any executory contract. Further, as Creditor knows, Debtor will not be granted a discharge in this chapter 13 case and the Plan cannot invalidate a valid consensual mortgage lien. Creditor does not clearly articulate what type of claim it is asserting against Debtor or how it must be treated under the Bankruptcy Code. From the court's perspective, Creditor's claims will be largely unaffected by confirmation of the Plan.

Creditor's third objection states that Debtor does not have standing to pursue claims related to real property located in Los Banos and therefore the Plan is defective. However, nowhere in the Plan does Debtor attempt to pay, modify, or otherwise provide for any claims held by Creditor related to the Los Banos property. To the extent Creditor has a secured claim, the Plan states that "[s]ecured claims not listed as Class 1, 2, 3, or 4 claims are not provided for by this plan. While this may be cause to terminate the automatic stay, such relief must be separately requested by the claim holder." Plan ¶ 3.11, Doc. #218. When a secured claim is not provided for by the plan, the confirmed chapter 13 plan does not affect the lien's validity. Bisch v. United States (In re Bisch), 159 B.R. 546, 549 (B.A.P. 9th Cir. 1993); see also Nomellini v. IRS (In re Nomellini), 577 B.R. 851, 856-57 (N.D. Cal. 2017).

Creditor's final objection states that the Plan is not proposed in good faith. Creditor's argument is that the Plan omits the settlement agreement and generally fails to deal with or acknowledge Creditor's claims. Creditor contends that the Plan is in total contravention of applicable bankruptcy rules and established case law. These objections have largely been addressed above. To reiterate, to the extent there is an executory contract between Creditor and Debtor, it will be rejected upon confirmation of the Plan and Debtor will be deemed to have breached any executory contract prior to filing the bankruptcy petition. To the extent Creditor holds a lien or other security interest on Debtor's property, the Plan fails to provide for any of Creditor's claims and any liens held by Creditor will not be affected. Debtor will not receive a discharge in this case. Creditor has failed to clearly articulate to this court exactly what about Debtor's Plan makes it unconfirmable. Creditor will be largely unaffected by Plan confirmation.

For the foregoing reasons, Creditor's objections to Plan confirmation will be OVERRULED.

Conclusion

Creditor's objections will be OVERRULED. However, the Plan does not comply with 11 U.S.C. § 1325(a)(6) and Trustee's objection will be SUSTAINED.

Accordingly, Debtor's motion to confirm the Plan is DENIED.

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-25-2021 [[248](#)]

T2M INVESTMENTS LLC/MV
STEVEN ALTMAN/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 shall submit a proposed order after the hearing.

This objection was filed and served on at least 14 days' notice prior to the hearing date 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.

On September 28, 2021, Sylvia Nicole ("Debtor"), the chapter 13 debtor, filed an amended Schedule C. Doc. #230. T2M Investments LLC ("Creditor") objects to Debtor's claim of exemption in residential real property located at 1521 S. 7th Street, Los Banos, California (the "Property"). Doc. #248. Debtor claims an exemption under 11 U.S.C. § 522(b) as the law that allows the exemption. Am. Schedule C, Doc. #230.

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 ("C.C.P.") § 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).

Debtor has no available exemption under § 522 because California has opted out of the federal exemption scheme. This court has previously made Debtor aware of the inapplicability of § 522 exemptions when the chapter 13 trustee objected to Debtor's first Schedule C on the same grounds. See DCN MHM-3. In response to the chapter 13 trustee's objection, Debtor amended her Schedule C, but has since amended it again to claim an unavailable exemption under § 522.

Accordingly, Creditor's objection will be SUSTAINED.

15. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[UST-3](#)

MOTION FOR ORDER RETAINING JURISDICTION
10-20-2021 [[243](#)]

TRACY DAVIS/MV
JUSTIN VALENCIA/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

16. [21-12481](#)-A-13 **IN RE: ROBERT/DARLENE AGUINAGA**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-29-2021 [[9](#)]

DARLENE AGUINAGA/MV
PETER BUNTING/ATTY. FOR DBT.

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 shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Robert Aguinaga and Darlene Roxanne Aguinaga (together, "Debtors"), the chapter 13 debtors, move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #9. Secured creditor The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the certificate holders of the CWABS Inc., Asset-Backed Certificates, Series 2006-22, filed written non-opposition on November 8, 2021. Doc. #14.

Debtors had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 21-11046 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on April 26, 2021 and dismissed on October 13, 2021. Decl. of Darlene Roxanne Aguinaga, Doc. #11. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay 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 current case. Debtors filed this case on October 25, 2021. Petition, Doc. #1. As it currently stands, the automatic stay will terminate in the present case on November 24, 2021.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). 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 offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted), vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. The Prior Case was dismissed for Debtors' failure to make plan payments. Aguinaga Decl., Doc. #11. To rebut the presumption of bad faith, Debtors submit that they fell behind on plan payments due to unexpected expenses. Debtors had to purchase a new catalytic converter as the result of theft. Decl., Doc. #11. Debtors also made payments to the electric company for a \$6,000 utility bill that Debtors did not know they could include in the bankruptcy case. Id. During one of the scheduled payments, Debtors inadvertently paid \$2,086 instead of \$208.60, which set Debtors behind financially. Id. Debtors sought to catch up after the chapter 13 trustee's default was issued by paying \$3,100, but it was not enough to cure the default in the Prior Case. Id. Debtors have filed all necessary schedules and a chapter 13 plan in this case. Id. Debtors seek to prevent foreclosure proceedings. Id. Debtors' schedules show that they can afford the proposed plan payments. Id.

The court is inclined to find that Debtors rebut the presumption of bad faith that arose from the failure to make plan payments in the Prior Case and that Debtors' petition commencing this case was filed in good faith. Further, there is reason to conclude that this case will result in a confirmed plan that will be fully performed.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes and to all parties that received notice of Debtors' motion (see Doc. #13), unless terminated by further order of the court.

17. [21-11182](#)-A-13 **IN RE: KIAH SANDERS**
[WLG-1](#)

MOTION TO MODIFY PLAN
10-8-2021 [\[17\]](#)

KIAH SANDERS/MV
NICHOLAS WAJDA/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)(2). 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.

18. [21-12296](#)-A-13 **IN RE: ISTVAN/MARGIT MAJOROS**
[MHM-1](#)

FORBEARANCE STATUS CONFERENCE RE: NOTICE OF MORTGAGE PAYMENT CHANGE
10-21-2021 [\[22\]](#)

PHILLIP GILLET/ATTY. FOR DBT.

NO RULING.

Secured Creditor New Residential Mortgage Loan Trust 2018-1, through its servicing agent Nationstar Mortgage LLC d/b/a Mr. Cooper, ("Creditor") filed a Notice of Forbearance for a period of 3 months starting October 1, 2021 through December 1, 2021, with payments to resume November 1, 2021. Doc. #22

Pursuant to General Order 20-03, the chapter 13 trustee ("Trustee") set this forbearance status conference because the debtors assert different terms for the forbearance. Specifically, Trustee states that during the first meeting of creditors held November 2, 2021, the debtors stated that they did not want the forbearance and that they never requested a forbearance. Doc. #27. Debtors' counsel stated that the debtors may have requested a forbearance in the past during loan modification requests prior to filing bankruptcy. Doc. #27.

Trustee requests that Creditor produce a copy of the debtors' request for a forbearance due to the COVID-19 pandemic. Trustee will seek to have Creditor's forbearance request denied.

1. [18-14542](#)-A-7 **IN RE: LARRY SELL**
[19-1025](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-15-2019 [[1](#)]

THE LEAD CAPITAL, LLC V. SELL
DERRICK COLEMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 24, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the plaintiff's status conference statement filed on November 10, 2021 (Doc. #62), the status conference will be continued to February 24, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than February 17, 2022.

2. [18-14542](#)-A-7 **IN RE: LARRY SELL**
[19-1025](#) [PWG-1](#)

MOTION TO SUBSTITUTE ATTORNEY
11-3-2021 [[57](#)]

THE LEAD CAPITAL, LLC V. SELL
PHILLIP GILLET/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, Denied in part.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Although LBR 9014-1(f)(2) is generally not permitted in connection with an adversary proceeding, the withdrawal of an attorney is governed by the California Rules of Professional Conduct and the court finds no undue prejudice in allowing opposition to be presented at the hearing. LBR 2017-1(e). Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion in part. 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.

Phillip W. Gillet Jr. ("Movant"), counsel for Larry Raymond Sell ("Defendant"), the defendant and bankruptcy debtor, moves to withdraw as Defendant's attorney

of record. Doc. #57. Movant seeks withdrawal as attorney of record in this adversary proceeding and in Defendant's bankruptcy case, Case No. 18-14542. Movant's withdrawal will leave Defendant unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e). Withdrawal is governed by the California Rules of Professional Conduct. Id.

The certificate of service filed with this motion shows that only the parties to the adversary proceeding were served with notice. Doc. #61. The court is inclined to GRANT Movant's motion only with respect to the adversary proceeding. Movant's withdrawal from the bankruptcy case will require a separate motion filed in the underlying bankruptcy case and notice to all parties who have appeared in that bankruptcy case.

Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that in a September 28, 2021 email, Defendant accused Movant of withholding evidence and asked for the court's contact information so that Defendant could communicate directly with the court. Doc. #60. Defendant has not responded to Movant's emails since September 28, 2021. Id. Defendant has not paid any money since retaining Movant, and Movant states that Defendant has breached the retainer agreement. Id. Movant further states that no trial date has been set in the adversary proceeding. Id. It appears that Movant's withdrawal will cause no undue prejudice to Defendant and Movant has demonstrated cause for withdrawal.

Accordingly, this motion will be GRANTED with respect to the adversary proceeding. However, because LBR 2017-1(e) requires notice to all parties who have appeared, Movant's withdrawal will be DENIED with respect to the bankruptcy case.

3. [20-11147](#)-A-7 IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ
[20-1040](#)

CONTINUED 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.

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

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-24-2021 [[1](#)]

SAWUSCH ET AL V. FLORES
JESSICA WELLINGTON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [[203](#)]

NICOLE V. T2M INVESTMENTS, LLC
SYLVIA NICOLE/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1015](#)

STATUS CONFERENCE RE: THIRD-PARTY COMPLAINT
9-9-2021 [[261](#)]

NICOLE V. T2M INVESTMENTS, LLC
CORY CHARTRAND/ATTY. FOR PL.

NO RULING.

7. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[21-1023](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-26-2021 [[1](#)]

U.S. TRUSTEE V. NICOLE
JUSTIN VALENCIA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

RESCHEDULED HEARING RE: MOTION TO VACATE RENEWAL OF JUDGMENT
10-6-2021 [\[212\]](#)

FORD ET AL V. DEITZ
HAGOP BEDOYAN/ATTY. FOR MV.

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 shall submit a proposed order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The hearing was rescheduled to be heard on November 18, 2021 at 11:00 a.m. in Department A. Order, Doc. #224. The plaintiffs timely filed written opposition on October 27, 2021. Doc. #219. The defendant, Shawn Deitz ("Defendant"), filed a reply on November 3, 2021. Doc. #221. This matter will proceed as scheduled.

As a procedural matter, the local rules do not provide for the submission of additional argument less than 7 days prior to the date set for hearing. LBR 9014-1(f)(1)(D). Wayne and Patricia Ford ("Plaintiffs") filed a surreply on November 15, 2021. Doc. #228. Because the argument contained in the surreply does not alter the court's consideration of these matters, in the interests of judicial economy and efficient administration, the court reviewed Plaintiffs' surreply and provides the following comments.

In the surreply, Plaintiffs correctly state that the judgment against Defendant in this adversary proceeding established a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). Doc. #228. Plaintiffs also are correct in stating that bankruptcy courts have exclusive jurisdiction to determine dischargeability of debts under § 523(a)(2), (a)(4), and (a)(6). Ackerman v. Eber (In re Eber), 687 F.3d 1123, 1128 (9th Cir. 2012). However, the issue before the court is not whether Defendant can discharge a debt. The question before the court is whether Plaintiffs can continue to execute on their judgment obtained in this adversary proceeding. As explained more fully below, Federal Rule of Civil Procedure ("Civil Rule") 69, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7069, provides that execution on a money judgment entered by a federal court is generally enforced in accord with the procedure of the state where the court is located. See also Juan Juan Chen v. Wen Jing Huang (In re Wen Jing Huang), 509 B.R. 742, 749 n.9 (Bankr. D. Mass. 2014) ("in order to enforce a nondischargeable debt, plaintiffs must avail themselves of the procedure for enforcing that judgment in a nonbankruptcy court of competent jurisdiction"). In this motion, the court is only determining whether Plaintiffs' renewal of their judgment should be vacated.

Defendant, the bankruptcy debtor and judgment defendant, moves to vacate the Notice of Renewal of Judgment entered by the bankruptcy clerk on September 9, 2021 in favor of Plaintiffs in the amount of \$258,068.23. Doc. #212. Defendant moves to vacate the renewed judgment on the ground that Plaintiffs failed to seek renewal within the 10-year time period proscribed in California Code of Civil Procedure ("C.C.P.") § 683.130.

Facts

Defendant asks the court to take judicial notice of various filings on this adversary proceeding docket. Doc. #214. Plaintiffs do not oppose the request, and this court may take judicial notice of and consider the records in this adversary proceeding and the bankruptcy case. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). Defendant's request for judicial notice is granted.

Defendant filed for relief under chapter 7 of the Bankruptcy Code on June 20, 2008. On September 19, 2008, Plaintiffs initiated this adversary proceeding against Defendant alleging that debts owed by Defendant to Plaintiffs were nondischargeable under 11 U.S.C. § 523(a). Doc. #1. On July 28, 2011, after a trial in the adversary proceeding, the court entered a judgment against Defendant for total damages of \$356,092.76. Doc. ##75-76. The court ordered that the judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). Doc. #76. A Notice of Entry of Order/Judgment in an Adversary Proceeding was filed and served that same day. Doc. ##77-78.

On September 8, 2021, Plaintiffs filed an Application for and Renewal of Judgment ("Application"). Doc. #206. The Application identifies this adversary proceeding, states that judgment was entered on July 28, 2011, and recorded in Fresno County on September 12, 2011. Doc. #206. Sheryl Noel, partner with the attorneys of record for Plaintiffs, stated that Defendant made 145 payments from November 23, 2011 through June 29, 2021, and that the principal balance as of June 29, 2021 was \$263,394.70. Noel Decl., Doc. #208.

On September 9, 2021, the court filed a Notice of Renewal of Judgment, requiring any objection to the renewal be filed within 30 days after service. Doc. #210. Defendant timely filed this objection on October 6, 2021. Doc. #212.

State Law Governs Renewal of Plaintiffs' Judgment

Civil Rule 69 provides that the procedure on execution of a money judgment, "and in proceedings supplementary to and in aid of judgment or execution[,]" must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Civil Rule 69(a)(1); Romano v. LaVecchia (In re Romano), BAP Nos. NV-08-1139, NV-08-1140, NV-08-1142, 2008 Bankr. LEXIS 4729, 2008 WL 8462950, at *6 (B.A.P. 9th Cir. Oct. 24, 2008) (Civil Rule 69 "sets forth the procedure for enforcing a money judgment entered by a federal court."). Thus, in the absence of an applicable federal statute, "[s]tate law governs the duration of judgments." People's Bail Bonds v. Dobos (In re Dobos), 603 B.R. 31, 39 n.6 (B.A.P. 9th Cir. 2019).

In their opposition to Defendant's motion to vacate, Plaintiffs argue that a federal statute, 28 U.S.C. § 3201, which provides a 20-year renewal period in some instances, applies under Civil Rule 69 and governs the applicable renewal procedure. Doc. #219; 28 U.S.C. § 3201(c)(1), (2). However, as Defendant points out, section 3201(c) of Title 28 does not apply to the debt owed to Plaintiffs.

Section 3201(c)(1) provides that: "Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years." 28 U.S.C. § 3201(c)(1). Section 3201(c)(2) governs the procedure for renewing a lien created under 28 U.S.C. § 3201(a). Section 3201(a) sets forth the procedures for creating a lien on "[a] judgment in a civil action."

Section 3201 of Title 28, located in Chapter 176 of Title 28, is part of The Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308 ("Act"). Section 3001 provides in relevant part that, except to the extent that another

federal law specifies the procedures for recovering on a claim or judgment for a debt arising under such law, the Act "provides the exclusive civil procedures for the United States - a (1) to recover a judgment on a debt[.]" 28 U.S.C. § 3001(a). The Act defines "debt" as an amount that is owing to the United States," 28 U.S.C. § 3002(3), and "judgment" as "a judgment, order or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt." 28 U.S.C. § 3002(8). In this case, Defendant's debt is owed to Plaintiffs as private individuals, is not a judgment entered in favor of the United States, and therefore is not subject to the 20-year renewal period provided in the Act. FTC v. Nat'l Bus. Consultants, Inc., 376 F.3d 317, 320 (5th Cir. 2004).

Because there is no relevant federal statute, California law governs the procedure for renewal of a money judgment entered by a federal court. Civil Rule 69(a); Romano, 2008 Bankr. LEXIS 4729 at *6-7; see also Dobos, 603 B.R. at 38-39. C.C.P. § 683.020, "which defines the period for enforceability of judgments, provides after the expiration of 10 years after the date of entry of a money judgment the judgment may not be enforced." Rubin v. Ross, 65 Cal. App. 5th 153, 161 (2021), petition for review denied, No. S269882, 2021 Cal. LEXIS 6001 at *1 (Cal. Aug. 25, 2021) (quotations and punctuation omitted). "[T]he application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by [C.C.P. §] 683.020. C.C.P. § 683.130(a). Here, Plaintiffs filed the Application on September 8, 2021, but the 10-year period expired in July 2021. Because the judgment expired before Plaintiffs filed the Application, Plaintiffs cannot renew the judgment. C.C.P. § 683.020; Dobos, 603 B.R. at 41.

Accordingly, this motion will be GRANTED and the renewal of judgment shall be vacated.

COVID-19 Orders Did Not Extend Renewal Period

Plaintiffs alternatively argue that the Judicial Council of California tolled the renewal period when it adopted Emergency Rule 9. On April 6, 2020, due to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9 to "toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action." Judicial Council of Cal., Circulating Order Memorandum to the Judicial Council No. CO-20-09, May 22, 2020, Doc. #222. Similarly, the United States Bankruptcy Court, Eastern District of California promulgated its own General Order 20-02 that extended certain filing deadlines. U.S. Bankr. Court, E.D. Cal. General Order 20-02, Mar. 30, 2020, amended Apr. 16, 2020, Doc. #222; see also E.D. Cal. General Order No. 612, Mar. 18, 2020, Doc. #222.

Neither party has submitted any case or other authority demonstrating that Emergency Rule 9 extended the period of time to renew a judgment. Both parties rely on the language of Emergency Rule 9 and Circulating Order No. CO-20-09. Because under Civil Rule 69 the period for renewal of a money judgment in this case is controlled by California law, the court will consider whether a California emergency rule affected the applicable portion of California law.

"The rules applicable to interpretation of the rules of court are similar to those governing statutory construction. Under those rules of construction, our primary objective is to determine the drafters' intent. If the rule's language is clear and unambiguous, it governs." All of Us or None-Riverside Chapter v. Hamrick, 64 Cal. App. 5th 751, 772-73 (2021) (quotations omitted). California courts have applied these guidelines to Emergency Rule 9. See People v. Philadelphia Reinsurance Corp., No. 37-2020-00200183, 2021 Cal. App. LEXIS 929 at *3 (July 29, 2021), ordered published by, People v. Philadelphia Reinsurance

Corp., 2021 Cal. LEXIS 7583 (Oct. 2021). The court agrees with the California courts that have held that the language of Emergency Rule 9 is clear and unambiguous. Id. at *4.

"Emergency Rule 9 tolls statutes of limitations and repose for civil causes of action. Statutes of limitations and statutes of repose are specific statutes that serve to bar the initiation of legal proceedings after the expiration of a defined timeline." Id. Both statutes of limitations and statutes of repose limit the time within which a proceeding may be commenced. Id. at *4 n.1.

Conversely, "the statutory renewal of judgment is an automatic, ministerial act accomplished by the clerk of the court." Rubin, 65 Cal. App. 5th at 165 (citations omitted). "Renewal does not create a new judgment or modify the present judgment but merely extends the enforceability of the judgment. The renewed judgment has no independent existence from the original judgment." Id. (quotations and citations omitted).

"The express intention of [Emergency Rule 9] is to toll the statutes of limitations and repose for civil causes of action and certain 'special proceedings' set forth in the Advisory Committee Comment." Philadelphia Reinsurance Corp., 2021 Cal. App. LEXIS 929 at *10. The statutory renewal of a money judgment, codified in Title 9 of the California Code of Civil Procedure, is not contemplated as a "special proceeding." Cf. Id.; Circulating Order No. CO-20-09, Doc. #222; C.C.P. §§ 680.010-724.260. "Had the Judicial Council or Advisory Committee intended to include the timelines for the filing of [a renewal of judgment] it could have done so as it did relative to other types of proceedings that were expressly listed in the Advisory Committee Comment." Id. at *11.

The court holds that Emergency Rule 9 did not extend the period for statutory renewal of a money judgment under C.C.P. § 683.130.

Other Portions of California's Code of Civil Procedure are Inapplicable

Bankruptcy Rule 7001 states that "[a]n adversary proceeding is governed by the Rules of this Part VII." Bankruptcy Rule 7069 states that Civil Rule 69 applies in adversary proceedings. Civil Rule 69, in turn, applies state law to the renewal of money judgments. It is through Civil Rule 69 that California law governing the renewal of money judgments controls the court's analysis in this case.

Plaintiffs contend that C.C.P. §§ 473 and/or 475 apply to this proceeding such that the court may allow Plaintiffs to renew the judgment despite the untimely filing of the Application. However, C.C.P. §§ 473 and/or 475 are located in Title 6 of the California Code of Civil Procedure that deals with the pleadings in civil actions in California courts and not Title 9 of the California Code of Civil Procedure that deals with enforcement of judgements, which is the portion of the California Code of Civil Procedure that applies to this adversary proceeding under Civil Rule 69. Plaintiffs have offered no authority demonstrating that C.C.P. §§ 473 and/or 475 apply to this adversary proceeding or should guide this court's analysis with respect to this motion. Absent any indication otherwise, this court finds neither C.C.P. §§ 473 nor 475 applicable to this adversary proceeding.

Conclusion

Defendant's motion is GRANTED. The renewal of judgment shall be vacated.