

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, February 7, 2019
Place: Department B - 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [18-14600](#)-B-13 IN RE: DOROTEO IBARRA-PEREA AND ENEDELIA RUIZ DE IBARRA
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-15-2019 [[17](#)]

PATRICK KAVANAGH

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

DISPOSITION: Continued to March 14, 2019 at 9:00 a.m. The court sets April 25, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed.

ORDER: The court will issue an order. The order shall include the bar date for plan confirmation.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than February 28, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 7, 2019. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set April 25, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

2. [17-11906](#)-B-13 **IN RE: TRACY FLAHERTY**
[RSW-3](#)

MOTION TO MODIFY PLAN
12-13-2018 [[121](#)]

TRACY FLAHERTY/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [18-10913](#)-B-13 **IN RE: WALTER/KATHRYN COVEY**
[RSW-4](#)

MOTION TO MODIFY PLAN
12-13-2018 [[67](#)]

WALTER COVEY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 14, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than February 28, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 7, 2019. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

4. [18-14213](#)-B-13 **IN RE: JOSEPH SMELTZER**
[MHM-2](#)

MOTION TO DISMISS CASE
12-20-2018 [[39](#)]

MICHAEL MEYER/MV
DISMISSED 1/11/19

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on January 11, 2019. Doc. #46.

5. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-3-2019 [[115](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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. Debtors filed an amended Schedule C (doc. #118) after this objection was filed. The amended Schedule C appears to be in conformance with the trustee's objection, but the court makes no finding in that regard. Trustee may again object to the amended Schedule C pursuant to the Federal Rules of Bankruptcy Procedure.

6. [18-13846](#)-B-13 **IN RE: EDUARDO HURTADO-ORTIZ AND VERONICA HURTADO**
[YG-1](#)

MOTION TO CONFIRM PLAN
11-29-2018 [[34](#)]

EDUARDO HURTADO-ORTIZ/MV
YELENA GUREVICH
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 14, 2019 at 9:00 a.m. The court sets April 25, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed.

ORDER: The court will issue an order. The order shall include the bar date for plan confirmation.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than February 28, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 7, 2019. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be

denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set April 25, 2019 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

The court notes that the moving papers were not correctly served on the United States Trustee. The address provided is not correct. The correct address is 2500 Tulare Street, Suite 1401, Fresno, CA 93721.

7. [14-15948](#)-B-13 **IN RE: KRISTAN CAFFEE**
[LKW-5](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-9-2019 [[73](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded fees of \$1,995.00 and costs of \$1.00. The fees and costs shall be paid through debtor's chapter 13 plan.

8. [18-14557](#)-B-13 **IN RE: JERRY WALKER**
[MHM-1](#)

MOTION TO DISMISS CASE
12-20-2018 [[14](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to file complete and accurate schedules 11 U.S.C. § 521 and/or F.R.B.P. 1007. Accordingly, the case will be dismissed.

9. [18-14268](#)-B-13 **IN RE: VINOD SAHNI**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-8-2019 [[24](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Sustained.

ORDER: The court will issue the order.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on December 13, 2018 and this objection was filed on January 8, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee objects on the grounds that debtor has not met their burden in exempting \$46,100.00 of "household furnishings, appliances, provisions, wearing apparel, and other personal effects" because debtors have not proved that they are "ordinarily and reasonably necessary" under California Code of Civil Procedure § 704.020. The debtor listed household goods & furnishings, electronics, clothes, firearms, bikes, exercise and golf equipment, and "2 dogs, 6 cats, 30 birds & 2 horses." Doc. #24. All but \$600.00 of the combined value was exempted. *Id.*

In deciding whether household goods and furnishings of the debtor are reasonably necessary, the court may consider the lifestyle that the debtor has become accustomed to. See In re Lucas, 77 B.R. 242, 245 (9th Cir. BAP 1987) (citations omitted). However, the exemption statute is intended to prevent the debtor from exempting luxury items. See In re Frazier, 104 B.R. 255, 260 (Bankr. N.D. Cal. 1989).

The debtors failed to provide a breakdown of each item and its value, which makes it impossible to determine whether "each item is of extraordinary value when compared to the value of the same type of item found in other households." Doc. #24.

The court finds that the trustee is correct, and in the absence of any objection or opposing evidence, SUSTAINS the objection.

10. [18-14070](#)-B-13 **IN RE: OMAR MARTINEZ**
[MHM-4](#)

MOTION TO DISMISS CASE
12-18-2018 [[29](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
DISMISSED 1/11/19

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on January 11, 2019. Doc. #40.

11. [18-14070](#)-B-13 **IN RE: OMAR MARTINEZ**
[MHM-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-3-2019 [[33](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
DISMISSED 1/11/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #40.

12. [18-10575](#)-B-13 **IN RE: NORMA FERNANDEZ**
[MHM-5](#)

MOTION TO DISMISS CASE
1-14-2019 [[91](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #102.

13. [18-10575](#)-B-13 **IN RE: NORMA FERNANDEZ**
[RSW-3](#)

MOTION TO CONFIRM PLAN
12-28-2018 [[81](#)]

NORMA FERNANDEZ/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 28, 2019 at 1:30 p.m. in
 Fresno.

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

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. The debtor timely responded, stating that the debtor will be able to pay the increased plan payment because "she will begin receiving Social Security then." Doc. #83, 100.

Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than February 14, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Speculation as to when the debtor will receive Social Security is not persuasive. Evidence showing feasibility and sources of income, as well as statements from the Social Security Administration and/or statements showing the receipt of SSI are suggested as relevant. The trustee shall file a reply, if any, on or before February 21, 2019.

The court has previously set a bar date by which a plan must be confirmed. See doc. #75. That date is February 28, 2019. Debtor does not have any more opportunities to fully notice a motion to confirm another amended chapter 13 plan before the case is dismissed.

14. [18-14877](#)-B-13 **IN RE: SAUL OCHOA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-18-2019 [[16](#)]

NEIL SCHWARTZ

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to March 14, 2019 at 9:00 a.m. with
the following deadlines unless the debtor
consents to a change in the order suggested by
the trustee, files amended schedules I & J,
and an explanatory declaration with the
amended schedules.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than February 28, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 7, 2019. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

15. [15-10192](#)-B-13 **IN RE: LLOYD/KATHY BELL**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-7-2019 [[78](#)]

PATRICK KAVANAGH

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in

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

This motion is GRANTED. Movant is awarded fees of \$4,800.00 and costs of \$5.04. In light of the \$4,000.00 in fees already paid, \$805.04 shall be paid directly by the debtor prior to the entry of discharge.

16. [17-12294](#)-B-13 **IN RE: TERESO/RAMONA SOLIZ**
[PBB-2](#)

MOTION TO SET ASIDE DISMISSAL OF CASE
1-24-2019 [[65](#)]

TERESO SOLIZ/MV
PETER BUNTING
DISMISSED 01/14/19

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure ("Rule") 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief." Under this rule as incorporated by Rule 9024, a court may relieve a party from a final order upon a finding of excusable neglect. In Pioneer Investment Services Co. v. Brunswick Associates

LP, 507 U.S. 380, 395 (1993), the Supreme Court held that excusable neglect, for purposes of Rule 9006(b)(1), encompasses failure to comply with a filing deadline.

To determine whether a party's neglect is excusable, courts must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. Id.

The Ninth Circuit adopted the Pioneer test for Civil Rule 60 (b)(1) cases in Briones v. Riviera Hotel & Casino, 116 F.3d 379, 381 (9th Cir. 1997). Through subsequent decisions, Bateman v. U.S. Postal Service, 231 F.3d 1220, 1224-25 (9th Cir. 2000), and Pincay v. Andrews, 389 F.3d 853, 860 (9th Cir. 2004) (en banc), the Ninth Circuit further clarified how courts should apply this test.

The debtors' case was dismissed because they were delinquent in plan payments and they did not cure them timely. The trustee sent a "Notice of Default and Intent to Dismiss Case," ("NODID") stating that the trustee would need to receive \$2,280.00 on or before January 14, 2019. Doc. #67. Debtors sent \$300.00 on December 31, 2018 and \$2,000.00 on January 8, 2019 through TFS Bill Pay. Id. The payments were received on January 8, 2019 and January 15, 2019, respectively, one day later than the deadline, despite sending the payment nearly a week prior to the deadline.

The court finds that the debtors made reasonable and timely efforts to comply with the NODID, and the one-day-late payment constitutes inadvertence and excusable neglect. The debtor has not delayed in bringing this motion since it was filed ten days after the case was dismissed. There appears to be no prejudice since the case has been pending for some time and there is no evidence before the court that anyone has changed their position in reliance on the dismissal. The debtor acted in good faith by making numerous Plan payments before the dismissal and the debtors did make great effort to comply with the Trustee's NODID.

Therefore, the order dismissing this case shall be vacated. The order is without prejudice to any party who can establish they have reasonably relied to their detriment on the dismissal.

17. [18-14396](#)-B-13 **IN RE: DARIO/MARIA MENDEZ**
[PK-1](#)

OBJECTION TO CLAIM OF MERRICK BANK/RESURGENT CAPITAL
SERVICES, CLAIM NUMBER 2 AND/OR MOTION TO REQUEST FOR COPY
OF CONSUMER CREDIT AGREEMENT
12-12-2018 [[17](#)]

DARIO MENDEZ/MV
PATRICK KAVANAGH
VACATED PER STIPULATION AND ORDER 1/18/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties.
Doc. #30.

18. [17-10199](#)-B-13 **IN RE: GARY WRIGHT AND KIM GRIFFIN-WRIGHT**
[RSW-5](#)

MOTION TO MODIFY PLAN
12-13-2018 [[69](#)]

GARY WRIGHT/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10:00 AM

1. [18-15029](#)-B-7 **IN RE: CARLOS/GLORIA TORRES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-2-2019 [[17](#)]

WILLIAM EDWARDS
DISMISSED 1/7/19

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The case was dismissed on January 7, 2019. Doc. #21.

2. [17-14133](#)-B-7 **IN RE: BENJAMIN HARRIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-9-2019 [[109](#)]

ROBERT WILLIAMS

FINAL RULING: This matter will proceed as scheduled.

DISPOSITION: The OSC will be vacated. Fees will be deferred.

ORDER: The court will issue an order.

This OSC was issued for failure of the Chapter 7 Trustee, Jeffrey Vetter, to pay fees due for copy and certification costs to the Clerk's Office. The fees due and payable for the copy and certification costs will be deferred. The OSC will be vacated.

3. [18-14634](#)-B-7 **IN RE: BILL/DELORES ALVIS**
[WFZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2019 [[13](#)]

KINECTA FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS
MARK BLACKMAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The moving papers were not properly served on the U.S. Trustee at the correct address in Fresno, California.

4. [18-14837](#)-B-7 **IN RE: KENDELL ROGERS**
[PK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-10-2019 [[16](#)]

SERENA VISTA APARTMENTS LLC/MV
PATRICK KAVANAGH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The motion was filed on 28 days' notice, but the language in the notice fails to require written response within 14 days of the hearing in compliance with LBR 9014-1(f)(1).

5. [18-15144](#)-B-7 **IN RE: LISA LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-11-2019 [[13](#)]

WILLIAM EDWARDS

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

6. [18-14664](#)-B-7 **IN RE: MIGUEL ESPANTA PARRA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
11-19-2018 [[5](#)]

MIGUEL ESPANTA PARRA/MV

NO RULING.

The debtor lists dependents on the bankruptcy schedules, a 20 year old child and an 8 year-old grandson, but does not list them in the waiver application. Debtor has not provided an explanation as to why they are claiming a non-minor child and grandson as dependents. Debtor must appear at the hearing and be prepared to explain why the dependents were not listed on the waiver application and why they should be considered dependents.

7. [18-14573](#)-B-7 **IN RE: WILLIAM BELL**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-11-2019 [37]

LAKEVIEW LOAN SERVICING,
LLC/MV
R. BELL
DARLENE VIGIL/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 will submit a proposed order after hearing providing, only for the relief awarded.

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

The movant, Lakeview Loan Servicing, LLC, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) with respect to a piece of real property located at 14824 Gayhead Rd in Apple Valley, CA 92307 ("Subject Property").

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval. The court does not find this debtor was complicit in the scheme as there is no evidence supporting the finding.

Non-filing borrower "Helen M Mahfouz" ("Mahfouz") executed a promissory note for \$178,703.00 in favor of FLAGSTAR BANK, FSB on August 25, 2015. Doc. #41. The promissory note was secured by a deed of trust, also in favor of FLAGSTAR BANK, FSB, executed on or about

August 26, 2015. *Id.* The deed of trust was eventually assigned to movant. *Id.*

Helen Mahfouz filed chapter 13 twice. The first time on July 26, 2017 in the Central District of California, then again on September 15, 2017, again in the Central District of California. *Id.* Both cases were dismissed a few months after the petition was filed; in the first case no plan was confirmed, but a plan was confirmed in the second case. *Id.*

One "Julio Carballo" ("Carballo") filed chapter 13 in the Eastern District of California on August 11, 2018, and he apparently acquired the property by way of a grant deed from Mahfouz the day after filing bankruptcy. *Id.* Carballo voluntarily dismissed his case. Case no. 18-13289, doc. #37. Carballo's schedules did not list the Subject Property. Doc. #23

The current debtor, William Bell, filed this bankruptcy on November 12, 2018. *Id.* He purportedly acquired an interest in the property by way of grant deed four days before filing bankruptcy from Mahfouz. *Id.* Debtor's schedules do not list the Subject Property.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 14824 Gayhead Rd in Apple Valley, CA 92307; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. This order shall be binding in any other case affecting the real property described in the motion filed not later than 2 years after entry of this order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

8. [18-14283](#)-B-7 **IN RE: GILBERTO/MARIA JAUREGUI**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-7-2019 [[16](#)]

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
R. BELL
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted provided movant clarifies a
 discrepancy described in this ruling.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2015 Nissan Altima. Doc. #20. The collateral has a value of \$12,100.00 and debtor owes \$18,065.77. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is uninsured and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

The court notes that the vehicle in the moving papers is a 2015 Nissan Altima. Debtors schedules list a 2014 Nissan Altima and a 2007 Nissan Altima. The 2014 listed on the schedules has a much lower value than the 2015 Altima listed in the moving papers. Movant must appear at the hearing and come prepared to resolve this discrepancy.

10:30 AM

1. [18-14663](#)-B-11 IN RE: 3MB, LLC
[AG-1](#)

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
1-10-2019 [[59](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
LEONARD WELSH
AMIR GAMLIEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Federal Rule of Bankruptcy Procedure 2004 permits, on motion of any party in interest, the court to order the examination of any entity, inter alia.

Secured creditor U.S. Bank, N.A. ("Movant") asks this court to enter an order to allow Movant to conduct the examinations of debtor's managing member, Robert Bell, and Mark Thomas, a 50% equity holder and member of debtor, and compel the production of documents as requested in this motion, which is lengthy and will not be reproduced here. The court notes that no opposition was filed.

Movant is authorized to conduct a Rule 2004 examination on Robert Bell and Mark Thomas in conformance with Fed. R. Bankr. P. 2004 and applicable law. The examinations shall be completed not later than February 15, 2019 or on some other date agreed upon by the parties at the offices of Wood & Randall, located at 900 Truxtun Ave., Suite

320 in Bakersfield, CA 93301. Mr. Bell and Mr. Thomas shall produce any and all documents responsive to the requests in the motion at least three business days prior to the examination date.

This order is without prejudice to a motion for a protective order or other relief as permitted by law.

2. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-5](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-9-2019 [[52](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's bankruptcy counsel, Leonard K. Welsh, requests fees of \$11,512.50 and costs of \$178.89 for a total of \$11,691.39 for services rendered from November 20, 2018 through December 31, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Advising debtor about the administration of its chapter 11 case and its duties as debtor-in-possession, (2) Attending the meeting of creditors in Fresno, (3) Financing and advising debtor's principals about the use of cash collateral, (4) Administering claims, and (5)

Litigating various motions to defend debtor. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$11,512.50 in fees and \$178.89 in costs.

3. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-6](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-18-2019 [\[79\]](#)

3MB, LLC/MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Debtor, the defendant in the state court action, asks this court to modify the automatic stay under 11 U.S.C. § 362 to allow a state court action filed in January 2018 against debtor in Kern County Superior Court to continue until final judgment, for this court to abstain during that time, and for this matter to continue once the state court action has been finally resolved. Doc. #79. The state court action is an eminent domain proceeding against debtor.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors from this case are:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;

- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt."

Factors 1, 2, 7, 10, 11, and 12 weigh in favor of modifying the stay to allow the state court action to proceed to conclusion. All of the claims made against debtor are claims based solely on state law, judicial economy will be promoted by allowing the Plaintiff's claims to be tried in one forum and one action, the complaints have been answered and the lawsuits are ready to proceed with discovery and trial, and no prejudice will occur to any other interested party.

The court can abstain under 28 U.S.C. § 1334(c). See Sec. Farms v. Int'l Bhd. Of Teamsters, 124 F.3d 999, 1009-10 (9th Cir. 1997).

In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) states "[w]here a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Debtor is apparently "prepared to proceed to trial in the Kern County Superior Court if Plaintiff and Debtor cannot settle their disputes." Doc. #83.

The factors the court must weigh in making its decision on a request for discretionary abstention weigh in favor of debtors. In deciding whether to abstain, the court should consider 12 factors:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,

(9) the burden of [the bankruptcy court's] docket,
(10) the likelihood that the commencement of the proceeding in
bankruptcy court involves forum shopping by one of the parties,
(11) the existence of a right to a jury trial, and
(12) the presence in the proceeding of nondebtor parties.

Id. at 1166-67.

Factors 2, 4, 6, 10, and 12 weight in favor of abstaining. The
issues in the state court action are solely state law issues, the
state court proceeding is ready to proceed to discovery and trial,
the state court action is not related to the main bankruptcy case,
the bankruptcy case does not likely involve forum shopping by one of
the parties, and the plaintiffs are nondebtor parties.

In making its decision, the court should view the circumstances of
the case as a whole and in light of the factors analyzed above. See
id. at 1169. Viewing the circumstances of the case as a whole, and
in light of the factors analyzed above, the court holds that
abstaining is appropriate.

Therefore, this motion is GRANTED. The automatic stay is modified to
permit the state court action to proceed to liquidate the City of
Bakersfield eminent domain claims in Kern County Superior Court,
case nos. BCV-18-100121 and BCV-18-100123. The bankruptcy court
shall abstain from deciding the validity and amount of the
Plaintiff's claims against debtor.

The order shall provide that the "Orders for Prejudgment Possession
- Actions for Eminent Domain" entered by the Kern County Superior
Court remain in full force and effect notwithstanding Debtor's
Chapter 11 case. But any other relief except that permitted by this
order shall require further order this court.

4. [18-14868](#)-B-11 **IN RE: 1 RED INVESTMENTS INC.**

RESCHEDULED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
12-5-2018 [\[1\]](#)

PHILLIP GILLET

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

DISPOSITION: Continued to March 14, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

This matter is continued to March 14, 2019 at 10:30 a.m. to be heard
in conjunction with LKW-1, matter #5 below, which is being continued
to the same date and time.

5. [18-14868](#)-B-11 **IN RE: 1 RED INVESTMENTS INC.**
[LKW-1](#)

RESCHEDULED HEARING RE: MOTION TO DISMISS CASE
12-19-2018 [[32](#)]

DAN COOK, INC./MV
PHILLIP GILLET
LEONARD WELSH/ATTY. FOR MV.

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

DISPOSITION: Continued to March 14, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

This motion is Continued to March 14, 2019 at 10:30 a.m. The court will issue the order.

First, this motion and its accompanying notice, declaration, and exhibits were not properly served on the debtor.

Federal Rule of Bankruptcy Procedure 7004(a)(3) requires service upon a corporation to be made "to the attention of an officer, a managing or general agent, or to any other agent authorized by statute to receive service," inter alia.

The proof of service shows that service was not made to the attention of any of the aforementioned individuals, just to the Debtor. This is not sufficient.

Second, the court notes that approximately four hours prior to this being motion, an ex parte application for substitution of attorney was filed. Doc. #37. That motion was granted on December 20, 2019. Doc. #46. However, the order was never served, so movant was likely unaware of the substitution and thus never served the new attorney, which is also required under Fed. R. Bankr. P. 7004(g).

Third, the meeting of creditors has not yet been concluded.

Not later than February 14, 2019, movant shall re-file with a new Docket Control Number and re-serve the moving papers in conformance with the Federal Rules of Bankruptcy Procedure and the Local Rules of Practice. If at the continued hearing, the meeting of creditors has concluded, the court may take up the matter. If the meeting of creditors has not concluded, the court, in its discretion, may continue the matter.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-60](#)

MOTION TO BORROW
1-25-2019 [[1035](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
OST 1/24/19

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #1032) 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.

Debtor Tulare Local Healthcare District ("TRMC") seeks authorization to borrow \$9,000,000.00 from the City of Tulare "to fund ongoing District operational obligations, to fund settlements of certain disputes and to provide financing needed to move forward toward filing its Plan of Adjustment." Doc. #1035. The borrowing, if approved, will not be fully extended at this time but may be extended in full if certain conditions occur.

Unless opposition is presented at the hearing, the court GRANTS this motion and authorizes TRMC to borrow not more than \$9,000,000.00 from the City of Tulare, subject to the terms as outlined in Exhibit A (doc. #1039), the declaration of Richard Gianello (doc. #1038), and the proposed order (doc. #1039). As collateral for the loan, the City of Tulare shall encumber multiple real properties located in Tulare, CA. The appraised value of the real properties are estimated to be over \$14,000,000.00. Doc. #1038.

According to the motion, one lender whose collateral is affected by the proposed borrowing, HCCA, has conditionally consented. Wilmington Trust, though, has not. Wilmington Trust has a purported floating lien securing Revenue and General Obligation Bonds. The debtor has the burden on this motion to show adequate protection of the interest of Wilmington Trust. 11 U.S.C. § 364 (d). Absent Wilmington's consent, the debtor will have to establish adequate protection of Wilmington's interest.

The motion also asks for a finding of "good faith" under 11 U.S.C. § 364(e). If an objection is raised about the debtor's good faith,

the presumption of good faith may be rebutted if, upon inquiry it appears the presumption can be overcome. In re Adam's Apple, 829 F.2d 1484, 1490-91 (9th Cir. 1987). Generally, a good faith finding requires: (1) Evidence of the need for financing; (2) Efforts made to analyze the amount needed; (3) Some evidence that the agreement was reached at arm's length; and (4) That the best interest of the debtor and its creditors would be served by the borrowing. Weinstein, Eisen and Weiss LLP v. Gill (In re Cooper Commons, LLC), 430 F.3d 1215, 1220 (9th Cir. 2005).

The Gianello declaration establishes that the debtor has needs for financing even though day to day management is being performed by Adventist Health. The debtor's funding will be exhausted on or about February 14, 2019 without the financing. Gianello has reviewed the debtor's needs as he has been acting in an interim manager capacity since the case was filed. The District's governing board has been involved in the negotiations with the City of Tulare. Gianello and his staff made many efforts to locate financing and have determined this package is the best that can be obtained under the circumstances. BizCap's Reed Upson testified that 160 packages were sent to prospective lenders. Those interested submitted requests for additional information and a few of those made proposals. Three proposals were made to the District. This strongly evidences the arrangement is at arm's length. Gianello also testified that the District still needs funding to complete its mission which includes finalizing this case.

11:00 AM

1. [18-12721](#)-B-7 **IN RE: DEBRA SMITH**
[18-1071](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-9-2018 [[1](#)]

ABSOLUTE BONDING CORPORATION
V. SMITH
HAROLD RUBINFELD/ATTY. FOR PL.

NO RULING.

2. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION
ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [18-12341](#)-B-7 **IN RE: DANNY/ROBIN MARSHALL**
[18-1065](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-28-2018 [[1](#)]

RABOBANK, N.A. V. MARSHALL ET
AL
MATTHEW KENNEDY/ATTY. FOR PL.

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Dropped from calendar.
NO ORDER REQUIRED: The proceeding has been closed. Doc. #24.

4. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-17-2015 [[1](#)]

BJORNEBOE V. BREWER
MISTY PERRY-ISAACSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 8, 2019 at 11:00 a.m.

ORDER: The court shall issue the order.

Plaintiffs stated that the state court matter is set for trial on January 6, 2020. This matter will be continued to August 8, 2019 at 11:00 a.m. to inform the court of the current status of the state court action and of any new developments. Plaintiff's counsel shall file a status report with the court and set a continued status conference for hearing not later than August 1, 2019.

5. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#) [MH-3](#)

MOTION FOR PROTECTIVE ORDER
2-1-2019 [[122](#)]

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
MIRIAM HISER/ATTY. FOR MV.
OST 2/4/19

NO RULING.

11:30 AM

1. [18-14966](#)-B-7 **IN RE: GABRIEL RAMOS**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
1-18-2019 [[11](#)]

OSCAR SWINTON

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Debtor's counsel refused to sign the agreement.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [18-14772](#)-B-13 **IN RE: CONCEPCION MORALES**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN FINANCE &
ASSOC. CORP.
1-14-2019 [[13](#)]

ROBERT WILLIAMS

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The reaffirmation agreement is unsigned by the Debtor,

the creditor, American Finance & Assoc. Corp. and Debtor's counsel. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by all interested parties.