

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday February 8 2018
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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

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. [17-13005](#)-B-13 **IN RE: GREGORY/SHELLEY SNELLA**
[MHM-2](#)

MOTION TO DISMISS CASE
1-10-2018 [[50](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Continued to April 30, 2018.

ORDER: The court will issue an order.

This motion was filed in compliance with Local Rule 9014-1(f)(1). If the debtor wished to oppose, they were required to timely file a written opposition. The court notes that debtor did not file written opposition in this matter, but has in other matters being heard on this calendar.

This motion is being continued to the bar date by which a plan must be confirmed. The court is setting a bar date of April 30, 2018. Debtor must have a plan confirmed by that time or this case will be dismissed on the trustee's declaration.

2. [17-13005](#)-B-13 **IN RE: GREGORY/SHELLEY SNELLA**
[NES-2](#)

CONTINUED MOTION TO CONFIRM PLAN
9-22-2017 [[20](#)]

GREGORY SNELLA/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: No appearance is necessary. The court will issue an order.

This motion is DENIED AS MOOT. In lieu of filing a written response to the trustee's objection to this motion, debtors have filed a modified plan which is set for hearing on this same calendar, NES-5, matter number 3.

3. [17-13005](#)-B-13 **IN RE: GREGORY/SHELLEY SNELLA**
[NES-5](#)

MOTION TO CONFIRM PLAN
12-29-2017 [[45](#)]

GREGORY SNELLA/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

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

DISPOSITION: Denied. The court sets a bar date of April 30, 2018.

ORDER: No appearance is necessary. The court will issue an order.

First, the Trustee's Motion to Dismiss, which was filed after this motion, is unopposed. Second, the debtors' response (unsupported by evidence) states that an appraisal is needed and a new plan will be filed providing an appropriate payment for Class 1 creditors and priority claims. This motion is DENIED. A plan must be confirmed by April 30, 2018 or this case will be dismissed on the trustee's ex parte application.

4. [15-12709](#)-B-13 **IN RE: LORI KITCHEN**
[WDO-5](#)

MOTION TO MODIFY PLAN
1-9-2018 [[96](#)]

LORI KITCHEN/MV
WILLIAM OLCOTT
CONT'D TO 3/8/18 WITHOUT AN ORDER

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("FRBP") and the Local Bankruptcy Rules ("LBR").

LBR 3015-1(d)(2) is the rule that outlines the procedures for modifying a plan after confirmation. The rule requires that notice of a modification motion must comply with FRBP 3015(g) and LBR 9014-

1(f)(1). FRBP 3015(f) requires twenty one days of notice of the time fixed for filing objections, and LBR 9014-1(f)(1) requires 28 days of notice that at least fourteen days prior to the hearing written opposition must be filed, for a total of at least 35 days' notice. This motion was filed on less than 35 days' notice.

The court notes that movant filed an amended notice of hearing, docket #100. LBR 9014-1(j) states that continuances must be approved by the court. Movant neither sought for, nor was granted, a continuance. Movant should withdraw the deficient motion, file a new motion and notice the hearing as required by the Local Bankruptcy Rules and the Federal Rules of Bankruptcy Procedure or obtain an order shortening time.

5. [17-13915](#)-B-13 **IN RE: VERONICA TRUJILLO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2018 [[15](#)]

ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to March 8, 2018.

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

The objection will be continued and set for hearing on March 8, 2018 at 9:00 a.m. The court will issue an order. The court may treat the March 8, 2018 hearing as a scheduling conference. If the case is dismissed (item #6 below) this objection will be overruled as moot.

This objection to confirmation was noticed as a preliminary hearing. Unless this case is voluntarily converted to chapter 7 or dismissed or the objection has been withdrawn, the debtor(s) shall file and serve a written response not later than February 22, 2018. The response shall specifically address each issue raised in the objection, 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 1, 2018. If the debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated and confirmation will be denied without a further hearing.

Pursuant to §1324(b), the court intends to set April 30, 2018 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.

6. [17-13915](#)-B-13 **IN RE: VERONICA TRUJILLO**
[MHM-2](#)

MOTION TO DISMISS CASE
1-11-2018 [[18](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtor filed a timely response, stating that she made two plan payments. Both payments were late and the opposition, which is unverified, does not provide an excuse for the tardy payments. The repetitive tardiness suggests the Plan is not feasible and that is a basis to dismiss the case.

The court notes that the trustee's declaration refers to a confirmed plan. No plan has been confirmed in this case.

7. [17-13916](#)-B-13 **IN RE: JACK/SHARYN JOST**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2017 [[27](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
DISMISSED

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

DISPOSITION: Denied as moot.

ORDER: No appearance is necessary. The court will issue an order.

An order dismissing the case was entered on December 27, 2017, Docket #35. This motion will be denied as moot. No appearance is necessary.

8. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
1-9-2018 [[29](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and indicated that most required documentation has been provided to the trustee. The debtors' response is not supported by evidence that all defaults have been cured. The declaration provides some disturbing information: the business is not insured. The schedules state Mr. Lopez's business is mobile home construction. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

9. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[RSW-2](#)

MOTION TO AVOID LIEN OF CALIFORNIA EMPLOYMENT DEVELOPMENT
DEPARTMENT
12-12-2017 [[18](#)]

RICK LOPEZ/MV
ROBERT WILLIAMS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. No appearance is necessary. The motion has been withdrawn.

10. [17-10023](#)-B-13 **IN RE: RODNEY/VICKI SLATER**
[PK-5](#)

MOTION TO MODIFY PLAN
12-4-2017 [[69](#)]

RODNEY SLATER/MV
PATRICK KAVANAGH

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

The motion will be granted without oral argument based on well-pled facts. This motion to modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

11. [17-12425](#)-B-13 **IN RE: PATRICIA TONGATE**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
12-27-2017 [[32](#)]

PATRICK KAVANAGH

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

Counsel will be awarded \$5,500.00 in fees.

12. [17-14625](#)-B-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
1-25-2018 [[15](#)]

JERRICK BLOCK/MV
ROBERT WILLIAMS

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 hearing.

The debtors are competent to testify as to the value of the 2013 Chevrolet Malibu. But the debtors' declaration is deficient in two respects. First, 11 U.S.C. § 506(a)(2) requires the valuation to be the "replacement value," not "fair market value." The debtors' declaration states their opinion of the "fair market value" of the 2013 Malibu, not the "replacement value." Second, the source of valuation is "looking online." The debtors are not experts and cannot testify as to hearsay sources of value. Federal Rules of Evidence 701, 702.

The court notes though, that the valuation proposed was the value agreed to by Capital One in a recently dismissed case. Since the value to be found in the motion is the same as what was recently agreed upon, the motion will be GRANTED.

13. [17-14133](#)-B-13 **IN RE: BENJAMIN HARRIS**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2017 [[23](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

14. [17-14133](#)-B-13 **IN RE: BENJAMIN HARRIS**
[MHM-2](#)

MOTION TO DISMISS CASE
1-9-2018 [[38](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

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

DISPOSITION: Granted. This case will be converted to chapter 7.

ORDER: No appearance is necessary. The court will issue an order.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. Debtor's counsel filed a declaration, indicating numerous attempts had been made to contact the Debtor with regard to the dismissal of his case without success. It appears the debtor is unreachable and thus proceeding in Chapter 13 is not feasible. The record shows that there has been unreasonable delay by the Debtor that is prejudicial to creditors.

The schedules reveal the debtor has an interest in a trust which owns real estate. The schedules say the debtor shares an interest in the trust with his siblings. The debtor estimates his interest has a value of \$21,000.00. This may be available to creditors with unsecured claims. Accordingly, the case will be converted to chapter 7. 11 U.S.C. § 1307(c).

15. [17-13734](#)-B-13 **IN RE: RANDALL KARNES**
[PLG-2](#)

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
1-3-2018 [[28](#)]

RANDALL KARNES/MV
RABIN POURNAZARIAN
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. No appearance is necessary. The motion has been withdrawn.

16. [17-14642](#)-B-13 **IN RE: CARMEN AVILA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-10-2018 [[16](#)]

PHILLIP GILLET

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the required fee has been paid in full.

17. [16-10344](#)-B-13 **IN RE: CHRISTOPHER/TINA GENEL**
[RSW-2](#)

MOTION TO INCUR DEBT
1-10-2018 [[35](#)]

CHRISTOPHER GENEL/MV
ROBERT WILLIAMS
CORRECTED/AMENDED NOTICE OF HEARING RESCHEDULING TO 2/1/18
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. No appearance is necessary. This motion
was conditionally granted on the February
1, 2018 calendar.

18. [17-13952](#)-B-13 **IN RE: ANGIE PENALOZA**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2017 [[21](#)]

MICHAEL MEYER/MV
ALLAN CATE

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 is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed.

19. [17-13952](#)-B-13 **IN RE: ANGIE PENALOZA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-9-2018 [[26](#)]

ALLAN CATE

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

DISPOSITION: Overruled as moot.

ORDER: No appearance is necessary. The court will issue an order.

This objection is OVERRULED AS MOOT. Based on the court's holding in matter #18 on this calendar, DCN MHM-1, granting the Trustee's Motion to Dismiss, this motion is moot.

20. [17-13952](#)-B-13 **IN RE: ANGIE PENALOZA**
[MHM-3](#)

MOTION TO DISMISS CASE
1-9-2018 [[29](#)]

MICHAEL MEYER/MV
ALLAN CATE

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case is being dismissed on the trustee's motion [MHM-1] on calendar above, docket no. 18. Accordingly, this motion will be denied as moot.

21. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
1-9-2018 [[18](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

22. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[PK-1](#)

MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION
1-25-2018 [[24](#)]

JAIME SANCHEZ/MV
PATRICK KAVANAGH

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 an order.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion based on well-pled facts as follows.

This motion to value respondent's collateral was served as a preliminary matter. If no appearance in opposition is presented at the hearing, 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 debtor is competent to testify as to the value of the 2011 Mercedes-Benz E-350. Based on the evidence presented, the respondent's secured claim will be fixed at \$15,895.00. The proposed

order submitted after the hearing shall specifically identify the collateral, and if applicable, the proof of claim to which it relates and will be effective upon confirmation of the chapter 13 plan.

23. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[PK-2](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
1-25-2018 [[33](#)]

JAIME SANCHEZ/MV
PATRICK KAVANAGH

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 the hearing.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion based on well-pled facts as follows.

This motion to value respondent's collateral was served as a preliminary matter. If no appearance in opposition is presented at the hearing, 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 debtor is competent to testify as to the value of the 2007 GMC Sierra and other personal property, including a refrigerator, washer/dryer and stove; two televisions and two cellular phones; everyday clothes and work clothes; jewelry; two dogs and one cat; bank account, and a 401(k). Based on the evidence presented, the respondent's secured claim will be fixed at \$10,000.00 on the 2007 GMC Sierra and \$8,415.00 as to the other personal property. The proposed order submitted after the hearing shall specifically identify the collateral, and if applicable, the proof of claim to which it relates and will be effective upon confirmation of the chapter 13 plan.

24. [15-12954](#)-B-13 **IN RE: MICHAEL HALL**
[PK-3](#)

OBJECTION TO CLAIM OF MIDLAND CREDIT MANAGEMENT, INC., CLAIM
NUMBER 3
12-8-2017 [[121](#)]

MICHAEL HALL/MV
PATRICK KAVANAGH

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

DISPOSITION: Resolved by stipulation of the parties.

ORDER: No appearance is necessary. The parties will provide
the order.

The parties have reached an agreement resolving the debtor's
objection to claim.

Through their respective counsel, the parties have agreed and
stipulation that the court may enter an order on this motion as
follows:

1. Debtor's Objection to Claim No. 3 filed by Midland Credit
Management, Inc. as agent for Midland Funding, L.L.C. in the
amount of \$4,296.48 is sustained.
2. Claim No. 3 is disallowed.
3. The hearing date of February 8, 2018 is vacated.
4. The debtor's counsel is awarded attorney fees of \$900.00
pursuant to California Civil Code section 1717.

25. [15-12954](#)-B-13 **IN RE: MICHAEL HALL**
[PK-4](#)

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 4
12-13-2017 [[131](#)]

MICHAEL HALL/MV
PATRICK KAVANAGH

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

DISPOSITION: Resolved by stipulation of the parties.

ORDER: No appearance is necessary. The parties will provide
the order.

The parties have reached an agreement resolving the debtor's
objection to claim.

Through their respective counsel, the parties have agreed and
stipulation that the court may enter an order on this motion as
follows:

5. Debtor's Objection to Claim No. 4 filed by LVNV Funding, LLC on February 8, 2018, in the amount of \$9,404.75 is sustained.
6. Claim No. 4 is disallowed.
7. The hearing date of February 8, 2018 is vacated.
8. The debtor's counsel is awarded attorney fees of \$600.00 pursuant to California Civil Code section 1717.

26. [17-14357](#)-B-13 **IN RE: MICHELLE/PAUL ESPARZA**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
 1-3-2018 [[28](#)]

WELLS FARGO BANK, N.A./MV
 THOMAS MOORE
 DARLENE VIGIL/ATTY. FOR MV.
 WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. No appearance is necessary. The objection has been withdrawn.

27. [17-14357](#)-B-13 **IN RE: MICHELLE/PAUL ESPARZA**
[MHM-2](#)

MOTION TO DISMISS CASE
 1-9-2018 [[34](#)]

MICHAEL MEYER/MV
 THOMAS MOORE
 MICHAEL MEYER/ATTY. FOR MV.
 RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and indicated that the required documentation had been submitted, but the debtors' response is not supported by evidence that the default has been cured. Attaching email exchanges without evidence supporting foundation and a hearsay

exception, the debtor's response is meaningless. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

28. [17-14462](#)-B-13 **IN RE: GERALD/TERRI JOHNSON**
[MHM-2](#)

MOTION TO DISMISS CASE
1-9-2018 [[22](#)]

MICHAEL MEYER/MV
STEVEN ALPERT
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

29. [17-14363](#)-B-7 **IN RE: BOBBY/ELLEN TINSLEY**
[MHM-2](#)

MOTION TO DISMISS CASE
1-9-2018 [[26](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
CONVERTED

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has been converted to chapter 7. This motion will be denied as moot. No appearance is necessary.

30. [17-13866](#)-B-13 **IN RE: CHAD/DEZAREI HARRISON**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2017 [[20](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 8, 2018, at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on March 8, 2018, at 9:00 a.m., in Bakersfield, to be heard with the Debtors' Motion to Confirm First Modified Chapter 13 Plan. If the plan is not confirmed on March 8, 2018, the court intends to dismiss the case at the continued hearing on the grounds stated in the motion. No appearance is necessary.

31. [17-13866](#)-B-13 **IN RE: CHAD/DEZAREI HARRISON**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2018 [[27](#)]

ROBERT WILLIAMS

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

DISPOSITION: Overruled as moot. The court is setting a bar date
of April 30, 2018.

ORDER: No appearance is necessary. The court will issue an
order.

This objection is OVERRULED AS MOOT. The court notes that a modified plan and a motion to confirm the modified plan were filed after this objection was filed and served.

Pursuant to §1324(b), the court will set April 30, 2018 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.

32. [17-13867](#)-B-13 **IN RE: JEANNIE SAMUEL**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2017 [[20](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 8, 2018, at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on March 8, 2018, at 9:00 a.m., in Bakersfield, to be heard with the Debtors' Motion to Confirm First Modified Chapter 13 Plan. If the plan is not confirmed on March 8, 2018, the court intends to dismiss the case at the continued hearing on the grounds stated in the motion. No appearance is necessary.

33. [17-13867](#)-B-13 **IN RE: JEANNIE SAMUEL**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2018 [[27](#)]

ROBERT WILLIAMS

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

DISPOSITION: Overruled as moot. The court is setting a bar date
of April 30, 2018.

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

This objection is OVERRULED AS MOOT. The court notes that a modified plan and a motion to confirm the modified plan were filed after this objection was filed and served.

Pursuant to §1324(b), the court will set April 30, 2018 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.

34. [17-14374](#)-B-13 **IN RE: ANNA BALL**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT
COMPANY
12-12-2017 [[36](#)]

FORD MOTOR CREDIT COMPANY/MV
D. GARDNER
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: No appearance is necessary. The objection has
been withdrawn.

35. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[MHM-1](#)

MOTION TO DISMISS CASE
12-29-2017 [[38](#)]

MICHAEL MEYER/MV
REBECCA TOMILOWITZ
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 8, 2018, at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on March 8, 2018, at 9:00 a.m., in Bakersfield, to be heard with the Debtors' Motion to Confirm Second Modified Chapter 13 Plan. If the plan is not confirmed on March 8, 2018, the court intends to dismiss the case at the continued hearing on the grounds stated in the motion. No appearance is necessary.

36. [17-13581](#)-B-7 **IN RE: GENORA JORDAN-MCCLANAHAN**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2018 [[46](#)]

ROBERT WILLIAMS
CONVERTED

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The case has been converted to chapter 7. This objection will be overruled as moot. No appearance is necessary.

37. [17-13581](#)-B-7 **IN RE: GENORA JORDAN-MCCLANAHAN**
[MHM-3](#)

MOTION TO DISMISS CASE
1-10-2018 [[49](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
CONVERTED

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has been converted to chapter 7. This motion will be denied as moot. No appearance is necessary.

38. [17-14293](#)-B-13 **IN RE: ERIC/MEREDITH KURTZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
1-10-2018 [[14](#)]

NEIL SCHWARTZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally sustained.

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

This motion was set on 28 days' notice in compliance with Local Rule
9014-1(f)(1). A timely opposition was filed.

The opposition states that the debtors have filed an amended chapter
13 plan on the correct forms, which they have. The opposition also
states that the debtors will submit a motion to confirm the chapter
13 plan, which they have not done.

If the debtors have not filed a motion to confirm chapter 13 plan
prior to this hearing, the court intends to sustain the trustee's
objection.

Pursuant to § 1324(b), the court intends to set April 30, 2018 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.

39. [17-14597](#)-B-13 **IN RE: JOSE DE LA GARZA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-2018 [[16](#)]

CREDIT ACCEPTANCE
CORPORATION/MV
RICHARD STURDEVANT
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted.

The movant, Credit Acceptance Corporation, seeks relief from the automatic stay with respect to a 2004 BMW X5. The movant has produced evidence that the vehicle has a value of \$8,460.97 and its secured claim is approximately \$5,425.00. Claim 1-1.

The court concludes that there is equity in the vehicle but no evidence exists that it is necessary to a reorganization; the debtor did not even list the vehicle in its Chapter 13 Plan. The movant already has possession of the vehicle. It was obtained pre-petition, in July 2017.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has established that the value of its collateral exceeds the amount of its secured claim, the court can award attorneys' fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b). Movant shall file, serve and set for hearing a motion for allowance of reasonable attorneys' fees on or before February 22, 2018. If a motion is not filed on or before that date, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. If so, the order granting this motion shall provide that no fees and costs are allowed. If the court denies fees and costs, movant or its agents are barred from recovering fees and costs in connection with prosecuting this motion.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

40. [17-14597](#)-B-13 **IN RE: JOSE DE LA GARZA**
[MHM-1](#)

MOTION TO DISMISS CASE
1-9-2018 [[24](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtor filed a timely response and indicated that the default has been cured. The debtor's response lacked supporting evidence, and based on the trustee's reply, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

41. [17-14098](#)-B-13 **IN RE: JUAN/CECILIA TORIBIO**

OBJECTION TO CONFIRMATION OF PLAN BY VILLAGE CAPITAL &
INVESTMENT, LLC
12-28-2017 [[35](#)]

VILLAGE CAPITAL & INVESTMENT,
LLC/MV
PATRICK KAVANAGH
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This objection is overruled without prejudice for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9014-1(d)(3)(B)(iii) requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking

the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. This language is absent from the notice.

LBR 9004-2(b)(5) requires that the first page of every document filed with the court must include, inter alia, the Docket Control Number ("DCN"). In this case, the motion itself did not have the DCN on the first page, though the notice, exhibits, and proof of service did comply.

For the above reasons this objection is OVERRULED WITHOUT PREJUDICE.

42. [17-14098](#)-B-13 **IN RE: JUAN/CECILIA TORIBIO**
[MHM-1](#)

MOTION TO DISMISS CASE
12-12-2017 [[27](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. No appearance is necessary. The motion has been withdrawn.

43. [17-14098](#)-B-13 **IN RE: JUAN/CECILIA TORIBIO**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-9-2018 [[39](#)]

PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained. The court is setting a bar date of April 30, 2018, or the case will be dismissed on the trustee's ex parte application.

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

This objection to confirmation of plan was noticed on less than 28 days in compliance with Local Rule 9014-1(f)(2). No written response was required, but the court notes the debtor's response.

At the time of this hearing, the January payment in the amount of \$3,500 will have come due. If the debtors are not current with their plan payments, the court intends to sustain this objection.

The declaration of Ms. Toribio explains the debtors had to live in two households due to work demands. That is no longer the case. This may explain the differences in schedules I & J.

Pursuant to §1324(b), the court intends to set April 30, 2018 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.

44. [17-14098](#)-B-13 **IN RE: JUAN/CECILIA TORIBIO**
[MHM-3](#)

MOTION TO DISMISS CASE
1-9-2018 [[42](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to deny the motion to dismiss on the grounds stated below.

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

This motion was filed on 28 days' notice in compliance with Local Rule 9014-1(f)(1). Debtors filed a timely response, seeming to allege that the case was filed due to a clerical error because "the person in the attorney's office responsible for filing bankruptcy petitions was out on the same day the debtor's bank account was levied." Docket #61.

The Ninth Circuit Bankruptcy Appellate Panel has held that a decision to dismiss a case under 11 U.S.C. § 109 for failure to provide a credit counseling certificate was not jurisdictional. In In re Hess, the Vermont Bankruptcy Court used a 'totality of the circumstances' test in determining whether a case filed by a debtor who did not establish all the criteria of § 109 should be dismissed. The elements were (1) whether the debtor filed the case in good faith, (2) whether the debtor took all reasonable steps to comply with the statutory requirements, (3) whether the debtor's failure to comply was the result of circumstances that were both extraordinary and beyond the control of the debtor, (4) whether the debtor's conduct meets the minimum requirements of § 109(h), (5) whether any party would be prejudiced by allowing the case to proceed, and (6) whether there are any unique equitable factors that tip the balance in one direction or the other. In re Hess, 347 B.R. 489, 498 (D. Vt. Bankr. 2006).

Here, the totality of circumstances leans toward denying this dismissal motion. The case was filed in good faith, the debtor took all reasonable steps to comply, the debtor's failure to comply was in fact the result of circumstances out of their control, no party would be prejudiced by allowing the case to proceed, and the filing of the certificates was only a few days after the bankruptcy case was filed.

The court does not see cause enough to grant this motion.

45. [17-10199](#)-B-13 **IN RE: GARY WRIGHT AND KIM GRIFFIN-WRIGHT**
[RSW-4](#)

MOTION TO MODIFY PLAN
12-14-2017 [[57](#)]

GARY WRIGHT/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

The motion will be granted without oral argument based on well-pled facts. This motion to modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The 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. [17-14601](#)-B-7 **IN RE: ADAM WENTWORTH, AND BRANDI WENTWORTH**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-12-2017 [[12](#)]

NATIONSTAR MORTGAGE LLC/MV
R. BELL
BRANDYE FOREMAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

2. [17-14406](#)-B-7 **IN RE: JOHNNY ROCHA**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2018 [[16](#)]

ALLY BANK/MV
ROBERT WILLIAMS
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after the hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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 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 waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral 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).

3. [17-14408](#)-B-7 **IN RE: JAIRO/REBECCA MESA**
[RSW-1](#)

MOTION TO REDEEM
1-25-2018 [[14](#)]

JAIRO MESA/MV
ROBERT WILLIAMS

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 an order.

This motion was filed and served pursuant to LRB 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.

Pursuant to the requirements listed in 11 U.S.C. § 722, the court GRANTS this motion to redeem. After reviewing the motion and evidence, the court finds that the property to be redeemed, a 2015 Kia Optima, is tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt. The property has been exempted under 11 U.S.C. § 522, and debtors are willing and able to pay the lienholder the amount of the lienholder's allowed secured claim in full.

4. [17-14409](#)-B-7 **IN RE: PATRICIA DOMINGUEZ**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-5-2018 [[12](#)]

AMERICAN HONDA FINANCE
CORPORATION/MV
R. BELL
VINCENT FROUNJIAN/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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

5. [17-14247](#)-B-7 **IN RE: DEVIN JONES**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-2017 [13]

METROPOLITAN LIFE INSURANCE
COMPANY/MV
D. GARDNER
JENNIFER WONG/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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.

If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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).

6. [17-14252](#)-B-7 **IN RE: DANNY/CHARLENE PRICE**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-2-2018 [[13](#)]

SYSTEMS AND SERVICES
TECHNOLOGIES, INC./MV
NEIL SCHWARTZ
AUSTIN NAGEL/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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 waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral 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).

7. [17-13869](#)-B-7 **IN RE: CHARLES JOHNSON**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-2017 [[17](#)]

THE BANK OF NEW YORK MELLON/MV
D. GARDNER
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted in part and denied as moot in part. The
debtor has received his discharge.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtor because his discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee.

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 proposed order shall specifically describe the property or action to which the order relates.

If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The debtor received his discharge on January 29, 2018 and the automatic stay ends in a chapter 7 when a discharge is granted or denied. 11 U.S.C. §362(c)(2)(C). Therefore this motion is also DENIED AS MOOT as to the debtor since there is no stay in place as to the debtor's interest. The motion is GRANTED as to the interest of the chapter 7 trustee only.

8. [17-14275](#)-B-7 **IN RE: JOSE VERA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
1-5-2018 [[16](#)]

AMERICAN HONDA FINANCE
CORPORATION/MV
R. BELL
VINCENT FROUNJIAN/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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

9. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2017 [[31](#)]

SIERRA PACIFIC MORTGAGE
COMPANY, INC./MV
HAGOP BEDOYAN
CAREN CASTLE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to March 8, 2018 at 10:00 a.m. and
denied as moot in part as to the debtor.

ORDER: The court will issue the order.

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

The debtor received his discharge on January 10, 2018 and the automatic stay ends in a chapter 7 when a discharge is granted or denied. 11 U.S.C. §362(c)(2)(C). Therefore this motion is also DENIED AS MOOT since there is no stay in place as to the debtor's interest.

Pursuant to 11 U.S.C. §362(e)(2)(B), the court must find good cause for extending this motion 60 days past the date of filing. The court finds that good cause exists because there is a material dispute as to whether there is equity in the property and if the property has value enough to be of use to the estate.

Based on the record, the factual issues appear to include: the actual value of the property. Debtor's schedule A states a value of \$190,000. The declaration of Rosina Dewar, a licensed real estate salesperson employed by Watson Realty Services, Inc., states that she believed the property was worth \$224,000 based on a "drive by appraisal."

The trustee wants to try and sell the property for the benefit of creditors. The owner of the property is an LLC owned by the debtors. So, the trustee owns the LLC. The court will set dates for proceeding after consulting with counsel.

10. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2017 [[37](#)]

SIERRA PACIFIC MORTGAGE CO./MV
HAGOP BEDOYAN
DANIEL FUJIMOTO/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn by Moving Party.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party. No appearance is necessary.

11. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[PWG-1](#)

MOTION TO EMPLOY PHILLIP W. GILLET, JR. AS ATTORNEY(S)
AND/OR MOTION TO EMPLOY PHILLIP W. GILLET, JR. AS SPECIAL
COUNSEL
12-29-2017 [[49](#)]

JEFFREY VETTER/MV
HAGOP BEDOYAN

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the
order.

This motion is denied without prejudice for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9014-1(e)(2) requires that proof of service, in the form of a certificate of service, be filed with the Clerk not more than three days after the moving papers were filed.

A total of three notices were filed for this motion. The original notice had the incorrect date and time for the hearing. The first amended notice (Docket #54) amended the time correctly, but did not correctly amend the date. The second amended notice (Docket #56) correctly amended the date, and notice was entirely accurate.

Movant filed their motion, original notice, declarations, memorandum of points and authorities, and first amended notice on December 29, 2017. Dockets #49, 50, 51, 52, 53, and 54. A certificate of service showing that the aforementioned documents, excluding the original

notice, were mailed by first class mail on December 30, 2017 to over 100 parties, was filed on January 2, 2018. Docket #57. January 2, 2018 is more than three days after December 29, 2017. However, Federal Rule of Bankruptcy Procedure 9006(a) ("FRBP") makes January 2, 2018 the actual last day to file and comply with the local rules because January 1, 2018 (the "actual" third day) is a legal holiday, New Year's Day. Therefore "the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." FRBP 9006(a)(1)(C). Since January 2, 2018 was not a Saturday, Sunday, or legal holiday, January 2, 2018 is within the relevant compliance period. In this instance, movant did comply with the Local Rules.

However, a second amended notice (Docket #56), with the correct date and time of the hearing, was filed on January 2, 2018 just hours before the first certificate of service (Docket #57) was filed. A second certificate of service (Docket #63) showing that the second amended notice was mailed by first class mail on January 4, 2018. This certificate of service was filed on January 10, 2018. January 10, 2018 is more than three days after January 2, 2018, the date the served paper was filed. In this instance, movant did not comply with the Local Rules. Therefore this motion is DENIED WITHOUT PREJUDICE.

12. [17-14885](#)-B-7 **IN RE: KRISTINA BEHNKE**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
1-17-2018 [9]

HONDA LEASE TRUST/MV
LISA HOLDER
VINCENT FROUNJIAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

10:30 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-16](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF EHRLICH PLEDGER
LAW, LLP FOR JEAN PLEDGER, SPECIAL COUNSEL(S)
1-18-2018 [[423](#)]

T. BELDEN

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

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

MOTION FOR COMPENSATION FOR WAYNE LONG & CO., ACCOUNTANT(S)
1-18-2018 [[409](#)]

WAYNE LONG & COMPANY/MV
T. BELDEN

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

3. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-18](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BELDEN BLAINE
RAYTIS, LLP FOR T. SCOTT BELDEN, DEBTORS ATTORNEY(S)
1-18-2018 [[416](#)]

T. BELDEN

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the
 order.

This motion is denied without prejudice for failure to comply with
Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of
Practice in the Eastern District became effective on September 26,
2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing
requirements, requires movants to notify respondents that they can
determine whether the matter has been resolved without oral argument
or if the court has issued a tentative ruling by checking the
Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day
before the hearing.

4. [17-12535](#)-B-11 **IN RE: OVADA MORERO**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-3-2018 [[145](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
 submit a proposed order in conformance with the
 ruling below.

This matter was fully noticed in compliance with the Local Rules of
Practice and there is no opposition. 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. Accordingly, the
respondents' defaults will be entered.

Counsel will be awarded fees of \$5,397.50 and costs of \$47.80.

5. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
1-25-2017 [[1](#)]

JACOB EATON

NO RULING.

6. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[KDG-8](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR SILO CITY,
INC.
12-6-2017 [[225](#)]

JACOB EATON
RESPONSIVE PLEADING

NO RULING.

7. [15-14685](#)-B-11 **IN RE: B&L EQUIPMENT RENTALS, INC.**
[LKW-52](#)

MOTION TO CLOSE CHAPTER 11 CASE
1-10-2018 [[857](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

The court has reviewed the motion and attached declaration and exhibits. The plan is substantially consummated and the case should be closed for administrative purposes. This motion is GRANTED.

8. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[LKW-11](#)

MOTION FOR COMPENSATION FOR CBIZ MHM, LLC, ACCOUNTANT(S)
12-22-2017 [[215](#)]

CBIZ MHM, LLC/MV
LEONARD WELSH

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

CBIZ MHM, LLC will be awarded fees of \$12,621.25.

9. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[KDG-9](#)

MOTION TO DISMISS CASE
1-18-2018 [[260](#)]

SILO CITY, INC./MV
JACOB EATON

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 an order.

This motion to dismiss was filed by the debtor-in-possession in compliance with Local Rule 9014-1(f)(2) and no written response was required.

The basis for this motion is that debtor owes its counsel over \$100,000 and counsel has informed debtor that it intends to withdraw as debtor's counsel due to the non-payment of fees. Debtor has attempted to find other representation but has not been successful, and corporate debtors in chapter 11 cases are unable to represent themselves.

Debtor contends that dismissal, rather than conversion to Chapter 7, is in the best interest of creditors because all of debtor's assets are fully encumbered.

11 U.S.C. § 1112(b)(1) states that a court shall dismiss or convert the case to chapter 7, whatever is in the best interests of creditors, after notice and a hearing, for "cause." § 1112(b)(4) is a non-exclusive list what may be considered "cause." The following "cause" supports dismissal in lieu of conversion.

The debtor has few major assets: a piece of developed real property and bagging equipment. Docket #38. Debtor admits that it does not have any equity in the property. Docket #250, p. 4, ¶ 26. One of the largest secured creditors, Allstar Growth Fund, LLC ("Allstar"), has liens that encumber the property. Docket #204. Allstar has also opposed plan confirmation and other motions the debtor has filed.

In re Pedro states that a "court shall convert or dismiss a chapter 11 case if it finds 'cause' for dismissal, subject to two conditions..." In re Pedro, 2014 Bankr. LEXIS 1412. If the court is able to find "and specifically identify unusual circumstances establishing that converting or dismissing the case is not in the best interest of creditors and the estate" and the debtor establishes that "there is a reasonable likelihood that a plan will be confirmed within . . . a reasonable period of time," the court may not convert or dismiss the case. 11 U.S.C. §§ 1112(b)(2), (b)(2)(A).

In In re Pedro, the court found that the debtor did not identify any unusual circumstances establishing that dismissal is not in the best interest of creditors and the estate and the debtor there was "virtually no likelihood of confirming a chapter 11 plan." In re Pedro, LEXIS 1412 at 10.

The court has not been presented with any unusual circumstances establishing that conversion or dismissal is not in the best interests of creditors and the estate and the debtor has established that there is no reasonable likelihood that a plan will be confirmed within a reasonable period of time. The case has been pending for over a year. No plan appears confirmable within a reasonable time especially if the debtor will soon be without counsel. 11 U.S.C. § 1112(b)(2)(A). There are also issues concerning the ability of management to maintain confidence among stakeholders given recently settled state court litigation involving a principal of the debtor and affiliates of prospective lessees. The debtor's principal has stated the existing plan will need to be substantially

modified to reflect over a 50% reduction in expected monthly rental income. (Docket #262). This will further delay matters. Debtor has no authority to use cash collateral to make adequate protection payments. *Id.*

There is no reasonable likelihood of rehabilitation due to the inability of the debtor to secure leases with sufficient rents with which to pay its creditors. § 1112(b)(4)(A). A review of the MOR's shows virtually no income except from sporadic rents. The debtor claims it has successfully negotiated short term leases with two tenants who do not require a subordination agreement. The fact remains, the first lender encumbering the debtor's property will not enter into such an agreement. This suggests great difficulty in reorganizing this debtor. The lack of equity establishes that liquidation of assets is unrealistic. Although not listed, the fact that debtor has not paid its creditors since filing the bankruptcy over a year also weighs heavily in favor of dismissal.

The court also finds that dismissal, rather than conversion to Chapter 7, is in the best interest of creditors because all of debtor's assets are fully encumbered and more bankruptcy proceedings would further harm creditors when enforcing their state law remedies would be less burdensome and time consuming.

This motion is GRANTED.

10. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[RTM-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-29-2017 [[204](#)]

ALLSTAR GROWTH FUND, LLC/MV
JACOB EATON
MURRAY TRAGISH/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [17-13297](#)-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
[17-1088](#)

STATUS CONFERENCE RE: COMPLAINT
12-5-2017 [[1](#)]

ICON ENTERTAINMENT GROUP, INC.
V. BENDER ET AL
PHILLIP GILLET/ATTY. FOR PL.

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

DISPOSITION: Continued to March 8, 2018 at 11:00 a.m.

ORDER: No appearance is necessary. The court will issue an
order.

By prior order of the court, this status conference is continued to
March 8, 2018 at 11:00 a.m.

11:30 AM

1. [17-14015](#)-B-7 **IN RE: MISAEL SOLIS AND ZULEMA CORTEZ-MATA**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
1-19-2018 [[17](#)]

THOMAS GILLIS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Counsel shall inform his clients that no appearance is necessary.

Debtors were represented by counsel when they 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). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [17-13570](#)-B-7 **IN RE: JUANITA GIBSON**

REAFFIRMATION AGREEMENT WITH WELLS FARGO FINANCIAL NATIONAL
BANK
12-12-2017 [[26](#)]

STEVEN ALPERT

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

Debtor's counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor(s)' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.