UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, May 9, 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. 18-10913-B-13 **IN RE: WALTER/KATHRYN COVEY**
RSW-5

MOTION TO MODIFY PLAN
3-28-2019 [89]

WALTER COVEY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied

ORDER: The court will prepare the order.

The Coveys ("Debtors") filed this case over a year ago. They confirmed a Chapter 13 Plan a few months later. This Plan is for 60 months, requires payments of $1,714.00 per month and pays allowed unsecured claims a 75% dividend. The Chapter 13 Trustee objected to confirmation of the Debtor's original Plan calling for smaller payments and a distribution of 42% to unsecured creditors. To resolve the dispute, the Debtors agreed to increase payments to $1,714.00 per month, the dividend to 75% and submit all tax refunds to the Trustee for distribution to creditors. Doc. #58.

The Coveys asked to modify the Plan to reduce payments. Doc. #67. The Trustee objected, and the Coveys agreed to further modify the Plan to provide for surrender of a travel trailer. The first modification request was denied. Doc. #87.

The Covey's Second Modified Plan is at issue here. This Plan retains a 60-month duration but proposes reducing monthly payments to $1,537.00 per month. The travel trailer is surrendered. In contrast to the current Plan, this proposed modification provides an "unknown" distribution to allowed unsecured claims. The trustee opposes confirmation.

The Trustee argues the Plan is not filed in "good faith" required by § 1325(a)(3). The Debtors never increased their payments to $1,714.00 per month, the Trustee contends, even though that was agreed. The Trustee dismisses the Covey's claim that Kathryn's income reduced necessitating this modification arguing the income reduction was accounted for when the first Plan was confirmed. The

Trustee also points to allegedly "over-withheld" tax estimates and a car payment of $351.00 per month which the Trustee contends should not be considered an expense since there is no vehicle creditor in Class 4 (directly paid claims).

The Coveys disagree. They contend the Plan is filed in good faith stating the Plan requires tax refunds to be paid to the Trustee and the $1,537.00 per month payment under the modification was earlier agreed upon by Trustee's counsel. The "unknown" unsecured creditor dividend is necessary, they say, because there could be a deficiency when the travel trailer is sold by the creditor. Finally, they claim a vehicle lease has expired and the car payment represents a new lease which has roughly the same terms resulting in no impact on income and expense.

The motion will be denied because the Debtors have not met their burden of proof.

The Debtors have the burden of proof on all elements of plan confirmation. Barnes v. Barnes (In re Barnes), 32 F.3d 405, 407 (9th Cir. 1994). When good faith is contested, factual findings are necessary. 550 West Ina Road Trust v. Tucker (In re Tucker), 989 F. 2d 328 (9th Cir. 1993). The problem here is there is insufficient evidence of the Covey's good faith in proposing this modified Plan.

Good faith requires an examination of "the totality of circumstances." Goeb v. Heid (In re Goeb), 675 F. 2d 1386, 1391 (9th Cir. 1982). The court is not provided a record to make a good faith finding here. In fact, it appears the modified Plan, on its face, is not proposed by a means permitted by law since it does not provide for an amount for unsecured claimants equal to or more than they would receive in a Chapter 7 case. § 1325(a)(4). An "unknown amount" is too vague. Does it mean zero; 42%; 75%; something else?

True enough, a Plan providing 0% to unsecured creditors is not per se bad faith. See, Downey Sav. & Loan Assn. v. Metz (In re Metz), 820 F.2d 1495, 1498 (9th Cir. 1987). But this Plan does not even say that. Over an objection by the Trustee more factors need to be considered.

The case has been pending over one year. There is a dispute whether the Debtors ever made payments as agreed when the first Plan was confirmed. Doc. #58. The debtors have turned in a travel trailer but are, in a separate motion, asking approval for the lease of another vehicle. The debtors are over median. They claim three dependents: two are 21 years old and older. The Debtors each have long term employment. In response to the Trustee's NODID they filed a modified Plan but the impetus for the modification – employment compensation change – may have already been considered when the first Plan was confirmed.

The only evidence supporting "good faith" is Kathryn Covey's and counsel's declarations. Counsel's declaration contains legal conclusions. Kathryn Covey's declaration says the plan was "proposed in good faith" which is a conclusion – not evidence. The declaration repeats that the percentage to unsecured creditors is "unknown" -

the Plan says that. The declaration also says the proposed $1,537.00 payment is affordable because they surrendered the travel trailer.

The declaration does not address pertinent facts:

- The reason(s) for modifying the Plan;
- The income loss allegedly affecting Kathryn Covey and why;
- The reason for the unsecured creditor distribution being diminished;
- Why the amount to be distributed to unsecured creditors is unspecified;
- Why the Schedule J filed earlier (doc. #73) included a payment "on daughter's car" and excluded a payment on a leased vehicle but the recent Schedule J (doc. #95) excludes the daughter's car payment and includes the leased vehicle;
- Why Line 23(a) on both schedules list the same "combined monthly income;"

to name a few. Though Ms. Covey's earlier declaration (doc. # 70) says her income was cut in half, the concurrently filed schedules I and J seem to take that into account. The court should not be required to guess the status of Debtor's income when they want to modify the Plan.

There is insufficient evidence to find good faith. So, the motion will be DENIED.

2. 18-10913-B-13 **IN RE: WALTER/KATHRYN COVEY**
RSW-7

MOTION TO INCUR DEBT
4-24-2019 [100]

WALTER COVEY/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 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.

This motion is GRANTED. After review of the attached evidence, the court finds that debtors can make the monthly payment for the proposed vehicle lease. Debtors are authorized but not required to

incur further debt in order to lease a vehicle with Ford Credit for a vehicle in an amount not greater than $17,000.00, with an estimated monthly payment of $351.00, for a period not greater than 48 months. Should the debtors' budget prevent maintenance of current plan payment, debtors shall continue making plan payments until the plan is modified.

3. 19-11414-B-13 **IN RE: DAVID WRIGHT AND JENNIFER DOYLE**
DJP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-25-2019 [25]

BRADY SPENCER/MV
DON POOL/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.

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.

Movants Brady Spencer and Amanda Spencer seek relief from the automatic stay under § 362(d)(1) in order to allow Movants to continue state court litigation now pending against Debtors, including seeking entry of a stipulated judgment in favor of Movants and against Debtors, for the recovery of leased real property commonly known as 1748 East Gatwick Lane in Fresno, CA 93730.

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 in this case include:

(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"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. Movant owns the subject property, so the interests of other creditors will not be prejudiced. The state court action is an unlawful detainer action, and not a core matter the bankruptcy court should hear in this case as a stipulation for entry of judgment has resolved the case. On or about March 1, 2019, Movants and Debtors entered into a Stipulation for Entry of Judgment in the unlawful detainer action, which provided for entry of judgment against Debtors in the event they fail to close escrow on the property by March 29, 2019, which Debtors did. Doc. #28.

This motion is GRANTED. Movants may proceed with the unlawful detainer action and proceed to enforce their rights in the subject property under non-bankruptcy law.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that Debtors are many months delinquent in their obligation to Movants.

4. 18-14519-B-13 **IN RE: JODI GOLDEN-BAYHURST**
MHM-2

MOTION TO DISMISS CASE
3-26-2019 [44]

JODI GOLDEN-BAYHURST/MV
ROBERT WILLIAMS

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. 11 U.S.C. § 1307(c)(1). The debtor has failed to confirm a Chapter 13 Plan. 11 U.S.C. § 1307(c)(1), (3). Accordingly, the case will be dismissed.

5. 18-14519-B-13 **IN RE: JODI GOLDEN-BAYHURST**
MHM-4

MOTION TO DISMISS CASE
4-8-2019 [51]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case will be dismissed on the Chapter 13 Trustee's Motion [MHM-2] above. Therefore, this motion will be denied as moot.

6. 19-11024-B-13 **IN RE: MARY HENDRIX**
PK-1

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP DBA LOAN MART
3-22-2019 [12]

MARY HENDRIX/MV
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.

The debtor is competent to testify as to the value of the 2001 Ford Taurus. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at $2,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

7. 18-13527-B-13 **IN RE: GREG/SHERRY KELLY**
MHM-2

MOTION TO DISMISS CASE
3-13-2019 [140]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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 respondents' defaults 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 debtors that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtors have failed to confirm a Chapter 13 Plan. 11 U.S.C. § 1307(c)(1), (3). Accordingly, the case will be dismissed. The court notes debtor's nonopposition. Doc. #154.

8. 14-11633-B-13 **IN RE: SANTOS/ELVIRA ORNELAS**
PK-6

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
3-27-2019 [101]

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 $4,290.00 in fees (authorized payment is limited to $2,981.00 as provided in the First Modified Plan) and costs of $53.78.

9. 18-15133-B-13 **IN RE: MICHAEL LONGMIRE**
MHM-1

MOTION TO DISMISS CASE
3-8-2019 [20]

MICHAEL MEYER/MV
YELENA GUREVICH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless debtor and trustee provide information set forth below.

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

The chapter 13 trustee ("Trustee") asks the court to dismiss this case for failure to file a complete and accurate Schedule H, failure to confirm a chapter 13 plan, and failure to provide Trustee with a completed Domestic Support Obligation Checklist. Doc. #20.

Debtor timely responded, without evidence, stating that they have filed a complete and accurate Schedule H, have set a hearing for plan confirmation, and have provided the Domestic Support Obligation Checklist. Doc. #31.

The court takes judicial notice of the amended Schedule H (doc. #18, filed February 27, 2019) and the motion to confirm plan (doc. ##25-29). That motion is denied without prejudice for procedural reasons. See matter #10, YG-1, below. However, the court has no evidence that the Domestic Support Obligation Checklist was provided. Unless this motion is withdrawn prior to the hearing, debtor must appear and explain to the court why this case should not be dismissed. Trustee must be prepared to verify the accuracy and completeness of the

amended Schedule H and status of the Domestic Support Obligation.

10. 18-15133-B-13 **IN RE: MICHAEL LONGMIRE**
YG-1

MOTION TO CONFIRM PLAN
3-19-2019 [25]

MICHAEL LONGMIRE/MV
YELENA GUREVICH

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 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.

Second, the certificate of service (doc. #29) states that only the motion was served on the listed parties. Thus, the court has no proof that the notice, declaration, or plan itself were served on the interested parties. Therefore, the motion must be denied without prejudice.

11. 19-10244-B-13 **IN RE: DEBORAH HIDALGO**
MHM-2

MOTION TO DISMISS CASE
3-26-2019 [18]

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. #26.

12. 18-13846-B-13 **IN RE: EDUARDO HURTADO-ORTIZ AND VERONICA HURTADO**
YG-2

MOTION TO CONFIRM PLAN
3-7-2019 [58]

EDUARDO HURTADO-ORTIZ/MV
YELENA GUREVICH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

This case has been pending for over six months without a plan having been confirmed. The chapter 13 trustee ("Trustee") opposed the first proposed plan for a number of reasons. Doc. #41. The court's order continuing that motion stated that if Debtors did not confirm a plan by April 25, 2019, Trustee "shall file a declaration of noncompliance with a proposed order and the case will be dismissed without a further hearing." Doc. #52. Debtors later withdrew the motion on March 7, 2019. Doc. #55.

April 25, 2019 came and went without a plan being confirmed nor a declaration and proposed order from Trustee.

The chapter 13 trustee ("Trustee") opposes this motion to confirm plan on the grounds that debtors have not shown that the plan is feasible. Doc. #66. Trustee states that Debtors' Schedules I & J are nearly six months old, most recently filed on November 22, 2018, but the court believes they are much older, seeing the only schedules I & J filed on September 22, 2018, with the petition. Doc. #1.

In support of their motion, Debtors offer up the declaration of Eduardo Hurtado-Ortiz. Doc. #60. The declaration states that "the schedules I have filed in this case are correct as of the date of the filing of the case and are still correct. I have not changed any of the values shown in those schedules." Doc. #60.

Debtors' reply, which did not include any evidence, stated that the debtors have made all payments, are current on payments, and that there is "nothing to indicate that Debtors' are not able to continue

to make payments." To date, debtors have not updated Schedules I & J to show the ability to make the proposed payment of $756.00. Doc. #61. The amount of the payment has not yet changed.

Debtors have the burden of proof regarding feasibility. "Debtor clearly [has] the burden of proving both feasibility, In re Wagner, 259 B.R. 694 (8th Cir. BAP 2001), and good faith. In re Soost, 290 B.R. 116 (Bankr. D. Minn. 2003)." Cao Huu Tran v. Harrah's Operating Co. (In re Cao Huu Tran), No. EC-05-1229-ABPa, 2006 Bankr. LEXIS 4884, *17-18 (B.A.P. 9th Cir. Aug. 8, 2006).

The court is not persuaded that Mr. Hurtado-Ortiz's declaration proves the feasibility requirement. The court notes Schedule I lists his occupation as a farm worker, and Mrs. Hurtado is unemployed. Doc. #1. Additionally, Mr. Hurtado-Ortiz was employed less than a year as of the petition date. Id. Is he still employed? Earning the same wages? Less? More? Is Mrs. Hurtado employed? Have expenses increased? The court does not know. Instead of amending schedules I & J, Debtors leave Trustee and the Court in the blind.

This matter will be called in order to give debtors an opportunity to explain to the court why the case should not be dismissed pursuant to the court's previous order.

13. 17-14055-B-13 **IN RE: WES/GLORIA MCMACKIN**
PK-3

MOTION TO MODIFY PLAN
3-4-2019 [101]

WES MCMACKIN/MV
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 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.

14. 17-12561-B-13 **IN RE: VICTOR/KARLA MOORE**
PK-5

MOTION TO MODIFY PLAN
4-3-2019 [93]

VICTOR MOORE/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

The chapter 13 trustee ("Trustee") opposes this motion on the grounds that the plan as currently proposed is taking longer than 60 months to fund (11 U.S.C. § 1322(d)) and that debtors will not be able to make all payments under the plan and comply with the plan (11 U.S.C. § 1325(a)(6)). Doc. #104. Trustee proposes that the order confirming plan can fix these issues if debtors agree to increase the plan payment to $2,250.00 per month effective month 22 of the plan. Id. Additionally, debtors must file amended schedules I & J showing the ability to make the increased payment.

If debtors have not filed amended schedules I & J prior to this hearing, the court may continue it a short time to allow debtors to file the schedules and to allow Trustee to respond to them. If debtor has filed amended schedules prior to this hearing and Trustee has had an opportunity to review them, and if Trustee does not further oppose, then the court intends to grant this motion.

15. 19-10161-B-13 **IN RE: ISMAEL SALAS**
JHW-1

OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE LLC
3-8-2019 [14]

TD AUTO FINANCE LLC/MV
NEIL SCHWARTZ
JENNIFER WANG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and 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.

Creditor TD Auto Finance LLC ("Creditor") objects to plan confirmation because the proposed plan fails to provide the proper "formula" discount rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii) and Till v. SCS Credit Corp., 124 S. Ct. 1951 (2004), and the plan incorrectly lists Creditor's collateral as a non-purchase money security interest ("PMSI") when in fact Creditor holds a PMSI in the collateral, a 2016 Nissan 370Z. Doc. #14.

In Till, the Supreme Court determined that the appropriate interest rate for a secured claim should be determined by the 'formula approach,' which requires the court to take the national prime interest rate and adjust it to compensate for an increased risk of default. Till, 124 S. Ct. at 1957. Such factors include (1) circumstances of the estate, (2) the nature of the security, and (3) duration and feasibility of the reorganization plan. Id. at 1960.

As of March 7, 2019, the national prime interest rate was 5.5%. Doc. #17. Creditor argues that increasing the interest rate to 6.5% is warranted because debtor's plan provides for repayment of Creditor's claim 22 months longer than the term in the loan, and therefore they are exposed to additional risk of default. Doc. #14.

Unless opposition is presented at the hearing, the court is persuaded that Creditor has met its burden and the interest rate on Creditor's claim shall be changed to 6.5%. Further, the classification of Creditor's collateral shall be changed in the plan to reflect that Creditor holds a PMSI in the collateral.

This objection is SUSTAINED.

16. 19-10161-B-13 **IN RE: ISMAEL SALAS**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
3-22-2019 [19]

NEIL SCHWARTZ
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #24.

17. 17-11265-B-13 **IN RE: PHILIP FITCH**
WDO-2

CONTINUED MOTION TO MODIFY PLAN
2-14-2019 [37]

PHILIP FITCH/MV
WILLIAM OLCOTT
TRUSTEE'S OPPOSITION WITHDRAWN

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 court notes that the only objection to confirmation was withdrawn on April 19, 2019. Doc. #51. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

18. 19-10367-B-13 **IN RE: GARY GOODMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-8-2019 [36]

PHILLIP GILLET
$231.00 FINAL INSTALLMENT PAYMENT ON 4/17/19

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 a final installment payment of $231.00 was made on April 17, 2019.

19. 19-10367-B-13 **IN RE: GARY GOODMAN**
JHW-1

OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE LLC
3-7-2019 [20]

TD AUTO FINANCE LLC/MV
PHILLIP GILLET
JENNIFER WANG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and 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.

Creditor TD Auto Finance LLC ("Creditor") objects to plan confirmation because the proposed plan fails to provide the proper "formula" discount rate in conformance with 11 U.S.C. § 1325(a)(5)(B)(ii) and Till v. SCS Credit Corp., 124 S. Ct. 1951 (2004). Doc. #20. Creditor's collateral is a 2016 Jeep Wrangler.

In Till, the Supreme Court determined that the appropriate interest rate for a secured claim should be determined by the 'formula approach,' which requires the court to take the national prime interest rate and adjust it to compensate for an increased risk of default. Till, 124 S. Ct. at 1957. Such factors include (1)

circumstances of the estate, (2) the nature of the security, and (3) duration and feasibility of the reorganization plan. Id. at 1960.

As of March 6, 2019, the national prime interest rate was 5.5%. Doc. #23. Creditor argues that increasing the interest rate to 6.5% is warranted because debtor's plan provides for repayment of Creditor's claim 27 months longer than the term in the loan, and therefore they are exposed to additional risk of default. Doc. #20.

Unless opposition is presented at the hearing, the court is persuaded that Creditor has met its burden and the interest rate on Creditor's claim shall be changed to 6.5%.

This objection is SUSTAINED.

20. 18-14268-B-13 **IN RE: VINOD SAHNI**
MHM-2

CONTINUED MOTION TO DISMISS CASE
1-23-2019 [27]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The plan is confirmed. See matter #21, RSW-2 below.

21. 18-14268-B-13 **IN RE: VINOD SAHNI**
RSW-2

CONTINUED MOTION TO CONFIRM PLAN
2-27-2019 [35]

VINOD SAHNI/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 court notes the declaration of Mr. Williams (doc. #62), Mr. Jump (doc. #63), and the amended certificate of service (doc. #64). 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. 19-10329-B-7 **IN RE: STEVEN/MODESTA ESPINOZA**
MEL-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2019 [15]

BANK OF AMERICA, N.A./MV
NEIL SCHWARTZ
MEGAN LEES/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 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 N 2017 Forest River EVO 2850. Doc. #20. The collateral has a value of $19,400.00 and debtor owes $26,231.59. *Id.*

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

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).

2. 19-10746-B-7 **IN RE: DINA ALVARENGA**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-25-2019 [12]

FORD MOTOR CREDIT COMPANY/MV
JOSEPH PEARL
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 collateral is a 2016 Ford Focus. Doc. #16. The collateral has a value of $16,409.00 and debtor owes $24,743.31. *Id.*

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

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. 18-14555-B-7 **IN RE: ENCARNACION DE LA TORRE**
DMG-2

MOTION TO SELL
4-11-2019 [44]

JEFFREY VETTER/MV
PATRICK KAVANAGH
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied or alternatively, sale approved subject to State of California's consent or full payment of the tax. State of California to approve the order.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation to be determined at the hearing.

This motion is DENIED. Chapter 7 trustee ("Trustee") asks the court for authorization to sell a California State Class 47 liquor license for $28,500 to Jim Bender. Doc. #44.

Creditor California Department of Tax and Fee Administration opposes the motion on the grounds that California Business and Professions Code § 24049 permits the department to "refuse to transfer any license when the applicant is delinquent in the payment of any taxes due . . . when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license . . . ."

Creditor claims debtor is delinquent in the amount of $70,870.09 in pre-petition taxes and interest. Claim #7, Doc. #51. Debtor's tax liability arises out of the operation of his restaurant (doc. #51), and the California Department of Alcoholic Beverage Control placed a hold on the debtor's alcoholic beverage license. Id. The 9th Circuit has held that § 24049 is still applicable in bankruptcy. See generally In re Farmers Markets, Inc., 792 F.2d 1400, 1402-03 (9th Cir. 1986).

The court notes respondent's failure to comply with Local Rule of Practice 9004-2(c)(1) requires that exhibits, declarations, *inter alia*, to be filed as separate documents. Here, the declaration of Ross Masaki and the exhibits were combined into one document and not filed separately.

Based on the record, the court is persuaded by Creditor's opposition that debtor is delinquent in the payment of state taxes, and such liability arose, at least in part, out of the exercise of the privilege of an alcoholic beverage license. Doc. #51.

The court notes the chapter 7 trustee's response. Doc. #53. The court may set the matter for further hearing.

4. 18-15058-B-7 **IN RE: JOHN BORDERS**
RSB-1

MOTION TO AVOID LIEN OF DISCOVER BANK
4-5-2019 [14]

JOHN BORDERS/MV
R. BELL

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. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Discover Bank in the sum of $30,929.93 on February 10, 2010. Doc. #17. The abstract of judgment was recorded with Kern County on May 4, 2010. *Id.* That lien attached to the debtor's interest in a residential real property in Tehachapi, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $137,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled $160,015. on that same date, consisting of a first deed of trust in favor of Union Federal Bank of Indianapolis. Doc. #17. The debtor claimed an exemption pursuant

to Cal. Civ. Proc. Code § 701.340(b)(5) in the amount of $1.00. Doc. #1.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

5. 18-15058-B-7 **IN RE: JOHN BORDERS**
RSB-2

MOTION TO AVOID LIEN OF LIVINGSTON FINANCIAL, LLC
4-5-2019 [19]

JOHN BORDERS/MV
R. BELL

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. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Livingston Financial LLC in the sum of $22,839.54 on February June 9, 2011. Doc. #22. The abstract of judgment was recorded with Kern County on July 13, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Tehachapi, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $137,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled $160,015. on that same date, consisting of a first deed of trust in favor of Union Federal Bank of Indianapolis. Doc. #17. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 701.340(b)(5) in the amount of $1.00. Doc. #1.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. 19-10365-B-7 **IN RE: BENNY BANKSTER**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2019 [15]

WELLS FARGO BANK, N.A./MV
PHILLIP GILLET
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. The collateral is a parcel of real property commonly known as 12106 Brockridge Court, Bakersfield, California 93312. Doc. #18. The collateral has a value of $243,044.68 and the amount owed is $195,321.92. Doc. #19.

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.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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. 18-14967-B-7 **IN RE: MATTHEW/HEIDI IDOUX**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-2019 [17]

FREEDOM MORTGAGE
CORPORATION/MV
D. GARDNER
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 4/1/19

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

DISPOSITION: Granted in part as to the trustee's interest and denied as moot in part as to the debtors' interest.

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 debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on April 1, 2019. Docket #23. The motion will be GRANTED IN PART 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. The collateral is a parcel of real property commonly known as 12216 Jacksonville Avenue, Bakersfield, California 93312. Doc. #19. The collateral has a value of $275,000.00 and the amount owed is $253,298.82. Doc. #21. The order shall provide the motion is DENIED AS MOOT as to the debtors.

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.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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).

8. 18-14091-B-7 **IN RE: MANUEL/CARMEN GARCIA**
RSW-1

MOTION TO EXTEND TIME TO FILE REAFFIRMATION AGREEMENT
4-12-2019 [28]

MANUEL GARCIA/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 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.

This motion is GRANTED. Federal Rule of Bankruptcy Procedure 4008 requires reaffirmation agreements to be filed not later than 60 days after the first § 341 meeting of creditors. The rule also "at any time and in [the court's discretion]" allows the court to enlarge the time to file a reaffirmation agreement.

The § 341 meeting was held on September 10, 2018, and no reaffirmation agreement was filed with the court within the 60 day deadline. Debtors received their discharge on January 15, 2019 (doc. #18) and the case was closed on January 18, 2019 (doc. #20).

Debtors' reopened this case on March 21, 2019 for the sole purpose of filing a motion to enlarge time to file a reaffirmation agreement and to file the reaffirmation agreement. Doc. #22.

Debtors' motion states that debtors completed the reaffirmation documents and signed it on January 10, 2019 and returned it Federal Home Loan Mortgage Corporation ("Creditor"). Doc. #28. The agreement was not filed with the court prior to the debtors' discharge being entered. Id. Creditor signed the agreement on January 14, 2019 (doc. #28), and has asked debtor's counsel to file the reaffirmation as soon as the time to do so has been enlarged. Id.

The court, in its discretion, GRANTS the motion. Unless opposition is presented at the hearing, the court finds that no prejudice shall occur to any party in the granting in this motion. The order does not approve the reaffirmation agreement. That must be the subject of a separate motion.

The court questions why a reaffirmation agreement is necessary under California's One Action laws. But that is not at issue in this motion.

9. 18-15196-B-7 **IN RE: ROLLAND GAONA**
JCW-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-10-2019 [23]

BANK OF AMERICA, N.A./MV
JOSEPH PEARL
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted in part as to the trustee's interest and denied as moot in part as to the debtor's interest.

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 debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on April 30, 2019. Docket #29. The motion will be GRANTED IN PART 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. The proposed order shall specifically describe the property or action to which the order relates. The collateral is a parcel of real property commonly known as 3413 Reeder Avenue, Bakersfield, California 93309-6114. Doc. #25. The collateral has a value of $170,000.00 and the

amount owed is $178,929.23. Doc. #26. The order shall provide the motion is DENIED AS MOOT as to the debtor.

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).

10. 19-10597-B-7 **IN RE: ANTHONY/RHONDA GONZALEZ**
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-14-2019 [11]

MB FINANCIAL BANK, N.A./MV
NEIL SCHWARTZ
BONNI MANTOVANI/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 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 2017 Yamaha WR450F. Doc. #14. The collateral has a value of $6,075.00 and debtor owes $11,282.41. *Id.*

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

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

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).

10:30 AM

1. 18-14901-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
12-7-2018 [1]

JACOB EATON

NO RULING.

2. 18-14901-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
KDG-6

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
3-15-2019 [103]

FRANK HORSTINK/MV
JACOB EATON
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #194.

11:00 AM

1. 18-13000-B-7 **IN RE: DIANE FERNANDEZ**
19-1010

STATUS CONFERENCE RE: AMENDED COMPLAINT
2-11-2019 [13]

WHEELER V. FERNANDEZ
JOHN WHEELER/ATTY. FOR PL.

NO RULING.

At the previous hearing, the court ordered that the moving party, Defendant, shall submit a proposed order in conformance with the ruling. Doc. #16. As of May 7, 2019 the court has not received an order. The motion was granted on March 14, 2019. Id.

If no order is submitted by Defendant prior to this hearing, Defendant must explain to the court why sanctions should not be ordered.

2. 18-11407-B-7 **IN RE: JONATHAN AVALOS**
18-1016

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR FAILURE TO PROSECUTE
3-18-2019 [31]

A.G., A MINOR BY AND THROUGH
HER GUARDIAN AD LITEM V.

NO RULING.

3. 18-14315-B-7 **IN RE: BRANDON/SANDRA CAUDEL**
19-1011

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-17-2019 [1]

HARDCASTLE SPECIALTIES, INC.
V. CAUDEL
VIVIANO AGUILAR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. 18-14317-B-7 **IN RE: SHANNON/CARRIE KING**
19-1012

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-17-2019 [1]

HARDCASTLE SPECIALTIES, INC.
V. KING
VIVIANO AGUILAR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. 18-14323-B-7 **IN RE: SYLVIA SPEAKMAN**
19-1028

STATUS CONFERENCE RE: COMPLAINT
2-19-2019 [1]

YOUNG V. SPEAKMAN ET AL
LISA HOLDER/ATTY. FOR PL.

NO RULING.

6. 18-14323-B-7 **IN RE: SYLVIA SPEAKMAN**
19-1028 DMG-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
3-26-2019 [7]

YOUNG V. SPEAKMAN ET AL
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. Defendant to file an answer within 14 days of entry of the order.

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

Plaintiff Vicki Young ("Plaintiff") brought this adversary proceeding for a judgment determining that the $186,500.00 allegedly owed to Plaintiff by defendants Sylvia Speakman ("Defendant") and Joseph Speakman is excepted from discharge under 11 U.S.C. §§ 523(a)(2)(A), (a)(3), and (a)(4), and to obtain a declaration under 28 U.S.C. § 2201 that the community property acquired before or after the filing of Defendant's chapter 7 case is liable to satisfy the debt owed to Plaintiff.

Because this motion to dismiss only concerns Sylvia Speakman ("Defendant"), only facts pertinent to the claims against her Defendant shall be mentioned.

Defendant's husband, Joseph Speakman, and Plaintiff started a business relationship in a company called MC-Young, Inc. ("MCY"). Though MCY was a corporation, the complaint alleges MCY "operated" as a partnership. Doc.#1 This ambiguity is irrelevant on this motion.

Plaintiff alleged that the Speakmans used funds embezzled from MCY to pay community debts, acquire community property, and invest and acquire property in their names. Id. After MCY faltered and their business relationship soured, Plaintiff and Joseph entered into a "Mediated Agreement to Transfer Business Interests and Indemnity," whereby Joseph was required to pay certain debts incurred for MCY. Id. Additionally, MCY and affiliated businesses were transferred to Joseph because Joseph agreed to buy out Plaintiff's interest in MCY. Id. To secure payment, Defendant and Joseph signed both a note and a deed of trust encumbering their residence. Id.

Plaintiff alleges that Joseph had no intention of paying the debt owed to Plaintiff, and the Speakmans defaulted. Id. Plaintiff filed suit against the Speakmans in Kern County Superior Court for breach of the Mediated Agreement and to foreclose on the deed of trust. Id. In 2009, the parties settled; the Speakmans agreed to pay $186,500.00 to Plaintiff and that a judgment could be conditionally entered against them in that amount. Id. This settlement made in and approved by the Kern County Superior Court gave the Speakman's a strong incentive. If they paid a substantially reduced amount and otherwise performed by a date certain, the judgment would be satisfied. Id.

Plaintiff again alleged that the Speakmans had no intent to abide by the settlement agreement and pay the debt. Id. The Speakmans eventually defaulted on the agreement and Plaintiff sought entry of judgment after default. The Kern County Superior Court entered a judgment on April 1, 2010. Id. Plaintiff has only recovered a small portion of the debt by garnishing Defendant's wages. Only the second claim for relief is against Defendant.

The second claim for relief alleges Plaintiff's claim against Defendant is excepted from discharge under 11 U.S.C. § 523(a)(2)(A). Plaintiff essentially alleges that Defendant had no intention of performing under the settlement, she knew her representation that she intended to pay the debt was false, and Plaintiff justifiably relied on the representation and was harmed by that representation by being required to undertake involuntary collection measures and incurring attorney's fees, costs, and interest. Id.

Defendant's motion to dismiss states that the complaint "does not identify or describe any money, property, services or an extension, renewal or financing of credit" that the Plaintiff lost "prompted by material representations of fact." Doc. #7. Defendant claims her liability was created based on the stipulated judgment. Id. Defendant only confessed judgment pursuant to a business

relationship that soured between Plaintiff and Defendant's spouse. Id. The complaint does not allege, according to Defendant's motion, any fraudulent behavior on the part of Defendant when Defendant signed a promissory note and deed of trust encumbering their residence. Defendant also did not sign the Mediated Agreement referenced in the complaint, and thus no misrepresentations for purposes of fraud can be attributed to her in that regard. Id.

Plaintiff timely opposed the motion to dismiss on the grounds that Defendant obtained "property" under § 523(a)(2)(A) and the complaint states a claim for relief when it alleged that Defendant did not intend to pay Plaintiff when Defendant signed the settlement agreement promising to pay Plaintiff. Doc. #11. Plaintiff states that "property" under § 523(a)(2)(A) is construed broadly, alludes to an argument that the settlement agreement was an "extension of credit" because the settlement agreement was "an indulgence by a creditor granting the debtor further time to pay an existing debt," and that money promised in a settlement agreement could amount to a debt for money obtained by fraud within § 523(a)(2)(A). Id.

Under Federal Rule of Civil Procedure 12(b)(6) (made applicable by Federal Rule of Bankruptcy Procedure 7012), a court must dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Fed. R. Civ. P. 12(b)(6) dismissal, a court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011). However, a court need not accept as true conclusory allegations or legal characterizations cast in the form of factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). While the court generally must not consider materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Twombly, 550 U.S. at 570 (A claim survives Civil Rule 12(b)(6) when it is "plausible."). It is self-evident that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 (9th Cir. 2008).

11 U.S.C. § 523(a)(2)(A) states that a discharge in bankruptcy does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial conditions. The Ninth Circuit Bankruptcy Appellate Panel says reliance on misrepresented facts and the absence of an intent to perform on an agreement is fraud under § 523(a)(2)(A). See Sepulveda v. Adams (In re Sepulveda), 2017 Bankr. LEXIS 1156 *14 BAP No. CC-16-1226-FLKu, Bk. No. 8:13-bk-13965-SC,

Adv. Pro. 8:14-ap-01003-SC (9th Cir. BAP April 26, 2017) citing Sachan v. Huh (In re Huh), 506 B.R. 257, 262 (9th Cir. BAP 2014).

Fed. R. Civ. P. 9(b) requires parties alleging fraud to "state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." The Ninth Circuit "has interpreted Federal Rule of Civil Procedure 9(b)'s requirement that fraud be pled with particularity to require '[t]he complaint [to] specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity.' Neubronner v. Milken, 6 F.3d 666, 671-72 (9th Cir. 1993)" McMaster v. United States, 731 F.3d 881, 888 (9th Cir. 2013). "A pleading is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations." Id.

The court must therefore first determine whether Defendant has "state[d] with particularity the circumstances constituting fraud or mistake." If the court determines that Plaintiff has, then the court must then determine whether Defendant owed a debt to Plaintiff for money, property, services, or an extension, renewal, or refinancing of credit. And if so, whether it was obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

"The creditor bears the burden of proving the applicability of § 523(a)(2)(A) by a preponderance of the evidence." Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010) (citing Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000)).

In the 9th Circuit, claims of fraud under § 523(a)(2)(A) "require[s] an affirmative representation by the debtor and a showing of reliance by the person claiming fraud as well as the debt sought to be discharged was a proximate result of the representation." Anastas v. American Sav. Bank (In re Anastas), 94 F.3d 1280, 1283-84 (9th Cir. 1996) (citing Citibank (South Dakota), N.A. v. Eashai (In re Eashai), 87 F.3d 1082, 1086 (9th Cir. 1996).

The allegations of the complaint include Defendant in only a few instances: that Defendant used embezzled funds from MCY to pay community debts, acquire community property, invest and acquire property in their names; that Defendant and Joseph executed a note secured by deed of trust against their residence in favor of Plaintiff; and that Defendant failed to and never intended to comply with the settlement of the Superior Court case. Doc. #1, ¶¶14, 16, 21, 22, 24 – 27. Plaintiff alleges that Defendant failed to comply with the Mediated Agreement (doc. #1, ¶ 19), but the complaint never alleges that defendant was a party to that agreement. An exhibit attached to the complaint is a copy of the "Mediated Agreement." Defendant did not sign that agreement.

Any liability the Defendant would have, as alleged, arise out of the settlement agreement in the Kern County Superior Court lawsuit and

the resulting judgment entered because Joseph and Defendant did not fully perform.

The allegations against Defendant survive Fed. R. Civ. P. 9(b). The complaint sufficiently alleges the particularity of the allegedly fraudulent acts. Accompanying the complaint is the Kern County Superior Court complaint that Plaintiff filed after the Speakmans defaulted, and a copy of the transcript when the settlement of that action was agreed upon. Doc. #1. Defendant affirmatively acknowledged her agreement to the stipulation "on the record" before the Superior Court. The court finds that the complaint particularly alleges the fraudulent activity of defendant enough "so that the defendant can prepare an adequate answer from the allegations." McMaster v. United States, 731 F.3d 881, 888 (9th Cir. 2013).

It is also apparent from the record that Defendant owes Plaintiff a debt (either money or an extension of credit, see Exhibit A, B, and C), and Plaintiff has sufficiently pled fraud. Joseph and Defendant pledging their house as collateral for the debt was an extension of credit. See Selenberg v. Bates (In re Selenberg), 856 F.3d 393, 397-98 (5th Cir. 2017) (finding that "the creditor had received an extension of credit within the meaning of § 523(a) when the debtor executed the promissory note"). The primary theory of the Plaintiffs claim against Defendant, though, is the settlement of the Superior Court action incorporating the allegedly fraudulent promise.

The motion states that "no facts are alleged that describe a fraud on the part of the defendant" in connection with Defendant signing the promissory note and deed of trust together with her husband against their residence. Doc. #7. But the fact remains that Joseph failed to comply with the Mediated Agreement; that after a lawsuit was commenced in Kern County Superior Court, Defendant and Joseph settled, agreeing to pay nearly $200,000.00 to Plaintiff. Then Defendant and Joseph failed to comply with that agreement. Defendant's failure to perform plus proof of the other elements of § 523 (a)(2)(A) can be inferred as fraudulent. Those elements are alleged in the complaint. Proof is another problem all together.

Defendant's arguments challenge the Plaintiff to prove the claim against Defendant is non-dischargeable:

1. Did Defendant have no intention to perform the settlement as agreed?
2. Did Plaintiff justifiably rely on Defendant's representations in entering into the settlement agreement?
3. Was Plaintiff damaged by relying on Defendant entering into the settlement?
4. If so, what are Plaintiff's damages for relying upon the settlement with Defendant?

Defendant's argument that Plaintiff got what she bargained for under the settlement – a $186,000.00 judgment – misses the point here. True, a judgment was entered, but the issue Defendant raises is a damages/proof issue: What damage can Plaintiff prove in reliance on the settlement with the Defendant? Whether that damage – if proven – is excepted from discharge requires Plaintiff to prove many more elements. That is not a pleading deficiency issue.

The court notes Defendant's supplemental points and authorities in response to the opposition. Doc. #14. While true that the complaint states that Plaintiff "signed the settlement of the Superior Court" and there is no paper-copy of the agreement for Plaintiff to have signed, the certified transcript (exhibit B, doc. #1) shows that Defendant agreed to the terms of the settlement. Additionally, the abstract of judgment (exhibit C, doc. #1) names Defendant as a party to the Kern County Superior Court action.

The court intends to DENY this motion. Defendant to file and serve an answer within 14 days of entry of the order denying the motion.

7. 17-13297-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
17-1088

PRE-TRIAL CONFERENCE RE: COMPLAINT
12-5-2017 [1]

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

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

DISPOSITION: Vacated.

ORDER: The court will issue the order.

Plaintiff has not filed their pre-trial statement; only Defendant has. Doc. #83. Therefore this pre-trial conference is vacated.

8. 17-13297-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
17-1088 DMG-4

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
4-22-2019 [78]

ICON ENTERTAINMENT GROUP, INC.
V. BENDER ET AL
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: 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(f)(2)(A) states that motions set on less than 28 days' notice "shall not be used for a motion filed in connection with an adversary proceeding."

This motion was filed and served on April 22, 2019. Doc. #82. The matter was set for hearing on May 9, 2019. Doc. #79. May 9, 2019 is less than 28 days after April 22, 2019. Therefore this motion is not in compliance with LBR 9014-1(f)(2)(A) and will be DENIED WITHOUT PREJUDICE.