

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, June 7, 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. [18-10100](#)-B-13 IN RE: SANTOS ARAGON
[RSW-1](#)

MOTION TO CONFIRM PLAN
3-21-2018 [[25](#)]

SANTOS ARAGON/MV
ROBERT WILLIAMS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

2. [18-10100](#)-B-13 IN RE: SANTOS ARAGON
[RSW-2](#)

MOTION TO CONFIRM PLAN
4-2-2018 [[30](#)]

SANTOS ARAGON/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.

The motion will be granted without oral argument based on well-pled facts. This motion to confirm 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 confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [18-11505](#)-B-13 **IN RE: MIGUEL GONZALEZ AND ADRIANA
MELENDREZ-GONZALEZ**
[PK-2](#)

MOTION TO VALUE COLLATERAL OF WILSHIRE CONSUMER CREDIT
5-9-2018 [[34](#)]

MIGUEL GONZALEZ/MV
PATRICK KAVANAGH

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.

The proof of service filed with the motion showed that the motion, notice of motion, declaration of Adriana Gonzalez, memorandum of points and authority, and exhibits were served on the U.S. Trustee, Michael H. Meyer, two addresses for "Wilshire Consumer Credit," ("Wilshire") and "Westlake Services, LLC" ("Westlake"). Doc. #39.

The first address for Wilshire does not show that it was served on an officer or to even anyone specifically at Wilshire in accordance with Federal Rule of Bankruptcy Procedure 7004(b)(3) and (b)(7).

Fed. R. Bankr. P. 7004(b)(3) requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

Fed. R. Bankr. P. 7004(b)(7) states that service is "sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served . . . by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state."

Without the court explaining the state law ad nauseam, California Code of Civil Procedure §§ 416.10 through 416.50 are the code sections that explain how to serve business entities like Wilshire and Westlake in California, both apparently limited liability companies. Because the first address did not list the name of a person it was to be addressed to, it is not in compliance with the Federal Rules of Bankruptcy Procedure.

The second address is incorrect. The proof of service states that it was addressed to Wilshire, Attn: Jesse Fuentes (presumably an officer) at "3450 Wilshire Blvbd., [sic] Suite 332." The evidence attached to the proof of service shows that the correct address is not "3450," but "3540." The typo in the abbreviation for "boulevard" is excusable, as a postman would still likely be able to deliver it

to the correct number on the street. Therefore this second address was not actually the correct address.

The third address is for Westlake. Westlake is not listed on the claim, and evidence included with the proof of service does not adequately show how Westlake is related to Wilshire. The address states that Westlake is an "Agent for Service of: Corporate Creations Network Inc." Doc. #39. If Westlake is the agent for service of Corporate Creations Network Inc., then movant has not shown how Corporate Creations Network Inc. is related to creditor. If Westlake is in fact though the agent for service of Wilshire, then service will be found to be proper. The evidence before the court though, does not sufficiently show why Westlake was served. A quick internet search showed a "Bloomberg" webpage stating that Westlake Services, LLC is doing business as Westlake Financial Services LLC. On page 4 of the proof of service, "www.westlakefinancial.com" is listed as an "additional website address" for "Wilshire Consumer Credit."

The court's own search still does not sufficiently prove that service of this motion was done in compliance with the Federal Rules of Bankruptcy Procedure. This motion is DENIED WITHOUT PREJUDICE.

4. [17-11906](#)-B-13 **IN RE: TRACY FLAHERTY**
[RSW-2](#)

MOTION TO MODIFY PLAN
4-10-2018 [[93](#)]

TRACY FLAHERTY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 12, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on July 12, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than June 28, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 5, 2018. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be

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

5. [15-12709](#)-B-13 **IN RE: LORI KITCHEN**
[WDO-7](#)

MOTION TO MODIFY PLAN
3-23-2018 [[115](#)]

LORI KITCHEN/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.

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; the only opposition was withdrawn on May 16, 2018. Doc. #126. All other respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

6. [18-10111](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-30-2018 [[36](#)]

NEIL SCHWARTZ

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue the order.

Because trustee's motion to dismiss (MHM-4, matter #7 below) is granted, this objection is OVERRULED AS MOOT.

7. [18-10111](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[MHM-4](#)

MOTION TO DISMISS CASE
4-30-2018 [[39](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (4). Accordingly, the case will be dismissed.

8. [18-10111](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[MHM-5](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-9-2018 [[43](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue the order.

Because trustee's motion to dismiss (MHM-4, matter #7 above) is granted, this objection is OVERRULED AS MOOT.

9. [18-10915](#)-B-13 **IN RE: MARGARET HEAD**
[MHM-1](#)

MOTION TO DISMISS CASE
4-26-2018 [[12](#)]

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 and indicated that the required documentation had been provided to the trustee, and that she would be current with her plan payments by the time of the hearing. The debtor's response was not supported by evidence. No reason was given for failing to make timely chapter 13 plan payments as required by 11 U.S.C. § 521(e)(2)(A) and (B) and for failing to provide to the trustee all documentation required by 11 U.S.C. § 521(a)(3) and (4). 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.

10. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[MHM-4](#)

CONTINUED MOTION TO DISMISS CASE
3-30-2018 [[73](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

This motion is DENIED AS MOOT. This motion to dismiss was filed on the grounds of unreasonable delay that is prejudicial to creditors, specifically for failure to confirm a chapter 13 plan. Debtor's

motion to confirm a plan is tentatively granted below (RSW-3, matter #11). If that motion is granted, this motion will be denied as moot. If that motion is denied, this motion will be granted. If that motion is continued, this motion will also be continued.

11. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[RSW-3](#)

CONTINUED MOTION TO CONFIRM PLAN
2-26-2018 [[61](#)]

RICK LOPEZ/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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 matter was continued to allow debtor to respond to the trustee's detailed objection to the plan. Debtor filed a timely response, and included three stipulations signed by the creditors that are the subjects of the trustee's objection.

Unless trustee objects to debtor's response, this motion is GRANTED. If trustee does object, the matter may be continued or called as a scheduling conference.

12. [13-16747](#)-B-13 **IN RE: DIANA YBARRA**
[MHM-2](#)

MOTION TO DISMISS CASE
5-7-2018 [[37](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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

DISPOSITION: Continued to July 12, 2018, at 9:00 a.m.

ORDER: 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 a modified plan would be filed and set for hearing on the next Bakersfield calendar date. Based on the declaration of debtor's counsel, the motion to dismiss will be continued to July 12, 2018, at 9:00 a.m., to be heard with the debtor's motion to modify plan.

13. [18-10648](#)-B-13 **IN RE: JESUS BUCIO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
4-30-2018 [[19](#)]

NEIL SCHWARTZ

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue the order.

Because trustee's motion to dismiss (MHM-2, matter #14 below) is granted, this objection is OVERRULED AS MOOT.

14. [18-10648](#)-B-13 **IN RE: JESUS BUCIO**
[MHM-2](#)

MOTION TO DISMISS CASE
4-30-2018 [[22](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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 debtor that is prejudicial to creditors. The debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). The debtor has failed to file complete Official Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period. 11 U.S.C. § 521 and/or Fed. R. Bankr. P. 1007. Accordingly, the case will be dismissed.

15. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[PK-3](#)

MOTION TO CONFIRM PLAN
4-23-2018 [[69](#)]

JAIME SANCHEZ/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The chapter 13 trustee filed a detailed opposition to this motion.

The trustee believes that the current plan can be confirmed with the following changes in the order confirming plan: Section 3.06 fails to provide a monthly payment; therefore, the attorney of record has agreed to be paid pro-rata with all unsecured creditors; the plan payment is \$2,135.00 per month, effective month 5; the percentage to unsecured creditors is 61.33%; and the court shall retain jurisdiction regarding liquidation. The debtors shall also file amended schedules I and J showing that they can afford the required plan payment.

Debtors shall appear at the hearing and oppose or agree to the trustee's recommendations. If debtors agree, then this objection shall be overruled as moot. If debtors oppose, then the matter may proceed as a scheduling conference.

16. [13-10854](#)-B-13 **IN RE: ANTHONY/ELIZABETH PEARCE**
[MHM-2](#)

MOTION TO DISMISS CASE
5-7-2018 [[93](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing, the court will receive arguments on the issue of whether the performance of the debtor after the 60 months of the plan warrants dismissal.

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 he has paid \$2,500 of the remaining \$4,224.07, with the balance to be paid by July 15, 2018.

17. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[MSK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC
5-1-2018 [[55](#)]

LAKEVIEW LOAN SERVICING,
LLC/MV
PATRICK KAVANAGH
MARK KRAUSE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part and overruled in part. The court may continue the hearing for further evidence. The debtors shall confirm a plan by August 23, 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 the order.

This objection is SUSATINED IN PART and OVERRULED IN PART. 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. B.A.P. 2014),

citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

This objection was properly noticed in accordance with Local Rule of Practice ("LBR") 3015-1(c)(4) and the hearing will proceed as scheduled.

This objection was made on the grounds that the plan fails to fully pay pre-petition arrears of \$9,120.57, and that the plan is not feasible as evidenced by schedules I and J.

First, as stated in debtors' response, the proof of claim, and not the plan, controls. Doc. #63. The court notes that the arrearages listed on the proof of claim is less than what is stated in the motion by over \$1,000.00. See claim #5. This objection is OVERRULED.

Second, based on the evidence before the court, the court believes that there is a feasibility issue under 11 U.S.C. § 1325(a)(6). Debtor's schedule J shows that debtors' expenses exceeds their income by nearly \$1,000.00. Doc. #1. The plan proposes payments in excess of \$2,000.00 every single month of the plan. Doc. #16. The court does not see how debtors will be able to make plan payments with their current income. This objection is SUSTAINED.

This objection is SUSTAINED IN PART and OVERRULED IN PART. The debtors shall file an amended plan and/or amended Schedules I and J in order to show that their plan is feasible.

Pursuant to § 1324(b), the court sets August 23, 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 ex parte application.

18. [17-14664](#)-B-13 **IN RE: MARIA MORENO**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-30-2018 [[35](#)]

ROBERT WILLIAMS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection.

19. [17-14664](#)-B-13 **IN RE: MARIA MORENO**
[MHM-5](#)

CONTINUED MOTION TO DISMISS CASE
3-30-2018 [[38](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

20. [18-11964](#)-B-13 **IN RE: PAUL/MICHELLE ESPARZA**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-24-2018 [[8](#)]

PAUL ESPARZA/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 the order.

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

This case was filed on May 16, 2018 and the automatic stay will expire on June 15, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* This evidence standard has been defined, in Singh v. Holder, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." In re Castaneda, 342 B.R. 90 (Bankr. S.D. Cal. 2006), *citations omitted*.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed on the grounds that the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor filed a previous chapter 13 case on November 11, 2017. The case was dismissed on April 6, 2018 for failure to make plan payments. Doc. #10. Debtor filed bankruptcy to stop a pending foreclosure sale.

In this case, both debtors are working and their current monthly income is more than sufficient to pay all expenses and make the plan payment. Debtor's counsel has also clearly explained the amount of their plan payments and when they are due. Doc. #10.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.

21. [18-10871](#)-B-13 **IN RE: JOHNNY/CATHERINE GARCIA**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER
4-30-2018 [[14](#)]

ROBERT WILLIAMS

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 court will issue the order.

The hearing on this motion will be called as scheduled. Debtor filed a response to this objection, stating that they have filed an amended means test to address the issue raised in the objection.

This hearing will be called so the trustee can have the opportunity to object to the amended means test.

22. [17-14681](#)-B-13 **IN RE: JOHN/OLIVIA JILES**
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
3-29-2018 [[39](#)]

ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled in part and sustained in part.

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 objection was continued to allow debtor to file further briefs and evidence supporting confirmation. Debtor timely filed a brief and declaration of Olivia Jiles. Trustee did not file a response.

Trustee's objection raised three issues: whether debtors are below- or above-median debtors; whether the Local and National Standards are applicable in this case; and whether the disputed expenses are "reasonable and necessary for the health and welfare of debtors and their dependents."

First, at the previous hearing, the trustee confirmed that the debtors were below-median debtors.

Second, the trustee stated that the Local and National Standards are a "guide." Debtor's counsel did not disagree. In In re Ormonde, 2010 Bankr. LEXIS 6507, P.8 (E.D. Cal. Bankr.), this court stated that "[f]or a below-median-income debtor, the deductions are based on a 'reasonably necessary' test and the court can generally look to schedules I and J to being that inquiry." In an unpublished opinion by the Bankruptcy Court for the Northern District of Ohio, Eastern Division, that court used five factors to "determine whether a particular expense is reasonably necessary for the debtor's maintenance or support." In re Short, 2008 Bankr. LEXIS 3940, p.11 (N.D. Ohio Bankr.). The five factors are

1. Whether the expense is for luxury goods;
2. Whether the expense is excessive in amount;
3. Whether the expense permits the debtor to keep excessive amounts of disposable income;
4. Whether the budget includes expenses only for the purpose of avoiding payments to unsecured creditors; or
5. Whether the expenses are deliberately inflated and unreasonable. *Id.*

Based on the declaration provided by Olivia Jiles, and in absence of any response from the trustee, the court finds that the expenses debtors included in their Schedule J for electricity, telephone and transportation are reasonably necessary for them and their dependents' maintenance and support. The declaration however, was silent as to food, clothing, recreation, and personal care.

The 36-month plan proposes to pay nothing to the unsecured creditors, whose claims total approximately \$31,020.00. Doc. #5, section 3.14. If debtors took the amount for recreation alone and applied it to payments to unsecured creditors, the unsecured creditors could potentially receive more than a 10% dividend on their claims over the life of a 36-month plan.

This objection is OVERRULED IN PART and SUSTAINED IN PART. Debtors showed that amounts for electricity, telephone, and transportation were reasonable necessary for them and their dependents' maintenance and support. This objection is OVERRULED as to those expenses. However, to budget \$120 a month for recreation purposes while paying unsecured creditors nothing is not in line with the bankruptcy code and case law. See In re Wiley, 2011 Bankr. LEXIS 5608, p.12 (E.D. Cal. Bankr). Trustee's objections to the recreation expense, food, clothing, and personal care are SUSTAINED.

23. [17-14681](#)-B-13 **IN RE: JOHN/OLIVIA JILES**
[MHM-3](#)

MOTION TO DISMISS CASE
5-7-2018 [[52](#)]

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 have failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and/or (c)(4). The debtors filed a timely response and indicated that they would be current with their plan payments by the time of the hearing. The debtors' response was not supported by evidence. No reason was given for failing to make timely chapter 13 plan payments. 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.

24. [18-10681](#)-B-13 **IN RE: RICHARD/MARIA LAUREYS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-1-2018 [[20](#)]

WILLIAM OLCOTT
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Debtors filed an amended plan on May 3, 2018. Doc. #26.

25. [12-19182](#)-B-13 **IN RE: ALAN ROSS AND NADINE DEUTSCH**
[RSW-6](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MICHAEL H. MEYER
4-27-2018 [[93](#)]

ALAN ROSS/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 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.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the debtor's business judgment. The order should be limited to the claims compromised as described in the motion.

The debtor requests approval of a settlement agreement between the debtor and trustee regarding the unsettled estate of debtor's deceased mother and an inheritance due to debtor.

Under the terms of the compromise, the debtors will pay 50% of the funds on hand (currently approximately \$99,000.00) to the chapter 13 for distribution to the creditors.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense,

inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured because the estate has not yet been settled; collection will be easy because debtor is the trustee of the trust; litigation could be very complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

26. [18-12004](#)-B-13 **IN RE: HERBERT KELLEY**
[SJS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-24-2018 [\[13\]](#)

HERBERT KELLEY/MV
SUSAN SALEHI

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

This case was filed on May 18, 2018 and the automatic stay will expire on June 17, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* This evidence standard has been defined, in Singh v. Holder, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." In re Castaneda, 342 B.R. 90 (Bankr. S.D. Cal. 2006), *citations omitted*.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the debtor failed to pay the filing fee. 11 U.S.C. § 362(c)(3)(C)(i)(I).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor's previous case, case no. 18-10737, was filed on February 28, 2018 and dismissed on May 7, 2018 for failure to pay the filing fee. Debtor has paid the filing fee in this case in its entirety, filed all schedules, and has filed a plan.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.

27. [17-14293](#)-B-13 **IN RE: ERIC/MEREDITH KURTZ**
[NES-4](#)

MOTION TO INCUR DEBT
5-24-2018 [[53](#)]

ERIC KURTZ/MV
NEIL SCHWARTZ

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").

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.

10:00 AM

1. [14-10203](#)-B-7 **IN RE: JASON STOTLER**
[TGF-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-9-2018 [[30](#)]

JASON STOTLER/MV
VINCENT GORSKI

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").

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.

2. [17-13005](#)-B-7 **IN RE: GREGORY/SHELLEY SNELLA**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-30-2018 [[100](#)]

PNC BANK, NATIONAL
ASSOCIATION/MV
NEIL SCHWARTZ
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 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 collateral is a parcel of real property commonly known as 16921 Breckenridge Rd., Bakersfield, CA 93307. Doc. #100. The collateral has a value of \$365,000.00. The amount owed is \$386,291.82, as well as an IRS lien in the amount of \$56,890.61. Doc. #103.

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.

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).

3. [18-10608](#)-B-7 **IN RE: BRADLEY/BETH RIGGEN**
[LKW-1](#)

CONTINUED MOTION TO AVOID LIEN OF DCR CREDIT RECOVERY, INC.
3-27-2018 [[16](#)]

BRADLEY RIGGEN/MV
LEONARD WELSH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference. The hearing was continued to facilitate settlement discussion which are no longer occurring.

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.

Based on the record, the factual issues appear to include: the current value of debtor's residence.

4. [18-10309](#)-B-7 **IN RE: BERTHA JARRELL**
[RSW-1](#)

MOTION TO REDEEM AND/OR MOTION TO VALUE COLLATERAL OF TOYOTA
MOTOR CREDIT CORPORATION
4-25-2018 [[13](#)]

BERTHA JARRELL/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference. The hearing will be continued to a
date after July 9, 2018.

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

Based on the record, the factual issues appear to include: the price
a retail merchant would charge for the 2017 Toyota Corolla.

5. [18-11521](#)-B-7 **IN RE: MAKEBA LYONS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-1-2018 [[13](#)]

WILLIAM EDWARDS
\$335.00 FILING FEE PAID 5/1/18

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 on May
1, 2018. No appearance is necessary.

6. [17-14133](#)-B-7 **IN RE: BENJAMIN HARRIS**

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-7-2018 [[85](#)]

NEIL SCHWARTZ

NO RULING.

7. [18-10655](#)-B-7 **IN RE: GILBERTO/ANGELA ZUNIGA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
5-8-2018 [[14](#)]

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 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 collateral is a 2012 Honda Accord. Doc. #18. The collateral has a value of \$8,175.00 and debtor owes \$10,997.94. *Id.*

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.

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).

8. [18-10760](#)-B-7 **IN RE: SANFORD SEMCHAK & SPEIGHTS INC.**
[TGM-4](#)

MOTION TO SELL
4-11-2018 [[31](#)]

RANDELL PARKER/MV
PATRICK KAVANAGH
TRUDI MANFREDO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

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.

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. It appears that the sale of the phone number of debtor is a reasonable exercise of the trustee's business judgment. The trustee shall submit a proposed order after the hearing.

Any other prospective bidders must bring certified funds to the hearing in the amount of \$500.00; the funds must be made out to "Randell Parker, Chapter 7 Trustee." The funds are non-refundable if a bidder is successful but fails to perform. Prospective bidders must also bring documentary evidence of the ability to pay the amount of their bid.

The provisions of Federal Bankruptcy Rule of Procedure 6004(h) are waived.

9. [18-11463](#)-B-7 **IN RE: AVIAN NEWSOME**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-27-2018 [[13](#)]

WILLIAM EDWARDS
\$335.00 FILING FEE PAID 5/1/18

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 on May 1, 2018. No appearance is necessary.

10. [15-13167](#)-B-7 **IN RE: DOUG KOPHAMER FARMS**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2018 [[484](#)]

ALLY BANK/MV
LEONARD WELSH
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

This motion for relief from stay was 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 collateral is a 2013 GMC Sierra. Doc. #486. The collateral has a value of \$17,063.00 and debtor owes \$10,899.24. *Id.* The loan matured on December 27, 2017. Doc. #484.

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).

11. [15-13167](#)-B-7 **IN RE: DOUG KOPHAMER FARMS**
[SW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2018 [[478](#)]

ALLY BANK/MV
LEONARD WELSH
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

This motion for relief from stay was 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 collateral is a 2014 GMC Sierra. Doc. #482. The collateral has a value of \$21,521.00 and debtor owes \$16,527.30. *Id.*

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).

12. [15-13167](#)-B-7 **IN RE: DOUG KOPHAMER FARMS**
[SW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2018 [[490](#)]

ALLY BANK/MV
LEONARD WELSH
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

This motion for relief from stay was 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 collateral is a 2009 GMC Sierra. Doc. #493. The collateral has a value of \$9,413.00 and debtor owes \$2,858.65. *Id.* The loan matured on July 25, 2016. Doc. #490.

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).

13. [18-10879](#)-B-7 **IN RE: EDWIN/EMILY LEDFORD**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-4-2018 [[11](#)]

WELLS FARGO BANK, N.A./MV
NEIL SCHWARTZ
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 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 collateral is a parcel of real property commonly known as 604 Sesnon Street, Bakersfield, CA 93309. Doc. #11. The collateral has a value of \$226,964.92. The amount owed is \$186,480.02, as well as a lien by FHA in the amount of \$5,000.00, a lien by Park Stockdale Civic Association in the amount of \$800.00 and a lien by Solar City in the amount of \$\$3,261.00. Doc. #15.

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).

14. [12-17580](#)-B-7 **IN RE: XTECH INDUSTRIES, INC.**
[RP-1](#)

MOTION FOR COMPENSATION FOR RANDELL PARKER, CHAPTER 7
TRUSTEE(S)
5-8-2018 [[152](#)]

RANDELL PARKER/MV
BENJAMIN SHEIN

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").

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.

10:30 AM

1. [17-11028](#)-B-11 IN RE: PACE DIVERSIFIED CORPORATION
[BBR-23](#)

MOTION TO EXTEND TIME
4-26-2018 [[487](#)]

PACE DIVERSIFIED
CORPORATION/MV
T. BELDEN

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.

Pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1), the court, for cause shown, may extend the time for an act to be done.

In this case, the court finds that cause exists to extend the time to file objections to claims. Debtor's principals had to attend to a family emergency near the time objections were to be filed. The motion was properly noticed and no oppositions were filed. Therefore, this motion is GRANTED.

2. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[WW-7](#)

PRE-TRIAL CONFERENCE RE: MOTION FOR ADMINISTRATIVE EXPENSES
11-30-2017 [[367](#)]

MACPHERSON OIL COMPANY/MV
T. BELDEN
RILEY WALTER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The court entered an order approving a
stipulation between the parties.

3. [18-10390](#)-B-11 **IN RE: HELP KIDS, INC.**
[LKW-3](#)

MOTION FOR COMPENSATION FOR LEONARD K. WALSH, DEBTORS
ATTORNEY(S)
5-8-2018 [[34](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's bankruptcy counsel, Leonard K. Welsh, requests fees of \$10,570.00 and costs of \$214.81 for a total

of \$10,784.81 for services rendered as debtor's counsel from February 6, 2018 through April 30, 2018.

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

Movant shall be awarded \$10,570.00 in fees and \$214.81 in costs.

4. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-25-2017 [[1](#)]

LEONARD WELSH

NO RULING.

5. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[APN-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
2-9-2018 [[251](#)]

SANTANDER CONSUMER USA,
INC./MV
LEONARD WELSH
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

6. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[APN-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
2-9-2018 [[257](#)]

SANTANDER CONSUMER USA,
INC./MV
LEONARD WELSH
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[LKW-12](#)

CONFIRMATION HEARING RE: PLAN
2-9-2018 [[245](#)]

LEONARD WELSH

NO RULING.

11:00 AM

1. [15-14881](#)-B-7 **IN RE: GEORGE SNYDER**
[18-1010](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-27-2018 [[1](#)]

PARKER V. MERCHANTS BANK OF
CALIFORNIA, NATIONAL
LISA HOLDER/ATTY. FOR PL.

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

DISPOSITION: Continued to July 5, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

The status conference will be continued to July 5, 2018 at 11:00
a.m. to be heard with the motion for entry of default judgment.

11:30 AM

1. [18-11296](#)-B-7 **IN RE: JOSE/MARIA CORTEZ**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL
SERVICES, INC.
5-18-2018 [[12](#)]

NO RULING.