

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**  
**Honorable René Lastreto**  
**Hearing Date: Thursday, June 9, 2016**  
**Place: U.S. Courthouse, 510 19<sup>th</sup> Street**  
**Bakersfield, California**

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**
  
2. Submission of Orders:  
  
Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.
  
3. Matters Resolved Without Opposition:  
  
If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.
  
4. Matters Resolved by Stipulation:  
  
If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.
  
5. Resubmittal of Denied Matters:  
  
If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [11-17609](#)-B-13 ERMELINDA RAMIREZ MOTION TO DISMISS CASE  
MHM-5 4-21-16 [[124](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

Unless the trustee's motion is withdrawn, this matter will proceed as scheduled. If the debtor's plan payments are current as of the date of the hearing, as indicated by the debtor's response, the motion will be denied. If the debtor is not current then the motion will be granted and the case will be dismissed.

2. [16-10714](#)-B-13 SONIA GONZALEZ  
MHM-1  
MICHAEL MEYER/MV  
STEVEN WOLVEK/Atty. for dbt.

MOTION TO DISMISS CASE  
5-11-16 [[26](#)]

The motion will be granted. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

Based on the record and the moving papers, there has been unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the trustee with: the Class 1 Mortgage Checklist with payment coupon or last statement; Authorization to Release Information Form; and the Deed of Trust. Nor has the debtor filed a complete and accurate Disclosure of Compensation of Attorney for Debtor.

It appears the debtor filed a partial form 122C-1 Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, an amended Statement of Financial Affairs, and an Amended Plan, after this motion was filed, however the motion to dismiss has not been withdrawn.

Accordingly, the case will be dismissed.

3. [16-10319](#)-B-13 MONIQUE BOOKOUT  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

OBJECTION TO CONFIRMATION OF  
PLAN BY MICHAEL H. MEYER  
5-10-16 [[33](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to sustain the trustee's objection to confirmation. It appears that the plan will not fund within 60 months because of the unsecured priority claims.

Pursuant to §1324(b), the court intends to set August 4, 2016, as a bar date by which time a chapter 13 plan must be confirmed and objections to claims must be filed, served, and set for a hearing; otherwise the case will be dismissed on the trustee's declaration.

4. [16-10319](#)-B-13 MONIQUE BOOKOUT  
RSW-1  
MONIQUE BOOKOUT/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA INC.  
5-4-16 [[25](#)]

The motion will be granted. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.

This motion to value respondent's collateral was fully noticed in compliance with the Local Rules and there was no opposition or evidentiary objections. The default of responding parties is hereby entered.

Although the debtor is competent to testify as to the value of the subject vehicle, a 2012 Mitsubishi Lancer, basing the valuation on newspapers is hearsay where the debtor was not qualified as an expert. However, based on the debtor's unopposed declaration, the respondent's secured claim will be fixed at \$4,650. 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.

5. [16-10722](#)-B-13 JAMES/KIMBERLY PADGETT  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE  
5-10-16 [[19](#)]

The motion will be granted. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules. The record shows there is a material breach in plan payments and the debtors' late response is not supported by admissible evidence that the default has been cured. Based on the trustee's response to the debtors' tardy opposition, the case will be dismissed.

6. [16-10722](#)-B-13 JAMES/KIMBERLY PADGETT  
PPR-1  
BANK OF AMERICA, N.A./MV  
ROBERT WILLIAMS/Atty. for dbt.  
CASSANDRA RICHEY/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
5-11-16 [[23](#)]

This matter will be continued to July 7, 2016, at 9:00 a.m. The court will prepare and enter a civil minute order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. If the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter on July 7, 2016 and set an evidentiary hearing.

If the above motion (#5, MHM-1) is granted, then this motion will be overruled as moot.

7. [15-11029](#)-B-13 TERRY WHEELER  
MHM-4  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-21-16 [[148](#)]

The motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.

The trustee's motion to dismiss was based on failure to make plan payments. The debtor has filed a modified plan. Although the debtor's response misstates the hearing date for the modified plan as June 9, 2016, it is actually scheduled for August 4 and appears to address the plan payment arrearage.

8. [15-14729](#)-B-13 SANDRA RUIZ  
MHM-2  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO DISMISS CASE  
4-27-16 [[36](#)]

The motion will be granted. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed for cause shown.

9. [16-11129](#)-B-13 DAVID/LINDA MILAZZO  
MHM-1  
MICHAEL MEYER/MV  
LEONARD WELSH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
5-10-16 [[25](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

10. [16-11129](#)-B-13 DAVID/LINDA MILAZZO OBJECTION TO CONFIRMATION OF  
PPR-1 PLAN BY BANK OF AMERICA,  
BANK OF AMERICA, NATIONAL NATIONAL ASSOCIATION  
ASSOCIATION/MV 5-2-16 [[15](#)]  
LEONARD WELSH/Atty. for dbt.  
DIANA TORRES-BRITO/Atty. for mv.

**This matter will be continued to July 7, 2016, at 9:00 a.m. The court will enter a civil minute order. No appearance is required.**

**The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan.**

**The court notes that the this objection to confirmation was filed prior to the debtors' filing of a modified plan which in part deals with the objection. Accordingly, an amended objection should be filed and served. If the §341 has been concluded and this objection has not been withdrawn, the court will call the matter on July 7, 2016, and set an evidentiary hearing on an amended objection. If this objection is not withdrawn or amended by then, it will be overruled on July 7, 2016.**

11. [15-14330](#)-B-13 JOSE/PAULA BUSTAMANTE CONTINUED MOTION FOR RELIEF  
BN-1 FROM AUTOMATIC STAY  
THE GOLDEN 1 CREDIT UNION/MV 1-21-16 [[46](#)]  
D. GARDNER/Atty. for dbt.  
VALERIE PEO/Atty. for mv.  
ORDER #117

**Unless it is withdrawn prior to the hearing, this motion will proceed as scheduled. The court intends to drop the matter from calendar as resolved pursuant to the stipulation filed February 29, 2016 as document #79.**

12. [15-14330](#)-B-13 JOSE/PAULA BUSTAMANTE CONTINUED MOTION TO CONFIRM  
DMG-5 PLAN  
JOSE BUSTAMANTE/MV 4-8-16 [[108](#)]  
D. GARDNER/Atty. for dbt.  
ORDER #119

**The motion will be granted. The Movant shall submit a proposed order as specified below. No appearance is necessary.**

**This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules, 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.**

13. [16-11050](#)-B-13 MARGARET LUND

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-4-16 [[16](#)]

PATRICK KAVANAGH/Atty. for dbt.  
INSTALLMENT PAID ON 5/23/16

**The OSC will be vacated. No appearance is necessary. The required installment has been paid.**

**If any of the remaining installments are not paid when they come due then the case may be dismissed without further notice.**

14. [15-12954](#)-B-13 MICHAEL HALL

MOTION TO CONFIRM PLAN  
4-21-16 [[67](#)]

SAW-2  
MICHAEL HALL/MV  
STEVEN WOLVEK/Atty. for dbt.

**The motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.**

**There is nothing in the record to show that the plan was ever served on anyone.**

15. [11-11358](#)-B-13 MICHAEL DEMATTIA AND

MOTION TO DISMISS CASE  
4-4-16 [[72](#)]

MHM-1 CHANTAL BLANCHARD  
MICHAEL MEYER/MV  
VINCENT GORSKI/Atty. for dbt.  
WITHDRAWN

**The trustee's motion has been withdrawn. No appearance is necessary.**

16. [16-11063](#)-B-13 DANIEL PADILLA

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-4-16 [[29](#)]

SUSAN SALEHI/Atty. for dbt.  
2 INSTALLMENT PAYMENTS MADE  
ON 5/13/16

**The OSC will be vacated. No appearance is necessary. The required installment has been paid.**

**If any of the remaining installments are not paid when they come due then the case may be dismissed without further notice.**

17. [16-11063](#)-B-13 DANIEL PADILLA  
MHM-1  
MICHAEL MEYER/MV  
SUSAN SALEHI/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
5-11-16 [[31](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

18. [16-11063](#)-B-13 DANIEL PADILLA  
SJS-1  
DANIEL PADILLA/MV  
SUSAN SALEHI/Atty. for dbt.

MOTION TO CONFIRM PLAN  
4-22-16 [[20](#)]

**This matter will be dropped from calendar. No appearance is necessary.**

**On May 17, 2016, the debtor filed a modified plan, SJS-3, that is set for a confirmation hearing on July 7, 2016. Accordingly, this plan, SJS-1, is deemed withdrawn.**

19. [16-11063](#)-B-13 DANIEL PADILLA  
SJS-2  
DANIEL PADILLA/MV  
SUSAN SALEHI/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK (USA), N.A.  
4-22-16 [[23](#)]

**This motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.**

The record does not establish that the motion was served on the named respondent, Capital One Bank (USA), N.A., in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). For a directory of FDIC Insured Institutions, see <http://www3.fdic.gov/idasp/main.asp>.

In addition, the moving papers did not include a copy of the abstract of judgment.

Also, the debtor's exhibits were not filed in compliance with Local Bankruptcy Rules, Appendix II, EDC.002-901, Eastern District Bankruptcy Court's Guidelines for the Preparation of Documents (effective December 19, 2013).

Finally, the motion was filed without admissible supporting evidence as required by Local Bankruptcy Rule 9014-1(d)(7). A "Zillow quote" is hearsay under FRE 802, and no foundation for an exception has been submitted. FRE 803(n). No foundation was submitted regarding the balance still owing on the unavoidable senior lien either. Reference to a payment statement without a foundation does not make that statement relevant.



20. [16-11063](#)-B-13 DANIEL PADILLA  
SJS-2  
DANIEL PADILLA/MV  
  
SUSAN SALEHI/Atty. for dbt.

MOTION TO AVOID LIEN OF  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
4-22-16 [[23](#)]

**This matter will be dropped. No appearance is necessary. It was listed on the calender inadvertently.**

21. [16-11072](#)-B-13 ELLYN LOPEZ  
PK-1  
ELLYN LOPEZ/MV  
  
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
SPRINGLEAF FINANCIAL SERVICES,  
INC.  
4-26-16 [[14](#)]

**The motion will be granted. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.**

**This motion to value respondent's collateral was fully noticed in compliance with the Local Rules and there was no opposition. The default of responding parties is hereby entered. The debtor is competent to testify as to the value of the subject vehicle, a 2005 Toyota Highlander. Based on the evidence presented, the respondent's secured claim will be fixed at \$10,486. 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.**

22. [14-15877](#)-B-13 DANIEL/LINDA MONTES  
MHM-4  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
4-21-16 [[55](#)]

**The motion will be granted. The court will issue a civil minute order. No appearance is necessary.**

**This matter was fully noticed in compliance with the Local Rules. The record shows there is a material breach in plan payments. The debtors' late response was not authorized by court order and is not supported by admissible evidence that the default has been cured. Accordingly, there is no legal basis to deny the motion. The case will be dismissed.**

23. [13-11783](#)-B-13 DWAYNE/TONI CARTER  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
WITHDRAWN

MOTION TO DISMISS CASE  
4-20-16 [[43](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

24. [15-10985](#)-B-13 CHERYL LOPEZ MOTION TO DISMISS CASE  
MHM-4 4-21-16 [[59](#)]  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.

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

25. [15-13887](#)-B-13 BERNARD NAWORSKI MOTION TO DISMISS CASE  
MHM-2 4-21-16 [[30](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**The motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.**

**The trustee's motion to dismiss was based on failure to make plan payments. The debtor has filed a modified plan set for a hearing on August 4, 2016, that appears to address the plan payment arrearage.**

26. [16-10787](#)-B-13 ALBERTO/ANGELICA MORENO CONTINUED MOTION TO VALUE  
TOG-1 COLLATERAL OF JPMORGAN CHASE  
ALBERTO MORENO/MV BANK, N.A.  
4-7-16 [[9](#)]  
THOMAS GILLIS/Atty. for dbt.

**No appearance is necessary. The court will enter a civil minute order.**

**This matter was resolved by stipulation of the parties and has been continued to provide the debtors with an opportunity to file a proposed conforming order. No order has been submitted conforming to the stipulation.**

**If a proposed conforming order has not been submitted by June 16, 2016, then the motion will be denied without prejudice without further hearing.**

27. [16-10299](#)-B-13 KARINA PIMENTEL MOTION TO CONFIRM PLAN  
PWG-1 4-21-16 [[44](#)]  
KARINA PIMENTEL/MV  
PHILLIP GILLET/Atty. for dbt.

**The motion will be granted. No appearance is necessary. The Movant shall submit a proposed order as specified below.**

**This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules, 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.**

9:45 A.M.

1. [15-13167](#)-B-12 DOUG KOPHAMER FARMS  
LKW-16

MOTION FOR COMPENSATION FOR  
LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
5-18-16 [[248](#)]

LEONARD WELSH/Atty. for dbt.

**This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion and direct the applicant to submit a proposed order after the hearing.**

10:00 A.M.

1. [16-10625](#)-B-7 ANTHONY BANDA  
SMS-1  
ANTHONY BANDA/MV  
STEVEN STANLEY/Atty. for dbt.

MOTION TO AVOID LIEN OF FORD  
MOTOR CREDIT COMPANY LLC  
5-3-16 [[15](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

2. [16-10035](#)-B-7 DEBRA VANCAMP  
JMV-1  
JEFFREY VETTER/MV

MOTION TO EXTEND TIME TO FILE A  
MOTION TO DISMISS CASE UNDER  
SEC. 707(B) AND/OR MOTION TO  
EXTEND DEADLINE TO FILE A  
COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
5-2-16 [[23](#)]

WILLIAM EDWARDS/Atty. for dbt.  
JEFFREY VETTER/Atty. for mv.

**The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.**

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 trustee has not been able to complete the § 341 meeting and has not therefore been able to complete his analysis of the debtor's financial affairs. It appears there are inaccurate schedules and missing documents in addition to other problems. Accordingly, the time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to August 3, 2016.

3. [13-13443](#)-B-7 CLANTON CONSTRUCTION,  
JTW-2 INC.  
JANZEN, TAMBERI AND WONG/MV

MOTION FOR COMPENSATION FOR  
JANZEN, TAMBERI & WONG,  
ACCOUNTANT(S)  
8-5-14 [[49](#)]

JACOB EATON/Atty. for dbt.

**This matter will proceed as scheduled. Unless there is opposition presented at the hearing, the court intends to grant the motion and to direct the applicant to submit a proposed order after the hearing.**

4. [16-11464](#)-B-7 CLIFFORD/JODIE MCDONALD  
PK-1  
FRONTIER REAL ESTATE SERVICE,  
INC./MV  
PATRICK KAVANAGH/Atty. for mv.

AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-27-16 [[38](#)]

This motion will proceed as scheduled. The court intends to deny the motion without prejudice to the filing of a new motion under §362 for relief from the automatic stay. It appears from the record that the post-petition actions of the creditor in furtherance of its state court unlawful detainer action are void because they were in violation of the automatic stay.

There are several technical and substantive problems with this motion.

First, the motion was served with fewer than 14 days' notice without a request for an order shortening time, therefore the responding parties had insufficient notice of this hearing.

Second, the movants have not made a showing sufficient to support the requested *nunc pro tunc* relief. Following *In re Fjeldsted*, 293 B.R. 12, 25 (9th BAP, 2003), the two most important factors are, (1) whether the creditor was aware of the bankruptcy petition, and (2) whether the debtors engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

In this case the record shows that the creditor was listed in the bankruptcy petition and its address was listed in the creditor matrix. While the creditor list was not filed with the petition, the record shows that the notice of the filing of the case went out approximately two weeks before the creditor undertook the eviction actions for which it now appears to be seeking the court's ratification through *nunc pro tunc* relief. There also is no evidence in the record that the creditor would be unduly prejudiced by refileing its motion for relief.

Additional factors cited by *In re Fjeldsted, id.*, support the court's decision.

1. The only prior bankruptcy case filed by the debtors, a dismissed chapter 13, terminated prior to the contract at issue here and did not affect this creditor;
2. There is no evidence that any third parties would be prejudiced by the court's decision;
3. There is no evidence of bad faith by the debtor;
4. It appears the creditors had at least constructive knowledge of the bankruptcy case;
5. The debtors are, so far, complying with the Bankruptcy Code and Rules;
6. The court's order denying relief would not prejudice movant since movant may file another motion;
7. While the creditor moved quickly here after "learning" of the filing, there was no adjudication in the state court pre-petition.

5. [12-15487](#)-B-7 ANTHONY LEONIS  
RSW-1  
ANTHONY LEONIS/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF JAMES  
CIECIORKA AND JEAN CIECIORKA  
3-21-16 [[215](#)]

**The hearing will proceed as scheduled.**

6. [13-17289](#)-B-7 JOSE/BARBARA OLGUIN  
RSW-3  
JOSE OLGUIN/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF WHITE &  
WHITLEY GROUP, LLC  
5-20-16 [[34](#)]

**This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the default of respondents and grant the motion.**

7. [16-11493](#)-B-7 JULIAN GIL

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-17-16 [[22](#)]

DISMISSED

**The OSC will be vacated. The case has already been dismissed. No appearance is necessary.**

10:30 A.M.

1. [13-13062](#)-B-7 CECILY WATERMAN  
JMV-1  
JEFFREY VETTER/MV

LEONARD WELSH/Atty. for dbt.  
LISA HOLDER/Atty. for mv.

MOTION FOR COMPENSATION FOR  
JEFFREY M. VETTER, CHAPTER 7  
TRUSTEE(S)  
4-13-16 [[125](#)]

**The hearing will proceed as scheduled.**



11:00 A.M.

1. [16-10003](#)-B-7 MELLANIE RAPOZO

PRO SE REAFFIRMATION AGREEMENT  
WITH U.S. BANK NATIONAL  
ASSOCIATION  
5-5-16 [[33](#)]

MELLANIE MARSHALL/Atty. for dbt.

The hearing will be dropped from calendar. No appearance is necessary.

The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. It is therefore not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. CA 2003). The reaffirmation agreement does include the disclosures required by the Bankruptcy Code.

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

2. [16-10211](#)-B-7 TERRY CARGILL

REAFFIRMATION AGREEMENT WITH  
LEE FINANCIAL SERVICES  
4-26-16 [[46](#)]

PATRICK KAVANAGH/Atty. for dbt.

The hearing will be dropped from calendar. No appearance is necessary.

The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. It is therefore not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. CA 2003). The reaffirmation agreement was not signed by the creditor. The debtor shall have 14 days to refile the reaffirmation agreement properly signed by the creditor.

3. [16-11148](#)-B-7 CUAUHTEMOC ANDRIANO AND MARIA LOPEZ-ANDRIANO REAFFIRMATION AGREEMENT WITH CAB WEST, LLC - - 20132 FORD EDGE  
4-22-16 [[9](#)]

STEVEN STANLEY/Atty. for dbt.

**This reaffirmation agreement will be dropped from calendar without a disposition. The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed April 5, 2016, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365 (p)(1), the leased property is no longer property of the estate. Debtors' counsel will inform debtors that no appearance is necessary.**

4. [16-11148](#)-B-7 CUAUHTEMOC ANDRIANO AND MARIA LOPEZ-ANDRIANO REAFFIRMATION AGREEMENT WITH CAB WEST, LLC - - 2015 FORD F150  
4-22-16 [[11](#)]

STEVEN STANLEY/Atty. for dbt.

**This reaffirmation agreement will be dropped from calendar without a disposition. The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed April 5, 2016, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365 (p)(1), the leased property is no longer property of the estate. Debtors' counsel will inform debtors that no appearance is necessary.**

5. [16-10390](#)-B-7 JULIUS/ROSALIE RODGERS REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK  
5-4-16 [[15](#)]

WILLIAM OLCOTT/Atty. for dbt.

**The hearing will be dropped from calendar. No appearance is necessary.**

**The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. It is therefore not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. CA 2003). The reaffirmation agreement does include the disclosures required by the Bankruptcy Code.**

1:30 P.M.

1. [15-11200](#)-B-7 ROSA BALMORI  
[16-1043](#)  
U.S. TRUSTEE V. BALMORI  
GREGORY POWELL/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT  
4-12-16 [1]

This matter will proceed as scheduled. The court intends to dismiss the complaint, with leave to file and serve an amended complaint by July 11, 2016, for two reasons. First, the title of the complaint is misleading. The complaint is for revocation under §727(d) and not denial of a discharge under §727(a).

Second, the complaint recites no facts to show that the debtor, expressly or by operation of law, is charged with knowledge of the auditors' or U.S. Trustee's inquiries.

The burden of proof lies with the party seeking the revocation, here the U.S. Trustee. §522(d)(1). Under § 727(d)(4) the U.S. Trustee must plead "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 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In this complaint under §727(d)(4) the U.S. Trustee must plead facts that go to show, "the debtor has failed to explain satisfactorily-(A) a material misstatement in an audit . . . ." (B) has failed "to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit . . . ." (§ 727(d)(4), emphasis added.)

The U.S. Trustee's complaint states no facts to show that the debtor is even aware of the audit, much less that the debtor has failed to cooperate. The companion provisions in §727(d) provide for revocation of a discharge where the discharge was obtained "through the fraud of the debtor," §727(d)(1); where "the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee," §727(d)(2); or, the debtor committed an act specified in §727(a)(6). (Emphasis added.) Each of these provisions in §727(d) requires an act of, and knowledge by, the debtor.

The debtor will not be required to file a responsive pleading until and unless the court orders.

2. [16-11205](#)-B-7 TINA SANCHEZ  
[16-1042](#)  
SANCHEZ V. DEPT OF ED./NEL NET  
TINA SANCHEZ/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT  
4-11-16 [[1](#)]

**This matter will be continued to July 7, 2016, at 1:30 p.m. No appearance is necessary.**

**The complaint was not served pursuant to FRBP 7004. The plaintiff must obtain a reissued summons and timely serve the defendant with the reissued summons and a copy of the complaint.**

**The debtor is encouraged to review the requirements of FRCP 4(m) made applicable here by FRBP 7004. A governmental agency that has listed its address for service of adversary proceedings in the Roster of Governmental Agencies, may be served at that address. This roster can be found on the court's website under "Forms and Publications."**

3. [15-14881](#)-B-7 GEORGE SNYDER  
[16-1034](#)  
WESTERN UNION FINANCIAL  
SERVICES, INC. V. SNYDER, III  
ROSS SPECTOR/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT  
3-22-16 [[1](#)]

**It appears this adversary proceeding has been settled. The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. The court will prepare and enter a civil minute order No appearance is necessary.**

**The clerk of the court may close the adversary proceeding without notice in 60 days unless the adversary proceeding has been concluded or set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required.**

4. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,  
DHR-1 INC.  
IVAN MEDRANO/MV  
LEONARD WELSH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO EMPLOY DANIEL H.  
REISS AS ATTORNEY(S)  
5-2-16 [[263](#)]

**This matter will proceed as scheduled. Unless opposition to this tentative ruling is presented at the hearing, the court intends to grant the motion and approve the employment *nunc pro tunc* to April 1, 2016, at an hourly rate of \$425. Other attorneys in the applicant's firm will have their rates reduced by at least 26%. A proposed order shall be prepared by the applicant after the hearing and approved as to form by debtor's counsel.**

5. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS, MOTION FOR COMPENSATION BY THE  
LKW-25 INC. LAW OFFICE OF LEONARD K. WELSH  
FOR LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
5-13-16 [[277](#)]

LEONARD WELSH/Atty. for dbt.

**This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to approve this application for fees. The proposed order shall be prepared by applicant after the hearing.**

6. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS, MOTION TO REJECT LEASE OR  
LKW-26 INC. EXECUTORY CONTRACT  
B&L EQUIPMENT RENTALS, INC./MV 5-18-16 [[284](#)]  
LEONARD WELSH/Atty. for dbt.

**This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion. The proposed order shall be prepared by movant after the hearing.**

7. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS, MOTION TO SELL  
LKW-28 INC. 5-19-16 [[305](#)]  
B&L EQUIPMENT RENTALS, INC./MV  
LEONARD WELSH/Atty. for dbt.

**This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to approve the sale. The proposed order shall be prepared by movant after the hearing.**