

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 1, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [17-13414](#)-B-7 IN RE: JOHN/ELVIRA LOPES
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-3-2018 [[73](#)]

JAMES SALVEN/MV
RILEY WALTER

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. James E. Salven, accountant for the chapter 7 trustee, shall be awarded fees of \$1,950.00 and costs of \$373.57.

2. [17-13414](#)-B-7 **IN RE: JOHN/ELVIRA LOPES**
[MW-2](#)

MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE
6-21-2018 [[68](#)]

AMTRUST NORTH AMERICA, INC./MV
RILEY WALTER
ERIC TSAI/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant, a creditor of debtor, seeks to file a proof of claim in this case after the claims bar date. The deadline to file a proof of claim was January 11, 2018. Doc. #23. Movant claims in its motion that it was not notified of the bankruptcy until after the claims bar date. Doc. #68.

Federal Rule of Bankruptcy Procedure 9006(b)(1) states:

In general. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

In order for a court to find "excusable neglect," the court must take into account "all relevant circumstances surrounding the party's omission," including "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 396 (1993). A review of the docket reveals that professional's fee applications have been approved but the trustee has not yet filed a final report of administration of the case.

Upon review of the motion, memorandum of points and authorities, and the included evidence, and in the absence of any opposition, the court finds as follows: debtor will not be prejudiced by this late proof of claim; the late claim will not have any impact on any judicial proceedings and the court finds that debtor filed this motion in a reasonable time after being notified of debtor's bankruptcy; and the court finds the movant acted in good faith.

Movant may file their proof of claim on or before August 15, 2018. If the claim is filed after that date, it shall be deemed untimely.

3. [18-11521](#)-B-7 **IN RE: MAKEBA LYONS**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2018 [[22](#)]

HSBC BANK USA, N.A./MV
WILLIAM EDWARDS
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The collateral is a parcel of real property commonly known as 6507 Lavender Gate Drive, Bakersfield, California 93312. Doc. #22. The collateral has a value of \$200,000.00 and the amount owed is \$223,665.37. Doc. #26. 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.

No attorney's fees will be allowed. The movant has not established any equity in the collateral. 11 U.S.C. § 506(b).

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).

4. [18-12122](#)-B-7 **IN RE: KAYCEE TAYLOR**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-14-2018 [9]

WELLS FARGO BANK, N.A./MV
BENNY BARCO
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The collateral is a 2005 Infiniti FX. Doc. #13. The collateral has a value of \$9,500.00 and debtor owes \$10,228.04. *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).

5. [18-12123](#)-B-7 **IN RE: MIGUEL/GRISELDA LAGUNAS**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2018 [[11](#)]

SANTANDER CONSUMER USA INC./MV
TIMOTHY SPRINGER
JENNIFER WANG/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 2014 Nissan Versa. Doc. #16. The collateral has a value of \$7,125.00 and debtors owe \$14,132.23. *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).

6. [18-10439](#)-B-7 **IN RE: MARGARET WEESE**
[JES-1](#)

MOTION TO SELL
6-21-2018 [[16](#)]

JAMES SALVEN/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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 a Glock handgun and a Dickenson shot gun is a reasonable exercise of the trustee's business judgment. The trustee shall submit a proposed order after the hearing.

7. [17-10443](#)-B-7 **IN RE: ASHO ASSOCIATES, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-3-2018 [[98](#)]

JAMES SALVEN/MV
TODD TUROCI

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

DISPOSITION: Granted.

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

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

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

This motion is GRANTED. James E. Salven, accountant for the chapter 7 trustee, shall be awarded fees of \$1,950.00 and costs of \$118.37.

8. [09-19651](#)-B-7 **IN RE: JACLYN WATKINS**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
7-3-2018 [[56](#)]

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. James E. Salven, accountant for the chapter 7 trustee, shall be awarded fees of \$1,475.00 and costs of \$196.87.

9. [13-16155](#)-B-7 **IN RE: MICHAEL WEILERT AND GENEVIEVE DE
MONTREMARE**
[RTW-2](#)

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S)
6-29-2018 [[647](#)]

JANZEN, TAMBERI AND WONG/MV

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Trustee's accountants, Janzen, Tamberi & Wong, requests fees of \$23,380.00 and costs of \$43.24 for a total of \$23,380.24 for services rendered as trustee's accountants from October 24, 2013 through June 19, 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) Reviewing tax returns for prior years analyzing the tax implications of interest liquidation, (2) Reviewing past years of retirement account statements and identifying any excess contributions, (3) Preparing federal and state partnership income tax returns, (4) Preparing federal and state fiduciary income tax returns for debtors, and (5) Reviewing bank and accounting information for preferential payments or fraudulent conveyances.. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$23,380.00 in fees and \$43.24 in costs.

10. [18-12070](#)-B-7 **IN RE: MARTIN/SANDRA GONZALEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-2018 [[11](#)]

WELLS FARGO BANK, N.A./MV
WILLIAM OLCOTT
JAMIE HANAWALT/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 3907 Four Seasons Court, Bakersfield, California 93313. Doc. #11. The collateral has a value of \$177,800.00 and the amount owed is \$237,197.05. Doc. #13. 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.

No attorney's fees will be allowed. The movant has not established any equity in the collateral. 11 U.S.C. § 506(b).

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.

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).

11. [18-11075](#)-B-7 **IN RE: JOSUE MORENO**
[JMP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-2018 [[13](#)]

JPMORGAN CHASE BANK, N.A/MV
PETER BUNTING
JOSEPH PLEASANT/ATTY. FOR MV.
DISCHARGED, RESPONSIVE PLEADING

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

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

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice. The court notes that the motion was filed on 28 days' notice, but the language in the notice fails to require written response within 14 days of the hearing in compliance with LBR 9014-1(f)(1). The debtor filed a non-opposition, stating that they have already surrendered the vehicle to movant. Doc. #23. Therefore, debtor waived the notice requirement and trustee cannot be prejudiced by the incorrect information in the notice because trustee would be unable to liquidate the vehicle for unsecured creditors' benefit anyway since there is no equity in the collateral and the trustee did not oppose the motion.

The motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on June 26, 2018. Docket #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The automatic stay is terminated as to the trustee, only as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The order shall provide the motion is DENIED AS MOOT as to the debtor.

The collateral is a 2015 Chevrolet Silverado 1500. Doc. #17. The collateral has a value of \$30,262.00 and debtor owes \$39,628.45. *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 has been surrendered to movant on March 8, 2018. Docket #15.

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. [18-11076](#)-B-7 **IN RE: TIFFANY MIRANDA**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2018 [\[16\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
PETER BUNTING
DARLENE VIGIL/ATTY. FOR MV.
DISCHARGED, RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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). Therefore, the defaults of the above-mentioned parties in interest are. 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.

Movant-creditor U.S. Bank, N.A. ("Creditor") seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4) to foreclose on real property commonly known as 8323 Santa Fe Drive in Buena Park, CA 90620.

The original borrowers, Luis and Monica Aguilar ("Borrowers"), borrowed nearly half a million dollars to purchase real property in Buena Park, CA. Shortly after borrowing the money, the promissory note and a deed of trust securing the property were assigned to Creditor. After Borrowers became delinquent in their payments to Creditor, Creditor initiated foreclosure proceedings on the subject real property. Borrowers apparently transferred an ownership interest, allegedly without debtor's knowledge, in the subject property to debtor executed on March 22, 2018. Debtor filed for bankruptcy relief four days later.

Debtor filed a non-opposition to this motion, stating that debtor was not aware of this transfer of ownership interest and debtor did

not list any such interest in her schedules. Doc. ##1, 24. The non-opposition included a declaration of the debtor which has not been contested.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court concludes that "cause" exists to lift the stay because Borrowers are delinquent in paying their obligation to Creditor and debtor does not oppose the granting of this motion and debtor does not know and did not know about the property before the petition was filed.

The court also notes that the trustee filed a report of no distribution on May 1, 2018.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Movant has not established the debtor agreed to anything supporting an attorneys' fee award and any such request is DENIED.

The court is unable to grant relief under § 362(d)(4) because the court cannot make the necessary findings:

That the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either the transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or multiple bankruptcy filings affecting such real property.

Debtor stated that they were not aware of any transfer or ownership interest in the property and therefore cannot have participated in a "scheme to delay, hinder, or defraud creditors." The debtor has also not filed multiple bankruptcies.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that Creditor is ready to proceed with a foreclosure sale.

This motion is GRANTED IN PART and DENIED IN PART.

13. [18-12278](#)-B-7 **IN RE: JESSE RUELAS**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-2018 [[17](#)]

WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER
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 3267 Blackwood Ave, Clovis, California 93619. Doc. #17. The collateral has a value of \$380,000.00 and the amount owed is \$340,952.87. Doc. #21. The proposed order shall specifically describe the property or action to which the order relates.

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

The 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.

Because the movant has established that the value of its collateral exceeds the amount of its secured claim, the court can award fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b). However, movant must file a separate motion in conformance with the Local Rules of Practice and Federal Rules of Bankruptcy Procedure.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that movant is not receiving regular monthly payments.

14. [17-11798](#)-B-7 **IN RE: MARK/AMY AVILA**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,
ACCOUNTANCY CORPORATION, ACCOUNTANT(S)
6-29-2018 [[41](#)]

RATZLAFF, TAMBERI & WONG/MV

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Ratzlaff, Tamberi & Wong, the chapter 7 trustee's accountants shall be awarded fees of \$963.50.

15. [18-12394](#)-B-7 **IN RE: RUBEN OCHOA**
[CH-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
7-17-2018 [[24](#)]

CARDENAS THREE, LLC/MV
COBY HALAVAIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Cardenas Three, LLC, seeks relief from the automatic stay under § 362(d)(4) with respect to a piece of real property located at 2208 Sully Court in Bakersfield, CA.

Under 11 U.S.C. § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval. On or about March 2, 2017, MRA Aesthetic Solutions, LLC ("MRA") executed a Promissory Note in the amount of \$338,000.00 which is secured by a Deed of Trust against real property at 2208 Sully Court in Bakersfield, CA. Doc. #28. After MRA became delinquent a foreclosure sale was set for May 24, 2018, MRA transferred the subject property to the debtor, and debtor first filed for bankruptcy relief on May 22, 2018. *Id.* Debtor's first bankruptcy case was dismissed on June 11, 2018. *Id.* At that time, the subject property was scheduled for foreclosure sale on June 15, 2018. *Id.* Then on June 14, 2018, the debtor filed for bankruptcy relief a second time.

The Court having rendered findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 2208 Sully Court in Bakersfield, CA; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant is ready to move forward with a foreclosure sale.

The court notes that the declaration did not comply with LBR 9004-2(c)(1). LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration and exhibits were combined into one document and not filed separately.

16. [18-12394](#)-B-7 **IN RE: RUBEN OCHOA**
[CH-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
7-17-2018 [[30](#)]

CARDENAS THREE, LLC/MV
COBY HALAVASIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Cardenas Three, LLC, seeks relief from the automatic stay under § 362(d)(4) with respect to a piece of real property located at 8908 S. Union Avenue in Bakersfield, CA.

Under 11 U.S.C. § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property.

After review of the included evidence, the court finds that the debtor's filing of the petition was party of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval. On or about March 2, 2017, Yekuyeku Properties, Inc. ("Yekuyeku") executed a Promissory Note in the amount of \$265,000.00 which is secured by a Deed of Trust against real property at 8908 S. Union Avenue in Bakersfield, CA. Doc. #34. After Yekuyeku became delinquent a foreclosure sale was set for May 24, 2018, Yekuyeku transferred the subject property to the debtor, and debtor first filed for bankruptcy relief on May 22,

2018. *Id.* Debtor's first bankruptcy case was dismissed on June 11, 2018. *Id.* At that time, the subject property was scheduled for foreclosure sale on June 15, 2018. *Id.* Then on June 14, 2018, the debtor filed for bankruptcy relief a second time.

The Court having rendered findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 2208 Sully Court in Bakersfield, CA; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant is ready to move forward with a foreclosure sale.

The court notes that the declaration did not comply with LBR 9004-2(c)(1). LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration and exhibits were combined into one document and not filed separately.

11:00 AM

1. [18-12017](#)-B-7 **IN RE: BEN/LORI KUYKENDALL**

REAFFIRMATION AGREEMENT WITH BENEFICIAL STATE BANK
6-29-2018 [[14](#)]

SHANE REICH

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The reaffirmation agreement is not signed by the debtors and does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed.

2. [18-11530](#)-B-7 **IN RE: ROBERT/LINDA GALLARDO**

REAFFIRMATION AGREEMENT WITH MECHANICS BANK
7-5-2018 [[30](#)]

TIMOTHY SPRINGER

NO RULING.

3. [18-12268](#)-B-7 **IN RE: ASHLEY BAILEY**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL
CREDIT UNION
7-3-2018 [[12](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

This reaffirmation agreement will be DENIED. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

4. [18-11372](#)-B-7 **IN RE: SUZANNE MEDRANO**

PRO SE REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
7-5-2018 [\[13\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped.

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

The court is not approving or denying approval of the reaffirmation agreement. The reaffirmation agreement is not signed by the creditor and does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed.

5. [18-11476](#)-B-7 **IN RE: GAGANDEEP SINGH**

PRO SE REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC
7-6-2018 [\[17\]](#)

LAYNE HAYDEN

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

This reaffirmation agreement will be DENIED. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the

agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. Also, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement.

6. [18-11579](#)-B-7 **IN RE: PERRY/PAULA WYATT**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
6-29-2018 [[20](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

This reaffirmation agreement will be DENIED. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

7. [18-12591](#)-B-7 **IN RE: ROBERT JOHNSON**

PRO SE REAFFIRMATION AGREEMENT WITH SAN DIEGO COUNTY CREDIT
UNION
7-5-2018 [[10](#)]

GABRIEL WADDELL
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Creditor withdrew the reaffirmation agreement
on July 13, 2018. Docket #13.

1:30 PM

1. [16-10016](#)-B-13 **IN RE: KEVIN DAVEY**
[16-1074](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
11-18-2016 [[84](#)]

DAVEY V. OCWEN LOAN SERVICING,
LLC ET AL
VINCENT GORSKI/ATTY. FOR PL.
DISMISSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #203.

2. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-3](#)

CONTINUED PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF
CHRISTOPHER SCOTT CALLISON, CLAIM NUMBER 8
9-8-2017 [[64](#)]

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN
RESPONSIVE PLEADING

NO RULING.

3. [17-11376](#)-B-7 **IN RE: HECTOR MERCADO MUNOZ AND MIRTA MERCADO**
CARDENAS
[17-1092](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-26-2017 [[1](#)]

BRAVO CAPITAL, LLC V. MERCADO
ANDREW ALPER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The parties have signed a stipulation
dismissing this adversary proceeding with
prejudice.

4. [18-11580](#)-B-7 **IN RE: FEDERICO HUERTA-LOPEZ**
[18-1033](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
6-7-2018 [[6](#)]

HUERTA-LOPEZ V. OPORTUN, INC.
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION: This matter will be continued to September 12, 2018
 at 1:30 p.m.

ORDER: The court will issue the order.

Plaintiff shall file a motion for default and judgment or dismissal before the continued hearing. If such a motion is filed, the status conference will be dropped and the court will hear the motion when scheduled. If no motion for default and judgment or dismissal is filed prior to the continued hearing, the court will issue an order to show cause on why this case should not be dismissed.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1032](#)

STATUS CONFERENCE RE: COMPLAINT
6-4-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. TORREZ
DANIELLE BETHEL/ATTY. FOR PL.
DISMISSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
 entered. Doc. #6.