

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, August 8, 2019
Place: Department B – 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [19-11707](#)-B-13 **IN RE: SALVADOR TEJEDA**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-17-2019 [\[18\]](#)

DISMISSED 7/23/19

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. #29.

2. [19-11408](#)-B-13 **IN RE: DOUGLAS MCDANIEL**
[MHM-4](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-25-2019 [\[77\]](#)

MICHAEL MEYER/MV
RICHARD GARBER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

ORDER: Order preparation will be determined at the hearing.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor has opposed the objection.

This objection is OVERRULED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the latest Schedule C was filed on June 7, 2019 (doc. #43) and this objection was filed on June 25, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

The chapter 13 trustee ("Trustee") technically has no objection. Trustee asks the court to make a finding as to whether debtor is entitled to the claimed \$175,000.00 exemption on his residence under California Code of Civil Procedure § 704.730(a)(3)(B). The court notes that Trustee acknowledges the debtor's declaration (doc. #60) purporting to show entitlement to the exemption. The debtor timely opposed the objection. Doc. #94.

Pursuant to C.C.P. § 704.730(a)(3)(B), qualifications for claiming the \$175,000.00 exemption include that the debtor's spouse was, at the time of the bankruptcy filing, a person physically or mentally disabled and who as a result of that disability is unable to engage in substantial gainful employment. Debtor's wife was in a debilitating car wreck which permanently and adversely affected her in such a way that she is not able to work. Doc. #60. Debtor's wife suffers from chronic, debilitating pain and mental illness. Id.

The court finds that debtor is entitled to the exemption and OVERRULES the trustee's objection.

3. [19-11408](#)-B-13 **IN RE: DOUGLAS MCDANIEL**
[RMG-3](#)

MOTION TO CONFIRM PLAN
6-21-2019 [\[70\]](#)

DOUGLAS MCDANIEL/MV
RICHARD GARBER

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

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

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. 19-10826-B-13 **IN RE: ERICK JOHNSON**
MHM-2

MOTION TO DISMISS CASE
6-20-2019 [32]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the 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 the debtor has failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and/or (c)(4). Accordingly, the case will be dismissed.

5. [19-10826](#)-B-13 **IN RE: ERICK JOHNSON**
[PK-2](#)

MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-1-2019 [\[36\]](#)

ERICK JOHNSON/MV
PATRICK KAVANAGH

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

DISPOSITION: Granted.

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

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

Pursuant to LBR 2017-1(e), and based upon movant's declaration, the court GRANTS this motion and Patrick Kavanagh ("Attorney") may withdraw as the attorney for debtor Erick Johnson ("Debtor") in this bankruptcy case. Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California, and Attorney shall conform to the requirements of those rules. The authority and duty of Attorney as attorney for Debtor in the bankruptcy case shall continue until the court enters the order. The order submitted shall state the debtor's last known address.

6. [19-11632](#)-B-13 **IN RE: GREGORY BATSCCH**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
6-14-2019 [\[14\]](#)

ROBERT WILLIAMS
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. Debtor filed an amended plan.
Doc. #31, RSW-1.

7. [18-14036](#)-B-13 **IN RE: JEFFREY/ELIZABETH MILLER**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-13-2019 [\[56\]](#)

ACAR LEASING LTD/MV
LEONARD WELSH
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 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 movant, Acar Leasing LTD d/b/a GM Financial Leasing ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(1) allows the court to grant relief from the 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 and without opposition, the court finds that "cause" exists to lift the stay because debtor has failed to make at least five post-petition payments. The movant has produced evidence that debtor is delinquent at least \$2,772.35. Doc. #59, 60.

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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least five post-petition payments and the vehicle is depreciating in value.

8. [19-12442](#)-B-13 **IN RE: ADRIAN ROJAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-15-2019 [\[23\]](#)

PHILLIP GILLET

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

9. [19-12045](#)-B-13 **IN RE: ZATHHEBA/BRITTANY LEBO**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-3-2019 [\[15\]](#)

NEIL SCHWARTZ

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

DISPOSITION: Continued to September 5, 2019 at 9:00 a.m. If the case is dismissed (item # 10 below), this objection will be overruled as moot.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than August 22, 2019. 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 debtors' position. Trustee shall file and serve a reply, if any, by August 29, 2019.

If the debtors elect 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 August 29, 2019. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

10. [19-12045](#)-B-13 **IN RE: ZATHHEBA/BRITTANY LEBO**
[MHM-2](#)

MOTION TO DISMISS CASE
7-8-2019 [\[18\]](#)

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 debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtors failed to provide all of the required documentation. Accordingly, the case will be dismissed.

11. [19-12045](#)-B-13 **IN RE: ZATHHEBA/BRITTANY LEBO**
[SDN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY STATE FARM FEDERAL CREDIT UNION
7-9-2019 [\[22\]](#)

STATE FARM FEDERAL CREDIT UNION/MV
NEIL SCHWARTZ
SHERYL NOEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

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

Creditor State Farm Federal Credit Union ("Creditor") objects to confirmation because the plan fails to provide for their claim on the full value of the secured vehicle in violation of 11 U.S.C. § 1325(a)(5)(B)(ii). Doc. #22. Creditor claims that under 11 U.S.C. § 506, the market value of the subject vehicle, a 2004 GMC truck, is \$6,750.00. Id. Offered as proof of the vehicle's value is a NADA printout referenced in a declaration. Creditor claims the "clean retail" value of the truck is \$6,750.00.

Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. Doc. #2. Creditor's proof of claim, filed June 29, 2019, states the claim amount to be \$1,051.82 and the value of the

property is \$6,750.00. This claim is classified in class 2A - claims not reduced based on value of collateral. The creditor also filed another proof of claim and asserts that the obligations are "cross-collateralized." So, the creditor claims, the "unused equity" in the truck secures the much larger claim. This larger claim is not provided for by the Plan.

First, a secured creditor's claim need not be "provided for" by the Plan. If a claim is provided for by the Plan §1325(a)(5) governs its treatment. But, there is nothing in §§ 1322 or 1325 requiring that a secured creditor's claim be "provided for" in the Plan.

Second, section 3.11(b) of the Plan states that a secured creditor whose claim is not provided for may seek stay relief.

Third, Section 3.01 of the Plan provides that it is the proof of claim, not the plan itself, that determines the amount to be repaid under the plan. Doc. #2. The objector here has filed two proofs of claim and the debtor will need to object to them otherwise the claims will be paid according to the claims as filed.

Therefore, this objection is OVERRULED WITHOUT PREJUDICE.

12. [19-12345](#)-B-13 **IN RE: PAOLA ZAVALA**
[MHM-1](#)

MOTION TO DISMISS CASE
7-10-2019 [\[16\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
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 motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion is GRANTED. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case because debtor is delinquent in the amount of \$1,175.00. Doc. #16. Before this hearing, another payment in that same amount will also come due.

Debtor timely responded, stating that they would be current by the time of the hearing. Doc. #21.

This matter will be called to confirm whether debtor is current. If debtor is current on plan payments, the motion will be denied. If debtor is not current, the motion will be granted.

13. [19-10948](#)-B-13 **IN RE: AIMEE MOREHEAD**
[RSW-1](#)

MOTION TO CONFIRM PLAN
6-19-2019 [\[24\]](#)

AIMEE MOREHEAD/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion is DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The chapter 13 trustee ("Trustee") objected to confirmation because the debtor will not be able to make all payments under the plan and comply with the plan, and the plan provides for payments to creditors for a period longer than five years. Doc. #34.

The debtor responded, stating that Trustee is correct in that the plan payments must increase, and that debtor "will be able to pay the increase" because her wages as a self-employed cosmetologist have been increasing and she has been looking for other work. Doc. #36.

The court takes judicial notice of debtor's schedules I and J which show a monthly net income of \$923.36. Doc. #22. That amount is barely enough to make the first 12 payments under the plan but not the remainder, and that amount is not enough to pay the increased amount proposed by Trustee. The court has no other evidence before it to find plan feasibility. The debtor's "response" is unverified hearsay and not evidence at all. The motion is DENIED.

14. [19-11853](#)-B-13 **IN RE: KENNETH HUDSON**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-24-2019 [\[34\]](#)

MICHAEL MEYER/MV
DISMISSED 7/23/19

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. #43.

15. [17-12561](#)-B-13 **IN RE: VICTOR/KARLA MOORE**
[PK-6](#)

OBJECTION TO CLAIM OF DEPARTMENT OF THE TREASURY - INTERNAL
REVENUE SERVICE, CLAIM NUMBER 1
6-25-2019 [\[111\]](#)

VICTOR MOORE/MV
PATRICK KAVANAGH

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 3007-1(b)(1)(A) 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 objection is SUSTAINED. 11 U.S.C. § 502(a) states that a claim is "deemed allowed, unless a party in interest . . . objects."

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Debtors Victor and Karla Moore ("Debtors") object to the claim of the Internal Revenue Service ("Claimant") because Claimant has failed to consider the amended return for the tax year 2015 filed on or near April 11, 2018. The original return has a clerical error as it relates to "other taxes." Doc. #111. Line 10 of the amended return corrects these taxes lowering the tax liability by \$21,594.00. Additionally, interest in the amount of \$1,085.59 has been added.

Based on the evidence provided, and in the absence of opposition, the court SUSTAINS the objection and disallows Claimant's claim #1 in the amount of \$22,679.59 and allows the claim in the amount of \$47,992.30.

16. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
6-14-2019 [\[32\]](#)

ARASTO FARSAD
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. Debtor filed an amended plan.
Doc. #59, AF-2.

17. [19-11475](#)-B-13 **IN RE: HEZEKIAH SHERWOOD**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
6-17-2019 [\[19\]](#)

JEFFREY MEISNER
DISMISSED 7/23/19

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. #35.

18. [18-14480](#)-B-13 **IN RE: RONALD/BARBARA PIERCE**
[RSW-1](#)

MOTION TO MODIFY PLAN
6-12-2019 [\[18\]](#)

RONALD PIERCE/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

19. [19-11884](#)-B-13 **IN RE: FRANK ANDRASEVITS**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
7-3-2019 [\[14\]](#)

JULIE MORADI-LOPES

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

DISPOSITION: Continued to September 5, 2019 at 9:00 a.m. If the
 case is dismissed (#20 below) the objection will be
 overruled as moot.

ORDER: The court will issue an order.

The chapter 13 trustee ("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, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than August 22, 2019. 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 debtors' position. Trustee shall file and serve a reply, if any, by August 29, 2019.

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 August 29, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

20. [19-11884](#)-B-13 **IN RE: FRANK ANDRASEVITS**
[MHM-2](#)

MOTION TO DISMISS CASE
7-3-2019 [\[17\]](#)

MICHAEL MEYER/MV
JULIE MORADI-LOPES

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made

applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to provide the trustee with all of the required documentation, failed to provide Credit Counseling Certificate and failed to file a feasible plan. Accordingly, the case will be dismissed.

10:00 AM

1. [19-12311](#)-B-7 **IN RE: YAKDAN AL QAISI AND SARWA ALDOORI**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
6-21-2019 [\[12\]](#)

NEIL SCHWARTZ

NO RULING.

2. [19-12311](#)-B-7 **IN RE: YAKDAN AL QAISI AND SARWA ALDOORI**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-2019 [\[14\]](#)

FINANCIAL SERVICES VEHICLE TRUST/MV
NEIL SCHWARTZ
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on May 31, 2019 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 and the automatic stay under § 362(a) has already terminated by operation of law.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

3. [19-12414](#)-B-7 **IN RE: LATISHA ELIJAH**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
6-6-2019 [\[6\]](#)

LATISHA ELIJAH/MV
LATISHA ELIJAH/ATTY. FOR MV.

NO RULING.

Debtor's application for a waiver of the chapter 7 filing fee does not explain why debtor lists so many dependents, including an adult and a grand-daughter. It appears that debtor should properly claim one dependent, a minor child.

Debtor shall appear at the hearing and explain the basis for claiming the dependents.

4. [19-12118](#)-B-7 **IN RE: GILMAR ALVARENGA**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2019 [\[10\]](#)

FREEDOM MORTGAGE CORPORATION/MV
NEIL SCHWARTZ
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a parcel of real property commonly known as 6036 Moonstone Peak Drive, Bakersfield, CA 93313. Doc. #13. The collateral has a value of \$245,046.00 and the amount owed is \$229,609.54. Doc. #15.

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).

5. [18-14323](#)-B-7 **IN RE: SYLVIA SPEAKMAN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-13-2019 [\[17\]](#)

SANTANDER CONSUMER USA, INC./MV
ROBERT WILLIAMS
SHERYL ITH/ATTY. FOR MV.
DISCHARGED 2/25/19

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

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

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on October 24, 2018. Docket #15. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2010 Chrysler Sebring. Doc. #22. The collateral has a value of \$4,150.00 and debtor owes \$9,254.84. *Id.* The order shall provide the motion is DENIED AS MOOT as to the debtor.

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. [19-12339](#)-B-7 **IN RE: TYCEN HOWZE AND ALEAH MORENO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-12-2019 [\[12\]](#)

TD AUTO FINANCE LLC/MV
VINCENT GORSKI
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 proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2018 Ram Ram 1500. Doc. #18. The collateral has a value of \$19,700.00 and debtor owes \$28,589.30. *Id.*

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

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

7. [19-11849](#)-B-7 **IN RE: CLARA JEFFERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-15-2019 [\[21\]](#)

PHILLIP GILLET
\$31.00 AMENDMENT FILING FEE PAID 7/15/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the amendment fee now due was paid on July 15, 2019. Therefore, the OSC will be vacated.

8. [19-12552](#)-B-7 **IN RE: JOHAM HUERTA VILLASENOR**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-3-2019 [\[11\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
D. GARDNER
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2019 Toyota 4Runner. Doc. #15. The collateral has a value of \$37,875.00 and debtor owes \$46,218.15. *Id.*

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

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available

in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

9. [19-12355](#)-B-7 **IN RE: GREGORY/AMANDA LONDON**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2019 [\[13\]](#)

CAB WEST LLC/MV
R. BELL
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on May 31, 2019 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 and the automatic stay under § 362(a) has already terminated by operation of law.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted.

10. [12-14078](#)-B-7 **IN RE: FERNANDO VEGA AND MARIA GARCIA DE VEGA**
[LNH-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN DENATALE
GOLDNER FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
7-1-2019 [\[91\]](#)

JOSEPH PEARL

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").

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least

fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on July 1, 2019 and set for hearing on August 8, 2019. Doc. #92, 96. August 8, 2019 is more than 28 days after July 1, 2019, and therefore this hearing was set on at least 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and opposition, if any, must be presented at the hearing. Doc. #92. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served at least 14 days prior to the hearing date. Because this motion was filed, served, and noticed on at least 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

10:30 AM

1. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-10](#)

OBJECTION TO CLAIM OF US BANK NATIONAL ASSOCIATION, CLAIM NUMBER
1
6-18-2019 [\[171\]](#)

3MB, LLC/MV
LEONARD WELSH
ORDER CONTINUING TO 9/5/19 PER ECF #217

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

DISPOSITION: Continued to September 5, 2019 at 10:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #217.

2. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-12](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
7-11-2019 [\[199\]](#)

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 \$20,057.50 and costs of \$249.65 for a total of \$20,307.15 for services rendered from May 1, 2019 through June 30, 2019.

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) reviewing a creditor's plan and disclosure statement and filing opposition to that, (3) Preparing and filing an objection to claim, (4) Preparing fee applications, 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 \$20,057.50 in fees and \$249.65 in costs.

3. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-13](#)

MOTION TO ABSTAIN AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY
7-12-2019 [\[206\]](#)

3MB, LLC/MV
LEONARD WELSH

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, debtor 3MB, LLC, seeks an order from the court modifying the automatic stay under § 362(d)(1) to permit a pre-petition state court lawsuit to continue to conclusion and to abstain from deciding the amount and validity of plaintiffs' Alan Scott Hair and Mary Charles Hair ("Plaintiffs") claim. Doc. #206.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. The state court action is a personal injury tort action based on state law and the Kern County Superior Court is familiar with the law and facts giving rise to Plaintiffs' claim. There are other non-bankruptcy defendants Plaintiffs have filed against as well, so judicial economy will be better preserved by continuing the action in Kern County Superior Court. Plaintiffs have also agreed to limit any recovery against debtor to insurance coverage available to debtor unless the Kern County Superior Court enters an award for punitive damages.

The court's ability to abstain is authorized by 28 U.S.C. § 1334(c)(1). Ninth Circuit law states that "abstention can exist only where there is a parallel proceeding in state court. That is, inherent in the concept of abstention is the presence of a pendent state action in favor of which the federal court must, or may, abstain." Sec. Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1009 (9th Cir. 1997). In re Tucson Estates, Inc., 912 F.2d 1162 (9th Cir. 1990) provides courts 12 factors a court must consider when deciding whether to abstain. They are

- (1) The effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) The extent to which state law issues predominate over bankruptcy issues,
- (3) The difficulty or unsettled nature of the applicable law,

- (4)The presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5)The jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6)The degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7)The substance rather than form of an asserted "core" proceeding,
- (8)The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9)The burden of the [bankruptcy court's] docket,
- (10)The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11)The existence of a right to a jury trial, and
- (12)The presence in the proceeding of nondebtor parties.

The court finds that abstention in this case is appropriate. State law issues predominate over bankruptcy issues in the state court action; the state court action commenced pre-petition; the issues involved in state court action appear to be unrelated to the main bankruptcy case; Plaintiffs have a right to a jury trial and there are non-debtor parties in the state court action. The court finds that the factors weigh in favor of abstention.

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim.

4. [19-12954](#)-B-12 **IN RE: EVELYN RAQUEDAN**
[KDG-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
8-1-2019 [\[11\]](#)

ROBERT BRANDT/MV
PHILLIP GILLET
JACOB EATON/ATTY. FOR MV.
OST 8/1/19

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)(3) and an order shortening time (doc. #15) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. 11 U.S.C. § 362(j) states "[O]n request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated."

In this case, the automatic stay never arose. Under 11 U.S.C. § 362(c)(4), if a debtor has filed two or more cases that have been dismissed were pending within the previous year, the automatic stay "shall not go into effect upon the filing of the later case."

In this case, the debtor has filed two cases that were dismissed within the previous year.

Case no. 18-14107 was filed on October 10, 2018 and dismissed on April 12, 2019. The case was dismissed on motion by the chapter 12 trustee for unreasonable delay that is prejudicial to creditors because debtor failed to timely file a chapter 12 plan under § 1221.

Case no. 19-11554 was filed on April 17, 2019 and dismissed on July 2, 2019. The case was dismissed on motion by the chapter 12 trustee for unreasonable delay that is prejudicial to creditors on multiple grounds. In this case, debtor never sought to extend the automatic stay under 11 U.S.C. § 362(c)(3).

This case was filed on July 10, 2019. Under 11 U.S.C. § 362(c)(4)(B) the debtor can request that the stay take effect after notice and a hearing held within 30 days after the filing of the case. The 30 day deadline ends on August 9, 2019. Debtor has not set such a hearing

on this calendar, nor specially set such a motion for hearing for a date prior to the deadline ending.

The court notes however that the motion is vague on the issue of whether movant is a "party in interest." The motion states that movant is a "secured creditor," but does not state how creditor is secured. Movant must explain to the court movant's standing to bring this motion.

Unless opposition is presented at the hearing, the court intends to GRANT this motion.

11:00 AM

1. [18-11407](#)-B-7 **IN RE: JONATHAN AVALOS**
[18-1016](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-20-2018 [[1](#)]

A.G., A MINOR BY AND THROUGH HER GUARDIAN AD LITEM V.
CHANTAL TRUJILLO/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [18-14323](#)-B-7 **IN RE: SYLVIA SPEAKMAN**
[19-1028](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-19-2019 [[1](#)]

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

NO RULING.

3. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

FURTHER STATUS CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-17-2015 [[1](#)]

BJORNEBOE V. BREWER
MISTY PERRY-ISAACSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: The matter will be continued for further status
 conference to February 5, 2020 at 11:00 am in
 Bakersfield subject to further order. Plaintiff to
 file a further report seven calendar days before the
 next conference

ORDER: The court will issue the order.

The plaintiff's status report states the Kern County Superior Court action, after numerous delays due largely to a defendant's military service, will be tried in January 2020. Plaintiff to file a status report 7 calendar days before the next scheduled status conference.

5. [18-12689](#)-B-7 **IN RE: MARTIN GIUNTOLI**
[18-1067](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
10-5-2018 [[1](#)]

STATE COMPENSATION INSURANCE FUND V. GIUNTOLI
RHETT JOHNSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar. The parties have stipulated
 to a settlement agreement and dismissal. Doc. ## 20,
 21. The parties shall present litigation termination
 documents to the court on or before August 22, 2019.

ORDER: The court will issue an order.

6. [19-10093](#)-B-7 **IN RE: REYANTHONY/ELAINE BRACAMONTE**
[19-1051](#)

STATUS CONFERENCE RE: COMPLAINT
5-21-2019 [[1](#)]

BRACAMONTE ET AL V. CACH, LLC ET AL
PATRICK KAVANAGH/ATTY. FOR PL.

NO RULING.

The present record does not show valid service on any party defendant.

The Certificate of Service (doc. # 6) shows two attorneys were served. But the Certificate does not show who the attorneys represent. If those attorneys represent a party defendant, the Certificate does not show the party or parties authorized service on the attorneys. There appears to be no service on the Los Angeles County Sheriff.

The complaint may need to be re-served after an alias summons is issued.

11:30 AM

1. [19-12219](#)-B-7 **IN RE: IVAN BRIBIESCACARDENAS AND MAYRA CORONADO FLORES**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
7-12-2019 [\[10\]](#)

OSCAR SWINTON

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtor was 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 the agreement established a presumption of undue hardship and that his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. [19-11091](#)-B-7 **IN RE: GUSTAVO MERJIL**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
6-21-2019 [\[16\]](#)

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

DISPOSITION: Dropped.

ORDER: The court will issue an order neither approving or disapproving the reaffirmation agreement.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.