UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, October 4, 2018
Place: Department B – 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. 18-13203-B-13 **IN RE: JAMES BALLARD**
AP-1

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
9-6-2018 [15]

WELLS FARGO BANK, N.A./MV
RABIN POURNAZARIAN
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Overruled.

ORDER: The court will issue the order.

This motion is OVERRULED. 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 Wells Fargo Bank, N.A.'s ("Creditor") objection is on the grounds that the plan does not account for the entire amount of the pre-petition arrearages that debtor owes to creditor and that the plan does not promptly cure Creditor's pre-petition arrears as required by 11 U.S.C. § 1322(b)(5). Doc. #15, claim #6 FILED September 24, 2018.

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. #4. Creditor's proof of claim, filed September 24, 2018, states a claimed arrearage of $1,731.41. This claim is classified in class 4 – paid directly by debtor. If confirmed, the plan terminates the automatic stay for Class 4 creditors. Plan section 3.11. The debtor may need to modify the plan to account for the arrearage. If they do not and the plan is confirmed, Creditor will have stay relief. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED.

2. 18-12004-B-13 **IN RE: HERBERT KELLEY**
SJS-2

MOTION TO CONFIRM PLAN
8-16-2018 [42]

HERBERT KELLEY/MV
SUSAN SALEHI
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 8, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on November 8, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than October 25, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 1, 2018. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set December 20, 2018 as a bar date by which a chapter 13 plan must be confirmed *or objections to claims must be filed* or the case will be dismissed on the trustee's declaration.

3. 18-13105-B-13 **IN RE: MATTHEW ESCALANTE**
MHM-1

MOTION TO DISMISS CASE
9-5-2018 [27]

MICHAEL MEYER/MV
D. GARDNER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

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.

Here, the trustee asks the court to dismiss the case for debtor's failure to make plan payments. Doc. #27. Debtor timely responded, stating that the plan payments were made. Doc. #40. Counsel's declaration states that debtor gets paid once a month, which is why the first payment was late. Doc. #41. Debtor also filed a declaration (although late), stating that his payment allegedly made to be withdrawn on September 21, 2018 was not completed. Doc. #42. However, debtor paid $2,507.00 on September 27, 2018 (that amount being one plan payment). The debtor also stated that "[t]he attendant verified that the automatic payment was successfully established today (September 27, 2018)." *Id.* That statement is hearsay. Federal Rule of Evidence 801. The court notes that no proof of service was filed with debtor's counsel's opposition and declaration, nor debtor's declaration, so the court does not know if debtor served those documents on the chapter 13 trustee.

If debtor is not current at the time of this hearing, then the court intends to grant this motion.

4. 18-10913-B-13 **IN RE: WALTER/KATHRYN COVEY**
RSW-1

MOTION TO AVOID LIEN OF DISCOVER BANK
9-8-2018 [44]

WALTER COVEY/MV
ROBERT WILLIAMS

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").

On motions filed on less than 28 days' notice, but at least 14 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed and served on September 8, 2018 and set for hearing on October 4, 2018. Doc. #45, 48. October 4, 2018 is 26 days after September 8, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #45. That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

5. 18-11614-B-13 **IN RE: AUDREY LEWIS**
SJS-1

MOTION FOR COMPENSATION FOR SUSAN J. SALEHI, DEBTORS ATTORNEY(S)
8-15-2018 [19]

SUSAN SALEHI

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 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion and exhibits were combined into one document and not filed separately. Doc. #19. Additionally, this motion for compensation has the same docket control number as a previously filed, but not set for a hearing, motion for compensation. *See* doc. #17. The evidence is also insufficient. The motion refers to "time sheets attached hereto as Exhibit A," yet Exhibit A is just the "Rights and Responsibilities." If counsel re-files this motion, counsel must include time records sufficiently showing the kind of work done regarding this case and the amount of time spent on tasks involved in this case.

6. 14-15234-B-13 **IN RE: JEANNE REDDIG**
RSW-2

MOTION FOR HARDSHIP DISCHARGE
9-10-2018 [35]

JEANNE REDDIG/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. Pursuant to Federal Rule of Bankruptcy Procedure 4007(d), the court sets November 15, 2018 as the date by which a creditor may file a complaint to determine the dischargeability of any debt under 11 U.S.C. § 523(a)(6).

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, except the chapter 13 trustee, 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.

Debtor asks this court for their discharge to be entered prior to completing plan payments pursuant to 11 U.S.C. § 1328(b). 11 U.S.C. § 1328(b) allows the court to grant a discharge to a debtor that has not completed all the plan payments if

> the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable; the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less

> than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and modification of the plan under section 1329 is not practicable.

Debtor's declaration states that she lost her job after her knees were replaced and she was unable to continue in her job. Doc. #37. Her income has thus decreased substantially, to only $392.00 per month, the majority of that coming from her children. *Id.* She is waiting for Social Security disability income. *Id.*

The chapter 13 trustee filed "comments," not opposing the motion, but illustrating a problem that could arise from the court granting this motion. If the court grants this motion and enters the debtor's discharge, debtor will have exited bankruptcy and the automatic stay will no longer be in force. *See* 11 U.S.C. § 362(c). Debtor's current plan is paying Springleaf Financial, a class 2 creditor secured by a Toyota Corolla, a significantly reduced interest rate (5% down from 26%). If the discharge is entered, the interest rate will no longer be 5% because the discharge does not affect secured creditors' rights.

After review of the evidence in support of this motion, the court believes that debtor qualifies for a discharge under 11 U.S.C. § 1328(b). Debtor's significantly reduced income makes modification of the plan impracticable; the debtor cannot "justly be held accountable" for the circumstances making debtor unable to complete the chapter 13 plan; and the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the debtor was in chapter 7. Therefore, this motion is GRANTED.

The order granting this motion will not be signed until debtor's counsel provides notice, pursuant to Fed. R. Bankr. P. 4007(d) and in the manner provided for by Fed. R. Bankr. P. 2002, to all creditors at least 30 days before November 19, 2018. Debtor's counsel shall file a proof of service showing compliance with the order. The court finds there is no reasonable cause 11 U.S.C. § 522(q)(1) may be applicable to the debtors; there is not pending any proceeding in which the debtors may be found guilty of a felony described in § 522(q)(1)(A) or liable for a debt under § 522(q)(1)(B).

7. 14-15948-B-13 **IN RE: KRISTAN CAFFEE**
LKW-4

MOTION TO BORROW
9-5-2018 [57]

KRISTAN CAFFEE/MV
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.

This motion is GRANTED. After review of the attached evidence, the court finds that debtors are able to make the monthly payment for the new property in Oskaloosa, KS. Debtors are authorized but not required to incur further debt in order to purchase real property located at 208 Liberty Street in Oskaloosa, KS for $129,527.00 with an estimated monthly payment of $1,040.79. Should the debtors' budget prevent maintenance of current plan payment, debtors shall continue making plan payments until the plan is modified.

8. 18-11649-B-13 **IN RE: CHARLES/PRISCILLA HERNANDEZ**
MHM-3

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
8-20-2018 [60]

PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

ORDER: The court will issue the order.

The Chapter 13 Trustee ("Trustee") objects to confirmation of the debtors' plan arguing that the plan does not comply with 11 U.S.C. § 1325(b). The Trustee contends the debtors' proposed plan does not provide all of their projected disposable income will be applied during the plan to make payments to unsecured creditors. The proposed plan provides no payment to unsecured creditors. The Trustee has objected to two income deductions claimed by the debtors' on the amended Form 122C-2. Doc. #46. First, the Trustee contends the amount the debtor claims they must pay monthly for debt service to Ally Financial for the purchase of a 2015 GMC Canyon exceeds what the Plan payment will be by $246.08. Second, the Trustee objects to the debtors' deducting $966.98 for "Additional Vehicle Expense" under the "Special Circumstances" category (line 43 on Form 122C-2). The Trustee alleges the debtors' did not adequately document and support the "special circumstance" justifying the large additional deduction than that already permitted under the "standards:" $440.00 per month in this case (Line 12).

The debtors' essentially concede the Trustee's first point but urge that even if you add $246.08 into the monthly budget, they still are "negative" thereby establishing that they need not make any payments under a plan to unsecured creditors. The debtors' contest the Trustee's challenge to their "special circumstance." They argue they have a special need for a higher vehicle operation expense because of the distance they travel to work daily; each are employed at occupations almost 60 miles from their home.

For our purposes, 11 U.S.C. § 1325(b)(2) defines "disposable income" as current monthly income (see § 101(10A)) "less amounts reasonably necessary to be expended . . . for the maintenance or support of the debtor or a dependent of the debtor." Determination of what is "reasonably necessary to be expended" requires reference to subparagraphs (A) and (B) of 11 U.S.C. § 707(b)(2) for "above median" debtors. *See* § 1325(b)(3). These debtors are indisputably "above median." Special circumstance deductions are addressed in § 707(b)(2)(B).

§ 707(b)(2)(B) imposes on debtors both a substantive evidentiary burden and an explicit procedure. In re Littman, 370 B.R. 820, 830 (Bankr. D. Id. 2007). Debtors must itemize each additional expense. This involves not just the nature of the suggested adjustment but

also identifying and specifying the amount or financial impact. *Id*. Debtors must also show there is "no reasonable alternative" to each added expense. *Id*. Each item must be "documented" and accompanied by a "detailed explanation" of the "special circumstances" that make the expense "necessary and reasonable." *Id*. The debtors must attest to all of this under oath and show the impact of the additional expenses on the projected income calculation. § 707(b)(2)(B)(iii) and (iv).

The debtors' here itemized the additional expense. But the court is not persuaded the debtors have met their evidentiary burdens for two reasons.

First, the financial impact and documentation prongs are very debatable. The debtors' here live in Tehachapi and commute daily to Bakersfield for employment; that is approximately 58 miles. Mr. Hernandez is a welder and Ms. Hernandez is an office manager in a medical office. Neither have worked for their current employers for a long time - Mr. Hernandez has been employed two years and Ms. Hernandez one year. They have calculated their additional expense relying on the IRS allowance for vehicle mileage for tax reporting. But the debtors have presented no authority supporting the IRS mileage allowance as an acceptable calculation of an additional vehicle expense supporting "special circumstances" for purposes of determining disposable income.

In re Turner, 376 B.R. 370, 378 (Bankr. D. N.H. 2007) cited by the debtors, involved a debtor who was an area supervisor for an employer which required him to travel to several locations to perform his job. The evidentiary support for that debtor's claimed extraordinary circumstance included tax returns which showed his actual expenses. See also, In re Babson, 2011 Bankr. LEXIS 4519, *8-10 (Bankr. E.D.N.C. Nov. 1, 2011). The debtors' here do not provide tax returns supporting the additional expense. That could be because the debtors do not claim a deduction because their expense is considered commuting and not necessary for either debtor to perform their job duties. It could also be for other reasons which are not known.

The local standards promulgated by the IRS for "transportation expenses" includes: insurance; vehicle payments; maintenance; fuel; state and local registration; required inspections (*viz.* smog certification); parking fees; tolls; driver's license and public transportation. In re Batzkiel, 349 B.R. 581 (Bankr. N.D. Iowa 2006). The "means test" separately itemizes the acquisition expense for vehicles. The debtors' here may have a higher fuel bill or maintenance bill but the mileage deduction rate is inapplicable by itself for a "special circumstances" analysis.

Second, the court is not persuaded the additional expense is necessary or reasonable in this context. The court in Turner stated: "[e]xpenses related to special circumstances, though, should be expenses that are not otherwise accounted for in the means test. . . . the 'special circumstances' provision is not a catch-all for any expense that does not fit into any other means test expense category." Turner, 376 B.R. at 378, citing In re Lightsey, 374 B.R. 377 (Bankr. S.D. Ga 2007). The court in Turner found the travel

expenses greatly exceeds that of the ordinary debtor." *Id*. Here there is already an expense category for the "operation expenses." The allowance is $440 in this case. The debtors' did not establish that allowance is insufficient for them. They claim a total auto expense of $1479.11 per month which is less than they could claim using the IRS mileage allowance. But, that is not the critical comparison.

The debtors' have a home in Tehachapi that they claim they could not have purchased for the same price in Bakersfield. The debtors' live with a teenage son who goes to school in Tehachapi and they claim it would be unreasonable to uproot him and move closer to their employment. They also claim they are paid more in Bakersfield than they could receive in Tehachapi for similar employment. Ms. Hernandez tried working at home and was not able to generate enough income. They commute to Bakersfield using Mr. Hernandez' truck. Ms. Hernandez keeps her car at her mother's residence in Bakersfield and drives to work from there.

"Special circumstances" do not have to be involuntary. But a debtor has to demonstrate a special circumstance which leaves [the debtors] with no reasonable alternative but to incur the expense. In re Haman, 366 B.R. 307, 313 (Bankr. D. Del. 2007). "It is up to Debtors to show that their particular circumstances are 'special' and not simply the same circumstance faced by any other family in the locality in which Debtors live." In re Starkey, 2007 Bankr. LEXIS 155 at *6 (Bankr. D. Neb. January 25, 2007). A lengthy commute, with other facts, have supported a "special circumstance". See, Batzkiel, 349 B.R. at 586-87.

The debtors here made their own rational choices. They elected to seek additional employment in a locality almost 60 miles from their residence and they receive remuneration for that choice. They chose to purchase a residence for a more favorable price in Tehachapi. They do not want to uproot their son who is attending school there. These are all reasonable choices that are good for their own family. That said, it is not the issue. Rather, the question is whether their expenditure is "special." The court does not find that it is. The court is mindful that seeking a new job or moving a residence may not be reasonable alternatives in the time frame to confirm a Chapter 13 plan. See, In re Heath, 371 B.R. 806, 812 (Bankr. E.D. Mich. 2007). But, the debtors' length of employment at their current jobs suggests they recently decided to make their life style decisions. The disposable income deduction sought here is not determined by their choices, but rather "special circumstances."

The objection is SUSTAINED.

9. 18-12955-B-13 **IN RE: BERNARD NAWORSKI**
MHM-1

MOTION TO DISMISS CASE
9-4-2018 [24]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that the debtor has failed to make all payments due under the plan. Accordingly, the case will be dismissed.

10. 17-12561-B-13 **IN RE: VICTOR/KARLA MOORE**
PK-2

CONTINUED MOTION TO MODIFY PLAN
8-2-2018 [52]

VICTOR MOORE/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was continued to allow debtor to respond to the trustee's detailed objection.

Debtor timely responded, indicating that they consent to increasing the plan payment to $2,118.00 beginning in December 2018; that because of a surgery Karla had in mid-July, she is on temporary disability until mid-October, at which point she will be making her original wages and be able to pay the increased plan payment; and consents to increasing the plan payment "by the amount necessary to complete the plan." Doc. #52.

After review of the motion and supporting documents, the court is persuaded that the debtor is in compliance with the applicable law and is able to complete a chapter 13 plan. Therefore, this motion is GRANTED.

11. 18-13665-B-13 **IN RE: JASMIN GOTICO**
RSW-1

MOTION TO EXTEND AUTOMATIC STAY
9-19-2018 [13]

JASMIN GOTICO/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

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

This case was filed on September 6, 2018 and the automatic stay will expire on October 6, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where

the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

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

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

Debtor previously filed bankruptcy to stop a pending foreclosure sale. Doc. #15. That case was dismissed approximately five months later for failure to make plan payments. It was a 36-month plan. Debtor is now on a 60-month plan with a lower payment, and her Schedules I and J show an ability make the plan payment. *See id.*, doc. #1.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

12. 18-12467-B-13 **IN RE: ALLAN BABB**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-23-2018 [45]

DISMISSED 9/7/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. The case has already been dismissed on September 7, 2018. Doc. #48.

13. 14-12269-B-13 **IN RE: DONALD/MARGIE MCKAY**
LKW-8

MOTION FOR HARDSHIP DISCHARGE
8-30-2018 [111]

DONALD MCKAY/MV
LEONARD WELSH
RESPONSIVE PLEADING

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Granted provided the parties agree. Otherwise, the matter will proceed as a scheduling conference.

ORDER: If granted, the moving party shall prepare and submit an order as provided. If not, the court will issue further orders.

Debtors Donald McKay (age 78) and Margie McKay (age 77) ask the court to enter an order granting them a discharge in their Chapter 13 case before they complete the plan payments under § 1328(b), often called the "hardship discharge."

This case has been pending since April 30, 2014. Their plan was confirmed September 25, 2014. The plan provided for payment of two class 2 claims (vehicle contracts) and priority claims (IRS, EDD and SBE) in full and a 20% dividend to creditors with allowed unsecured claims. Mr. McKay suffered an injury July 11, 2018 which seriously compromises his ability to continue his employment as a truck driver. Ms. McKay does not work outside the home. The plan payment is $1,870.00 per month. The McKay's made the plan payments through August 2018 but now cannot because Mr. McKay is unable to work. They are living on Social Security benefits and gifts from their family. The McKay's claim a modification of their plan is not feasible because of the uncertain length of rehabilitation for Mr. McKay's injury and their age. Under their Plan, they have managed to pay all but about $2100 to their class 2 creditors and their priority claims in full.

The Chapter 13 Trustee has opposed the motion. The Trustee conceded Mr. McKay's injury is beyond the McKay's control. The Trustee disputes two critical elements: whether, to date, the unsecured creditors have received what they would have received on the effective date of the McKay's plan; whether it is not practicable for the McKay's to now modify the plan. There are about 9 months to go to complete the Plan.

In reply, the McKay's concede the Trustee is correct on the "liquidation analysis" but has offered to pay to the Trustee $9,138.60 provided this motion is granted which, together with funds the Trustee has on hand to "complete their Chapter 13 Plan." Also, the debtors have offered to prepare a "pro-forma" Schedule I and J to show that continued payments to the Trustee as required by the Plan are impracticable.

11 U.S.C. § 1328(b) allows the court (in its discretion) to grant the debtor a discharge in Chapter 13 before the debtor has completed Plan payments if three requisites are met: (1) the debtor's failure to complete payments is due to circumstances for which the debtor should not be held justly accountable; (2) the value, as of the effective date of the plan, of actual distributions on account of each allowed unsecured claim is not less than the claim would have been paid if the debtor was liquidated on the plan's effective date; and (3) a modification of the plan is not practicable. Debtors must persuade the court that they have complied with each element before the court can consider granting the "hardship discharge." In re Schleppi, 103 B.R. 901, 903 (Bankr. S.D. Ohio 1989).

The Trustee concedes the debtor has met the first element.

The second prong requires the debtor to affirmatively establish that the value of the funds *actually distributed* under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim in a Chapter 7 liquidation proceeding. Schleppi, 103 B.R. at 904, citing In re Bond, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984). See also In re McNealy, 31 B.R. 932 (Bankr. S.D. Ohio 1983) [hardship discharge denied despite death of co-debtor where evidence was insufficient to satisfy best interests of creditors test for co-debtor]; In re White, 126 B.R. 542 (Bankr. N.D. Ill. 1991) [holding insufficient evidence precluded finding of compliance under § 1328(b)(2)]. The Trustee here provided mathematic calculations showing the debtors have not yet met the critical liquidation test to warrant a hardship discharge. The debtors' agree and have obtained information from the Trustee to resolve the issue and the debtors' are willing to pay these funds to the Trustee if this motion is granted.

The third prong is also in dispute. The Trustee claims the debtor has not proven that a modification of the Plan with nine months to go is impracticable. The debtors' position is that the substantial drop in income with no realistic positive change on the horizon shows the plan modification is impracticable. See, Schleppi and In re Grice, 319 B.R. 141, 144-45 (Bankr. E.D. Mich. 2004). The debtors claim they will produce an updated Schedule I and J to support their position.

If these requisites are met, the court will GRANT the motion. The court finds there is no reasonable cause to believe 11 U.S.C. § 522(q)(1) may be applicable to the debtors; there is not pending any proceeding in which the debtors may be found guilty of a felony described in § 522(q)(1)(A) or liable for a debt under § 522(q)(1)(B). The court sets November 19, 2018 as the date by which any creditor may file an adversary proceeding contesting the dischargeability of any debt under § 523(a)(6). The order granting this motion will be signed after the debtors' cause a notice under Federal Rule of Bankruptcy Procedure 2002 to be sent to all creditors of this deadline no later than October 19, 2018 and file a certificate of service to that effect.

14. 18-10871-B-13 **IN RE: JOHNNY/CATHERINE GARCIA**
RSW-1

MOTION TO CONFIRM PLAN
8-6-2018 [39]

JOHNNY GARCIA/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: The hearing will proceed as scheduled.

DISPOSITION: The hearing will proceed as a scheduling conference for an evidentiary hearing on the issues identified below.

ORDER: The court will issue an order.

The Garcia's are "below median" debtors. They are asking the court to confirm their First Modified Plan ("Plan"). Doc. #39-44. The Plan is 60 months in duration. They are going to pay the lender secured by their residence the pre-petition arrearage due and maintain regular monthly payments. They also propose to directly pay a lender secured by a vehicle. Unsecured creditors with allowed claims will not receive a distribution.

Mr. Garcia sustained a work related injury in 2008 severely affecting his back. Doc. #52. He applied for SSDI benefits which were granted and he was deemed 93% disabled. *Id*. Those benefits stopped in 2009 when the Workers Compensation Appeals Board awarded him benefits. The WCAB award is $1,000 monthly until January 10, 2022 with a $50,000 "lump sum" on August 30, 2020. *Id.* In 2020, Mr. Garcia will be 55 years old. *Id.* Mr. Garcia says he and his spouse "barely" have the income to "get by" and it is "difficult" to make the Plan payments. *Id.* Mr. Garcia is currently employed as an independent contractor for "ride share" services. Ms. Garcia is currently receiving unemployment but is looking for work. The Garcia's claimed that both the monthly payments ($1,000 per month) and the $50,000 "lump sum" are exempt under California's exemption statutes. Cal. Code Civ. Pro. § 704.160.

The Trustee objects to confirmation of the Plan. Since the debtors are "below median," the Trustee argues, projected disposable income (PDI) is calculated using schedules I and J. The debtors completed a "Form 122 C-2" which was unnecessary but did not account for the lump sum payment in the I and J schedules. So, the Trustee concludes, the debtors have not included all of their PDI for distribution to unsecured creditors and the Plan cannot be confirmed under 11 U.S.C. § 1325(b)(1)(B) and (b)(2). The Trustee reasons that exempt property is irrelevant for the PDI calculation.

The debtors reference several cases which take "the minority view" that exempt property should be unavailable as an element of PDI. The Trustee counters that under Hamilton v. Lanning, 560 U.S. 505, 130 S.Ct. 2464 (2010), the payment of the $50,000 is virtually certain and should enter into the calculation of PDI.

The debtor has the burden of proving all requisites to Plan confirmation. That includes the "disposable income" issue - when a Trustee or unsecured creditor objects to confirmation - and the "good faith" requirements. In re Enabit, 490 B.R. 404, 411 (Bankr. N.D. Cal. 2013); In re McCollum, 363 B.R. 789, 795-96 (E.D. La. 2007). The "good faith" inquiry asks, among other things, did the debtors' act equitably in proposing the Plan? Drummond v. Welsh (In re Welsh), 465 B.R. 843, 855 (9th Cir BAP 2012). Here the debtors propose no payment to unsecured creditors, have not included the $50,000 "virtually certain" payment in their Schedule I, and seek the protection of the bankruptcy law while they pay their arrearages on their home loan over 60 months. That said, Mr. Garcia was severely injured, he may need additional medical care and requires income to "get by" until he qualifies for Medicare. But the court does not have any evidence, other that Mr. Garcia's supplemental declaration, that he believes he will need all of the $50,000 for medical expenses or so he and his spouse can continue to make ends meet. No expert testimony as to the likelihood of surgery in the future or Mr. Garcia's prognosis for gainful employment has been provided. Nor has Ms. Garcia's employment prospects and other issues been proven. It is noteworthy the Trustee has provided no evidence either.

The "majority view" seems applicable here. See, Hagel v. Drummond (In re Hagel), 184 B.R. 793 (9th Cir BAP 1995) (superseded by statute on other grounds); Stuard v. Koch (In re Koch), 109 F.3d 1285 (8th Cir. 1997); In re Gebo, 290 B.R. 168 (Bankr. M.D. Fla. 2002) [including "exempt property" as disposable income does not compel liquidation of property but whether the debtor, who is in Chapter 13 voluntarily, is in good faith if the exempt property can be paid to unsecured creditors]. See also, In re Minor, 177 B.R. 576 (Bankr. E.D. Tenn. 1995) [worker's compensation received post-petition is income the court can consider in evaluating a Chapter 13 Trustee's motion to modify a Plan]; In re Hall, 442 B.R. 754 (Bankr. D. Idaho 2010) [SSDI payments made to debtor's defray maintenance expenses "freeing up" income from other sources to make Chapter 13 plan payments].

Disposable income is post-petition income that is not reasonably necessary for maintenance and support of the debtors or dependents of the debtors under 11 U.S.C. § 1325(b)(2). McDonald v. Burgie (In

re Burgie), 239 B.R. 406, 411 (9th Cir. BAP 1999). "Lump sum" is a misnomer. The proper inquiry in whether it is income or an income substitute, not whether it is received by bulk or in installments. *Id*. The germane question: what the payment's purpose is. Profit v. Savage (In re Profit), 283 B.R. 567, 574 (9th Cir BAP 2002). Here, Mr. Garcia's supplemental declaration speculates on what the WCAB judge considered when the awards were made in 2009. He also says he *believes* he will need all the money to be paid including the lump sum for medical needs. No evidence is presented how he comes to that conclusion. No expert testimony about what will be needed to assist the Garcia's through the upcoming medical issues was presented. The court cannot rule on the disposable income issue on this record.

The exemption of the payments is not controlling. PDI is not confined to "property of the estate." In Moen v. Hull (In re Hull), 251 B.R. 726, 732 (9th Cir BAP 2014), the BAP held that exempt property must be considered in determining PDI [non-filing spouse's post-petition income]. Here, the court is now left to speculate and in light of the objection, there is currently an insufficient record to rule.

15. 18-10875-B-13 **IN RE: MICHAEL CHAPMAN**
MHM-3

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
6-25-2018 [31]

PATRICK KAVANAGH
RESPONSIVE PLEADING

NO RULING.

16. 18-12878-B-13 **IN RE: KYLE DAUK AND CANDIS MONKIEWICZ**
CJO-1

OBJECTION TO CONFIRMATION OF PLAN BY PENNYMAC LOAN SERVICES, LLC
9-17-2018 [13]

PENNYMAC LOAN SERVICES, LLC/MV
ROBERT WILLIAMS
CHRISTINA O/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

17. 17-10379-B-13 **IN RE: NICOLE SCOTT**
SJS-2

MOTION FOR COMPENSATION FOR SUSAN J. SALEHI, DEBTORS ATTORNEY(S)
8-15-2018 [34]

SUSAN SALEHI

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 9004-2(c)(1) requires that motions, exhibits, *inter alia*, to be filed as separate documents. Here, the motion and exhibits were combined into one document and not filed separately. Doc. #34. Additionally, this motion for compensation has the same docket control number as a previously filed, but not set for a hearing, motion for compensation. *See* doc. #32. The evidence is also insufficient. The motion refers to "time sheets attached hereto as Exhibit A," yet Exhibit A is just the "Rights and Responsibilities." If counsel re-files this motion, counsel must include time records sufficiently showing the kind of work done regarding this case and the amount of time spent on it.

18. 18-12179-B-13 **IN RE: SAVINO VELASQUEZ AND DORA MEDRANO**
WDO-1

MOTION TO CONFIRM PLAN
8-22-2018 [30]

SAVINO VELASQUEZ/MV
WILLIAM OLCOTT
DISMISSED 9/7/18

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. #39.

19. 18-10681-B-13 **IN RE: RICHARD/MARIA LAUREYS**
WDO-3

MOTION TO CONFIRM PLAN
8-30-2018 [57]

RICHARD LAUREYS/MV
WILLIAM OLCOTT

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.

20. 18-11888-B-13 **IN RE: SALVADOR CERVANTES**
MHM-3

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
9-13-2018 [32]

NICHOLAS WAJDA

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

DISPOSITION: Continued to November 8, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on November 8, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than October 25, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 1, 2018. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set December 20, 2018 as a bar date by which a chapter 13 plan must be confirmed *or objections to claims must be filed* or the case will be dismissed on the trustee's declaration.

21. 18-12495-B-13 **IN RE: JOSIE JOHNSON**
MHM-2

MOTION TO DISMISS CASE
8-17-2018 [24]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

10:00 AM

1. 17-14304-B-7 **IN RE: XCOR AEROSPACE INC, A CALIFORNIA CORPORATION**
JMV-1

MOTION TO PAY
9-6-2018 [118]

JEFFREY VETTER/MV
RILEY WALTER
LISA HOLDER/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. The chapter 7 trustee is authorized to pay $903.00 for the tax year 2017, $800.00 for the tax year 2018, and $800.00 in anticipation of the taxes owed in 2019 as an administrative expense. The trustee is also authorized to pay an additional amount up to $1,700.00 for any unexpected tax liabilities without further court approval.

2. 17-14304-B-7 **IN RE: XCOR AEROSPACE INC, A CALIFORNIA CORPORATION**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
9-4-2018 [111]

RATZLAFF TAMBERI & WONG/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 has been 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.

The motion will be GRANTED. Trustee's accountants, Ratzlaff, Tamberi & Wong, requests fees of $3,276.00 and costs of $82.72 for a total of $3,352.72 for services rendered from December 27, 2018 through August 16, 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) Preparation of 2017 federal and state taxes, (2) Preparation of 2018 federal and state taxes, (3) Corresponding with the trustee regarding tax and audit issues of the estate, and (4) Preparing the adjust trial balance for fiscal year 2017. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $3,276.00 in fees and $82.72 in costs.

3. 18-13309-B-7 **IN RE: JESSICA JOHNSON**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-24-2018 [10]

SANTANDER CONSUMER USA INC./MV
LAUREN RODE
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 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 2016 Chrysler 200. Doc. #15. The collateral has a value of $14,300.00 and debtor owes $31,292.58. *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).

4. 18-12815-B-7 **IN RE: SHARON RIGHTMER**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2018 [12]

WELLS FARGO BANK, N.A./MV
D. GARDNER
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The collateral is a parcel of real property commonly known as 610 Kern Street, Taft, California 93268. Doc. #14. The collateral has a value of $72,000.00 and the amount owed is $74,964.87. Doc. #15. The proposed order shall specifically describe the property or action to which the order relates.

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

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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

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

5. 18-12337-B-7 **IN RE: GENESIS POOLS, INC.**
RP-1

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY, LLC. AS AUCTIONEER(S) AND/OR MOTION TO CONDUCT PUBLIC AUCTION SALE 8-14-2018 [48]

RANDELL PARKER/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.

Trustee is authorized to employ Gould Auction & Appraisal Company, LLC ("Auctioneer") to conduct a public auction sale of estate property. The trustee proposes to compensate Auctioneer on a percentage collected basis. The percentage is 15% of the gross proceeds. Doc. #48. The trustee is also authorized to pay up to, but not more than, $1,650.00 for the hauling and storage of the vehicles. Auctioneer is responsible of all other "ordinary expenses including, but not limited to, security advertising, and other costs of sale." Auctioneer will be reimbursed up to $500.00 in extraordinary expenses.

11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis." The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

The motion is GRANTED.

6. 18-13237-B-7 **IN RE: PAUL PASCARELLA**
MJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-5-2018 [17]

FREEDOM MORTGAGE
CORPORATION/MV
ASHTON DUNN
MEHRDAUD JAFARNIA/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 1200 Beasley Street, Ridgecrest, California 93555. Doc. #19. The collateral has a value of $218,271.00 and the amount owed is $186,613.63. Doc. #20. The proposed order shall specifically describe the property or action to which the order relates.

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

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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

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

7. 10-12664-B-7 **IN RE: CHARLES BLANKENSHIP**
DRJ-2

MOTION TO AVOID LIEN OF AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.
9-20-2018 [24]

CHARLES BLANKENSHIP/MV
GARY HUSS

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

DISPOSITION: Continued to October 24, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

By order of the court (doc. #35), this matter is continued to October 24, 2018 at 9:30 a.m.

8. 18-12077-B-7 **IN RE: TROY PINKLY AND LORENA GUILLORY**
UST-1

MOTION FOR DENIAL OF DISCHARGE OF JOINT DEBTOR UNDER 11 U.S.C. SECTION 727(A)
8-30-2018 [17]

TRACY DAVIS/MV
WILLIAM OLCOTT
TERRI DIDION/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. 11 U.S.C. § 727(a)(8) states that a debtor shall be granted a discharge unless "the debtor has been granted a discharge under this section . . . in a case commenced within 8 years before the date of the filing of the petition."

Debtor Lorena Guillory previously filed for chapter 7 relief on September 30, 2011 and received a discharge on January 25, 2012. Doc. #20. September 30, 2018 is within eight years of the date this petition was filed (May 23, 2018). Therefore, debtor Lorena Guillory cannot receive a discharge in this case and the United States Trustee's motion is GRANTED.

9. 18-11784-B-7 **IN RE: FERNANDO PANTOJA**
UST-1

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)
8-30-2018 [14]

TRACY DAVIS/MV
VINCENT GORSKI
TERRI DIDION/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. 11 U.S.C. § 727(a)(8) states that a debtor shall be granted a discharge unless "the debtor has been granted a discharge under this section . . . in a case commenced within 8 years before the date of the filing of the petition."

Debtor previously filed for chapter 7 relief on December 27, 2010 and received a discharge on May 31, 2011. Doc. #17. December 27,

2010 is within eight years of the date this petition was filed (May 1, 2018). Therefore, debtor cannot receive a discharge in this case and the United States Trustee's motion is GRANTED.

10. 17-12187-B-7 **IN RE: PAUL/JOAMY BALDERAS**
WEE-3

MOTION TO SET ASIDE DISMISSAL OF CASE
8-22-2018 [55]

PAUL BALDERAS/MV
WILLIAM EDWARDS
DISMISSED 09/11/2017

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. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

The debtors' case was dismissed for failure to pay the $31.00 fee for filing an amended Schedule F. Debtor's counsel states that the fee was not paid because he (counsel) thought he paid the fee, but he actually had not.

The court is persuaded that these facts qualify sufficiently as "mistake" or "excusable neglect." Debtors have since filed a motion

to reopen the case and pay the required additional filing fee of $31.00.

10:30 AM

1. 18-10390-B-11 **IN RE: HELP KIDS, INC.**
LKW-7

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
9-12-2018 [107]

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.

This motion is GRANTED. Movant shall be awarded $5,460.00 in fees and $58.66 in costs.

2. 18-11990-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-18-2018 [1]

D. GARDNER

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

DISPOSITION: Continued to November 8, 2018 at 10:30 a.m.

ORDER: The court will issue the order.

Under the order continuing the hearing on approval of the Disclosure Statement (doc. #68), a new Disclosure Statement and Plan is to be filed by October 15, 2018 and a hearing for approval of the new Disclosure Statement is set for November 8, 2018. Since opposition and reply dates have been set, there is no need to conduct this hearing. Debtor shall, and any other party may, file a status report on or before November 1, 2018. .

3. 17-11591-B-11 **IN RE: 5 C HOLDINGS, INC.**
LKW-18

MOTION FOR COMPENSATION FOR CBIZ MHM, LLC, ACCOUNTANT(S)
9-5-2018 [446]

CBIZ MHM, LLC/MV
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 has been 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.

The motion will be GRANTED. Debtor's accountants, CBIZ MHM, LLC, requests fees of $17,055.00 for services rendered from December 1, 2017 through June 30, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparing debtor's monthly operating reports, (2) Preparing debtor's payroll tax returns, (3) Making adjustments to debtor's financial records, and (4) assisting debtor and counsel in preparing the disclosure statement and plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

CBIZ MHM, LLC shall be awarded $17,055.00 in fees.

11:00 AM

1. 18-11575-B-7 **IN RE: SONIA PEREZ**
   18-1051

   STATUS CONFERENCE RE: COMPLAINT
   8-6-2018 [1]

   LBS FINANCIAL CU V. PEREZ
   KAREL ROCHA/ATTY. FOR PL.

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

DISPOSITION: This matter will be continued to November 8, 2018 at 11:00 a.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.

11:30 AM

1. 18-12443-B-7 **IN RE: ADOLFO GOMEZ ALVAREZ AND JESSICA GOMEZ**

PRO SE REAFFIRMATION AGREEMENT WITH NISSAN MOTOR ACCEPTANCE CORPORATION
9-11-2018 [14]

OSCAR SWINTON

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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. 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.

2. 18-12561-B-7 **IN RE: CARLOS SOLIS AND BEATRIZ ALVAREZ**

PRO SE REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
8-27-2018 [15]

OSCAR SWINTON

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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. 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.

3. 18-13266-B-7 **IN RE: ARLISHA STEWART**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
8-31-2018 [24]

NO RULING.