UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, December 13, 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. 18-12004-B-13 **IN RE: HERBERT KELLEY**
SJS-3

MOTION TO CONFIRM PLAN
10-13-2018 [62]

HERBERT KELLEY/MV
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").

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

2. 18-13805-B-13 **IN RE: SHANNON/TY WILLIAMS**

OBJECTION TO CONFIRMATION OF PLAN BY BRIDGECREST CREDIT COMPANY, LLC
11-19-2018 [30]

BRIDGECREST CREDIT COMPANY, LLC/MV
RICHARD STURDEVANT
JENNIFER BERGH/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This objection is OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This objection did not include a DCN. Therefore, it is OVERRULED WITHOUT PREJUDICE.

3. 12-16106-B-13 **IN RE: JOSE TRUJILLO**
VAG-7

MOTION TO AMEND ORDER RE: VALUE COLLATERAL OF ALFRED L. SANTACRUZ
11-5-2018 [101]

JOSE TRUJILLO/MV
VINCENT GORSKI

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 Rules of Civil Procedure 60(a), made applicable by Federal Rule of Bankruptcy Procedure 9024, states that," A court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion. . ."

The court has reviewed the subject order (doc. #67) and strikes it under Fed. R. Civ. P. 60(a). The proposed order included as exhibit A shall be entered. The proposed order shall be labeled "Amended Order." A separate order granting this motion shall also be submitted.

The court notes that the exhibit was included with the motion, and not as a separate document, which is in violation of LBR 9004-2(c)(1).

4. 18-13714-B-13 **IN RE: DARON NUNN**
MHM-2

MOTION TO DISMISS CASE
11-14-2018 [27]

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 there has been unreasonable delay by the debtor that is prejudicial to creditors. [11 U.S.C. § 1307(c)(1)]. The debtor failed to make all payments due under the plan. [11 U.S.C. § 1307(c)(1) and (c)(4)]. The debtor failed to provide the trustee with all the documentation required. [11 U.S.C. § 521(a)(3) and (4)]. Accordingly, the case will be dismissed.

5. 18-13714-B-13 **IN RE: DARON NUNN**
RMG-1

OBJECTION TO CONFIRMATION OF PLAN BY LAWRENCE S. COHEN
11-9-2018 [20]

LAWRENCE COHEN/MV
ROBERT WILLIAMS
RICHARD GARBER/ATTY. FOR MV.

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. The case is dismissed. See matter #4 above, MHM-2.

6. 18-13527-B-13 **IN RE: GREG/SHERRY KELLY**
PK-6

MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK
10-25-2018 [64]

GREG KELLY/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.

The debtor is competent to testify as to the value of the Sleep Number bed. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at $500.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

7. 17-14235-B-13 **IN RE: MICHAEL OCHOA**
RSW-2

MOTION TO INCUR DEBT
11-21-2018 [29]

MICHAEL OCHOA/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 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)(3) and an order shortening time (doc. #48) 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 property to be improved is not the debtor's residence and according to the schedules, is over-encumbered. But, the confirmed plan requires 100% payment to creditors with allowed unsecured claims.

This motion is GRANTED. Debtor may borrow no more than $25,000.00 from Cal Pro Real Estate. Should the debtors' budget prevent maintenance of current plan payment, debtors shall continue making plan payments until the plan is modified.

8. 18-13842-B-13 **IN RE: JOHN MCKINLEY**
MHM-2

MOTION TO DISMISS CASE
11-13-2018 [18]

MICHAEL MEYER/MV
NEIL SCHWARTZ
DISMISSED 11/29/18

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on November 29, 2018 (Doc. #27).

9. 18-13444-B-13 **IN RE: ALVIN REYES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-29-2018 [36]

SUSAN SALEHI
DISMISSED 11/9/18

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. #44.

10. 18-13846-B-13 **IN RE: EDUARDO HURTADO-ORTIZ AND VERONICA HURTADO**
MHM-2

MOTION TO DISMISS CASE
11-13-2018 [24]

MICHAEL MEYER/MV
YELENA GUREVICH
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #38.

11. 18-13847-B-13 **IN RE: RANDY ADAMS**
MHM-1

MOTION TO DISMISS CASE
11-15-2018 [21]

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 there has been unreasonable delay by the debtor that is prejudicial to creditors. [11 U.S.C. § 1307(c)(1)]. The debtor failed to make all payments due under the plan. [11 U.S.C. § 1307(c)(1) and (c)(4)]. The debtor failed to file tax returns for years 2015, 2016, and 2017. [11 U.S.C. § 1307(e)]. Accordingly, the case will be dismissed.

12. 16-12259-B-13 **IN RE: DANIEL SANDERS**
PK-1

MOTION TO SUBSTITUTE AS THE REPRESENTATIVE FOR THE DECEASED, FOR CONTINUED ADMINISTRATION OF THE CASE, FOR WAIVER OF THE SECTION 1328 CERTIFICATE REQUIREMENTS , FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
11-1-2018 [18]

CLYDE SANDERS/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.

This motion is GRANTED. Movant is the debtor's brother. Debtor passed away on October 23, 2018. Doc. #25. Movant asks the court to substitute him as debtor's representative in this case; that the case be continued to be administered; and for the post-petition education requirement for entry of discharge and the certification requirement to be waived.

Federal Rule of Civil Procedure 25, made applicable by Federal Rule of Bankruptcy Procedure 7025 and 9014, the court may order substitution of the proper party.

Under 11 U.S.C. § 1328(g), the court cannot grant a discharge to a debtor in chapter 13 unless the debtor completes an instructional course concerning personal financial management, unless they are a person described in § 109(h)(4). Section 109(h)(4) excuses individuals "whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability. . . ."

The court orders that movant Clyde Sanders is substituted for the deceased debtor Daniel Sanders. The case shall continue to be administered. The court excuses the certification requirements for entry of discharge under 11 U.S.C. § 109(h).

13. 17-12561-B-13 **IN RE: VICTOR/KARLA MOORE**
PK-3

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
10-30-2018 [76]

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.

This motion is GRANTED. Movant is awarded $5,500.00 in fees.

14. 14-13862-B-13 **IN RE: MARK JOSEPH**
NLG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-2018 [86]

FEDERAL NATIONAL MORTGAGE
ASSOCIATION/MV
ROBERT WILLIAMS
NICHOLE GLOWIN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion for Relief from Automatic Stay was previously filed on September 28, 2016 (doc. #54) and denied as moot on November 3, 2016. Doc. #66. The DCN for that motion was NLG-1. Another motion for Relief from Automatic Stay was filed on January 19, 2018 (doc. #70) and denied without prejudice on March 8, 2018. Doc. #82. The DCN for that motion was NLG-1. This motion also has a DCN of NLG-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

15. 14-12269-B-13 **IN RE: DONALD/MARGIE MCKAY**
LKW-9

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-15-2018 [139]

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.

Movant is awarded fees of $4,357.50 and expenses of $43.24.

16. 16-11473-B-13 **IN RE: SHELBY/CAROL KING**
LKW-19

MOTION FOR COMPENSATION FOR LEONARD K WELSH, DEBTORS ATTORNEY(S)
11-19-2018 [391]

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 $19,255.00 and costs of $170.41 for a total of $19,425.41 for services rendered from October 1, 2017 through October 31, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Advising debtor about the administration of its chapter 13 case, (2) Representing debtors in the sale of 15 rental properties and two vacant lots, (3) Resolving concerns concerning The Kern County Treasurer-Tax Collector, the IRS, and the Construction Laborers Trust Funds regarding their claims, and (4) Resolving an adversary proceeding. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $19,255.00 in fees and $170.41 in costs.

17. 18-10575-B-13 **IN RE: NORMA FERNANDEZ**
MHM-4

CONTINUED MOTION TO DISMISS CASE
10-1-2018 [56]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 17, 2019 at 1:30 p.m. A chapter 13 plan must be confirmed by February 28, 2019 or the case will be dismissed on the Trustee's ex parte application.

ORDER: The court will issue an order.

This motion was continued to be heard in conjunction with debtor's motion to confirm plan, number 18 below (RSW-2). This motion is continued to be heard in conjunction with that motion on January 17, 2019 at 1:30 p.m.

This case has been pending for 10 months. The debtor has stipulated to make a years' worth of payments to the creditor secured by her residence. Doc. #32. No plan has been confirmed and the debtor filed an amended plan on October 23, 2018. Doc. #64. The trustee's objections are easily resolveable. There is no reason this case should be delayed. Unsecured creditors are to receive a 100% dividend if the Plan is confirmed. The court finds further delays are prejudicial to creditors and sets a plan confirmation bar date of February 28, 2019. The case will be dismissed on the Trustee's ex parte application if a Plan is not confirmed by that date.

18. 18-10575-B-13 **IN RE: NORMA FERNANDEZ**
RSW-2

MOTION TO CONFIRM PLAN
10-23-2018 [60]

NORMA FERNANDEZ/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 17, 2019 at 1:30 p.m. Debtor must have a chapter 13 plan confirmed not later than February 28, 2019 or the case shall be dismissed on the trustee's ex-parte application.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on January 17, 2019 at 1:30 p.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 January 3, 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 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 January 10, 2019. 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 February 28, 2019 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.

19. 18-13386-B-13 **IN RE: MATTHEW/ANGELA WANTA**
PK-2

MOTION TO CONFIRM PLAN
10-9-2018 [22]

MATTHEW WANTA/MV
PATRICK KAVANAGH
DISMISSED 11/9/18

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. #47.

20. 15-10192-B-13 **IN RE: LLOYD/KATHY BELL**
PK-2

MOTION TO VACATE DISMISSAL OF CASE
11-29-2018 [63]

LLOYD BELL/MV
PATRICK KAVANAGH
DISMISSED 11/15/2018

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. 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 have had a history of failing to make payments. According to the docket, since the plan was confirmed, the trustee has had to file one motion to dismiss and send four Notices of Default. The last Notice of Default resulted in dismissal. But for

only approximately one payment remaining to complete the plan, the court would likely dismiss this case.

But, the court finds that vacating dismissal is warranted due to the inadvertence and excusable neglect of the debtors. The Notice of Default/Intent to Dismiss case for failing to make plan payments stated that the trustee must receive $798.00 plus the current month's payment of $401.00 on or before November 15, 2018, or the case would be dismissed. Debtor Kathy Bell mailed $800.00 via U.S. Priority Mail on November 5, 2018, and it was delivered on November 7, 2018. Doc. #65. She used TFS to pay the balance. Based on her prior experience with TFS, she believed that payments would get to the trustee in one week. Because payment was made in the afternoon on November 7, 2018, for TFS purposes the transaction was made on November 8, 2018. At the time, debtor believed that the payment would arrive on November 15, 2018. Because November 12, 2018 was a federal holiday observed (Veteran's Day), the payment did not post until November 16, 2018, one day after the case was dismissed. *Id.* Debtors have approximately one more payment left.

Therefore, the dismissal shall be vacated.

21. 18-12897-B-13 **IN RE: JENNIFER SHELL**
PK-1

OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 17
10-1-2018 [17]

JENNIFER SHELL/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 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 objection is SUSTAINED.

The parties have stipulated to the following:

Debtor's objection to claim #17 filed by LVNV Funding, LLC in the amount of $10,055.12. Claim #17 is disallowed. Debtor's counsel is awarded attorneys' fees of $750.00 pursuant to California Civil Code Section 1717. That will be the order of the court.

22. 18-12897-B-13 **IN RE: JENNIFER SHELL**
PK-2

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
11-15-2018 [29]

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.

This motion is GRANTED. Movant is awarded $5,160.00 in fees.

10:00 AM

1. 18-14017-B-7 **IN RE: ARMANDO/MELISSA HERNANDEZ**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-9-2018 [11]

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ
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 2015 Honda Accord. Doc. #16. The collateral has a value of $12,000.00 and debtor owes $15,449.90. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and is in movant's possession.

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).

2. 18-13557-B-7 **IN RE: DEREK/THERESA BRINKLEY**
RMD-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
10-16-2018 [15]

CONSUMER PORTFOLIO SERVICE, INC./MV
ROBERT WILLIAMS
RYAN DAVIES/ATTY. FOR MV.

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

DISPOSITION: Granted in part and denied in part.

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

This motion 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 request for relief from co-debtor stay is denied. There is no co-debtor stay in a chapter 7 case.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2013 BMW 328IC. Doc. #19. The collateral has a value of $10,150.00 and debtors owe $24,038.34. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been repossessed and is in movant's possession.

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

3. 18-10760-B-7 **IN RE: SANFORD SEMCHAK & SPEIGHTS INC.**
TGM-6

MOTION FOR ADMINISTRATIVE EXPENSES
11-15-2018 [66]

RANDELL PARKER/MV
PATRICK KAVANAGH
TRUDI MANFREDO/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. Trustee Randell Parker is authorized to pay the California minimum tax for the 2017 tax year in the current amount of $829.37 and the California minimum tax for the 2018 tax year, plus any additional penalties that may accrue prior to payment, the additional penalties not to exceed $100.00.

4. 18-13393-B-7 **IN RE: JOHNNY/MELINDA JOHNSON**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-15-2018 [16]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION/MV
WILLIAM OLCOTT
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The 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 26672 Sebastian Lane, Gold Beach, OR 97444. Doc. #18. The collateral has a value of $350,000.00 and the amount owed is $314,186.95. Doc. #19.

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. 18-14197-B-7 **IN RE: CHRISTOPHER SZABO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-30-2018 [13]

WILLIAM EDWARDS
$335.00 FILING FEE PAID 11/21/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due were paid in full on November 21, 2018.

10:30 AM

1. 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 January 10, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

This matter is continued to January 10, 2019 at 10:30 a.m. to be heard in conjunction with debtor's motion to confirm plan.

2. 18-11990-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
UST-1

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
10-30-2018 [82]

TRACY DAVIS/MV
D. GARDNER
ROBIN TUBESING/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This motion is continued to January 10, 2019 at 10:30 a.m. to be heard in conjunction with debtor's motion to confirm plan.

Under 11 U.S.C. § 1112(b)(3) a hearing on this dismissal motion must be commenced not later than 30 days after the filing of the motion. The motion must be decided not later than 15 days after commencement of the hearing absent the movant's consent to continue the hearing for a specific period or compelling circumstances prevent the court from meeting the time limits.

There is apparently no consequence if these time limits are not met. In re Pinnacle Labs, Inc., No. 11-08-10239 SA, 2008 Bankr. LEXIS 4173 (Bankr. D.N.M. June 19, 2008). The court intends to continue

the hearing to January 10, 2019 to coincide with the hearing on confirmation of the debtor's Plan. If the United States Trustee (UST) does not consent to the continuance and if the hearing is deemed to have "commenced" on December 13, 2018, the court finds compelling circumstances for the hearing and decision on this motion to be outside the time limits in § 1112(b)(3).

First, the UST filed this motion on October 30, 2018. Under 1112(b)(3), the motion should have been heard on or before November 29, 2018. The court uses a "self set" calendar and the UST could have set this hearing in Fresno on November 29, 2018 without need for a separate order and comply with Federal Rule of Bankruptcy Procedure 2002(a)(4). This suggests the UST does not want to strictly comply with the timing requirements on this motion.

Second, the "15-day deadline" for a decision on this motion would fall during the middle of the holiday season and court is not scheduled to be in session. See In re Jayo, No. 06-20051-TLM, 2006 Bankr. LEXIS 1996, 19, n.18 (Bankr. D. Idaho July 28 2006).

Third, at this relatively early stage of the case the UST will need to demonstrate "no more than a 'hopeless and unrealistic prospect' of rehabilitation" to prevail on the grounds asserted in this motion. In re Econ. Cab & Tool Co., 44 B.R. 721, 724 (Bankr. D. Minn. 1984) (citing In re Steak Loft of Oakdale, Inc., 10 B.R. 182, 185 (Bankr. E.D.N.Y. 1981).),*but cf* In re Johnston, 149 B.R. 158, 162 (9th Cir. BAP 1992) (case converted but in addition to continuing loss the debtor was not insuring the rolling stock or complying with industry regulations). The debtor's cash flow is "thin" but the debtor is a church which experiences some collection variance. If the debtor does not confirm the Plan or other circumstances persist, the prospects of rehabilitation may wane. The small amount of receipts does suggest very minor "hiccups" could be fatal to rehabilitation.

Fourth, the debtor's Plan does not contemplate total liquidation but maintaining operations with help from congregants to make payments to the secured creditor. Since the secured creditor may be taking the most risk in the case, the court is interested in its position on dismissal and reorganization prospects. Mr. Andrade's declaration (doc. #107) states the UST fees are current and that a "profit," albeit minimal, is expected for the month of November 2018. There is some support that rehabilitation is not "hopeless" or "unrealistic."

3. 18-14901-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
KDG-1

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
12-10-2018 [9]

FRANK HORSTINK/MV
JACOB EATON
OST 12/11/18

NO RULING.

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

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

DISPOSITION: Continued to March 14, 2019 at 11:00 a.m.

ORDER: The court will issue an order.

Due to the trial in Kern County Superior Court, this matter will be continued to March 14, 2019 at 11:00 a.m. Status reports are due not later than March 7, 2019.

2. 18-12721-B-7 **IN RE: DEBRA SMITH**
18-1071

STATUS CONFERENCE RE: COMPLAINT
10-9-2018 [1]

ABSOLUTE BONDING CORPORATION
V. SMITH
HAROLD RUBINFELD/ATTY. FOR PL.

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

DISPOSITION: Continued to January 10, 2019 at 11:00 a.m.

ORDER: The court will issue an order.

Defendant has not yet answered the complaint. Therefore this status conference is continued to January 10, 2019 at 11:00 a.m.

The court notes that the summons appears to have been served on October 19, 2018 which outside the required time for service after a summons is issued. See Federal Rule of Bankruptcy Procedure 7004(e).

3. 17-11028-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
18-1006

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2018 [1]

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

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

DISPOSITION: Continued under prior order.

NO ORDER REQUIRED: An order continuing the pre-trial conference has already been entered. Doc. #84.

4. 17-12535-B-7 **IN RE: OVADA MORERO**
18-1070

STATUS CONFERENCE RE: COMPLAINT
10-9-2018 [1]

PARKER V. JOHNSON ET AL
TRUDI MANFREDO/ATTY. FOR PL.

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

DISPOSITION: Continued to January 10, 2019 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the stipulation between the parties, this matter is continued to January 10, 2019 at 11:00 a.m. Joint or unilateral status reports shall be filed and served not later than January 3, 2019.

5. 18-12341-B-7 **IN RE: DANNY/ROBIN MARSHALL**
18-1065

STATUS CONFERENCE RE: COMPLAINT
9-28-2018 [1]

RABOBANK, N.A. V. MARSHALL ET AL
MATTHEW KENNEDY/ATTY. FOR PL.

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

DISPOSITION: This matter will be continued to January 10, 2019 at 11:00 a.m.

ORDER: The court will issue the order.

The complaint was filed on September 28, 2018. Doc. #1. A summons was issued on October 1, 2018. Doc. #3. The complaint and summons were served on defendants and their attorney on October 1, 2018. Doc. #6. Defendants had until October 31, 2018 to answer or file a motion to the complaint. The court has not received any answer or motion from defendant.

Plaintiff shall file a motion for entry of 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.

6. 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: Continued to February 7, 2019 at 11:00 a.m.

ORDER: The court will issue an order.

Per plaintiff's request, and for good cause, this matter shall be continued to February 7, 2019 at 11:00 a.m.

7. 18-12689-B-7 **IN RE: MARTIN GIUNTOLI**
18-1067

STATUS CONFERENCE RE: COMPLAINT
10-5-2018 [1]

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

NO RULING.

8. 17-13297-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
17-1088

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-5-2017 [1]

ICON ENTERTAINMENT GROUP, INC.
V. BENDER ET AL
PHILLIP GILLET/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

9. 17-13297-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
17-1088 DMG-2

MOTION FOR PAYMENT OF ATTORNEY FEES
11-7-2018 [42]

ICON ENTERTAINMENT GROUP, INC.
V. BENDER ET AL
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Movants are defendants/debtors Robert Bender and Deborah Halle ("Movants"). Their counsel is D. Max Gardner ("Gardner"). Responding parties, plaintiff Icon Entertainment Group, Inc. ("Icon") filed timely opposition consisting of a declaration and exhibits which included a declaration of Icon's state court counsel, Jeff Wise ("Wise"). Icon is represented in this adversary proceeding by Phillip W. Gillet, Jr. ("Gillet").

Icon filed this adversary proceeding on December 5, 2017 contesting the dischargeability of an alleged obligation owed by movants stemming from ticket sales receipts allegedly diverted by the movants. The receipts were to be allegedly used to pay concert promotion costs and Icon for four (4) live acts Icon booked at the Fox Theater in Bakersfield early in 2017. The amount allegedly diverted is not specified in the prayer of the complaint.

Movants filed an answer denying most of the charging allegations (Doc. #11).

The court held a scheduling conference on March 9, 2017. The court issued a scheduling order immediately thereafter which, among other things, set various deadlines and dates including: the exchange of initial disclosures; close of fact and expert discovery; filing of the parties' pre-trial statements (Icon – September 26, 2018); submission of undisputed facts (October 17, 2018); pre-trial conference (October 24, 2018). With the exception of a non-compliant telephonic appearance at the pre-trial conference, Icon and Gillet missed them all.

Icon/Gillet filed initial disclosures (six month's late) and their "pre-trial statement" (one month late) about two days before the pre-trial conference. Movants filed their pre-trial statement timely even though Icon was ordered to file their statement first.

Movants then filed a Motion to Dismiss this proceeding under Federal Rule of Civil Procedure ("Civil Rule") 41 (made applicable to this proceeding by Federal Rule of Bankruptcy Procedure ("Rule") 7041) for Icon's failure to prosecute and evidently ignoring the court's orders. The court issued a detailed tentative ruling (Doc. #36) denying the motion. The ruling is incorporated by reference here. The court applied the applicable "five part test" and determined that rather than a terminating sanction, a compensatory sanction would be more appropriate. Doc.#39. Movants/Gardner then filed this motion seeking total attorney's fees of $1,891.00. Movants limit the requested award against Gillet at $999.00 and seek the balance ($892.00) to be awarded against Icon. Docs. #42, 44.

Movants limit on compensatory fees against Gillet is altruistic. Movants do not "desire to see Plaintiff's counsel in the situation where he is required to report the sanctions to the State Bar of California," and because counsel is required to self-report sanctions in excess of $1,000.00, Defendant is requesting that any sanction against counsel be capped at $999.00. Doc. #44.

Gillet's opposing declaration largely echoes his opposition to the motion to dismiss. *See* doc. #30, ¶¶4-11, 12, 13, 15, and 16 compared to doc. #54 ¶¶3-7, 10-12, and 20-23.

Icon/Gillet's argument that the court may not award sanctions is not well taken.

First, Icon is incorrect that "[m]onetary discovery sanctions under Federal Rules [sic] of Civil Procedure 37 require that the parties first make a motion compelling discovery with a certification that

movant has conferred or attempted to confer regarding the discovery sanctions," citing Fed. R. Civ. P. 37(a)(1). Icon misreads Civil Rule 37 and assumes that no order was entered dealing with the parties' discovery obligations. The scheduling order certainly does that.

Civil Rule 37(b)(2)(A) (Rule 7037) states that if a party fails to obey an order to provide or permit discovery, the court where the action is pending may issue further just orders. The rules then list several orders, but the list is non-exhaustive. The fact is that Plaintiff failed to obey a court order; the scheduling order issued March 9, 2018. Doc. #20. The court already made findings about Icon/Gillet's failure to obey the order – that should not be in dispute.

Second, Icon/Gillet overstate the limits of this court's "inherent authority" to sanction. *See* doc. #36; Primus Auto. Fin. Servs. v. Batarse, 115 F.3d 644 (9th Cir. 1997) and Fink v. Gomez, 239 F.3d 989 (9th Cir. 2001) cited by Icon do require either a finding of bad faith or something tantamount to bad faith such as recklessness to support sanctions. But, sanctionable conduct includes improper litigation tactics (e.g., delaying or disrupting litigation) bad faith, vexatious or wanton conduct, willful abuses of judicial process or acting for oppressive reasons. Fink, 239 F.3d at 991-92.

Sometimes, a failure to act, by itself, can be sanctionable under the court's inherent power in the face of an affirmative duty to act. See, e.g. Haeger v. Goodyear Tire & Rubber Co., 813 F.3d 1233, 1245 (9th Cir. 2016) rev'd on other grounds, 137 S. Ct. 1178 (2017) [inherent power sanctions imposed based on litigant's failure to produce relevant documents despite their affirmative duty to do so under Civil Rules 26, 34]. This case involved incontestable non-feasance by Icon/Gillet. Until Movants filed the motion to dismiss, Icon/Gillet ignored the scheduling order. Extremely tardy compliance with court orders does not remedy the delay that resulted.

In response to the motion to dismiss, Gillet stated in his declaration (doc. #30) that a family member's illness and the inexperience of his staff were the primary reasons for his failure to comply. Now in response to this motion, Gillet declares (doc. #54) that the delay was to avoid this litigation. He also impliedly claims Gardner did not contact him and as a result failed to mitigate the fees that are the subject of this motion. Gillet admits in his first declaration that monetary sanctions and not the termination sanction was appropriate. Doc. #30.

The apparent lack of contact between Gardner and Gillet, as Icon argues, is plowing old ground. Perhaps Gardner should have contacted Gillet before filing the motion to dismiss or earlier. But, Icon is the plaintiff. Gardner represents the defendants. It is not incumbent on defense counsel to manage plaintiff's counsel's calendar. This is not a discovery skirmish. This motion is for compensatory fees for Icon/Gillet's disregard of the scheduling order.

Third, the evidence from Icon in this case suggests an intentional strategy to delay this case. A state court complaint naming third parties concerning this dispute was filed but not until September 21, 2018 according to the exhibits filed in opposition to this motion. Doc. #55. This is contrary to assurances the court was given at the scheduling conference in this case. Gillet's first declaration references that Icon and its state court counsel, Wise, "decided" to pursue the action in state court then "come back" when judgment was entered. So, "no discovery was commenced [in this action.]"

The Wise declaration (doc. #55) is equally disconcerting. There, he states that there were strategic reasons (i.e. law enforcement authorities' potential prosecution; the relationship between Fox Theater and Icon; potential change in party defendants) for waiting to proceed in state court. What about this court? What about the court's order setting deadlines? Are those also ignored for strategic reasons? Neither the Gillet or Wise declarations address reasons this court's order was not followed.

To be sure, the court did rule on the motion to dismiss that Icon/Gillet were not in bad faith. But, after review of Gillet's second declaration and the Wise declaration, it is apparent this adversary proceeding was filed and was not going to be seriously prosecuted even though the court issued a scheduling order. Icon/Gillet did not bother to file the necessary motions to let the court or the Movants know their plan. That is failing to act in the face of a specific duty. That supports sanctions awarded under the court's inherent power.

But, even if Gillet/Icon's conduct did not rise to the level of sanctions under the court's inherent power, sanctions are justified under Civil Rule 16 (Rule 7016).

Civil Rule 16(f)(1) provides that ". . . on its own, the court may issue any just orders, *including* those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney . . . fails to obey a scheduling or other pretrial order."(emphasis added). Subdivision (f)(2) gives the court the direction to order the party its attorney or both to pay reasonable expenses – including attorney's fees – incurred because of noncompliance with the rule. Only substantial justification for noncompliance or circumstances that would make the award unjust are exceptions to the rule. Id. Sanction awards under Civil Rule 16(f) are discretionary with the court. Ayers v. City of Richmond, 895 F.2d 1267, 1269 (9th Cir. 1980), citing Ford v. Alfaro, 785 F.2d 835, 840 (9th Cir. 1986).

In Ayers, the court found that sanctions imposed on an attorney for failing to appear at a settlement conference was not an abuse of the court's discretion under Civil Rule 16(f). Ayers, 895 F.2d at 1270.

In Ikerd v. Lacy, 852 F.2d 1256, 1258-59 (10th Cir. 1988), the court held that sanctions were appropriate for failure to appear, finding that "[n]either contumacious attitude nor chronic failure is a necessary threshold to the imposition of sanctions" under Civil Rule 16(f).

The District Court for the Eastern District of California held that ". . . courts . . . agree that sanctions may be imposed for a party's unexcused failure to comply with a Rule 16 order, even if that failure was not made in bad faith." Martin Family Tr. v. NECO/Nostalgia Enters. Co., 186 F.R.D. 601, 604 (E.D. Cal. 1999). In Martin Family Tr., the court found that the plaintiff's argument that its conduct should "not be sanctioned because its counsel had a realistic chance of settling the case" "trivialize[d] the import of a Rule 16 scheduling order by suggesting a party can violate the order with immunity from sanctions and ignores litigants' 'unflagging duty to comply with clearly communicated case-management orders.'" Id. (citations omitted).

The Ninth Circuit has affirmed Civil Rule 16(f) sanctions when a party failed to attend a mediation session due to "an incapacitating headache, and that his failure to appear was not intentional." Lucas Auto. Eng'g, Inc. v. Bridgestone/Firestone, Inc., 275 F.3d 762, 769 (9th Cir. 2001).

The reason sanctions were even awarded in the order denying the motion to dismiss is because the court decided to sanction plaintiff in lieu of dismissing the case with prejudice pursuant to Civil Rule 41(b). See Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987). It is disingenuous for Icon/Gillet to argue now that the sanctions should not have been awarded when Gillet suggested the opposite when responding to the motion to dismiss.

Plaintiff failed to obey the court's scheduling order. The court has authority to sanction Plaintiff for failing to obey a scheduling order. The court issued sanctions in its prior order. Plaintiff has made no motion to vacate, modify, or strike the court's prior order for sanctions. The issue need not be litigated further.

Mr. Gillet's other arguments that rely on to Civil Rules 37(a)(3)(A), (a)(5)(A)(i) and (iii), inter alia, are likewise moot.

Icon/Gillet fail to establish that their non-compliance was substantially justified. The court again incorporates its findings in this ruling and those findings in the ruling on the motion to dismiss. They need not be repeated here.

An award of expenses against Icon at this juncture would be unjust. First, Gardner's declaration in support of this motion essentially states that sanctions "should be awarded" against Icon. That is a statement of opinion not a fact. Second, the authority the court has found sanctioning parties for a violation of Civil Rule 16(f) seem to require direct non-compliance such as failing to attend an ordered mediation. See Lucas Auto. Eng'g, Inc., 275 F.3d at 769. That has not occurred here. Based on this record, the failures involved in this motion relate to imprudent counsel strategies not party involvement. Third, while at some moment, Icon must take responsibility for the actions of their agents, because of the relative lack of involvement the court has so far had in this adversary proceeding, there is inadequate historical context to award sanctions directly against Icon.

Icon/Gillet finally argue the fees Movants/Gardner seeks are unreasonable. They contend that because Gardner did not contact Gillet before filing the motion to dismiss this "discovery dispute" was not resolved and the dismissal motion would be unnecessary. They also contend there should be no charge for Gardner's attendance at the scheduled pre-trial conference since he would have to attend anyway. Then they argue they would have paid $600.00 suggested by the court in the tentative ruling on the motion to dismiss but because this motion was filed seeking more sanctions any sanctions awarded should be reduced by what Icon/Gillet have incurred to respond to this motion. These arguments are meritless.

First, there is no dispute as to the rate of fees or the hours Gardner has spent. The court finds both the rate and the hours reasonable based on the court's familiarity with counsel rates in the area and the time needed to prepare and file the motions at issue. Notably, Gardner is seeking nothing for the filing and prosecution of this motion.

Second, the "he did not contact me" argument has been dealt with many times already and the court is simply not persuaded that argument makes any sense in this context.

Third, Icon/Gillet miss the point. This is not a mere discovery dispute but rather a motion for compensatory sanctions for failing to comply with a court order.

Fourth, while Gardner was compelled to attend the pre-trial conference in Fresno in accordance with the scheduling order, nothing was accomplished at that conference directly because Icon/Gillet failed to comply with the scheduling order. In fact, at that conference, Gillet appeared by phone which was specifically precluded by the order. The court finds that the $558.00 representing Gardner's travel time (at ½ his hourly rate) was a reasonable expense caused by Icon/Gillet's failure to abide by the scheduling order.

Fifth, Icon/Gillet's argument that the $600.00 mentioned by the court in the previous tentative ruling should be a sanction "cap" and that "cap" should be reduced by Icon/Gillet's expenses in responding to this motion misapprehends the court's previous ruling.

Plaintiff's counsel willingly and substantially violated the court's order. Plaintiff's counsel made no efforts to seek continuances or modifications of the deadlines in the order. Defendant filed a motion to dismiss through which Plaintiff's counsel explained the delay. Defendant incurred expenses and fees as a result. The sanctions are appropriate to compensate Defendants.

This motion is GRANTED IN PART and DENIED IN PART. Movant/Gardner's expenses in the amount of $999.00 shall be awarded against Gillet payable to Gardner for the benefit of movants 21 days after entry of the order on this motion. The request for sanctions against Icon is DENIED.

10. 17-13297-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
17-1088 PWG-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-15-2018 [46]

ICON ENTERTAINMENT GROUP, INC.
V. BENDER ET AL
PHILLIP GILLET/ATTY. FOR MV.
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 was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The court notes that no Motion was ever filed with the court. Doc. #46 and #47 appear to be identical, and have the same title of "Notice of Hearing on Motion…." This is not in compliance with LBR 9014-1(d)(1) or (d)(4). Subdivision (d)(4) permits, in certain circumstances the combination of a "motion" and "points and authorities." It does not excuse the filing of a "motion."

Plaintiff asks this court to modify the automatic stay under 11 U.S.C. § 362 to allow a state court action filed in September 2017 in Kern County Superior Court to continue until final judgment, for this court to abstain during that time, and for this matter to continue once the state court action has been finally resolved. Doc. #48. The state court action, properly, does not yet name the debtors as defendants. If stay relief were granted, movant would presumably name the debtors as defendants.

Defendants/debtors timely oppose, largely on the grounds that relief from stay would be prejudicial and there is not sufficient cause to permit modification of the stay. Doc. #57.

Analysis of factors governing stay relief to permit litigation to proceed in another forum

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"

This motion is DENIED. The court finds that the *Curtis* factors weigh in favor of defendants.

Factor 1 weighs in favor of debtors because the state court proceeding will not result in a partial or complete resolution of the issues as to the debtors. The bankruptcy court will still have to decide dischargeability under 11 U.S.C. § 523.

Factor 2 weighs in favor of debtors because the issues in the complaint as to the debtors are related to the bankruptcy case. The state court complaint raises issues which, if applied to the debtors, will impact the dischargeability of the claims.

Factor 3 is neutral or militates slightly in favor of the debtors because the foreign proceeding does not involve the debtors as a fiduciary. The state court action could be subsequently amended to include a theory implicating the debtors as fiduciaries. But that would not be the reason the debtors were defendants independent of their alleged liability under the theories plead in the state court complaint.

Factor 4 weighs in favor of debtors because a specialized tribunal has not been established to hear the case.

Factor 5 weighs in favor of debtors because there is no proof that debtors' insurance carrier has assumed full financial responsibility for defending the litigation. In fact, Mr. Bender's declaration suggests otherwise. Doc. #59.

Factor 6 is neutral or slightly favors the debtors because the debtors are not functioning as a bailee or conduit for the goods or proceeds in question. Third parties are involved in the state court action but there is no evidence they are "essentially" involved. The

charging allegations allege facts that center around the debtor's actions or inactions. The debtors do not appear to be involved solely as persons who are not implicated in the ultimate facts alleged.

Factor 7 weighs in favor of debtors. If litigation were to proceed in state court, other creditors may be prejudiced due to the delay in resolving what is apparently a contingent and unliquidated claim against this estate. The state court action is only two and one half month's old when this motion is scheduled to be heard. Realistically it will be many months before the state court action will conclude.

Factor 8 is neutral because the judgment claim may be subject to equitable subordination under 11 U.S.C. § 510. But further development of the record is needed before this factor can be determined.

Factor 9 is neutral at this time because it is unknown whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under 11 U.S.C. § 522(f).

Factor 10 weighs in favor of debtors. The movant (who is also the plaintiff in the state court litigation) filed an adversary proceeding in this court one year ago contesting the dischargeability of its claim against the debtors. Due to movant's inaction, the adversary proceeding has languished for a year and now, it is unknown when the adversary proceeding will be resolved. The pre-trial conference in the adversary proceeding was to have occurred two months ago.

The first Case Management Conference in the state court action is scheduled for March 2019. It is unlikely the state court action will be tried before the adversary proceeding is resolved.

There is nothing inconsistent with judicial economy in trying the adversary proceeding against the debtors in this court. First the elements of intentional fraud in both jurisdictions are virtually identical. See Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000) and Lazar v. Superior Court, 12 Cal. 4th 631, 638, 49 Cal. Rptr. 2d 377, 909 P.2d 981 (1996) and Honkanen v. Hopper (In re Honkanen), 446 B.R. 373, 382 (9th Cir. BAP 2011). Second, the debtors will still have to participate in the state court proceeding as witnesses subject to California's discovery and subpoena rules. The parties can streamline discovery in both actions through stipulations concerning number and use of depositions and so forth.

Factor 11 weighs in favor of debtors because the foreign proceeding has not progressed to the point where the parties are prepared for trial.

Factor 12 weighs in favor of debtors because they are entitled to speedy administration of the estate, their liability notwithstanding a bankruptcy discharge, and a final judgment as to the dischargeability of plaintiff's claim. It is also not irrelevant that movant here failed to abide by the court's scheduling order

issued in early March, 2018 which has caused continued delay in this case.

The court disagrees with movant's contention that the Kern County Superior Court is the best court to determine the validity and amount of any claim against the debtors. Doc. #48. First, while this court is certain that Kern County Superior Court will make a proper decision, claims against the debtors can be part of the claim allowance or dischargeability determination in this court. Second, the state court case was filed over 10 months after movants filed the adversary proceeding in this court. This motion for relief from stay was filed nearly two months later. Third, as mentioned before, the dischargeability of any of movant's claims against the debtor is going to have to be determined by this court in any event. Given the status of the state court action, there is no compelling reason why that determination should be made after a trial in state court.

Abstention analysis

The court possibly could abstain under 28 U.S.C. § 1334(c). See Sec. Farms v. Int'l Bhd. Of Teamsters, 124 F.3d 999, 1009-10 (9th Cir. 1997). But abstention is not mandatory.

First, dischargeability is a "core" proceeding which the bankruptcy court, by reference from the United States District Court, is empowered to determine. 28 U.S.C. § 157(b)(2)(I). The action against the debtors is more than simply "related to" this bankruptcy case. Rather, the claims against the debtors related to their discharge "involve a cause of action created or determined by a statutory provision of title 11." Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir 1995).

Second, the timely adjudication prong of mandatory abstention is not met on this record. One of the requirements in 28 U.S.C § 1334(c)(2) is that that the court shall abstain "if an action is commenced, *and can be timely adjudicated*, in a State forum of appropriate jurisdiction" (emphasis added). "[A] state court trail [sic] that could be a year or more down the road" (doc. #48), as plaintiff states, is not "timely adjudication." The movants decided to file an adversary proceeding in this court first. Movants then decided, for what very well may be authentic, calculated, and appropriate reasons, to file the state court action 10 months after this case. In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) states "[w]here a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." There is no "imminent state court trial."

The factors the court must weigh in making its decision on a request for discretionary abstention weigh in favor of debtors. In deciding whether to abstain, the court should consider 12 factors:

(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.

Id. at 1166-67.

Factor 1 weighs against abstaining because the case has been pending in the bankruptcy court for over a year and the court is able to efficiently administer the estate.

Factor 2 weighs against abstaining as to claims against the debtors because as mentioned above state law elements of intentional fraud are virtually identical to those facts supporting an objection to the dischargeability of intentional fraud claims in bankruptcy court.

Factor 3 weighs against abstaining because the state law issues are neither difficult nor particularly unsettled.

Factor 4 weighs in favor of abstaining because there is a related proceeding in state court. However, that proceeding was filed less than three months prior and has not substantially progressed.

Factor 5 weighs against abstaining because this court’s jurisdiction does apply concerning the dischargeability of claims against the debtors.

Factor 6 weighs against abstaining because the state court proceeding adjudicating any claims against these debtors is very related to this bankruptcy case. The same is not true as to the other parties who are defendants in the state court action. Their issues are remote to this bankruptcy case which support severing any claim against the third party defendants from claims against the debtors. The automatic stay does not protect the third party defendants anyway.

Factor 7 weighs against abstaining because the substance of the claims against the debtors largely impacts dischargeability or claim allowance.

Factor 8 weighs against abstaining because severability of solely state law claims against the debtors, while possible, seems wasteful. The gravamen of the claims against the debtors raised in the dischargeability proceeding are the same as in the state court.

Splitting those claims based upon other theories seems problematic. Even if severable, the delay caused would outweigh any benefits severance would provide.

Factor 9 weighs against abstaining because the bankruptcy court can hear the trial of the claims against the debtor before the Kern County Superior Court given the relative early stage in the Kern County litigation. That litigation has been pending for just over 2 months.

Factor 10 is neutral or militates against abstaining. The movants filed the dischargeability action first in this court. They likely had to file the case in this bankruptcy case to preserve their rights. It makes no sense that movants forum shopped by first filing the case here in this court.

Factor 11 weighs against abstaining. Movants choose the forum by filing the case here. No jury trial is available in the core matters including allowance of claims. The third party defendants may have a right to a jury trial but their claims will not be tried in this court in any event.

Factor 12 weighs against abstaining at this time because the debtors are defendants in the adversary proceeding contesting dischargeability. Third party defendants are not named parties in any action pending here and even if they were, the claims could be severed, as mentioned above. This factor at this time is probably irrelevant since the state court action does not name the debtor's either.

In making its decision, the court should view the circumstances of the case as a whole and in light of the factors analyzed above. See id. at 1169. Viewing the circumstances of the case as a whole, and in light of the factors analyzed above, the court holds that abstaining would not be efficient.

The motion is DENIED.

11:30 AM

1. 18-13319-B-7 **IN RE: DANIEL LOPEZ AND SIRIA MIYAGISHIMA**

REAFFIRMATION AGREEMENT WITH FIFTH THIRD BANK
10-29-2018 [18]

SUSAN SALEHI
REAF RESCINDED 11/20/18 LT

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

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

The debtors filed a Notice of Rescission of Reaffirmation Agreement with Fifth Third Bank on November 20, 2018. Doc. #21. The matter will be dropped as moot.

2. 18-13559-B-7 **IN RE: JUAN DIAZ**

PRO SE REAFFIRMATION AGREEMENT WITH KERN FEDERAL CREDIT UNION
10-25-2018 [9]

MARK MARKUS

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

3. 18-13963-B-7 **IN RE: JOSE ZAGAL HERNANDEZ AND GIULIANA DE DIAS ZAGAL**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
11-16-2018 [10]

OSCAR SWINTON

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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.

4. 18-13482-B-7 **IN RE: CLIFTON/RAEVEN ARY**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
10-18-2018 [17]

R. BELL

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed August 25, 2018, and the lease was not assumed by the chapter 7 trustee within 60 days, 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.