

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, January 10, 2019
Place: Department B – 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [18-14004](#)-B-13 **IN RE: DAVID/GLORIA MARTINEZ**
[RSW-3](#)

MOTION TO CONFIRM PLAN
12-6-2018 [\[26\]](#)

DAVID MARTINEZ/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

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

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

2. [18-13708](#)-B-13 **IN RE: LEONARDO CHAVEZ**
[NSV-1](#)

MOTION TO CONFIRM PLAN
11-21-2018 [\[20\]](#)

LEONARDO CHAVEZ/MV
NIMA VOKSHORI

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.

3. [18-13910](#)-B-13 **IN RE: JERRY/ALLISON VANDENAKKER**
[MHM-2](#)

MOTION TO DISMISS CASE
11-20-2018 [\[17\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtors have failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). The debtors have 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.

4. [18-14213](#)-B-13 **IN RE: JOSEPH SMELTZER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-21-2018 [\[43\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

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

5. [17-13248](#)-B-13 **IN RE: JEANETTE HUMECKY**
[RSW-4](#)

MOTION TO MODIFY PLAN
11-13-2018 [\[64\]](#)

JEANETTE HUMECKY/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

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

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

6. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[PK-2](#)

MOTION TO MODIFY PLAN
12-3-2018 [\[77\]](#)

WES MCMACKIN/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 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.

7. [18-14560](#)-B-13 **IN RE: MATTHEW/ANGELA WANTA**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT
COMPANY
12-12-2018 [\[35\]](#)

FORD MOTOR CREDIT COMPANY/MV
PATRICK KAVANAGH
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Scheduled for final hearing if the matter is
not resolved.

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

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

Creditor Ford Motor Credit Company's ("Creditor") objection is on the grounds that the plan does not provide for the entire amount of Creditor's claim that debtors owe to Creditor as required by 11 U.S.C. § 1325. Doc. #35, claim #4. The objector also claims the plan does not describe the claim as a PMSI when the claim is for a balance on a PMSI. The creditor has filed a statement of disputed facts. This means the creditor does not consent to a ruling without an evidentiary hearing.

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. #9. Creditor's proof of claim, filed December 12, 2018, states an amount of \$24,709.04. The plan does provide for a single adequate protection payment of \$3,000.00 at the trustee's discretion.

The debtors may need to modify the plan to account for the discrepancy. If they do not and the plan is confirmed, the claim still controls. If the plan is modified, then this objection may be moot.

Therefore, this objection is OVERRULED.

8. [18-14867](#)-B-13 **IN RE: EDGAR CORDOVA**
[JKB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-13-2018 [\[12\]](#)

VANGUARD HEALTHSCIENCES,
INC./MV
PHILLIP GILLET
JULIAN BACH/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. The order shall
include no relief otherwise provided by law.

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

The movant, Vanguard Healthsciences, Inc., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) with respect to a piece of real property located at 18417 Buckaroo Court in Bakersfield, CA 93314 ("Property").

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or

part ownership of the subject real property without the consent of the secured creditor or court approval.

On or about October 5, 2016, movant funded a loan to debtor in the original principal sum of \$648,700.00. Doc. #16. The loan is secured by a deed of trust against the Property. Debtor defaulted under the loan on March 1, 2017 by failing to pay off the loan in full at time of maturity. *Id.* On October 29, 2018, the eve of the scheduled nonjudicial foreclosure sale against the Property, an entity named "Chapos Tacos de Tijuana, LLC," which may or may not be the dba of this debtor, commenced the first bankruptcy case, a chapter 11, claiming an interest in the Property. Case no. 18-14387-A-11. That case was dismissed on December 7, 2018 for failure to pay the filing fee. On December 5, 2018, debtor filed this chapter 13 case, identifying the Property as his residence and "Los Tacos Chapos Tacos de Tijuana" as his dba.

Debtor's schedule A/B shows that the Property is valued at \$1,100,000.00. Doc. #30. Schedule D shows two parties that have an interest in the property; Julian Bach in the amount of \$625,000.00 and Michelle Goodell in the amount of \$248,000.00 or \$249,000.00. The text on Schedule D is illegible.

Movant states that amount due and owing to it is nearly \$700,000.00. Doc. #16.

Movant also alleges that he "personally and unconditionally guaranteed another loan made to an entity named 1 Red Investments, Inc., of which he is the President and owner, secured by the [Property]." *Id.* 1 Red Investments, Inc. ("Red") has also been in two successive Chapter 11 bankruptcy cases.

Movant funded a loan to Red for \$645,000.00 on October 18, 2016. *Id.* That loan is secured by the Property. *Id.* Red defaulted under the terms of the loan on March 1, 2017. *Id.* Red first filed Chapter 11 on the eve of the scheduled nonjudicial foreclosure sale. Case no. 18-14340-A-11. That case was dismissed on December 10, 2018 for failure to pay the petition filing fee. Red again filed chapter 11 on December 5, 2018. Case no. 18-14868-A-11.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 18417 Buckaroo Court in Bakersfield, CA 93314; and

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will NOT be ordered waived due to the fact that movant has not shown an exigency endangering movant's interest.

9. [18-14070](#)-B-13 **IN RE: OMAR MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-20-2018 [\[21\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor has 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. [18-14070](#)-B-13 **IN RE: OMAR MARTINEZ**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER AND/OR
MOTION FOR BAR DATE
12-18-2018 [\[26\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

TENTATIVE RULING: This matter will proceed as scheduled if the
trustee withdraws the previous motion, matter
#9.

DISPOSITION: Sustained.

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

The chapter 13 trustee ("Trustee") objects to confirmation under 11
U.S.C. § 1325(a)(6) because debtor is delinquent in the amount of
\$3,238.00, which does not include a plan payment due on December 25,
2018 in the same amount.

If debtor is not current at this hearing on all plan payments, then
this objection shall be sustained.

Pursuant to § 1324(b), the court will set March 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.

If the case is dismissed, this matter will be dropped from calendar
as moot.

11. [13-15280](#)-B-13 **IN RE: JOSEPH/AMAILIA GIL**
[TGF-2](#)

MOTION FOR COMPENSATION FOR VINCENT A. GORSKI, DEBTORS
ATTORNEY(S)
11-13-2018 [\[53\]](#)

VINCENT GORSKI
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The hearing on this motion will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

The legal issues appear to include: whether unpaid attorneys' fees
have been discharged.

10:00 AM

1. [18-14304](#)-B-7 **IN RE: OSCAR GONZALEZ AND MIGDALIA GOMEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-28-2018 [\[13\]](#)

FORD MOTOR CREDIT COMPANY/MV
THOMAS GILLIS
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The 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 Ford Fusion. Doc. #17. The collateral has a value of \$14,421.00 and debtors owe \$17,802.21. *Id.*

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

2. [17-10443](#)-B-7 **IN RE: ASHO ASSOCIATES, INC.**
[KDG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN,
DENATALE, GOLDNER, COOPER, ROSENLIB & KIMBALL, LLP FOR
JACOB L. EATON, TRUSTEES ATTORNEY(S)
12-11-2018 [\[121\]](#)

TODD TUROCI

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded fees of \$6,459.00 and costs of \$13.25.

3. [18-13671](#)-B-7 **IN RE: KATHERINE HERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-28-2018 [\[36\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

4. [18-14573](#)-B-7 **IN RE: WILLIAM BELL**
[KAZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-2018 [\[17\]](#)

DEUTSCHE BANK NATIONAL
TRUSTEE/MV
R. BELL
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The movant failed to serve the amended notice of hearing filed with the court on November 27, 2018 (Doc. #23). LBR 9014-1(e)(3). The movant failed to file form EDC 3-468 Relief from Stay Information Sheet. LBR 4001-1(a)(3). The motion will be DENIED WITHOUT PREJUDICE.

5. [12-14078](#)-B-7 **IN RE: FERNANDO VEGA AND MARIA GARCIA DE VEGA**
[LNH-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DEFENDANTS
12-5-2018 [\[54\]](#)

RANDELL PARKER/MV
JOSEPH PEARL
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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). The defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and a medical device manufacturer and related defendants ("Defendants").

Under the terms of the compromise, the Defendants will pay \$144,500.00 to the estate, in full satisfaction of the claims. After payment of certain fees associated with the litigation, the trustee expects the estate to net approximately \$108,000.00. Total claims filed in the case total \$56,891.70, including the legal fees of debtors' litigation counsel, the law firm Lief, Cabraser, Heimann and Vernstein, LLP.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the defendants have vigorously disclaimed all liability for Debtor's damages; collection will be very easy as the plaintiffs are large corporations which gross billions of dollars annually and the settlement funds are being held by a third-party administrator; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their

attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted except as otherwise ordered.

Movant's request to include an injunction in the order approving this compromise is DENIED. The motion states that "the defendants" request that this court permanently enjoin "all persons or entities" (the motion names several specific entities as well) from prosecuting "any released claims." There are problems with that relief.

First, injunctions are ordinarily issued as part of or following an adversary proceeding. Federal Rule of Civil Procedure ("Civil Rule") 65 (made applicable by Federal Rule of Bankruptcy Procedure 7065). A motion approving a compromise is not an adversary proceeding with its attendant jurisdictional and due process protections.

Second, the motion does not identify any potential claimants who would assert "released claims." Even if the court was inclined to issue an injunction - it is not - the court could not issue an injunction with the required provisions notwithstanding serious due process and notice issues. See Civil Rule 65(d)(2).

Third, injunctions can be issued in connection with confirmation of Chapter 11 plans but only following strict requirements. See 11 U.S.C. § 524(g). This is a reopened Chapter 7 case which was reopened to administer this asset. This is not a reorganization and the release which the Trustee proposes to sign and perform settles a claim. It does not reorganize anything. The request is unnecessary and procedurally improper.

The court will GRANT the motion but DENIES any injunctive relief.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

6. [18-13082](#)-B-7 **IN RE: SANTOS RODRIGUEZ**
[RSB-1](#)

MOTION TO AVOID LIEN OF HUDSON & KEYSE, LLC
11-15-2018 [\[16\]](#)

SANTOS RODRIGUEZ/MV
R. BELL
RESPONSIVE PLEADING

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.

7. [18-14289](#)-B-7 **IN RE: BRYON BULLOCK**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-20-2018 [\[19\]](#)

SANTANDER CONSUMER USA INC./MV
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 proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2014 Dodge Challenger. Doc. #19. The collateral has a value of \$14,700.00 and debtors owe \$16,113.04. *Id.*

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

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

8. [18-14290](#)-B-7 **IN RE: OMAR/STEPHANIE SANCHEZ**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-27-2018 [\[13\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
R. BELL
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 6701 Virden Drive, Bakersfield, California 93313. Doc. #17. The collateral has a value of \$256,000.00 and the amount owed is \$266,836.13. Doc. #14.

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).

10:30 AM

1. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
12-7-2018 [[1](#)]

JACOB EATON

NO RULING.

2. [16-10643](#)-B-12 **IN RE: MARK FORREST**
[LKW-19](#)

MOTION FOR ENTRY OF DISCHARGE
12-19-2018 [[269](#)]

MARK FORREST/MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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. 11 U.S.C. § 1228(a) states "as soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant a discharge of all debts provided for by the plan."

The court finds that debtor has made all payments under the confirmed chapter 12 plan and notes that no opposition has been filed. Pursuant to § 1228(a), debtor's discharge shall be entered.

The court finds that there is no reasonable cause to believe that 11 U.S.C. § 522(q)(1) may be applicable to the debtor because debtor did not claim exemptions in property described in 11 U.S.C. § 522(p)(1) in excess of \$146,450.00, and therefore § 522(q) is not applicable.

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

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-19-2018 [[1](#)]

LEONARD WELSH

NO RULING.

4. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-2](#)

MOTION TO EMPLOY CBIZ MHM, LLC AS ACCOUNTANT(S)
12-5-2018 [[30](#)]

3MB, 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 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. § 327(e) permits employment of "professional persons" on "reasonable terms and conditions."

The debtor-in-possession ("DIP") is authorized to employ CBIZ MHM, LLC ("CBIZ") as its accountants and the accountants for its Chapter 11 estate during the pendency of its Chapter 11 case.

CBIZ will prepare Monthly Operating Reports for Debtor, prepare income tax returns and financial statements for Debtor and its Chapter 11 estate, advise Debtor in the areas of tax law and

business planning, and perform other appropriate services for Debtor.

5. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-3](#)

MOTION TO EMPLOY NATHAN M. HODGES AS SPECIAL COUNSEL
12-20-2018 [\[42\]](#)

3MB, LLC/MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. § 327(e) permits employment of "professional persons" on "reasonable terms and conditions."

The debtor-in-possession ("DIP") is authorized to employ Nathan M. Hodges as its general counsel. Mr. Hodges represented the debtor in Kern County Superior Court prior to this bankruptcy case, defending Debtor against two eminent domain complaints filed by the City of Bakersfield ("Plaintiff").

Mr. Hodges is experienced in business and real estate law and trial practice. Mr. Hodges will render legal services including determining the validity and amount, if any, of Plaintiff's claims by defending Debtor in the lawsuits, prosecuting objections filed by Plaintiff in the bankruptcy court, and/or negotiating settlements with Plaintiff.

6. [18-10390](#)-B-11 **IN RE: HELP KIDS, INC.**
[LKW-8](#)

MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR FINAL DECREE
12-17-2018 [\[122\]](#)

HELP KIDS, INC./MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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. Pursuant to 11 U.S.C. § 1141(d) and Debtor's Plan of Reorganization dated May 15, 2018, Article IX, Section 9.02 and Article XIII, Section 13.02, debtor shall receive its discharge. Under Federal Rule of Bankruptcy Procedure ("Rule") 3022, the court shall also enter a Final Decree closing the case.

11 U.S.C. § 1141(d) states that unless otherwise provided in the bankruptcy code, the plan, or order confirming the plan, "the confirmation of a plan discharges the debtor from any debt that arose before the date of such confirmation"

Debtor's Plan of Reorganization states that "[d]ebtor is entitled to a discharge upon confirmation of the Plan pursuant to Section 1141(d). Accordingly, Debtor will be discharged from any debts that arose prior to confirmation when the Court confirms the Plan and grants a discharge in this case as provided for under Section 1141(d)." Doc. #46.

Rule 3022 states "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court . . . on motion of a party in interest, shall enter a final decree closing the case."

The Bankruptcy Code nor the Bankruptcy Rules of Procedure do not define "full administration" of a chapter 11 case, but the Advisory Committee Rule 3022 outline several factors the court should consider when making that determination. They include: whether the order confirming the plan has become final, whether the debtor or successor to the debtor under the plan has assumed the business and management of the property dealt with under the plan, whether the payments under the plan have commenced, and whether all motions, contested matters, and adversary proceedings have been resolved."

The court finds that the order confirming the plan has become final, that the debtor has assumed the business and management of the property dealt with under the plan, that the payments under the plan have commenced, and that all motions, contested matters, and adversary proceedings have been resolved. Doc. #124.

7. [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

NO RULING.

8. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
[DMG-6](#)

AMENDED/MODIFIED CHAPTER 11 PLAN
11-15-2018 [[100](#)]

D. GARDNER

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. The court finds that the plan conforms to 11 U.S.C. §§ 1123 and 1129. The court notes that no opposition has been filed or served on Debtor.

9. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
[UST-1](#)

CONTINUED 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: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

The court is tentatively granting the debtor's motion to confirm the amended chapter 11 plan, matter #8 above, DMG-6. Because the plan has not been opposed, the court finds that the grounds of this motion are moot and shall be DENIED WITHOUT PREJUDICE.

10. [18-14868](#)-B-11 **IN RE: 1 RED INVESTMENTS INC.**
[JKB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-11-2018 [\[13\]](#)

VANGUARD HEALTHSCIENCES,
INC./MV
PHILLIP GILLET
JULIAN BACH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-

mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Vanguard Healthsciences, Inc., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) with respect to a piece of real property located at 1200 Golden State Avenue in Bakersfield, CA 93301 ("Property").

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

Pursuant to the terms of the loan documents, Debtor was to make payments of interest only commencing December 1, 2016, and the loan fully matured on November 1, 2018. The loan is secured by a deed of trust against the Property. Debtor defaulted under the loan on March 1, 2017. Doc. #16. On October 25, 2018, the eve of the scheduled nonjudicial foreclosure sale against the Property, Debtor commenced its first bankruptcy case, a chapter 11, claiming an interest in the Property. Case no. 18-14340-A-11. That case was dismissed on December 10, 2018 for failure to pay the filing fee. On December 5, 2018, debtor filed this chapter 11 case.

Debtor's schedule A/B shows that the Property is valued at \$1,012,000.00. Doc. #40. Schedule D shows two parties that have an interest in the property; "Triufo 1" in the amount of \$240,000.00 and "Vanguard" in the amount of \$625,000.00 *Id.*

Movant states that amount due and owing to it is over \$700,000.00. Doc. #16.

This matter is also tied to another motion for relief from the automatic stay in a chapter 13 case. Case no. 18-14867-B-13, In re Edgar Cordova.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 18417 Buckaroo Court in Bakersfield, CA 93314; and

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will NOT be ordered waived due to the fact that movant has not shown an exigency.

11. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[KDG-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION
12-10-2018 [\[9\]](#)

FRANK HORSTINK/MV
JACOB EATON

NO RULING.

11:00 AM

1. [18-12721](#)-B-7 **IN RE: DEBRA SMITH**
[18-1071](#)

CONTINUED 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: This matter will be continued to February 7, 2019 at
11:00 a.m.

ORDER: The court will issue the order.

Plaintiff shall file a motion for entry of default and judgment or dismissal and schedule a hearing before this 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.

2. [17-12535](#)-B-7 **IN RE: OVADA MORERO**
[18-1070](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-9-2018 [\[1\]](#)

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

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

DISPOSITION: The status conference will be dropped from calendar
and a scheduling order shall be issued.

ORDER: The court will issue the order.

The court has reviewed the joint status report (doc. #26) and finds no reason to hear a status conference at this time. The status conference will be dropped from calendar and the court will issue a scheduling order which will, among other things, set a pre-trial conference date.

3. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#)

FURTHER STATUS CONFERENCE RE: COMPLAINT
4-25-2018 [\[1\]](#)

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
RESPONSIVE PLEADING

NO RULING.

4. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#) [KB-1](#)

MOTION TO EXTEND TIME
12-17-2018 [\[92\]](#)

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
KATIE BASSEY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

The court notes that the motion was substantially non-compliant with the Local Rules of Practice ("LBR").

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, LBR 9004-2(c)(1) requires that motions, proofs of service, *inter alia*, to be filed as separate documents. Here, the motion and proof of service were combined into one document and not filed separately.

Second, 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.

Third, the notice did not contain the language in LBR 9014-1(f)(1)(B), which states that motions filed on at less than 28 days' notice require the movant to notify the respondent or respondents

that any opposition to motions filed on less than 28 days' notice need not be in writing must be presented at the hearing.

This motion was served on December 14, 2018 and filed on December 17, 2018 and set for hearing on January 10, 2019. Doc. #93. January 10, 2019 is less than 28 days after December 14, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated nothing about opposition, if it was necessary, if it needed to be written and submitted to the court or could be made orally at the hearing, at what time written opposition needed to have been filed and served, etc. 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.

Fourth, no evidence was included with the motion. See LBR 9014-1(d)(1).

5. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#) [KB-2](#)

MOTION FOR PROTECTIVE ORDER
12-17-2018 [\[94\]](#)

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
KATIE BASSEY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

The court notes that the motion was substantially non-compliant with the Local Rules of Practice ("LBR").

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, LBR 9004-2(c)(1) requires that motions, proofs of service, *inter alia*, to be filed as separate documents. Here, the motion and proof of service were combined into one document and not filed separately.

Second, 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.

Third, the notice did not contain the language in LBR 9014-1(f)(1)(B), which states that motions filed on at less than 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on less than 28 days' notice need not be in writing must be presented at the hearing.

This motion was served on December 14, 2018 and filed on December 17, 2018 and set for hearing on January 10, 2019. Doc. #95. January 10, 2019 is less than 28 days after December 14, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated nothing about opposition, if it was necessary, if it needed to be written and submitted to the court or could be made orally at the hearing, at what time written opposition needed to have been filed and served, etc. 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.

Fourth, no evidence was included with the motion. See LBR 9014-1(d)(1).

6. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#) [MH-1](#)

MOTION TO COMPEL AND/OR MOTION FOR PRODUCTION OF DOCUMENTS ,
MOTION FOR SANCTIONS
11-15-2018 [\[62\]](#)

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
MIRIAM HISER/ATTY. FOR MV.

NO RULING.

The court notes that movant failed to comply with Local Rule of Practice (LBR) 9004-2(c)(1).

LBR 9004-2(c)(1) requires that motions, notices, proofs of service, *inter alia*, to be filed as separate documents. Here, the notice and proof of service were combined into one document and not filed separately.

7. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#) [MH-2](#)

MOTION FOR PROTECTIVE ORDER
12-3-2018 [\[82\]](#)

BASSEY V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
MIRIAM HISER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Federal Rule of Civil Procedure ("Civil
Rule") 26(c), as applied to the Bankruptcy Courts by Federal Rule of
Bankruptcy Procedure ("Rule") 7026(c), states that the Court "may,
for good cause, issue an order to protect a party or person from
annoyance, embarrassment, oppression or undue burden or expense..."

Movant asks this court to issue a protective order precluding the
taking of the deposition of "the Defendant, ECMC" pursuant to the
"Notice of Deposition" ("Notice") of plaintiff Katie Bassey
("Bassey").

Bassey's Notice failed to state the person who she would be
deposing. The Notice states that "Plaintiff shall take the
deposition of the Defendant, ECMC." ECMC is not a person, but a
corporations, and corporations are not able to be deposed. The
Notice does not name any officer, director or managing agent in
compliance with Civil Rule 30(b)(1) (made applicable by Rule 7030).
The Notice is also not a notice of a "person most knowledgeable"
deposition ("PMK deposition") in compliance with Rule 7030.

The court also finds that the document requests would cause undue
burden or expense on movant and are irrelevant to the case at hand.
The requested amounts of documents are likely to exceed anything
Bassey could reasonably make use of. The issue at hand is whether
Bassey can show an "undue hardship" in order to have her student
loans discharged, and the document requests would have no bearing on
her individual case.

The court notes that movant failed to comply with Local Rule of
Practice (LBR) 9004-2(c)(1).

LBR 9004-2(c)(1) requires that motions, notices, proofs of service,
inter alia, to be filed as separate documents. Here, the notice and
proof of service were combined into one document and not filed
separately.

8. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[SAA-1](#)

MOTION TO RECONSIDER
10-17-2018 [\[74\]](#)

RESPONSIVE PLEADING

NO RULING.

9. [18-12341](#)-B-7 **IN RE: DANNY/ROBIN MARSHALL**
[18-1065](#)

CONTINUED 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: Default entered on December 14, 2018. Doc. #13.
Continued to February 7, 2019 at 11:00 a.m., subject
to being dropped from calendar if motion for entry
of default judgment is scheduled before January 31,
2019. The hearing must be scheduled prior to that
date, but may be heard after that date. If not,
plaintiff's counsel shall file a status report on or
before January 31, 2019.

ORDER: The court will issue the order.

If a prove-up hearing is scheduled (but not necessarily heard) prior
to the continued hearing date, the status conference will be dropped
from calendar.

If no prove-up hearing is set by then, an order to show cause re:
dismissal will be issued for failure to prosecute.