

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, March 4, 2020
Place: Department B – 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [19-14712](#)-B-13 **IN RE: GEREMY LATTA**
[WDO-3](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT GM FINANCIAL
1-30-2020 [\[51\]](#)

GEREMY LATTA/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

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 is GRANTED. 11 U.S.C. § 1325(a)(*) (the hanging paragraph) gives a debtor the ability to value a motor vehicle acquired for the personal use of the debtor at its current amount, as opposed to the amount due on the loan, when the loan was a purchase money security interest secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of the filing.

Debtor asks the court for an order valuing a 2010 Mitsubishi Lancer ("Vehicle") at \$2,350.00. Doc. #51. Creditor Americredit GM Financial's ("Creditor") claim is listed on the debtor's schedule D

in the amount of \$4,065.62. Doc. #15. Debtor's declaration states that the replacement value (as defined in 11 U.S.C. § 506(a)(2)) is \$2,350.00. Doc. #54. Debtor incurred the debt on July 8, 2012. Id. That date is more than 910 days before debtor filed this case.

The debtor is competent to testify as to the value of the Vehicle. 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). Creditor's secured claim will be fixed at \$2,350.00. 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.

2. [20-10028](#)-B-13 **IN RE: HELECIA CHOYCE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-21-2020 [\[12\]](#)

DISMISSED 1/24/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED: The case was dismissed on January 24, 2020.
Doc. #14.

3. [19-13437](#)-B-13 **IN RE: JOSE REYES**
[RSW-1](#)

MOTION TO MODIFY PLAN
1-15-2020 [\[30\]](#)

JOSE REYES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

4. 16-10344-B-13 **IN RE: CHRISTOPHER/TINA GENEL**
RSW-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
2-19-2020 [59]

CHRISTOPHER GENEL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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. It appears from the moving papers that the chapter 13 debtors-in-possession ("DIP") has considered the standards of In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

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

The DIP requests approval of a settlement agreement between the estate and a defendant arising from a complication during a medical procedure. Doc. #59. The settlement proposed is for \$77,000.00, before attorneys fees of 40% and costs, and receive payment in the net amount of \$42,589.11. Id.

On a motion by the DIP 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 concludes that the A & C Properties factors balance in favor of approving the compromise. That is: the cost and value of time associated with litigating the dispute through trial would be high and it is in the best interest of the estate to resolve the dispute without trial. 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.

5. [19-15053](#)-B-13 **IN RE: YASMIN APRESA**
[RSW-2](#)

MOTION TO CONFIRM PLAN
1-23-2020 [\[27\]](#)

YASMIN APRESA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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. [19-15063](#)-B-13 **IN RE: CHARLES GOFORTH AND ANGELA LUTHER-GOFORTH**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-10-2020 [\[14\]](#)

WILLIAM OLCOTT/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #33.

7. [19-15374](#)-B-13 **IN RE: WILEY ANGLIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-3-2020 [\[20\]](#)

\$79.00 INSTALLMENT PAYMENT 2/10/20

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 on February 10, 2010.

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.

8. [19-10376](#)-B-13 **IN RE: CHRISTINA MARTINEZ**
[RSW-1](#)

MOTION TO MODIFY PLAN
1-13-2020 [\[25\]](#)

CHRISTINA MARTINEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Continued to April 8, 2020 at 9:00 a.m.

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

The chapter 13 trustee ("Trustee") has filed an objection to the debtor's plan for modification. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than March 25, 2020. 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. Trustee shall file and serve a reply, if any, by April 1, 2020.

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 April 1, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

The court notes the late-filed response by debtor. The court will disregard the response pursuant to Local Rule of Practice 9014-1(1). The matter is called to determine only if Trustee wishes to withdraw the objection.

10:00 AM

1. [19-11818](#)-B-7 **IN RE: JONATHAN DOVICH**
[DMG-4](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY
2-12-2020 [\[58\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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 Federal Rule of Bankruptcy Procedure 2002(6) 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 motion will be GRANTED. Trustee's counsel, D. Max Gardner, requests fees of \$2,201.00 and costs of \$102.95 for a total of \$2,303.95 for services rendered from August 9, 2019 through February 6, 2020. Doc. #61.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee application, (2) Drafting motion to sell estate's interest in personal property and accompanying documents, and (3) Preparing quitclaim deed. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$2,201.00 in fees and \$102.95 in costs.

2. [19-14037](#)-B-7 **IN RE: GREGORIO/IDALIA TORRES**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
1-14-2020 [\[20\]](#)

TRACY DAVIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The court already entered an order denying the
motion without prejudice. Doc. #32.

3. [20-10438](#)-B-7 **IN RE: DAVON JACKSON**
[PK-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
2-19-2020 [\[14\]](#)

JERRY WINFREY/MV
PATRICK KAVANAGH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Debtor filed two previous bankruptcy cases in the Eastern District of California; the first on August 28, 2019 (case no 19-13691) which was dismissed on December 10, 2019, and the second on January 9, 2020 (case no. 20-10080) which was dismissed on January 27, 2020. Debtor filed this instant bankruptcy case on February 6, 2020.

In cases where an individual debtor files two or more chapter 7 cases within a one-year period, and within one year after dismissal of the second case files for chapter 7 relief again, the automatic stay does not take effect upon the filing of the later case. 11 U.S.C. § 362(c)(4)(A)(i). Under 11 U.S.C. § 362(c)(4)(B) however, the court may extend the automatic stay if notice and a hearing are

completed within 30 days after the filing of the later case. The 30 day time period will expire on March 7, 2020. The debtor has not yet filed such a motion.

Even though the deadline to file a motion imposing the stay has not expired, the court is still authorized to grant the requested relief under §§ 362(c)(4)(A)(ii) and 362(j). The motion is granted. The stay is not in effect.

4. [18-12341](#)-B-7 **IN RE: DANNY/ROBIN MARSHALL**
[LNH-3](#)

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES ATTORNEY
1-29-2020 [\[79\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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. Trustee's counsel, Lisa Noxon Holder, requests fees of \$7,817.50 and costs of \$223.12 for a total of \$8,040.62 for services rendered from November 14, 2018 through January 28, 2020.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of purchase and sale agreements to sell debtors' interest in two companies, (2) Preparing and filing employment applications, and (3) Reviewing and finalizing the sale of the

estate's assets. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$7,817.50 in fees and \$223.12 in costs.

5. [19-14152](#)-B-7 **IN RE: PHELAN/LAKISHA JONES**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
1-29-2020 [\[21\]](#)

TRACY DAVIS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The United States Trustee ("UST") asks the court to dismiss this case for presumptive abuse pursuant to 11 U.S.C. §§ 707(b)(1) and (b)(2) because debtors have monthly disposable income of \$791.90 (\$45,513.95 over 60 months) resulting in a 100% percent distribution to nonpriority unsecured creditors under another chapter. Doc. #21.

Dismissal for abuse is also warranted under 11 U.S.C. §§ 707(b)(1) and 707(b)(3)(B), because the Debtors have monthly net income after expenses of at least \$843.00 (\$50,580 over 60 months), resulting in a 100% repayment to general unsecured creditors in another chapter based upon the totality of the circumstances of the debtors' financial situation. Debtors did not oppose this motion.

Therefore the motion is GRANTED and the case is dismissed.

6. [19-14157](#)-B-7 **IN RE: JOSE SANCHEZ**
[JMV-1](#)

MOTION TO SELL
2-12-2020 [\[20\]](#)

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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 Federal Rule of Bankruptcy Procedure 2002(a)(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. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee ("Trustee") asks this court for authorization to sell a 2012 Toyota Sienna and 2014 Lexus CT ("Vehicles") to

debtor, subject to higher and better bids at the hearing, for \$14,975.00.

It appears that the sale of the Vehicles are in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Trustee asserts that the 2014 Lexus CT is worth \$12,500.00 and after costs of sale, the estate's interest is \$10,625.00. Doc. #20. Trustee asserts that the value of the 2012 Toyota Sienna is \$5,500.00 and after costs of sale and debtor's exemption, the estate's interest is \$4,350.00. Id. Trustee possesses proof of insurance for both vehicles and a \$1,500.00 partial payment. Doc. #22.

7. [19-12674](#)-B-7 **IN RE: ADRIAN PEREZ**
[DMG-2](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-11-2019 [\[36\]](#)

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

8. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[LNH-2](#)

STATUS CONFERENCE RE: MOTION TO SELL FREE AND CLEAR OF LIENS
2-12-2020 [\[34\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

NO RULING.

At the request of the parties, this matter will proceed as a status conference.

9. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[JMV-1](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7 TRUSTEE
1-30-2020 [\[171\]](#)

JEFFREY VETTER/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
PHILLIP GILLET/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

Chapter 7 Trustee Jeffrey Vetter ("Trustee") requests fees of \$35,202.50 and costs of \$2,885.08 for a total of \$38,087.58 as statutory compensation and actual and necessary expenses. During the course of this case, Trustee conducted the meeting of creditors, sold residential real property, reviewing and reconciling financial records, and prepared the final report. Doc. #174.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested fees and costs.

10. [20-10481](#)-B-7 **IN RE: STAR GATE TRANSPORT, INC.**
[RAP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-14-2020 [\[7\]](#)

SUMITOMO MITSUI FINANCE AND LEASING CO, LTD./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RAYMOND POLICAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Sumitomo Mitsui Finance and Leasing Co., seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) & (2). Doc. #7.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

The collateral consists of four 2018 Utility Refrigerated Van Trailers, each equipped with one 2018 Thermo King TK S600 refrigeration unit (collectively, the "Trailers"). Doc. #11. The total amount owed for all four trailers is \$225,239.10. Id. The movant estimates that the value of each trailer is \$48,026.00 for an aggregate value of \$192,104.00. Doc. #9. The debtor listed each trailer in its schedules at \$65,000.00 each. Doc. #1.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least nine payments. Doc. #9. The movant has produced evidence that the debtor is delinquent at least \$51,987.60, plus late fees and interest, with an additional payment of \$5,776.40 coming due on March 1, 2020. Id. The debtor also failed to maintain proof of insurance coverage on the Trailers. Id. Additionally, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) & (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least nine payments, the debtor failed to maintain proof of insurance, and the collateral is a depreciating asset. No other relief is awarded.

11. [19-15395](#)-B-7 **IN RE: MATTHEW BILLINGTON**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2020 [\[12\]](#)

TD AUTO FINANCE LLC/MV
D. GARDNER/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, TD Auto Finance LLC, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) & (2). Doc. #12. The debtor did not oppose.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

The collateral is a 2017 Dodge Durango. Doc. #12. The movant estimates the value of the collateral to be \$29,325.00 and the total amount owed is \$36,926.07. Doc. #15, 18. The movant obtained pre-petition possession of the vehicle on November 1, 2019. Doc. #15.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least six payments. Doc. #18. The movant has produced evidence that the debtor is delinquent at least \$6,577.99, including late and miscellaneous fees of \$262.50 and \$190.00. Doc. #15, 17.

Additionally, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) & (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least six payments and the collateral is a depreciating asset. No other relief is awarded.

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 April 8, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Plaintiff has set for hearing on April 8, 2020 at 11:00 a.m. a motion for summary judgment. Therefore the status conference is continued to that date and time to be heard in conjunction with the motion.

2. [18-14315](#)-B-7 **IN RE: BRANDON/SANDRA CAUDEL**
[19-1011](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
12-23-2019 [\[64\]](#)

HARDCASTLE SPECIALTIES, INC. V. CAUDEL ET AL
VIVIANO AGUILAR/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 1, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

The parties have stipulated to continuing the pre-trial conference to April 1, 2020 at 11:00 a.m. to be heard in conjunction with plaintiff's motion to dismiss. The court will issue the order.

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

NO RULING.

4. [19-12251](#)-B-7 **IN RE: MARTIN/BETSY MORENOVILLA**
[19-1102](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-26-2019 [\[1\]](#)

ALPHA & OMEGA GARDENING, INC. V. DEMAY ET AL
NATHANIEL OLESON/ATTY. FOR PL.

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

DISPOSITION: Continued to April 8, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

The status conference is continued to April 8, 2020 at 11:00 a.m. If another motion for entry of default judgment is not properly filed and served by then, the status conference will be called to determine why the case should not be dismissed for failure to prosecute.

5. [19-12251](#)-B-7 **IN RE: MARTIN/BETSY MORENOVILLA**
[19-1102](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
2-10-2020 [\[26\]](#)

ALPHA & OMEGA GARDENING, INC. V. DEMAY ET AL
NATHANIEL OLESON/ATTY. FOR MV.

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

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. 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).

First, Local Rule of Practice 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 motion does not include a DCN and therefore does not comply with the local rules.

Second, LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

In this case, the court did not see that a proof of service was filed.

Third, LBR 9004-2(c)(1) requires that motions, notices, *inter alia*, to be filed as separate documents. Here, the motion and notice (doc. #26) were combined into one document and not filed separately.

Fourth, LBR 9014-1(f)(2)(A) states that motions in adversary proceedings must be filed on at least 28 days' notice. This motion was filed on February 10, 2020 and set for hearing March 4, 2020. March 4, 2020 is less than 28 days after February 10, 2020 and therefore not in compliance with LBR 9014-1(f)(2)(A).

Fifth, the notice of hearing was entirely absent of any language required under LBR 9014-1(f)(1), including LBR 9014-1(d)(3)(B)(iii).

Sixth, the motion did not comply with 9004-2(d). There is no exhibit index, and the pages are not numbered.

This ruling may not entirely list the procedural problems with the motion. The court urges counsel to consult the local rules.

6. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[19-1128](#)

MOTION TO SET ASIDE
1-16-2020 [\[17\]](#)

BROWN V. HUDSON
NEIL SCHWARTZ/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order setting aside the default has already
been entered. Doc. #23.

11:30 AM

1. [19-14144](#)-B-7 **IN RE: DARIO GARCIA-VEGA AND FABIOLA FERNANDEZ**

PRO SE REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC
1-24-2020 [\[16\]](#)

JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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

The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.