

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, March 8, 2018
Place: Department B - 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

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. [17-11906](#)-B-13 **IN RE: TRACY FLAHERTY**
[RSW-1](#)

MOTION TO MODIFY PLAN
1-18-2018 [[69](#)]

TRACY FLAHERTY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 5, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on April 5, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than March 22, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 29, 2018. Any reply to the trustee's opposition or motion to confirm a modified plan shall include admissible evidence specifically responding to each issue raised by the trustee concerning the elements of 11 U.S.C. § 1325(a). Docket #77.

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

2. [15-12709](#)-B-13 **IN RE: LORI KITCHEN**
[WDO-5](#)

MOTION TO MODIFY PLAN
1-9-2018 [[96](#)]

LORI KITCHEN/MV
WILLIAM OLCOTT
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The court entered an ordering denying this
motion on February 9, 2018 (dockets #104,
105.)

3. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
1-12-2018 [[34](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED: The motion has been withdrawn by the Moving
Party.

4. [17-14625](#)-B-13 **IN RE: JERRICK/SANDRA BLOCK**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-1-2018 [[20](#)]

ROBERT WILLIAMS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection.

5. [17-13929](#)-B-13 **IN RE: ALBERT/TERRY MCCLAREN**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-24-2018 [[28](#)]

MICHAEL MEYER/MV
L. HURST
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue the order.

This objection has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). A timely response was filed by debtors, which indicated that they had resolved the issues raised by trustee by filing an amended list of exemptions on February 20, 2018. Docket #31. The debtors have proposed a plan providing 100% payment to allowed claims. After reviewing the record and evidence included with debtor's response, the court finds that the objections raised by trustee are resolved and this objection is OVERRULED AS MOOT.

6. [17-13734](#)-B-13 **IN RE: RANDALL KARNES**
[PLG-1](#)

MOTION TO CONFIRM PLAN
1-2-2018 [[22](#)]

RANDALL KARNES/MV
RABIN POURNAZARIAN
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 5, 2018 at 9:00 a.m. A plan shall be confirmed on or before May 31, 2018 or claims objections filed by that date or the court will dismiss the case on the trustee's ex parte application.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on April 5, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to modify a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to has been withdrawn, the debtor shall file and serve a written response not later than March 22, 2018. The response shall specifically address each issue raised in the opposition to

confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 29, 2018. If the debtor does not timely file a modified plan or a written response, this motion to modify the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set May 31, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

7. [17-14638](#)-B-13 **IN RE: TERESITA ERON**
[MHM-2](#)

MOTION TO DISMISS CASE
2-1-2018 [[30](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED: The motion has been withdrawn by the Moving Party.

8. [17-14638](#)-B-13 **IN RE: TERESITA ERON**
[PK-1](#)

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
1-15-2018 [[20](#)]

TERESITA ERON/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 has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The debtor is competent to testify as to the value of the 2007 Honda Pilot. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$5,870.00. 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.

9. [17-14642](#)-B-13 **IN RE: CARMEN AVILA**
[MHM-2](#)

MOTION TO DISMISS CASE
1-31-2018 [[24](#)]

MICHAEL MEYER/MV
PHILLIP GILLET

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). The debtor has failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). Accordingly, the case will be dismissed.

10. [17-14642](#)-B-13 **IN RE: CARMEN AVILA**
[MRG-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT II LLC
1-16-2018 [\[18\]](#)

BOSCO CREDIT II, LLC/MV
PHILLIP GILLET
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice

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

This objection is OVERRULED WITHOUT PREJUDICE for failure to comply with the Local 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.

Also, the objection is moot as the court has dismissed the case on the trustee's motion (item #9 above, MHM-2).

11. [13-10854](#)-B-13 **IN RE: ANTHONY/ELIZABETH PEARCE**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
2-15-2018 [\[79\]](#)

PATRICK KAVANAGH

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.

Mr. Kavanagh will be awarded fees of \$5,400.82 and costs of \$99.18.

12. [15-12954](#)-B-13 **IN RE: MICHAEL HALL**
[PK-5](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
2-14-2018 [[145](#)]

PATRICK KAVANAGH

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 LRB 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.

Mr. Kavanagh will be awarded fees of \$5,000.00.

13. [16-11954](#)-B-13 **IN RE: LAVONE/CHRISTINE HUNTER**
[MHM-2](#)

MOTION TO DISMISS CASE
1-9-2018 [[136](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date certain so the debtor can
file and serve a modified plan.

ORDER: Preparation of the order will be determined at
the hearing.

This motion will be continued and set for a final hearing on April 5, 2018, at 9:00 a.m., to be heard with the debtors' motion to modify plan. No appearance is necessary.

The court notes the trustee has used a previous Docket Control Number ("DCN") for this motion. DCN MHM-2 was used on the trustee's prior motion to dismiss. Dockets #22-28; 35; 54-59.

14. [16-11954](#)-B-13 **IN RE: LAVONE/CHRISTINE HUNTER**
[PK-7](#)

MOTION TO MODIFY PLAN
1-4-2018 [[128](#)]

LAVONE HUNTER/MV
PATRICK KAVANAGH

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

DISPOSITION: Deemed withdrawn.

ORDER: The court will issue the order.

This motion is DEEMED WITHDRAWN because another modified plan and motion to modify (PK-8, matter #15 below) have been filed.

15. [16-11954](#)-B-13 **IN RE: LAVONE/CHRISTINE HUNTER**
[PK-8](#)

MOTION TO MODIFY PLAN
1-31-2018 [[140](#)]

LAVONE HUNTER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date certain so the debtor can file and serve a modified plan.

ORDER: Preparation of the order will be determined at the hearing.

The trustee has filed an objection related to the address for real property subject to a tax lien. The plan change needed to pay the KCTC has since been resolved by a stipulation of the parties filed on March 2, 2018. Docket #154. However, the stale Schedules I and J problem persists.

Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than March 22, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 29, 2018. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

The court notes that the declaration of Christine Lee Hunter states that she "had amended [her] Schedules I and J near the time when this declaration was filed." Docket #143, ¶13. The last amended Schedules I and J were filed over a year ago on February 3, 2017. Docket #85.

16. [14-13862](#)-B-13 **IN RE: MARK JOSEPH**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-19-2018 [[70](#)]

SETERUS, INC./MV
ROBERT WILLIAMS
NICHOLE GLOWIN/ATTY. FOR MV.

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").

Movant filed and served the first notice well within the time frame under LBR 9014-1(f)(1) and included the necessary language under that rule. Docket #71. However, the first notice did not include the LBR 9014-1(d)(3)(B)(iii) language, and the address of the courthouse in Bakersfield was incorrect. Movant corrected both problems with an amended notice of hearing, filed on February 9, 2018. Docket #77. However, February 9, 2018 is less than 28 days notice, requiring a written response 14 days before the hearing. LBR 9014-1(f)(1). Movant needed to comply with LBR 9014-1(f)(2), which the amended notice did not.

Therefore, this motion is DENIED WITHOUT PREJUDICE.

17. [17-14664](#)-B-13 **IN RE: MARIA MORENO**
[MHM-2](#)

MOTION TO DISMISS CASE
1-31-2018 [[17](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED: The motion has been withdrawn by the Moving Party.

18. [17-13866](#)-B-13 **IN RE: CHAD/DEZAREI HARRISON**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
12-12-2017 [[20](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: No disposition.

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

As stated in the pre-hearing disposition at the February 8, 2018 hearing (MHM-1, Motion to Dismiss, docket #44), if the motion to confirm plan (RSW-1, docket #30) is denied, this motion will be granted. If the motion to confirm plan is granted however, this motion will be denied as moot.

19. [17-13866](#)-B-13 **IN RE: CHAD/DEZAREI HARRISON**
[RSW-1](#)

MOTION TO CONFIRM PLAN
1-19-2018 [[30](#)]

CHAD HARRISON/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(b) and will proceed as scheduled. The court notes the timely opposition filed by the trustee.

After reviewing the record, the court believes that the AmeriCredit claim can be addressed in the order confirming plan. As stated in the pre-hearing disposition at the February 8, 2018 hearing (MHM-1, Motion to Dismiss, docket #44), if the plan is not confirmed, the court intends to dismiss the case. Debtors filed their case in October of 2017 and have not made a single plan payment. This suggests the plan is not feasible and confirmation should be denied under 11 U.S.C. § 1325(a)(6). The debtor has not disputed that fact.

This case was filed in October 2017. Mr. Harrison's declaration states he was unemployed before the case was filed and remained so until mid-January 2018. But the declaration does not address the payment of the AmeriCredit claim, or more importantly, why regular payments are likely. Mr. Williams' declaration (docket#33) does not address the feasibility issue and simply contains legal conclusions. The debtor's supplemental I & J (docket #35) admits the debtor's employment status is in transition, thus regular payment under the proposed modified plan is problematic.

The motion is DENIED.

20. [17-11667](#)-B-13 **IN RE: MIGUEL VIVEROS**
[MHM-3](#)

MOTION TO DISMISS CASE
1-30-2018 [\[56\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

This case was filed on April 29, 2017. The Debtor has failed to confirm a Chapter 13 plan. Accordingly, the case will be dismissed.

21. [17-13867](#)-B-13 **IN RE: JEANNIE SAMUEL**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
12-12-2017 [[20](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to April 30, 2018 at 9:00 a.m.

ORDER: Preparation of the order will be determined at
the hearing.

This matter is being continued to April 30, 2018 at 9:00 a.m. to be consistent with the court's order in MHM-2, Objection to Confirmation of Plan. The order in that matter stated that the debtors shall confirm a chapter 13 plan by April 30, 2018 or the case will be dismissed without further hearing. Docket #42.

22. [17-13867](#)-B-13 **IN RE: JEANNIE SAMUEL**
[RSW-1](#)

MOTION TO CONFIRM PLAN
1-18-2018 [[30](#)]

JEANNIE SAMUEL/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: Preparation of the order will be determined at
the hearing.

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(b). Trustee filed timely opposition.

Trustee's objection is based on the grounds that the plan has not been proposed in good faith, and has included evidence to assert an objection on those grounds. The burden has now shifted to the debtor to show that the plan has been proposed in good faith. The trustee also objects on feasibility grounds since the debtor has not made a payment since October 2017 when the case was filed. The debtor has not filed a timely reply.

23. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
12-29-2017 [\[38\]](#)

MICHAEL MEYER/MV
REBECCA TOMILOWITZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: No disposition. If there are still factual disputes, further scheduling may be ordered if the court finds the disputes are material. Hearing will be continued to April 5, 2018 at 9:00 a.m.

ORDER: Preparation of the order will be determined at the hearing.

The court notes that the debtors do not consent to this court's resolution of disputed material factual issues under Federal Rule of Civil Procedure 43(c).

Additionally, the court reminds counsel that Local Bankruptcy Rule 9004-2(c)(1) requires that exhibits, inter alia, filed in a motion "shall be filed as separate documents."

Here, the exhibits were included in the response, docket #50, and not filed separately.

24. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[RT-4](#)

MOTION TO CONFIRM PLAN
1-18-2018 [\[42\]](#)

EDUARDO ESCOBAR/MV
REBECCA TOMILOWITZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to April 5, 2018 at 9:00 a.m. since motion to value was filed. However there is no evidence that the debtor has provided the October 2017 mortgage statements and proof of payment to the trustee.

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

25. [17-14681](#)-B-13 **IN RE: JOHN/OLIVIA JILES**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA
INC.

2-6-2018 [[18](#)]

SANTANDER CONSUMER USA INC./MV
ROBERT WILLIAMS
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Continued to April 5, 2018 at 9:00 a.m.

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

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 meeting has concluded and this objection has not been withdrawn, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

26. [13-14390](#)-B-13 **IN RE: SHIN/MICHIKO YOSHIKAWA**
[PK-7](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)

2-15-2018 [[130](#)]

PATRICK KAVANAGH

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 LRB 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.

Mr. Kavanagh will be awarded fees of \$2,000.00 and costs of \$25.74.

27. [18-10490](#)-B-13 **IN RE: HECTOR SOLIZ AND BEATRIZ GOMEZ SOLIZ**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-22-2018 [\[8\]](#)

HECTOR SOLIZ/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

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

This case was filed on February 15, 2018 and the automatic stay will expire on March 17, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise

facts of the case." *In re Castaneda*, 342 B.R. 90 (Bankr. S.D. Cal. 2006), *citations omitted*.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed on the grounds that debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

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

Debtors previously filed bankruptcy in order to stop a pending foreclosure sale on their property. Docket #10, ¶1. Mr. Soliz filed that case with an attorney with "information on a card that [he] received in the mail," and he did not know that he had to take the counseling class before filing. *Id.* Debtors are now represented by an attorney, have monthly net income great enough to make plan payments, and have completed their counseling classes. *Id.* at ¶2.

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

10:00 AM

1. [17-14403](#)-B-7 **IN RE: SCOTT/TAMI COBB**
[RSW-1](#)

MOTION TO AVOID LIEN OF AMCO INSURANCE COMPANY
12-28-2017 [[10](#)]

SCOTT COBB/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 has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

A judgment was entered against the debtor in favor of AMCO Insurance Company for the sum of \$17,230.99 on December 15, 2016. Docket #13. The abstract of judgment was recorded with Kern County on April 18, 2017. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$267,000.00 as of the petition date. Docket #1, Schedule B. The unavoidable liens totaled \$283,090.00 on that same date, consisting of a first mortgage in favor of Nationstar Mortgage LLC. Docket #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Schedule C, Docket #1.

2. [17-14538](#)-B-7 **IN RE: DAVID/MARTHA RYGIEL**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-18-2018 [[12](#)]

PNC BANK, NATIONAL
ASSOCIATION/MV
ROBERT WILLIAMS
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.

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

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

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

3. [17-14055](#)-B-7 **IN RE: WES/GLORIA MCMACKIN**
[PK-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
1-31-2018 [\[17\]](#)

PATRICK KAVANAGH

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.

The Supreme Court of the United States held that a debtor does not have an "absolute" right to convert to Chapter 13, but that the right is conditioned upon the debtor's ability to qualify as a Chapter 13 debtor (as required under 11 U.S.C. § 706(d)). See Marrama v. Citizens Bank, 549 U.S. 365 (2007). In Marrama, the Supreme Court affirmed the First Circuit's holding that the debtor did not qualify as a debtor under Chapter 13. *Id.* at 376. The First Circuit stated, "[w]e can discern neither a theoretical nor a practical reason that Congress would have chosen to treat a first-time motion to convert a chapter 7 case to chapter 13 under subsection 706(a) differently from the filing of a chapter 13 petition in the first instance." *Id.* at 370-71. The debtor did not qualify under chapter 13 because (treating his conversion as a theoretical initial Chapter 13) his chapter 13 case would have been dismissed or converted to chapter 7 for "cause" under 11 U.S.C. § 1307(c). See *id.* at 369-71. "Bad-faith" conduct has been used synonymously with "cause" for grounds of dismissal or conversion. See *id.* at 373-74.

The court must therefore analyze the "cause" factors of 11 U.S.C. § 1307(c) in order to decide whether to grant the motion. The list is nonexclusive. *Id.* at 373.

After reviewing the record and § 1307(c), the court finds that the debtor may convert to Chapter 13 because the debtor has the ability to qualify as a Chapter 13 debtor. The court found no instances in the record that would warrant dismissal or conversion under § 1307(c).

4. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[ASW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2017 [[31](#)]

SIERRA PACIFIC MORTGAGE
COMPANY, INC./MV
HAGOP BEDOYAN
CAREN CASTLE/ATTY. FOR MV.
DISCHARGED, RESPONSIVE PLEADING

NO RULING.

5. [18-10524](#)-B-7 **IN RE: EARL/STEPHANIE ALBERT**
[HLF-1](#)

MOTION TO COMPEL ABANDONMENT
2-27-2018 [[13](#)]

EARL ALBERT/MV
JUSTIN HARRIS
OST 2/27/18

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 an order shortening time entered on February 27, 2018 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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset... Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir.

1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtor seeks to compel trustee to abandon tools and equipment she uses in her sole proprietorship known as "Manicured." The property is properly scheduled on Schedule B and has been properly and entirely exempted on Schedule C. Docket #1. The chapter 7 trustee has filed a non-opposition to this motion and the court finds that the property is of inconsequential value and benefit to the estate and therefore this motion is GRANTED. The order shall specify the property abandoned.

10:30 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[WW-7](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
11-30-2017 [[367](#)]

MACPHERSON OIL COMPANY/MV
T. BELDEN
RILEY WALTER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [17-13297](#)-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
[17-1088](#)

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

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

NO RULING.

11:30 AM

1. [17-14252](#)-B-7 **IN RE: DANNY/CHARLENE PRICE**

REAFFIRMATION AGREEMENT WITH CAB WEST, LLC
1-29-2018 [[19](#)]

NEIL SCHWARTZ

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

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

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed November 4, 2017, and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate.