

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, March 14, 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. [18-14600](#)-B-13     **IN RE: DOROTEO IBARRA-PEREA AND ENEDELIA RUIZ DE IBARRA**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
1-15-2019    [\[17\]](#)

PATRICK KAVANAGH  
RESPONSIVE PLEADING

NO RULING.

2. [18-14904](#)-B-13     **IN RE: ARELI LOPEZ**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-8-2019    [\[14\]](#)

ROBERT WILLIAMS

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

DISPOSITION:     Continued to April 4, 2019 at 9:00 a.m.

ORDER:             The court will issue an order.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than March 21, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by March 28, 2019.

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 28, 2019. 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.

3. [17-12109](#)-B-13     **IN RE: FRANK RUIZ**  
[PK-3](#)

MOTION TO MODIFY PLAN  
2-4-2019    [\[57\]](#)

FRANK RUIZ/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.

4. [18-10913](#)-B-13     **IN RE: WALTER/KATHRYN COVEY**  
[RSW-4](#)

CONTINUED MOTION TO MODIFY PLAN  
12-13-2018    [\[67\]](#)

WALTER COVEY/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was continued to allow the debtors to respond to the trustee's objection or to file a confirmable plan. Doc. #81. The debtors timely responded, agreeing to raise their plan payment \$200.00 per month and returning their travel trailer, which they are paying \$120.00 per month on under the currently confirmed plan (doc. #5).

The chapter 13 trustee objected on the grounds of bad faith, arguing that debtors were not making the agreed-to payment of \$1,714.00 per month, but \$1,275.00. per month under the plan (doc. #5). The order confirming plan states that the plan payment is \$1,714.00 per month effective month 1. Doc. #58.

The surrender of the travel trailer, at most, would increase their ability to pay unsecured creditors \$120.00 per month (notwithstanding any claim submitted by the secured creditor based on a deficiency after disposing of the travel trailer, if any deficiency), yet that amount plus the \$200.00 per month agreed to by debtors still does not reach the \$1,714.00 as ordered by the court. See doc. #58.

If the objection is not withdrawn and the matter remains unresolved, the court may need to set a final hearing .

5. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[FC-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-21-2019    [\[18\]](#)

FRANK CRUZ/MV  
FRANK CRUZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Denied.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 18-14847. That case was filed on December 4, 2018 and was dismissed on January 17, 2019 for failure to file necessary documents and appear at the § 341 meeting of creditors. This case was filed on February 14, 2019 and the automatic stay will expire on March 16, 2019.

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because 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 not persuaded that the presumption has been rebutted. The court finds that the debtor's petition was not filed in good faith, and it intends to DENY the motion to extend the automatic stay as to all creditors.

Debtor's previous bankruptcy case was a skeleton filing - none of the required schedules or other documents were filed with the petition. Debtor was notified on December 4 and 6, 2018 that he had to file with the court several other documents not later than December 18, 2018 or the case would be dismissed. Doc. #3, 9, 10 (case no. 18-14847, "PC"). Debtor filed a motion to extend the deadline to file schedules on December 18, 2018 (doc. #13, PC) and the court granted the motion the following day (doc. #14, PC), extending the time to January 2, 2019. The reasons stated for the extension of time, *inter alia*, are that debtor was taking care of his ill mother and was unable to devote much time to the bankruptcy case. Doc. #13, PC. The court notes that debtor filed three adversary proceedings on January 7, 2019, well before he ever filed the documents the court notified him of on December 4 and 6, 2018. See Case nos. 19-01004, 19-01005, and 19-01006.

Objector in this instant motion, Mel Abdelaziz, filed a motion for relief from the automatic stay on December 21, 2018 in order to dispose of their collateral, a piece of real property. Doc. #18, 19, PC. That motion was scheduled to be heard on January 24, 2019. Doc. #18, PC. Debtor timely opposed that motion on January 7, 2019. Doc. #28, PC.

Debtor again asked the court to extend the time to file schedules and other necessary documents on December 26, 2018 (doc. #23, PC), which the court again granted that same day (doc. #25, PC), for the same reasons as before. Doc. #23, PC. The deadline was extended to January 16, 2019.

Debtor failed to appear at the § 341 meeting on January 9, 2019.

The chapter 13 trustee filed a motion to dismiss on January 16, 2019 (doc. #37, PC) set for hearing on February 14, 2019. But before that motion could be heard, the case was dismissed on January 17, 2019 for failure to timely file documents. Doc. #41, PC. The day after the case was dismissed debtor filed Schedules A-J, an amended petition, and form 122C-1, inter alia. Doc. #42, 43, 44, 45, PC.

Debtor then filed a motion to vacate dismissal on January 18, 2019 (doc. #46, PC) and an amended motion to vacate dismissal on January 25, 2019 (doc. #49, PC). Creditor Mel Abdelaziz opposed the motion. Doc. #58, PC. Debtor asked the court to vacate the dismissal due to mistake because he failed to file the documents "due to [his] worry, concern, and attention to my mother's death-imminent moments, [he] mis-calendared [his] last day to file schedules and chapter 13 plan to be due January 18th instead of January 16, 2019." Doc. #49.

At the hearing, the court denied the motion. The court held that because debtor failed to obtain credit counseling prior to the petition being filed under 11 U.S.C. § 109(h), the case had to be dismissed. Debtor's petition states that he requested credit counseling services but was unable to obtain those services because:

"I was misled to that by [sic] last week specific performance of my 10/24/17 contract to buy 1708 N. Cedar Ave Fresno, CA 93703 would be compelled [sic] by settlement of Fresno Superior Court Case 17CECG04380 and with it UD case 17 CECL08762, filed the day of that purchase, would be disposed [sic] but did not requiring [sic] me to file this emergency case with no time for credit counseling to seek the same result by Chapter 13 Plan [sic]." Doc. #1, PC.

It was still necessary for the debtor "to obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling," inter alia. Id. The debtor failed to do so. The court found that none of the exceptions listed under § 109 existed in debtor's case.

The court finds that the petition was filed in bad faith.

At the hearing on February 14, 2019 debtor stated that his state of mind was not such that allowed him to complete the tasks necessary to keep his case going. The court is not persuaded by that excuse. Prior to the dismissal, debtor was able to file three adversary proceedings against creditor Mel Abdelaziz, oppose a motion for relief from the automatic stay filed by the same creditor, and request two extensions to file schedules and other necessary documents. The adversary proceedings were secondary to obtain credit counseling and filing the schedules and other necessary documents, and yet debtor chose to prioritize the adversary proceedings.

Additionally, despite filing schedules one day after the case was dismissed in the previous case, debtor again filed a skeletal petition in this case. See doc. #1. However, debtor did file the missing documents on the last day of the deadline. Doc. #26-29. Debtor also failed to obtain credit counseling prior to filing the petition. The Certificate of Counseling (doc. #9) states that he

received counseling at 4:20 p.m. on February 14, 2019, the day of the filing. The petition shows that it was filed at 3:07 p.m. on February 14, 2019. Doc. #1.

The motion will be DENIED and the automatic stay will expire on March 16, 2019. If further 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.

6. [18-14519](#)-B-13     **IN RE: JODI GOLDEN-BAYHURST**  
[MHM-1](#)

MOTION TO DISMISS CASE  
2-7-2019    [[31](#)]

JODI GOLDEN-BAYHURST/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

The 13 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for March 19, 2019 at 10:00 a.m. and bring verification of her social security number. If the debtor fails to do so, the chapter 13 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

7. [18-14519](#)-B-13     **IN RE: JODI GOLDEN-BAYHURST**  
[RSW-2](#)

MOTION TO CONFIRM PLAN  
1-16-2019    [[22](#)]

JODI GOLDEN-BAYHURST/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

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 for failure to comply with the Local Rules of Practice ("LBR")



LBR 3015-1(c) requires the debtor to file the plan within 14 days of filing the petition, at which point the trustee "shall serve all creditors and other persons entitled to notice with a copy of the debtor's chapter 13 plan." If debtor does not file and serve the plan on the trustee, the debtor must seek confirmation by motion pursuant to LBR 3015-1(d).

The debtor requested an extension of time to file the plan and other necessary documents, and the court gave debtor until December 3, 2019 to do so. Doc. #16. The court's order required debtor to "file a proof of service showing that all creditors were served with [notice of commencement of the case] not later than five (5) court days after the Missing Documents are filed" and "to serve the Chapter 13 plan with a motion for confirmation. . . ." Id. The debtor filed their plan on November 28, 2019 (doc. #20), but did not file a proof of service or the chapter 13 plan as ordered by the court.

For the above reasons, this motion is DENIED WITHOUT PREJUDICE.

8. [19-10032](#)-B-13     **IN RE: LUIS/ROSALINDA MARTINEZ**  
[RSW-1](#)

MOTION TO AVOID LIEN OF BENEFICIAL STATE BANK  
2-27-2019    [20](#)

LUIS MARTINEZ/MV  
ROBERT WILLIAMS

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

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

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

This motion was served on February 26, 2019 (doc. #24) and filed with the court on February 27, 2019 and set for hearing on March 14, 2019. Doc. #21. March 14, 2018 is less than 28 days after February 27, 2019, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #21. That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required. Because this motion

was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

9. [18-13846](#)-B-13     **IN RE: EDUARDO HURTADO-ORTIZ AND VERONICA HURTADO**  
[YG-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
11-29-2018    [\[34\]](#)

EDUARDO HURTADO-ORTIZ/MV  
YELENA GUREVICH  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #55.

10. [18-11649](#)-B-13     **IN RE: CHARLES/PRISCILLA HERNANDEZ**  
[MHM-4](#)

MOTION TO DISMISS CASE  
1-23-2019    [\[77\]](#)

MICHAEL MEYER/MV  
PATRICK KAVANAGH

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 debtors that is prejudicial to creditors. The debtors failed to

confirm a Chapter 13 Plan. 11 U.S.C. § 1307(c)(1) and (c)(3). Accordingly, the case will be dismissed.

11. [18-11649](#)-B-13     **IN RE: CHARLES/PRISCILLA HERNANDEZ**  
[MHM-5](#)

MOTION TO DISMISS CASE  
2-11-2019    [\[81\]](#)

MICHAEL MEYER/MV  
PATRICK KAVANAGH

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

The court dismissed the case on the Trustee's motion [MHM-4] above. This motion will be denied as moot.

12. [18-14560](#)-B-13     **IN RE: MATTHEW/ANGELA WANTA**  
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
2-8-2019    [\[55\]](#)

PATRICK KAVANAGH

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection is OVERRULED AS MOOT. Debtors filed an amended plan. Doc. #64/68.

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

MOTION TO DISMISS CASE  
1-25-2019    [\[39\]](#)

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 there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to provide the trustee with all required documentation. The debtor failed to set a plan for hearing and notice all creditors. The debtor failed to file tax returns for the years 2017 and 2018. 11 U.S.C. § 1307(e). Accordingly, the case will be dismissed.

14. [18-14268](#)-B-13     **IN RE: VINOD SAHNI**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.  
12-21-2018    [[20](#)]

WELLS FARGO BANK, N.A./MV  
ROBERT WILLIAMS  
DANE EXNOWSKI/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection is OVERRULED AS MOOT. Debtors filed an amended plan.  
Doc. #39.

15. [18-14268](#)-B-13     **IN RE: VINOD SAHNI**  
[MHM-2](#)

MOTION TO DISMISS CASE  
1-23-2019    [[27](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to April 4, 2019 at 9:00 a.m.

ORDER:             The court will issue an order.

This motion is continued to April 4, 2019 at 9:00 a.m. to be heard  
in conjunction with debtor's motion to confirm modified plan.

16. [18-14673](#)-B-13      **IN RE: KEVIN MOONEY AND CHRISTY TURNER**  
[RSW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
2-6-2019    [\[18\]](#)

KEVIN MOONEY/MV  
ROBERT WILLIAMS

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. 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). The defaults of the noticed parties shall be entered.

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. for the sum of \$6,886.69 on June 20, 2017. Doc. #21, ex. C. The abstract of judgment was recorded with Kern County on July 19, 2017. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The subject real property had an approximate value of \$182,710.00 as of the petition date. Doc. #1, Schedule A/B.

The debtor claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(3) in the amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a)(3) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, is unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, or a joint gross annual income of not more than \$35,000. None of the evidence filed with the motion supported the allowance of this exemption. Debtors have that burden on these motions. Morgan v. FDIC (In re Morgan), 149 B.R. 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.*

The evidence debtors submitted with this motion does not show that any of the three elements exist. See doc. #20 and 21. Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

17. [18-14877](#)-B-13     **IN RE: SAUL OCHOA**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
1-18-2019    [\[16\]](#)

NEIL SCHWARTZ

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection is OVERRULED AS MOOT. Debtors filed an amended plan.  
Doc. #25.

18. [15-10679](#)-B-13     **IN RE: HARVEY JONES**  
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-29-2019    [\[64\]](#)

FREEDOM MORTGAGE  
CORPORATION/MV  
ROBERT WILLIAMS  
ERIN MCCARTNEY/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, Freedom Mortgage Corporation, seeks relief from the automatic stay under § 362(d)(1) on real property commonly known as 78086 Rillstone Drive in Lancaster, South Carolina 29720.

11 U.S.C. § 362(d)(1) allows the court to grant relief from 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).

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor has failed to make at least seven post-petition payments. The movant has produced evidence that debtor is delinquent at least \$10,192.70. Doc. #67, 68.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least seven post-petition payments to movant.

19. [18-15081](#)-B-13     **IN RE: OSCAR/MELISSA GARZA**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.  
MEYER  
2-8-2019    [\[23\]](#)

WILLIAM OLCOTT  
RESPONSIVE PLEADING

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

DISPOSITION:        Overruled as moot.

ORDER:                The court will issue an order.

This objection is OVERRULED AS MOOT. Debtors filed an amended plan.  
Doc. #39.



20. [18-15081](#)-B-13     **IN RE: OSCAR/MELISSA GARZA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-8-2019    [\[27\]](#)

MICHAEL MEYER/MV  
WILLIAM OLCOTT  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was 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, with the exception of the debtor, 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.

Chapter 13 trustee Michael H. Meyer ("Trustee") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and 521. Trustee contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Debtor, opposes the motion, contending that the necessary and requested documents have been supplied. Doc. ##27, 29.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr. D.S.C. Dec. 29 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. Aug. 5, 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security

number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3). As one commentator noted, "'Cooperate' is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

Trustee has requested the following additional documentation from the debtor: a properly completed Schedule H. Doc. #27. Debtor timely responded, without evidence, stating that they had complied by filing a properly completed Schedule H on March 1, 2019. The court takes judicial notice of that document. Doc. #40.

This document is necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. For this reason the case is dismissed.

21. [18-15081](#)-B-13     **IN RE: OSCAR/MELISSA GARZA**  
[WDO-1](#)

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES,  
INC.

2-5-2019    [\[17\]](#)

OSCAR GARZA/MV  
WILLIAM OLCOTT  
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.

Based on the record, the factual issues appear to include: the  
"replacement value" of the 2006 GMC Sierra 1500 pickup.

22. [18-11987](#)-B-13     **IN RE: HECTOR CHAVEZ**  
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTOR'S  
ATTORNEY(S)

1-21-2019    [\[32\]](#)

PATRICK KAVANAGH

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

DISPOSITION:                Granted.

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

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

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

This motion is GRANTED. Movant is awarded \$5,670.00 in fees.

23. [19-10588](#)-B-13     **IN RE: RUBEN/MARIA GARCIA**  
[PK-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
2-28-2019    [9]

RUBEN GARCIA/MV  
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.

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 18-15013. That case was filed on

December 17, 2018 and was dismissed on February 11, 2019 for failure to provide necessary documents. This case was filed on February 20, 2019 and the automatic stay will expire on March 22, 2019.

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because 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' previous case was dismissed for failure to produce requested and necessary documents to the trustee's office. Due to the debtors' irregular work schedule, they do not work every week and thus are not paid every week. At one point debtor Maria Garcia only realized after the meeting of creditors that she did not receive a paycheck on December 14, 2018. Doc. #12.

Now, both debtors have provided their attorney with all the necessary pay advices and other documents necessary to file a complete chapter 13 petition. Doc. #11, 12.

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.

24. [19-10528](#)-B-13     **IN RE: ANTHONY/MELISSA CLARKE**  
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
3-4-2019    [\[11\]](#)

ANTHONY CLARKE/MV  
PETER BUNTING  
OST 3/5

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 Local Rule of Practice ("LBR") 9014-1(f) (3) and an order shortening time. Doc. #16. 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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 18-12423. That case was filed on June 15, 2018 and was dismissed on December 14, 2018 for failure to make plan payments. This case was filed on February 15, 2019 and the automatic stay will expire on March 17, 2019.

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

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c) (3) (C) exist. The presumption of bad

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

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

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

Debtor fell behind in making plan payments due to an increase of health insurance premiums and living expenses. Doc. #14. After the chapter 13 trustee sent its Notice of Default, debtors sent in \$1,974.86. Id. However, that amount was not sufficient to cure the arrearage and the case was dismissed.

Debtors have refiled and their schedules I and J show an ability, albeit a slim ability, to make the \$2,050.00 plan payment. Id., doc. #1, 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. [19-10114](#)-B-7     **IN RE: CLAUDIO RUIZ**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-6-2019    [\[13\]](#)

KIA MOTORS FINANCE/MV  
PATRICK KAVANAGH  
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 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 2018 Kia Rio. Doc. #17. The collateral has a value of \$10,550.00 and debtor owes \$21,987.12. *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).



2. [18-14634](#)-B-7      **IN RE: BILL/DELORES ALVIS**  
[WFZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
2-13-2019    [\[23\]](#)

KINECTA FEDERAL CREDIT  
UNION/MV  
ROBERT WILLIAMS  
MARK BLACKMAN/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 was filed on 28 days' notice, but the language in the notice fails to require written response within 14 days of the hearing in compliance with LBR 9014-1(f)(1). The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii). The motion will be DENIED WITHOUT PREJUDICE.

3. [18-14934](#)-B-7      **IN RE: SAMANTHA SANCHEZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-18-2019    [\[16\]](#)

SANTANDER CONSUMER USA INC./MV  
RILEY WALTER  
JENNIFER WANG/ATTY. FOR MV.  
RESPONSIVE PLEADING

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. The debtor filed non-opposition on January 22, 2019. Doc. #23. The trustee's default 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 2009 Honda Civic. Doc. #21. The collateral has a value of \$6,400.00 and debtor owes \$15,902.73. *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, the debtor's Statement of Intention is to surrender the Vehicle, and the debtor filed non-opposition to the motion.

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

4. [17-12535](#)-B-7      **IN RE: OVADA MORERO**  
[LNH-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR  
COMPENSATION FOR MIRAMAR INTERNATIONAL R.E., BROKER(S)  
2-21-2019    [\[287\]](#)

RANDELL PARKER/MV  
LEONARD WELSH  
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 consistent with the ruling.

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. Under 11 U.S.C. § 363(f), the trustee may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if . . . such entity consents."

The trustee wishes to sell real property located at 9006 Laramie Avenue in Bakersfield, CA 93314 for \$825,000.00 to Vicente A. Benavidez ("Buyer"). Doc. #287. Buyer has paid a \$20,000.00 deposit, nonrefundable if Buyer fails to perform. Doc. #289. The property is being sold "as is, where is" with no warranties made by the trustee. The trustee has produced evidence that \$11,887.53 in real property taxes, \$340,000.00 under a note secured by a first deed of trust, 2% costs of sale equaling \$16,500.00, and a broker commission of \$35,062.50 will be paid from the proceeds. Id. The sale proceeds

will be \$419,487.47, and after the debtor's homestead exemption of \$175,000.00, the estate will net \$244,487.47.

Two secured creditors have consented to the sale so long as their liens attach to the proceeds.

First, the lien of Kandas and Douglas Johnson ("Johnsons"), the beneficiaries of a second deed of trust securing a note for \$135,000.00, and debtor's daughter and son-in-law, shall be attached to the sale proceeds. Doc. #292, exhibit 3.

Second, the IRS has consented to have their lien attach to the proceeds. Id., exhibit 5.

Because "such entit[ies have] consent[ed]," the trustee may sell the property located at 9006 Laramie Avenue in Bakersfield, CA 93314 to Buyer for \$825,000.00 and free and clear of Johnsons' and IRS' liens. The liens are transferred to the proceeds.

Trustee is also authorized to pay real estate brokers connected with the sale a commission of 4.5% of the gross sale amount (including overbid) to be split between buyer's broker (2%) and seller's broker (2.5%).

The trustee asks that the sale order act to revoke the Morero Trust. That relief is DENIED. The Trustee has the authority to revoke the trust to the extent that authority is property of the estate. 11 U.S.C. § 541(c); Cal. Prob. Code §§ 15304(a), 18200; Ohanian v. Irwin (In re Irwin), 338 B.R. 839, 852-53 (E.D. Cal. 2006) (revocable trust); In re Salkin, 526 B.R. 31, 34 (Bankr. C.D. Cal. 2015) (after revocable trust becomes irrevocable).

The motion is otherwise GRANTED.

5. [18-13240](#)-B-7      **IN RE: DAVID MOBLEY**  
[LNH-4](#)

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES  
ATTORNEY(S)  
2-21-2019    [\[65\]](#)

PETER BUNTING

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, Lisa Noxon Holder, requests fees of \$8,171.50 and costs of \$369.96 for a total of \$8,541.46 for services rendered from August 15, 2018 through December 31, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee applications for various professionals, (2) Selling debtor's real property, and (3) Obtaining lien releases from secured parties when escrow had no success in obtaining payoff demands. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$8,171.50 in fees and \$369.96 in costs.

6. [18-15151](#)-B-7     **IN RE: JOY CABALLERO**  
[MSK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-8-2019    [\[11\]](#)

CONSUMER PORTFOLIO SERVICE,  
INC./MV  
ROBERT WILLIAMS  
MARK KRAUSE/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 Ford Focus. Doc. #13. The collateral has a value of \$8,175.00 and debtor owes \$12,213.35. *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).

7. [18-13057](#)-B-7     **IN RE: GARY/BEATRIZ HOLLAND**  
[RSW-1](#)

MOTION TO EXTEND TIME TO FILE REAFFIRMATION AGREEMENT  
2-15-2019     [\[23\]](#)

GARY HOLLAND/MV  
ROBERT WILLIAMS

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

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

This motion is GRANTED. Federal Rule of Bankruptcy Procedure 4008 requires reaffirmation agreements to be filed not later than 60 days after the first § 341 meeting of creditors. The rule also "at any time and in [the court's discretion]" allows the court to enlarge the time to file a reaffirmation agreement.

The § 341 meeting was held on September 10, 2018, and no reaffirmation agreement was filed with the court within the 60 day deadline. Debtors received their discharge on November 19, 2018 (doc. #15) and the case was closed on November 30, 2018 (doc. #17). Debtors' reopened this case on February 7, 2019 for the sole purpose of filing a motion to enlarge time to file a reaffirmation. Doc. #19.

Debtors' motion states that debtors filled the reaffirmation documents and signed them on November 12, 2018 and returned them to U.S. Bank Trust National Association. The agreement was not filed with the court prior to the debtors' discharge being entered. Doc. #23. Debtors' motion states that "U.S. Bank Trust National Association indicated that if the case is reopened, they will sign

the Reaffirmation Agreement and file with the Court." Id. Both the creditor and debtors wish to enter into this reaffirmation agreement.

The court, in its discretion, GRANTS the motion. Unless opposition is presented at the hearing, the court finds that no prejudice shall occur to any party in the granting in this motion. The order does not approve the reaffirmation agreement. That must be the subject of a separate hearing.

8. [18-14664](#)-B-7     **IN RE: MIGUEL ESPANTA PARRA**  
[JMV-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
1-21-2019    [\[15\]](#)

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

DISPOSITION:        Conditionally denied.

ORDER:                The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for April 5, 2019 at 9:00 a.m. in Bakersfield, CA. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

9. [19-10070](#)-B-7      **IN RE: LOGAN/TIFFANY AUGUST**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-7-2019    [\[9\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
D. GARDNER  
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 Toyota Prius. Doc. #13. The collateral has a value of \$15,825.00 and debtor owes \$18,900.25. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the possession of the secured creditor.

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. [19-10070](#)-B-7     **IN RE: LOGAN/TIFFANY AUGUST**  
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-8-2019    [\[15\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
D. GARDNER  
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 2014 Toyota Camry. Doc. #19. The collateral has a value of \$12,075.00 and debtor owes \$11,671.79. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the possession of the secured creditor.

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).



11. [18-13082](#)-B-7     **IN RE: SANTOS RODRIGUEZ**  
[RSB-2](#)

MOTION TO AVOID LIEN OF HUDSON & KEYSE, LLC  
1-17-2019    [\[34\]](#)

SANTOS RODRIGUEZ/MV  
R. BELL

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue the order.

This motion is DENIED AS MOOT. This case was filed on July 28, 2018 (doc. #1) and the debtor received their discharge on November 21, 2018 (doc. #21).

A judgment was entered against the debtor in favor of Hudson & Keyse LLC in the sum of \$15,914.06 on September 18, 2007. Doc. #37. The abstract of judgment was recorded with Kern County on December 23, 2011. Id. That lien attached to the debtor's interest in residential real property in Bakersfield, CA.

California Code of Civil Procedure ("CCP") § 683.020 states that "upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: the judgment may not be enforced; all enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease; and any lien created by an enforcement procedure pursuant to the judgment is extinguished."

CCP §§ 683.110 through 683.160 state that a judgment is renewable and provides the procedures for renewal.

The 10 year expiration date under the California statute of limitations (Cal. Civ. Proc. Code § 683.020) has run. The lien expired on September 18, 2017, approximately 10 months before this case was filed. Therefore, this motion is DENIED AS MOOT.

12. [19-10094](#)-B-7     **IN RE: JOSE ROSETTE AND GLORIA COTA**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-25-2019    [\[12\]](#)

GATEWAY ONE LENDING &  
FINANCE/MV  
D. GARDNER  
AUSTIN NAGEL/ATTY. FOR MV.  
DISMISSED 1/25/19

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

DISPOSITION:                    Dropped as moot.

NO ORDER REQUIRED:        The case was dismissed. Doc. #18.

13. [18-15196](#)-B-7     **IN RE: ROLLAND GAONA**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-4-2019    [\[9\]](#)

BANK OF AMERICA, N.A./MV  
JOSEPH PEARL  
JENNIFER WONG/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 motion will be DENIED WITHOUT PREJUDICE. The moving papers were not properly served on the U.S. Trustee.

14. [19-10499](#)-B-7     **IN RE: MELVIN/LINDA SMITH**  
[SL-1](#)

MOTION TO COMPEL ABANDONMENT  
2-25-2019    [\[20\]](#)

MELVIN SMITH/MV  
SCOTT LYONS

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.

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 asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's partnership business "R&M Dozing." The assets include a 1998 Dodge 1500 ("Business Assets").

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED. The order shall include a specific list of the property abandoned.

10:30 AM

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

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

JACOB EATON

NO RULING.

2. [19-10423](#)-B-12      **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[FRB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-27-2019    [\[33\]](#)

FARM CREDIT SERVICES OF  
AMERICA, PCA/MV  
DAVID JOHNSTON  
MICHAEL GOMEZ/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, Farm Credit Services of America, PCA, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) in order to seek and obtain orders in the California Superior Court in the matter of Farm Credit Services of America, PCA v. Singh, et al., extending the length of time that its OX/ORAP liens under California Civil Procedure Code § 708.110(d) apply. Movant is a judgment creditor with an OX/ORAP lien which arose prepetition on all non-exempt personal property assets of the debtors. Doc. #33, 36. The lien has a duration of one year from when it arose.

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).

After review of the included evidence, and unless opposition is presented at the hearing, the court finds that "cause" exists to modify the stay because movant will be unduly prejudiced if it is unable to extend the length of time that its OX/ORAP liens apply.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to file applications/motions and obtain orders from the California Superior Court to extend the length of time that its OX/ORAP liens apply. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because movant's request is time-sensitive.

3. [19-10092](#)-B-11      **IN RE: CHAPOS TACOS DE TIJUANA, INC.**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-28-2019    [\[18\]](#)

DISMISSED 2/5/19

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

DISPOSITION:                      Dropped from calendar.

NO ORDER REQUIRED:              An order dismissing the case has already been entered. Doc. #20.

11:00 AM

1. [18-13000](#)-B-7     **IN RE: DIANE FERNANDEZ**  
[19-1010](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
2-11-2019    [\[13\]](#)

WHEELER V. FERNANDEZ  
REISSUED SUMMONS FOR 5/9/19

NO RULING.

2. [18-13000](#)-B-7     **IN RE: DIANE FERNANDEZ**  
[19-1010](#)     [DMG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
2-8-2019    [\[9\]](#)

WHEELER V. FERNANDEZ  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted without leave to amend.

ORDER:                            The minutes of the hearing will be the court's findings and conclusions. 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 without leave to amend. Defendant-debtor Diane Renee Fernandez ("Defendant") asks this court to dismiss this adversary proceeding on the grounds that the time to object to discharge or contest dischargeability of a debt has passed. Doc. #9,

adversary proceeding ("AP"). Plaintiff Joh Wheeler ("Plaintiff") asks this court to "deny [Defendant's] request to vacate these debts." Doc. #1, AP. The debts are based on alleged fraudulent acts and damages incurred to property owned by Plaintiff. Id.

Federal Rule of Bankruptcy Procedure 4004(a) states that a complaint objecting to the debtor's discharge shall be filed "no later than 60 days after the first date set for the meeting of creditors under § 341(a)." The court can, however, extend the time to object after notice and a hearing if (1) the motion is filed before the time has expired, or (2) if after the time has expired, the objector files a motion to extend if the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) AND the objector did not have knowledge of those facts in time to permit an objection.

Federal Rule of Bankruptcy Procedure 4007 permits a creditor to file a complaint to obtain a determination of the dischargeability of any debt other than under 11 U.S.C. § 523(c) "at any time." A § 523(c) action must be filed not later than 60 days after the first date set for the § 341 meeting of creditors.

The court takes judicial notice of the record and docket in this adversary proceeding and in the main case. Plaintiff is listed on the Master Address List (doc. #3, main case ("MC")) at the following address, which is also the address listed on Plaintiff's amended complaint (doc. #13, AP):

151 Alfred Duhon Road  
Lake Charles, LA 70607

The court has no record of any change of address for Plaintiff.

Plaintiff was sent the "Notice of Meeting of Creditors" ("Notice") on July 26, 2018. Doc. #7, MC. The Notice states that a party who wishes to object to the debtor receiving a discharge or that a particular debt should not be discharged must file a motion or complaint not later than November 6, 2018. Doc. #5, MC.

Plaintiff filed this adversary proceeding on January 11, 2019. Doc. #1, AP. Plaintiff filed an amended complaint on February 11, 2019. Doc. #13, AP. This amended complaint was filed after the 21 day deadline pursuant to Federal Rule of Civil Procedure 15(a)(1), made applicable to bankruptcy adversary proceedings under Fed. R. Bankr. P. 7015. The court notes that there is no evidence that Plaintiff served the first complaint nor the amended complaint on Defendant and Defendant's attorney in compliance with Fed. R. Bankr. P. 7004(b)(1), (3). The amended complaint does not state whether Plaintiff is objecting to Defendant's discharge under 11 U.S.C. § 727(a) or contesting dischargeability of debts under 11 U.S.C. § 523(a), but because Plaintiff's first complaint objects to the discharge of debtor's alleged debts owed specifically, the court assumes that it as an objection to discharge of Plaintiff's claims under § 523(a).

Nothing shows that Plaintiff requested an extension of time to file an objection to discharge under Fed. R. Bankr. P. 4004 before the time expired. And the record does not show that any of the exceptions exist that would allow the court to extend the time now.

Despite these procedural and substantive errors, the court must treat pro se litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing Draper v. Coombs, 795 F.2d 915, 924 (9th Cir. 1986), inter alia). "Thus, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity amend effectively." Ferdik, 963 F.2d at 1261 (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)).

Even with that great leniency, the court is still constrained by the law. See King v. Burwell, 135 S. Ct. 2480, 2505 (2015) ("our task is to apply the text, not to improve upon it") (Scalia, J., dissenting) (citing Pavelic & LeFlore v. Marvel Entm't Grp., Div. of Cadence Indus. Corp., 493 U.S. 120, 110 S. Ct. 456 (1989), superseded by statute on other grounds).

Plaintiff's claims, as alleged, fall under §§ 524(a)(2), (6). Section 523(c)(1) states that the debtor shall be discharged from those debts unless after notice and a hearing the court determines otherwise. Fed. R. Bankr. P. 4007(b) states that complaints "other than under under § 523(c)" can be filed anytime. Fed. R. Bankr. P. 4007(c) specifically addresses § 523(c). That rule states that a complaint under § 523(c) must be filed not later than 60 days after the first date set for the meeting of creditors under § 341. As stated previously, that expired November 6, 2018. Furthermore, the court is unable to extend the time to file such a complaint, as the court can only do so on motion filed before the time has expired. Plaintiff did not file such a motion.

It is for the above reasons that the court must dismiss the adversary proceeding without leave to amend.

3. [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

NO RULING.



4. [18-14317](#)-B-7     **IN RE: SHANNON/CARRIE KING**  
[19-1012](#)

STATUS CONFERENCE RE: COMPLAINT  
1-17-2019    [[1](#)]

HARDCASTLE SPECIALTIES, INC.  
V. KING  
VIVIANO AGUILAR/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

5. [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.

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

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

BASSEY V. EDUCATIONAL CREDIT  
MANAGEMENT CORPORATION  
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [19-10132](#)-B-7      **IN RE: JOSE/REYNA PEREZ**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT  
CORPORATION  
2-20-2019    [[10](#)]

OSCAR SWINTON

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [18-14966](#)-B-7      **IN RE: GABRIEL RAMOS**

PRO SE REAFFIRMATION AGREEMENT WITH MECHANICS BANK  
1-24-2019    [[16](#)]

OSCAR SWINTON

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [18-14981](#)-B-7      **IN RE: MIGUEL ANGEL MORENO AND MARIA PEREZ  
DEVARGAS**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
1-31-2019    [\[14\]](#)

OSCAR SWINTON

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

4. [18-14688](#)-B-7      **IN RE: JUAN/JEANETE JAIME**

PRO SE REAFFIRMATION AGREEMENT WITH KINECTA FEDERAL CREDIT  
UNION  
2-21-2019    [\[24\]](#)

THOMAS GILLIS

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

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). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.