

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 4, 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. [18-14904](#)-B-13 **IN RE: ARELI LOPEZ**
[MHM-1](#)

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

ROBERT WILLIAMS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #26.

2. [19-10111](#)-B-13 **IN RE: MARIA MORENO**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING,
LLC
2-11-2019 [\[12\]](#)

OCWEN LOAN SERVICING, LLC/MV
ROBERT WILLIAMS
SEAN FERRY/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").

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.

3. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[PK-6](#)

MOTION TO CONFIRM PLAN
2-6-2019 [\[124\]](#)

GREG KELLY/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

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

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

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

A Motion to Value Collateral was previously filed on October 25, 2018. Doc. #64. The DCN for that motion was PK-6. This motion also has a DCN of PK-6 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

4. [16-12259](#)-B-13 **IN RE: DANIEL SANDERS**
[PK-2](#)

MOTION TO MODIFY PLAN
2-12-2019 [\[33\]](#)

DANIEL SANDERS/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The defaults of all parties that were served with the motion, with the exception of the chapter 13 trustee, shall be entered.

Daniel Sanders, the debtor, passed away October 23, 2018. Before he died, Daniel successfully confirmed a Chapter 13 Plan ("Plan"). A "below median debtor," Daniel's "applicable commitment period" was 36 months. The Plan though is for 47 months. Unsecured creditors are to receive an approximately 10% dividend. Notably, the Plan required payments of \$270 per month. Other than administrative claims and the dividend to unsecured creditors, a non-purchase money lien on a vehicle was to be paid through the Plan. Daniel's house payments were being made directly by Daniel.

Daniel's brother, Clyde, movant here, sought and received an order substituting him as personal representative for the debtor about two months after Daniel died. Doc. # 29. The order waived requirements for certain certifications and the financial management course as pre-requisites for a discharge. The order also said the administration of the case was in the best interests of creditors and the estate. Clyde was authorized to act in the stead of the deceased debtor as the debtor's representative.

Now, Clyde wants to propose a modified Plan requiring the regular Plan payment until April 2019 when he will pay all the unsecured creditors would receive if the Plan was completed - about \$2,716.24.

The chapter 13 trustee opposes this motion on two grounds. First, that the debtor is the only person eligible to file a chapter 13 plan, and since the debtor has passed away, a new chapter 13 plan cannot be confirmed. Second, the plan fails to provide for payments for Debtor's applicable commitment period. 11 U.S.C. §§ 1325(b)(4), 1329(c).

Clyde responded, stating that the court granted a motion substituting debtor for a representative and that the authority the trustee relies on is distinguishable from the facts of this case.

The statutes do not support Clyde's position here. 11 U.S.C. § 101(13) defines "debtor" as "person . . . concerning which a case under this title is commenced." Section 109 provides that only "an individual with regular income" and within the statutory eligibility can be a debtor in Chapter 13. The "debtor" is Daniel. Clyde is a personal representative of an estate or an intestate administration. That does not make Clyde a "debtor" for bankruptcy purposes. Section 1321 gives debtors "the monopoly" on proposing Plans in Chapter 13. In re Franklin, 459 B.R. 463, 465 (Bankr. D. NV 2011).

Federal Rule of Bankruptcy Procedure 1016 permits further administration by a representative of a deceased debtor "in the same manner, so far as possible, as though death . . . had not occurred." This has been interpreted to mean continued administration under the Plan confirmed prior to debtor's death. See, In re Stewart, No. 01-66434-fra13, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004).

The chapter 13 trustee cites Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 916 (9th Cir. BAP 2011) in support of its argument that only the debtor can file a chapter 13 plan. To be sure, that case includes that proposition but does not really apply here. There are many other cases holding the same way

as this court in similar contexts: Stewart, In re Spiser, 232 B.R. 669 (Bankr. N.D. Tex. 1999); Muessel v. Pappalardo In re Muessel, 292 B.R. 712, 715-16 (1st Cir. BAP 2003).

So, there are two options available for Clyde here: 1. The Plan can be completed as confirmed or 2. Clyde may seek a "hardship discharge" for Daniel's estate. In absence of contrary controlling authority, the court unfortunately does not have much choice on this motion. Notably, the concern for Daniel's child and his living arrangements make this an unfortunate decision. But, even under the confirmed Plan, payments were to be made to the encumbering creditor directly.

Clyde cannot file a Plan as he is not a "debtor" in his representative capacity. But, even if Clyde was correct, the plan could not be confirmed anyway because of the time constraints under 11 U.S.C. §§ 1325(b)(4) and 1329(c).

11 U.S.C. § 1325(b)(4) provides that the "applicable commitment period . . . [is] 3 years . . . [but] may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period."

11 U.S.C. § 1329(c) provides that a modified plan "may not provide for payments over a period that expires after the applicable commitment period. . . ."

The statute is clear that the plan must be at least 36 months unless all allowed unsecured claims are paid in full. Allowed unsecured claims appear to total over \$30,000.00. Because debtor is deceased, the amended Schedule I shows no income, but the court notes Clyde's declaration stating that he has made all plan payments since debtor's passing and that he has an ability to continue paying, including the lump sum at the end of the plan. Doc. #35. Unless Clyde wishes to pay the allowed unsecured claims in full, the plan must proceed for a minimum of 36 months. The current plan payments are \$250.00 with unsecured creditors receiving a 10% dividend. Doc. #5.

This case was filed in June 2016. Doc. #1. The plan was confirmed on September 21, 2016. Doc. #14. No motions to dismiss have been filed in this case.

The reason for modification, as stated by Clyde, "is so [he] can move towards winding up his affairs." Doc. #25. The debtor's son still apparently lives in the house, and debtor's son needs a place to live. Id. As stated, direct payments to the creditor secured by the home are being made under the current plan.

The motion is DENIED.

5. [18-14560](#)-B-13 **IN RE: MATTHEW/ANGELA WANTA**
[PK-2](#)

MOTION TO CONFIRM PLAN
2-28-2019 [\[60\]](#)

MATTHEW WANTA/MV
PATRICK KAVANAGH

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

DISPOSITION: Denied without prejudice.

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

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

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

A Motion to Extend the Automatic Stay was previously filed on November 21, 2018. Doc. #21. The DCN for that motion was PK-2. This motion also has a DCN of PK-2 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

6. [17-11265](#)-B-13 **IN RE: PHILIP FITCH**
[WDO-2](#)

MOTION TO MODIFY PLAN
2-14-2019 [\[37\]](#)

PHILIP FITCH/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled. The chapter 13 trustee timely opposed under 11 U.S.C. § 1325(a)(6) on the grounds that debtor is delinquent in the amount of \$130.00 (as of March 12, 2019) and another \$130.00 payment will come due on March 25, 2019, shortly before this hearing.

Because those are the only grounds on which this motion is opposed, if debtor is current on plan payments at the time of the hearing, the court will deny the motion without prejudice. Otherwise, the motion will be granted.

7. [18-13665](#)-B-13 **IN RE: JASMIN GOTICO**
[RSW-2](#)

MOTION TO SELL
3-18-2019 [[36](#)]

JASMIN GOTICO/MV
ROBERT WILLIAMS

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought.

This motion does not comply with Federal Rule of Bankruptcy Procedure 2002(a)(2), which requires motions to sell be noticed and served with at least 21 days' notice.

This motion was served and filed on March 18, 2019, and set for hearing on April 4, 2019, which is 18 days after March 18, 2019. The confirmed Plan in this case (doc. ##4, 30) does not vest estate property in the debtor.

Because this motion does not comply with Fed. R. Bankr. P. 2002(a)(2), it is DENIED WITHOUT PREJUDICE.

8. [18-14268](#)-B-13 **IN RE: VINOD SAHNI**
[MHM-2](#)

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

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted. The court sets a bar
date of June 6, 2019 by which a chapter 13
must be confirmed or the case will be
dismissed.

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

This motion is CONDITIONALLY GRANTED. The grounds of this motion are that there has been prejudice to creditors due to debtor's failure to confirm a chapter 13 plan. Doc. #27. This matter was continued to this date to be heard in conjunction with debtor's motion to confirm plan (RSW-2, matter #9 below). That motion is denied without prejudice for failure to comply with the Local Rules of Practice.

The court sets a bar date of June 6, 2019 by which a chapter 13 plan must be confirmed or the case will be dismissed.

9. [18-14268](#)-B-13 **IN RE: VINOD SAHNI**
[RSW-2](#)

MOTION TO CONFIRM PLAN
2-27-2019 [\[35\]](#)

VINOD SAHNI/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.

This motion does not comply with Local Rule of Practice ("LBR") 9014-1(e). This rule requires first that "all pleadings and documents filed in support of . . . a motion shall be made on or

before the date they are filed with the court" and that "a certificate of service, shall be filed with the Clerk concurrently with the pleadings . . . or not more than three (3) days after they are filed."

Two certificates of service were filed. The first was timely filed (doc. #40), but it did not show that "all pleadings and documents filed in support" of the motion were served on the necessary parties. That certificate of service is ambiguous; it shows that "Motion to Confirm LMP documents ECF Docket Reference No. RSW-2" was served. Id. The court does not know if that means all documents with a docket control number of RSW-2 were served, or just the motion. However, a second certificate of service was filed with the court on March 19, 2019. Doc. #53. This certificate of service lists out the several documents that were served. Id. The court therefore can only conclude that the first certificate of service shows that only the motion was served.

A cursory review of Mr. Williams' motions to confirm plans show certificates of service showing both forms, i.e., a certificate showing a "Motion to Confirm . . . documents ECF Docket Reference No. RSW-4," and an amended certificate listing each document served. See case no. 18-10913, RSW-4, doc. #72; case no. 18-14519, RSW-2, doc. #26; case no. 17-11906, RSW-3, doc. #126; case no. 17-13248, RSW-4, doc. ##69, 80; case no. 18-12786, RSW-1, doc. ##31, 38.

The court is simply confused as to why two certificates of service were filed in this case showing different documents being served. Confusion is intensified since Mr. Williams signed the "corrected" certificate of service on February 27, 2019 but it was not filed until March 19, 2019. Also, Mr. Jump did the same thing. Mr. Jump apparently actually served the documents.

Specifically, the motion does not comply with LBR 9014-1(e)(2) because this second certificate of service was filed more than three days after the documents were filed.

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

10. [18-14673](#)-B-13 **IN RE: KEVIN MOONEY AND CHRISTY TURNER**
[RSW-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
3-21-2019 [\[34\]](#)

KEVIN MOONEY/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. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$6,886.69 on June 20, 2017. Doc. #37. The abstract of judgment was recorded with Kern County on July 29, 2017. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$182,710.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$69,463.61 on that same date, consisting of a first deed of trust in favor of Ditech Financial LLC. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00. Doc. #1, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11. [19-10073](#)-B-13 **IN RE: THERESE DOZIER**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
2-28-2019 [\[14\]](#)

CAPITAL ONE AUTO FINANCE/MV
NEIL SCHWARTZ
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The case will be dismissed. See
Matter #13 below, MHM-2.

12. [19-10073](#)-B-13 **IN RE: THERESE DOZIER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-4-2019 [\[18\]](#)

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. The case will be dismissed. See
Matter #13 below, MHM-2.

13. [19-10073](#)-B-13 **IN RE: THERESE DOZIER**
[MHM-2](#)

MOTION TO DISMISS CASE
3-4-2019 [\[22\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's 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 has failed to provide the trustee with all of the documentation required. Accordingly, the case will be dismissed.

14. [18-12786](#)-B-13 **IN RE: CRISTAL HERRERA**
[RSW-1](#)

MOTION TO MODIFY PLAN
2-14-2019 [\[26\]](#)

CRISTAL HERRERA/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. The court will issue the order.

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). Therefore, the defaults of the above-mentioned parties in interest are. 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. The chapter 13 trustee withdrew his opposition on March 25, 2019. Doc. #39. This motion presents the same issue the court has with matter #9 above. Counsel must appear and explain the discrepancy.

15. [19-10489](#)-B-13 **IN RE: RICHARD NELSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-13-2019 [[16](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

If the amendment fee due at the time of hearing is paid before the hearing, the order to show cause will be vacated.

16. [17-14098](#)-B-13 **IN RE: JUAN/CECILIA TORIBIO**
[PK-1](#)

MOTION TO INCUR DEBT
3-11-2019 [\[86\]](#)

JUAN TORIBIO/MV
PATRICK KAVANAGH

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).

This motion is denied without prejudice for lack of evidence. The motion references a "printout" from the trustee's website, but it was not included. Nor is there evidence of exactly how much money debtors will borrow, from who, and what the terms of the loan are. Ms. Toribio's declaration does not address these fundamental issues.

The court notes that there are about \$51,000 of unsecured claims not including approximately \$23,000 in unsecured student loan debt. The debtors claim they are going to "pay off" the plan early but they do not address the student loan debt in the motion. Since the Plan proposes to pay only 10% to unsecured creditors, the debtors here need to make a stronger case for an early payoff.

Even if the court approved the loan on such a scant evidentiary showing, it would appear a Plan modification is necessary so the court can engage in a "good faith" analysis and look at the totality of the circumstances. See, Mattson v. Howe (In re Mattson), 468 B.R. 361, 370-72 (9th Cir. BAP 2012).

The motion is DENIED WITHOUT PREJUDICE.

17. [17-14098](#)-B-13 **IN RE: JUAN/CECILIA TORIBIO**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
3-11-2019 [[91](#)]

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.

This motion is GRANTED. Movant is awarded \$9,000.00 in fees.

10:00 AM

1. [18-15208](#)-B-7 **IN RE: OSCAR/ADRIANNE SILVA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-2019 [\[15\]](#)

CAB WEST LLC/MV
NEIL SCHWARTZ
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on December 31, 2018 and the lease was not assumed by the chapter 7 trustee within 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 and the automatic stay under § 362(a) has already terminated by operation of law. There is no evidence before the court that an alternative assumption agreement has been reached between the movant and the debtors. See 11 U.S.C. § 365(p)(2). Also, the debtors may receive their discharge on or about April 10, 2019.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

2. [18-15208](#)-B-7 **IN RE: OSCAR/ADRIANNE SILVA**
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-2019 [\[21\]](#)

CAB WEST LLC/MV
NEIL SCHWARTZ
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal

property. The case was filed on December 31, 2018 and the lease was not assumed by the chapter 7 trustee within 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 and the automatic stay under § 362(a) has already terminated by operation of law. There is no evidence before the court that an alternative assumption agreement has been reached between the movant and the debtors. See 11 U.S.C. § 365(p)(2). Also, the debtors may receive their discharge on or about April 10, 2019.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

3. [18-14425](#)-B-7 **IN RE: CHAD TRULLINGER**
[VG-1](#)

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR
MOTION TO TREAT THIS CASE AS COMPLETED
2-19-2019 [\[14\]](#)

VINCENT GORSKI

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor's counsel asks the court to excuse debtor from being required to complete and file a certificate of completion of financial management course and directing the clerk's office to treat this case as it would if the debtor had. Doc. #14. Debtor passed away recently and is therefore unable to complete a financial management course.

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, the debtor is excused from completing and filing a certificate of completion of the financial management course. The clerk's office is to treat this case as it would if the debtor had filed a certificate of completion of the financial management course.

4. [18-14627](#)-B-7 **IN RE: ELIAS RIVAS AND NICOLE BARRIENTE**
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-15-2019 [\[19\]](#)

FREEDOM HOME MORTGAGE
CORPORATION/MV
R. BELL
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 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 parcel of real property commonly known as 1213 Stub Oak Ave., Bakersfield, California 93307. Doc. #21. The collateral has a value of \$267,000.00 and the amount owed is \$269,631.15. Doc. #24.

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

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

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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

5. [18-14634](#)-B-7 **IN RE: BILL/DELORES ALVIS**
[WFZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-2019 [\[38\]](#)

KINECTA FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS
MARK BLACKMAN/ATTY. FOR MV.
DISCHARGED 3/15/19

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

DISPOSITION: Denied without prejudice.

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

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

First, there is no proof of service. LBR 9014-1(e) requires the movant to file proof of service, "in the form of a certificate of service . . . with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed."

No such certificate of service was filed with this motion. Therefore the court does not know if the motion and notice were served on the appropriate parties.

Second, there is no evidence, including the § 362 sheet. LBR 4001-1(a)(3) requires that every motion for relief from stay must include a completed "Form EDC 3-468, *Relief from Stay Summary Sheet*." LBR

9014-1(d) requires "every application, motion . . . or other requires for an order, shall be comprised of a motion . . . notice, evidence, and a certificate of service. Unless otherwise ordered, the moving party may, but need not, file a memorandum of points and authorities in support of the motion." Every single document, i.e. the notice, motion, declaration, exhibits, form EDC 3-468, etc. must be filed separately. See LBR 9014-1(d)(4), 9004-2(c).

No such form was filed with this motion, nor any other evidence.

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

This is the third time the DCN "WFZ-1" has been used. It was used on a motion for relief from stay filed January 16, 2019 (doc. #13, denied without prejudice on procedural grounds on February 7, 2019); and another motion for relief from the automatic stay (doc. #23, denied without prejudice on procedural grounds on March 14, 2019). Each separate matter filed with the court must have a different DCN. The three letters used can be identical; but the number cannot be.

The LBR can be accessed at the following link:

<http://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRules2018.pdf>

6. [18-14483](#)-B-7 **IN RE: WILLIAM/DOLORES BELL**
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-19-2019 [\[20\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
NEIL SCHWARTZ
ERIN MCCARTNEY/ATTY. FOR MV.
DISCHARGED 2/26/19

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

DISPOSITION: Granted in part as to the trustee's interest and
denied as moot in part as to the debtors' interest.

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 motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on February 26, 2019. Docket #27. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 order shall provide the motion is DENIED AS MOOT as to the debtors. The proposed order shall specifically describe the property or action to which the order relates. The collateral is a parcel of real property commonly known as 2214 Lewis Puller Dr., Bakersfield, California 93301. Doc. #23. The collateral has a value of \$176,575.00 and the amount owed is \$166,006.34. Doc. #22.

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

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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

10:30 AM

1. [18-14663](#)-B-11 **IN RE: 3MB, LLC**

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

LEONARD WELSH

NO RULING.

2. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-7](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
3-13-2019 [[109](#)]

LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and 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. Debtor's bankruptcy counsel, Leonard K. Welsh, requests fees of \$11,475.00 and costs of \$300.43 for services rendered from January 1, 2019 through February 28, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Advising debtor about the administration of its chapter 11 case and its duties as debtor-in-possession, (2) Prosecuting a relief from stay motion, (3) Financing and advising debtor's principals about a chapter 11 plan and reorganization, (4) Administering claims, and (5) Preparing and prosecuting several motions for employment of

professionals. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$11,475.00 in fees and \$300.43 in costs.

3. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
[DMG-7](#)

MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
3-7-2019 [\[135\]](#)

D. GARDNER

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

DISPOSITION: Granted.

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

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

This motion is GRANTED.

Federal Rule of Bankruptcy Procedure 3022 provides "[A]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case."

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

The court finds that the order confirming the plan has become final (doc. #130), that the debtor has assumed the business and management of the property dealt with under the plan, that the payments under the plan have commenced, and that all motions, contested matters, and adversary proceedings have been resolved. Therefore a final decree shall be entered closing this case pursuant to Fed. R. Bankr. P. 3022 and the chapter 11 plan provision at Article VII, paragraph 7.03.

4. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
[DMG-8](#)

MOTION FOR COMPENSATION FOR D MAX GARDNER, DEBTORS ATTORNEY(S)
3-7-2019 [\[139\]](#)

D. GARDNER
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 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 \$6,169.00 in fees and \$102.02 in costs.

5. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[FRB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2019 [[115](#)]

FARM CREDIT WEST, PCA/MV
JACOB EATON
MICHAEL GOMEZ/ATTY. FOR MV.
OST 3/29/19

NO RULING.

11:00 AM

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

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

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

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

DISPOSITION: Dropped from calendar.

ORDER: Pursuant to the court's ruling at the hearing held on February 7, 2019, because plaintiff has set a motion for entry of default judgment for hearing on April 24, 2019, the status conference will be concluded. The court will issue the order.