

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 5, 2018
Place: Department B - 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [18-10100](#)-B-13 IN RE: SANTOS ARAGON
[MHM-2](#)

MOTION TO DISMISS CASE
3-1-2018 [[17](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtor filed a timely response and indicated that all required documentation would be provided to the trustee, and he would appear at the continued meeting of creditors. The debtor's response is not supported by evidence and no reason was given for failing to appear at the initial meeting of creditors. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

2. [17-13005](#)-B-13 **IN RE: GREGORY/SHELLEY SNELLA**
[NES-8](#)

MOTION TO VALUE COLLATERAL OF DEPARTMENT OF THE
TREASURY/INTERNAL REVENUE SERVICE
3-7-2018 [[70](#)]

GREGORY SNELLA/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. 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).

Upon review of the debtors' schedules, the debtors' prayer for relief cannot be granted because the claim of the Internal Revenue Service ("IRS") is not wholly unsecured and cannot be valued as wholly unsecured nor treated in the plan as wholly unsecured.

Debtors' schedule A/B shows debtors have personal property valued at \$42,125.00. Docket #11. The IRS filed a claim for \$151,543.64, \$74,692.42 of which is secured. Claim no.2. 26 U.S.C. § 6321 states:

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or *personal*, belonging to such person. (emphasis added).

Schedule D shows no secured debt on debtor's personal property. Docket #11. Because the IRS's claim is not wholly unsecured, this motion is DENIED WITHOUT PREJUDICE.

3. [17-11906](#)-B-13 **IN RE: TRACY FLAHERTY**
[RSW-1](#)

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

TRACY FLAHERTY/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. 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. [18-10011](#)-B-13 **IN RE: PETER/DENISE FORRISTAL**
[MHM-2](#)

MOTION TO DISMISS CASE
3-1-2018 [[15](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at
the hearing the court intends to grant the
motion to dismiss on the grounds stated in the
motion.

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and indicated that all required documentation would be provided to the trustee, and that they would appear at the continued meeting of creditors. The declaration of Elizabeth Clark in support of the trustee's motion states that the trustee sent a list of the required documents to the Debtors and their attorney on January 4, 2018. The debtors have had nearly 3 months to obtain the requested documents, debtors did not explain why they were not

"informed" of the meeting of creditors, and neither the class 2 contracts nor tax returns were completed. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

5. [18-10011](#)-B-13 **IN RE: PETER/DENISE FORRISTAL**
[RPZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CITIBANK, N.A.
3-6-2018 [[23](#)]

CITIBANK, N.A./MV
NEIL SCHWARTZ
ROBERT ZAHRADKA/ATTY. FOR MV.

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

DISPOSITION: Continued to April 26, 2018 at 1:30 p.m unless this case is dismissed (MHM-2, matter #4 above). If the case is dismissed, this objection will be overruled as moot.

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

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 meeting has concluded and trustee's objection to this motion has not been withdrawn, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary. If the case is dismissed (MHM-2, matter #4 above), this objection will be overruled as moot.

6. [18-10111](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-1-2018 [[17](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and indicated that all required documentation would be provided to the trustee, and that they would appear at the continued meeting of creditors. The declaration of Elizabeth Clark in support of the trustee's motion states that the trustee sent a list of the required documents to the Debtors and their attorney on January 18, 2018. The debtors have had nearly 3 months to obtain the requested documents and their response is not supported by evidence that the default has been cured. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

7. [17-13915](#)-B-13 **IN RE: VERONICA TRUJILLO**
[RSW-1](#)

MOTION TO CONFIRM PLAN
2-20-2018 [[38](#)]

VERONICA TRUJILLO/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

This motion will be set for a continued hearing on April 30, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than April 16, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 23, 2018. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

8. [17-10622](#)-B-13 **IN RE: JENNIFER RIVAS**
[PK-4](#)

MOTION TO MODIFY PLAN
2-5-2018 [[99](#)]

JENNIFER RIVAS/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

9. [17-14133](#)-B-7 **IN RE: BENJAMIN HARRIS**
[NES-2](#)

MOTION BY NEIL E. SCHWARTZ TO WITHDRAW AS ATTORNEY
3-5-2018 [\[62\]](#)

NEIL SCHWARTZ
CONVERTED

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

DISPOSITION: Granted.

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

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

Pursuant to LBR 2017-1(e), and based upon movant's declaration, the court GRANTS this motion and Mr. Schwartz may withdraw as the attorney for Mr. Benjamin Harris in Mr. Harris' bankruptcy case. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and Mr. Schwartz shall conform to the requirements of those rules and the LBR for this court. The authority and duty of Mr. Schwartz as attorney for Mr. Harris in the bankruptcy case shall continue until the court enters the order.

10. [17-13734](#)-B-13 **IN RE: RANDALL KARNES**
[PLG-1](#)

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

RANDALL KARNES/MV
RABIN POURNAZARIAN
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

11. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-6-2018 [[57](#)]

MICHAEL MEYER/MV
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. The objection was based on the debtors' original Schedule C claiming exemptions under California Code of Civil Procedure ("CCP") §§ 703.140(b) and 704. Debtor filed an Amended Schedule C on March 22, 2018 (docket #62) that only utilized CCP § 704 in exempting property. Therefore this objection is OVERRULED AS MOOT.

12. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[MHM-4](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-1-2018 [[52](#)]

PATRICK KAVANAGH

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

DISPOSITION: Continued to April 30, 2018 at 9:00 a.m. The court sets June 28, 2018 as the bar date for plan confirmation.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on April 30, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than April 16, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 23, 2018. If the debtors do not timely file a modified

plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set June 28, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

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

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

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING, WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

14. [16-11954](#)-B-13 **IN RE: LAVONE/CHRISTINE HUNTER**
[PK-8](#)

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

LAVONE HUNTER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING-WITHDRAWN

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; the opposition was withdrawn. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

15. [18-10455](#)-B-13 **IN RE: ADRIENNE COLBERT**

MOTION TO DISMISS CASE
2-26-2018 [[11](#)]

ADRIENNE COLBERT/MV
ADRIENNE COLBERT/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

16. [18-10455](#)-B-13 **IN RE: ADRIENNE COLBERT**

ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT IMPOSE A
180-DAY BAR FROM REFILEING
3-2-2018 [[12](#)]

RESPONSIVE PLEADING

NO RULING.

17. [17-14357](#)-B-13 **IN RE: MICHELLE/PAUL ESPARZA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-12-2018 [[49](#)]

MICHAEL MEYER/MV
THOMAS MOORE

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 is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed.

18. [17-14357](#)-B-13 **IN RE: MICHELLE/PAUL ESPARZA**
[MHM-4](#)

MOTION TO DISMISS CASE
2-13-2018 [\[53\]](#)

MICHAEL MEYER/MV
THOMAS MOORE

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has been dismissed on the trustee's motion [MHM-3] above.

19. [17-13866](#)-B-13 **IN RE: CHAD/DEZAREI HARRISON**
[MHM-3](#)

MOTION TO DISMISS CASE
2-12-2018 [\[46\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
DISMISSED

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on March 8, 2018 (Document No. 56).

20. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[LKW-15](#)

CONTINUED MOTION TO MODIFY PLAN
1-30-2018 [[332](#)]

SHELBY KING/MV
LEONARD WELSH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied if the motion is not withdrawn.

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).

On March 21, 2018 (docket #347), the debtor's counsel represented to the court that a stipulation further modifying the Third Modified Plan would be prepared and signed by the trustee to address the trustee's opposition. The debtors also stated this motion "will be" withdrawn. However, as of April 2, 2018, no stipulation has been submitted nor has the motion been withdrawn. The court concludes the debtors do not want to proceed.

21. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[MHM-1](#)

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

MICHAEL MEYER/MV
REBECCA TOMILOWITZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: If debtor's motion to confirm (RT-4, #23 below) is granted, then this motion will be denied. If debtor's motion to confirm is denied, then this motion may be granted.

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

The basis for this motion was failure to confirm a chapter 13 plan, failure to make payments due under the plan, and unreasonable delay that is prejudicial to creditors.

On January 25, 2018, debtor submitted a declaration stating that he had made the necessary payments to become current with the plan payments. Docket # 52.

Therefore if the motion to confirm (RT-4) is granted, then this motion will be denied. If the motion to confirm is denied, then this motion may be granted.

22. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[RT-3](#)

MOTION TO VALUE COLLATERAL OF CITIMORTGAGE
2-27-2018 [\[65\]](#)

EDUARDO ESCOBAR/MV
REBECCA TOMILOWITZ

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

DISPOSITION: Granted.

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

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

Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtors' may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

23. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[RT-4](#)

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

EDUARDO ESCOBAR/MV
REBECCA TOMILOWITZ
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. 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).

Unless the movant provides the October 2017 mortgage statement and proof of payment, then this motion will be DENIED WITHOUT PREJUDICE. As of March 30, 2018, the court has not seen either document.

24. [17-14681](#)-B-13 **IN RE: JOHN/OLIVIA JILES**
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER
CONSUMER USA INC.
2-6-2018 [[18](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled by stipulation of the parties unless evidentiary hearing is set.

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

This objection is OVERRULED WITHOUT PREJUDICE unless an evidentiary hearing is set as set forth below.

The basis of creditor's objection was debtor's value of the collateral, the monthly adequate protection payments under the proposed plan, and the proposed interest rate was less than the guidelines provided in Till v. SCS Credit Corp., 541 U.S. 465 (2004).

A stipulation entered into by the parties was filed on March 28, 2018. Docket #36. The stipulation was not set for a hearing, but a motion for approval of the stipulation was also filed. Docket #37. The stipulation sets the secured value of creditor's collateral at \$7,200 with the balance set as a general unsecured claim. *Id.* The stipulation does not mention adequate protection payments, interest rate, or insurance coverage.

If the stipulation does not effectively resolve creditor's objection and the material disputed facts identified in the objection, pursuant to the court's prior disposition at the previous hearing on this matter (docket #29), the court may set an evidentiary hearing or schedule further proceedings, if any are necessary.

25. [17-14293](#)-B-13 **IN RE: ERIC/MEREDITH KURTZ**
[NES-2](#)

MOTION TO CONFIRM PLAN
2-5-2018 [[21](#)]

ERIC KURTZ/MV
NEIL SCHWARTZ

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10:00 AM

1. [17-14601](#)-B-7 **IN RE: ADAM WENTWORTH, AND BRANDI WENTWORTH**
[EAT-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-12-2018 [[25](#)]

NATIONSTAR MORTGAGE LLC/MV
R. BELL
BRANDYE FOREMAN/ATTY. FOR MV.

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

DISPOSITION: Denied as moot in part, granted in part.

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 because their discharge has been entered. The motion will be granted 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 proposed order shall specifically describe the property or action to which the order relates.

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

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

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

2. [14-10203](#)-B-7 **IN RE: JASON STOTLER**
[TGF-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
2-20-2018 [[22](#)]

JASON STOTLER/MV
VINCENT GORSKI

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

In this case, no proof of service was filed. Therefore this motion is DENIED WITHOUT PREJUDICE.

3. [18-10110](#)-B-7 **IN RE: JANICE HIXON**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-2018 [[10](#)]

WELLS FARGO BANK, N.A./MV
DARLENE VIGIL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as to the trustee's interest and the automatic stay is terminated as to the debtor's interest on April 23, 2018.

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. The court will issue an order if a further hearing is necessary.

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay with respect to a parcel of real property, APN 408-201-09, commonly known as 15703 Legacy Court, Bakersfield, CA 93314. The movant has produced evidence that the property has a value of \$550,000.00 and is owed \$1,186,278.53. Docket #14.

The court concludes that there is no equity in the property, the property is not necessary to a reorganization because debtor filed in chapter 7, nor can the trustee can administer it for the benefit of the creditors.

On March 21, 2018 the debtor, acting *pro se*, filed a letter which the court construes as unverified opposition to the motion. Debtor did not file a proof of service showing that movant was served with the letter. The debtor asks for the hearing to be continued for at least 30 days because of debtor's health concerns. The debtor disputes movant's paying a contractor for repairs on the collateral in 2013. Debtor claims the repairs were not completed to her satisfaction. The property at issue, 15703 Legacy Court, Bakersfield ("the Legacy property") is "for income" according to the opposition.

The court is sympathetic to the debtor's health concerns, but the movant here has established a *prima facie* case for stay relief. The stay will be automatically terminated under 11 U.S.C. § 362(e)(2) on April 23, 2018 (movant filed this motion on February 22, 2018) unless the court finds good cause for the extension or the movant agrees to an extension. The court does not find good cause for an extension for the following reasons.

First, the property is apparently not the debtor's residence. This is supported by at least two facts:(1) the debtor claimed a homestead exemption on another property in her bankruptcy schedules (docket# 1)-418 Douglas St. Bakersfield, CA;(2) the debtor's own "opposition" mentions the property is needed for income but the debtor's Schedules I and J and Statement of Financial Affairs show no income from rent. Docket #1. So, it appears that the debtor is trying to protect a property that provides nothing tangible to her or the estate.

Second, according to the evidence submitted by the movant, the debtor is nearly \$500,000.00 in arrears under the loan secured by the Legacy property. There is no realistic possibility of the debtor curing the arrearage based on the evidence before the court and there is nothing in the debtor's "opposition" suggesting that with more time, she could cure the arrearage.

Third, based on the debtor's schedules, the amount of debt secured by the Legacy property far exceeds its value. So, the movant has met its burden of proof on this motion under 11 U.S.C. § 362(g)(1). Nothing in the debtor's opposition says that if she had more time, she would have any dispute with either the amount of debt owed or the value of the Legacy property.

Fourth, the trustee has not opposed the relief here, so the trustee must have concluded there is no benefit to the estate in maintaining the stay.

Fifth, the "dispute" raised by the debtor concerning payments to a contractor to repair damage to the Legacy property is likely time barred - the payments occurred five years ago. Even if not time barred, such a dispute was not listed in the debtor's schedules suggesting the debtor does not consider it worth pursuing and is

beyond the scope of the issues in a stay relief motion. Veal v. Am. Home Mortg. Serv'g Inc (In re Veal), 450 B.R. 897, 919-20 (9th Cir. B.A.P. 2011).

Sixth, the debtor now claims she will seek help with this bankruptcy case. Movant has established the previous filings by this debtor. Debtor knew before this case was filed of the complexity involved in filing a bankruptcy case. The court is not convinced that only now the debtor has realized the need for counsel. Based on the schedules and the circumstances of this case, the court is not convinced that more time will change anything.

Unless movant consents to an extension, the motion will be GRANTED but the order is not effective until April 23, 2018.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the delay in effectiveness of this order.

4. [17-12535](#)-B-7 **IN RE: OVADA MORERO**
[LKW-11](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
2-27-2018 [[183](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

Mr. Welsh shall be awarded fees of \$4,280.00 and costs of \$46.00.

5. [17-14447](#)-B-7 **IN RE: RYAN/TARA THOMPSON**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-6-2018 [[14](#)]

WELLS FARGO BANK, N.A./MV
NEIL SCHWARTZ
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Denied as moot in part, granted in part.

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 because their discharge has been entered. The motion will be granted 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 proposed order shall specifically describe the property or action to which the order relates.

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 and shall state the motion is DENIED as to the debtors. 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).

6. [18-10760](#)-B-7 **IN RE: SANFORD SEMCHAK & SPEIGHTS INC.**
[TGM-1](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-14-2018 [[6](#)]

RANDELL PARKER/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 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.

Trustee is authorized to employ Gould Auction & Appraisal Company as auctioneer to conduct a public auction to sell personal property at a public auction on April 21, 2018 in Bakersfield, CA.

The 14-day stay under Federal Rule of Bankruptcy Procedure 6004(h) shall be waived.

7. [17-14864](#)-B-7 **IN RE: ELIDA HUERTA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-5-2018 [[16](#)]

DAIMLER TRUST/MV
R. BELL
JENNIFER WANG/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 23, 2017 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.

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.

8. [17-13177](#)-B-7 **IN RE: LUIS LARA**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-6-2018 [[20](#)]

KERN FEDERAL CREDIT UNION/MV
KARNEY MEKHITARIAN
NICHOLE GLOWIN/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Denied as moot in part, granted in part.

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 debtor because his discharge has been entered. The motion will be granted 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 proposed order shall specifically describe the property or action to which the order relates.

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

If an award of attorney fees has been requested, it will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. In addition, any future request for an award of attorney's fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C.A. §506(b).

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 nonbankruptcy law. No more, no less.

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

Unless the court expressly orders otherwise, the proposed order shall not include any other relief and shall state the motion is DENIED as to the debtor's interest. 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).

9. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[KDG-4](#)

MOTION BY JACOB L. EATON TO WITHDRAW AS ATTORNEY
3-22-2018 [\[103\]](#)

MICHAEL MICHAEL/MV
HAGOP BEDOYAN

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.

Pursuant to LBR 2017-1(e), and based upon movant's declaration, the court GRANTS this motion and the law firm of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP ("Law Firm") may withdraw as the attorney for Michael Michael and Amira Michael ("Debtors") in their bankruptcy case. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those rules and the LBR of this court. The authority and duty of the Law Firm as attorney for Debtors in the bankruptcy case shall continue until the court enters the order.

10. [18-10799](#)-B-7 **IN RE: JOSE/BEATRICE CHAPA**
[SL-1](#)

MOTION TO COMPEL ABANDONMENT
3-28-2018 [\[17\]](#)

JOSE CHAPA/MV
SCOTT LYONS
OST 3/28/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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 operates a sole proprietorship as a diesel engine repair mechanic. Docket #19. The assets debtor uses in the job have been properly and fully exempted under California Code of Civil Procedure § 704.060(a)(1). Therefore, the property defined in this motion is of inconsequential value and benefit to the estate. The creditors do

not benefit by disposition of the assets since the proceeds, if any, would be exempt. Therefore, this motion is GRANTED.

10:30 AM

1. [18-10390](#)-B-11 **IN RE: HELP KIDS, INC.**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
2-6-2018 [[1](#)]

LEONARD WELSH

NO RULING.

2. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-25-2017 [[1](#)]

LEONARD WELSH

NO RULING.

3. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[LKW-12](#)

CHAPTER 11 DISCLOSURE STATEMENT
2-9-2018 [[246](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 42 days' notice as required by Local Rule of Practice ("LBR") 9014-1 and Federal Rule of Bankruptcy Procedure 2002(b). 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.

Before the disclosure statement and proposed plan may be sent to all creditors and parties in interest, the disclosure statement must be approved by the court. 11 U.S.C. § 1125(b). Under 11 U.S.C. § 1125, a disclosure statement accompanying a proposed chapter 11 plan must contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." In re Brotby, 303 B.R. 177, 193 (9th Cir. B.A.P. 2003) (citation omitted) (internal quotation marks omitted).

After review of the disclosure statement, the court finds that the disclosure statement contains "adequate information" as defined under 11 U.S.C. § 1125(a)(1). The court therefore approves the disclosure statement.

4. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[LKW-13](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
2-27-2018 [[268](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's counsel, Leonard Welsh, requests fees of \$11,057.50 and costs of \$309.52 for a total of \$11,367.02 for services rendered as debtor's counsel from December 1, 2017 through January 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 fee applications for various professionals, (2) Attending various hearings dealing with resolution of various issues facing the debtor, (3) Negotiating a Plan of Reorganization, (4) Preparation of a Disclosure Statement, (5) Reviewing a notice of stay of Proceeding, and (6) Continuing to negotiate regarding ongoing litigation issues involving the debtor. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$11,057.50 in fees and \$309.52 in costs.

5. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[WW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM
LAW GROUP FOR RILEY C. WALTER, CREDITOR COMM. ATY(S)
3-14-2018 [[289](#)]

LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The Walter Wilhelm Law Group shall be awarded fees of \$8,647.00 and costs of \$634.36.

11:00 AM

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

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

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

NO RULING.

2. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

STATUS CONFERENCE RE: COMPLAINT
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION
ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[17-1023](#) [LKW-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INTERNATIONAL FIDELITY INSURANCE COMPANY
3-2-2018 [[28](#)]

INTERNATIONAL FIDELITY
INSURANCE COMPANY V. KING ET
LEONARD WELSH/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 has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v.

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

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

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

The debtors request approval of a settlement agreement between the debtors and International Fidelity Insurance Company, Inc. ("IFIC")

Under the terms of the compromise, IFIC will have an allowed Class 7 General Unsecured Claim, will receive distributions under the Third Modified Plan with the same Plan Distribution on its Allowed Class 7 Claim similar to the Plan Distribution paid to other allowed Class 7 General Unsecured Claims in the bankruptcy case, and will dismiss its adversary proceeding after a final and non-appealable order approving the settlement agreement is entered.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as debtors have disputed the validity of IFIC's claims; it is not known whether collection will be difficult; the litigation would be expensive and time-consuming; and the interests of the creditors will be preserved; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the motion will be granted.

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

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-1](#)

CONTINUED MOTION FOR REMAND
1-24-2018 [[17](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
CONTINUED TO 4/12/18 BY ORDER DATED 3/22/18

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

DISPOSITION: Continued to April 12, 2018 at 9:30 a.m.

NO ORDER REQUIRED: Resolved by stipulation of the parties and
order of the court.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-2](#)

CONTINUED MOTION TO DISMISS COUNTERCLAIM AND/OR MOTION TO
STRIKE
1-29-2018 [[21](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
MARC LEVINSON/ATTY. FOR MV.
CONTINUED TO 4/12/18 BY ORDER DATED 3/22/18

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

DISPOSITION: Continued to April 12, 2018 at 9:30 a.m.

NO ORDER REQUIRED: Resolved by stipulation of the parties and
order of the court.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-3](#)

CONTINUED MOTION TO STRIKE
1-29-2018 [[26](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
CONTINUED TO 4/12/18 BY ORDER DATED 3/22/18

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

DISPOSITION: Continued to April 12, 2018 at 9:30 a.m.

NO ORDER REQUIRED: Resolved by stipulation of the parties and
 order of the court.

7. [16-10391](#)-B-13 **IN RE: MICHAEL PFEIFFER**
[DMG-7](#)

CONTINUED FINAL SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM
OF DEBRA MCGUIRE, CLAIM NUMBER 9-2
12-5-2017 [[108](#)]

MICHAEL PFEIFFER/MV
D. GARDNER
RESPONSIVE PLEADING

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.

8. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[17-1023](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-8-2017 [[1](#)]

INTERNATIONAL FIDELITY
INSURANCE COMPANY V. KING ET
ROBERT BERENS/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This status conference was continued to be heard in conjunction with the motion to compromise (LKW-1, matter #3 above). That motion is granted, therefore this motion is dropped from calendar.

11:30 AM

1. [17-14348](#)-B-7 IN RE: FIDEL CORCHADO

REAFFIRMATION AGREEMENT WITH GATEWAY ONE LENDING & FINANCE
3-13-2018 [[13](#)]

NEIL SCHWARTZ

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. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.