

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, April 7, 2021
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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, **and all parties will need to appear at the hearing unless otherwise ordered.** 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. [20-12600](#)-B-13 **IN RE: FERNANDO/OLGA DIAZ**
[LMF-1](#)

MOTION TO CONFIRM PLAN
2-9-2021 [\[47\]](#)

OLGA DIAZ/MV
LAUREN FOLEY/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Fernando Diaz and Olga Diaz ("Debtors") filed this motion on February 9, 2021 under the same docket control number ("DCN") as the previous motion to confirm plan, which was denied without prejudice on February 3, 2021. Doc. #47. On March 1, 2021, Debtors refiled the motion to confirm plan under DCN LMF-2, which is set for hearing on April 7, 2021 in matter #2 below. Doc. #58.

Accordingly, this motion will be DENIED AS MOOT because Debtors' have filed an amended motion to confirm plan.

2. [20-12600](#)-B-13 **IN RE: FERNANDO/OLGA DIAZ**
[LMF-2](#)

MOTION TO CONFIRM PLAN
3-1-2021 [\[58\]](#)

OLGA DIAZ/MV
LAUREN FOLEY/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the chapter 13 trustee, 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 amounts 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.

LBR 9004-2(c)(1) requires motions, supporting documents, and other related pleadings to be filed as separate documents. Here, the notice and plan (Doc. #59) were combined into one document and not filed separately. The court also notes that the plan was not listed in the certificates of service filed with this motion. Docs. #60; #66. However, the joint debtor's declaration states that the plan was served on October 27, 2020 and again with this motion, which was served on March 1, 2021. Doc. #64.

Typically, these errors would result in the motion being denied without prejudice. LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Only because the debtors will likely have their case dismissed in matter #3 below (MHM-2) if this motion is denied, the court will overlook these procedural deficiencies under LBR 1001-1(f). Future violations of the local rules may result in the motion being denied without prejudice.

This motion will be 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.

3. [20-12600](#)-B-13 **IN RE: FERNANDO/OLGA DIAZ**
[MHM-2](#)

MOTION TO DISMISS CASE
2-12-2021 [\[51\]](#)

MICHAEL MEYER/MV
LAUREN FOLEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") requests dismissal for unreasonable delay by the debtors that is prejudicial to

creditors for failing to confirm a chapter 13 plan. Doc. #51. Fernando Diaz and Olga Diaz ("Debtors") timely opposed disputing unreasonable delay prejudicing creditors because they have made two attempts to confirm a plan with a third attempt set for confirmation hearing in matter #2 above. Doc. #61.

The court intends to grant Debtors' motion to confirm in matter #2 above. Therefore, this motion will be DENIED AS MOOT because the Debtors have confirmed a chapter 13 plan.

4. [18-13708](#)-B-13 **IN RE: LEONARDO CHAVEZ**
[NSV-6](#)

MOTION TO MODIFY PLAN
2-19-2021 [\[82\]](#)

LEONARDO CHAVEZ/MV
NIMA VOKSHORI/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 5, 2021 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled.

The court notes two violations of the local rules.

First, the notice of hearing (Doc. #83) contains questionable notice language. The notice provides:

Your rights may be affected or modified. Therefore, you should carefully review these papers and Debtor's proposed chapter 13 Plan. Then you, or your attorney, must send a written response to this motion explaining your position fourteen (14) days before the hearing date of this motion. If you mail your response to this motion, the response must be received on or before fourteen (14) days before the hearing date of this motion.

. . . .

You must attend the hearing set for April 7, 2021 at 9:00 AM, or as soon thereafter as it may be heard

If written opposition is required, the failure to file timely written opposition as set forth above may result in the motion being resolved without oral argument and the striking of untimely written opposition.

Doc. #83 (emphasis in original).

The notice is not untrue, but it still should have contained language from LBR 9014-1(f)(1)(B) and unequivocally informed respondents that opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the court at least 14 days before the hearing and be accompanied by evidence establishing factual allegations. Failure to timely file opposition may be deemed a waiver of any opposition to the granting of the motion and without good cause, no party shall be heard in opposition to the motion at oral argument if timely filed written opposition has not been filed.

The language contained in the notice of hearing is close, but not unambiguous. "If written opposition is required" seems to imply that it might not be required. It is required, but the notice skirts around whether it is or is not, seeming to leave open the possibility that it might not be required.

Second, the original motion documents were filed on February 19, 2021. Docs. #81-84. The certificate of service was filed on March 9, 2021, which is 18 days after the original documents were filed. LBR 9014-1(e)(2) requires proof of service, in the form of a certificate of service, to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed.

Although the certificate of service states that respondents were served on February 19, 2021, it was not filed until 18 days later, which is well beyond the three-day deadline.

Typically, these errors would result in the motion being denied without prejudice. LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Because the chapter 13 trustee responded and the untimely certificate of service shows parties were served on at least 35 days' notice, and in the interests of a just and speedy adjudication, the court will overlook this procedural deficiency under LBR 1001-1(f). Future violations of the local rules may result in the motion being denied without prejudice.

Leonardo J Chavez ("Debtor") seeks confirmation of an amended chapter 13 plan. Doc. #82. Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed because: (1) the plan fails to provide for submission of all or such portion of Debtor's future earnings or income to the supervision and control of Trustee to execute the plan; and (2) Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #88.

This matter will be CONTINUED to May 5, 2021 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtor shall file and serve a written response not later than April 21, 2021. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed

or undisputed, and include admissible evidence to support the Debtor's position. Trustee shall file and serve a reply, if any, by April 28, 2021.

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 28, 2021. If the Debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. [19-11408](#)-B-13 **IN RE: DOUGLAS MCDANIEL**
[RSW-6](#)

CONTINUED MOTION FOR AUTHORITY TO NEGOTIATE CHECK RECEIVED
FROM DAMAGES INCURRED AND FOR INSTRUCTIONS
2-17-2021 [\[164\]](#)

DOUGLAS MCDANIEL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 3/17/21

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion was continued to April 7, 2021 so that Douglas Krug McDaniel ("Debtor") could file and serve a written response to the objections of creditors Bank of New York Mellon and Valley Strong Credit Union not later than March 24, 2021. On March 17, 2021, the case was dismissed for failure to make plan payments. Doc. #179. Debtor did not file a written response.

Accordingly, this motion will be DENIED AS MOOT because the case has been dismissed.

6. [20-13208](#)-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
2-25-2021 [\[38\]](#)

PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 5, 2021 at 9:00 a.m.

ORDER: The court will issue an order.

Elizabeth Leigh Martin and Aaron Scott Hampton ("Debtors") filed a chapter 13 plan with their petition on September 30, 2020. Doc. #3.

Chapter 13 trustee Michael H. Meyer ("Trustee") filed an objection under Local Rule of Practice ("LBR") 3015-1(c)(4) to Debtors' plan on February 25, 2021 because: (1) the plan fails to provide for submission of all or such part of Debtors' future income to the supervision of Trustee to execute the plan; (2) the plan unfairly discriminates between a class of unsecured claims; and (3) the plan does not provide for all of the Debtors' projected disposable income to be applied to unsecured creditors under the plan. Doc. #38. The court notes that creditor Pravati SPV II, LLC, also filed an objection to confirmation in matter #8 below. See RPZ-1.

Debtors filed bankruptcy on September 30, 2020. Doc. #1. The first meeting of creditors was scheduled for November 3, 2020. Doc. #14. Accordingly, the deadline to file objections under LBR 3015-1(c)(4) was November 10, 2020, which is reflected in the *Notice of Chapter 13 Bankruptcy Case*, Form EDC 309I. *Id.*, ¶ 9. General Order 20-02 extends that deadline to seven days after the § 341 meeting is concluded and not continued to a further date. See Am. Gen. Order 20-02, at 4, ¶ 5 (Am. Apr. 16, 2020).

The first § 341(a) meeting of creditors was held on November 3, 2020. See docket generally. It was continued four more times until its conclusion on February 23, 2021. Under General Order 20-02, the deadline for filing LBR 3015-1(c)(4) objections was March 2, 2021. Trustee's objection was filed on February 25, 2021 and was therefore timely.

This matter will be CONTINUED to May 5, 2021 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the Debtors shall file and serve a written response not later than April 21, 2021. 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 Debtors' position. Trustee shall file and serve a reply, if any, by April 28, 2021.

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 28, 2021. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

7. [20-13208](#)-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-8-2021 [\[51\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Elizabeth Leigh Martin and Aaron Scott Hampton's ("Debtors") claim of exemptions for certain assets claimed in the Debtors' schedules. Doc. #51. Debtors did not timely file written opposition.

This objection will be SUSTAINED.

Fed. R. Bankr. P. 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on February 23, 2021 and this objection was filed on March 8, 2021, which is within the 30-day timeframe.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption

applies." See also *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (B.A.P. 9th Cir. 2016); *In re Tallerico*, 532 F.R. 774, 788-90 (Bankr. E.D. Cal. 2015).

Ten exemption entries are implicated by this objection. Doc. #51. Rather than entering the value of each exemption, Debtors checked the boxes for each exemption to indicate 100% of the fair market value of the asset, up to any applicable statutory limit is exempted. Doc. #29, Schedule C. Trustee states that it is presumed that the amount of each exemption claimed when selecting 100% of the fair market value up to the applicable statutory limit, that the exemption is in the amount of the total statutory limit. Doc. #51.

Thus, Debtors' two vehicles exempted under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(2) are presumed to both be taken in the full amount of the \$5,850.00 statutory limit even though the aggregate value of the assets exempted appears to be less than the statutory limit.

Moreover, Debtors claim eight exemptions under C.C.P. § 703.140(b)(5). Doc. #29. All of these exemptions are presumed by Trustee to be in the amount of \$30,825.00 each, even though the value of each item is less than the statutory limit. Doc. #51.

The assets and their exemptions are as follows:

Property	Value Owned	Presumed Exempt	Exemption C.C.P. §
1953 Buick Special	\$2,200.00	\$5,850.00	703.140(b)(2)
2008 Nissan Altima	\$1,000.00	\$5,850.00	703.140(b)(2)
SKS rifle	\$300.00	\$30,825.00	703.140(b)(5)
Capital One 360 acct. no. xxxx-2708	\$217.67	\$30,825.00	703.140(b)(5)
Capital One 360 acct. no. xxxx-0770	\$1.65	\$30,825.00	703.140(b)(5)
Capital One Fixed Costs	\$53.01	\$30,825.00	703.140(b)(5)
Capital One Spark Business acct. no. xxxx-7617	\$6,306.07	\$30,825.00	703.140(b)(5)
Capital One Spark Business acct. no. xxxx-7608	\$526.52	\$30,825.00	703.140(b)(5)
JP Morgan Chase Bank, N.A. acct. no. xxx-3720	\$1,292.23	\$30,825.00	703.140(b)(5)
Chime acct. no. 9865	\$15.88	\$30,825.00	703.140(b)(5)

Doc. #29, Schedule C; cf. #51.

The court finds that the Trustee is correct. Debtors will need to refile Schedule C and specify the dollar amount for each exemption under C.C.P. §§ 703.140(b)(2) and (5).

In the absence of any objection or opposing evidence, Trustee's objection will be SUSTAINED.

8. [20-13208](#)-B-13 **IN RE: ELIZABETH MARTIN AND AARON HAMPTON**
[RPZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PRAVATI SPV II, LLC
3-23-2021 [\[59\]](#)

PRAVATI CAPITAL/MV
PHILLIP GILLET/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.

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

DISPOSITION: Overruled.

ORDER: The court will issue an order.

This objection will be OVERRULED for failure to comply with the
Local Rules of Practice ("LBR").

Elizabeth Leigh Martin and Aaron Scott Hampton ("Debtors") filed a
chapter 13 plan with their petition on September 30, 2020. Doc. #3.

Pravati SPV II, LLC ("Creditor"), filed a LBR 3015-1(c)(4) objection
to Debtors' proposed plan on March 23, 2021 contending: (1) Debtors'
plan was not filed in good faith; (2) the plan fails to contribute
all of Debtors' projected disposable income to unsecured creditors
under the plan; and (3) the plan does not provide for distribution
of at least the allowed amount of creditors' secured claims.
Doc. #59. Chapter 13 trustee Michael H. Meyer also filed an
objection to confirmation in matter #6 above. See MHM-2.

Debtors filed bankruptcy on September 30, 2020. Doc. #1. The first
meeting of creditors was scheduled for November 3, 2020. Doc. #14.
Accordingly, the deadline to file objections under LBR 3015-1(c)(4)
was November 10, 2020, which is reflected in the *Notice of Chapter
13 Bankruptcy Case*, Form EDC 309I. *Id.*, ¶ 9. General Order 20-02
extends that deadline to seven days after the § 341 meeting is
concluded and not continued to a further date. See Am. Gen. Order
20-02, at 4, ¶ 5 (Am. Apr. 16, 2020).

The first § 341(a) meeting of creditors was held on November 3,
2020. See docket generally. It was continued four more times until
its conclusion on February 23, 2021. Under General Order 20-02, the
deadline for filing LBR 3015-1(c)(4) objections was March 2, 2021.
Creditor's objection was filed on March 23, 2021, which is untimely
because it is 28 days after the meeting of creditors concluded, and
21 days after the deadline to file LBR 3015-1(c)(4) objections
passed.

Accordingly, this objection will be OVERRULED because the deadline
for filing LBR 3015-1(c)(4) objections has already expired.

9. [20-11818](#)-B-13 **IN RE: ROBERT/TINA LEIKAM**
[RSW-1](#)

OBJECTION TO CLAIM OF ACAR LEASING LTD, CLAIM NUMBER 6
2-2-2021 [\[21\]](#)

TINA LEIKAM/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 5, 2021 at 9:00 a.m.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1) and will proceed as scheduled.

Robert James Leikam, II, and Tina Renee Leikam ("Debtors") object to Claim #6 filed by ACAR Leasing LTD, d/b/a GM Financial Leasing ("Creditor") filed on June 2, 2020 in the sum of \$9,136.32 and seeks to reclassify it as solely a secured claim. Doc. #21. Debtors leased a 2019 Chevrolet Equinox that is financed by Creditor. *Id.* Creditor included a copy of the lease agreement and certificate of title with the proof of claim in Attachment 1. See Claim #6-1, Attach. 1, at 5-8.

Robert S. Williams, Debtors' attorney, declares that Creditor filed the claim as unsecured in error because it is a vehicle lease and therefore a secured claim. Doc. #23. Mr. Williams states that he "personally called [Creditor] on 9/30/20 and talked to a lady in the bankruptcy department. She agreed there is an error and said they would amend the claim, but they did not do so." *Id.*, ¶ 2. On this basis, Debtors seek to reclassify the claim.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely opposed because Debtors provide no legal authority in support of their position that the claim is not a true lease, but a security agreement. Doc. #25, citing *Butner v. United States*, 440 U.S. 48, 55 (1979) ("The existence, nature and extent of a security interest in property is governed by state law.").

Trustee contends that whether Creditor holds a true lease or a security agreement is governed by California law and Debtors' have failed to demonstrate by a preponderance of the evidence that the lease is in fact a security agreement. *In re Rebel Rents, Inc.*, 291 B.R. 520, 524-25 (Bankr. C.D. Cal. 2003); *In re Cohrs*, 373 B.R. 107, 109 (Bankr. E.D. Cal. 2007).

The court notes that Mr. Williams' declaration contains hearsay from an unidentified declarant purported to be Creditor's agent. Doc. #23, ¶ 2. This alleged statement is not admissible to prove

that Creditor filed its claim in error. See Fed. R. Evid. 801, 802. Debtors have failed to make a *prima facie* showing that they are entitled to the relief sought.

This matter will be called as scheduled to inquire about Debtors' position. The court may continue the matter to May 5, 2021 at 9:00 a.m. and require Debtors to file and serve a written response not later than April 21, 2021. The response shall specifically include admissible evidence to support the Debtors' position. Trustee shall file and serve a reply, if any, by April 28, 2021.

10. [21-10027](#)-B-13 **IN RE: ELIZABETH JOHNSON**
[BBR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MEGGAN PHILLIPS
3-2-2021 [\[20\]](#)

MEGGAN PHILLIPS/MV
CHINONYE UGORJI/ATTY. FOR DBT.
T. BELDEN/ATTY. FOR MV.

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

DISPOSITION: Overruled.

ORDER: The court will issue an order.

This objection will be OVERRULED for failure to comply with the Local Rules of Practice ("LBR").

Elizabeth Johnson ("Debtor") filed a chapter 13 plan on January 19, 2021 within 14 days of the petition date. Doc. #13.

Meggan Phillips ("Creditor") filed a LBR 3015-1(c)(4) objection to Debtor's proposed plan on March 2, 2021 contending: (1) Debtor's proposed plan payments exceed the projected monthly net income listed on Schedule J; (2) the plan does not provide for all debts owed by the Debtor, including the debt owed to Creditor; and (3) the plan was not proposed in good faith. Doc. #20.

Debtor filed bankruptcy on January 8, 2021. Doc. #1. The first meeting of creditors was scheduled for February 23, 2021. Doc. #16. Accordingly, the original deadline to file objections under LBR 3015-1(c)(4) was March 2, 2021, which is reflected in the *Notice of Chapter 13 Bankruptcy Case*, Form EDC 309I. *Id.*, ¶ 9. General Order 20-02 extends that deadline to seven days after the § 341 meeting is concluded and not continued to a further date. See Am. Gen. Order 20-02, at 4, ¶ 5 (Am. Apr. 16, 2020).

The first § 341(a) meeting of creditors was held on February 23, 2021. See docket generally. Debtor and counsel did not appear, and the continued meeting of creditors was scheduled for March 30, 2021. Debtor and counsel did not appear at the March 30, 2021 meeting and it was continued again to April 13, 2021. Under General Order 20-02, the deadline for filing LBR 3015-1(c)(4) objections will not expire

until seven days after the meeting of creditors concludes and is not continued to a further date.

However, as noted above, this objection was filed under LBR 3015-1(c)(4), which provides that objections shall comply with 9014-1(a)-(e), **(f) (2)**, and (g)-(l). "The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary." LBR 3015-1(c)(4).

Moreover, LBR 9014-1(f)(2)(C) provides the procedure when no party in interest is required to file written opposition and requires the notice to inform respondents that opposition, if any, shall be presented at the hearing and if opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Here, the notice of hearing stated:

Opposition, if any, to the sustaining of the Objection must be (1) in writing, (2) served on the parties identified in Exhibit "A" attached hereto, and (3) filed with the Court by the responding party at least fourteen (14) calendar days preceding the date of the hearing pursuant to Local Rule 9014-1(f)(1).

. . . .

The Court will not hear opposition to the Objection at oral argument if written opposition has not been timely filed. Failure to timely file written opposition may be deemed a waiver of any opposition to the sustaining of the Objection or may result in the imposition of sanctions pursuant to Local Rule Number 9014-1. **Further, the Court may resolve the matter without oral argument unless written opposition and supporting evidence are filed with the Clerk of Court and served on the moving party.**

Doc. #21, at 2 (emphasis in original). This is incorrect. The notice should have used the language from LBR 9014-1(f)(2) because written opposition is not required for LBR 3015-1(c)(4) objections.

As noted above, the deadline for filing objections under General Order 20-02 has not expired. Creditor may still file another objection with the correct notice language.

Accordingly, this objection will be OVERRULED for failure to comply with the local rules.

11. [21-10027](#)-B-13 **IN RE: ELIZABETH JOHNSON**
[BBR-2](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
3-24-2021 [\[30\]](#)

MEGGAN PHILLIPS/MV
CHINONYE UGORJI/ATTY. FOR DBT.
T. BELDEN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Meggan Phillips ("Creditor") moves for an order confirming that the automatic stay as to Elizabeth Johnson ("Debtor") has terminated. Doc. #30.

Debtor filed two previous joint bankruptcy cases with her husband, Lanre Johnson, in the Eastern District of California. Debtor filed a chapter 11 petition (Case No. 19-15206) on December 16, 2019, which was dismissed on January 6, 2020. Debtor filed a chapter 13 case (Case No. 20-10486) on February 10, 2020, which was dismissed on December 3, 2020. Debtor filed this bankruptcy case on January 8, 2021. Doc. #1.

In cases where an individual debtor has already filed a chapter 7, 11, or 13 case, and within one year after dismissal files for chapter 13 relief, the automatic stay expires after 30 days. 11 U.S.C. § 362(c)(3)(A). Under 11 U.S.C. § 362(c)(3)(B) however, the court may extend the automatic stay if notice and a hearing are completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Debtor did not request such a hearing and therefore the stay was lifted 30 days after the petition was filed.

This motion will be DEEMED AS A REQUEST UNDER § 362(j) FOR AN ORDER CONFIRMING THAT THE AUTOMATIC STAY HAS BEEN TERMINATED UNDER § 362(c)(3)(A). Creditor may submit an order confirming that the automatic stay has already terminated on the grounds set forth above. No other relief will be granted.

12. [15-14330](#)-B-13 **IN RE: JOSE/PAULA BUSTAMANTE**
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
2-18-2021 [[157](#)]

MICHAEL MEYER/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Chapter 13 trustee Michael H. Meyer ("Trustee") filed this motion seeking an order determining that: (1) Jose Jesus Bustamante and Paula Bustamante ("Debtors") have cured the default with respect to a November 7, 2006 promissory note secured by a deed of trust encumbering residential real property located at 9607 Hamburg Court, Bakersfield, CA 93311 in favor of Golden 1 Credit Union ("Creditor"); and (2) all post-petition payments due and owing from December 2015 through November 2020 have been paid. Doc. #157. No party in interest timely filed written opposition.

This motion will be GRANTED.

Fed. R. Bankr. P. ("Rule") 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtors, debtors' counsel, and the trustee a statement indicating (1) whether it agrees to cure the default on the claim, and (2) whether the debtors are otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Rule 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this

rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required post-petition amounts.

The record shows that Debtors have cured the default on the loan with Creditor and is current on mortgage payments to the same through November 2020. Doc. #159. Trustee states that his office has paid a total of \$13,740.00 toward the ongoing mortgage payment, \$1,144.80 towards the pre-petition arrearage claim, and \$13.74 in late fees. *Id.*

Accordingly, this motion will be GRANTED. Creditor and its successors in interest will be precluded from presenting any omitted information because it was required to be provided in the response to the Notice of Final Cure pursuant to Rule 3002.1(i). Debtors have cured the default and are current on mortgage payments through November 2020.

13. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-8](#)

MOTION TO MODIFY PLAN
2-11-2021 [\[122\]](#)

LATUNJIA JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
TRUSTEE'S OPPOSITION 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.

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 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 trustee Michael H. Meyer ("Trustee") objected to this motion because David Deshawn Johnson and Latunjia Monia Johnson

("Debtors") will not be able to make all payments under the plan and comply with the plan per Debtors' Schedules I and J filed in June 2020. Doc. #130. Debtors responded. Doc. #130. The Trustee withdrew the objection on March 9, 2021. Doc. #134.

This motion will be 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.

14. [20-12848](#)-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[MHM-1](#)

MOTION TO DISMISS CASE
2-23-2021 [\[51\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on April 2, 2021. Doc. #69. Therefore, the motion will be dropped from calendar.

15. [20-12848](#)-B-13 **IN RE: PATRICK/MARIBETH TABAJUNDA**
[MHM-2](#)

MOTION TO DISMISS CASE
3-2-2021 [\[55\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 5, 2021 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") filed this motion to dismiss for (1) unreasonable delay by the debtors that is prejudicial to creditors and (2) failure to confirm a chapter 13 plan. Doc. #55. Trustee also has a motion to dismiss in matter #14 above. MHM-2.

Patrick B. Tabajunda and Maribeth E. Tabajunda ("Debtors") timely responded on March 24, 2021 stating that they have a modified plan set for hearing on May 5, 2021 at 9:00 a.m. Doc. #65; see RSW-4.

Accordingly, this matter will be continued to May 5, 2021 at 9:00 a.m. to be heard in connection with the motion to confirm plan.

16. [21-10286](#)-B-13 **IN RE: JAMES/AIMEE MCCOY**
[DMG-1](#)

MOTION TO SELL
3-10-2021 [\[22\]](#)

AIMEE MCCOY/MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

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 chapter 13 trustee, 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 entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts 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.

James Gaston McCoy, III, and Aimee Marie McCoy ("Debtors") ask this court for authorization to sell a parcel of residential real property located at 9419 Flowertree Dr., Shafter, CA 93263 ("Property") to Gracia Moreno and Enrique Gonzalez ("Buyers") for \$333,000.00. Docs. #22, #24. No party in interest timely filed written opposition.

This motion will be GRANTED. 11 U.S.C. § 363(b)(1) allows the chapter 13 trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, the debtor has the authority to sell property of the estate under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting

from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the [debtor]'s judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he [debtor]'s business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Systems, Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016).

Here, Debtors wish to sell Property to Buyers for \$333,000.00. Doc. #22. The Debtors note that chapter 13 trustee Michael H. Meyer ("Trustee") will not consent to this sale on an *ex parte* basis because a plan has not been confirmed and the property has not vested.

As reflected in Schedule D, Property is encumbered by a deed of trust in favor of Freedom Mortgage Corporation in the amount of approximately \$269,494.00. Doc. #10, Schedule D, ¶ 2.1. Freedom Mortgage filed a proof of claim in the amount of \$263,021.55 on March 31, 2021. See Claim #3.

Debtors listed the Property in Schedule A/B with a value of \$310,000.00. Doc. #10, Schedule A/B, ¶ 1.1. Debtors exempted Property for \$300,000.00 on Schedule C under California Code of Civil Procedure ("C.C.P.") § 704.730. *Id.*, Schedule C. Debtors also state that a six percent (6%) commission will be shared by the listing agent and selling agent, which will be \$19,980.00 if Property sells for \$333,000.00. Doc. #22, ¶ 6.

The proposed sale can be illustrated as follows:

Proposed sale price of Property	=	\$333,000.00
Freedom Mortgage deed of trust	-	\$269,494.00
Broker fees (6% of sale price)	-	\$19,980.00
Other costs of sale	-	?
Remaining equity	<	\$43,526.00
Debtors' homestead exemption	-	\$300,000.00
Residual homestead exemption	>	(\$256,474.00)

Doc. #24.

The sale of the Property appears to be in the best interests of the estate because it will pay off the first mortgage and provide Debtors with proceeds to pay their chapter 13 plan. Debtors' proposed chapter 13 plan, which is presently unconfirmed, proposes to pay a 100% dividend to unsecured creditors. See Doc. #12. The sale appears to be supported by a valid business judgment and proposed in good faith. Debtors' judgment appears to be reasonable and will be given deference.

Additionally, Buyers do not appear to be insiders requiring heightened scrutiny with respect to Debtors. Mr. McCoy filed a declaration stating that this sale is an arm's length transaction. Doc. #24, at 2, (vi). Buyers are not listed on the amended master address list. Docs. ##15-16. Buyers are also not co-debtors with Debtors. Doc. #10, Schedule H.

Any order approving the sale will need to be signed by the Trustee. Further, the order will require the Trustee be given and approve a seller's final closing statement before the sale is completed.

Any party wishing to overbid must be present at the time of the hearing. No warranties or representations are included with the Property; it will be sold "as-is."

17. [18-11987](#)-B-13 **IN RE: HECTOR CHAVEZ**
[PK-5](#)

CONTINUED : MOTION TO MODIFY PLAN
1-4-2021 [\[70\]](#)

HECTOR CHAVEZ/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted. Order to be submitted with signature of the Trustee or his counsel.

ORDER: The Moving Party will 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 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 entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts 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.

Hector Manuel Chavez ("Debtor") seeks confirmation of his modified chapter 13 plan. Doc. #70.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected on grounds that Debtor will not be able to make all payments under the plan, comply with the plan, and the plan was not proposed in good faith under 11 U.S.C. §§ 1325(a)(3), (6). Doc. #81.

This matter was previously continued to April 7, 2021 so that Debtor could file and serve a written response to Trustee's contentions not later than March 24, 2021. Doc. #84. The Trustee's reply, if any, was due not later than March 31, 2021.

Debtor timely responded on March 24, 2021. Doc. #87. Trustee withdrew his opposition on April 2, 2021. Doc. #90.

Accordingly, this motion will be 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.

18. [16-10189](#)-B-13 **IN RE: RUBEN ARAMBULA AND IRMA GOMEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-10-2021 [[66](#)]

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the motion on March 29, 2021. Doc. #70. Therefore, the motion will be dropped from calendar.

19. [20-11896](#)-B-13 **IN RE: MARTIN/EVANGELINA MENDOZA**
[MHM-1](#)

OBJECTION TO CLAIM OF LVNV FUNDING INC./RESURGENT CAPITAL
SERVICES, CLAIM NUMBER 3
2-23-2021 [[62](#)]

MICHAEL MEYER/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection on February 25, 2021. Doc. #66.
Therefore, the objection will be dropped from calendar.

10:00 AM

1. [20-13809](#)-B-7 **IN RE: ERLINDA GALARIO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2021 [\[15\]](#)

SANTANDER CONSUMER USA INC./MV
VINCENT QUIGG/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2013 Volkswagen Golf ("Vehicle"). Doc. #15.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the last payment received by Movant from the debtor was on November 19, 2018, and the loan matured on March 26, 2019. The movant has produced evidence that debtor is delinquent at least \$2,099.00. Doc. #17, 18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral

pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.

2. [12-14919](#)-B-7 **IN RE: LEONILA JACOBO**
[ORS-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
3-1-2021 [\[30\]](#)

LEONILA JACOBO/MV
OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, 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 amounts 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.

Leonila Jacobo ("Debtor") filed this motion seeking to avoid two judicial liens in favor of Discover Bank ("Creditor"), and encumbering residential real property located at 21222 Adobe Rd., Bakersfield, CA 93307 ("Property"). Doc. #30. No party in interest timely filed written opposition.

The court notes that Debtor corrected the procedural deficiencies from the previously motion by filing the motion documents separately and with a docket control number. Debtor also filed an amended notice correcting the hearing time that was served more than 28 days before the hearing. Doc. #38.

Debtor also served C T Corporation System, Creditor's registered agent for service of process per the California Secretary of State business search website (www.businesssearch.sos.ca.gov) at 818 West

Seventh Street, Suite 900, Los Angeles, CA 90017. Docs. #36; #39. This is close, but CT Corporation System's business address appears to be 818 Seventh Street, Suite 930, Los Angeles, CA 90017, and its mailing address is 28 Liberty Street, New York, New York 10005. Debtor also served (1) Discover Financial directly with attention to the Bankruptcy Department; (2) Creditor at two different addresses listed on the abstracts of judgment; and (3) two different attorneys who represented Creditor in obtaining the abstracts of judgment. *Id.* Also, this is Debtor's second attempt and Creditor did not object to either this motion or the last. See Docs. ##23-29.

This motion will be 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 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, two judgments were entered against Debtor in favor of Creditor. The first judgment in the sum of \$5,861.84 was entered on March 7, 2012 and an abstract of judgment was issued on April 20, 2012. Doc. #33, Ex. 1. The first judgment was recorded in Kern County on May 8, 2012. *Id.* The second judgment in the sum of \$5,345.03 was entered on March 15, 2012 and an abstract was issued on April 20, 2012. *Id.*, Ex. 2. The second judgment was recorded in Kern County on May 3, 2012. *Id.* Both judgment liens attached to Debtor's interest in Property.

As of the petition date, Property had an approximate value of \$57,500.00. Doc. #1, Schedule A. Property was not encumbered by any other unavoidable liens. Doc. #22, Am. Schedule D. Debtor claimed an exemption pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730 in the amount of \$57,500.00. Doc. #1, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date	=	\$57,500.00
Debtor's homestead exemption	-	\$57,500.00
Remaining equity	=	\$0.00
Creditor's first judgment lien	-	\$5,861.84
Creditor's second judgment lien	-	\$5,345.03
Extent Debtor's exemption impaired	=	(\$11,206.87)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

3. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-18-2021 [\[70\]](#)

PETER FEAR/ATTY. FOR DBT.
\$11.50 FEE PAID 3/19/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the copy/certification fees were paid on March 19, 2021. Therefore, the Order to Show Cause will be vacated.

4. [21-10120](#)-B-7 **IN RE: HOWARD/BRENDA CHADDICK**
[PK-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-24-2021 [\[26\]](#)

WHITE AND ASH LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
PATRICK KAVANAGH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

White and Ash, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (2) with respect to real property located at 6541 White Lane, Suite M, Bakersfield, CA 93309 ("Property"). Doc. #26. Movant has possession of Property but requests relief so that it may remove and administer fixtures and personal property left behind and abandoned by Howard Sandlin

Chaddick and Brenda Kay Chaddick ("Debtors"). *Id.* Opposition was not required and may be presented at the hearing.

In the absence of opposition, the court is inclined to GRANT this motion.

Movant's attorney, Patrick Kavanagh, filed a declaration stating that the abandoned property, "if liquidated by the trustee in a commercially and covid reasonably [sic] manner, with appropriate insurance and safety for such sale, with restoration and repair of the premises, would not produce enough net proceeds to make a meaningful distribution to creditors." Doc. #30.

William Potter, Movant's property manager, also filed a declaration stating that Debtors abandoned the property to Movant on January 19, 2021 and then subsequently filed bankruptcy that same day. Doc. #29. Mr. Potter also states that the fixtures and equipment left behind are listed in Schedule A/B, question 40, as "Machinery, fixtures, equipment supplies you use in business, and tools of your trade." *Id.* The value of the machinery and fixtures total \$19,040.00 according to the schedules. Doc. #32, Ex. A. Mr. Potter states that the alignment racks and the lifts are attached to the building and removal of these assets would cause damage to the building necessitating remediation and repair. Doc. #29, ¶ 12. Mr. Potter states that he received an estimate of \$11,000.00 to remove the lifts and repair the building with an additional \$5,000.00 for general repairs.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least 12 pre-petition payments and two post-petition payments. The movant has produced evidence that Debtors are delinquent at least \$64,000.00. Docs. ##28-29.

The court also finds that the Debtors do not have any equity in the property and the property is not necessary to an effective reorganization. Debtors were tenants of Movant and did not have any equity interest in Property. Further, this is a chapter 7 case, so the Property is not necessary for an effective reorganization.

This matter will be called as scheduled to inquire about the Debtors' and the chapter 7 trustee's positions.

In the absence of opposition, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2) to permit the Movant to dispose of

its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtors have failed to make at least 12 pre-petition and two post-petition payments to Movant.

5. [17-10624](#)-B-7 **IN RE: REBECCA STARK**
[PK-2](#)

CONTINUED MOTION TO AVOID LIEN OF CALIFORNIA REPUBLIC BANK
2-17-2021 [\[21\]](#)

REBECCA STARK/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor Rebecca Ann Stark withdrew this motion on March 5, 2021.
Doc. #33. Accordingly, this motion will be dropped from calendar.

6. [16-13441](#)-B-7 **IN RE: LUIS/MARYBEL PEREZ**
[RSW-1](#)

MOTION TO AVOID LIEN OF UNIFUND CCR, LLC
3-16-2021 [\[21\]](#)

MARYBEL PEREZ/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
ROBERT WILLIAMS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Luis Perez, Jr., and Marybel Perez ("Debtors") filed this motion seeking to avoid a judicial lien in favor of Unifund CCR, LLC

("Creditor"), and encumbering residential real property located at 3001 Meadow Ridge Avenue, Bakersfield, CA 93308 ("Property"). Doc. #21. Written opposition was not required and may be presented at the hearing.

In the absence of opposition, this motion will be 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 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtors in favor of Creditor in the sum of \$6,913.94 on May 14, 2015. Doc. #24, Ex. 4. An abstract of judgment was issued on May 6, 2016 and recorded in Kern County on June 7, 2016. *Id.* That lien attached to Debtors' interest in Property. Doc. #23.

As of the petition date, Property had an approximate value of \$180,000.00. Doc. #1, Schedule A/B, ¶ 1.1. The unavoidable liens totaled \$125,606.00 on that same date, consisting of a deed of trust in favor of Ditech Home Finance *Id.*, Schedule D, ¶ 2.1. Debtor claimed an exemption pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730 in the amount of \$54,394.00. Docs. #12, Schedule C; #23. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$180,000.00
Total amount of unavoidable liens	-	\$125,606.00
Remaining available equity	=	\$54,394.00
Debtors' homestead exemption	-	\$54,394.00
Creditor's judicial lien	-	\$6,913.94
Extent Debtors' exemption impaired	=	(\$6,913.94)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

7. [20-13489](#)-B-7 **IN RE: ESTELA MUNOZ**
[RSW-2](#)

MOTION TO AVOID LIEN OF CACH, LLC
2-16-2021 [\[20\]](#)

ESTELA MUNOZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 amounts 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.

Estela Munoz ("Debtor") filed this motion seeking to avoid a judicial lien in favor of Cach, LLC ("Creditor"), and encumbering residential real property located at 3605 Shellmacker Avenue, Bakersfield, CA 93307 ("Property"). Doc. #20. No party in interest timely filed written opposition.

This motion will be 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 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$24,546.39 on March 28, 2014. Doc. #23, Ex. 4. An abstract of judgment was issued on July 9, 2015 and recorded in Kern

County on July 21, 2015. *Id.* That lien attached to Debtor's interest in Property. Doc. #22. Creditor filed Proof of Claim No. 8 on March 22, 2021 in the amount of \$24,546.39. See Claim #8-1.

As of the petition date, Property had an approximate value of \$127,573.00. *Id.*, ¶ 2; Doc. #1, Schedule A/B, ¶ 1.1. The unavoidable liens totaled \$43,797.00 on that same date, consisting of a deed of trust in favor of Bank of America. *Id.*, Schedule D, ¶ 2.1. Debtor claimed an exemption pursuant to California Code of Civil Procedure ("C.C.P.") § 704.730 in the amount of \$100,000.00. Docs. #1, Schedule C; #22. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$127,573.00
Total amount of unavoidable liens	-	\$43,797.00
Remaining available equity	=	\$83,776.00
Debtors' homestead exemption	-	\$100,000.00
Creditor's judicial lien	-	\$24,546.39
Extent Debtors' exemption impaired	=	(\$40,770.39)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). No party in interest timely filed written opposition. This motion will be GRANTED.

10:30 AM

1. [20-12642](#)-B-11 **IN RE: 3MB, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
8-11-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 27, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On April 6, 2021, the parties stipulated to continue this status conference to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day. Doc. #232. Accordingly, this status conference will be continued to April 27, 2021 at 9:30 a.m.

2. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[AG-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2021 [[193](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
LEONARD WELSH/ATTY. FOR DBT.
AMIR GAMLIEL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 27, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On April 6, 2021, the parties stipulated to continue this motion to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day. Doc. #232. Accordingly, this matter will be continued to April 27, 2021 at 9:30 a.m. Per the stipulation, no further briefing shall be permitted in connection with the continued hearings.

3. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-11](#)

AMENDED CHAPTER 11 DISCLOSURE STATEMENT 94 DISCLOSURE
STATEMENT FILED BY DEBTOR 3MB, LLC
2-4-2021 [\[173\]](#)

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 27, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On April 6, 2021, the parties stipulated to continue this matter to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day. Doc. #232. Accordingly, this matter will be continued to April 27, 2021 at 9:30 a.m. Per the stipulation, no further briefing shall be permitted in connection with the continued hearings.

The court notes that the parties' stipulation and proposed order did not comply with the Local Rules of Practice ("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.

LBR 9014-1(c)(1) requires a DCN below the case number on all pleadings and other documents, including proofs of service filed in support of or opposition to a matter. Once a DCN is assigned, all related papers filed by any party, including stipulations resolving that motion, shall include the same number. LBR 9014-1(c)(4).

Here, the stipulation (Doc. #230) relates to four separate matters: the status conference (no DCN), the Motion for Relief from the Automatic Stay (AG-4), the Amended Chapter 11 Disclosure Statement (LKW-11), and the Motion for Compensation for Leonard K. Welsh (LKW-13). However, the stipulation and the proposed order only contain one DCN: AG-004. This is incorrect. The parties should have filed four separate stipulations, each with its own respective DCN. Alternatively, the parties should have at least included every related DCN in the caption page of both the stipulation and order.

LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. In the interest of a speedy adjudication, the court will overlook this deficiency in this instance under LBR 1001-1(f). Future violations of the local rules may result in rejection of the proposed order.

4. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-13](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
3-10-2021 [\[200\]](#)

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 27, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On April 6, 2021, the parties stipulated to continue this motion to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day. Doc. #232. Accordingly, this matter will be continued to April 27, 2021 at 9:30 a.m. Per the stipulation, no further briefing shall be permitted in connection with the continued hearings.

The court notes that the parties' stipulation and proposed order did not comply with the Local Rules of Practice ("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.

LBR 9014-1(c)(1) requires a DCN below the case number on all pleadings and other documents, including proofs of service filed in support of or opposition to a matter. Once a DCN is assigned, all related papers filed by any party, including stipulations resolving that motion, shall include the same number. LBR 9014-1(c)(4).

Here, the stipulation (Doc. #230) relates to four separate matters: the status conference (no DCN), the Motion for Relief from the Automatic Stay (AG-4), the Amended Chapter 11 Disclosure Statement (LKW-11), and the Motion for Compensation for Leonard K. Welsh (LKW-13). However, the stipulation and the proposed order only contain one DCN: AG-004. This is incorrect. The parties should have filed four separate stipulations, each with its own respective DCN. Alternatively, the parties should have at least included every related DCN in the caption page of both the stipulation and order.

LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. In the interest of a speedy adjudication, the court will overlook this deficiency in this instance under LBR 1001-1(f). Future violations of the local rules may result in rejection of the proposed order.

11:00 AM

1. [19-14513](#)-B-7 **IN RE: NAYLAN BENDER**
[20-1003](#)

CONTINUED FURTHER SCHEDULING CONFERENCE RE: COMPLAINT
1-21-2020 [[1](#)]

LRS REALTY & MANAGEMENT, INC.
V. BENDER, III
JEREMY FAITH/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [21-10082](#)-B-7 **IN RE: KEVIN RAMIREZ**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
2-17-2021 [\[13\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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. Debtor states that he has started a new job and will be making more money, but no evidence has been provided to show increased income. Amended Schedules I and J have not been filed with the court. 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. Therefore, the reaffirmation agreement will be denied.