

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 26, 2018
Place: Department B - Courtroom #13
Fresno, 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.

9:30 AM

1. [18-11166](#)-B-11 IN RE: JOSE/MARY VALADAO
[WW-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL
4-2-2018 [[15](#)]

JOSE VALADAO/MV
RILEY WALTER

NO RULING.

1:30 PM

1. [17-12900](#)-B-13 **IN RE: PAUL/TERESA YAMASHITA**
[ALG-2](#)

MOTION TO MODIFY PLAN
3-9-2018 [[37](#)]

PAUL YAMASHITA/MV
JANINE ESQUIVEL
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: GRANTED conditioned on debtor consenting to all changes requested by the Trustee in the order confirming plan. If not, the motion is DENIED.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The trustee filed a detailed objection on March 27, 2018 (doc. #52). The trustee stated that the plan could be confirmed with the following changes in the Order Confirming Plan: All plan payments for months 1-8 shall total \$10,350.00. Commencing in month 9, plan payments shall be \$1,138.00.

This matter shall be called to give debtor an opportunity to object to trustee's opposition.

2. [18-11201](#)-B-13 **IN RE: DOUGLAS PARKS**
[FW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-11-2018 [[9](#)]

DOUGLAS PARKS/MV
PETER FEAR

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

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

This case was filed on March 30, 2018 and the automatic stay will expire on April 29, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* This evidence standard has been defined, in Singh v. Holder, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." In re Castaneda, 342 B.R. 90 (Bankr. S.D. Cal. 2006), *citations omitted*.

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

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

Debtor's previous case was dismissed for failure to timely file necessary documents. Doc. #11. Debtor did not re-file the case

immediately because he tried to work his debts out with his creditors outside of bankruptcy. However that failed, and debtor filed again in order to reinstate his contractor's license so he can make plan payments. *Id.* To date, debtor has timely filed all the necessary paperwork in this case and a plan has been filed as well.

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

3. [18-10302](#)-B-13 **IN RE: ANDREA AFFRONTI**
[MHM-2](#)

MOTION TO DISMISS CASE
3-26-2018 [[23](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

4. [18-10303](#)-B-13 **IN RE: JOHN/GUADALUPE CUNNINGHAM**
[MHM-1](#)

MOTION TO DISMISS CASE
3-26-2018 [[20](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

5. [17-13504](#)-B-13 **IN RE: SAMUEL/OLGA NEVAREZ**
[TOG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
2-14-2018 [[43](#)]

SAMUEL NEVAREZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The debtor has responded to the trustee's objection. The Cornerstone claims (#6 & #7) were amended by the creditor on March 28, 2018. The amendments appear to resolve the Plan funding issue raised by the Trustee. This motion is GRANTED. This matter will be called unless trustee withdraws the objection.

6. [17-13005](#)-B-7 **IN RE: GREGORY/SHELLEY SNELLA**
[NES-9](#)

MOTION TO CONFIRM PLAN
3-7-2018 [[75](#)]

GREGORY SNELLA/MV
NEIL SCHWARTZ
CONVERTED 4/4/18

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This case was converted to chapter 7. Doc. #86. Therefore this motion is DENIED AS MOOT.

7. [18-10306](#)-B-13 **IN RE: ALEJANDRO CERVANTES**
[MHM-2](#)

MOTION TO DISMISS CASE
3-26-2018 [[29](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
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 has been provided to the trustee. The debtor's response is not supported by evidence. 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.

8. [14-11111](#)-B-13 **IN RE: PHILLIP/MARNIE HAMILTON**
[TCS-6](#)

MOTION TO MODIFY PLAN
3-19-2018 [[130](#)]

PHILLIP HAMILTON/MV
TIMOTHY SPRINGER

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 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.

9. [17-12213](#)-B-13 **IN RE: RENE ELLER**
[TCS-2](#)

MOTION TO MODIFY PLAN
3-16-2018 [[48](#)]

RENE ELLER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if debtor is current at the time of
hearing and the debtor satisfactorily explains
the issues noted below. If not, the motion
will be denied.

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)(1) and will proceed as scheduled.

Trustee's timely filed opposition stated that this first amended plan can be confirmed if debtor is current on payments at the time of confirmation. Debtor is delinquent \$4,499.99 and their amended Schedule I and J do now show an ability to pay that amount. But, the debtor's declaration (doc. #51) does not contain facts establishing feasibility including: (1) likelihood of the debtor to continue to receive overtime pay; (2) why the retirement loan deduction is now "required" which was not the case when the original schedule I and J

was filed; and (3) why the tripling of the monthly expense for life insurance is necessary.

10. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA
FIELD IRONWORKERS TRUST FUNDS
3-13-2018 [[29](#)]

BOARD OF TRUSTEES OF THE
CALIFORNIA IRONWORKERS FIELD
PETER FEAR
CHRISTOPHER MCDERMOTT/ATTY. FOR MV.

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

DISPOSITION: Continued to June 14, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to a date after the continued § 341
meeting. No appearance is necessary.

11. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[RMP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR
DITECH FINANCIAL LLC
2-28-2018 [[18](#)]

DITECH FINANCIAL LLC/MV
PETER FEAR
JAMES LEWIN/ATTY. FOR MV.

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

DISPOSITION: Continued to June 14, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to a date after the continued § 341
meeting. No appearance is necessary.

CONTINUED MOTION TO CONFIRM PLAN
2-7-2018 [\[52\]](#)

GLORIA ALCALA/MV
HAYK GRIGORYAN
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).

The order of the court, entered on April 2, 2018, required the debtor to do one of two things: (1) to file and serve a written response not later than April 12, 2018, or (2) file, serve, and set for hearing a confirmable plan not later than April 19, 2018. Doc. #81. If debtor does neither, this motion will be denied on the grounds stated in the opposition without a further hearing. *Id.* A bar date of June 14, 2018 was also set by which a plan must be confirmed or objections to claims must be filed, or the case will be dismissed. *Id.*

Debtor filed two declarations, one on March 19, 2018 (doc. #76) and the other on March 23, 2018 (doc. #77). A third amended plan ("TAP") was also filed on March 19, 2018. Doc. #75. These three documents were filed before the court issued its ruling on the originally scheduled motion set for hearing on March 29, 2018.

First, the second amended plan (doc. #54) was never withdrawn, as the court's order required.

Second, the TAP filed on March 19, 2018 was never properly set for hearing. No motion to confirm, notice of motion to confirm, evidence supporting said motion, or proof of service, all with proper docket control numbers, was filed in compliance with the Local Rules of Practice ("LBR"). Even if the TAP was properly filed and served on the required parties, the LBR 3015-1(d)(2) requires at least 35 days' notice. The TAP was filed 10 days prior to the hearing date written at the top of the first page. Doc. #75.

Third, the declaration filed March 19, 2018 is incomplete as to several elements of 11 U.S.C. § 1325(a), specifically (a)(1), (a)(4), and (a)(6). Doc. #76. It is not signed under penalty of perjury.

The declaration filed March 23, 2018 shows that debtor was current as of March 19, 2018. The court notes that the declaration shows the debtor made only two payments on time. Doc. #77. This declaration was submitted on a form that is not acceptable in this district.

This matter will be called to allow debtor's counsel to explain to the court why they did not follow the court's order or the Local Rules of Practice.

13. [18-10432](#)-B-13 **IN RE: RUSSELL MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-23-2018 [[12](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER
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.

14. [15-13333](#)-B-13 **IN RE: SELINA BARNETT**
[DRJ-4](#)

MOTION TO MODIFY PLAN
3-22-2018 [[82](#)]

SELINA BARNETT/MV
DAVID JENKINS

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 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.

15. [15-13333](#)-B-13 **IN RE: SELINA BARNETT**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-7-2018 [[69](#)]

MICHAEL MEYER/MV
DAVID JENKINS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

16. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[MHM-1](#)

MOTION TO DISMISS CASE
2-13-2018 [[59](#)]

MICHAEL MEYER/MV
PETER BUNTING
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 10, 2018, at 1:30 p.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to May 10, 2018, at 1:30 p.m., to be heard with the debtors' motion to confirm plan.

17. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-2](#)

CONTINUED MOTION TO CONFIRM PLAN
2-9-2018 [[36](#)]

TIMOTHY SABBATINI/MV
PETER BUNTING
PLAN WITHDRAWN,

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

18. [17-14339](#)-B-13 **IN RE: SHAWN WILLIAMS**

MOTION TO CONFIRM PLAN
3-7-2018 [[89](#)]

SHAWN WILLIAMS/MV
NIMA VOKSHORI
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").

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. There was no DCN on this motion.

19. [17-14339](#)-B-13 **IN RE: SHAWN WILLIAMS**
[MHM-4](#)

CONTINUED MOTION TO DISMISS CASE
3-5-2018 [[85](#)]

MICHAEL MEYER/MV
NIMA VOKSHORI
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion is based on an unreasonable delay that is prejudicial to creditors and for failure to confirm a plan.

This case was filed over five months ago and no plan has yet been confirmed. The motion to confirm, matter #19 above, was denied without prejudice for failure to comply with the Local Rules of Practice.

This motion is the fourth motion to dismiss that has been filed in this case.

This matter will be called so debtor can explain to the court why this case should not be dismissed for the grounds stated in the motion.

20. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[FW-5](#)

MOTION TO CONFIRM PLAN
3-2-2018 [[52](#)]

KELLY HUFFMAN/MV
PETER FEAR
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

21. [17-14874](#)-B-13 **IN RE: RIGOBERTO/ESTELA ESTRADA**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
2-28-2018 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion is DENIED.

The basis for this motion was that debtor had not confirmed a plan and for an unreasonable delay that is prejudicial to creditors.

Debtor's motion to confirm plan, matter #23, TOG-2 below, was unopposed and is confirmed. Therefore, this motion to dismiss is DENIED.

22. [17-14874](#)-B-13 **IN RE: RIGOBERTO/ESTELA ESTRADA**
[TOG-1](#)

MOTION TO CONFIRM PLAN
3-6-2018 [[24](#)]

RIGOBERTO ESTRADA/MV
THOMAS GILLIS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

23. [17-14874](#)-B-13 **IN RE: RIGOBERTO/ESTELA ESTRADA**
[TOG-2](#)

MOTION TO CONFIRM PLAN
3-15-2018 [[34](#)]

RIGOBERTO ESTRADA/MV
THOMAS GILLIS

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 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.

24. [17-10875](#)-B-13**IN RE: GERALD STULLER AND BARBARA WILKINSON-STULLER**
[MJD-5](#)

MOTION TO MODIFY PLAN
3-19-2018 [[119](#)]

GERALD STULLER/MV
SCOTT SAGARIA
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot. Movant withdrew the motion.

ORDER: The court will issue the order.

This motion is DENIED AS MOOT. Movant withdrew the motion on April 19, 2018. Doc. #134.

25. [18-10286](#)-B-13 **IN RE: JOHN/BOBBIE-ANN HEINRICH**
[MHM-2](#)

MOTION TO DISMISS CASE
3-23-2018 [[20](#)]

MICHAEL MEYER/MV
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 20, 2018 (Document No. 32).

26. [18-10489](#)-B-13 **IN RE: JAVIER/GABRIELA DIAZ**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
3-15-2018 [[14](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
JEFFREY ROWE
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 objection 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 sustain the objection. 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 basis for this objection is that the debtors are attempting to treat the debt to movant as a purchase, rather than a lease under the proposed Plan.

Under 11 U.S.C. § 365(d)(2), the trustee, or debtor as debtor-in-possession, may assume or reject a lease of personal property or executory contract at any time before confirmation. The court, on request of a party to such agreement, may order the debtor-in-

possession to assume or reject the lease or executory contract in a specified amount of time.

After reviewing the objection and attached evidence, and unless opposition is presented at the hearing, the court finds that the obligation owed to movant is a lease of personal property, a vehicle. The debtors have classified the claim in class 2. Based on the evidence submitted so far, the lease should be addressed in section 4 of the form plan. Movant retains rights to, by motion, ask the court to require the assumption or rejection of the lease within a specified time under 11 U.S.C. § 365(d)(2). It is up to the debtor to amend the Plan to deal with the lease at issue.

If the debtors assume the lease, the plan will need to be amended to formally assume the lease and indicate payment directly to movant, pursuant to the terms of the lease. If the debtors reject the lease, debtors must surrender the collateral and the plan will need to be amended to reflect the surrender.

If movant seeks attorney's fees, movant may file a separate motion.

27. [17-14293](#)-B-13 **IN RE: ERIC/MEREDITH KURTZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-29-2018 [\[37\]](#)

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion 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 movant, Santander Consumer USA Inc., seeks relief from the automatic stay with respect to a 2015 Jeep Cherokee. The movant has produced evidence that the balance due and owing on the vehicle is \$21,390.17. Doc. #39. Debtor has only a possessory interest in the

vehicle; debtor is leasing the vehicle and does not own the property.

The court concludes that there is no equity in the vehicle, no evidence exists that it is necessary to a reorganization, and the contract between the debtor and creditor requires debtor to surrender the vehicle to creditor and pay the balance.

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.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the vehicle is depreciating in value.

28. [18-10894](#)-B-13 **IN RE: JUAN REBOLLERO**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CHASE MORTGAGE
3-29-2018 [\[13\]](#)

JUAN REBOLLERO/MV
THOMAS GILLIS

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. Pursuant to Federal Rule of Bankruptcy Procedure

5009(d), debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by Rule 7004 for service of a summons and complaint, and in compliance with the LBR. 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.

29. [18-10396](#)-B-13 **IN RE: AHARON/GRANUSH GASPARIAN**
[MHM-2](#)

MOTION TO DISMISS CASE
3-26-2018 [[18](#)]

MICHAEL MEYER/MV
KARNEY MEKHITARIAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.