

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Monday, April 30, 2018
Place: Department B - 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

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

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

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

2. [17-13005](#)-B-7 **IN RE: GREGORY/SHELLEY SNELLA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
1-10-2018 [[50](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ
CONVERTED 4/4/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant converted to chapter 7.

3. [15-12709](#)-B-13 **IN RE: LORI KITCHEN**
[WDO-6](#)

MOTION TO MODIFY PLAN
3-20-2018 [[109](#)]

LORI KITCHEN/MV
WILLIAM OLCOTT

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

4. [18-10011](#)-B-13 **IN RE: PETER/DENISE FORRISTAL**
[MHM-2](#)

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

MICHAEL MEYER/MV
NEIL SCHWARTZ
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 matter was continued past the date of the continued § 341 meeting of creditors. The grounds for this motion are that the debtor failed to appear at the § 341 meeting of creditors and failed to provide trustee with certain documents. In their response to trustee's motion filed on March 21, 2018, debtors stated that they would attend the continued § 341 meeting and provide the trustee with the necessary documents. Doc. #30.

If the trustee withdraws this motion prior to the hearing, it will be dropped from calendar. If the motion is not withdrawn, this matter will proceed. The motion will be GRANTED on the grounds set forth in the trustee's motion.

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

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

CITIBANK, N.A./MV
NEIL SCHWARTZ
ROBERT ZAHRADKA/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 court will issue
the order.

This objection was continued past the date of the continued § 341
meeting of creditors.

The grounds of this objection is that debtors seek to value
creditor's total secured claim at \$0.00. Doc. #23. Debtors have
valued the subject property at \$248,805.00 (based on Zillow.com)
while creditor obtained a Broker's Price Opinion that suggested the
value of the subject property was \$245,000.00. Doc. #25, ex. 4.
Creditor argues that regardless of which valuation is correct, the
subject property is not wholly unsecured, and therefore not subject
to avoidance under 11 U.S.C. § 506(d), because the value of the
property exceeds the balance of the loan owed to creditor. Doc. #23.

Debtor's evidence of value (Zillow.com) is hearsay. Debtors' are not
experts and thus cannot base an opinion on a third party source.
Federal Rules of Evidence 701, 703. Also, Zillow.com is not a
qualified expert and a quotation from the website is not credible
evidence of value.

Finally, debtors did not include any "non-standard" provisions in
the proposed plan. Doc. #5. Debtors apparently ignored § 1.04 of the
form plan requiring that separate motions be filed to evaluate
secured claims.

6. [17-13915](#)-B-13 **IN RE: VERONICA TRUJILLO**
[RSW-1](#)

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

VERONICA TRUJILLO/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING WITHDRAWN,

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice and the only opposition was withdrawn on April 13, 2018 Doc. #51. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[MHM-4](#)

MOTION TO DISMISS CASE
3-30-2018 [[73](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 7, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on June 7, 2018 at 9:00 a.m. to be heard with the motion to confirm plan (Docket No. 8 below). The court will issue an order. No appearance is necessary.

The court notes that debtor's response was one day late. Debtor filed their response on April 17, 2019. Doc. #79. Responses/oppositions are due no later than 14 days before the hearing. Local Rule of Practice 9014-1(f)(1). This response was filed less than 14 days before the hearing.

8. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[RSW-3](#)

MOTION TO CONFIRM PLAN
2-26-2018 [[61](#)]

RICK LOPEZ/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 7, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on June 7, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than May 24, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than May 31, 2018. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

9. [16-11129](#)-B-13 **IN RE: DAVID/LINDA MILAZZO**
[LKW-11](#)

MOTION TO APPROVE LOAN MODIFICATION
3-30-2018 [[183](#)]

DAVID MILAZZO/MV
LEONARD WELSH

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver

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

This motion is GRANTED. Debtors are authorized, but not required, to enter into a home loan modification agreement with Ditech Financial, LLC. Debtors shall continue performing under the confirmed plan. Should the loan modification conflict with the plan, a modified plan should be filed and set for a confirmation hearing.

10. [17-13734](#)-B-13 **IN RE: RANDALL KARNES**
[PLG-3](#)

MOTION TO CONFIRM PLAN
3-15-2018 [\[47\]](#)

RANDALL KARNES/MV
RABIN POURNAZARIAN

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

DISPOSITION: Granted.

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

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

11. [17-14052](#)-B-13 **IN RE: JAIME/LEONOR SANCHEZ**
[MHM-4](#)

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

PATRICK KAVANAGH

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT.

Debtor has filed an amended plan, set for hearing on June 7, 2018. Therefore, this objection is OVERRULED AS MOOT. Debtor shall withdraw the first plan.

12. [18-10455](#)-B-13 **IN RE: ADRIENNE COLBERT**
[MHM-1](#)

MOTION TO DISMISS CASE
3-30-2018 [[17](#)]

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 April 6, 2018 (Document No. 25).

13. [17-14664](#)-B-13 **IN RE: MARIA MORENO**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
3-30-2018 [[35](#)]

ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 7, 2018 at 9:00 a.m. Debtor shall confirm a chapter 13 plan on or before July 19, 2018 or the case will be dismissed on the trustee's ex parte application.

ORDER: The court will issue the order.

This objection will be set for a continued hearing on June 7, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

This objection to confirmation was noticed as a preliminary hearing. Unless this case is voluntarily converted to chapter 7 or dismissed or the objection has been withdrawn, the debtor shall file and serve a written response not later than May 24, 2018. The response shall specifically address each issue raised in the objection, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served,

and set for hearing, not later than May 31, 2018. If the debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated and confirmation will be denied without a further hearing.

Pursuant to § 1324(b), the court will set July 19th, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

The court notes that debtor's response was one day late. Debtor filed their response on April 17, 2019. Doc. #81. Responses/oppositions are due no later than 14 days before the hearing. Local Rule of Practice 9014-1(f)(1). This response was filed less than 14 days before the hearing.

14. [17-14664](#)-B-13 **IN RE: MARIA MORENO**
[MHM-5](#)

MOTION TO DISMISS CASE
3-30-2018 [\[38\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to June 7, 2018 at 9:00 a.m. if debtor is current by the date of the hearing. Otherwise, the case will be dismissed. Debtor shall confirm a chapter 13 plan on or before July 19, 2018 or the case will be dismissed on the trustee's ex parte application.

ORDER: The court will issue the order.

This motion will be set for a continued hearing on June 7, 2018 at 9:00 a.m. to be heard with the objection to confirmation of plan (Docket No. 13 above).

Pursuant to § 1324(b), the court will set July 19th, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

The court notes that debtor's response was one day late. Debtor filed their response on April 17, 2019. Doc. #44. Responses/oppositions are due no later than 14 days before the hearing. Local Rule of Practice 9014-1(f)(1). This response was filed less than 14 days before the hearing.

15. [18-10575](#)-B-13 **IN RE: NORMA FERNANDEZ**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
3-9-2018 [[12](#)]

THE BANK OF NEW YORK/MV
ROBERT WILLIAMS
ASYA LANDA/ATTY. FOR MV.

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

DISPOSITION: Resolved by Stipulation.

NO ORDER REQUIRED.

This motion has been resolved by stipulation between the parties.

16. [17-13481](#)-B-13 **IN RE: EDUARDO ESCOBAR AND JOAQUINA MIRANDA**
[MHM-1](#)

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

MICHAEL MEYER/MV
REBECCA TOMILOWITZ
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion.

17. [17-14681](#)-B-13 **IN RE: JOHN/OLIVIA JILES**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
3-29-2018 [\[39\]](#)

ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The hearing will be continued to June 7, 2018
at 9:00 am. The debtor shall file further
briefs and evidence supporting confirmation on
or before May 11, 2018. The Trustee may file
and serve a response on or before May 25, 2018
and the debtor may file and serve a reply by
May 31, 2018.

The court sets July 19, 2018 as the bar date
by which a plan must be confirmed or
objections to claims be filed.

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

The hearing on this motion will be called as scheduled and will
proceed as a status conference. The above schedule will be discussed
and the necessity for further discovery.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters.

The legal and factual issues appear to include: whether debtors are
below median income or above median income debtors; whether the
Local and National Standards are applicable in this case, and;
whether the disputed expenses are "reasonable and necessary for the
health and welfare of Debtors and their dependents."

The debtors here contend they are "below median" and therefore the
application of the "national and local standards" may not be
required. But, the Trustee has raised confirmation objections. The
trustee contends all of the debtor's "projected disposable income"
is not being used to fund the Plan using "the standards" compared to
the debtors' "actual expenses" as guidance.

Though unnecessary under LBR 3015-1, the debtors filed a response
without evidence arguing that "the standards" do not apply but a
"below median" debtor's "good faith" does.

Suppose the debtors are correct. What evidence does the court now
have to discern the debtor's good faith in proposing the Plan under
11 U.S.C. § 1325(a)(3)? That is, after all, the debtors' burden to

prove. In re Stitt, 402 B.R. 694, 700 (Bankr. D. ID. 2008) citing Smyrnos v. Padilla (In re Padilla), 213 B.R. 349, 352 (9th Cir B.A.P. 1997). The Trustee has made a comparison using the standards as a guideline. Any "totality of circumstances" approach to disposable income calculation and expense evaluation is subject to a "reasonableness" test. In re Gillead, 171 B.R. 886, 890 (Bankr. E.D. CA 1994) [pre-BAPCPA case applying the approach advocated by the debtors here]. The various factors to weigh good faith in Chapter 13 cases in this circuit are readily discernible. See, Padilla at pg. 352-53.

This Plan proposes no payments to unsecured creditors. The unsecured claims filed in this case are approximately \$14,500 not including any unsecured portion of claims filed as secured. This relatively modest amount of claims compels a good faith inquiry. The debtor and the Trustee will be given opportunity to augment the record as indicated in the above disposition.

Pursuant to § 1324(b), the court will set July 19th, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

18. [18-10490](#)-B-13 **IN RE: HECTOR SOLIZ AND BEATRIZ GOMEZ SOLIZ**
[MHM-2](#)

MOTION TO DISMISS CASE
3-29-2018 [[27](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a late response and indicated that all required documentation would be provided to the trustee, and that they would make the delinquent plan payment prior to the hearing. The debtors' response is not supported by evidence and no reason was given for failing to make their plan payments timely. 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.

The court notes that debtor's response was one day late. Debtor filed their response on April 17, 2019. Doc. #33. Responses/oppositions are due no later than 14 days before the hearing. Local Rule of Practice 9014-1(f)(1). This response was filed less than 14 days before the hearing.

10:00 AM

1. [18-10608](#)-B-7 **IN RE: BRADLEY/BETH RIGGEN**
[LKW-1](#)

MOTION TO AVOID LIEN OF DCR CREDIT RECOVERY, INC.
3-27-2018 [[16](#)]

BRADLEY RIGGEN/MV
LEONARD WELSH

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

DISPOSITION: Continued to June 7, 2018 at 10:00 a.m.

NO ORDER REQUIRED: Order granted on April 23, 2018. Doc. #40.

2. [18-10608](#)-B-7 **IN RE: BRADLEY/BETH RIGGEN**
[LKW-2](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
3-27-2018 [[22](#)]

BRADLEY RIGGEN/MV
LEONARD WELSH
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.

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 court notes that the creditor, Wells Fargo Bank, N.A. withdrew their opposition on April 25, 2018. Doc. #42.

A judgment was entered against the debtor in favor of Wells Fargo Bank, N.A. for the sum of \$103,151.38 on June 20, 2011. Doc. #26, ex. F. The abstract of judgment was recorded with Kern County on December 14, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Keene, California. The subject real property had an approximate value of \$65,000.00 as of the petition date. Doc. #1, Schedule C. The debtor claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the

amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, is unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. The court did not see any evidence submitted with this motion that supported the allowance of this exemption. Debtors have that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If the debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

3. [18-10342](#)-B-7 **IN RE: KEVIN GREEN AND LARRISSA WARNELL**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-15-2018 [[18](#)]

CALIFORNIA HOUSING FINANCE
AGENCY/MV
VINCENT GORSKI
CAREN CASTLE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

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

The request for attorney's fees will be denied pursuant to 11 U.S.C. §506(b). Debtors have no equity in the property.

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

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

4. [18-10760](#)-B-7 **IN RE: SANFORD SEMCHAK & SPEIGHTS INC.**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-2018 [[13](#)]

FORD MOTOR CREDIT COMPANY/MV
PATRICK KAVANAGH
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

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

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

5. [18-10967](#)-B-7 **IN RE: OSCAR/MARICELA LLAMAS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-2-2018 [\[15\]](#)

DISMISSED

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Dropped as moot.
NO ORDER REQUIRED: The case was dismissed on April 6, 2018 (Doc. #17).

6. [18-10374](#)-B-7 **IN RE: MICHAEL/BARBARA BANNISTER**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-20-2018 [\[12\]](#)

WELLS FARGO BANK, N.A./MV
LEONARD WELSH
JAMIE HANAWALT/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.
DISPOSITION: Granted.
ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

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

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

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See In

re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

7. [18-10988](#)-B-7 **IN RE: JERRY KING**
[LKW-1](#)

MOTION TO AVOID LIEN OF UNITRIN DIRECT INSURANCE COMPANY
3-23-2018 [\[7\]](#)

JERRY KING/MV
LEONARD WELSH

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.

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).

A judgment was entered against the debtor in favor of Unitrin Direct Insurance Company for the sum of \$6,965.68 on May 7, 2008. The abstract of judgment was recorded with Kern County on October 29, 2008. Doc. #11, ex. E. That lien attached to the debtor's interest in a residential real property in Ridgecrest, California. The subject real property had an approximate value of \$65,000.00 as of the petition date. Doc. #1, Schedule C. The debtor claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$65,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, is unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. The court did not see any evidence submitted with this motion that supported the allowance of this exemption. Debtors have that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If the debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

10:30 AM

1. [15-14685](#)-B-11 **IN RE: B&L EQUIPMENT RENTALS, INC.**
[LKW-55](#)

MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR FINAL DECREE
4-12-2018 [[883](#)]

B&L EQUIPMENT RENTALS, INC./MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the court must enter a final decree closing a case when the estate has been "fully administered." "However, neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term 'fully administered.'" See In re Ground Sys., Inc., 213 B.R. 1016, 1018 (B.A.P. 9th Cir. 1997) (denying motion for entry of final decree because debtor's plan required estate to remain open pending completion of plan payments and such a plan requirement did not run afoul of the Code and Federal Rules of Bankruptcy Procedure).

The Advisory Committee Note to Fed. R. Bankr. R. 3022 lists a number of factors for courts to consider in determining whether the estate has been fully administered. The factors a court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved. "Although the Advisory Committee Note provides guidance on when a bankruptcy court may enter a final decree, not all the factors set forth in the Advisory Committee Note need to be present to establish that a case is fully administered for final decree purposes." In re Spokane

Raceway Park, Inc., 2013 Bankr. LEXIS 4594, p.9-10 (B.A.P. 9th Cir.) (citations omitted).

Here, factors supporting a finding of full administration of the estate have been satisfied. The court finds that the estate has been fully administered because the deposits required by the plan have been distributed, the debtor-in-possession has continued the business, and all motions, contested matters, and adversary proceedings have been finally resolved. No other factors listed in the advisory committee note have been contested by any creditor or party in interest.

Unless opposition is presented at the hearing, the court intends to GRANT this motion and enter the discharge of debtor and enter the final decree.

2. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[APN-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2018 [[251](#)]

SANTANDER CONSUMER USA,
INC./MV
LEONARD WELSH
AUSTIN NAGEL/ATTY. FOR MV.
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.

This motion was filed on February 9, 2018, and continued twice; once to April 12, 2018, and then to this date, April 30, 2018. This motion was filed and served on 28 days' notice, and shortly before the original hearing date of March 12, 2018, a motion to continue the hearing was filed and granted on the same day. Doc. #282. The reason for the continuance was that counsel for the Debtor contacted movant regarding payment posting errors that "may result in this account being current." Doc. #278. The motion was continued to April 12, 2018.

Debtor filed a response one day prior to the hearing, stating that "Debtor believes it can resolve the remaining issues with Santander without further action by the court if the hearing on the motion is continued to April 30, 2018." Doc. #322. The court received debtor's second response on April 26, 2018 with evidence attached. Doc. #352. Movant told debtor the amount of arrearages that needed to be paid, and a check in that amount, \$10,798.57, satisfying the amounts owed on both the 2015 Ram 4500 (subject property in this motion) and 2015 Ram 3500 (subject property in the below motion, APN-2) payable to

"Chrysler Capital," was mailed to movant's attorney, Austin Nagel on April 19, 2018. Doc. #354. Debtor also requested that movant withdraw this motion. Doc. #354. As of April 26, 2018, the motion has not been withdrawn. Additionally, the court notes that the address on the check does not match the addresses on the proof of claim, nor Mr. Nagle's address on the motion. Doc. #353.

The court is persuaded by the evidence included with the motion and believes that the issues are resolved. However, because creditor has not withdrawn this motion or yet acknowledged receipt of the funds, this matter will be called and the motion will be GRANTED unless the creditor withdraws the motion at or prior to the hearing.

The movant, Santander Consumer USA, Inc., dba Chrysler Capital, seeks relief from the automatic stay with respect to a 2015 Ram 4500. The movant has produced evidence that the vehicle has a value of \$45,520.00 and its secured claim is approximately \$37,759.63. Claim 11.

The court concludes that the contractual agreement is in default, movant is without adequate protection, and debtor is delinquent in the monthly payments to movant, and debtor is still in possession. Docket #253.

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 established that the value of its collateral exceeds the amount of its secured claim, the movant may file a separate motion and request 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 debtor has possession of the vehicle and it is depreciating in value.

3. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[APN-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2018 [[257](#)]

SANTANDER CONSUMER USA,
INC./MV
LEONARD WELSH
AUSTIN NAGEL/ATTY. FOR MV.
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.

This motion was filed on February 9, 2018, and continued twice; once to April 12, 2018, and then to this date, April 30, 2018. This motion was filed and served on 28 days' notice, and shortly before the original hearing date of March 12, 2018, a motion to continue the hearing was filed and granted on the same day. Doc. #283. The reason for the continuance was that counsel for the Debtor contacted movant regarding payment posting errors that "may result in this account being current." Doc. #280. The motion was continued to April 12, 2018.

Debtor filed a response one day prior to the hearing, stating that "Debtor believes it can resolve the remaining issues with Santander without further action by the court if the hearing on the motion is continued to April 30, 2018." Doc. #324. The court received debtor's second response on April 26, 2018 with evidence attached. Doc. #356. Movant told debtor the amount of arrearages that needed to be paid, and a check in that amount, \$10,798.57, satisfying the amounts owed on both the 2015 Ram 4500 (subject property in this motion) and 2015 Ram 3500 (subject property in the below motion, APN-2) payable to "Chrysler Capital," was mailed to movant's attorney, Austin Nagel on April 19, 2018. Doc. #358. Debtor also requested that movant withdraw this motion. Doc. #358. As of April 26, 2018, the motion has not been withdrawn. Additionally, the court notes that the address on the check does not match the addresses on the proof of claim, nor Mr. Nagle's address on the motion. Doc. #357.

The court is persuaded by the evidence included with the motion and believes that the issues are resolved. However, because creditor has not withdrawn this motion or yet acknowledged receipt of the funds, this matter will be called and the motion will be GRANTED unless the creditor withdraws the motion at or prior to the hearing.

Because debtor has not adequately rebutted the claims of movant, the court intends to GRANT this motion.

The movant, Santander Consumer USA, Inc., dba Chrysler Capital, seeks relief from the automatic stay with respect to a 2015 Ram 3500. The movant has produced evidence that the vehicle has a value of \$35,308.00 and is currently owed \$46,236.55 for the vehicle. Doc. #259.

The court concludes that there is no equity in the vehicle, the contractual agreement is in default, movant is without adequate protection, and debtor is delinquent in the monthly payments to movant, and debtor is still in possession of the vehicle. Docket #257.

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 due to the fact that the debtor has possession of the vehicle and it is depreciating in value.

11:00 AM

1. [15-14881](#)-B-7 **IN RE: GEORGE SNYDER**
[18-1010](#)

STATUS CONFERENCE RE: COMPLAINT
2-27-2018 [[1](#)]

PARKER V. MERCHANTS BANK OF
CALIFORNIA, NATIONAL
LISA HOLDER/ATTY. FOR PL.

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

DISPOSITION: Default entered on April 23, 2018. Doc. #10.
Continued to June 7, 2018 at 11:00 a.m.

ORDER: The court will issue the order.

If a prove-up hearing is scheduled (but not necessarily heard) prior to the continued hearing date, the status conference will be dropped from calendar.

If no prove-up hearing is set by then, an order to show cause re: dismissal will be issued for failure to prosecute.

11:30 AM

1. [18-10518](#)-B-7 **IN RE: ANDREW MEDINA AND YULIANA LEDESMA-RAMIREZ**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
4-9-2018 [[10](#)]

JOSEPH PEARL

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. OK, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor(s) shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [18-10337](#)-B-7 **IN RE: GEORGE GODFREY**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
4-10-2018 [[15](#)]

PATRICK KAVANAGH

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney

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

3. [18-10057](#)-B-7 **IN RE: ROBERT PAYNE**

PRO SE REAFFIRMATION AGREEMENT WITH USAA FEDERAL SAVINGS
BANK
3-28-2018 [[21](#)]

NO RULING.