

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, June 3, 2020
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. 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. [19-11809](#)-B-13 **IN RE: CHRISTINE WOOD**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
4-14-2020 [\[39\]](#)

PATRICK KAVANAGH/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 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 motion will be GRANTED. Debtor's bankruptcy counsel, Patrick Kavanagh, requests fees of \$4,263.00 and costs of \$49.70 for a total of \$4,312.70 for services rendered from February 21, 2019 through February 24, 2020. Doc. #39. The movant received a retainer in the amount of \$1,000.00 and now seeks payment of \$3,312.70 through the plan. See id. at Ex. A; doc. #2 at ¶ 3.5. The debtor has consented to this fee application. Doc. #39 at p. 12.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary

expenses." The movant's services included, without limitation: (1) advising the debtor about the administration of her chapter 13 case; (2) preparing and filing a chapter 13 petition and plan; (3) attending the meeting of creditors; (4) reviewing claims and drafting letters to creditors; and (5) reviewing and causing the withdrawal of a motion to dismiss. Doc. #39. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

The movant shall be awarded \$4,263.00 in fees and \$49.70 in costs. The movant is authorized to draw from the \$1,000.00 retainer and shall be paid the remaining \$3,312.70 through the chapter 13 plan.

2. [19-14712](#)-B-13 **IN RE: GEREY LATT**
[MHM-2](#)

MOTION TO DISMISS CASE
5-5-2020 [\[82\]](#)

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #86.

3. [19-14713](#)-B-13 **IN RE: DARWIN MAMARADLO**
[JCW-2](#)

MOTION TO APPROVE LOAN MODIFICATION
5-8-2020 [\[57\]](#)

MIDFIRST BANK/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
JENNIFER WONG/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.

This motion is GRANTED. Creditor MidFirst Bank seeks authorization from the court to enter into a loan modification agreement with the debtor. Doc. #57. The terms of the loan modification will result in two separate loans. Doc. #59.

The first loan has a principal balance of \$196,474.64, which will be paid over 360 months at an interest rate of 4.0% with a monthly payment of \$938.00, consisting of principal and interest. Doc. #59, p. 4-5. This loan also establishes an escrow account. The debtor will make monthly payments of \$483.38 into the account. This is subject to change depending on the amounts attributable to taxes, insurance, and other escrow items. Id. at p. 5. The combined monthly payment and escrow payment will be \$1,421.38 per month. Id.

The second loan is through the Department of Housing and Urban Development ("HUD") and has a principal balance of \$44,729.41. Payment will begin on December 1, 2049 or, if earlier, when one of the following events occurs: (1) the borrower has paid in full all amounts due under the primary note and mortgage; (2) the maturity of the primary note and mortgage is accelerated; or (3) the primary note and mortgage is no longer insured. Doc. #59 at p. 17.

Unless opposition is presented at the hearing, the debtor is authorized, but not required, to complete the loan modification with MidFirst Bank. The debtor shall continue paying his plan payments until the plan is modified.

4. [18-12731](#)-B-13 **IN RE: MARK/ALICIA GARAY**
[PK-4](#)

MOTION TO MODIFY PLAN
4-7-2020 [\[67\]](#)

MARK GARAY/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to June 24, 2020 at 9:30 a.m.

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

This motion was originally scheduled for hearing on May 12, 2020 at 9:00 a.m. Doc. #68. An amended notice of hearing was filed and served two days later, setting the hearing for June 3, 2020 at 9:00 a.m. Doc. #76. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See LBR 9014-1(j).

However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application.

If no written application for a continuance is received by the court before this hearing, and if debtor's counsel does not appear at the

hearing to orally request a continuance, then the motion will be denied without prejudice for failure to comply with the Local Rules of Practice.

5. [19-12742](#)-B-13 **IN RE: ANITA RICHARDSON**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1
4-15-2020 [\[25\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/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 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the objector has done here.

This objection is SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Here, objector has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See

California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) if a party in interest objects. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was in June 18, 2012. This case was filed seven years later. That is well past the two and four years under the pertinent statutes of limitations.

Therefore, claim no. 1 filed by Cavalry SPV I, LLC is disallowed in its entirety.

6. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-1](#)

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC
STAY
3-25-2020 [\[22\]](#)

DAVID JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

NO RULING.

7. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH WB USED AUTOMOTIVE, LLC
5-20-2020 [\[54\]](#)

DAVID JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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 shall submit a proposed order after hearing.

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

The debtors filed this motion seeking to approve a settlement agreement with Creditor WB Used Automotive, LLC ("WB"), for alleged violations of the automatic stay under 11 U.S.C. § 362.

This motion is GRANTED.

On a motion by the *trustee* and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Absent from Rule 9019 is standing for the debtor to seek such approval. Typically, only the trustee may file a motion to approve a compromise or settlement.

Though 11 U.S.C. § 1303 does not expressly grant chapter 13 debtors standing to prosecute and settle claims, other courts have applied it to authorize debtors to prosecute these motions. The Second Circuit has stated, "we conclude that a Chapter 13 debtor, unlike a Chapter 7 debtor, has standing to litigate causes of action that are not part of a case under title 11." Olick v. Parker & Parsley Petroleum Co., 145 F.3d 513, 515 (2d Cir. 1998)

The Second Circuit reasoned, "[t]he legislative history of § 1303, which sets out the exclusive rights of a Chapter 13 debtor, supports the holding that a Chapter 13 debtor's standing is different." Olick, 145 F.3d 513 at 516. "Both the House of Representatives and Senate floor managers of the Uniform Law on Bankruptcies, Pub.L. No. 95-598 (1978), stated that:

Section 1303 . . . specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although Section [323] is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued."

Olick, 145 F.3d 513 at 516 citing 124 Cong. Rec. H. 11,106 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards); S. 17,423 (daily ed. Oct. 5, 1978) (remarks of Sen. DeConcini).

Ninth Circuit courts have applied Olick's reasoning and agreed that chapter 13 debtors "have standing to pursue claims against others when those claims belong to the bankruptcy estate because 'the reality of a filing under Chapter 13 is that the debtors are the true representatives of the estate and should be given the broad latitude essential to control the progress of their case.'" Donato v. Metro. Life Ins. Co., 230 B.R. 418, 425 (N.D. Cal. 1999) (quoting Olick, 145 F.3d 513 at 516). The court also favorably cited the Third Circuit's reasoning that a chapter 13 debtor could continue to prosecute prepetition claims after filing because "an essential feature of a Chapter 13 case is that the debtor retains possession of and may use all the property of his estate, including his prepetition causes of action . . ." Donato, 230 B.R. 418 at 425 (citing Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1209 at n.2 (3rd Cir. 1991)).

Therefore, the debtor has standing to prosecute and settle this claim. The claim did arise post-petition. But for purposes of this motion, that makes little difference. 11 U.S.C. § 362 (k) limits claims for stay violations to "individuals." The debtors here had standing to prosecute the claim based on the stay violation.

Property of the estate includes this post-petition claim. See 11 U.S.C. § 1306 (a) (1).

In November 2019, the debtors purchased a 2017 Chevrolet Impala from WB. Doc. #54. Due to a mix up with the sales agreement forms, the debtors were required to sign a replacement contract. Doc. #24. The contract was assigned to A-L financial, but then reassigned back to WB. Doc. #54. Debtors made a payment to A-L, which was returned due to this contract reassignment. Id. The debtors filed for bankruptcy in early February 2020, and on February 25, 2020 the vehicle was repossessed. The debtors then filed a motion for sanctions in violation of the automatic stay. See doc. #22. WB and the debtors have recently reached a settlement agreement.

It appears from the moving papers that the debtors-in-possession ("DIP") have considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

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

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

Under the terms of the compromise, WB will: (1) return the vehicle (which it has already done); (2) accept the plan treatment; (3) waive its interest in the vehicle from the purchase to the filing of the case (\$1,019.74) and forgive two payments at the end of the plan (\$676.94); and (4) pay \$2,000.00 in attorneys' fees. In return, the debtors will: (1) waive all claims against WB, including pre-petition claims; (2) agree to a non-disparagement clause; (3) make all other payments totaling \$18,954.32; (4) release all pre-petition and post-petition claims. Doc. #54.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far

from assured as WB has vigorously disclaimed all liability for the debtors' damages; collection will be very easy as the debtors would be able to set off any recovery up to \$17,000.00 in secured debt owed to WB; the litigation would become complex, require an evidentiary hearing, and moving forward would decrease the net to the estate due to the legal fees; and the creditors, other than WB, are not affected because this is a 0% plan; the settlement is equitable and fair.

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

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

8. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[PK-4](#)

MOTION TO MODIFY PLAN
4-13-2020 [\[118\]](#)

WES MCMACKIN/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

The certificate of service ("COS") does not show that the modified chapter 13 plan was served. See doc. #125. The COS lists the motion, three declarations, exhibits, and the notice of hearing as being served. The plan is not included in any of those documents.

9. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[PK-5](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
4-13-2020 [\[126\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Debtors have not consented to the fees. Section 8f of the
application states that the debtors' consent will be filed
separately. Doc. #126. As of June 1, 2020, no consent has been
separately filed.

10. [19-10462](#)-B-13 **IN RE: DAVID/DIXIE LACROIX**
[TCS-4](#)

MOTION TO SELL
5-13-2020 [\[49\]](#)

DAVID LACROIX/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process
requires that the movant make a *prima facie* showing that they are
entitled to the relief sought. 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 exhibits attached to the motion were not served. Local Rule of
Practice ("LBR") 9014-1(d)(3)(D) requires all motions to include
evidence. LBR 9014-1(e) requires that all documents "filed in
support of . . . a motion shall be made on or before the date they
are filed with the Court." The certificate of service does not show
that the exhibits (doc. #52) were served. See doc. #53.

Even if those procedural deficiencies were absent, the motion would still fail on the merits. Neither the motion nor debtor's declaration discussed why the sale would be in the best interests of the estate, supported by a valid business judgment, and proposed in good faith. See In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Ala. 2018).

11. [20-10968](#)-B-13 **IN RE: EFRAIN GARZA**
[MHM-1](#)

MOTION TO DISMISS CASE
5-6-2020 [\[22\]](#)

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor converted the case to chapter 7. Doc. #26.

12. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[LKW-20](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY
5-13-2020 [\[403\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The motion is GRANTED. Movant is awarded \$2,835.00 in fees and \$40.16 in costs.

10:00 AM

1. [20-10812](#)-B-7 **IN RE: FRANK ANDRASEVITS**
[JCW-2](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-8-2020 [\[19\]](#)

MIDFIRST BANK/MV
JULIE MORADI-LOPES/ATTY. FOR DBT.
JENNIFER WONG/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 court will issue the order.

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

The movant, MidFirst Bank, filed this motion seeking to confirm termination or absence of the automatic stay under 11 U.S.C. § 362(c)(3)(A). This court will interpret this motion as a request for an order confirming that the automatic stay is not in effect. See 11 U.S.C. § 362(c)(4)(A)(ii).

Debtor filed two previous chapter 13 bankruptcy cases in the Eastern District of California: (1) Case No. 19-11884, which was filed on May 3, 2019 and dismissed on August 12, 2019; and (2) Case No. 19-13685, which was filed on August 28, 2019 and dismissed on January 31, 2020. Debtor filed this bankruptcy case March 3, 2020. Doc. #1.

If a debtor has had two cases pending within the one-year period preceding the date of their latest filed bankruptcy case, the automatic stay does not go into effect upon the filing of the latest case. 11 U.S.C. § 362(c)(4)(A). The court may order the stay to take effect as to any or all creditors upon the request of a party in interest and after notice and a hearing. In this case, no party in interest has filed or served a motion to impose the stay.

This is the third case filed by this debtor within a year and two earlier cases were dismissed. The order will state: "Under 11

U.S.C. § 362(c)(4), the automatic stay of 11 U.S.C. § 362(a) is not in effect.”

2. [20-10520](#)-B-7 **IN RE: RYAN/KARIN FUSSY**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-5-2020 [\[14\]](#)

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WENDY LOCKE/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 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 movant, Wells Fargo Bank, N.A. (“Movant”), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 8801 Omeara Ct. Bakersfield, California 93311 (“Property”). Doc. #19.

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 debtors have failed to make at least 25 complete pre- and post-petition payments. The movant has produced evidence that debtors are delinquent at least \$65,387.89 and the entire balance of \$358,225.64 is due. Doc. #16.

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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

3. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[LNH-1](#)

MOTION TO EMPLOY LISA HOLDER AS ATTORNEY(S)
5-20-2020 [\[55\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

NO RULING.

11:00 AM

1. [18-14323](#)-B-7 **IN RE: SYLVIA SPEAKMAN**
[19-1028](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-19-2019 [\[1\]](#)

YOUNG V. SPEAKMAN ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 15, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to plaintiff's status report (doc. #43), the matter is tentatively settled. The settlement payment is due in full on or before July 6, 2020. Plaintiff requests that the status conference be continued to July 14, 2020. Id. The court does not hold adversary proceeding hearings on that day; it does on July 15, 2020 at 11:00 a.m. Unless the matter is dismissed before the continued hearing, this matter is continued to July 15, 2020 at 11:00 a.m.

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

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-5-2018 [\[1\]](#)

PACE DIVERSIFIED CORPORATION ET AL V. MACPHERSON OIL
RESPONSIVE PLEADING

NO RULING.

3. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-17-2015 [\[1\]](#)

BJORNEBOE V. BREWER
MISTY PERRY-ISAACSON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [20-11141](#)-B-7 **IN RE: HENRY/MARANDA BLAIR**

REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY
4-29-2020 [\[15\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors 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 debtors' 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.