

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, July 7, 2016
Place: U.S. Courthouse, 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**
2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.
3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.
4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.
5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [15-15004](#)-B-13 MARK/CAMELIA TEUTIMEZ MOTION TO DISMISS CASE
MHM-3 5-24-16 [[37](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Unless the trustee has withdrawn his motion prior to the hearing, the motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' 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 FRBP 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 court's review of the record and the moving papers show there has been unreasonable delay by the debtors that is prejudicial to creditors. §1307(c)(1). The debtors have failed to confirm a Chapter 13 Plan. §1307(c)(1),(3). Accordingly, the case will be dismissed.

2. [16-11505](#)-B-13 JENNIFER JENKINS OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
6-14-16 [[14](#)]
ROBERT WILLIAMS/Atty. for dbt.

Unless the trustee's objection is withdrawn prior to the hearing, this matter will proceed as scheduled. If the debtor is not current through June 25, 2016, then the court intends to dismiss the case at the hearing.

Furthermore, if the case is not dismissed at the hearing, the trustee's declaration that the debtor has failed to timely make the July 25th plan payment will result in dismissal without further notice.

3. [16-11106](#)-B-13 NICOLE BENTLEY

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-6-16 [[33](#)]

SUSAN SALEHI/Atty. for dbt.
INSTALLMENT \$77 RECEIVED
6/9/16

This matter will be called as scheduled. If the installment payments now due have not been paid by the time of the hearing, the case will be dismissed. If the installment payments now due are fully paid by the time of the hearing, the OSC will be vacated.

4. [15-11808](#)-B-13 SHERRY SIMPSON

MOTION TO DISMISS CASE
5-9-16 [[75](#)]

MHM-3
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

Unless the trustee has withdrawn his motion prior to the hearing, the motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

5. [16-10508](#)-B-13 EFRAIN HERNANDEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-31-16 [[23](#)]

PATRICK KAVANAGH/Atty. for dbt.

This matter will be called as scheduled. If the installment payments now due have not been paid by the time of the hearing, the case will be dismissed. If the installment payments now due are fully paid by the time of the hearing, the OSC will be vacated.

6. [16-11209](#)-B-13 MOISES PALMA
PLG-2
MOISES PALMA/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
6-23-16 [[47](#)]

It appears that the issue between the debtor and Bank of the Ozarks has been resolved by stipulation of the parties. Accordingly, this motion by the debtor, sought to extend the effect of the automatic stay as to creditor Bank of the Ozarks only, will be denied as moot.

7. [16-11209](#)-B-13 MOISES PALMA
PLG-3
MOISES PALMA/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BMO HARRIS BANK N.A.
6-23-16 [[51](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion based on well-pled facts as follows:

This motion to value respondent's collateral was served as a preliminary matter. If no appearance in opposition is presented at the hearing, 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 FRBP 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 debtor is competent to testify as to the value of the 2009 Freightliner and 2014 utility trailer. Based on the evidence presented, the respondent's secured claim will be fixed at \$75,000.

The proposed order submitted after the hearing shall specifically identify the collateral, and if applicable, the proof of claim to which it relates and will be effective upon confirmation of the chapter 13 plan.

8. [16-11209](#)-B-13 MOISES PALMA
PLG-4
MOISES PALMA/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF THE OZARKS
6-23-16 [[56](#)]

It appears that this matter has been resolved by stipulation of the parties. Accordingly, the motion will be denied as moot. No appearance is necessary.

The moving party shall submit a proposed order with the proposed stipulation attached.

9. [16-11209](#)-B-13 MOISES PALMA
SBS-2
BANK OF THE OZARKS/MV
STEVEN ALPERT/Atty. for dbt.
SARA SPAETH/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF THE OZARKS
6-10-16 [[36](#)]

It appears that the issue between the debtor and Bank of the Ozarks has been resolved by stipulation of the parties. Accordingly, Bank of the Ozark's objection to confirmation will be overruled as moot. No appearance is necessary.

It appears that the objection was based solely on the treatment by the plan of the Bank's claim related to the same collateral which the debtor sought to value in #8, PLG-4, above. Accordingly, no further relief appears necessary.

10. [15-13215](#)-B-13 BEATRIZ AGUILAR
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-9-16 [[40](#)]

Unless the trustee's motion is withdrawn prior to the hearing, this matter will proceed as scheduled. If the debtor is not current through June 25, 2016, then the court intends to dismiss the case at the hearing.

Furthermore, if the case is not dismissed at the hearing, the trustee's declaration that the debtor has failed to timely make the July 25th plan payment will result in dismissal without further notice.

11. [16-10520](#)-B-13 RICHARD STOWERS

PATRICK KAVANAGH/Atty. for dbt.
INSTALLMENT \$77 RECEIVED
6/13/16

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-31-16 [[16](#)]

The OSC will be vacated. It appears that the required fees have been paid. No appearance is necessary.

12. [15-11029](#)-B-13 TERRY WHEELER
NLG-1
SETERUS, INC./MV
PATRICK KAVANAGH/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-2-16 [[162](#)]

This motion for relief from the automatic stay will be denied as moot. The court will enter a civil minute order. No appearance is necessary.

The secured claim relating to this collateral is provided for in Class 4 of the debtor's confirmed chapter 13 plan. Upon confirmation of the chapter 13 plan, the automatic stay was modified for this claim to permit enforcement of the creditor's remedies with regard to the collateral in the event of a default under applicable law. No attorney's fees will be awarded in relation to this motion.

13. [16-11129](#)-B-13 DAVID/LINDA MILAZZO
LKW-1
DAVID MILAZZO/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
5-6-16 [[19](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to deny the motion to confirm the plan without prejudice to the filing of a modified plan.

14. [16-11129](#)-B-13 DAVID/LINDA MILAZZO
PPR-1
BANK OF AMERICA, NATIONAL
ASSOCIATION/MV
LEONARD WELSH/Atty. for dbt.
DIANA TORRES-BRITO/Atty. for mv.
WITHDRAWN

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BANK OF
AMERICA, NATIONAL ASSOCIATION
5-2-16 [[15](#)]

The objection has been withdrawn. No appearance is necessary.

15. [12-15030](#)-B-13 GLENN/SHANA MORRIS
RHB-2
GLENN MORRIS/MV
RICHARD BAMBL/Atty. for dbt.

CONTINUED MOTION TO INCUR DEBT
6-1-16 [[65](#)]

This matter will proceed as scheduled. The court intends to deny this motion unless the issues raised below are adequately addressed at the hearing.

This matter was continued to provide the debtors with the opportunity to submit evidence, updated schedules I and J, for the trustee's review, showing that the plan will still be feasible after incurring this new debt. Three days before this hearing, the debtor filed amended schedules I & J.

The court notes that the debtors' motion does not explain the status of the debt on the 2007 Kia that is being replaced nor does it explain how the debtors' plan will provide for the new debt.

16. [14-14132](#)-B-13 FREDDY/ROSA JACQUEZ
MAZ-3
FREDDY JACQUEZ/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
4-14-16 [[45](#)]

This matter was continued to accommodate the trustee's review of the documents submitted by the debtors. Unless the trustee's opposition is withdrawn prior to the hearing, this motion will proceed as scheduled.

17. [16-11240](#)-B-13 GRACE CHAVEZ
EAT-1
HSBC BANK USA, NATIONAL
ASSOCIATION/MV
ROBERT WILLIAMS/Atty. for dbt.
EDWARD TREDER/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
6-16-16 [[17](#)]

This matter will proceed as scheduled. If the court sustains the trustee's objection, #18, MHM-2, below, then this objection will be denied as moot.

If the trustee's objection is overruled below, and no opposition is presented at the hearing, then the court intends to sustain the bank's objection and deny confirmation of the plan. The bank has filed a proof of claim which, in the absence of an objection to that proof of claim, governs the treatment of the claim. Local Rule 3007-1(d)(1). If this objection to confirmation is sustained then, within 14 days, the debtor shall file and serve and set for a hearing a modified plan that addresses the grounds for the objection. If no plan is submitted within that time, the trustee may move to dismiss the case.

18. [16-11240](#)-B-13 GRACE CHAVEZ
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-14-16 [[13](#)]

ROBERT WILLIAMS/Atty. for dbt.

This matter will proceed as scheduled. If the debtor is not current at the time of hearing, the court intends to sustain the objection to confirmation. If the objection is sustained then, within 14 days, the debtor shall file and serve and set for a hearing a modified plan that addresses the grounds for the objection. If no plan is submitted within that time, the trustee may move to dismiss the case.

19. [16-11243](#)-B-13 FRANK RUIZ
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-14-16 [[16](#)]

PATRICK KAVANAGH/Atty. for dbt.

This matter will proceed as scheduled. If the debtor is not current at the time of hearing, the court intends to sustain the objection to confirmation. If the objection is sustained then, within 14 days, the debtor shall file and serve and set for a hearing a modified plan that addresses the grounds for the objection.

20. [15-12156](#)-B-13 LEONARD RAMIREZ
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
5-9-16 [[23](#)]

Unless the trustee's motion is withdrawn prior to the hearing, this matter will proceed as scheduled. If the debtor is not current through June 25, 2016, then the court intends to dismiss the case at the hearing.

Furthermore, if the case is not dismissed at the hearing, the trustee's declaration that the debtor has failed to timely make the July 25th plan payment will result in dismissal without further notice.

21. [14-13863](#)-B-13 ARTURO CORONEL
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-9-16 [[33](#)]

Unless the trustee's motion is withdrawn by 12:00 p.m. on August 2, this motion to dismiss will be continued to August 4, 2016, at 9:00 a.m., to be heard with the debtor's motion to confirm a modified plan. The court will enter a civil minute order. No appearance is necessary.

22. [16-11063](#)-B-13 DANIEL PADILLA
SJS-3
DANIEL PADILLA/MV
SUSAN SALEHI/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
5-17-16 [[37](#)]

The motion to confirm the chapter 13 plan has been withdrawn. Within 14 days, the debtor shall file and serve a modified plan and set a confirmation hearing.

23. [11-18681](#)-B-13 ELIAS/YVONNE SALCIDO
PWG-3

MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET, JR., DEBTORS
ATTORNEY(S)
5-30-16 [[64](#)]

PHILLIP GILLET/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' 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 FRBP 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.

24. [16-10687](#)-B-13 HEATHER LEMA
DMG-1
HEATHER LEMA/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
3-25-16 [[12](#)]

The motion will be granted without oral argument based on well-pled facts, provided the order confirming amends the plan to increase the plan payments from \$1,150 per month to \$1,220.32 per month, as specified in the trustee's supplemental objection. No appearance is necessary. The Movant shall submit a confirming proposed order.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules. It appears that increasing the plan payment by approximately \$80 per month would address the trustee's opposition. No other respondents filed opposition and their defaults 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.

25. [11-18990](#)-B-13 ADRIAN ALANIZ
MHM-4
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-12-16 [[63](#)]

Unless the trustee has withdrawn his motion prior to the hearing, the motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules. The debtor's response is not supported by evidence that the default has been cured and the trustee's motion has not been withdrawn. The court notes that this is the trustee's third motion to dismiss filed in this case. Accordingly, the case will be dismissed.

26. [16-10098](#)-B-13 BEVERLY BARNARD
JES-1
JAMES SALVEN/MV

PETER BUNTING/Atty. for dbt.

CONTINUED MOTION FOR
COMPENSATION FOR JAMES E.
SALVEN, CHAPTER 7 TRUSTEE(S)
4-25-16 [[42](#)]

This motion was continued for the filing of an amended proof of service in compliance with the local rules and movant has done so. Accordingly, the motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there was no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 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.

9:30 A.M.

1. [15-13167](#)-B-12 DOUG KOPHAMER FARMS
JM-2
DEERE & COMPANY/MV
LEONARD WELSH/Atty. for dbt.
JAMES MACLEOD/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-27-16 [[255](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default 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 prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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

2. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-30 INC.
B&L EQUIPMENT RENTALS, INC./MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL FREE AND CLEAR
OF LIENS
6-16-16 [[363](#)]

This motion to sell collateral free and clear of the creditor's lien will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion in part and deny in part.

The secured creditor, Bank of America, has filed a limited opposition to the motion in which it consents to the proposed sale, but opposes any sale that is free and clear of a blanket lien that it contends encumbers any proceeds from this sale. Clearly, the bank does not consent to a free and clear sale, and no challenge to the bank's secured lien has been raised. Accordingly, the sale will be approved subject to the lien rights of the bank. After the costs of the sale are satisfied, the proceeds of the sale will be held in counsel for debtor's trust account subject to further order of the court after, either a stipulation of the parties, or other resolution of the bank's rights in the proceeds.

3. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-31 INC.
B&L EQUIPMENT RENTALS, INC./MV

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO EMPLOY PPL GROUP AS
AUCTIONEER(S) AND/OR MOTION TO
PAY
6-17-16 [[369](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion for employment subject to a determination of compensation to be paid in a subsequent hearing pursuant to §330 and §328(a).

10:00 A.M.

1. [12-18024](#)-B-7 MICHAEL BENGE
KDG-3
JEFFREY VETTER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CSAA INSURANCE
EXCHANGE , MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF SHERNOFF BIDART ECHEVERRIA
BENTLEY, LLP FOR RICARDO
ECHEVERRIA, SPECIAL COUNSEL(S)
6-9-16 [[33](#)]

FRANK SAMPLES/Atty. for dbt.
LISA HOLDER/Atty. for mv.

This matter will proceed as scheduled. The motion to compromise a controversy was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 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. Based on the court's review of the trustee's motion and representations, the compromise appears to be reasonable and in the best interest of the estate and its creditors in that it will be sufficient to pay all claims in full. The compromise appears to satisfy the relevant factors as set forth by the Ninth Circuit in *In re A&C Properties*.

The court intends to grant the motion, however it appears that the debtor's bankruptcy counsel is no longer authorized to practice law. The debtor is represented in the state law litigation that is the subject of this motion for compromise or settlement. Accordingly, the parties, through counsel, should be prepared to establish, to the court's satisfaction, that the debtor and his dependants will not be prejudiced by the debtor's lack of bankruptcy counsel in this matter.

2. [16-11031](#)-B-7 GILBERT/OLIVIA GARCIA
KDG-1
RANDELL PARKER/MV
LEONARD WELSH/Atty. for dbt.

MOTION TO EMPLOY LISA HOLDER AS
ATTORNEY(S)
6-9-16 [[31](#)]

This motion will be continued to August 4, 2016, at 10:00 a.m. The court will enter a civil minute order. No appearance is necessary.

The motion seeks to employ KDG as general counsel for the trustee in this case. The moving papers show that KDG has ongoing representation of the debtors' commercial landlord, SA Camp Companies, in connection with two currently open files: "General Business" and "Corporate Governance." The moving papers also show that SA Camp Companies holds an unsecured claim for unpaid rent against the debtors in the approximate amount of \$77,000. It appears the debtors are midway through a three-year lease and the moving papers do not make clear the trustee's treatment of this executory lease. The case was filed March 29, 2016, and the § 341 meeting was concluded May 17, 2016, therefore the time for assumption of the lease has passed and, unless assumed, the lease has been rejected by operation of law.

Under the circumstances, the court finds that notice of this motion to SA Camp Companies was insufficient. Although it received a copy of the notice in this matter at its post office box, in the same manner as the other creditors in this case, the matter will be continued so that movant can provide notice of this hearing pursuant to FRBP 7004. Such evidence shall be submitted on or before July 21, 2016.

In lieu of appearing at the continued motion, the movant may file SA Camp Companies' consent to KDG's representation of the trustee in this matter and submit a proposed order.

The moving papers state a lien search with the California Secretary of State resulted in no valid liens against the property. In addition, movant shall submit evidence that SA Camp Companies does not hold a lien in connection with its lease agreement pursuant to the California Commercial Code as to the assets that the trustee seeks to sell.

With regard to the issue of the representation of the debtors in connection with their assignment of one of their several commercial locations, if the motion to employ is granted at the continued hearing, it will be without prejudice to revisiting this conflict if raised by appropriate pleading. While the conflict appears minor at this time, any litigation against or involving the debtors may require separate counsel. The conflict is disclosed but the court is concerned about the nearly 40 day period when the Klein, DeNatale firm was putatively representing these debtors in a dispute with the debtor's former landlord. It was not until early February 2016 when the "rejection" was complete. There appears to be a significant period of time when Garcia could be found to have thought there was an attorney/client relationship with KDG.

MOTION TO SELL
6-9-16 [[36](#)]

This matter will be continued to August 4, 2016, at 10:00 a.m., on the Bakersfield calendar, to be heard with the trustee's motion to employ general counsel. The movant shall re-notice the motion to SA Camp Companies pursuant to FRBP 7004. The court will enter a civil minute order. No appearance is necessary.

The sale agreement provides that the buyer will assume liability for post-petition rents to the debtors' commercial landlord, SA Camp Companies, however SA Camp Companies did not receive sufficient notice of this motion.

In lieu of appearing at the continued hearing, movant may file SA Camp Companies' consent to this sale and submit a proposed order.

MOTION TO AVOID LIEN OF ROY
 ROWE
 5-26-16 [[29](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

ORDER TO SHOW CAUSE REGARDING
CONVERSION TO CHAPTER 13
6-14-16 [33]

This matter will proceed as scheduled. Unless opposition is presented at the hearing the court intends to grant the motion and convert the case to one under chapter 13 of the bankruptcy code provided the debtor's good faith in converting is sufficiently established.

6. [16-11945](#)-B-7 DEANGELO BRAGG
PK-1
DISTINCTIVE PROPERTIES/MV
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-9-16 [[15](#)]

The motion will be granted in part and denied in part. Relief under §362(d)(1) and (d)(2) will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. To the extent relief under §362(d)(4) was requested, such relief is denied.

The debtor's default 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 prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

7. [16-11464](#)-B-7 CLIFFORD/JODIE MCDONALD MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 5-25-16 [[24](#)]
SERVICES, INC./MV
SHERYL ITH/Atty. for mv.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtors' default and grant the motion for relief from stay.

The automatic stay will be 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.

If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

8. [16-11464](#)-B-7 CLIFFORD/JODIE MCDONALD MOTION FOR RELIEF FROM
PK-2 AUTOMATIC STAY
FRONTIER REAL ESTATE SERVICE, 6-23-16 [[45](#)]
INC./MV
PATRICK KAVANAGH/Atty. for mv.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtors' default and grant the motion for relief from stay.

The automatic stay will be 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 movant shall submit a proposed order after hearing that specifically describes the litigation to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

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).

9. [16-10267](#)-B-7 MARY KRIST
PK-1
MARY KRIST/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION FOR EXAMINATION
6-7-16 [[15](#)]

This matter will proceed as scheduled. This motion was fully noticed and there was no opposition. Accordingly, respondent's default will be entered. Unless opposition is presented at the hearing, the court intends to grant the motion and order disgorgement. Movant shall prepare the order.

The motion requests an attorneys fees award. The motion does not provide a legal basis for the award. Unless movant withdraws that request, a separate motion for attorneys fees will need to be scheduled on the court's docket. The motion will need to provide the appropriate legal basis for the motion and the amount of attorney's fees requested need to be set forth with competent, admissible evidence including time records.

The court notes that only "John Dougherty, Partner," served at "10955 Westmoor Dr., #400, PMB 35, Westminster, CO 80021," has been properly served pursuant to FRBP 7004, and no relief against any other entity can be ordered. The public records show that no person by this name is listed at this address either with the California State Bar or with the Colorado State Bar.

The court also notes that the funds sought to be disgorged have not been listed as exempt in the debtor's schedule C.

10. [15-14771](#)-B-7 GEORGE/ESTELLA MAGALLANES MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
CIT BANK, N.A./MV 5-31-16 [[62](#)]
ROBERT WILLIAMS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' default 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 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

11. [16-10997](#)-B-7 DEREK/APRIL BRANNAN
NLG-1
SETERUS, INC./MV
R. BELL/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-1-16 [[17](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' default 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 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

11:00 A.M.

1. [16-10400](#)-B-7 DANIEL DEGRAFFENREID PRO SE REAFFIRMATION AGREEMENT
WITH BALBOA THRIFT & LOAN
5-27-16 [[15](#)]
JOSEPH PEARL/Atty. for dbt.

The hearing will be dropped from calendar. No appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he 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. In addition, both the reaffirmation agreement and the debtor's schedules show that reaffirming this debt would be an undue hardship.

2. [16-11103](#)-B-7 DON/LAVERN WADE PRO SE REAFFIRMATION AGREEMENT
WITH LOBEL FINANCIAL CORP
6-21-16 [[15](#)]
JOSEPH PEARL/Atty. for dbt.

The hearing will be dropped from calendar. 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. In addition, both the reaffirmation agreement and the debtor's schedules show that reaffirming this debt would be an undue hardship.

3. [16-11442](#)-B-7 ARTURO VITELA

REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT
CORPORATION
5-31-16 [[12](#)]

VINCENT GORSKI/Atty. for dbt.

Approval of the Reaffirmation Agreement will be denied. 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.

4. [16-11688](#)-B-7 LISA MCCULLERS

REAFFIRMATION AGREEMENT WITH
SANTANDER CONSUMER USA INC.
5-31-16 [[9](#)]

STEVEN STANLEY/Atty. for dbt.

This matter was set for a hearing because the reaffirmation agreement initially filed was incomplete; it was not executed by the creditor. Subsequently an amended agreement executed by the creditor was filed. Accordingly, this hearing will be dropped from calendar. Debtor's counsel shall notify the debtor that no appearance is necessary.

1:30 P.M.

1. [16-10003](#)-B-7 MELLANIE RAPOZO
[16-1050](#)
SELLERS V. RAPOZO
KLAUS KOLB/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
6-15-16 [[10](#)]

This matter will proceed as scheduled. The parties should be prepared to discuss deadlines for discovery and dates for the pre-trial conference.

The court will ask the parties to brief or stipulate to the issue of the collateral estoppel effect, if any, of the arbitration award which was not finalized by judgment before the filing of the petition. The parties will be asked to schedule briefing on cross-motions for summary adjudication of that issue.

2. [16-10003](#)-B-7 MELLANIE RAPOZO
[16-1050](#) DMG-1
SELLERS V. RAPOZO

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION TO STRIKE
5-24-16 [[7](#)]

D. GARDNER/Atty. for mv.

This matter will proceed as scheduled as was provided in the notice of this motion to dismiss.

The court intends to grant the motion without prejudice and to permit the plaintiff to amend the complaint within 14 days. This relief is granted *nunc pro tunc* to authorize the filing of plaintiff's 1st amended complaint filed June 14, 2016. Defendant is to file a responsive pleading on or before July 18, 2016. Any further amendment of the complaint will require a stipulation or an order of the court. The court will enter a civil minute order after the hearing.

The motion to dismiss raises challenges to all of the claims for relief. The amended complaint appears to address those challenges. Whether the new allegations are sufficient to survive another motion under FRCP 12(b)(6) is not before the court at this time.

The court notes that the 1st amended complaint could be stricken as it was not filed within the deadlines set forth in FRCP 15(a)(1) (made applicable to bankruptcy adversary proceedings by FRBP 7015). Also, the 1st amended complaint was not filed with the defendant's consent or leave of court. FRCP 15(a)(2). However, striking the complaint would unnecessarily delay matters since the plaintiff would likely file the same amended complaint.

3. [16-11205](#)-B-7 TINA SANCHEZ
[16-1042](#)
SANCHEZ V. DEPT OF ED./NEL NET
TINA SANCHEZ/Atty. for pl.

CONTINUED STATUS CONFERENCE
RE:
COMPLAINT
4-11-16 [[1](#)]

This status conference will be dropped from calendar. No appearance is necessary. The summons has been reissued and a new status conference has been set in the reissued summons for September 8, 2016, at 1:30 p.m.

4. [16-10035](#)-B-7 DEBRA VANCAMP
[16-1054](#)
ATHERLY ET AL V. VAN CAMP
WILLIAM ALEXANDER/Atty. for pl.

STATUS CONFERENCE RE:
COMPLAINT
5-3-16 [[1](#)]

This matter will be dropped from calendar. The court will enter a civil minute order. No appearance is necessary.

It appears that defendant's default has been entered. The clerk of the court may close the adversary proceeding without notice in 60 days unless the adversary proceeding has been set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required.

5. [15-14685](#)-B-11

INC.

LEONARD WELSH/Atty. for dbt.

B&L EQUIPMENT RENTALS,
CONTINUED STATUS CONFERENCE
RE:
CHAPTER 11 VOLUNTARY PETITION
11-30-15 [[1](#)]

This matter will be called with the other matters in the case on the 9:30 a.m. calendar. No appearance is necessary at 1:30 p.m.