

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, September 7, 2017
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. 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. 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 A.M.

1. [17-11502](#)-B-13 LANCE PADILLA MOTION TO DISMISS CASE
MHM-1 8-10-17 [[34](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
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.

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. The record shows that there is a material default in the chapter 13 plan payments that has not been cured.

2. [17-13103](#)-B-13 GARY LOY MOTION TO IMPOSE AUTOMATIC STAY
JRL-1 8-23-17 [[11](#)]
GARY LOY/MV
JERRY LOWE/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 court will issue an order.

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

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

Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
 2. What has changed so that the present plan is likely to succeed?
- In re Elliot-Cook*, 357 B.R. 811, 814-15 (Bankr. N.D. Cal.2006)

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if more than 1 previous bankruptcy case was pending within the preceding 1-year period. 11 U.S.C. §362(c)(4)(A)(i). Here, the current case is the debtor's third case pending within the previous 12 month period. In addition, this case is presumed to have been filed in bad faith because the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The debtor's first case was dismissed because the debtor failed to make the payments required under the plan. The debtor's second case was dismissed because he inadvertently failed to pay an installment fee, which does not raise any presumption.

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

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtor's petition was filed in good faith, and it intends to grant the motion to impose the automatic stay. The debtor's first plan was opposed by the chapter 13 trustee and required amendment, although the plan in the second-filed case was confirmed. The second case was dismissed for failure to pay an installment fee. In the present case, the filing fee has already been paid in full. In addition, because the plan was confirmed in the second case, it is likely that the plan already filed in the current case is also confirmable. Finally, it is clear the debtor requires the protection of the automatic stay in that a foreclosure sale is scheduled for the debtor's home shortly and before a confirmation order could be entered.

The motion will be granted and the automatic stay imposed for all purposes as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will

consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order.

3. [17-11906](#)-B-13 TRACY FLAHERTY MOTION TO DISMISS CASE
MHM-1 7-10-17 [[20](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar..

ORDER: No appearance is necessary. The trustee has withdrawn the motion.

4. [15-12709](#)-B-13 LORI KITCHEN MOTION TO MODIFY PLAN
WDO-2 7-10-17 [[53](#)]
LORI KITCHEN/MV
WILLIAM OLCOTT/Atty. for dbt.
RESPONSIVE PLEADING

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The court will issue an order.

The motion has been withdrawn.

This plan, DC# WDO-2, was filed on *July 10, 2017*. The court notes that the notice of withdrawal, filed August 29, 2017, refers to a plan filed *August 10, 2017*, however the record does not show any plan was filed on *August 10, 2017*. The day after the notice was filed, on August 30, 2017, a new modified plan, DC# WDO-3, was filed. Accordingly, the notice of withdrawal will be deemed to refer to the plan filed on *July 10, 2017*.

5. [16-11209](#)-B-13 MOISES PALMA
ABG-1
KINECTA FEDERAL CREDIT
UNION/MV
STEVEN ALPERT/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-12-17 [[148](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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 debtor's 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 a depreciating asset and is not provided for in the debtor's chapter 13 plan.

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).

6. [16-11209](#)-B-13 MOISES PALMA
PLG-10
MOISES PALMA/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
7-6-17 [[138](#)]

FINAL RULING

There will be no hearing on this matter.

DISPOSITION:

Dropped from calendar as moot.

ORDER:

No appearance is necessary. The debtor has withdrawn the motion to modify the plan.

7. [17-10622](#)-B-13 JENNIFER RIVAS
PK-3

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
8-4-17 [[79](#)]

PATRICK KAVANAGH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

8. [17-11723](#)-B-13 MICHAEL/LUCIA LOPEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-17 [[29](#)]

DISMISSED

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. An order dismissing the case has already been filed.

9. [17-11723](#)-B-13 MICHAEL/LUCIA LOPEZ
MHM-2
MICHAEL MEYER/MV
DISMISSED

MOTION TO DISMISS CASE
7-10-17 [[31](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. An order dismissing the case has already been filed.

10. [17-12425](#)-B-13 PATRICIA TONGATE
PK-1
PATRICIA TONGATE/MV

MOTION TO VALUE COLLATERAL OF
BRANDSOURCE FOR URNERS/CITIBANK
N.A.
8-22-17 [[19](#)]

PATRICK KAVANAGH/Atty. for dbt.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as to Citibank, N.A.

ORDER: The Moving Party shall submit a proposed order after hearing.

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

The debtor is competent to testify as to the value of the "large screen TV." Based on the evidence presented, the respondent's secured claim will be fixed at \$900. 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.

11. [16-11129](#)-B-13 DAVID/LINDA MILAZZO
LKW-6
DAVID MILAZZO/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
6-29-17 [[119](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; the trustee has withdrawn his opposition and the defaults of other respondents 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.

12. [16-11129](#)-B-13 DAVID/LINDA MILAZZO
LKW-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LEONARD K. WELSH
FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-4-17 [[125](#)]

LEONARD WELSH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

13. [16-11954](#)-B-13 LAVONE/CHRISTINE HUNTER
PK-5

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
8-9-17 [[96](#)]

PATRICK KAVANAGH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

14. [15-14355](#)-B-13 JASON/DANELLE BLACK
PK-4
JASON BLACK/MV
PATRICK KAVANAGH/Atty. for dbt.
DISMISSED

MOTION TO MODIFY PLAN
7-14-17 [[84](#)]

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

DISPOSITION: **Denied as moot.**

ORDER: **No appearance is necessary. An order dismissing the case has already been entered.**

15. [17-12758](#)-B-13 JERRICK/SANDRA BLOCK
RSW-1
JERRICK BLOCK/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE
8-8-17 [[10](#)]

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

DISPOSITION: **Continued to October 19, 2017, at 1:30 p.m. in Fresno for a status conference. Either joint or unilateral status report(s) shall be filed and served by October 12, 2017. Telephonic appearances will be permitted.**

ORDER: **No appearance is necessary. The court will issue an order.**

Based on the respondent's opposition, this matter will be continued to October 19, 2017, at 1:30 p.m. in Fresno for a status conference. 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 debtors shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date.

The court notes that respondent's opposition was not supported by admissible evidence as required by LBR 9014-1(d)(7). Although an exhibit was filed titled "N.A.D.A. Official Used Car Guide Vehicle Valuation," no foundation for this exhibit appears in the record. The Guide is not self-authenticating. See FRE 902; *Green Tree Servicing, LLC v. Neal*, 550 BR 98 (Bankr. N.D. Miss. 2016).

16. [17-11265](#)-B-13 PHILIP FITCH
WDO-1
PHILIP FITCH/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-10-17 [[25](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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. No appearance is necessary. The movant shall submit a proposed order as specified below.

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.

17. [17-11868](#)-B-13 ALLAN BABB
MHM-1
MICHAEL MEYER/MV
DISMISSED

MOTION TO DISMISS CASE
7-7-17 [[33](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. An order dismissing the case has already been filed.

18. [17-11673](#)-B-13 MICHAEL MORRIS
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO DISMISS CASE
7-10-17 [[11](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed.

19. [17-12180](#)-B-13 GARY THOMPSON
MHM-1
MICHAEL MEYER/MV
DISMISSED

MOTION TO DISMISS CASE
7-7-17 [[28](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. An order dismissing the case has already been filed.

20. [12-60481](#)-B-13 TERRY/DELENA HALL
PK-7

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
8-1-17 [[112](#)]

PATRICK KAVANAGH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

21. [17-11881](#)-B-13 COREY YOUNG
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
8-7-17 [[21](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Continued to October 5, 2017, at 9:00 a.m.

ORDER: No appearance is necessary. The court will issue an order.

This matter will be continued to October 5, 2017, at 9:00 a.m., unless it has been withdrawn by that date.

The grounds for the trustee's motion is the debtor's failure to appear at the continued §341 meeting. The debtor has filed a timely response and his telephonic appearance at the continued §341 meeting from the U.S. Trustee's Office in Peoria, Ill., has been approved by the U.S. Trustee's Office in Fresno.

22. [17-12486](#)-B-13 PAULA DUNAWAY
PK-2
PAULA DUNAWAY/MV

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
8-9-17 [[25](#)]

PATRICK KAVANAGH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

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

The debtor is competent to testify as to the value of the 2013 Nissan Rogue S Sport Utility. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$13,536.74. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

23. [17-11389](#)-B-13 ALAN ROGERS
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
8-7-17 [[23](#)]

ROBERT WILLIAMS/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Continued to October 19, 2017, at 1:30 p.m., in Fresno.
Telephonic appearances will be permitted.

ORDER: No appearance is necessary. The court will issue an
order.

This motion will be set for a continued hearing on October 19, 2017, at
1:30 p.m., in Fresno. The court will issue an order.

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 debtor shall file and serve a written response not later than October 5, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. 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 October 12, 2017. If the debtor does 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.

9:30 A.M.

1. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION 3-23-17 [[1](#)]
- T. BELDEN/Atty. for dbt.
RESPONSIVE PLEADING

NO RULING.

2. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TRAVELER'S INSURANCE COMPANY/INLAND MARINE 8-25-17 [[260](#)]
- BBR-12 CORPORATION
PACE DIVERSIFIED CORPORATION/MV
- T. BELDEN/Atty. for dbt.
OST 8/25/17

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

This motion was filed and served pursuant to LRB 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 LRB 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

It appears from the moving papers that the Debtor-in-Possession has considered the factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee or debtor-in-possession reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

Accordingly, it appears that the the compromise pursuant to FRBP 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.

3. [17-12535](#)-B-11 OVADA MORERO

LEONARD WELSH/Atty. for dbt.

STATUS CONFERENCE RE: CHAPTER
11 VOLUNTARY PETITION
6-30-17 [[1](#)]

NO RULING.

4. [17-12535](#)-B-11 OVADA MORERO
LKW-5
OVADA MORERO/MV

LEONARD WELSH/Atty. for dbt.

MOTION FOR AUTHORITY TO
MAINTAIN PRE-PETITION BANK
ACCOUNTS
8-14-17 [[54](#)]

NO RULING.

5. [17-10238](#)-B-11 SILO CITY, INC.

JACOB EATON/Atty. for dbt.

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
1-25-17 [[1](#)]

NO RULING.

6. [17-10238](#)-B-11 SILO CITY, INC.
VVF-1
TCF EQUIPMENT FINANCE, INC./MV

JACOB EATON/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-22-17 [[106](#)]

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

DISPOSITION: **Denied without prejudice.**

ORDER: **No appearance is necessary. The court will issue an order. The order will also strike the late and non-conforming limited response filed by Signature Financial and Leasing LLC.**

The motion will be denied. The record does not show that the motion was served pursuant to Rule 1007(a)(1). In a chapter 11 case where no unsecured creditors committee has been appointed by the U.S. Trustee, a motion for relief from the automatic stay against the chapter 11 debtor must be served on the creditors holding the 20 largest unsecured claims as listed pursuant to Rule 1007(d).

If this motion is re-filed, the moving papers shall include a legible copy of the underlying agreement and movant shall brief the issue of whether, under Minnesota law, that agreement creates a security interest disguised as a lease, or constitutes a lease that has not been assumed by the debtor.

The late limited response filed by Signature Financial and Leasing LLC will be stricken. See LBR 9014-1(c), (f)(1), (i), and (l). Further, none of the factual contentions are supported by admissible evidence. FRBP 9017; LBR 9014-1(d)(7).

7. [16-10643](#)-B-12 MARK FORREST
LKW-13

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-9-17 [[189](#)]

LEONARD WELSH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

8. [15-13167](#)-B-12 DOUG KOPHAMER FARMS
LKW-25
DOUG KOPHAMER FARMS/MV
LEONARD WELSH/Atty. for dbt.

MOTION FOR LIMITING SERVICE
8-9-17 [[403](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

9. [15-13167](#)-B-12 DOUG KOPHAMER FARMS
LKW-26
DOUG KOPHAMER FARMS/MV
LEONARD WELSH/Atty. for dbt.

MOTION FOR ADMINISTRATIVE
EXPENSES
8-9-17 [[408](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

10. [15-13167](#)-B-12 DOUG KOPHAMER FARMS
LKW-27

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-10-17 [[414](#)]

LEONARD WELSH/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

11. [17-11591](#)-B-11 5 C HOLDINGS, INC.

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
4-25-17 [[1](#)]

LEONARD WELSH/Atty. for dbt.

NO RULING.

12. [17-11591](#)-B-11 5 C HOLDINGS, INC.
LKW-6

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-7-17 [[124](#)]

LEONARD WELSH/Atty. for dbt.

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

DISPOSITION: **Granted.**

ORDER: **No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.**

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

13. [17-11591](#)-B-11 5 C HOLDINGS, INC.
LKW-7
5 C HOLDINGS, INC./MV

LEONARD WELSH/Atty. for dbt.

MOTION TO EMPLOY COMMERCIAL
TRADE, INC. AS COLLECTION
AGENCY
8-15-17 [[132](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

This motion was filed and served pursuant to LRB 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 LRB 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

10:00 A.M.

1. [17-12113](#)-B-7 ANGELICA LOPEZ
CJO-1
LAKEVIEW LOAN SERVICING,
LLC/MV
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-28-17 [[18](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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 debtor's 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).

2. [17-11830](#)-B-7 MICHELLE WHITE
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-28-17 [[12](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: No appearance is necessary. The court will issue an
order.

The debtor shall attend the meeting of creditors rescheduled for September 8, 2017, at 10:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

3. [17-12537](#)-B-7 JOSE REA-ELIZARRARAS AND MOTION FOR RELIEF FROM
VVF-1 VALERIA CORTES AUTOMATIC STAY AND/OR MOTION
AMERICAN HONDA FINANCE FOR ADEQUATE PROTECTION
CORPORATION/MV 8-8-17 [[13](#)]
PATRICK KAVANAGH/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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 adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered.

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. [17-11940](#)-B-7 ANGEL CASTRELLON
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
7-28-17 [[10](#)]

VINCENT GORSKI/Atty. for dbt.

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

DISPOSITION: **Conditionally denied.**

ORDER: *Debtor's counsel shall notify his client that no
appearance is necessary at this hearing. The court will
issue an order.*

The debtor shall attend the meeting of creditors rescheduled for September 8, 2017, at 4:30 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e) (1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

5. [17-12147](#)-B-7 ROGELIO/MARGARITA
RSW-1 SANDOVAL
ROGELIO SANDOVAL/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF WILLIAM
WADELTON
8-10-17 [[14](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

This motion was filed and served pursuant to LRB 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.

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

6. [17-12376](#)-B-7 MARCUS MATTHEWS
MARCUS MATTHEWS/MV
MARCUS MATTHEWS/Atty. for mv.

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
6-21-17 [[5](#)]

NO RULING.

7. [12-17580](#)-B-7 XTECH INDUSTRIES, INC.
VG-4
VINCENT GORSKI/MV

MOTION FOR COMPENSATION FOR
VINCENT A. GORSKI, CHAPTER 7
TRUSTEE(S)
7-21-17 [[143](#)]

BENJAMIN SHEIN/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling: There will be no hearing on this matter.

Disposition: The Application is DENIED without prejudice to the trustee filing a new application with appropriate evidentiary support. No appearance is necessary.

Order: The court will issue an order.

The chapter 7 trustee Vincent Gorski ("Trustee") requests the court approve compensation of \$15,000.14 (slightly less than the full commission calculated under 11 U.S.C. §326) and expenses of \$331.74. Without further documentation from the Trustee on the issues set forth below, the court finds there are extraordinary circumstances warranting further fee review.

First, the court is not required to award the commission in all cases. 11 U.S.C. §326(a) provides for the commission rate that the court "may" award as "reasonable compensation" to a Chapter 7 trustee. 11 U.S.C. § 330(a)(7) provides that the court "shall treat" reasonable compensation "to be awarded to a trustee . . . as a commission based on section 326." Thus, the court must be convinced that the Trustee is entitled to reasonable compensation in the first instance and the burden of proof in such matters is upon the applicant. *In re Tan, Lie, Hung & Mountain States Investments LLC*, 413 BR 851, 856 (Bankr. Or. 2009) citing *Roderick v. Lew (In re Roderick Timber Co.)*, 185 BR 601, 606 (9th Cir. BAP 1995). See also *In re Nakhuda*, 544 BR 886 (9th Cir. BAP 2016) and *In re Scoggins*, 517 BR 206, 221 (Bankr. E.D.Ca. 2014) citing *In re Gianulias*, 111 BR 867, 869 (E.D.Ca. 1989).

Here the only evidence before the court is the trustee's "narrative" which does not discuss some basic questions concerning the administration of this five (5) year old case. All that can be discerned from the narrative is that this was a case involving liquidation of business equipment and negotiating with secured creditors. However, given that this case required five years to complete, an explanation is plainly needed.

Second, the court finds there are "extraordinary circumstances"

warranting further examination of the requested compensation. In *Salgado-Nava*, 473 BR 911, 921 (9th Cir. BAP 2012), the BAP held that trustee fees based on the commission structure of section 326 should be approved without significant additional review absent extraordinary circumstances. However, "if extraordinary circumstances exist . . . the bankruptcy court may be called upon in those cases to determine if there exists a rational relationship between the amount of commission and the type and level of services rendered." *Id.* So far the cases have isolated two situations that are not *per se* extraordinary: trustee compensation exceeding a "lodestar analysis," *Salgado-Nava*, 473 BR, at 821; and trustee fees in excess of distribution to unsecured creditors. *In re Ruiz*, 541 BR 892, 897 (9th Cir. BAP 2015). This case involves the latter situation since the Trustee's final report states no money will be distributed to unsecured creditors. However that is not the only extraordinary circumstance here.

The court has reviewed the final report (which frankly should be unnecessary since the applicant has the burden of proof) and it appears that as early as September or October 2012, the Trustee and his-then counsel knew of Citizen Business Bank's "blanket lien" which, according to the Trustee's narrative, was unanticipated earlier. It also appears that lien searches were performed. The obvious question is, why pursue liquidation if the unsecured creditors were likely to receive nothing? The final report reveals that "carve out" negotiations with the lenders/lessors ensued. Were eventual unsecured creditor recoveries not part of the consideration in those negotiations? What unanticipated event over the last 5 years resulted in no distribution to unsecured creditors? In addition to that extraordinary circumstance, the length of the administration of this case is certainly another. The case was filed in 2012 and based on the trustee's narrative it was clear from the outset that other than negotiating with: (a) secured creditors on their claims and (b) the trustee in a related case on ownership issues, that liquidation or abandonment of the encumbered equipment was the only administration needed. Why did the case require 5 years to complete?

Another extraordinary circumstance is the payment of bank fees for a five year period reducing the available recovery for unsecured creditors. Other than payment of bond premiums and distributions to estate professionals the bank fees were a substantial drain on estate cash. Why was it necessary to maintain the accounts for such a long period of time?

Third, an incomplete record was presented to the court. As mentioned above, the only evidence supporting this application was the narrative which the court has already discussed. LBR 2016-2 applies to this application. The evidence is insufficient for the court to determine if there is a rational relationship between the trustee's requested commission here and the type and level of services the trustee performed in this case. See, *Salgado-Nava*, 473 BR 911.

There is no evidence supporting, nor does the court thus far find, that the Trustee was deficient in performance of services to the estate. The court makes no finding that the Trustee was not diligent. However, such findings are not necessary to warrant further inquiry. See, *Ruiz*, 541 BR at 897.

The application is DENIED without prejudice.

8. [11-17482](#)-B-7 JOHN/SHERRI DEATHERAGE MOTION TO AVOID LIEN OF
RSB-1 CITIBANK (SOUTH DAKOTA) N.A.
JOHN DEATHERAGE/MV 8-9-17 [[21](#)]
R. BELL/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

9. [17-12187](#)-B-7 PAUL/JOAMY BALDERAS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-17-17 [[28](#)]

WILLIAM EDWARDS/Atty. for dbt.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Case dismissed.

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

This matter will proceed as scheduled. If the fee due at the time of the hearing, \$31, have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

10. [17-12388](#)-B-7 MARCO PINEDA AND ALBA OPPOSITION RE: TRUSTEE'S MOTION
GARCIA PINEDA TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
8-7-17 [[14](#)]

YOON HAM/Atty. for dbt.

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

DISPOSITION: **Conditionally denied.**

ORDER: *Debtor's counsel shall notify his client that no
appearance is necessary at this hearing. The court will
issue an order.*

The debtor shall attend the meeting of creditors rescheduled for September 8, 2017, at 2:30 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e) (1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

11. [17-12193](#)-B-7 HENRY GALINATO
JCW-1
WELLS FARGO BANK, N.A./MV
JENNIFER WONG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-13-17 [[39](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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 debtor's 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).

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

DISPOSITION: **Conditionally denied.**

ORDER: **No appearance is necessary. The court will issue an
order.**

The debtor shall attend the meeting of creditors rescheduled for September 8, 2017, at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

11:00 A.M.

1. [17-11511](#)-B-7 JESSE/GENIA CHANEY REAFFIRMATION AGREEMENT WITH
ACAR LEASING LTD
7-31-17 [[15](#)]
JACOB EATON/Atty. for dbt.
NOTICE OF RESCISSION

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: No appearance is necessary. The debtors have filed a notice of rescission of the reaffirmation agreement and, accordingly, it is not effective. The court will issue an order.

2. [17-11917](#)-B-7 JEREMY SMITH REAFFIRMATION AGREEMENT WITH
FORD MOTOR CREDIT COMPANY
7-12-17 [[12](#)]
D. GARDNER/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: No appearance is necessary. The court will issue an order.

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. [17-11647](#)-B-7 WILLIAM/APRIL BLEVINS

PRO SE REAFFIRMATION AGREEMENT
WITH ALTAONE FEDERAL CREDIT
UNION
8-3-17 [[14](#)]

JOSEPH PEARL/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The court will issue an
order.

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 debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

4. [17-11149](#)-B-7 ESEQUIEL RENTERIA

PRO SE REAFFIRMATION AGREEMENT
WITH U.S. BANK NATIONAL
ASSOCIATION
7-21-17 [[17](#)]

OSCAR SWINTON/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The court will issue an
order.

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). In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

5. [17-12850](#)-B-7 NANCY WEBER

PRO SE REAFFIRMATION AGREEMENT
WITH WESTAMERICA BANK
8-14-17 [[9](#)]

STEVEN STANLEY/Atty. for dbt.

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

DISPOSITION: **Dropped from calendar.**

ORDER: **No appearance is necessary. The court will issue an order.**

The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. It is therefore not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. Ca. 2003). There is no financial information included in the agreement and it has not been signed by anyone. The debtor shall have 14 days to refile the reaffirmation agreement properly completed, signed, and endorsed by the attorney.

6. [17-10866](#)-B-7 JUAN OLIVA

REAFFIRMATION AGREEMENT WITH
ONEMAIN FINANCIAL SERVICES,
INC.
7-6-17 [[13](#)]

NEIL SCHWARTZ/Atty. for dbt.

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

DISPOSITION: **Denied.**

ORDER: **No appearance is necessary. The court will issue an order.**

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.

7. [17-11680](#)-B-7 PATRICK/SHEILA SANCHEZ REAFFIRMATION AGREEMENT WITH
AMERICAN HONDA FINANCE CORP. -
2014 HONDA ACCORD
7-7-17 [[14](#)]

R. BELL/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: No appearance is necessary. The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed April 30, 2017, and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate.

8. [17-11680](#)-B-7 PATRICK/SHEILA SANCHEZ REAFFIRMATION AGREEMENT WITH
AMERICAN HONDA FINANCE CORP. -
2015 HONDA CIVIC
7-7-17 [[15](#)]

R. BELL/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The court will issue an order.

The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. It is therefore not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. Ca. 2003). There is no financial information included in the agreement and it has not been signed by anyone. The debtor shall have 14 days to refile the reaffirmation agreement properly completed, signed, and endorsed by the attorney.

1:30 P.M.

1. [17-11220](#)-B-7 LUIS/SHANNON POMPA
[17-1060](#)
ABACA BAIL BONDS V. POMPA ET
AL
ABACA BAIL BONDS/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: AMENDED
COMPLAINT
7-17-17 [[12](#)]

FINAL RULING

There will be no hearing on this matter.

DISPOSITION:

Rescheduled to October 5, 2017, at 1:30 p.m. Status
conference statements from both parties shall be filed
and served by September 28, 2017.

ORDER:

No appearance is necessary. The court will issue an
order.