

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**  
**Honorable René Lastreto**  
**Hearing Date: Thursday, September 8, 2016**  
**Place: U.S. Courthouse, 510 19<sup>th</sup> 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. [16-11900](#)-B-13 EMANUEL/KAREN DOZIER MOTION TO DISMISS CASE  
MHM-1 7-13-16 [[25](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.

The trustee's motion has been withdrawn. No appearance is necessary.

2. 16-11900-B-13 EMANUEL/KAREN DOZIER OBJECTION TO CONFIRMATION OF  
PPR-1 PLAN BY BANK OF AMERICA, N.A.  
BANK OF AMERICA, N.A./MV 8-3-16 [29]  
ROBERT WILLIAMS/Atty. for dbt.  
BONNI MANTOVANI/Atty. for mv.

This matter will be continued to November 3, 2016, at 9:00 a.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. If the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

3. [11-17609](#)-B-13 ERMELINDA RAMIREZ MOTION TO VACATE DISMISSAL OF  
RSW-4 CASE  
ERMELINDA RAMIREZ/MV 8-25-16 [[142](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
DISMISSED

**This matter will proceed as scheduled.**

If the debtor can successfully explain the delay in bringing this motion, and 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 a civil minute order.

4. [15-14409](#)-B-13 ALICIA RIZO  
MHM-2  
MICHAEL MEYER/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO DISMISS CASE  
8-8-16 [[39](#)]

Unless the trustee's motion is withdrawn, 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 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.

5. [16-12410](#)-B-13 EDWARD GUTIERREZ

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-5-16 [[21](#)]

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.

If any of the remaining installments are not paid when they come due then the case may be dismissed without further notice.

6. [16-11118](#)-B-13 KENNETH SPURLOCK CONTINUED MOTION TO DISMISS  
MHM-1 CASE  
MICHAEL MEYER/MV 6-14-16 [[25](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

This matter will be dropped as moot. The debtor has voluntarily converted his case to a case under chapter 7 and confirmation of a chapter 13 plan is no longer relevant. No appearance is necessary.

7. 16-11118-B-13 KENNETH SPURLOCK MOTION TO CONFIRM PLAN  
RSW-1 7-7-16 [29]  
KENNETH SPURLOCK/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

This matter will be dropped as moot. The debtor has voluntarily converted his case to a case under chapter 7 and confirmation of a chapter 13 plan is no longer relevant. No appearance is necessary.

8. [16-10520](#)-B-13 RICHARD STOWERS MOTION TO DISMISS CASE  
MHM-1 8-9-16 [[23](#)]  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.

This motion will be dropped from calendar as moot. The debtor has voluntarily converted this case to chapter 7 and therefore performance of the chapter 13 plan is no longer relevant. No appearance is necessary.

9. [16-12424](#)-B-13 RYAN/ANNMARIE DICKSON  
JHW-1  
TD AUTO FINANCE LLC/MV  
NEIL SCHWARTZ/Atty. for dbt.  
JENNIFER WANG/Atty. for mv.
- OBJECTION TO CONFIRMATION OF  
PLAN BY TD AUTO FINANCE LLC  
7-29-16 [[12](#)]

This matter will proceed as scheduled. In lieu of appearing, the parties may submit a proposed order confirming the plan that resolves movant's objection to the designation of its claim as a "non purchase money" claim.

If such order is not submitted, and unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue a civil minute order.

10. [16-11129](#)-B-13 DAVID/LINDA MILAZZO  
LKW-2

MOTION FOR COMPENSATION FOR  
LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
8-3-16 [[56](#)]

LEONARD WELSH/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules of Practice 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 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 applicant has served as the debtors' attorney and they have consented to payment of the fee.

11. [16-12929](#)-B-13 OMAR/JUDIT MARTINEZ  
GEG-1  
OMAR MARTINEZ/MV  
GLEN GATES/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
8-25-16 [[11](#)]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the debtor, 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 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 presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at §362(c)(3)(c). "This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, 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*.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtor's petition was filed in good faith, and it intends to grant the motion to extend the automatic stay. According to the co-debtor's declaration, the co-debtor now has a new position in which she earns more money, and the debtor's income is steadier. They also plan to surrender one vehicle and sell another.

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

12. [16-11636](#)-B-13 FLORENTINO/STELLA MACIAS MOTION TO DISMISS CASE  
MHM-1 7-12-16 [[18](#)]  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

**The trustee's motion has been withdrawn. No appearance is necessary.**

13. [13-18038](#)-B-13 MARK MOORE AND TAMILEE CONTINUED MOTION TO DISMISS  
MHM-6 DERINGTON-MOORE CASE  
MICHAEL MEYER/MV 6-16-16 [[114](#)]  
ROBERT WILLIAMS/Atty. for dbt.

**The trustee's motion has been withdrawn. No appearance is necessary.**

14. [16-11050](#)-B-13 MARGARET LUND ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-2-16 [[25](#)]  
PATRICK KAVANAGH/Atty. for dbt.  
FINAL INSTALLMENT PAID  
8/18/16

**The OSC will be vacated. The record shows that the required fee has been paid in full. No appearance is necessary.**

15. [13-14151](#)-B-13 MONTY/MIRIAM FAULKNER MOTION TO SUBSTITUTE AS THE  
SSG-4 REPRESENTATIVE FOR DEBTOR AND  
STEVE GOHARI/MV JOINT DEBTOR AND/OR MOTION TO  
CONTINUE ADMINISTRATION OF THE  
BANKRUPTCY CASE  
7-22-16 [[54](#)]  
STEVE GOHARI/Atty. for dbt.

**This matter will proceed as scheduled.**

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion requesting, in essence, waiver of the requirement for the debtors to complete the documents required under §1328 for entry of a discharge. It appears that the plan has been completed however both debtors are now deceased. 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 a civil minute order.

16. [16-11853](#)-B-13 VICTOR VILLALVAZO  
HTP-1  
BANK OF THE SIERRA/MV  
  
RICHARD STURDEVANT/Atty. for dbt.  
HANNO POWELL/Atty. for mv.

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY BANK OF  
THE SIERRA  
6-29-16 [[15](#)]

**This matter will be continued to November 3, 2016, at 9:00 a.m. The court will issue a civil minute order. No appearance is necessary.**

**The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.**

17. [16-11853](#)-B-13 VICTOR VILLALVAZO  
MHM-1  
MICHAEL MEYER/MV  
RICHARD STURDEVANT/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
7-12-16 [[25](#)]

**The trustee has withdrawn the motion. No appearance is necessary.**

18. [16-11954](#)-B-13 LAVONE/CHRISTINE HUNTER  
MHM-1  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
7-13-16 [[18](#)]

**Unless the trustee's motion is withdrawn prior to the hearing, this matter will proceed as scheduled.**

**The trustee's motion to dismiss was based on the debtors' failure to file, serve, and set for hearing a chapter 13 plan. The debtors' timely opposition indicates the debtors' intention to file a plan and set it for a hearing.**



19. [15-14355](#)-B-13 JASON/DANELLE BLACK  
PK-2  
JASON BLACK/MV

MOTION FOR COMPENSATION FOR  
PATRICK KAVANAGH, DEBTORS  
ATTORNEY(S)  
8-11-16 [[59](#)]

PATRICK KAVANAGH/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 of Practice 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 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 applicant has served as the debtors' attorney and they have consented to payment of the fee.

20. [16-12158](#)-B-13 RICO PIMENTEL

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-22-16 [[35](#)]

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.

If any of the remaining installments are not paid when they come due then the case may be dismissed without further notice.

21. [16-12158](#)-B-13 RICO PIMENTEL

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-21-16 [[26](#)]

This OSC will be dropped from calendar because it has been superseded by the OSC issued on August 22, 2016.

22. [16-12158](#)-B-13 RICO PIMENTEL  
BH-2  
SANTIAGO CREEK MOBILE HOME  
PARK, L.P./MV  
ROBERT BRUMFIELD/Atty. for mv.

OBJECTION TO CONFIRMATION OF  
PLAN BY SANTIAGO CREEK MOBILE  
HOME PARK, L.P.  
8-25-16 [[46](#)]

If this case is not dismissed pursuant to the OSC, above at calendar #20, then this matter will be continued to November 3, 2016, at 9:00 a.m. If the case is dismissed, then this objection will be overruled as moot. The court will issue a civil minute order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. If the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

23. [15-11859](#)-B-13 ARTURO/BERENICE FLORES  
MHM-3  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
8-8-16 [[66](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

24. [16-11063](#)-B-13 DANIEL PADILLA  
  
SUSAN SALEHI/Atty. for dbt.  
FINAL INSTALLMENT PAID  
8/4/16

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-2-16 [[82](#)]

The OSC will be vacated. No appearance is necessary. The required installment has been paid.

25. [16-11063](#)-B-13 DANIEL PADILLA  
SJS-6  
DANIEL PADILLA/MV  
SUSAN SALEHI/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
7-6-16 [[72](#)]

This matter will proceed as scheduled.

The court intends to deny the motion to confirm the chapter 13 plan and to set a bar date by which time a plan must be confirmed as prayed in the trustee's opposition.

Alternatively, the debtor may appear and stipulate to immediately increase the monthly plan payment to an amount that will be sufficient to complete performance of the plan. It appears from the record that the plan payment needs to be \$246.10. The court will issue a civil minute order.

26. [16-11072](#)-B-13 ELLYN LOPEZ  
MHM-1  
MICHAEL MEYER/MV

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY MICHAEL  
H. MEYER  
6-14-16 [[35](#)]

PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

This matter will proceed as scheduled.

The trustee suggests that the debtor's payment on the loan secured by her automobile should be listed along with other secured debts and not as a transportation "ownership expense." The trustee shall be prepared to explain how this case can be distinguished from the Ninth Circuit Bankruptcy Appellate Panel's reasoning in its August 23, 2016, unpublished decision, *Drury v. U.S. Trustee (In re Drury)*, BAP No. CC-15-1441-KuFD.

Even though [Drury] is not the owner of the automobile, is not the borrower under the automobile loan and is not legally obligated to repay that loan, it is undisputed that Drury will lose possession of the automobile unless she continues to make payments to the lender. This undisputed fact establishes for means test purposes that the relevant IRS local transportation expense standard of \$517 for car ownership expenses is "applicable" to Drury and thus she is entitled to claim this amount for purposes of determining whether her chapter 71 case filing was presumptively abusive under § 707(b)(2).

*Emphasis added.*

The trustee points out, in a footnote, that in *Drury* the debtor was making payments to purchase a vehicle from her sister, instead of, as in the instant case, making payments on a loan secured by her automobile. Given the reasoning of the BAP, it is difficult to see how a debt for money used to purchase, and secured by, an automobile, is different than a debt that is secured by an automobile already owned by the debtor. In either case, as the BAP held, if the debtor will lose possession of the automobile unless the debtor maintains the payments, then the "car ownership expense" allowance is "applicable" to the debtor.

The trustee's suggestion that the debt secured by the automobile should be listed with other secured debts is interesting, however the Bankruptcy Code has not made such a distinction in connection with similar obligations. A non-purchase-money debt for an automobile can be analogized as a "car equity loan." The "means test" does not distinguish between the repayment obligations stemming from a mortgage obligation incurred in order to purchase a debtor's home, and those mortgages undertaken to refinance a home or home equity loans.

The debtor shall be prepared to explain why she is entitled to the maximum ownership expense of \$517.

27. [16-11473](#)-B-13 SHELBY/CAROL KING  
DMG-1  
MISSION BANK/MV  
LEONARD WELSH/Atty. for dbt.  
D. GARDNER/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-11-16 [[55](#)]

**This motion for relief from the automatic stay will be denied without prejudice. No appearance is necessary.**

**The movant failed to file a separate relief from stay information sheet pursuant to LBR 4001-1(a) (3) .**

28. [16-11473](#)-B-13 SHELBY/CAROL KING  
LKW-1  
SHELBY KING/MV  
LEONARD WELSH/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
PLAN  
6-16-16 [[23](#)]

**This matter will proceed as scheduled. The motion was continued to permit the parties to resolve a disagreement regarding the amount of the unsecured portion of trust fund claims.**

29. [15-10076](#)-B-13 ESTEBAN ZAVALA  
MHM-4  
MICHAEL MEYER/MV  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
6-6-16 [[127](#)]

**Based on the trustee's reply, filed September 1, 2016, this matter will proceed as scheduled.**

**Unless opposition is presented at the hearing, the court intends to grant the motion and dismiss the case since the modified plan is not feasible. 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) .**

30. [16-11276](#)-B-13 JOSEPH/FATIMA SILVAS  
MHM-1  
MICHAEL MEYER/MV  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
8-10-16 [[23](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

31. [15-13181](#)-B-13 ORLAND DIRAMOS  
MHM-1  
MICHAEL MEYER/MV  
SUSAN SALEHI/Atty. for dbt.

MOTION TO DISMISS CASE  
8-8-16 [[20](#)]

Unless the trustee's motion is withdrawn, 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 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.

32. [15-10184](#)-B-13 PIERRE ROSADO  
MHM-3  
MICHAEL MEYER/MV  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
6-16-16 [[44](#)]

Unless the motion is withdrawn, this matter will proceed as scheduled. This matter was continued to be heard with the debtor's motion to confirm a modified plan, below, at calendar #33.

33. [15-10184](#)-B-13 PIERRE ROSADO  
PLG-1  
PIERRE ROSADO/MV  
STEVEN ALPERT/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN  
7-29-16 [[56](#)]

Unless the debtor files a notice of withdrawal of this proposed plan, this matter will proceed as scheduled.

The court notes that the debtor has responded to the trustee's opposition to confirmation of this plan by indicating that he intends to file another plan, however as of the time of calendar preparation, two days prior to the hearing, no plan has been filed.

34. [16-11686](#)-B-13 BERTHA SANCHEZ  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
7-15-16 [[18](#)]

**Based on the debtor's response, this motion will be continued to November 3, 2016, at 9:00 a.m., to permit the debtor to appear at her continued \$341 meeting of creditors.**

35. [16-10288](#)-B-13 CLINT/JUDITH HARRISON  
MHM-2  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
6-10-16 [[4](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

36. [16-10288](#)-B-13 CLINT/JUDITH HARRISON  
RSW-3  
CLINT HARRISON/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
ACCEPTANCE NOW  
8-26-16 [[60](#)]

**This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion.**

**The court notes that the debtor states in his declaration that the creditor "valued the furniture at \$500.00 in their claim." The claims register, however, does not show a proof of claim filed by this respondent, nor a proof of claim in the amount of either \$1,669 or \$500.**

**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 a civil minute order.**

37. [16-10288](#)-B-13 CLINT/JUDITH HARRISON  
RSW-4  
CLINT HARRISON/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
8-3-16 [[47](#)]

**This matter will proceed as scheduled.**

38. [16-10288](#)-B-13 CLINT/JUDITH HARRISON  
RSW-5  
CLINT HARRISON/MV

MOTION TO AVOID LIEN OF SEVEN  
OAKS AT GRAND ISLAND HOMEOWNERS  
ASSOCIATION  
8-26-16 [[64](#)]

ROBERT WILLIAMS/Atty. for dbt.

**This matter 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 a civil minute order.**

39. [16-10288](#)-B-13 CLINT/JUDITH HARRISON  
RSW-6  
CLINT HARRISON/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
CALIFORNIA FRANCHISE TAX BOARD  
8-26-16 [[68](#)]

**The motion will be denied without prejudice. The court will issue a civil minute order. No appearance is necessary.**

**The record does not establish that the motion was served on the named respondent in compliance with Roster of Governmental Agencies, EDC 2-785 (Rev. 7/23/15), service on the California Franchise Tax Board.**

40. [16-11189](#)-B-13 RUBEN BEGA  
MHM-1  
MICHAEL MEYER/MV  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
6-14-16 [[17](#)]

**The trustee's motion has been withdrawn. No appearance is necessary.**

41. [16-10391](#)-B-13 MICHAEL PFEIFFER  
DMG-1  
MICHAEL PFEIFFER/MV  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
PLAN  
6-21-16 [[28](#)]

**This matter will proceed as scheduled.**

**9:30 A.M.**

1. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,  
INC.

CONTINUED STATUS CONFERENCE RE:  
CHAPTER 11 VOLUNTARY PETITION  
11-30-15 [[1](#)]

LEONARD WELSH/Atty. for dbt.

**This matter will proceed as scheduled.**

2. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,  
DHR-5 INC.

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF LEVENE, NEALE,  
BENDER, YOO & BRILL L.L.P. FOR  
DANIEL H. REISS, CREDITOR COMM.  
ATY(S)  
8-10-16 [[460](#)]

LEONARD WELSH/Atty. for dbt.

**This motion for compensation will proceed as scheduled.**

Although the notice of the motion states that it was served pursuant to LBR 9014-1(f)(1), requiring opposition to be filed pursuant to subsection (B), all of the moving papers were not filed 28 days prior to the hearing. The debtor filed an opposition, on September 6, to the application for fees.

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

3. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,  
LKW-34 INC.  
B&L EQUIPMENT RENTALS, INC./MV  
LEONARD WELSH/Atty. for dbt.

MOTION TO EMPLOY CBIZ MHM, LLC  
AS ACCOUNTANT(S)  
8-24-16 [[474](#)]

**This matter 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 a civil minute order.



10:00 A.M.

1.	<u>16-12506</u> -B-7	NICHOLAS/LISA NIELAND	MOTION FOR RELIEF FROM
	JCW-1		AUTOMATIC STAY
	PNC BANK, NATIONAL		8-9-16 [ <u>10</u> ]
	ASSOCIATION/MV		
	STEVEN STANLEY/Atty. for dbt.		
	JENNIFER WONG/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 of Practice 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 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 Rule 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).

2. [16-12806](#)-B-7 JOSE ANGULO AND NINFA  
VVF-1 MONTOYA  
HONDA LEASE TRUST/MV

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
8-18-16 [[13](#)]

VINCENT GORSKI/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

This motion for relief from the automatic stay will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This motion relates to an executory contract or lease of personal property. The time prescribed in 11 U.S.C. §365(d)(1) for the lease to be assumed by the chapter 7 trustee has not yet run and, pursuant to § 365 (p)(1), the leased property is still property of the estate and protected by the automatic stay under § 362(a).

This matter was fully noticed in compliance with the Local Rules of Practice 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 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 trustee has not moved to assume the subject lease and the lease was not listed in the debtors' Statement of Intention.

3. [16-11910](#)-B-7 JUAN VILLALOBOS  
APN-1  
BMW BANK OF NORTH AMERICA/MV  
NEIL SCHWARTZ/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-11-16 [[13](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The debtor is an individual. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

4. [16-12311](#)-B-7 MONICA BAUER  
APN-1  
CAB WEST, LLC/MV  
JOHN GARNER/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-11-16 [[17](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

This motion relates to the lease of personal property. The lease was not assumed by the chapter 7 trustee within 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 and the automatic stay under § 362(a) has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion.

5. [16-12316](#)-B-7 JANINE MCCULLOUGH  
PK-2  
AARON FABBIAN/MV  
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-11-16 [[32](#)]

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 of Practice 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 notice and motion requested a waiver of Federal Rule 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).

6. [12-18024](#)-B-7 MICHAEL BENGE  
KDG-4

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KLEIN, DENATALE,  
GOLDNER, COOPER, ROSENLIEB &  
KIMBALL FOR LISA HOLDER,  
TRUSTEES ATTORNEY(S)  
8-17-16 [[43](#)]

FRANK SAMPLES/Atty. for dbt.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and enter the following ruling, granting the motion in part, and denying it in part, as stated below. The applicant shall submit a proposed order after hearing.

The applicant submitted an application for payment of fees in the amount of \$12,149.50, and costs in the amount of \$108.63, for serving as the trustee's attorney from November 26, 2013, through August 12, 2016.

The application for employment was filed March 19, 2013, and an order approving employment was issued March 20, 2013. Neither the application for employment, nor the application for payment of fees, requested approval *nunc pro tunc*. Accordingly, fees incurred prior to January 20, 2013, in the amount of \$541.50, are not approved. Fees incurred after January 20, 2013, in the amount of \$11,608, will be approved.

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).

7. [16-11832](#)-B-7 RONALD/KIMBERLY WAITLEY  
VVF-1  
HONDA LEASE TRUST/MV

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
8-2-16 [[20](#)]

JOSEPH PEARL/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

This motion relates to a lease of personal property. The lease was not assumed by the chapter 7 trustee within 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 and the automatic stay under § 362(a) has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion.

The court notes that in the debtors' Statement of Intention they indicated their intention not to assume this lease.

8. [15-14436](#)-B-7 DONNA SPELL  
APN-1  
WELLS FARGO BANK, N.A./MV  
STEVEN STANLEY/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.  
WITHDRAWN

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-2-16 [[34](#)]

**This motion has been withdrawn. No appearance is necessary.**

9. [16-12337](#)-B-7 GEOFFERY/THERESA SAWYER  
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION  
TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
8-8-16 [[28](#)]

***The chapter 7 trustee shall attempt to notify the debtor that no appearance is necessary at this hearing. The court will issue a civil minute order.***

**The debtors shall attend the meeting of creditors rescheduled for September 9, 2016, at 4:30 p.m. If the debtors fail 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 debtors' 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.**

10. [16-12249](#)-B-7 TIMOTHY/BOBBIE GOMES  
APN-1  
WELLS FARGO BANK, N.A./MV  
STEVEN STANLEY/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-27-16 [[14](#)]

**This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.**

**The debtors' are individuals. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion.**

11. [16-12064](#)-B-7 JOHN/MARY BORNEMAN  
RSW-1  
JOHN BORNEMAN/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF  
AMERICAN EXPRESS CENTURION BANK  
8-19-16 [[13](#)]

**This matter 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 a civil minute order.**

12. [16-11469](#)-B-7 OUR VALLEY FENCE, INC.  
DMG-1  
MISSION BANK/MV  
LEONARD WELSH/Atty. for dbt.  
D. GARDNER/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-11-16 [[12](#)]

**This motion for relief from the automatic stay will be denied without prejudice. No appearance is necessary.**

**The movant failed to file a separate relief from stay information sheet pursuant to LBR 4001-1(a)(3).**

13. [12-15487](#)-B-7 ANTHONY LEONIS  
RSW-2  
ANTHONY LEONIS/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF JAMES  
CIECIORKA AND JEAN CIECIORKA  
7-14-16 [[243](#)]

**This motion to avoid the lien of James and Jean Cieciorka (the "Cieciorka Lien") will be granted on the condition that the debtor properly amend his schedule C to show all the property he wishes to claim as exempt. The movant shall submit a proposed order after filing said schedule to which the amended schedule has been attached. No appearance is necessary.**

**The debtor's initial schedule C (the "Initial Schedule C"), filed June 20, 2012, using Cal.Code of Civ. Proc. §703.140(b)(5), listed as exempt the following real property: "Residence at 8904 Gascony Court, Bakersfield ('Gascony Ct.),' and "Parcel in San Jose and Livermore, CA-1/2 owner ('Parcel')." (In each of the subsequent amended schedule C's the debtor has used CCP §703.140(b)(5).)**

**On September 15, 2015, the debtor filed a first amended schedule C, using the same exemption schedule, showing the Parcel as "DELETED" and showing "Account receivable" in the amount of \$12,860.43, as "ADDED" (the "Receivables"). No other property was listed as exempt.**

**On March 21, 2016, the debtor filed a second amended schedule C, showing real property as follows: Gascony Ct., "House at 13800 Las Entradas, Bakersfield, CA" ("Las Entradas") as "ADDED," and the Parcel as "DELETED." The Receivables remained on schedule C, as did the property listed in the Initial Schedule C.**

On June 9, 2016, the debtor filed a motion (RSW-1) to avoid the Cieciorka Lien.

That motion was denied as to Las Entradas, and granted as to Gascony Ct., based on a review of the Initial Schedule C.

On July 14, 2016, the debtor filed a third amended schedule C, which showed Las Entradas, and "Unpaid earnings CHANGED" in the amount of \$490 ("Unpaid Earnings"). No other property was listed.

On July 14, 2016, the debtor filed a motion to avoid the Cieciorka Lien (RSW-2) as to Gascony Ct. The debtor's current schedule C shows only Las Entradas and Unpaid Earnings, so would be ordinarily be denied as to Gascony Ct., except the court has already granted the motion as to Gascony Ct.

It now appears that the motion, RSW-1, brought June 9, 2016, should have been viewed in context with the amended schedule C filed on March 21, 2016, and thus granted as to both Gascony Ct. and Las Entradas. However, the amended schedule C currently in effect does not include Gascony Ct., nor does it include anything but Las Entradas and Unpaid Earnings. Schedule C should be cumulative and should be able to stand alone without reference to prior schedules C, because they are superseded by the latest one that is filed. See, *Bohrer*, 266 B.R. 200, 201 (Bankr. N.D. Cal. 2001) (When schedules are amended the old schedules do not . . . become nullities. The only effect of amendment of a schedule is that the original schedule no longer has the binding, preclusive effect it might otherwise have.) *Emphasis added.*

14.	<a href="#">16-12087</a> -B-7	SANTOS/TERESA QUINTANILLA	OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 8-8-16 [ <a href="#">9</a> ]
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N. JOE INUMERABLE/Atty. for dbt.

*Debtor's counsel shall notify his clients that no appearance is necessary at this hearing. The court will issue a civil minute order.*

The debtors shall attend the meeting of creditors rescheduled for September 9, 2016, at 10:00 a.m. If the debtors fail 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 debtors 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.



15. [16-10291](#)-B-7 MYRNA TORRES  
RP-1  
RANDELL PARKER/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO SELL  
8-10-16 [[14](#)]

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 of Practice 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 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. It appears that this sale of the estate's interest in a 2006 Nissan for \$2,200 is a reasonable exercise of the trustee's business judgment. The debtor is to remit payment in full to the trustee within 10 days of the entry of this order.

16. [16-10493](#)-B-7 ISMAEL LOERA  
VVF-1  
HONDA LEASE TRUST/MV  
  
R. BELL/Atty. for dbt.  
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
8-12-16 [[23](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

This motion relates to an executory contract or lease of personal property. The lease was not assumed by the chapter 7 trustee within 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 and the automatic stay under § 362(a) has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion.



**11:00 A.M.**

1.     [16-12303](#)-B-7     BERNARDOS GRAY     PRO SE REAFFIRMATION AGREEMENT  
WITH LENDMARK FINANCIAL  
SERVICES, LLC  
7-27-16 [[25](#)]

**This matter will proceed as scheduled.**

2.     [16-11946](#)-B-7     GUADALUPE CASTILLO     REAFFIRMATION AGREEMENT WITH  
AMERICAN HONDA FINANCE  
CORPORATION  
8-2-16 [[9](#)]

WILLIAM OLCOTT/Atty. for dbt.

**This hearing to review and approve a reaffirmation agreement will be dropped from calendar. Debtor's counsel shall notify the debtor that no appearance is necessary.**

**No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. It appears from the debtor's schedules that this payment is included in the debtor's expenses. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.**

3.     [16-12349](#)-B-7     STEVE/SANDRA LACKEY     REAFFIRMATION AGREEMENT WITH  
ACAR LEASING LTD  
8-22-16 [[11](#)]

STEVEN STANLEY/Atty. for dbt.

**This reaffirmation agreement will be dropped from calendar without a disposition. 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 June 29, 2016, and the lease was not assumed by the chapter 7 trustee within 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.**

4.     [16-11973](#)-B-7     JAVIER MARTINEZ AND ANA  
GARCIA     REAFFIRMATION AGREEMENT WITH  
FORD MOTOR CREDIT COMPANY  
8-2-16 [[11](#)]

PATRICK KAVANAGH/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. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtors would be able to make the payments.**

1:30 P.M.

1. [16-11205](#)-B-7 TINA SANCHEZ STATUS CONFERENCE RE: AMENDED  
[16-1042](#) COMPLAINT  
SANCHEZ V. DEPT OF ED./NEL NET 7-5-16 [[12](#)]  
TINA SANCHEZ/Atty. for pl.

**This matter will proceed as scheduled. The court notes that the reissued summons was not served on the respondent pursuant to the Roster of Governmental Agencies, EDC 2-785.**

2. [16-10016](#)-B-13 KEVIN DAVEY STATUS CONFERENCE RE: COMPLAINT  
[16-1074](#) 7-5-16 [[1](#)]  
DAVEY V. OCWEN LOAN SERVICING,  
LLC ET AL  
VINCENT GORSKI/Atty. for pl.  
RESPONSIVE PLEADING, AMENDED  
COMPLAINT FILED 8/30/16

**This matter will proceed as scheduled. The court notes that counsel for plaintiff did not submit a proposed order, prepared in conformance with FRCP 65(d)(1), as directed by the court at the prior hearing.**

3. [11-62436](#)-B-7 KEVIN/SUSAN MARTIN STATUS CONFERENCE RE: AMENDED  
[12-1131](#) COMPLAINT  
MARTIN ET AL V. IRS 1-22-13 [[25](#)]  
KEVIN MARTIN/Atty. for pl.

**This matter will proceed as scheduled.**

4. [14-12570](#)-B-13 STEPHEN/CAROL CHOAT PRETRIAL CONFERENCE RE: AMENDED  
[16-1019](#) COMPLAINT  
CHOAT ET AL V. CHEVRON VALLEY 2-25-16 [[21](#)]  
CREDIT UNION ET AL  
D. GARDNER/Atty. for pl.  
STIPULATION FOR DISMISSAL

**This matter will be dropped from calendar as moot. The adversary proceeding has already been dismissed by stipulation of the parties and order of the court. No appearance is necessary.**

5. [16-11072](#)-B-13 ELLYN LOPEZ STATUS CONFERENCE RE: COMPLAINT  
[16-1073](#) 7-1-16 [[1](#)]  
LOANME, INC. V. LOPEZ  
DAVID BRODY/Atty. for pl.

**This matter will proceed as scheduled.**

6. [16-11072](#)-B-13 ELLYN LOPEZ  
[16-1073](#) PK-1  
LOANME, INC. V. LOPEZ  
PATRICK KAVANAGH/Atty. for mv.  
RESPONSIVE PLEADING

MOTION TO DISMISS ADVERSARY  
PROCEEDING/NOTICE OF REMOVAL  
8-5-16 [7]

This matter will proceed as scheduled.

The court intends to grant the motion to dismiss the complaint without prejudice pursuant to the tentative ruling that follows.

Tentative Ruling- The defendant's Motion to Dismiss for Failure to State a Claim will be granted as to all three claims for relief. The plaintiff will have until September 22, 2016 to file a First Amended Complaint. No appearance is necessary.

This complaint alleges that the defendant's debt owed to plaintiff in an alleged amount of \$99,510.99 should be nondischargeable under 11 U.S.C. §§523(a)(2)(A), 523(a)(2)(B), and 523(a)(6). The obligation is for an alleged loan of \$100,000 made to the defendant by the plaintiff nine and one-half months before this bankruptcy case was filed.

#### Standards

A claim may be dismissed under Civil Rule 12(b)(6) either because it asserts a legal theory that is not cognizable as a matter of law or because it fails to allege sufficient facts to support an otherwise cognizable legal claim. *SmileCare Dental Grp. v. Delta Dental Plan of Cal., Inc.*, 88 F.3d 780, 783 (9th Cir. 1996). In addressing a Civil Rule 12(b)(6) challenge, the court accepts all factual allegations in the complaint as true (*Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 740 (1976)), and construes the pleading in the light most favorable to the nonmoving party. *Tanner v. Heise*, 879 F.2d 572, 576 (9th Cir. 1989). "Dismissal without leave to amend is improper unless it is clear . . . that the complaint could not be saved by any amendment." *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1196 (9th Cir., 1998) (quoting *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir., 1996)). To survive a motion to dismiss under Civil Rule 12(b)(6), a complaint need only set forth a short and plain statement of the claim showing the pleader is entitled to relief; it "does not need detailed factual allegations." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). Nevertheless a plaintiff must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]" *Id.* For purposes of a 12(b)(6) motion, attached documents are treated as part of the complaint. *Tellabs, Inc. v. Makor Issues & Rights Ltd.*, 551 U.S. 308 (2007).

#### First Claim-§ 523(a)(2)(a)

Section 523(a)(2)(A) excepts from discharge debts incurred through "false pretenses, a false representation or actual fraud." For this exception to apply, a creditor must allege and prove by a preponderance of the evidence each of the following elements: "(1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or

deceptiveness of the statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damages to the creditor proximately caused by its reliance on the debtor's statement or conduct." *Oney v. Weinberg (In re Weinberg)*, 410 B.R. 19, 35 (9th Cir. BAP 2009) quoting *Turtle Rock Meadows Homeowner's Association v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000). All five elements must be asserted in the creditor's complaint for an exception to discharge. *Weinberg*, 410 B.R. at 35. F.R.C.P 9(b)'s pleading particularity requirement means: "[T]he plaintiff must set forth what is misleading about a statement and why it is false. In other words, the plaintiff must set forth an explanation as to why the statement or omission complained of was false or misleading." *Yourish v. California Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999).

The complaint does not meet the pleading standards for the first claim for three independent reasons:

(1) No facts are alleged that support the conclusion, that the defendant did not intend to repay the loan at the time the loan was originally made. The plaintiff argues in its response that, during the nine and one-half months between the loan origination and the filing of the case, the plaintiff allegedly withdrew monies from various accounts and transferred it overseas. These facts do not establish, however that *at the time when the loan was made* the defendant did not intend to pay it. While inferences are to be drawn in the pleader's favor, the plaintiff admits that the defendant made two payments on the loan. Without more, this claim fails for that reason alone.

(2) Justifiable reliance is not adequately alleged. The plaintiff alleges generically that it loaned money and that reliance was justifiable "in light of the representations made by the defendant." What representations? Attached to the complaint is a note which does not bear the defendant's signature. Some language references the defendant's alleged authorization for "EFT Transfers" but there is no allegation that the defendant made those representations or that authorization supports "justifiable" reliance. No financial statement or other information is alluded to in this claim or attached to the complaint.

(3) Knowledge of the falsity of the alleged representation is not adequately alleged. For the same reasons indicated above, no facts are alleged or alluded to that are temporally consistent with defendant's knowledge of falsity *at the time the loan was made*. Plaintiff alleges in paragraph 11 "on information and belief," that the plaintiff knew that she did not intend to repay the loan. This allegation is contradicted by paragraph 10. Defendant's alleged *subsequent* desperation for money is not relevant without more facts tying together the representations which are the basis of the complaint with the wrongful acts alleged.

Second claim-§ 523(a) (2) (B)

The Ninth Circuit has defined the elements required for a claim under §523(a) (2) (B) as follows: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention to deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, (7) that damage proximately resulted from the representation. *In re Candland*, 90 F.3d 1466, 1469 (9th Cir., 1996) citing *In re Siriani*, 967 F.2d 302, 304 (9th Cir., 1992). F.R.C.P. 9(b) (made applicable to adversary proceedings by F.R.B.P. 7009) particularizes the pleading requirement for fraud claims: "In alleging fraud . . . a party must state with particularity the circumstances constituting fraud. . . ." "Averments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged." *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1105-06 (9th Cir., 2003).

In evaluating a motion to dismiss, two working principles must be considered. "[F]irst, the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements when only supported by mere conclusory statements." Second, "[D]etermining whether a complaint states a plausible claim is context-specific requiring the court to draw on its experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 663-4 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). The plaintiff may very well have a plausible claim as alleged in the second claim. However, the allegations are currently deficient in two respects.

First, materiality of the alleged representations of the debtor is not adequately pled. Material representations under this statutory provision are "substantial inaccuracies of the type which would generally affect a lender's or guarantor's decision." *In re Candland*, 90 F.3d 1466, 1470 citing and interpreting *In re Greene*, 96 B.R. 279, 283 (9th Cir. B.A.P. 1989) ["To except a debt from discharge, the creditor must show not only that the statements were inaccurate, but also that they contain important and substantial untruths."]

The complaint, at paragraph 26, alleges that the debtor's financial statements were "materially false." The ways in which they were false are generally pled. The complaint alleges that the debtor's financial statement "overstated assets and understated liabilities or overstated income." Which one is it? Overstatements, understatements, or both? No allegation tells the defendant, what was the important and substantial untruth? No financial statement is attached to the complaint so the reader must speculate, upon what did the plaintiff allegedly rely? While no formal discovery has likely occurred yet in this matter, the plaintiff does have the debtor's testimony at her first meeting of creditors as well as the schedules she filed, in order to plead the "important and substantial untruths."

Without more specificity the court cannot evaluate the nature or importance of the information on the financial statement. The complaint alleges that

plaintiff relied on the financial statements but without knowing what the misrepresentations are, the reliance "hurdle" the plaintiff must overcome is unknown. *In re Smith*, 242 B.R. 694, 702 (9th Cir., BAP 1999) and cases cited therein.

(2) The claim does not allege defendant's knowledge of falsity. The scienter requirement for a fraudulent misrepresentation is established by showing "either actual knowledge of the falsity of the statement or reckless disregard for its truth." *In re Gertsch*, 237 B.R. 160, 167 (9th Cir., BAP 1999) quoting *In re Houtman*, 568 F.2d 651, 656 (9th Cir., 1978).

The defendant's knowledge of the falsity of the financial statement is not alleged in this claim. As this claim is currently pled, the court cannot infer the defendant knew the statements were false when published. The allegations of defendant's imprudent investments in paragraphs 13-19 of the complaint do not clarify that issue.

### Third claim-§ 523(a)(6)

A simple breach of contract cannot give rise by itself to a nondischargeable debt. *In re Jercich*, 238 F.3d 1202, 1205 (9th Cir. 2001). However § 523(a)(6) can apply to a breach of contract claim when the breach is accompanied by willful tortious conduct. *Id.* Section 523(a)(6) precludes discharge of a debt incurred by willful and malicious injury to an entity or property of an entity. Both "malice" and "willfulness" must be pleaded and proved. An act is "willful" when the debtor subjectively intended to injure the creditor or subjectively knew that injury to the creditor was substantially certain to occur. *Su v. Carillo*, 290 F.3d 1140, 1142-43 (9th Cir. 2002). An injury is malicious if it involves: (1) a wrongful act; (2) done intentionally; (3) which necessarily causes injury, and (4) is done without just cause or excuse. *Jercich*, 238 F.3d at 1209. A "willful" injury is a "deliberate or intentional act that leads to injury." *In re Barboza*, 545 F.3d 702, 706 (9th Cir., 2008) quoting *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974 (1988) (emphasis in original).

This claim is very summarily alleged. While the plaintiff incorporates paragraphs one through nineteen, those paragraphs largely relate to the defendant's alleged use of the loan proceeds and other monies during the period leading up to the filing of the petition. The only allegation suggesting a willful or malicious act is that the defendant knew she could not repay the debt when plaintiff made the loan. This claim does not contain allegations from which "willful and malicious" conduct can be inferred.

(1) "Willfulness" is not sufficiently alleged. A willful injury is a deliberate or intentional act that leads to injury. *In re Barboza*, 545 F.3d 706. The complaint contains no allegations that the defendant intended to harm plaintiff. The complaint does not allege that the plaintiff was substantially certain harm would occur to plaintiff when she obtained the loan. The allegation is, that she did not intend to repay the

debt. Yet the defendant did make two payments. If she subsequently harbored that intent, that should be pleaded. Nevertheless, such an allegation still would not support a finding that, *when the loan was made*, the defendant was substantially certain harm would come to the plaintiff.

(2) Malice is not pled adequately. It is not a wrongful act to obtain a loan. It is not a wrongful act to improvidently invest vast amounts of personal wealth with unknown individuals. The plaintiff states in response to the motion that the defendant's incurrence of debt shows an intent to injure the plaintiff. Again, in the absence of other facts not alleged here, it is not wrongful to incur debt. Injury to the plaintiff is the issue in this adversary proceeding. Absent from the complaint are any facts linking the acts alleged with harm to the plaintiff.

Defendant's other challenge to the complaint, that the relief claimed is mutually exclusive, is not a meritorious basis to grant the motion. F.R.C.P 18(a) (made applicable to adversary proceedings by F.R.B.P. 7018) permits the pleading of alternative relief. At the time of trial, plaintiff may need to decide what theory or theories best conforms to proof. For the purposes of this motion, it is not necessary to require the plaintiff to choose.

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