

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, November 8, 2018
Place: Department B – 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

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

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

9:00 AM

1. [18-12004](#)-B-13 **IN RE: HERBERT KELLEY**
[SJS-2](#)

CONTINUED MOTION TO CONFIRM PLAN
8-16-2018 [\[42\]](#)

HERBERT KELLEY/MV
SUSAN SALEHI
PLAN WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #60.

2. [17-14711](#)-B-13 **IN RE: ELLIOT BADGER AND BRENDA VAQUERA**
[CJO-2](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
10-5-2018 [\[39\]](#)

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
ROBERT WILLIAMS
CHRISTINA O/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. Debtors are authorized, but not required, to enter into and finalize the Loan Modification Agreement ("Agreement") (doc. #41) with movant. If either party cannot agree to the terms outlined in the Agreement, then movant must file and serve another motion. This ruling does not constitute court approval as to the terms of the Agreement. Debtor shall perform under the terms of the Plan until the Plan is modified notwithstanding the loan modification.

3. 18-10913-B-13 **IN RE: WALTER/KATHRYN COVEY**
RSW-3

MOTION TO AVOID LIEN OF DISCOVER BANK
10-24-2018 [\[53\]](#)

WALTER COVEY/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Discover Bank in the sum of \$4,482.31 on February 10, 2017. Doc. #56. The abstract of judgment was recorded with Kern County on July 12, 2017. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$262,282.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$305,038.00 on that same date, consisting of a first deed of trust in favor of Select Portfolio Servicing, Inc. *Id.* The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. *Id.*

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. [17-10622](#)-B-13 **IN RE: JENNIFER RIVAS**
[PK-7](#)

MOTION TO SELL AND/OR MOTION TO PAY
10-18-2018 [\[182\]](#)

JENNIFER RIVAS/MV
PATRICK KAVANAGH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing. The chapter 13 Trustee shall approve the order.

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

This motion is GRANTED. Debtor is authorized, but not required, to sell the real property located at 5404 Tierra Abierta Drive in Bakersfield, CA to Anter Alghazali for the price of \$185,000.00. No transfer of possession or title shall occur until escrow closes. Seller shall pay 3% of the purchase price towards buyer's closing and non-recurring costs. Debtor is also authorized to execute any and all documents reasonably necessary to effectuate the sale of the property. The 14-day stay under Federal Rule of Bankruptcy Procedure 6004 is waived.

The motion contemplates a 6% real estate commission, however it does not state whether Executive Realtors and "Kern.com/Miramar International Riverwalk" will split the commission 50/50, or how and to whom the commission will be paid. Debtor's counsel must be prepared to clarify that at this hearing.

5. [17-10622](#)-B-13 **IN RE: JENNIFER RIVAS**
[PK-8](#)

MOTION TO AVOID LIEN OF CACH, LLC
9-26-2018 [\[168\]](#)

JENNIFER RIVAS/MV
PATRICK KAVANAGH

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on September 26, 2018 and set for hearing on November 8, 2018. Doc. #169, 173. November 8, 2018 is more than 28 days after September 26, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and could be presented at the hearing. Doc. #169. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served at least 14 days before the hearing. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

6. [17-12324](#)-B-13 **IN RE: PAUL/LORI MCMAHAN**
[RSW-2](#)

MOTION TO MODIFY PLAN
10-4-2018 [\[37\]](#)

PAUL MCMAHAN/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[CAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO
FINANCE
10-12-2018 [\[44\]](#)

CAPITAL ONE AUTO FINANCE/MV
PATRICK KAVANAGH
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

8. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[PK-2](#)

MOTION TO CONFIRM PLAN
9-28-2018 [\[22\]](#)

GREG KELLY/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 20, 2018 at 1:30 p.m.

ORDER: The court will issue the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1) and will proceed as scheduled.

This motion to confirm the chapter 13 plan was fully noticed according to LBR 3015-1(d)(1), and was timely opposed by the trustee. Doc. #58. Trustee opposes on the grounds that he has not concluded the § 341 meeting of creditors and asks that this motion be continued. *Id.*

The court notes several problems with the plan that may require an amended plan to be filed.

First, there is an issue with two Class 2(b) claims. Class 2(B) claims are reduced based on the value of the collateral. Section 3.08(c) of the plan states that Class 2(B) claims require the debtor to prevail on a properly filed, noticed, and served motion to value. Failure to do so may result in the denial of confirmation.

Preferred Credit Inc/Kirby vacuum's ("Preferred Credit") claim of \$413.00 is in Class 2(B) of the plan. However, Preferred Credit has not filed a claim in this case, nor has the debtor or trustee filed a claim on behalf of Preferred Credit. Also, the motion debtor filed, served, and set for hearing to value Preferred Credit's collateral is denied without prejudice on procedural grounds. See matter #9 below, PK-3.

Second, Debtor's motion to value the collateral of Synchrony Bank (Pk-6), another Class 2(B) claim, will not be heard until mid-December. Doc. #65.

The court is unable to grant this motion at this time due to the above-mentioned deficiencies. The court is persuaded that a continuance is proper. Therefore, this matter will be continued to December 20, 2018 at 1:30 p.m. The court will issue the order.

9. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[PK-3](#)

MOTION TO VALUE COLLATERAL OF PREFERRED CREDIT INC.
10-5-2018 [\[31\]](#)

GREG KELLY/MV
PATRICK KAVANAGH

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on October 5, 2018 and set for hearing on November 8, 2018. Doc. #32, 36. November 8, 2018 is more than 28 days after October 5, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and may be presented at the hearing. Doc. #32. That is incorrect. Because the hearing was set on

28 days' notice, the notice should have stated that written opposition was required and must be filed and served at least 14 days before the hearing. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

10. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[PK-4](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE, INC.
10-10-2018 [\[37\]](#)

GREG KELLY/MV
PATRICK KAVANAGH
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #60.

11. [18-13527](#)-B-13 **IN RE: GREG/SHERRY KELLY**
[PK-5](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE, INC.
10-16-2018 [\[52\]](#)

GREG KELLY/MV
PATRICK KAVANAGH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The debtor is competent to testify as to the value of the 2015 Hyundai Elantra. 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 \$8,032.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will

Here, the trustee has requested dismissal because the debtor has become delinquent in making their plan payments. Doc. #21. As of October 3, 2018, payments are delinquent in the amount of \$1,459.00 and prior to this hearing, another payment in the same amount will come due. Doc. #23. Debtor did not oppose.

The court finds that dismissal would be in the best interests of creditors and the estate. There is no equity in any of debtor's assets that could be liquidated in chapter 7 that could be used to pay creditors.

For the above reasons, this motion is GRANTED.

14. [18-13444](#)-B-13 **IN RE: ALVIN REYES**
[MHM-3](#)

MOTION TO DISMISS CASE
10-10-2018 [[28](#)]

MICHAEL MEYER/MV
SUSAN SALEHI

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case is dismissed on other grounds.

15. [18-13665](#)-B-13 **IN RE: JASMIN GOTICO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-8-2018 [[19](#)]

ACAR LEASING LTD/MV
ROBERT WILLIAMS
JENNIFER WANG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference or will be disposed by granting the motion due to lack of evidence in opposition.

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

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference or the motion may be granted.

This matter may be deemed a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing if further hearing is necessary.

Based on the record, the factual issues appear to include: whether debtor is current on her car payments. The debtor's opposition contained no evidence, however. It is the debtor's burden to show lack of cause for stay relief. 11 U.S.C. § 362(g). The evidence shows this is a vehicle lease assumed by the chapter 13 plan (doc. #4) if the plan is confirmed.

16. [18-12366](#)-B-13 **IN RE: LAURENCE/TUESDAY SHANNON**
[TCS-2](#)

CONTINUED MOTION TO CONFIRM PLAN
8-16-2018 [\[39\]](#)

LAURENCE SHANNON/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The trustee withdrew their opposition. Doc. #74.

This motion is GRANTED. 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. [18-10871](#)-B-7 **IN RE: JOHNNY/CATHERINE GARCIA**
[MHM-3](#)

MOTION TO DISMISS CASE
9-19-2018 [\[54\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING, CONVERTED

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case was converted to chapter 7.
Doc. #64.

18. [18-10871](#)-B-7 **IN RE: JOHNNY/CATHERINE GARCIA**
[RSW-1](#)

CONTINUED MOTION TO CONFIRM PLAN
8-6-2018 [\[39\]](#)

JOHNNY GARCIA/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING, CONVERTED

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case was converted to chapter 7.
Doc. #64.

19. [14-11274](#)-B-13 **IN RE: MANUEL DURAN**
[RSW-5](#)

MOTION TO MODIFY PLAN
9-12-2018 [\[86\]](#)

MANUEL DURAN/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

20. [18-10575](#)-B-13 **IN RE: NORMA FERNANDEZ**
[MHM-4](#)

MOTION TO DISMISS CASE
10-1-2018 [\[56\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 13, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This matter was fully noticed in accordance with Local Rule of Practice ("LBR") 9014-1(f)(1) and will be continued.

Trustee filed this motion on the grounds that debtor's delay in confirming a chapter 13 plan is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor timely responded, stating that a plan is set for a confirmation hearing on December 13, 2018 at 9:00 a.m. Doc. #61.

Therefore, this matter is continued to that date to be heard in conjunction with the motion to confirm.

21. [18-13386](#)-B-13 **IN RE: MATTHEW/ANGELA WANTA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-10-2018 [\[30\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1).

Chapter 13 trustee Michael H. Meyer ("Meyer") moves to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3), (4). Meyer contends that he has not received all of the documents to which he is entitled and which are necessary for performance of his duties. Debtor, opposes the motion, contending that the necessary and requested documents have been supplied. Doc. ##40, 43.

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13 case for cause. Failure to provide documents required by the chapter 13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr. S.C. 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the trustee is long. At a minimum it includes (1) pay advices for the 60 days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with the debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is

a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

The trustee has requested the following additional documentation from the debtor: Matthew Wanta's June and July 2018 paystubs in the amounts of \$2,055.60 and \$3,105.60, respectively; supporting documentation for item 40 on Form 122C-2; and failure to file a complete and accurate schedule A/B. Doc. #30. Debtor timely responded, twice, stating that the paystubs were provided. Doc. #40. Both responses appeared to be identical. However, debtors did not state that supporting documentation for item 40 on Form 122C-2, nor a complete and accurate Schedule A/B were provided. *Id.*

Nearly a month has passed since that demand and the debtor has not provided those documents. These documents are necessary for the chapter 13 trustee to rise and be heard with respect to plan confirmation. The court finds that the debtor has had a reasonable time to cooperate, and has not done so.

For each of these reasons, the case is dismissed.

22. [18-11888](#)-B-7 **IN RE: SALVADOR CERVANTES**
[MHM-3](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-13-2018 [\[32\]](#)

NICHOLAS WAJDA
CONVERTED 10/5/18

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The case was converted to chapter 7. Doc. #39.

23. [18-13491](#)-B-13 **IN RE: JULIO GARCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-10-2018 [\[26\]](#)

MICHAEL MEYER/MV
MICHAEL AVANESIAN

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the trustee has requested dismissal because there has been untimely delay that is prejudicial to creditors because debtor has failed to provide necessary and requested documents to the trustee's office. Doc. #28. Debtor did not oppose.

The court finds that dismissal would be in the best interests of creditors and the estate. There is no equity in any of debtor's assets that could be liquidated in chapter 7 that could be used to pay creditors.

For the above reasons, this motion is GRANTED.

The court notes the late filed opposition. However, the court strikes it under LBR 9014-1(1).

24. [18-12495](#)-B-13 **IN RE: JOSIE JOHNSON**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
8-21-2018 [\[29\]](#)

BANK OF AMERICA, N.A./MV
WENDY LOCKE/ATTY. FOR MV.
DISMISSED 10/17/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #41.

25. [18-13497](#)-B-13 **IN RE: MARK BOWDEN**
[MHM-2](#)

MOTION TO DISMISS CASE
10-10-2018 [\[17\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1).

Chapter 13 trustee Michael H. Meyer ("Meyer") moves to dismiss this
case under 11 U.S.C. §§ 1307(c)(1) and 521(a)(3), (4). Meyer
contends that he has not received all of the documents to which he
is entitled and which are necessary for performance of his duties,
and that debtor is delinquent in his plan payments. Debtor, opposes
the motion, contending that the necessary and requested documents
have been supplied. Doc. ##40, 43. However, debtor did not address
the alleged delinquency. *Id.*

11 U.S.C. § 1307(c) provides that the court may dismiss a chapter 13
case for cause. Failure to provide documents required by the chapter
13 trustee is cause. See In re Robertson, 2010 WL 5462500 (Bankr.
S.C. 2010); In re Nichols, 2009 WL 2406172 (Bankr. E.D.N.C. 2009).

The list of documents that a chapter 13 debtor must surrender to the
trustee is long. At a minimum it includes (1) pay advices for the 60
days prior to the petition, 11 U.S.C. § 521(a)(1)(B)(iv), Federal
Rule of Bankruptcy Procedure 1007(b)(1)(E); (2) a copy of the

debtor's most recent federal income tax return (or a transcript thereof), 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); (3) a photographic identification and proof of social security number, Fed. R. Bankr. P. 4002(b)(1); (4) evidence of "current monthly income," such as a post-petition pay stub, Fed. R. Bankr. P. 4002(b)(2)(A); (5) documentation of monthly expenses claimed under 11 U.S.C. §§ 707(b)(2)(A), (B), 1325(b)(3); and (6) bank and investment account statements that reflect the balance on the date of the petition, Fed. R. Bankr. 4002(b)(2)(B). Pay stubs and tax returns are due to the trustee at least seven days prior to the meeting of creditors. Fed. R. Bankr. P. 1007(b)(1)(E), 4002(b)(3). The remainder of these documents must be provided no later than the meeting of creditors. Fed. R. Bankr. 4002(b).

But the statutorily required documents do not define the outer limits of documentation to be provided in conformance with debtor's duties. The chapter 13 trustee has discretion to ask for far more documentation. 11 U.S.C. § 521 requires that the debtor ". . . cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title." 11 U.S.C. § 521(a)(3) (emphasis added). As one commentator noted, "Cooperate" is a broad term, indeed, and must be construed that whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond, at least if the request is not unreasonable." 4 *Collier on Bankruptcy* ¶ 521.15 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2018). Paramount among the chapter 13 trustee's duties is to "appear and be heard" regarding plan confirmation. 11 U.S.C. §§ 1302(b)(2)(B), 1322 (mandatory and optional plan contents), 1325 (elements for plan confirmation). Neither the code, nor the rules, prescribe a deadline for that cooperation, and this court finds that the debtor is entitled to a reasonable time to respond to the trustee's inquiries and requests for documentation.

11 U.S.C. § 1307(c)(6) states one cause for dismissal is a material default by the debtor with respect to a term of a confirmed plan. Failure to make a plan payment is a material default of a term of a confirmed plan. See Schlegal v. Billingslea (In re Schlegal), 526 B.R. 333, 341 (9th Cir. BAP 2015).

The trustee has requested the following additional documentation from the debtor: 2017 state and federal taxes or declaration; and documentation in support of value of real property as listed on Schedule A/B. Doc. #17. Debtor timely responded, stating that a tax declaration was sent twice and the trustee has acknowledged receipt, and a real estate agent's opinion as to the value of the real property was also sent (the opinion was also filed with the opposition, doc. #24). But the opposition states nothing as to the delinquency. Doc. #23.

Unless the trustee withdraws this motion, this motion is GRANTED for the reasons stated in the motion and the case is dismissed.

10:00

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

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

BRADLEY RIGGEN/MV
LEONARD WELSH
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #78.

2. [18-13130](#)-B-7 **IN RE: MAJER SINGH**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-2018 [\[25\]](#)

BMO HARRIS BANK N.A./MV
PETER FEAR
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part as to the trustee's
interest and denied as moot in part as to the
debtor's interest.

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362 (c) (2) (C). The debtor's discharge was entered on November 2, 2018. Docket #32. The motion will be GRANTED IN PART for cause shown as to the chapter 7

trustee.

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 proposed order shall specifically describe the property or action to which the order relates. The order shall provide the motion is DENIED AS MOOT as to the debtors.

The collateral is a 2017 Volvo VNL64T/670 Tractor Truck ("9366 Volvo"), a 2018 Volvo VNL64T/670 Tractor Truck ("7608 Volvo"), a 2018 Volvo VNL64T 860 Tractor Truck ("9176 Volvo"), and two 2019 Utility 53' Refrigerated Van Trailers ("Utility Trailers").

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allow the court to grant relief from stay if the debtor does not have equity in the property and the property is not necessary to an effective reorganization.

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor is delinquent on the payments due to movant, there is no equity in the 9366 Volvo or the Utility Trailers. There is very little equity in the 7608 Volvo and 9176 Volvo and no evidence exists that it is necessary to a reorganization because debtor is in chapter 7. The movant has produced evidence that the assets have a collective value of \$460,000.00 and debtor owes \$486,061.91. The debtor has also surrendered the assets to movant and movant is in possession of the assets.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the assets and they are depreciating in value.

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).

3. [17-12535](#)-B-7 **IN RE: OVADA MORERO**
[TGM-3](#)

AMENDED MOTION TO SELL FREE AND CLEAR OF LIENS
11-1-2018 [\[259\]](#)

RANDELL PARKER/MV
LEONARD WELSH
TRUDI MANFREDO/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

This motion is GRANTED. Under 11 U.S.C. § 363(f), the trustee may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property."

The trustee wishes to sell real property located at 9006 Laramie Avenue in Bakersfield, CA for \$875,000.00 to Jasvir Singh ("Buyer"). Doc. #237. Buyer has paid a \$20,000.00 deposit, nonrefundable if Buyer fails to perform. The property is being sold "as is, where is" with no warranties made by the trustee. The trustee has produced evidence of real property taxes in the amount of \$12,509.10, a note secured by a first deed of trust in the amount of \$294,880.00, costs of sale of \$17,500.00, and a broker commission of \$39,375.00. Doc. #239, 241. The net proceeds of the sale would be \$510,735.90. Miramar International R.E. shall be paid a commission of 4.5%, unless Buyer's broker or the ultimate purchaser's broker is different, then the 4.5% commission will be split: 2.5% to seller's agent and 2% to buyer's agent.

All bids at the hearing must have no contingencies. Bidders must bring certified funds in the amount of \$20,000.00 made payable to "RANDELL PARKER, Chapter 7 Trustee of the Bankruptcy Estate of Ovada Faye Pyle Morero," to the hearing, which is to be negotiated only if that bid is the highest bid. The initial overbid will be \$876,000.00, and further bids will be in \$1,000.00 increments. Bidders must also bring evidence of a pre-qualification letter from a lender for the full amount of the bid, or, in the alternative, evidence that the bidders has sufficient funds to pay its bid. The balance of the funds must be paid no later than 30 days after the entry of the Order approving the sale.

Creditors Douglas and Kandas Johnson ("Creditors") timely filed a response, stating that they have "no objection," but are agreeable to the sale under the following conditions: (1) the motion be approved subject to the second deed of trust; (2) any proceeds received from the sale of the Real Property in excess of the amount required to pay the note owed to Kern Schools Federal Credit Union secured by the first deed of trust, property taxes, and costs of sale, including commission, be held in a segregated account pending the resolution of the Adversary Proceeding no. 18-01070-B filed by the trustee; and (3) any distributions from those excess proceeds held in the segregated account be made only after further order of the Court. Doc. #247.

Because "the price at which such property is to be sold is greater than the aggregate value of all liens on such property," the trustee may sell the property located at 9006 Laramie Avenue in Bakersfield, CA to Buyer for \$875,000.00 and free and clear of liens as explained above. Trustee's entire prayer for relief, which is too lengthy to reproduce here, is GRANTED.

The court notes the stipulation entered into between the trustee and the Internal Revenue Service (doc. #264) and is incorporated herein.

4. [18-13459](#)-B-7 **IN RE: ALBERT RIOS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2018 [9](#)

WELLS FARGO BANK, N.A./MV
NEIL SCHWARTZ
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

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

The movant, Wells Fargo Bank, N.A., seeks relief from the automatic stay under § 362(d)(1) and (d)(2) with respect to a 2011 GMC Acadia.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from stay if the debtor does not have equity in the property and the property is not necessary to an effective reorganization.

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor is delinquent over \$3,000.00, there is no equity in the vehicle, and no evidence exists that it is necessary to a reorganization because debtor is in chapter 7. The movant has produced evidence that the vehicle has a value of \$10,725.00 (doc. #11) and debtor owes \$16,490.12. The court notes that the movant already has possession of the vehicle. Doc. #9.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

5. [18-13671](#)-B-7 **IN RE: KATHERINE HERNANDEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
9-7-2018 [\[5\]](#)

KATHERINE HERNANDEZ/MV

NO RULING.

6. [18-12092](#)-B-7 **IN RE: SATINDERPAL SINGH**
[JMV-1](#)

MOTION TO SELL
10-16-2018 [\[40\]](#)

JEFFREY VETTER/MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

The trustee asks this court for authorization to sell the estate's interest in a 2015 BMW X5 S and 2014 Honda Accord to debtor, subject to higher and better bids at the hearing, for \$8,701.89.

The bidding will begin at \$29,864.71. Any party wishing to overbid must bring a \$3,000.00 refundable deposit to the hearing in certified funds, such as a money order or cashier's check; be prepared to bid in an amount starting at \$29,864.71, which will satisfy the exemption amount of \$3,050.00 and liens in the amount of \$25,814.71, and; be prepared to bid in \$500.00 increments. Bidders are bidding on both vehicles; they cannot be bought separately. The balance must be paid within 10 days after the court order is signed. The winning bidder who fails to pay the balance in the prescribed time forfeits their \$3,000.00 deposit. Non-winning bidders will have their deposits returned to them at the hearing.

7. [18-13599](#)-B-7 **IN RE: ROBERT/DANETTE JOHNSON**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-4-2018 [\[12\]](#)

FORD MOTOR CREDIT COMPANY/MV
PHILLIP GILLET
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Ford Motor Credit Company, seeks relief from the automatic stay under § 362(d)(1) with respect to a 2014 Jeep Cherokee.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor is delinquent nearly \$2,000.00. Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

8. [18-14073](#)-B-7 **IN RE: JOSHUA GAUSE**
[SJS-1](#)

HEARING RE: MOTION TO SET ASIDE DISMISSAL OF CASE
10-27-2018 [\[20\]](#)

JOSHUA GAUSE/MV
SUSAN SALEHI
OST SIGNED 10/31/18

NO RULING.

The court notes that the notice did not contain the language required under Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

The motion also violated LBR 9004-2(c)(1), which requires that exhibits, notices, *inter alia*, must be filed as separate documents. Here, the notice and exhibits were combined into one document and not filed separately.

10:30 AM

1. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
5-18-2018 [\[1\]](#)

D. GARDNER

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

DISPOSITION: Continued to December 13, 2018 at 10:30 a.m.

ORDER: The court will issue an order.

This status conference is continued to December 13, 2018 at 10:30 a.m. to be heard in conjunction with the United States Trustee's motion to dismiss or convert. The court will issue the order.

2. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
[DMG-4](#)

CONTINUED CHAPTER 11 SMALL BUSINESS DISCLOSURE STATEMENT
FILED BY DEBTOR CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC
8-15-2018 [\[44\]](#)

D. GARDNER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

The debtor filed an amended disclosure statement. Doc. #74.

3. [18-11990](#)-B-11 **IN RE: CENTRO CRISTIANO AGAPE DE BAKERSFIELD INC**
[DMG-5](#)

AMENDED DISCLOSURE STATEMENT
10-15-2018 [\[74\]](#)

D. GARDNER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally approved.

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

This Amended Disclosure Statement is CONDITIONALLY APPROVED provided changes are made to the Disclosure Statement explained below.

This hearing was continued to permit the debtor to file an amended Disclosure Statement which is before the court now. At the last hearing, the defaults of all parties except the United States Trustee ("UST") and Trinity United Methodist Church ("TUMC") were entered. TUMC objected to approval of the first Disclosure Statement. TUMC has not objected to the Amended Disclosure Statement. The court shortened time for objections to the Amended Disclosure Statement at the last hearing. UST has objected to the Amended Disclosure Statement. The debtor has submitted a reply to the objection.

The court notes two procedural infirmities.

First, Local Rule of Practice ("LBR") 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This matter was filed on October 15, 2018 and set for hearing on November 8, 2018. Doc. #75, 78. November 8, 2018 is less than 28 days after October 15, 2018, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #75. That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

Second, LBR 9014-1(c) requires every motion to include a Docket Control Number ("DCN"). LBR 9014-1(c)(3) states that the repeated use of Docket Control Numbers is not allowed.

The DCN on this matter is DGM-5. DGM-5 was previously used on September 6, 2018. Doc. #51.

The UST's numerous objections largely address feasibility but can be divided into two general areas. First, lack of historical data. Second, budget deficiencies.

Historical Data- The UST raises several points. (i) Debtor's budget is not supported by the monthly operating reports or any other evidence. (ii) Debtor has not adequately explained how it arrived at the \$5,100.00 monthly revenue estimate in the absence of any historical data to support it. For the months of June, July, August, and September 2018, the debtor did not even gross \$4,000.00 monthly, averaging \$3,481.25. (iii) There is no evidence showing the church members' ability (who have purportedly committed to assist in paying TUMC the two \$10,000.00 payments outlined in the plan) to do so. TUMC is debtor's largest creditor, and the only secured creditor. In reply, debtor argues these issues largely address feasibility concerns which cannot be litigated in the context of a Disclosure Statement hearing. True enough, except a "hypothetical investor of the relevant class" must have some information upon which to make an informed judgment. If the Disclosure Statement is lacking in that discussion, it cannot contain "adequate information." If the data is insufficient the debtor must acknowledge the limitations and discuss the risks facing creditors in the Disclosure Statement. Two more MOR's may help or hinder this debtor's reorganization effort. The UST has filed a Motion to Dismiss and has the right to challenge feasibility at Plan confirmation if the case is not dismissed. The debtor needs to augment the Disclosure Statement.

The commitment of the members to fund the payment to TUMC is a critical aspect to reorganization. Some historical data or an acknowledgement of the risk should be included in the Disclosure Statement. The debtor has requested time to submit evidence if the feasibility issue is tried. But, some discussion of the success of past stewardship drives or other data should be included in the Disclosure Statement. If there is none, then that needs to be stated, the risks disclosed, and leave to another day the feasibility questions.

Budget Deficiencies-The UST raises these issues: (i) The projected expenses are inconsistent with the expenses listed in the Monthly Operating Reports. The UST isolates discrepancies in travel expenses reported on the MOR's. (ii) The budget does not provide for quarterly U.S. Trustee fees, and therefore the budget is inaccurate. (iii) The disclosure statement does not accurately reflect estimated attorneys' fees. The Disclosure Statement estimates additional attorney's fees of \$5,000.00, yet additionally states that debtor will owe counsel approximately \$15,000.00 at confirmation.

In reply the debtor essentially admits the challenges with the budget estimates and asks for time enough for two more MOR's to be

filed (one earlier than required). The debtor has the burden on feasibility of the Plan. At confirmation, if the case progresses that far, the debtor is going to have to explain the discrepancies. If not adequately explained, the Plan is not feasible.

The debtor agrees to change the explanation of attorney's fees in the Disclosure Statement. The debtor also contends the budget excluded additional quarterly fees because the debtor anticipates asking for administrative closure shortly after confirmation. The debtor agrees to change the Disclosure Statement to reflect that and that there is enough "cushion" in the budget to make the payment.

The debtor states an amended MOR will be filed for August 2018 detailing the travel expenditure incurred.

The Disclosure Statement is CONDITIONALLY APPROVED provided the above changes are made. The court and parties will discuss the logistics for filing the modified Disclosure Statement and entry of further scheduling orders.

11:00 AM

1. [18-12214](#)-B-7 **IN RE: MARIO SAUCEDO**
[18-1052](#)

STATUS CONFERENCE RE: COMPLAINT
8-21-2018 [[1](#)]

VALLEY OAK CREDIT UNION V.
SAUCEDO
BRANDON ORMONDE/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The parties settled the matter and this
adversary proceeding is closed.

2. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

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

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

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

DISPOSITION: Continued to December 13, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

3. [18-11575](#)-B-7 **IN RE: SONIA PEREZ**
[18-1051](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-6-2018 [[1](#)]

LBS FINANCIAL CU V. PEREZ
KAREL ROCHA/ATTY. FOR PL.
DISMISSED 10/05/2018, CLOSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The bankruptcy case was dismissed and this
adversary proceeding is closed.

11:30 AM

1. [18-13310](#)-B-7 **IN RE: LEWIS/CYNTHIA TAYLOR**

PRO SE REAFFIRMATION AGREEMENT WITH NATIONSTAR MORTGAGE LLC
9-17-2018 [\[17\]](#)

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

DISPOSITION: None.

NO ORDER REQUIRED.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. § 524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

2. [18-13133](#)-B-7 **IN RE: MARTIN PADILLA AND EVA JIMENEZ**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
9-19-2018 [\[14\]](#)

OSCAR SWINTON

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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

3. [18-12695](#)-B-7 **IN RE: CRAIG THOMAS AND JESSICA HAMM**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL
SERVICES, INC.
10-1-2018 [\[16\]](#)

JOSEPH PEARL

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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