

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, December 14, 2017
Place: Department B - 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

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

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

9:00 AM

1. [17-12600](#)-B-13 **IN RE: CURTIS/CHRISTINE HUDGINS**
[PLG-1](#)

MOTION TO CONFIRM PLAN
10-12-2017 [[37](#)]

CURTIS HUDGINS/MV
STEVEN ALPERT

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

2. [17-13122](#)-B-13 **IN RE: TANYA MADDOX**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-1-2017 [[23](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Sustained.

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

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

Debtor is currently married and has exempted her assets under C.C.P. § 703.140(b). When husband and wife do not file jointly for relief under the bankruptcy code, as in here, the filing debtor may not use the exemptions under C.C.P. § 703.140(b) unless both husband and wife sign a waiver of all other exemptions allowed under state law, other than § 703.140(b). The record does not show that debtor has filed such a waiver. Therefore, the movant's motion will be GRANTED.

3. [13-17427](#)-B-13 **IN RE: MICHAEL/LISA PITCHER**
[LKW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K.
WELSH FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-8-2017 [[52](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

Counsel will be awarded \$1,685.00 in fees and \$33.52 in costs.

4. [17-13531](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[ASW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
11-16-2017 [[30](#)]

THE BANK OF NEW YORK MELLON/MV
NEIL SCHWARTZ
DANIEL FUJIMOTO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained and confirmation is denied. However,
if matter #6, MHM-2, Trustee's Motion to
Dismiss is granted, then the objection will be
overruled as moot.

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

Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. If there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

Debtor's plan claims the arrearage on creditor's claim is \$39,500.00. Creditor's proof of claim states the arrearage is \$120,210.65. As of December 4, 2017 the debtors have not filed an objection to creditor's proof of claim. The current plan payment is \$3,231.00, of which \$1,533.93 is paid against the creditor's arrearage. In order to complete the plan in 60 months or less, the plan payment will need to increase to \$5,234.53. Additionally, debtor's Schedules I and J do not show that the current plan is feasible because the debtor will not have sufficient income to make the plan payments. Therefore, this objection will be SUSTAINED.

5. [17-13531](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H.
MEYER
11-14-2017 [[20](#)]

NEIL SCHWARTZ

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained and confirmation is DENIED. However, if matter #6, MHM-2, Trustee's Motion to Dismiss is granted, then the objection will be overruled as moot. The debtor shall confirm a modified plan on or before March 8, 2018 or the case will be dismissed on the Trustee's ex parte application.

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

Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. If there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The debtors are delinquent \$3,231.00. The November plan payment, which is the same amount, will come due before this hearing.

According to the SPS Select Portfolio Servicing, Inc.'s mortgage statement provided to the Trustee by the debtor, the "regular monthly payment" is \$1,784.96 and the "total amount due" is \$105,081.18. The current plan will not fund the "regular monthly payments," nor will pay the arrearage in five years.

6. [17-13531](#)-B-13 **IN RE: EUFEMIA ABUYEN**
[MHM-2](#)

MOTION TO DISMISS CASE
11-15-2017 [[25](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

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

DISPOSITION: Granted.

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

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

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

For the reasons set forth in the moving papers, the case will be dismissed.

7. [17-13833](#)-B-7 **IN RE: CHARLES/PRISCILLA HERNANDEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
11-14-2017 [[24](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion will be denied as moot. The Debtors filed a notice of conversion on November 30, 2017. The case has been converted to chapter 7.

8. [12-19140](#)-B-13 **IN RE: RICHARD/CALLIANDRA MURRAY**
[LKW-6](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
11-14-2017 [[94](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

Counsel will be awarded \$1,652.50 in fees and \$33.52 in costs.

9. [12-60240](#)-B-13 **IN RE: HERBERT/CECILIA JUAREZ**
[RSW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILLIAMS &
WILLIAMS, INC. FOR ROBERT S. WILLIAMS, DEBTORS ATTORNEY(S)
11-1-2017 [[73](#)]

ROBERT WILLIAMS

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

DISPOSITION: Granted.

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

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

Counsel will be awarded \$2,000.00 in fees.

10. [17-13542](#)-B-7 **IN RE: GONZALO/REGINA RUIZ**
[MHM-1](#)

MOTION TO DISMISS CASE
11-14-2017 [[24](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion will be denied as moot. The Debtors filed a notice of conversion on November 28, 2017. The case has been converted to chapter 7.

11. [17-13844](#)-B-13 **IN RE: EDWARD GUTIERREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-7-2017 [\[25\]](#)

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

DISPOSITION: Dropped from calendar as moot.

NO ORDER REQUIRED.

The court's order to show cause will be dropped as moot. It is the court's intention to grant the chapter 13 trustee's motion to dismiss [MHM-1] on calendar below.

12. [17-13844](#)-B-13 **IN RE: EDWARD GUTIERREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
11-15-2017 [\[28\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows there has been unreasonable delay by the pro se debtor that is prejudicial to creditors. It appears the debtor has failed to appear at the scheduled 341 Meeting of Creditors, failed to provide the Trustee with required documentation, failed to set a plan for hearing and notice creditors, and failed to provide a Credit Counseling Certificate as required by 11 U.S.C. § 109(h). Accordingly, the case will be dismissed.

13. [12-17745](#)-B-13 **IN RE: F. OLIVER COOPER**
[MHM-4](#)

MOTION TO DISMISS CASE
11-6-2017 [[166](#)]

MICHAEL MEYER/MV
D. GARDNER

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The trustee requests that the case be dismissed on the grounds of material default by the Debtor with respect to the confirmed plan. Accordingly, the case will be dismissed.

14. [17-13248](#)-B-13 **IN RE: JEANETTE HUMECKY**
[RSW-3](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
11-20-2017 [[33](#)]

JEANETTE HUMECKY/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 shall prepare the order in conformance with the ruling below.

A judgment was entered against the debtor in favor of Citibank

(South Dakota) N.A. for the sum of \$16,067.31 on August June 25, 2010. The abstract of judgment was recorded with Kern County on August 23, 2010. That lien attached to the debtor's interest in a residential real property in Bakersfield, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$199,611.00 as of the petition date. Docket 1, Schedule A/B. The unavoidable liens totaled \$280,279.85 on that same date, consisting of two deeds of trust in favor of Ditech. Docket 1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Docket 15.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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).

15. [17-13861](#)-B-13 **IN RE: DENISE TAYLOR**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL INC.
11-9-2017 [[14](#)]

DENISE TAYLOR/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will be called as a scheduling conference.

DISPOSITION: None.

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

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

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

Based on the record, the factual issues appear to include: the replacement value of the subject property, a 2011 Chevrolet Silverado 1500 LS.

16. [17-11667](#)-B-13 **IN RE: MIGUEL VIVEROS**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
8-16-2017 [[26](#)]

MICHAEL MEYER/MV
PHILLIP GILLET

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

Because debtor's Motion to Value Collateral, matter #17 on this calendar (PWG-2) is tentatively granted, this motion to dismiss will be denied as moot. The court may issue another order if for some reason, item 17 below is not granted at the hearing.

17. [17-11667](#)-B-13 **IN RE: MIGUEL VIVEROS**
[PWG-2](#)

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
11-22-2017 [[47](#)]

MIGUEL VIVEROS/MV
PHILLIP GILLET

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. The secured value will be set to \$1,258.00.

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

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

This motion to value respondent's collateral was served as a preliminary matter. If no appearance in opposition is presented at the hearing, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)).

Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The debtor is competent to testify as to the value of the 1997 Chevrolet Suburban. Based on the evidence presented, the respondent's secured claim will be fixed at \$1,258.00, which is the "replacement value," "the "price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

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

18. [16-11072](#)-B-13 **IN RE: ELLYN LOPEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-3-2017 [\[90\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

FINAL RULING: No appearance is necessary.

DISPOSITION: Continued to January 4, 2018, at 9:00 a.m.

ORDER: The court will issue an order.

This motion will be continued to January 4, 2018, at 9:00 a.m., to be heard with the Debtor's Motion to Confirm First Modified Chapter 13 Plan.

19. [17-14374](#)-B-13 **IN RE: ANNA BALL**
[DMG-2](#)

MOTION TO EXTEND AUTOMATIC STAY
11-20-2017 [[15](#)]

ANNA BALL/MV
D. GARDNER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file documents as required by this title without substantial excuse. 11 U.S.C. § 362(c)(3)(i)(ii)(aa). Negligence of the debtor's attorney may be considered substantial excuse. *Id.* The prior case was dismissed because counsel did not scan and file the plan at the same time as the rest of the documents due to the need to separately file and scan the plan so the "wet signature" would appear on the court's website.

The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This

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

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. In his declaration, counsel takes full responsibility of the error and did not charge the second filing fee or additional attorney time to re-file the case to the debtor. Additionally, counsel did not schedule the 14-day deadline and the filing of the plan was overlooked due to an e-mail service error.

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 an order.

20. [17-13581](#)-B-13 **IN RE: GENORA JORDAN-MCCLANAHAN**
[JCW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING
LLC
11-16-2017 [[34](#)]

OCWEN LOAN SERVICING LLC/MV
ROBERT WILLIAMS
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

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

This objection is overruled without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 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.

21. [17-13581](#)-B-13 **IN RE: GENORA JORDAN-MCCLANAHAN**
[MHM-1](#)

MOTION TO DISMISS CASE
11-14-2017 [[29](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

The trustee requests that the case be dismissed on the grounds of unreasonable delay by the Debtor, failure to make all payments due under the plan, and for failure to provide the Trustee with required documentation.

The Trustee's motion asks the court to dismiss the case for failure of the debtor to provide certain documentation and failure of the debtor to make payments as required under the proposed Plan.

The motion was served November 14, 2017 (30 days' notice). The debtor's opposition was due November 30, 2017 (LBR 9014-1 (f)(1)(B)). The notice of hearing provided for opposition to be filed fourteen (14) days before the hearing. The debtor filed late opposition December 7, 2017. The debtor did not seek any relief from the filing requirements under the Local Rules. The late opposition did not include a declaration supporting the factual assertions that either the documents requested were provided or the documents were not necessary. The late opposition admits payments were not made as required under the Plan.

The opposition is stricken under LBR 9014-1 (1). Even if it is considered, the opposition admits payments have not been made. The motion is GRANTED.

22. [16-10391](#)-B-13 **IN RE: MICHAEL PFEIFFER**
[DMG-6](#)

OBJECTION TO CLAIM OF DEBRA MCGUIRE, CLAIM NUMBER 9-2
10-30-2017 [[96](#)]

MICHAEL PFEIFFER/MV
D. GARDNER
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The movant withdrew the objection.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

9:30 A.M.

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-23-2017 [[1](#)]

T. BELDEN
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 21, 2017 at 9:30 a.m. in
Fresno.

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

The confirmation hearing for the modified plan is set for December
21, 2017 at 9:30 a.m. The status conference will be continued to
December 21, 2017 to be heard in conjunction with the confirmation
hearing.

2. [17-14129](#)-B-11 **IN RE: REAL HOSPITALITY, LLC**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-26-2017 [[1](#)]

VINCENT GORSKI

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

DISPOSITION: Continued to December 21, 2017 at 9:30 a.m.

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

The Trustee's Motion to Dismiss is set for December 21, 2017 at 9:30
a.m. The status conference will be continued to December 21, 2017 to
be heard in conjunction with the Trustee's motion.

Debtor's counsel shall file a status report on or before December
15, 2018.

3. [17-12535](#)-B-11 **IN RE: OVADA MORERO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
6-30-2017 [[1](#)]

LEONARD WELSH

NO RULING.

4. [17-12535](#)-B-11 **IN RE: OVADA MORERO**
[LKW-8](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
11-6-2017 [[119](#)]

LEONARD WELSH

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

DISPOSITION: Denied without prejudice.

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

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 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.

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
1-25-2017 [[1](#)]

JACOB EATON

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

DISPOSITION: Continued to February 8, 2018 at 10:30 a.m.

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

The confirmation hearing for the plan is set for February 8, 2018 at 10:30 a.m. The status conference will be continued February 8, 2018 to be heard in conjunction with the confirmation hearing.

6. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[KDG-7](#)

CONTINUED MOTION TO APPROVE LEASE AGREEMENT WITH AMERICAN
BIO-MINERAL TECHNOLOGIES LLC
11-16-2017 [[187](#)]

SILO CITY, INC./MV
JACOB EATON
RESPONSIVE PLEADING

NO RULING.

7. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[RTM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
11-29-2017 [[204](#)]

ALLSTAR GROWTH FUND, LLC/MV
JACOB EATON
MURRAY TRAGISH/ATTY. FOR MV.

NO RULING.

Counsel is reminded that the time stated in LR 9014-1(d)(3)(B)(iii) is 4:00 p.m., not 2:00 p.m., as stated in movant's Notice of Hearing, docket #205.

8. [17-12857](#)-B-11 **IN RE: SAC DEVELOPMENT, INC.**
[DJP-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-2017 [[149](#)]

MMN FARM MANAGEMENT, LLC/MV
JUSTIN HARRIS
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

The motion will be granted.

The movant, MMN Farm Management, LLC, seeks relief from the automatic stay with respect to the real property at the center of this case.

Based upon the request for judicial notice, the court concludes that the debtor has not made monthly adequate protection payments to the movant. Cause exists because debtor has no intention to reorganize, as evidenced by the fact that no plan of reorganization has been filed within 90 days of the petition date as required by 11 U.S.C. § 362(d)(3)(A). Debtor has also failed to make adequate protection payments as required by 11 U.S.C. § 362(d)(3)(B).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(3). The movant is ONLY permitted to record a Notice of Sale, with no foreclosure sale to occur prior to January 2, 2018, the date on which the case will be dismissed. Docket #155. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has not made monthly adequate protection payments. Also, there is a pending sale of the property and the case will be dismissed January 2, 2018.

9. [15-13167](#)-B-12 **IN RE: DOUG KOPHAMER FARMS**
[LKW-28](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
11-8-2017 [[439](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915,

917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

Counsel will be awarded \$5,287.50 in fees and \$89.21 in costs.

10. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-25-2017 [[1](#)]

LEONARD WELSH

NO RULING.

11. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[WW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM
LAW GROUP FOR RILEY C. WALTER, CREDITOR COMM. ATY(S)
11-21-2017 [[176](#)]

LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This matter was originally noticed on 28 days notice, albeit omitting necessary language pursuant to Local Rule 9014-1(d)(3)(B)(iii). An amended Notice of Hearing was filed on December 5, 2017, which included the necessary language. When a motion is set for 28 days' notice pursuant to Local Rule 9014-1(f)(1), that means that it is fully noticed. This was not the case. The court is therefore making its ruling tentative.

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.

Counsel will be awarded \$8,244.50 in fees and \$448.99 in costs.

10:00 A.M.

1. [17-13802](#)-B-7 **IN RE: STANLEY JOHNSON**

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-5-2017 [[10](#)]

NEIL SCHWARTZ

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

DISPOSITION: Conditionally denied.

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

The debtor shall attend the meeting of creditors rescheduled for
December 22, 2017 at 1:30 p.m. at 1300 18th St. #E, Bakersfield, CA.
If the debtor fails to appear, without explanation, the chapter 7
trustee may file a declaration with a proposed order and the case
may be dismissed without a further hearing.

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

2. [12-60305](#)-B-7 **IN RE: EMMETT BLANTON**
[DMG-10](#)

MOTION TO AVOID LIEN OF J.R. SMEED
11-13-2017 [[68](#)]

EMMETT BLANTON/MV
J. IRIGOYEN

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

DISPOSITION: Conditionally granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below and submit satisfactory proof of
compliance with this ruling.

A judgment was entered against the debtor in favor of J.R. Smeed
doing business as National Charter Life Insurance Company for the
sum of \$238,243.50 on October 6, 2009. The abstract of judgment was
recorded with Kern County on December 2, 2009. That lien attached to

the debtor's interest in a residential real property in Bakersfield, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$161,649.00 as of the petition date. Docket 42, Amended Schedule C. The unavoidable liens totaled \$211,746.00 on that same date, consisting of a first mortgage in favor of BAC Home Loans Serv, LLP and a second mortgage in favor of Equity One Loans. Docket 68. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$3,000.00 in Amended Schedule C. Docket 42.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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).

Local Rule 9014-1(c) requires a docket control number be placed below the case number on all filed documents in the same motion. In this case, no docket control number was included on the proof of service. This motion will be granted on the condition that counsel file an amended proof of service with the correct docket control number in the correct location.

3. [12-60305](#)-B-7 **IN RE: EMMETT BLANTON**
[DMG-11](#)

MOTION TO AVOID LIEN OF YOW YEA CHIOU
11-13-2017 [[73](#)]

EMMETT BLANTON/MV
J. IRIGOYEN

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

DISPOSITION: Denied without prejudice.

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

This motion will be denied without prejudice.

First, the motion references a lien of "Commercial Trade, Inc.", not Yow Yea Chiou. The Prayer of the motion also references "Commercial Trade, Inc." Additionally, no abstract of judgment was included as an exhibit.

Second, there is no proof that the lien holder was served the Amended Schedule C. Certificate of Service of Amended Schedule C (Doc. #44) shows service of lien holder at 1227 Chester Ave. The motion was served at another address included on the abstract of judgment.

Third, for the same reason, no proof the motion was served properly since the Certificate of Service does not include the Chester Avenue address.

Therefore, this Motion to Avoid the Lien of Yow Yea Chiou must be denied without prejudice.

4. [12-60305](#)-B-7 **IN RE: EMMETT BLANTON**
[DMG-7](#)

MOTION TO AVOID LIEN OF STOCKDALE INVESTMENT GROUP, INC.
11-13-2017 [\[58\]](#)

EMMETT BLANTON/MV
J. IRIGOYEN

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

DISPOSITION: Conditionally granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below and submit satisfactory proof of compliance with this ruling.

A judgment was entered against the debtor in favor of Stockdale Investment Group, Inc. for the sum of \$249,640 on September 29, 2011. The abstract of judgment was recorded with Orange County on December 2, 2009. That lien attached to the debtor's interest in a residential real property in Bakersfield, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$161,649.00 as of the petition date. Docket 42, Amended Schedule C. The unavoidable liens totaled \$211,746.00 on that same date, consisting of a first mortgage in favor of BAC Home Loans Serv, LLP and a second mortgage in favor of Equity One Loans. Docket 68. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$3,000.00 in Amended Schedule C. Docket 42.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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).

Local Rule 9014-1(c) requires a docket control number be placed below the case number on all filed documents in the same motion. In this case, no docket control number was included on the proof of service. This motion will be granted on the condition that counsel file an amended proof of service with the correct docket control number in the correct location.

5. [12-60305](#)-B-7 **IN RE: EMMETT BLANTON**
[DMG-8](#)

MOTION TO AVOID LIEN OF YOW YEA CHIOU
11-13-2017 [\[53\]](#)

EMMETT BLANTON/MV
J. IRIGOYEN

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

DISPOSITION: Conditionally granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below and submit satisfactory proof of compliance with this ruling.

A judgment was entered against the debtor in favor of Yow Yea Chiou for the sum of \$158,233.32 on December 24, 2009. The approximate balance as of the date of the petition was \$189,880.00. The abstract of judgment was recorded with Kern County on March 12, 2010. That lien attached to the debtor's interest in a residential real property in Bakersfield, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$161,649.00 as of the petition date. Docket 42, Amended Schedule C. The unavoidable liens totaled \$211,746.00 on that same date, consisting of a first mortgage in favor of BAC Home Loans Serv, LLP and a second mortgage in favor of Equity One Loans. Docket 68. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$3,000.00 in Amended Schedule C. Docket 42.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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).

Local Rule 9014-1(c) requires a docket control number be placed below the case number on all filed documents in the same motion. In this case, no docket control number was included on the proof of service. This motion will be granted on the condition that counsel file an amended proof of service with the correct docket control number in the correct location.

6. [12-60305](#)-B-7 **IN RE: EMMETT BLANTON**
[DMG-9](#)

MOTION TO AVOID LIEN OF YOW YEA CHIOU
11-13-2017 [[63](#)]

EMMETT BLANTON/MV
J. IRIGOYEN

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

DISPOSITION: Denied.

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

The debtor's name is not on the abstract of judgment. In fact, one of the final judgments rendered in Case No. S-1500-CV-260774 in Kern County on December 24, 2009 was specifically against "Mel Blanton" in the amount of \$49,000. This motion seeks to avoid that specific amount, but since the debtor is not the person whom judgment was against, debtor is not entitled to avoid that lien.

Additionally, Local Rule 9014-1(c) requires a docket control number be placed below the case number on all filed documents in the same motion. In this case, no docket control number was included on the proof of service.

7. [17-11647](#)-B-7 **IN RE: WILLIAM/APRIL BLEVINS**
[JSP-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
10-25-2017 [[29](#)]

WILLIAM BLEVINS/MV
JOSEPH PEARL

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

DISPOSITION: Denied without prejudice.

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

This motion is denied without prejudice for failing to comply with Local Rules 9014-1(e)(2), (f)(1), (2), and (d)(3)(B)(iii). The motion, notice, declaration, and exhibits were all filed over 28 days before the hearing as required by LR 9014-1(f)(1). But, the proof of service was not filed until November 17, 2017, more than three (3) days after the motion documents were filed. LR 9014-1(e)(2). That certificate of service (there were two filed) both said the motion was served on November 15, 2017 which is not permitted under LR 9014-1(e)(2). Additionally, the notice did not contain the language required by 9014-1(d)(3)(B)(iii). Therefore,

this motion is denied without prejudice.

8. [17-13456](#)-B-7 **IN RE: LUIS/NORMA PADILLA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-3-2017 [[18](#)]

ACAR LEASING LTD/MV
R. BELL
JENNIFER WANG/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.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion for relief from the automatic stay will be granted without oral argument based upon well-pled facts.

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 debtors indicated in their Statement of Intention that the lease would not be assumed.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

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

9. [17-13272](#)-B-7 **IN RE: LIAM EVANS**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-14-2017 [[44](#)]

SPECIALIZED LOAN SERVICING,
LLC/MV
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be denied without prejudice. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

10. [17-13974](#)-B-7 **IN RE: CESAR ORELLANA AND CAROLINA RAMIREZ**
[KEH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-8-2017 [[10](#)]

BALBOA THRIFT & LOAN/MV
OSCAR SWINTON
KEITH HERRON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be denied without prejudice. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>

11. [09-16179](#)-B-7 **IN RE: JOHN/LEAH LAY**
[RSB-1](#)

MOTION TO AVOID LIEN OF WESTAMERICA BANK
11-6-2017 [[25](#)]

JOHN LAY/MV
R. BELL

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

DISPOSITION: Granted.

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

A judgment was entered against the debtor in favor of WestAmerica Bank for the sum of \$5,441.64 on February 2, 2009. The abstract of judgment was recorded with Kern County on March 16, 2009. That lien attached to the debtor's interest in a residential real property in Bakersfield, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$312,000.00 as of the petition date. Docket 22, Amended Schedule C. The unavoidable liens totaled \$450,646.00 on that same date, consisting of one mortgage. Docket 27. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended Schedule C. Docket 22.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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).

The court notes the declarations in support of the motion do not state the real property at issue is the debtor's residence. However, the petition filed in 2009 does show the debtor's residence when they filed the case was 11825 Crescent Creek Court, Bakersfield, CA.

12. [13-11982](#)-B-7 **IN RE: CHARLES/ANDREIA CUEVAS**
[TGF-4](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
11-13-2017 [[51](#)]

CHARLES CUEVAS/MV
GARY HOOD

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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 LRB 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion in part and deny in part. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

It appears from the evidence submitted and the record that the debtor Andreia Cuevas is entitled to avoid this lien that impairs an exemption to which she would otherwise have been entitled. However, there was no evidence submitted to suggest that the residence of Charles Cuevas had a lien that impaired an exemption to which he would otherwise have been entitled. The evidence submitted shows the creditor's abstract of judgment named only Andreia Cuevas as a judgment debtor. This motion is GRANTED as to Andreia Cuevas' interest only. This motion is DENIED as to Charles Cuevas interest in either property.

13. [17-14086](#)-B-7 **IN RE: ALBERTO GUADARRAMA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-3-2017 [[10](#)]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
ROBERT WILLIAMS
JENNIFER WANG/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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in movant's possession.

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).

14. [17-14094](#)-B-7 **IN RE: JAYCE LEWIS**
[DRJ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-2017 [\[31\]](#)

VILLA FARIA, LIMITED
PARTNERSHIP/MV
DAVID JENKINS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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 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.

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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

15. [17-14226](#)-B-7 **IN RE: RAVINDER RIAR**
[BEW-1](#)

MOTION TO COMPEL ABANDONMENT
11-28-2017 [[14](#)]

RAVINDER RIAR/MV
BARRY WEBER
OST 12/8/17

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to an order shortening time 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.

An order granting the Trustee's ex-parte motion/application to require debtor to shut down business was granted on November 22, 2017. Docket #13. Nearly one week after, debtor filed this motion. Debtor has a business, a sole proprietorship named "RBR Transport." The assets used in this business are a truck and trailer, with which debtor hauls small loads for other companies. No other party has an ownership interest in the assets, and both assets act as collateral for secured loans. Debtor asserts that since RBR's sole business activity consists of the personal services of debtor, RBR Transport has no other value as a going concern. Additionally, this business is the sole support for the debtor and his family, and prohibiting debtor to conduct business would constitute a severe hardship for debtor and his family.

Unless evidence to the contrary is offered at the hearing, the court intends to grant debtor's motion.

11:00 A.M.

1. [17-13796](#)-B-7 **IN RE: PAULINO ARREDONDO-MORALES**

PRO SE REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
10-27-2017 [[11](#)]

PATRICK KAVANAGH

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

DISPOSITION: Dropped from calendar.

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

The court is not approving or denying approval of the reaffirmation agreement. The court notes that the reaffirmation agreement is not signed by any party. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor(s) shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by all parties.

1:30 P.M.

1. [17-11220](#)-B-7 **IN RE: LUIS/SHANNON POMPA**
[17-1060](#) [RSW-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ABACA BAIL BONDS
11-7-2017 [[39](#)]

ABACA BAIL BONDS V. POMPA ET
AL
ROBERT WILLIAMS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(ii) is considered as consent 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.

The amount of \$1,396.46 owed to Abaca will not be discharged in the bankruptcy. The cause of action of the complaint that seeks to deny the Debtor's discharge will be dismissed.

2. [17-11827](#)-B-7 **IN RE: AMARJEET SINGH AND AMANDEEP SIDHU**
[17-1079](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-9-2017 [[12](#)]

AMERICAN EXPRESS BANK, FSB ET
AL V. SINGH
KEN WHITTALL-SCHERFEE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: The status conference is dropped from calendar,
subject to being re-set by either party on 14 days
notice.

ORDER: No appearance is necessary. The court will issue a
scheduling order controlling further proceedings.

The court has reviewed the docket and the parties' Joint Discovery Plan. The court finds the Discovery Plan largely acceptable. Based on that, the court will issue a scheduling order which will include a date for the Pre-Trial Conference in this case. The scheduling order will control the schedule of further proceedings in this matter. A trial date will be set at the Pre-Trial Conference.

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

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

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

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

DISPOSITION: Continued to February 14, 2018 at 1:30 p.m. in
Fresno. Unilateral or joint status conference
statements from both parties shall be filed and
served by February 7, 2018. The court notes the
defendant did not join in the status conference
statement or timely file a separate statement.
Sanctions will be considered at the next conference
for failure of a party to file a statement as
ordered.

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

4. [17-12446](#)-B-7 **IN RE: CHRISTINA GUAJARDO**
[17-1083](#)

STATUS CONFERENCE RE: COMPLAINT
9-27-2017 [[1](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. V. GUAJARDO
JOHN KIM/ATTY. FOR PL.
JUDGMENT ENTERED 11/7/17

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

DISPOSITION: Dropped from calendar.

ORDER: An order closing this adversary proceeding has
already been entered.