

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, February 9, 2017
Place: U.S. Courthouse, 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

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

4. Matters Resolved by Stipulation:

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

5. Resubmittal of Denied Matters:

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

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

9:00 A.M.

1. [15-11302](#)-B-13 DENISE WILEY
RSW-4
DENISE WILEY/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROSEDALE-RIO
BRAVO WATER STORAGE DISTRICT
1-17-17 [[79](#)]

ROBERT WILLIAMS/Atty. for dbt.

This hearing will proceed as scheduled under LBR 9014-1(f)(2). The court's tentative ruling is as follows.

This motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

This motion was served together with a completely unrelated motion, a motion to confirm a chapter 13 plan which has been set on a different date and constitutes improper joinder. See, LBR 9014-1(d)(1). In addition, the court finds that the creditors that received the pleadings could be confused. Also, dual use of a proof of service for two different motions set on two different days creates the risk of improper docketing by the clerk's office.

2. [16-13209](#)-B-13 WILLIAM/CAMILLA GARCIA
WDO-1
WILLIAM GARCIA/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO CONFIRM PLAN
12-19-16 [[44](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [15-13215](#)-B-13 BEATRIZ AGUILAR
RSW-1
BEATRIZ AGUILAR/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN
12-30-16 [[54](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [16-13427](#)-B-13 JASON/NATASHA BATSON
PK-1
JASON BATSON/MV

PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WELLS FARGO FINANCIAL NATIONAL
BANK
1-11-17 [[27](#)]

The motion will be denied without prejudice. The court will issue an order. No appearance is necessary.

The record does not establish that the motion was served, certified, on the named respondent in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004).

In addition, the motion was not served on Bank of America, N.A., pursuant to its Request for Special Notice filed on October 11, 2016 (Doc. # 16).

5. [16-13427](#)-B-13 JASON/NATASHA BATSON
PK-2
JASON BATSON/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
COMENITY CAPITAL BANK/ZALES
1-11-17 [[34](#)]

The motion will be denied without prejudice. The court will issue an order. No appearance is necessary.

The record does not establish that the motion was served, certified, on the named respondent in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004).

In addition, the motion was not served on Bank of America, N.A., pursuant to its Request for Special Notice filed on October 11, 2016 (Doc. # 16).

The court notes that the debtors' declaration conflicts with the motion as to whether or not this debt is secured by a purchase money interest.

6. [16-13228](#)-B-13 BRIAN FREELAND
MHM-2
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO DISMISS CASE
1-12-17 [[33](#)]

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

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

7. [14-11633](#)-B-13 SANTOS/ELVIRA ORNELAS
PK-5
SANTOS ORNELAS/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO MODIFY PLAN
12-5-16 [[89](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

8. [16-13738](#)-B-13 SOPHIA GUILLEN
MHM-1
MICHAEL MEYER/MV
DISMISSED

MOTION TO DISMISS CASE
12-14-16 [[24](#)]

This case has already been dismissed. No appearance is necessary.

9. [16-11954](#)-B-13 LAVONE/CHRISTINE HUNTER
PK-3
LAVONE HUNTER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
11-22-16 [[62](#)]

This matter will be denied as moot. The court will enter an order. No appearance is necessary. This motion was continued to permit the debtors to either respond to the trustee's objections or to file a modified plan. The debtors timely filed a modified plan which has been set for hearing at a later date and so this plan will be deemed withdrawn.

10. [16-14260](#)-B-13 OLUSEGUN LERAMO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-3-17 [[26](#)]

FRANCISCO ALDANA/Atty. for dbt.

If the trustee does not withdraw his motion to dismiss the case, the OSC will be vacated in light of the court's intention to dismiss the case on the trustee's unopposed motion below at calendar number 11 (DC # MHM-1).

If the trustee withdraws his motion to dismiss the case then this matter will be called as scheduled. If the installment payments now due have not been paid by the time of the hearing, the case will be dismissed.

11. [16-14260](#)-B-13 OLUSEGUN LERAMO

MOTION TO DISMISS CASE
1-9-17 [[29](#)]

MHM-1

MICHAEL MEYER/MV

FRANCISCO ALDANA/Atty. for dbt.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there has been unreasonable delay that is prejudicial to creditors, including failure to appear at the scheduled 341 meeting of creditors; failure to provide the trustee with the required documentation; and failure to set a plan as required by the Order Extending Time to File Missing Documents.

12. [16-13489](#)-B-13 JIMMY CANNON

CONTINUED MOTION TO DISMISS
CASE
11-8-16 [[31](#)]

MHM-1

MICHAEL MEYER/MV

PHILLIP GILLET/Atty. for dbt.

The trustee's motion has been withdrawn.

13. [16-13489](#)-B-13 JIMMY CANNON

TGM-1

SYSTEMS & SERVICES
TECHNOLOGIES, INC./MV

OBJECTION TO CONFIRMATION OF
PLAN BY SYSTEMS & SERVICES
TECHNOLOGIES, INC., MOTION TO
DISMISS CASE
1-20-17 [[42](#)]

PHILLIP GILLET/Atty. for dbt.

TYNEIA MERRITT/Atty. for mv.

This objection was noticed as a preliminary matter. Based on the creditor's objection to confirmation, this matter will be continued to a final hearing on March 9, 2017, at 9:00 a.m., for submission of further briefing and evidence, including as to the appropriate rate of interest under *Till v. SCS Credit Corp.*, 541 U.S. 465(2004). No appearance is necessary at the February 9, 2017, hearing. The court will issue an order.

The objector's brief and evidence is due by February 23, 2017. The debtor's response shall be filed by March 2, 2017.

The court notes that the plan was filed prior to the creditor's proof of claim which shows the amount claimed owing on the Keystone Trailer. The debtor's chapter 13 plan lists this collateral in class 2A, "Class 2 claims not reduced based on value of collateral." In this district the proof of claim governs the plan payment distribution on secured claims.

It appears that the actual dispute involves the feasibility of the plan if the debtor pays the amount actually due, and the proposed rate of interest, 5%, versus the contract rate of 9.95%. The objector here has filed no evidence in support of the objection as required by LBR 3015-1(c)(4) and 9014-1(d)(7).

14. [15-11993](#)-B-13 MARIA ROSALES

RSW-3

MARIA ROSALES/MV

ROBERT WILLIAMS/Atty. for dbt.

RESPONSIVE PLEADING

MOTION TO MODIFY PLAN

12-12-16 [[57](#)]

This motion will be set for a continued hearing on March 9, 2017, at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtor shall file and serve a written response not later than February 23, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 2, 2017. If the debtor does not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

15. [16-13999](#)-B-13 ESTEBAN ZAVALA
PK-3

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
1-9-17 [[45](#)]

PATRICK KAVANAGH/Atty. for dbt.

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

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

9:30 A.M.

1. [16-13002](#)-B-12 WILLIAM/TRACY GREENLEE MOTION FOR COMPENSATION FOR
LKW-4 LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-18-17 [[79](#)]

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

2. [15-13167](#)-B-12 DOUG KOPHAMER FARMS MOTION FOR COMPENSATION FOR
LKW-18 LEONARD K. WELSH, DEBTORS
DOUG KOPHAMER FARMS/MV ATTORNEY(S)
1-9-17 [[309](#)]

LEONARD WELSH/Atty. for dbt.

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

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

3. [15-13167](#)-B-12 DOUG KOPHAMER FARMS MOTION TO EMPLOY RITCHIE BROS.
LKW-19 AUCTIONEERS (AMERICA) INC. AS
DOUG KOPHAMER FARMS/MV AUCTIONEER(S) AND/OR MOTION FOR
COMPENSATION FOR RITCHIE BROS.
AUCTIONEERS (AMERICA) INC.,
AUCTIONEER(S)
1-25-17 [[321](#)]

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

4. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
INC.

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

LEONARD WELSH/Atty. for dbt.

This status conference will proceed as scheduled. The court intends to set a continued hearing for March 29, 2017, at 9:30 a.m., on the Fresno calendar.

5. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
DHR-7 INC.

CHAPTER 11 DISCLOSURE STATEMENT
FILED BY CREDITOR COMMITTEE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS
12-27-16 [[603](#)]

LEONARD WELSH/Atty. for dbt.
DANIEL REISS/Atty. for mv.
RESPONSIVE PLEADING

The hearing will proceed as scheduled. The court intends to enter the following tentative ruling.

Tentative Ruling. Approval of the disclosure statement will be denied without prejudice. The court will enter an order consistent with this ruling and further ordering any amended disclosure statement and/or plan to be filed and served with the proper notice to be heard on the March 29, 2017, Fresno calendar at 9:30 a.m. In addition the proponent is to meet and confer with the debtor in preparing the joint statement as directed below.

The disclosure statement and plan were not served on all of the required parties with 28 days notice as required by FRBP 2002(b), which would require mailing on or before December 29, 2016. The court notes the supplemental proof of service showing service on January 26, 2017, however it appears the debtor still has not been served with the proponent's disclosure statement and plan, and the other parties received less than the required notice. The court has reviewed the Creditors' Committee's reply. Except for the creditors requesting special notice, there is no dispute as to the service deficiency. As to the creditors who requested special notice, see LBR 7005-1. The court could not locate a compliant proof of service.

In addition, the court notes the following issues with the Creditors' Committee's disclosure statement:

1. There is no table of contents. Because of the length of the Creditors' Committee's disclosure statement, a table of contents is required.

2. The time estimate for the liquidation is unsupported. The disclosure statement states it would only require six months but that estimate is not based on facts. (Creditors' Committee disclosure statement ("CCDS") 23:1-7).

3. The comparison of distribution periods between the two Plans is misleading. (CCDS 23:12-16). The debtor claims the distributions will occur over a 24-month period, and not over unspecified "years." (Debtor's disclosure statement 13:25). Further, while the disclosure statement claims distributions would occur more quickly under the Creditors' Committee Plan, there is no explanation as to why this is the case. (CCDS 22:12-17).
4. The disclaimer is unnecessarily lengthy. (CCDS 5:7-25). If the disclosure statement relies in whole, or in part, on data from the debtor, this disclosure statement should state why that data is in question. If the Creditors' Committee has better data, state why, especially where the Creditors' Committee's comparative data is discussed in the disclosure statement.
5. The discussion about court approval of the disclosure statement should include the approval of the summary which the court will require as set forth in this tentative ruling.
6. The disclosure statement does not adequately explain potential litigation. A claim against directors and officers is mentioned but not explained. While avoidance actions are mentioned, no evaluation of that litigation is included in the disclosure statement.
7. The disclosure statement does not identify the co-proponent nor is the co-proponent defined in the disclosure statement. (CCDS 20:21-26).
8. There is insufficient discussion of the ongoing expenses which are anticipated by the Liquidating Trustee, the oversight committee, and their counsels. (CCDS 25:1-7).
9. There is no discussion of the proposed treatment of the administrative claims under the plan in conformance with 11 U.S.C. § 1129(a)(9). There is no discussion or factual support suggesting that the administrative creditors have agreed to a different treatment other than what is required under § 1129. The court has received and reviewed the stipulation between the Creditors' Committee and the Kern County Tax Assessor. The listing of the tax collector as an administrative claimant in the disclosure statement does not change the treatment of that claim, which is the issue raised by the court.
10. The standard that the Liquidating Trustee must use to evaluate dispositions of assets to maximize return is vague. The disclosure statement says the trust is "organized for the purpose of . . . liquidating and disposing of the Liquidating Trust Assets in a manner designed to maximize the value. . . ." (CCDS 33:26-34:3). That standard is meaningless in light of the disclosure statement's prediction that all assets will be liquidated within six months.
11. There is no discussion of the source of funding on the effective date and, more importantly, what would occur if the funding is insufficient on the effective date. (CCDS 36:13-22).

12. Timing of when creditors can expect distributions is vaguely discussed and needs to be clarified. (CCDS 36:24-37:11).

13. The discussion concerning insurance coverage for potential claims against the estate should be prefaced with the Creditors' Committee's estimate of the claims for which this discussion is relevant. (CCDS 39:25-41:27).

14. While there is information on this issue in the proposed trust agreement attached to the disclosure statement, there is no discussion of who can terminate the Liquidating Trustee and the reasons for termination. (CCDS 42:14-43:4).

15. There is no discussion of the standard of proof, whether it is the standard under Federal Rule of Bankruptcy Procedure 9019 or whether it is something else, for approval of any settlement of estate litigation. (CCDS 43:5-14).

16. The discussion of the court's retention of jurisdiction is unclear. It is not clarified whether the bankruptcy court has exclusive jurisdiction. (CCDS 51:2-9).

17. The discussion in part 6 ("No Waiver") is difficult to understand. Is that reservation meant to include unlisted claims the estate may have? If so, how is that claimant to receive notice? (CCDS 51:16-27). Further, this discussion is in conflict with part 9 of the disclosure statement. (CCDS 52:12-53:10). By the time the disclosure statement is approved, some discovery, whether formal or informal, should have occurred so the proponent has a well defined "universe" of those claims, if any. Perhaps, the discussion can be shortened with appropriate references to "applicable law."

Future amendments of the disclosure statement should be filed along with a red and black lined version.

The determination of the adequacy of a disclosure statement is made in the context of the complexity of the case and the benefit of additional information to creditors and parties and the cost of providing that information. §1125(a)(1). Disclosure "is the heart" of chapter 11, according to the statute's legislative history, and also that the concept of "adequate information" is flexible. For example, different disclosure statements for different classes may be provided. § 1125(c).

11 USC §1129(c) provides that the court can confirm only one plan, taking into consideration the preferences of creditors and interest holders in deciding which to confirm. In the context of this case, and in order to assure the preferences of the creditors and interest holders are based on adequate information, the parties proposing competing chapter 11 plans for confirmation are directed to prepare clear and succinct explanations of the provisions of each plan to be filed jointly and signed by both parties.

11 USC §105(a) provides, "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of

this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

This power is limited by any explicit mandates of other sections of the Bankruptcy Code. This is because §105(a) "confers authority to 'carry out' the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits. That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere." *Law v. Siegel*, 134 S.Ct. 1188, 1194 (2014).

FRBP 3017(d)(1) provides that, after a disclosure statement is approved, the court can order the mailing of, *inter alia*, "the plan or a court approved summary of the plan." Rule 3017(d)(4) provides for the mailing of, "any other information as the court may direct." No provision in the Code limits the court's authority to require provision of additional information prior to the approval of the disclosure statement and, here where there are two competing plans, the mailing of the joint statement with the notice will be of value to creditors and interest holders.

6. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-38 INC.

CHAPTER 11 DISCLOSURE STATEMENT
FILED BY DEBTOR B&L EQUIPMENT
RENTALS, INC.
11-29-16 [[576](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

The hearing will proceed as scheduled. The court intends to enter the following tentative ruling.

Tentative Ruling. Approval of the disclosure statement will be denied without prejudice for the reasons set forth below. Defaults will be entered as to responding parties except the Creditors' Committee.

Tentative Ruling. Approval of the disclosure statement will be denied without prejudice. The court will enter an order consistent with this ruling and further ordering any amended disclosure statement and/or plan to be filed and served with the proper notice to be heard on the March 29, 2017, Fresno calendar at 9:30 a.m. In addition the proponent is to meet and confer with the debtor in preparing the joint statement as directed below.

The court notes the following issues with the debtor's disclosure statement:

1. The disclosure statement contains no realistic estimate of the cash on hand on the effective date of the plan. Exhibit A to the disclosure statement shows that, as of October 2016, disbursements exceed receipts by \$1.5 million. The debtor estimates that \$150,000 will be needed on the effective date just for administrative claimants. (Debtor's disclosure statement ("DDS") 10:1-8). The disclosure statement is inconsistent as to

where the cash will come from. Will it be from income from the business? From the debtor's principals? (DDS 14:10-16).

2. There is inadequate disclosure about the contributions to be made by the principals. First, the principals need to be clearly identified. Second, it is reasonable for creditors to judge whether the principals are able to provide the funding necessary to complete the plan. Requiring interested parties to make requests or limiting their review is not an adequate disclosure. Third, there is no means to enforce the funding obligation. Are the principals going to sign a note? Would the note be secured or unsecured? Who would be the holder of the note? Fourth, based on the debtor's estimates, the amount the principals are willing to fund may be insufficient if the *Medrano* litigation is not resolved favorably for the debtor.

3. The liquidation analysis is incomplete. (DDS 17:23-26). The disclosure statement states the claims are to be paid over 24 months. There is no discussion of whether the unsecured creditors can expect any interest. Under 11 U.S.C. § 1129(a)(7)(A)(ii), this is information the creditors need to know. In addition, the reduction in the accounts receivable mentioned in the disclosure statement is not explained.

4. The disclosure statement notes that the estate property will vest in the debtor upon confirmation of the Plan. However, the disclosure statement does not discuss whether secured creditors retain their liens which would be required under any "cramdown." 11 U.S.C. § 1129(b)(2)(A). (DDS 14:2-7).

5. The debtor asserts no facts to support the debtor's contention that there are no avoidance claims.

6. The disclosure statement does not contain a summary of the various classes under the plan and their treatment. It is unnecessary to simply repeat the details set forth in the Plan, however, some description of the classes should be included.

7. The disclosure statement does not include a deadline for the debtor to file claim objections.

The court has also reviewed the opposition to the disclosure statement filed by the Creditors' Committee. Most of the Creditors' Committee's issues have been incorporated in the court's comments at calendar number 5, DC# DHR-7, and above. The issue regarding the necessity of adjusting the dates in the disclosure statement is not a basis to object to the disclosure statement and, accordingly, that objection is overruled. However, the Creditors' Committee also raised the issue of whether the disclosure statement contains enough evidence supporting the viability of the debtor as a going concern in light of the deterioration of asset value and a 50% reduction in projected revenues compared to 2013 and 2014. Debtor's disclosure statement explains some of the declines as well as the payment of secured debt and states that the debtor has faced a difficult business climate. (See, DDS 3:17-21; 5:15-19; 6: 16-19). The debtor need not, in a disclosure statement, guarantee the viability of any

organization. However, the debtor must adequately disclose a basis to believe that it is likely that the business will survive.

Future amendments to the disclosure statement should be filed along with a red and black lined version.

The determination of the adequacy of a disclosure statement is made in the context of the complexity of the case and the benefit of additional information to creditors and parties and the cost of providing that information. §1125(a)(1). Disclosure "is the heart" of chapter 11, according to the statute's legislative history, and also that the concept of "adequate information" is flexible. For example, different disclosure statements for different classes may be provided. § 1125(c).

11 USC §1129(c) provides that the court can confirm only one plan, taking into consideration the preferences of creditors and interest holders in deciding which to confirm. In the context of this case, and in order to assure the preferences of the creditors and interest holders are based on adequate information, the parties proposing competing chapter 11 plans for confirmation are directed to prepare clear and succinct explanations of the provisions of each plan to be filed jointly and signed by both parties.

11 USC §105(a) provides, "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

This power is limited by any explicit mandates of other sections of the Bankruptcy Code. This is because §105(a) "confers authority to 'carry out' the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits. That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere." *Law v. Siegel*, 134 S.Ct. 1188, 1194 (2014).

FRBP 3017(d)(1) provides that, after a disclosure statement is approved, the court can order the mailing of, *inter alia*, "the plan or a court approved summary of the plan." Rule 3017(d)(4) provides for the mailing of, "any other information as the court may direct." No provision in the Code limits the court's authority to require provision of additional information prior to the approval of the disclosure statement and, here where there are two competing plans, the mailing of the joint statement with the notice will be of value to creditors and interest holders.

7. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-39 INC.

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-11-17 [[608](#)]

LEONARD WELSH/Atty. for dbt.

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

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

10:00 A.M.

1. [15-11935](#)-B-7 LEROY WEBER
KDG-2
JEFFREY VETTER/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LEROY WEBER
1-11-17 [[78](#)]

KENNETH HENJUM/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. It appears from the moving papers that the trustee has considered the standards of *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), and that the compromise pursuant to FRBP 9019 is a reasonable exercise of the trustee's business judgment.

2. [16-14257](#)-B-7 STEPHANIE MATTILA
JHW-1
FIRST INVESTORS FINANCIAL
SERVICES/MV
NEIL SCHWARTZ/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-29-16 [[11](#)]

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

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

3. [17-10162](#)-B-7 DANIELLE CARTOZIAN
DJP-1
EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
STEPHEN LABIAK/Atty. for dbt.
DON POOL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-26-17 [[11](#)]

This matter will proceed as scheduled. The debtor has filed a notice of non-opposition to the motion. Unless opposition is presented at the hearing, the court intends to enter the trustee's default and grant the motion for relief from stay.

The automatic stay will be terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

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

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

4. 16-14170-B-7 ADRIAN/FLOR QUINTERO
ABG-1
KINECTA FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-12-16 [9]

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection that request will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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).

5. [16-14171](#)-B-7 EDWARD/PAMELA MULLEN
WFM-1
BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-22-16 [[12](#)]

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

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

6. 16-13285-B-7 PAUL COOPER
ELR-2
ALTAONE FEDERAL CREDIT
UNION/MV
ASHTON DUNN/Atty. for dbt.
ERIKA RASCON/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
12-14-16 [34]

Based on the respondent's opposition, this matter will be continued to March 9, 2017, at 10:00 a.m., for the scheduling of an evidentiary hearing. 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 immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date. The court will issue an order. No appearance is necessary.

The court notes that both parties need to be aware of the definition of "current monthly income." USC § 101(10A). Also, very little admissible evidence was presented by the movant and virtually none by the debtors in support of their positions on this motion. LBR 9014-1(d)(7).

Movant's reply contains no admissible evidence, cites to third-party sources which are hearsay, and questions various expenses with speculative challenges. Much more than this will be needed to convince the court that the "totality of [the debtor's financial] circumstances" warrants dismissal.

7. 16-14303-B-7 TAYLOR MARTIN
MET-1
NATIONWIDE PROPERTY
MANAGEMENT/MV
MARY TANG/Atty. for mv.
OST

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-1-17 [18]

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

The automatic stay will be terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

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

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

11:00 A.M.

1. [16-14536](#)-B-7 SHAWNA STILLMAN

PRO SE REAFFIRMATION AGREEMENT
WITH ALLY FINANCIAL
1-9-17 [[13](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [16-10016](#)-B-13 KEVIN DAVEY CONTINUED STATUS CONFERENCE RE:
[16-1074](#) AMENDED COMPLAINT
DAVEY V. OCWEN LOAN SERVICING, 11-18-16 [[84](#)]
LLC ET AL
VINCENT GORSKI/Atty. for pl.
RESPONSIVE PLEADING

Based on the status report, this status conference will be continued to March 28, 2017, at 1:30 p.m., on the Fresno calendar. Telephonic appearances will be permitted at the March 28, 2017, status conference. Status reports from all parties will be due March 14, 2017. Parties are free to join in a single report. Failure of any party to timely file a joint or separate report may result in the imposition of monetary sanctions. No appearance is necessary at the February 9, 2017, hearing. The court will issue an order.

2. [15-13444](#)-B-7 TRAVIS/AMBER BREWER CONTINUED STATUS CONFERENCE RE:
[15-1151](#) COMPLAINT
BJORNEBOE V. BREWER 12-17-15 [[1](#)]
MISTY PERRY-ISAACSON/Atty. for pl.
RESPONSIVE PLEADING

Based on the stipulation of the parties, this status conference will be continued to December 14, 2017, at 1:30 p.m., in Bakersfield. This date and time is subject to change depending on the court's calendaring needs. A status conference statement from each party shall be filed by November 30, 2017, unless otherwise ordered. No appearance is necessary. The court will enter an order.