

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, March 16, 2017
Place: Department B – Courtroom #13
Fresno, 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.

9:30 A.M.

1. [17-10327](#)-B-12 EDWARD/LISA UMADA STATUS CONFERENCE RE: CHAPTER
12 VOLUNTARY PETITION
1-31-17 [[1](#)]
PETER FEAR/Atty. for dbt.

This matter will proceed as scheduled.

2. [17-10131](#)-B-11 FAMILIA FLORES STATUS CONFERENCE RE: CHAPTER
INCORPORATED 11 VOLUNTARY PETITION
1-17-17 [[1](#)]
JUSTIN HARRIS/Atty. for dbt.
DISMISSED

The status hearing will be vacated. This case has already been dismissed.

3. [17-10238](#)-B-11 SILO CITY, INC. STATUS CONFERENCE RE: CHAPTER
11 VOLUNTARY PETITION
1-25-17 [[1](#)]
JACOB EATON/Atty. for dbt.

This matter will proceed as scheduled.

4. [17-10238](#)-B-11 SILO CITY, INC. MOTION TO EMPLOY DANIELLS,
KDG-2 PHILLIPS, VAUGHAN & BOCK AS
SILO CITY, INC./MV ACCOUNTANT(S)
2-13-17 [[23](#)]
JACOB EATON/Atty. for dbt.

This matter will proceed as scheduled. Debtor's counsel shall address the effect of debtor's suspended status with the California Secretary of State on its ability to enter contracts of employment.

5. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER MOTION FOR ORDER AUTHORIZING
FW-14 DEBTOR-IN-POSSESSION TO DEPOSIT
JONATHAN MAYER/MV FUNDS IN 529 ACCOUNTS
2-16-17 [[108](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled to address the trustee's response and the debtors' reply. This motion was fully noticed and there was no other opposition, accordingly, the defaults of all other respondents will be entered.

1:30 P.M.

1. [14-12704](#)-B-13 JUAN/MARIA BUSTAMANTE MOTION TO MODIFY PLAN
TOG-5 1-27-17 [[41](#)]
JUAN BUSTAMANTE/MV
THOMAS GILLIS/Atty. for dbt.
PLAN WITHDRAWN

The motion to confirm a modified plan has been withdrawn. No appearance is necessary.

2. [11-62106](#)-B-13 ANTHONY SHOLARS AND MOTION FOR WAIVER OF
TCS-4 ISABEL BORGES-SHOLARS CERTIFICATION UNDER 11 U.S.C.
ANTHONY SHOLARS/MV 1328 AND/OR MOTION FOR
EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE
2-8-17 [[56](#)]

TIMOTHY SPRINGER/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 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. 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. The debtor Isabel Borges-Sholars, deceased, is excused from complying with the requirements of §1328 and from obtaining a certificate of completion of a personal financial management course.

3. [17-10028](#)-B-13 MANSOUR/PHEBE TOPALIAN
BDB-2
MANSOUR TOPALIAN/MV
BENNY BARCO/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
2-8-17 [[23](#)]

The motion will be granted without oral argument based upon well-pled facts. The debtors shall submit a proposed order consistent with this ruling as set forth below. No appearance is necessary.

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules of Practice and there was 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.

Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtors may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

4. [17-10133](#)-B-13 VICTOR/MARIA FIGUEROA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-22-17 [[20](#)]

THOMAS GILLIS/Atty. for dbt.
\$80.00 INSTALLMENT PAYMENT
ON 2/28/17

The OSC will be vacated. No appearance is necessary.

The OSC was issued for the debtor's failure to make the payment due February 17, 2017. The delinquent payment was made on or about February 28, 2017. The OSC will be vacated and the case will remain pending because the payment was made. However as a sanction, the court will modify the order permitting the payment of filing fees in installments to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

5. [15-13539](#)-B-13 TIMOTHY/SHARON TEGTMEYER MOTION TO MODIFY PLAN
EPE-2 1-31-17 [[48](#)]
TIMOTHY TEGTMEYER/MV
ERIC ESCAMILLA/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

6. [16-14541](#)-B-13 CURTIS/KELLI VAN NEST MOTION TO DISMISS CASE
MHM-1 2-14-17 [[15](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/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 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 record shows there has been unreasonable delay by the debtors that is prejudicial to creditors caused by: their failure to appear at the scheduled 341 Meeting of Creditors; failure to provide the trustee with the required documentation including, Authorization to Release Information Form; Business Case questionnaire with supporting documents; and Deed of Trust/ Promissory Note. Further, they have failed to provide Credit Counseling Certificates.

Accordingly, the case will be dismissed.

7. [12-19946](#)-B-13 TERRY/JODEL KING CONTINUED MOTION TO MODIFY PLAN
DRJ-3 12-21-16 [[73](#)]
TERRY KING/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

8. [16-13950](#)-B-13 SUSAN COX
MHM-2
MICHAEL MEYER/MV
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
12-21-16 [[31](#)]

This motion will be denied as moot. The court will enter an order. No appearance is necessary.

The trustee's motion to dismiss was based on the debtor's failure to confirm a chapter 13 plan. The court intends to enter an order confirming the debtor's plan filed January 25, 2017, and, accordingly, no other relief appears necessary or appropriate.

9. [16-13950](#)-B-13 SUSAN COX
SLC-1
SUSAN COX/MV
SUSAN COX/Atty. for mv.

MOTION TO CONFIRM PLAN
1-25-17 [[40](#)]

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.

10. [17-10553](#)-B-13 JENNIFER GUTIERREZ
SL-1
JENNIFER GUTIERREZ/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
3-2-17 [[11](#)]

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

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

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c) (3) (C) (i) (II) (cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. 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/impose the automatic stay.

It appears from the record that the debtor's prior case was dismissed because illness caused by work-related stress caused her to become delinquent in plan payments. It appears that this situation has been remedied and the debtor is prepared to go forward with this second case.

Accordingly, 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.

11. [12-16958](#)-B-13 BENJAMIN BRUFFETT
TCS-5
BENJAMIN BRUFFETT/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO INCUR DEBT
2-28-17 [[107](#)]

This motion will be denied without prejudice. Although amended schedules I and J were attached to the debtor's declaration, these schedules were not filed in the docket. The court will enter an order. No appearance is necessary.

12. [17-10563](#)-B-13 INPREET SINGH
JRL-1
INPREET SINGH/MV
JERRY LOWE/Atty. for dbt.

MOTION TO IMPOSE AUTOMATIC STAY
3-1-17 [8]

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

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

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. 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.

It appears from the record that the debtor's prior case was dismissed because a check he received from his work did not clear the bank and he missed his first plan payment. He states this is very unusual and that he has taken steps so that if this occurs again he will have assistance in making his plan payment. He filed this case in order to save his home and is prepared to go forward with this second case.

Accordingly, 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.

13.	16-14365 -B-13	ESTEBAN ARIAS AND SOFIA	MOTION TO VALUE COLLATERAL OF
	TOG-3	HERNANDEZ	STERLING JEWELERS, INC. DBA KAY
		ESTEBAN ARIAS/MV	JEWELERS
			2-9-17 [37]
		THOMAS GILLIS/Atty. for dbt.	

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

The debtor is competent to testify as to the value of the jewelery. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The debtor testified in a supporting declaration that the value of the jewelry at issue is \$1,500. However, the debtors' testimony at the meeting of creditors was inconsistent. Further, the schedules show the value claimed is \$1,200. The schedules have not been amended nor has the value discrepancy been explained.

The motion is denied without prejudice.

14. [17-10466](#)-B-13 RUBY LOMAS
SL-1
RUBY LOMAS/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
2-23-17 [9]

This matter will proceed as scheduled. Unless opposition is presented, the court intends to deny the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If no opposition is offered at the hearing, the court will take up the merits of the motion. Based on the moving papers and the record, the court intends to deny the motion to extend the automatic stay.

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.

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal.2006). Courts consider many factors - including those used to determine good faith under §§ 1307(c) and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. 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*.

The record does not support a finding that the filing of the subsequent case was in good faith as to the creditors to be stayed as required by 11 U.S.C. §362(c)(3)(B)/11 U.S.C. §362(c)(4)(B).

First, this motion was filed without persuasive evidence of changed circumstances. The debtor has filed three prior chapter 13 bankruptcy cases, all of which included arrearages on the debtor's residence which was included in class 1 of his chapter 13 plan, and all of which were dismissed for delinquency in plan payments.

10-60553, filed September 14, 2010 and dismissed December 16, 2011;
12-13248, filed April 11, 2012, and dismissed January 2, 2014;
15-12493, filed June 24, 2015, and dismissed December 19, 2016.

Second, the debtor claims that he forgot that he had a "stair-step" plan, however this is irrelevant. He was unable to make any plan payment due to a respiratory illness-the type of payment involved did not cause the non-payment.

Third, when the debtor's family member moved into the debtor's home he still did not make payments. The debtor states that his nephew stole his "mad money" but even before his nephew moved in he could not make plan payments.

Fourth, the debtor states that he participates in the PGE CARE Program, however does not explain the impact of this on his ability to make plan payments.

Finally, fifth, the debtor states that he is "thrifty," but this did not prevent the previous defaults in the debtor's prior cases.

15. [16-10372](#)-B-13 BRENT WILSON
GMA-1
BRENT WILSON/MV
GEOFFREY ADALIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
2-3-17 [[23](#)]

This matter will proceed as scheduled.

16. [16-13573](#)-B-13 LEANDRO/VIRGINIA BADILLO
TCS-1
LEANDRO BADILLO/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
BANK OF THE WEST
2-9-17 [[30](#)]

This motion to value collateral will be denied as moot. The court will enter an order. No appearance is necessary.

There is no case or controversy. The creditor has filed a proof of secured claim, which values its collateral in the same amount as stated in the motion. In the Eastern District of California, the amount and classification of a claim is determined by the proof of claim and applicable non-bankruptcy law. No further relief is required unless the granting of a motion will affect the treatment of the claim.

17. [14-11175](#)-B-13 DANNY/SARA BAEZA
KMM-5
DANNY BAEZA/MV
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO MODIFY PLAN
2-2-17 [[93](#)]

This motion will be continued to April 13, 2017, at 1:30 p.m., for submission of evidence. Competent, admissible evidence shall be filed and served on or before March 30, 2017. The court will enter an order. No appearance is necessary.

There was no evidence submitted with the moving papers that the elements of §1329(b)(1) and §1325(a) for confirmation have been met.

18. 11-18681-B-13 ELIAS/YVONNE SALCIDO
MHM-2
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
2-8-17 [94]

PHILLIP GILLET/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules of Practice and 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. 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.

19. 17-10622-B-13 JENNIFER RIVAS
PK-1
JENNIFER RIVAS/MV
PATRICK KAVANAGH/Atty. for dbt.
OST 3/9/17

MOTION TO EXTEND AUTOMATIC STAY
3-9-17 [17]

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

The Motion to Extend the Automatic Stay was properly set for hearing on the court's order shortening time. Consequently, the debtor, creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c) (3) (C) (i) (II) (cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. 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.

It appears from the record that the debtor's prior case was dismissed because she assisted her grandparents with their rental payment. The debtor states that this situation will not arise again because her grandparents have moved into her home with her. In addition, it appears the debtor requires the protection of the automatic stay to prevent her home from a foreclosure sale.

Accordingly, 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.

18. [11-18681](#)-B-13 ELIAS/YVONNE SALCIDO
MHM-2
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
2-8-17 [[94](#)]

PHILLIP GILLET/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 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. 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.

Safe 1 Credit Union and its successors in interest shall be precluded from presenting any omitted information, which was required to be provided in the response to the Notice of Final Cure, pursuant to 3002.1(i), in any form in any contested matter regarding debtors' first mortgage herein, in that the record shows that debtors have cured the default on their loan with Safe 1 Credit Union and the debtors are current on their mortgage payment to Safe 1 Credit Union through July 2016.