

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 6, 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.

4. [16-13816](#)-B-13 ROBERT/CHRISTINE MC DUFF CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 2-6-17 [[23](#)]
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

Unless the trustee's motion is withdrawn before the hearing, the motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

The basis for the trustee's motion to dismiss the case was the debtors' unreasonable delay in confirming a plan. Pursuant to LBR 3015-1(j), a plan cannot be confirmed until and unless the debtors value the judgment liens encumbering their property. This matter was continued to provide the debtors with an opportunity to obtain a stipulation from Capital One regarding value. Now the debtors have filed a statement and stipulation executed by themselves, Capital One, and the chapter 13 trustee, that explains that Capital One's lien had been released pre-petition and should not have been listed. The court intends to sign an order when a conforming proposed order is submitted. Accordingly, it appears that no further relief is necessary or appropriate.

5. [17-10223](#)-B-13 STEPHEN/ROSALIE TRUJILLO MOTION TO VALUE COLLATERAL OF
RSW-1 FIRST INVESTORS SERVICING
STEPHEN TRUJILLO/MV CORPORATION
ROBERT WILLIAMS/Atty. for dbt. 3-6-17 [[12](#)]

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

This motion to value respondent's collateral 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 debtor is competent to testify as to the value of the 2006 Cadillac STS-V8. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$7,000. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

6. [15-14827](#)-B-13 BRIAN HOVEN
LKW-3

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
3-7-17 [[66](#)]

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 in conformance with the ruling. No appearance is necessary.

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.

7. [15-10930](#)-B-13 MARIO/DEANA MEDINA
PLG-1
MARIO MEDINA/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO MODIFY PLAN
2-15-17 [[28](#)]

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. [16-14636](#)-B-13 ERIKA CENDEJAS
DWE-1
WELLS FARGO BANK, N.A./MV

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
2-16-17 [[25](#)]

PAULDEEP BAINS/Atty. for dbt.
DANE EXNOWSKI/Atty. for mv.
WITHDRAWN

The objection has been withdrawn. No appearance is necessary.

9. [15-14646](#)-B-13 RANDAL/GRETTA STUDY
DMG-4

MOTION FOR COMPENSATION FOR D.
MAX GARDNER, DEBTORS
ATTORNEY(S)
2-28-17 [[74](#)]

D. GARDNER/Atty. for dbt.

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

This motion was fully noticed pursuant to the Local Rules and there was no opposition. Accordingly, the respondents' defaults will be entered.

The applicant requests compensation pursuant to LR 2016-1(c). However, in order to receive the "no-look" fee, The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.*" LR 2016-1(c)(2).

In lieu of filing another motion, the applicant may submit a proposed order with a declaration that the properly executed Form EDC 3-096 has been filed and attaching a copy of Form EDC 3-096 to the proposed order.

10. [14-14047](#)-B-13 FRANCES GONZALES
RSW-1
FRANCES GONZALES/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED 02/16/2017,
RESPONSIVE PLEADING

MOTION TO VACATE DISMISSAL OF
CASE
3-14-17 [[66](#)]

This matter will proceed as scheduled. The court intends to enter the tentative ruling as follows:

The motion will be DENIED.

The motion to vacate the dismissal of the case will be deemed to be a motion brought under FRCP 60(b)(6) and will be denied. FRCP 60(b), made applicable here by FRBP 9024, states:

FRCP 60(b). Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

This ruling is consistent with *United States v. State of Washington, et al.*, 98 F.3d 1159, 1163 (9th Cir.1996), regarding the application of FRCP 60(b)(6), which, it explained,

[D]oes not particularize the factors that justify relief, but we have previously noted that it provides courts with authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," *Klapprott v. United States*, 335 U.S. 601, 614-15 (1949), while also cautioning that it should only be applied in "extraordinary circumstances," *Ackermann v. United States*, 340 U.S. 193, 212 (1950). *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863-64 (1988).

Following the admonitions of the Supreme Court, we have used Rule 60(b)(6) "sparingly as an equitable remedy to prevent manifest injustice." *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir.), cert. denied, 510 U.S. 813 (1993). "The rule is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Id.*, citations omitted.

Here we do not have one of those rare cases where "extraordinary circumstances" warrant vacating an "erroneous judgment." As J. Kozinski explained, in his concurring opinion, "I start with the proposition that Rule 60(b) is only a time-shifting provision; it does not confer independent authority on federal courts to set aside past judgments. Or, to put it differently, Rule 60(b) authorizes setting aside a judgment only for reasons that would have prevented entry of the judgment in the first place, had the reasons been known at the time judgment was entered." *Id.*, 1164.

The debtor filed this case in August 2014 and confirmed a 60 month plan that paid, a mortgage on his home in class 2, 100% to unsecured claims in the amount of \$123, and attorney's fees the balance of \$3,900.

The trustee's response to the debtor's motion provides information: the debtor is not current under the plan; the trustee refunded funds to the debtor totaling \$1,231.20; the debtor is delinquent in that amount in addition to the plan payments of \$432 for each of February and March 2017's payments.

The trustee's Notice of Default and Intent to Dismiss Case ("NODID") was filed and served on the debtor and counsel on January 6, 2017. That notice provided detailed information to the debtor regarding the four alternative responses to the NODID and specific directions to the debtor as to what the debtor needed to do to prevent the case from being dismissed. The trustee's response, the record, and the debtor's declaration and the motion, all show that the case was dismissed properly according to the procedures adopted by the chapter 13 trustee's office and the debtor has presented no evidence that convinces the court that the order should be vacated.

The NODID stated:

1. The current delinquent amount of \$855.00 must be RECEIVED BY THE TRUSTEE on or before January 31, 2017;
2. If the above amount is not received by January 31, 2017, then the sum of \$855.00 PLUS the current month's payment of \$432.00 for a total of \$1,287.00 must be RECEIVED BY THE TRUSTEE on or before February 16, 2017.
3. If debtor(s) elects to cure the default by modification, debtor(s) must file a modified plan that cures the default within 30 days of the mailing of this notice, pursuant to LBR 3015-1.
4. If, and only if, debtor(s) believes there is NO DEFAULT IN PLAN PAYMENTS, then within 28 days of the mailing of the notice, the debtor(s) shall file, serve, and set for hearing an Objection to the Notice of Default giving the Trustee at least 14 days' notice, pursuant to LBR 9014-1(f)(2). An Objection shall state with particularity the grounds therefore, be supported by evidence, and accompanied by a notice of objection hearing. . . . If the Trustee demonstrates that the debtor(s) has failed to make the payment(s) required by the confirmed plan, or if the debtor(s) fails to rebut the Trustee's evidence, the case shall be dismissed at the hearing.

Furthermore, if the debtor fails to timely set a hearing on the Trustee's notice, or cure the default by payment, or file a proposed modified plan and motion, or perform the modified plan pending its approval, or obtain approval of the modified plan, the case will be dismissed without a hearing on the Trustee's application.

The debtor's declaration acknowledges that the case was properly dismissed on February 16, 2017, due to non-payment. The debtor also states, without any documentary evidence, that a payment in the amount of \$864 was made "before January 31, 2017," but not posted until February 1, 2017. The debtor states that the amount of \$432 was made "by the required date of February 16, 2017, but not posted until February 22, 2017." The debtor states that with the funds returned by the trustee, the payment due in February can be made. The debtor does not cite any authority or facts to support the request that the dismissal be vacated.

11. [16-12653](#)-B-13 EDWARD HITTU
MHM-2
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
2-21-17 [[31](#)]

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

12. [16-11954](#)-B-13 LAVONE/CHRISTINE HUNTER MOTION TO CONFIRM PLAN
PK-4 2-2-17 [[77](#)]
LAVONE HUNTER/MV
PATRICK KAVANAGH/Atty. for dbt.

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.

13. [15-14355](#)-B-13 JASON/DANELLE BLACK MOTION TO MODIFY PLAN
PK-3 2-6-17 [[66](#)]
JASON BLACK/MV
PATRICK KAVANAGH/Atty. for dbt.

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.

14. [16-11473](#)-B-13 SHELBY/CAROL KING CONTINUED OBJECTION TO CLAIM OF
LKW-5 NORTHERN CALIFORNIA COLLECTION
SHELBY KING/MV SERVICES, CLAIM NUMBER 8
1-12-17 [[113](#)]
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

15. [16-11473](#)-B-13 SHELBY/CAROL KING CONTINUED OBJECTION TO CLAIM OF
LKW-8 WESTCHESTER FIRE INSURANCE
SHELBY KING/MV COMPANY, CLAIM NUMBER 23
1-12-17 [[132](#)]
LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

16. [16-13781](#)-B-13 GEREMY LATTA
MHM-1
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
2-3-17 [[15](#)]

This matter will proceed as scheduled.

17. [16-13781](#)-B-13 GEREMY LATTA
NES-3
GEREMY LATTA/MV

NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE
COLLATERAL OF AMERICREDIT
FINANCIAL SERVICES, INC.
2-8-17 [[19](#)]

This matter will proceed as scheduled.

18. [16-10687](#)-B-13 HEATHER LEMA
DMG-4
HEATHER LEMA/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
2-28-17 [[45](#)]

This matter will proceed as scheduled to determine what issues are material to confirmation.

19. [17-10293](#)-B-13 DARIEA HOLMES
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
3-15-17 [[19](#)]

This matter will proceed as scheduled.

9:30 A.M.

1. [16-13002](#)-B-12 WILLIAM/TRACY GREENLEE CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
8-17-16 [[1](#)]

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

2. [16-13002](#)-B-12 WILLIAM/TRACY GREENLEE MOTION
TO CONFIRM CHAPTER 12
PLAN
2-27-17 [[91](#)]

LKW-5

WILLIAM GREENLEE/MV

LEONARD WELSH/Atty. for dbt.

RESPONSIVE PLEADING

This hearing will be dropped from calendar. The court has entered an order. No appearance is necessary.

The debtors have withdrawn the motion to confirm their first modified chapter 13 plan and the court entered an order, on March 31, 2017, granting the debtors' ex parte application for an extension of time pursuant to §1224 to obtain confirmation of a second modified plan.

Unless the court extends the period where, "the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable," Section 1221 requires a plan to be filed within 90 days of the order for relief. Section 1224 requires conclusion of the confirmation hearing within 45 days after that date, "except for cause." The debtors filed this case on August 17, 2016, giving them until November 15, 2016, to file their plan. The debtors filed their initial plan on November 11, 2016, just short of the 90 day period, and had until December 27, 2016, to file and serve their first modified plan and conclude their confirmation hearing.

The debtors did not file their first modified plan, which has now been withdrawn, until February 27, 2017. Pursuant to §1228(c), "On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including (3) failure to file a plan timely under section 1221" Here, however, no party has moved to dismiss this case.

While "cause" is not defined, it is likely that a mere objection to confirmation of a plan fails to rise to "cause" under §1224, and the evidence submitted in support of the motion was very thin. For example, there was no evidence that Rabobank's objection was justifiably unexpected. The same issue arises about the trustee's opposition. The fact that it does appear that it would be in the best interests of the estate and creditors to extend the time for obtaining confirmation under the circumstances of this case constitutes cause under § 1224. The court's order granted debtors until April 30, 2017, to file and serve a modified chapter 12 plan.

The court will require a noticed motion and a hearing before considering any further extension of this time.

3. [17-10443](#)-B-11 ASHO ASSOCIATES, INC.

STATUS CONFERENCE RE: CHAPTER
11 VOLUNTARY PETITION
2-10-17 [[1](#)]

TODD TUROCI/Atty. for dbt.

This matter will proceed as scheduled.

4. [15-13167](#)-B-12 DOUG KOPHAMER FARMS
LKW-20

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
3-6-17 [[343](#)]

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 in conformance with the ruling. No appearance is necessary.

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.

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

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

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

6. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-40 INC.
B&L EQUIPMENT RENTALS, INC./MV

MOTION FOR AUTHORITY TO ENTER
INTO INSURANCE PREMIUM FINANCE
AGREEMENT AND/OR MOTION FOR
ADEQUATE PROTECTION
2-28-17 [[655](#)]

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 in conformance with the ruling. No appearance is necessary.

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.

7. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-41 INC.

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
3-6-17 [[665](#)]

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 in conformance with the ruling. No appearance is necessary.

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.

8. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-43 INC.

AMENDED CHAPTER 11 DISCLOSURE
STATEMENT
3-17-17 [[677](#)]

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

10:00 A.M.

1. [16-14524](#)-B-7 CLAUDIA GALLARDO MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
HYUNDAI MOTOR FINANCE/MV 3-1-17 [[15](#)]
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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 a depreciating asset in which the debtor has no equity and is to be surrendered.

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

2. [16-13225](#)-B-7 BAKERSFIELD MOVING &
JES-2 STORAGE DBA RELIABLE
JAMES SALVEN/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES SALVEN, ACCOUNTANT(S)
2-24-17 [[60](#)]

The motion will be granted in part and denied in part without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

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.

The costs will be allowed in full. The fees will be allowed with the exception of \$275 which was charged for preparing the motion to employ the applicant. The applicant represented the trustee in preparation of that motion, however the applicant is not an attorney and cannot charge for legal representation.

3. [16-13225](#)-B-7 BAKERSFIELD MOVING & STORAGE DBA RELIABLE MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
KDG-4 3-9-17 [[66](#)]

NEIL SCHWARTZ/Atty. for dbt.

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

Although the motion and the certificate of proof of service refer to an exhibit, there were no exhibits filed in connection with this motion. A chronological list of services sorted by task code was not filed.

4. [16-11349](#)-B-7 ARMANDO/JUDITH BELVEDERE CONTINUED MOTION TO AVOID LIEN OF MICHELE NOURAFCHAN
PK-3 2-9-17 [[30](#)]
ARMANDO BELVEDERE/MV
PATRICK KAVANAGH/Atty. for dbt.

This motion was continued to permit the debtors to file further evidence that they held an interest in their home at the time the subject lien attached. Such evidence having been filed, the motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

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. It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

5. [16-13657](#)-B-7 JOHNNIE/LINDA SIMS
RP-1
RANDELL PARKER/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
3-8-17 [[22](#)]

R. BELL/Atty. for dbt.
RANDELL PARKER/Atty. for mv.

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

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.

6. [16-13960](#)-B-7 LEONEL/LORENA PEREZ
RP-1
RANDELL PARKER/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY, LLC. AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
3-8-17 [[25](#)]

R. BELL/Atty. for dbt.
RANDELL PARKER/Atty. for mv.

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

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.

7. [16-14461](#)-B-7 GALEN/DANIELLE STUCKY
RSW-1

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
3-12-17 [[23](#)]

ROBERT WILLIAMS/Atty. for dbt.

The motion will be denied without prejudice. No appearance is necessary.

The motion was filed without admissible supporting evidence as required by LBR 9014-1(d) (7). A motion to convert a case from chapter 7 to chapter 13 must be supported by evidence of the debtors' good faith. *Marrama v. Citizen's Bank of Massachusetts*, 549 U.S. 365 (2007).

8. [16-14663](#)-B-7 SAMUEL SALAZAR
VVF-1
HONDA LEASE TRUST/MV

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
3-8-17 [[11](#)]

NEIL SCHWARTZ/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

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

This motion relates to an executory contract or lease of personal property. The case was filed on December 28, 2016, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. §365(d) (1). Pursuant to § 365 (p) (1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

9. [16-14472](#)-B-7 SWARAN SINGH
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
2-10-17 [[37](#)]

The motion is conditionally denied. No appearance is necessary at this hearing. The court will issue an order.

The debtor shall attend the meeting of creditors rescheduled for April 7, 2017, at 11:00 a.m. at the Bakersfield Meeting Room. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e) (1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the 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.

10. [16-13397](#)-B-7 CHRISTOPHER/BRITTANY CONTINUED MOTION TO AVOID LIEN
SMS-1 GATHINGS OF HERBERT P. SEARS CO., INC.
CHRISTOPHER GATHINGS/MV 1-11-17 [[19](#)]
STEVEN STANLEY/Atty. for dbt.

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

This motion was continued to permit the debtors to submit evidence that they held an interest in the property sought to be protected at the time the lien attached to the property. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991). The debtors have failed to do so, and moreover, the evidence filed in their motion below at calendar number 10, SMS-2, shows that the judgment lien, which was recorded February 21, 2008, attached to the property when the debtors subsequently acquired it on August 28, 2015, and the lien therefore cannot be avoided.

11. [16-13397](#)-B-7 CHRISTOPHER/BRITTANY CONTINUED MOTION TO AVOID LIEN
SMS-2 GATHINGS OF JAMIE BAKER
CHRISTOPHER GATHINGS/MV 1-11-17 [[25](#)]
STEVEN STANLEY/Atty. for dbt.

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

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. It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

12. [16-14597](#)-B-7 JOE/KAYLA FULLER
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-5-17 [[11](#)]

NEIL SCHWARTZ/Atty. for dbt.

The motion is conditionally denied. Debtor's counsel shall notify his/her client that no appearance is necessary at this hearing. The court will issue an order.

The debtor shall attend the meeting of creditors rescheduled for April 7, 2017, at 1:30 p.m., in the Bakersfield Meeting Room. If the debtor fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e) (1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the 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.

1:30 P.M.

1. [16-11605](#)-B-7 CAROLYN CHARLTON STATUS CONFERENCE RE: SECOND
[16-1078](#) AMENDED COMPLAINT
CHARLTON V. CHARLTON 2-16-17 [[25](#)]
NANETTE BEAUMONT/Atty. for pl.

The status conference will be vacated and may be reset by any party on 14 days' notice. No appearance is necessary.

It appears the defendant's default has been entered. The clerk of the court may close the adversary proceeding without notice in 90 days unless the adversary proceeding has been set for a further status conference within that time. Either party may request an extension of this time up to 30 days by *ex parte* application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue an order.

2. [17-10029](#)-B-7 ERNESTO/MARTHA LOPEZ STATUS CONFERENCE RE: COMPLAINT
[17-1003](#) 1-19-17 [[1](#)]
U.S. TRUSTEE V. LOPEZ ET AL
GREGORY POWELL/Atty. for pl.

The status conference will be vacated and may be reset by any party on 14 days' notice. No appearance is necessary.

It appears that the complaint was properly served and the defendant has not filed a response. The plaintiff shall apply for entry of default. The clerk of the court may close the adversary proceeding without notice in 90 days unless the adversary proceeding has been set for a further status conference within that time. Either party may request an extension of this time up to 30 days by *ex parte* application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue an order.