

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, April 27, 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. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION
BBR-2 CORPORATION
PACE DIVERSIFIED CORPORATION/MV
T. BELDEN/Atty. for dbt. CONTINUED MOTION TO USE CASH COLLATERAL
3-24-17 [[11](#)]

Pursuant to a prior stipulation and order, and after review of the status report filed April 21, 2017, and no opposition having been filed, this matter will be dropped from calendar. No appearance is necessary.

2. [10-61331](#)-B-12 NICHOLAS SOARES
FW-6 NICHOLAS SOARES/MV
PETER FEAR/Atty. for dbt. MOTION FOR ENTRY OF DISCHARGE
3-29-17 [[104](#)]

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. Based on the debtor's declaration it appears that the requirements of §§1228(a) and (f) have either been satisfied or are not applicable.

3. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER
PETER FEAR/Atty. for dbt. CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
9-13-16 [[1](#)]

This matter will be continued to June 14, 2017, at 1:30 p.m., to be heard with the motion to approve the disclosure statement. The court will enter an order. No appearance is necessary.

4. [16-13849](#)-B-12 DON FALLERT

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
10-24-16 [[1](#)]

D. GARDNER/Atty. for dbt.

This matter will proceed as scheduled.

5. [16-13849](#)-B-12 DON FALLERT

MOTION TO CONFIRM CHAPTER 12
PLAN
3-16-17 [[91](#)]

DMG-5

DON FALLERT/MV

D. GARDNER/Atty. for dbt.

RESPONSIVE PLEADING

This matter will proceed as scheduled.

In addition to his opposition to confirmation, the trustee has submitted a detailed responsive analysis to the objection filed by Bank of the Sierra, and the debtor has filed a response to the oppositions and to the trustee's response. The court will invite argument by the parties regarding the legal issues raised by the trustee.

If the objections are not resolved at the hearing then the court will continue the matter for a scheduling conference and evidentiary hearing as to the following factual issues:

1. This debtor's eligibility for chapter 12;
2. The appropriate interest rate for payment on Bank of the Sierra's claim;
3. The feasibility of the modified chapter 12 plan.

6. [16-13849](#)-B-12 DON FALLERT

MOTION FOR COMPENSATION FOR D.
MAX GARDNER, DEBTORS
ATTORNEY(S)
3-29-17 [[97](#)]

DMG-4

D. GARDNER/Atty. for dbt.

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

The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c). Docket Control Number DMG-4 has already been used for another matter.

7. [16-13849](#)-B-12 DON FALLERT
DMG-4
DON FALLERT/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM CHAPTER 12
PLAN
1-23-17 [[61](#)]

Based on the court's order extending time to file a chapter 12 plan, this motion to confirm a plan is deemed withdrawn.

8. [17-11263](#)-B-11 SAMUEL CASTILLO
FW-2
SAMUEL CASTILLO/MV
PETER FEAR/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
4-13-17 [[23](#)]

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 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.

The record shows that the debtor's prior case was a chapter 13 that was dismissed because the debtor's total unsecured debt exceeded the limits of §109(e). Accordingly, in this case the presumption of bad faith does not arise. "Where there is no presumption of bad faith and no party objects, a request to extend the stay should be liberally granted." *In re Elliott-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006), citing *In re Warneck*, 336 B.R. 181, 182 (Bankr.S.D.N.Y.2006).

The debtor has now filed a chapter 11 case. Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the debtor's petition was filed in good faith and intends to grant the motion to extend the automatic stay. 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 after the hearing.

9. [11-15081](#)-B-12 ALBERTO/DIANA SANCHEZ
HDN-7
ALBERTO SANCHEZ/MV
HENRY NUNEZ/Atty. for dbt.

MOTION FOR ENTRY OF DISCHARGE
3-20-17 [[118](#)]

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. Based on the debtors' declaration it appears that the requirements of §§1228(a) and (f) have either been satisfied or are not applicable.

1:30 P.M.

1. [17-10201](#)-B-13 KEVIN/ALISSA MCFARLAND CONTINUED MOTION TO VALUE
DRJ-3 COLLATERAL OF MATADORS
KEVIN MCFARLAND/MV COMMUNITY CREDIT UNION
2-23-17 [[15](#)]

DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

It appears that this matter has been resolved by stipulation of the parties and order of the court entered April 10, 2017.

2. [17-10710](#)-B-13 DOROTHY MAISON MOTION TO DISMISS CASE
MHM-1 3-30-17 [[23](#)]
MICHAEL MEYER/MV
CHRISTIAN YOUNGER/Atty. for dbt.

The trustee's motion has been withdrawn. No appearance is necessary.

3. [17-10612](#)-B-13 ADAM/CHRISTINA RAMIREZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-31-17 [[21](#)]

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. If the installment payments now due are fully paid by the time of the hearing, the OSC will be vacated.

If the OSC is vacated, 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.

4. [16-14414](#)-B-13 GERARDO REYES MOTION TO DISMISS CASE
MHM-1 3-24-17 [[55](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's motion has been withdrawn. No appearance is necessary.

5. [17-10318](#)-B-13 ALBERT/DEE ANNA KNAUER
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
3-16-17 [[17](#)]

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' 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 that there is unreasonable delay because the debtors have failed to provide the Trustee with 2016 State and Federal Tax Return and failed to file tax returns for the year 2016.

6. [16-12626](#)-B-13 DONALD CUMPTON
JRL-4
DONALD CUMPTON/MV
JERRY LOWE/Atty. for dbt.

MOTION TO MODIFY PLAN
3-9-17 [[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.

7. [17-10033](#)-B-13 JARED/BRIDGETTE WEBB MOTION TO CONFIRM PLAN
DRJ-2 3-15-17 [[18](#)]
JARED WEBB/MV
DAVID JENKINS/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.

8. [17-10235](#)-B-13 DARRELL/DEBRA TOMLIN MOTION TO CONVERT CASE FROM
MHM-1 CHAPTER 13 TO CHAPTER 7
3-24-17 [[24](#)]
JESSICA DORN/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

9. [17-10236](#)-B-13 PAUL/KATHLEEN LANGSTON MOTION TO DISMISS CASE
MHM-1 3-16-17 [[19](#)]
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Unless the trustee's motion has been withdrawn prior to the hearing, this matter will proceed as scheduled.

10. [17-10437](#)-B-13 WILLIAM HAGEN MOTION TO DISMISS CASE
MHM-1 4-4-17 [[22](#)]
MICHAEL MEYER/MV

This matter will proceed as scheduled.

11. [16-11844](#)-B-13 DALE/BRENDA KAUNDART
FW-1

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
3-13-17 [[30](#)]

PETER FEAR/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.

12. [17-10245](#)-B-13 MICHAEL/CAROL LUSK
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
3-16-17 [[23](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

13. [17-11246](#)-B-13 MARIANO AGUIRRE
DRJ-2
MARIANO AGUIRRE/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
4-10-17 [[9](#)]

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 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 debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay. It appears that the debtors' niece will be assisting the debtors with their plan payment in the current case. It also appears that the protection of the automatic stay is necessary to preserve the family home which is listed in class 1 of the chapter 13 plan with arrears in excess of \$10,000.

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.

14. [12-10950](#)-B-13 EDWARD BALLADARES AND
TCS-2 ESTHER CORPUS
EDWARD BALLADARES/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO AVOID LIEN OF
MEDVETTA FINANCIAL, INC.
4-7-17 [[51](#)]

This matter will proceed as scheduled.

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

15. [17-10553](#)-B-13 JENNIFER GUTIERREZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-28-17 [[29](#)]

SCOTT LYONS/Atty. for dbt.
\$156.00 INSTALLMENT FEE PAID
3/31/17

The OSC will be vacated. No appearance is necessary. The court will enter an order.

The OSC was issued for the debtor's failure to make the payment due March 23, 2017. The delinquent payment, as well the next payment, were made on or about March 31, 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.

16. [17-10064](#)-B-13 JOE HAYES
JRL-2
JOE HAYES/MV
JERRY LOWE/Atty. for dbt.

MOTION FOR RELIEF FROM ORDER
4-13-17 [[42](#)]

This matter will proceed as scheduled. The court intends to enter the tentative ruling below. 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).

Tentative Ruling- The motion will be GRANTED in part and DENIED in part. The court's order entered February 4, 2017 (JRL-1) shall be amended to provide that the imposition of the automatic stay under 11 U.S.C. § 362 (c) (4) shall be without prejudice to any party who has taken action while no automatic stay was in effect. All other relief is DENIED.

The debtor asks the court to relieve him of the terms of the order entered on February 4, 2017 (Doc. 26), granting his motion to impose the automatic stay ("the Order"). In this motion the debtor requests relief through amendment of the Order to provide that the imposition of the automatic stay was effective as of January 10, 2017, the date he filed this third bankruptcy case within 12 months.

A foreclosure sale of the debtor's property located at 1280 Hillcrest, Selma, CA, apparently occurred on January 11, 2017. The foreclosing lender was Nationstar Mortgage ("Nationstar"). According to a declaration by Efren Diaz, paralegal for debtor's counsel (Doc. 45), the petition commencing this case was filed after 6:00 p.m., on January 10, 2017. That evening Diaz also attempted, although unsuccessfully, to send the petition and accompanying notification correspondence by facsimile to the foreclosure trustee, Barrett, Frappier & Weiss, LLP ("Barrett"). However, early the next morning, January 11, 2017, and just prior to the foreclosure sale scheduled for 9:00 a.m. (Docs. 18 and 45), Diaz spoke with an employee

at Barrett, confirming the accuracy of the fax number and advising Barrett of the bankruptcy filing and the fact that the debtor was going to request retroactive imposition of the automatic stay to the date of the filing of the case. Diaz received no commitment from the Barrett employee but was told the employee would notify someone. Diaz sent another fax containing the petition and other information confirming the date of the filing of the case. (Because the court is denying retroactive relief, the inadmissibility of the hearsay evidence in that declaration is not relevant.)

On January 18, 2017, the debtor filed a motion (Doc. 13), for imposition of the automatic stay (the "Stay Motion"). The original certificate of service of the Stay Motion shows that it was served on Nationstar Mortgage LLC at a P.O. Box in Dallas Texas (Doc. 16). The notice of the Stay Motion stated that the debtor was seeking, "an order imposing the automatic stay" as to specified parties (including Nationstar) but did not include any statement that retroactive imposition of the stay was part of the request. Indeed, none of the motion papers requested retroactive imposition of the stay.

Nationstar's counsel filed a Notice of Appearance and Request for Notice the next day (Doc. 17). The debtor filed a supplemental certificate of service of the Stay Motion on January 19, 2017. Service was made on Barrett as well as on the purported purchaser of the property at the foreclosure sale and its agent. Nationstar's counsel was not served.

The hearing on the Stay Motion occurred on February 2, 2017. No one appeared in opposition. The court granted the unopposed motion and, following the oral ruling adopting the tentative ruling, the court and debtor's counsel engaged in a brief colloquy regarding the effective date of the Order. The court stated the Order was effective from the date of the filing. That statement was ambiguous since "the date of filing" could be construed to be the petition date or the date of the filing of the Stay Motion or a different "filing date." However the actual written order did not include that condition but simply granted the relief requested in the Stay Motion-- imposition of the automatic stay under § 362(c)(4).

The debtor now seeks relief under FRCP 60(b) (FRBP 9024) on two grounds: mistake, inadvertence, surprise and excusable neglect, 60(b)(1), and 60(b)(6), "any other reason that justifies relief."

First, the debtor seeks relief that is simply unavailable under law. When two bankruptcy cases have been pending and dismissed within 12 months (subject to an exception not relevant here), no automatic stay arises upon the filing of the third case. §362(c)(4)(A)(I). If the court is persuaded to impose the automatic stay, the order imposing the stay is effective on the date of the entry of the order. §362(c)(4)(C). In this case, the Order was effective on February 4, 2017. The law is clear. No stay arose when the case was filed January 10, 2017, thus the foreclosure sale was not stayed by the filing of the case. While there may be other reasons the sale should not have occurred, the automatic stay is not one of them.

Second, the relief granted on the Stay Motion is consistent with the relief requested. The debtor's moving papers did not request retroactive relief. The papers served on the parties involved, including the putative purchaser at the foreclosure sale and the foreclosing trustee, could have reasonably led those parties to conclude that no retroactive relief would be requested at the February 2, 2017, hearing notwithstanding the legal problems with such a request.

Third, no specific "mistake" of fact or law is identified by the debtor. If there is any "mistake" it was in not notifying the court of the foreclosure sale when the Stay Motion was filed. *In re Bromstead*, 354 BR 649 (Bankr. W.D.N.Y. 2006), cited by the debtor, dealt with a mistake of law by the parties and the court when a lien was set aside for impairing an exemption and the court was not apprised that the property at issue was not acquired by the debtor until after the lien was in existence. The bankruptcy court cited *In re Scarpino*, 113 F. 3d 338 (2d Cir. 1997) to clarify the issue.

Fourth, the relief requested by the debtor in the Stay Motion is not available without an adversary proceeding. The debtor cites *In re Whitaker*, 341 BR 336 (Bankr. S.D. Ga., 2006) to argue that § 105 provides the court with the authority to impose the stay if a debtor or counsel allows the automatic stay to lapse. The case is inapposite for two reasons. First, a court cannot impose a lapsed automatic stay when the statute says the automatic stay did not previously exist. There was simply no stay to lapse. In *Whitaker*, the stay lapsed (the debtor had filed a second case within 12 months) and the court reasoned that § 105 provided authority to impose the stay. Second, in *Whitaker*, no party was prejudiced by the imposition of the stay after it lapsed. Here, significant actions occurred during the time no stay was in place—the foreclosure sale and third party purchase of the foreclosed property.

Fifth, the debtor has not established a basis for relief under Rule 60(b)(6). That provision requires extraordinary circumstances making relief necessary to accomplish justice. *Community Dental Services v. Tani*, 282 F 3d 1164, 1167 (9th Cir, 2002). There must be circumstances beyond the party's control preventing the party from taking timely action to protect its interests. *Pioneer Investments Services Co. v. Brunswick Associated Ltd. Partnership*, 507 U.S. 380, 392 (1993). Here, the debtor could have filed an adversary proceeding and sought injunctive relief. See, *In re Lattin*, 461 B.R. 832 (Bankr. D.NV, 2011). There are no facts before the court as to why the debtor waited until 26 hours before the foreclosure sale before filing the third case, or, more to the point, why an adversary proceeding could not have been filed and provisional relief requested. In short, no evidence is before the court justifying extraordinary relief.

The debtor here appears to have been misled by a third party concerning his ability to refinance the mortgage and the debtor may have rights under state law and in state court.

Nevertheless, the Order, entered February 4, 2017, will be clarified as noted.

The motion will be GRANTED in part and DENIED in part.

17. [16-14365](#)-B-13 ESTEBAN ARIAS AND SOFIA MOTION TO DISMISS CASE
MHM-2 HERNANDEZ 3-24-17 [[78](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's motion has been withdrawn. No appearance is necessary.

18. [16-14365](#)-B-13 ESTEBAN ARIAS AND SOFIA MOTION TO CONFIRM PLAN
TOG-3 HERNANDEZ 3-15-17 [[61](#)]
ESTEBAN ARIAS/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

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 and the trustee has withdrawn his opposition. There is no opposition and those 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.

19. [16-14365](#)-B-13 ESTEBAN ARIAS AND SOFIA MOTION TO VALUE COLLATERAL OF
TOG-5 HERNANDEZ STERLING JEWELERS, INC.
ESTEBAN ARIAS/MV 3-22-17 [[73](#)]
THOMAS GILLIS/Atty. for dbt.

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 debtors are competent to testify as to the value of the jewelry. 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 \$1,200. 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.

20. [13-15371](#)-B-13 CHRISTANIA HAUGHTON MOTION TO REFINANCE
GMA-1 3-30-17 [[56](#)]
CHRISTANIA HAUGHTON/MV
GEOFFREY ADALIAN/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.

21. [15-13573](#)-B-13 ROUDNI/MELISSA HAROUN MOTION TO MODIFY PLAN
JRL-3 3-16-17 [[58](#)]
ROUDNI HAROUN/MV
JERRY LOWE/Atty. for dbt.
DISMISSED

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

22. [16-14574](#)-B-13 TIMOTHY/VICKIE WEATHERLY MOTION TO DISMISS CASE
MHM-2 3-21-17 [[33](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

The trustee's motion has been withdrawn. No appearance is necessary.

23. [16-14385](#)-B-13 NANCY MCFADIN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-10-17 [[40](#)]
SCOTT LYONS/Atty. for dbt.

The OSC will be vacated. The record shows that the required fee has been paid in full. The court will enter an order. Debtor's counsel will inform his client that no appearance is necessary.

24. [17-10292](#)-B-13 JORGE NAVARRO MOTION TO DISMISS CASE
MHM-1 3-16-17 [[19](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Unless the trustee's motion is withdrawn this matter will proceed as scheduled.

25. [16-14694](#)-B-13 MARICELA JIMENEZ CONTINUED MOTION TO DISMISS
CASE
MHM-1 2-22-17 [[25](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

This matter was continued to be heard with the continued motion to confirm a plan and will proceed as scheduled.

26. [16-14694](#)-B-13 MARICELA JIMENEZ CONTINUED MOTION TO CONFIRM
PLAN
TOG-1 2-13-17 [[17](#)]
MARICELA JIMENEZ/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.