

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, June 1, 2016
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 a civil minute 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. [16-10211](#)-B-7 TERRY CARGILL MOTION FOR RELIEF FROM
HAR-1 AUTOMATIC STAY
LEE FINANCIAL SERVICES/MV 4-29-16 [[50](#)]
PATRICK KAVANAGH/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

2. [16-11224](#)-B-7 RYAN/MELODY MURPHY
LMK-1
360 MORTGAGE GROUP, LLC/MV
MARK ZIMMERMAN/Atty. for dbt.
LESLIE KLOTT/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-3-16 [[14](#)]

The motion will be granted based on well-pled facts. 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 and there was no opposition. The debtors' default 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 proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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). No appearance is necessary.

3. [15-12834](#)-B-7 JOHN HARRIS
JES-1
JAMES SALVEN/MV

MOTION TO EMPLOY BAIRD'S
AUCTIONS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
4-29-16 [[50](#)]

JERRY LOWE/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

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

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 employment of the auctioneer and the sale will be approved subject to the compensation specified in the motion and limited to expenses in the amount of \$250.

4. [16-10736](#)-B-7 MARISOL VALDEZ

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
4-12-16 [[17](#)]

This OSC will be vacated. No appearance is necessary. The record shows that an order approving waiver of the fee has been issued.

5. [15-12948](#)-B-7 RAYMOND RENTERIA
BMJ-2
ANTONETTE GUTIERREZ/MV
HENRY NUNEZ/Atty. for dbt.
MARK POOCHIGIAN/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO CONFIRM VALIDITY OF
SETOFF RIGHT
5-2-16 [[43](#)]

The hearing on this motion will proceed as scheduled and will proceed as a status conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rules of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall immediately commence formal discovery, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include:

1. The value of the debtor's interest;
2. The capacity of the trust to potential set-off;
3. The extent or quantification of alleged "waste;"
4. The amount, if any, of rent collected by the debtor.

The legal issues appear to include:

1. The availability of a right to set-off after discharge;
2. Whether the judgment by the state court for fees and costs is a "debt" of this debtor subject to set-off;
3. The trust's right to set-off a debt against a life estate.

6. [16-11358](#)-B-7 R.L. JOHNSON & CO., INC.
JES-1 DBA MANAGEMENT RECRUITERS
JAMES SALVEN/MV

MOTION TO EMPLOY JEFFERY S.
BAIRD AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
5-3-16 [[6](#)]

MICHAEL ARNOLD/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 employment of the auctioneer and the sale will be approved subject to the compensation specified in the motion and limited to expenses as proved.

7. [11-11465](#)-B-7 ROBERT SILVA
WVB-2
ROBERT SILVA/MV
RILEY WALTER/Atty. for dbt.

MOTION TO AVOID LIEN OF TEXTRON
FINANCIAL CORPORATION
5-4-16 [[52](#)]

This matter will be continued to June 22, 2016, at 9:30 a.m. The court will prepare a minute order. No appearance is necessary.

On or before June 15, 2016, the debtor shall file evidence to show that the debtor possessed an interest in the subject property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991).

8. [12-11768](#)-B-7 ANGEL PICENO
MAZ-4
ANGEL PICENO/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

MOTION TO AVOID LIEN OF JP
MORGAN CHASE BANK, N.A.
4-28-16 [[43](#)]

This matter has been withdrawn. No appearance is necessary.

9. [16-10872](#)-B-7 GREG KNUDSON
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
4-27-16 [[12](#)]

JOEL WINTER/Atty. for dbt.

This matter will proceed as scheduled. Based on counsel's declaration, the non-appearance by the debtor was pursuant to counsel's advice. Based on the court's inquiry at the hearing, absent other issues the court intends to order the debtor to appear at the continued meeting of creditors or the case may be dismissed on the trustee's declaration.

Counsel shall advise his client of this tentative ruling.

10. [14-14593](#)-B-7 WAYNE HEAD
TGM-4
PETER FEAR/MV

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-27-16 [[84](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

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 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 FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

It appears from the record that the debtor did not appear at his scheduled § 341 meeting of creditors and that he is not cooperating with the trustee regarding property of the estate. Accordingly, the uncontroverted evidence shows that "cause" exists to grant the trustee's motion brought under FRBP 4004(b)(1) to extend the time, to September 15, 2016, for the U.S. Trustee or the chapter 7 trustee to file a motion pursuant to § 727 objecting to the debtor's discharge.

10:30 A.M.

1. [15-14017](#)-B-11 CLUB ONE CASINO, INC. STATUS CONFERENCE RE: COMPLAINT
[15-1146](#) 12-1-15 [[1](#)]
KMGI, INC. ET AL V. LONG ET AL
ORI KATZ/Atty. for pl.

This matter will proceed as scheduled. Telephonic appearances will be permitted.

2. [15-14017](#)-B-11 CLUB ONE CASINO, INC. ORDER TO SHOW CAUSE REGARDING
[15-1146](#) DISMISSAL OF ADVERSARY
KMGI, INC. ET AL V. LONG ET AL PROCEEDING
5-17-16 [[46](#)]

This matter will proceed as scheduled. Telephonic appearances will be permitted.

3. [15-14017](#)-B-11 CLUB ONE CASINO, INC. CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
10-14-15 [[1](#)]
HAGOP BEDOYAN/Atty. for dbt.

This matter will proceed as scheduled. Telephonic appearances will be permitted.

4. [15-14017](#)-B-11 CLUB ONE CASINO, INC. CONTINUED PRE-TRIAL CONFERENCE
WW-2 RE: MOTION FOR ABSTENTION
ELAINE LONG/MV AND/OR MOTION TO DISMISS CASE ,
MOTION TO APPOINT TRUSTEE
11-21-15 [[178](#)]

HAGOP BEDOYAN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled. Telephonic appearances will be permitted.

5. [15-14017](#)-B-11 CLUB ONE CASINO, INC. CONTINUED MOTION TO CONSOLIDATE
WW-3 LEAD CASE 15-14017 WITH
ELAINE LONG/MV 15-14021
11-21-15 [[189](#)]

HAGOP BEDOYAN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled. Telephonic appearances will be permitted.

6. [15-14021](#)-B-11 CLUB ONE ACQUISITION
CORP.

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
10-14-15 [[1](#)]

T. BELDEN/Atty. for dbt.

This matter will proceed as scheduled. Telephonic appearances will be permitted.

7. [15-14021](#)-B-11 CLUB ONE ACQUISITION
WW-2 CORP.
ELAINE LONG/MV

CONTINUED PRE-TRIAL CONFERENCE
RE: MOTION FOR ABSTENTION
AND/OR MOTION TO DISMISS CASE ,
MOTION TO APPOINT TRUSTEE
11-21-15 [[52](#)]

T. BELDEN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.

This matter will proceed as scheduled. Telephonic appearances will be permitted.

8. [15-14021](#)-B-11 CLUB ONE ACQUISITION
WW-3 CORP.
ELAINE LONG/MV

CONTINUED MOTION TO CONSOLIDATE
LEAD CASE 15-14017 WITH
15-14021
11-21-15 [[46](#)]

T. BELDEN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.

This matter will proceed as scheduled. Telephonic appearances will be permitted.

1:30 P.M.

1. [16-10302](#)-B-13 JASON/ASHLEY WILLIAMS MOTION TO DISMISS CASE
MHM-1 4-29-16 [[25](#)]
MICHAEL MEYER/MV
RANDY RISNER/Atty. for dbt.
WITHDRAWN

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

2. [16-10505](#)-B-13 ROCIO STINER MOTION TO DISMISS CASE
MHM-1 4-27-16 [[28](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

The motion will be granted. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

3. [16-10928](#)-B-13 MONICA ROMERO MOTION TO DISMISS CASE
MHM-1 4-28-16 [[15](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
WITHDRAWN

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

4. [16-10030](#)-B-13 KEITH/TAWNEY HIGGINS
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
4-29-16 [[23](#)]

TIMOTHY SPRINGER/Atty. for dbt.
CASE DISMISSED

The objection will be overruled as moot. The case has already been dismissed. No appearance is necessary.

5. [16-10030](#)-B-13 KEITH/TAWNEY HIGGINS
MHM-3

MOTION TO DISMISS CASE
4-29-16 [[27](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
CASE DISMISSED

The motion will be denied without prejudice as moot. The case has already been dismissed. No appearance is necessary.

6. [16-10934](#)-B-13 DORETHA BROWN
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
4-28-16 [[19](#)]

The motion will be granted. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 that the debtor has failed to provide the trustee with required documentation including, but not limited to, a Class 1 Mortgage Checklist with payment coupon or last statement; her 2015 State and Federal Tax Returns; proof of all income, i.e., pay advices; profit and loss statements; rental income; unemployment compensation; social security income; disability; and retirement for the six months prior to filing. [11 U.S.C. §521(a)(3)(4)]. The debtor has also failed to set a plan for hearing with notice to creditors and has failed to file a complete and accurate plan and schedules.

Accordingly, the case will be dismissed for cause shown.

7. [15-14735](#)-B-13 JAYCE/LISA LEWIS
JRL-1
JAYCE LEWIS/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
4-14-16 [[46](#)]

This matter will proceed as scheduled. In the absence of opposition presented at the hearing, the court intends to deny the debtors' motion to confirm the chapter 13 plan. It appears from the record that the April 2016 payment has not been made and the May 2016 payment will be due prior to this hearing.

Further, the court intends to set August 11, 2016, as a bar date by which time a plan must be confirmed or the case will be dismissed on the trustee's declaration.

8. [15-13539](#)-B-13 TIMOTHY/SHARON TEGTMEYER
EPE-1
TIMOTHY TEGTMEYER/MV
ERIC ESCAMILLA/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF FRESNO
CREDIT BUREAU, CLAIM NUMBER 5
4-26-16 [[36](#)]

This objection will be overruled. This dispute concerns the amount, validity, and priority of the respondent's claim that can only be resolved with an evidentiary record. The objection does not comply with LBR 3007-1(a) in that the objecting party did not submit evidence to establish the factual allegations demonstrating that the proof of claim should be disallowed.

The court notes that the moving papers were not served pursuant to LBR 3007-1(b), which requires 44 days notice unless the objecting party elects to give notice permitted by LBR 3007-1(b)(2). However, the claimant filed a written opposition to the objection and so waived that defect.

9. [16-11144](#)-B-13 CARLOS NAVARRETTE
APN-1
WELLS FARGO BANK, N.A./MV
TIMOTHY SPRINGER/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
5-10-16 [[24](#)]

This matter will be continued to June 16, 2016, at 1:30 p.m. The court will prepare and enter a civil minute order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. If the § 341 has been concluded and this objection has not been withdrawn by the next hearing, on June 16, 2016, the court will call the matter and set an evidentiary hearing.

10. [16-10358](#)-B-13 ADAM/CHRISTINA RAMIREZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-16-16 [[51](#)]

The required fees shall be paid in full by June 8, 2016, or the case will be dismissed without further notice. No appearance is necessary.

11. [16-10358](#)-B-13 ADAM/CHRISTINA RAMIREZ OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
5-3-16 [[43](#)]

This matter will proceed as scheduled. If the debtors are current on their chapter 13 plan payments at the time of the hearing, then the court intends to overrule the objection, if it is not withdrawn, and confirm the plan. If the debtors are not current, then the court intends to sustain the objection to plan confirmation.

12. [16-10358](#)-B-13 ADAM/CHRISTINA RAMIREZ MOTION TO DISMISS CASE
MHM-2 5-3-16 [[47](#)]
MICHAEL MEYER/MV

This matter was fully noticed and there was no objection. The debtors' default will be entered.

After the hearing on the trustee's objection to confirmation the court will rule on this motion to dismiss. The court intends to deny the motion without prejudice if the debtors are current on their chapter 13 plan payments at the time of the hearing. However, if the debtors are not current on their chapter 13 plan payments, then the court intends to grant the motion to dismiss the case.

13. [16-10866](#)-B-13 MICHELLE YORK
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

AMENDED MOTION TO DISMISS CASE
5-3-16 [[27](#)]

This matter will proceed as scheduled. The court has reviewed the debtors' response and intends to deny the motion, without prejudice, based on the following:

1. It now appears that the tax returns have been submitted to the trustee;
2. Not later than May 31, 2016, the debtor will submit a month-by-month profit and loss statement covering the period from September 1, 2015, through February 29, 2016;
3. The grant deed to the debtor's cabin, not in the possession of the debtor, will be provided to the trustee by May 31, 2016;
4. The promissory note secured by the above deed of trust is not in possession of the debtor. A copy of this document will be requested from the mortgage holder and the debtor will supply the trustee with a copy of her credit report showing the original amount of the note, the status of payments, and the current balance;
5. A completed "Business Case Questionnaire" was submitted to the trustee on April 6, 2016.

14. [16-10866](#)-B-13 MICHELLE YORK
PJL-2
PEOPLEASE HOLDINGS, INC./MV
DAVID JENKINS/Atty. for dbt.
PAUL LAURIN/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-4-16 [[41](#)]

This motion will be continued to June 23, 2016, at 1:30 p.m., to provide time for the movant to comply with the court's local rules and guidelines. The court will enter a civil minute order. No appearance is necessary.

The moving papers were not filed in compliance with the U.S. Bankruptcy Court, E.D. of California, Revised Guidelines for the Preparation of Documents (Revised August 12, 2015), including: Section III, A and D; Section IV, A, B, and C.

The court notes that no finding is needed under §362(e) as the motion does not relate to property of the debtor but relates to state court litigation; the motion was filed on May 4, 2016, and it is being heard within 30 days. Even if such a finding was necessary there is no harm to movant since the pending trial date in the state court litigation is not until on or after July 10, 2016. The stay should not preclude debtor's participation as a third-party witness in conformance with the law of the forum state. See, *Groner v. Miller (In re Miller)*, 262 B.R. 499 (9th Cir. BAP, 2001); *In re Kenoyer*, 489 B.R. 103, 117-122 (Bankr. Ct., N.D. Cal., 2013).

15. [16-11167](#)-B-13 MICHAEL/ASHLEY ESPINOSA OBJECTION TO CONFIRMATION OF
MDE-1 PLAN BY TOYOTA MOTOR CREDIT
TOYOTA MOTOR CREDIT CORPORATION
CORPORATION/MV 5-13-16 [[15](#)]
SCOTT LYONS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

This matter will be continued to July 21, 2016, at 1:30 p.m., a date after the continued §341 meeting. The court will prepare and enter a civil minute order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. If the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

16. [16-10778](#)-B-13 JASON ATHERTON AND MOTION TO DISMISS CASE
MHM-1 GENZZIA DOVIGI-ATHERTON 4-27-16 [[15](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

The motion will be granted. No appearance is necessary. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 have failed to provide the trustee with 2015 Tax Returns and have failed to commence making plan payments. Accordingly, the case will be dismissed for cause shown.

17. [16-11579](#)-B-13 LETICIA BAEZA
TCS-1
LETICIA BAEZA/MV
TIMOTHY SPRINGER/Atty. for dbt.
OST 5/19/16

MOTION TO EXTEND AUTOMATIC STAY
5-19-16 [[11](#)]

This motion will proceed as scheduled. The Motion to Extend the Automatic Stay was properly set for hearing as provided in the 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.

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 record shows that the prior case was dismissed because the debtor failed to make payments when they came due under her plan.

The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c). "This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, 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*.

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 debtor's declaration that her financial situation has changed since her fiancé, a member of the military, will help ensure that her plan payments are timely made. It also appears that the automatic stay is necessary to protect her automobile. 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. After the hearing, the court will issue a minute order.

18. [13-12985](#)-B-13 OSWALDO BARAJAS AND ERICA MOTION TO MODIFY PLAN
GH-5 CARDENAS-NAVA 4-14-16 [[82](#)]
OSWALDO BARAJAS/MV
GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

Based on the debtors' response to the trustee's opposition, the motion will be granted. No appearance is necessary. The debtors 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 and 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.

In addition, the proposed order shall include the language included in Section III, "Trustee's Recommendation/Analysis."

19. [15-14288](#)-B-13 GEORGE/JULIETTE ROBERTS RESCHEDULED HEARING RE: MOTION
DRJ-2 TO CONFIRM PLAN
GEORGE ROBERTS/MV 3-13-16 [[28](#)]
DAVID JENKINS/Atty. for dbt.
ORDER 4/6/16, RESPONSIVE
PLEADING

This matter will proceed as scheduled. If the trustee's opposition is resolved as described in Section III, "Trustee's Recommendation/Analysis" at the hearing then the court intends to grant the motion and confirm the chapter 13 plan.

This motion to confirm a chapter 13 plan was fully noticed in compliance with the Local Rules and the non-opposing respondents' default will be entered. A proposed confirmation order shall be submitted after the hearing and shall include the docket control number of the motion and reference the plan by the date it was filed.

20. [16-10188](#)-B-13 CINDY PAYAN
JDW-1
CINDY PAYAN/MV
JOEL WINTER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GOLDEN 1 CREDIT UNION
4-29-16 [[21](#)]

The motion will be granted without oral argument based upon well-pled facts. The debtor 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 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 FRBP 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 debtor 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.

21. [16-10294](#)-B-13 LINA CONTRERAS
AP-1
WELLS FARGO BANK, NA/MV

WILLIAM ROMAINE/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, NA
3-29-16 [[33](#)]

This matter will be continued to July 21, 2016, at 1:30 p.m. No appearance is necessary. The debtor has filed a modified chapter 13 plan and the plan to which this objection relates is deemed withdrawn.

The court notes that the debtor has not yet set the modified plan for a confirmation hearing.

22. [16-10294](#)-B-13 LINA CONTRERAS
MHM-1
MICHAEL MEYER/MV
WILLIAM ROMAINE/Atty. for dbt.

MOTION TO DISMISS CASE
4-29-16 [[45](#)]

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

23. [11-16697](#)-B-13 RONALD/DONNA HOFFART
RS-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FINANCIAL RELIEF
LAW CENTER FOR RICHARD
STURDEVANT, DEBTORS ATTORNEY(S)
5-18-16 [[178](#)]

ANDY WARSHAW/Atty. for dbt.

This motion will be denied. The court will enter a civil minute order. No appearance is necessary.

The notice period fails to comply with Federal Rule of Bankruptcy Procedure 2002(a)(6).

The exhibits were not filed in compliance with the U.S. Bankruptcy Court, E.D. of California, Revised Guidelines for the Preparation of Documents (Revised August 12, 2015), including: Section III, C and D; Section IV, B and C.

In addition, the fees are not categorized as required.

Finally, the motion is ambiguous with regard to the movant's agreement with the debtors. The fee agreement attached to the motion states that it is a "flat fee" agreement, however the "flat fee" is listed as "\$0," while there is an hourly rate listed for services that are "outside the scope of this Agreement" of \$300, however agreements for these services "require a separate written agreement." No such agreement appears in the record.

24. [14-12397](#)-B-13
PBB-2
WILLY JIMENEZ/MV
PETER BUNTING/Atty. for dbt.
CASE DISMISSED

WILLY JIMENEZ
MOTION TO MODIFY
PLAN
4-27-16 [[48](#)]

This motion will be denied as moot. The case has already been dismissed. No appearance is necessary.