

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 13, 2017
Place: U.S. Courthouse, 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.
3. Matters Resolved Without Opposition:

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

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

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

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

9:00 A.M.

1. [17-11502](#)-B-13 LANCE PADILLA
 RSW-1
 LANCE PADILLA/MV

 ROBERT WILLIAMS/Atty. for dbt.
- MOTION TO VALUE COLLATERAL OF
 AMERICREDIT FINANCIAL SERVICES,
 INC.
 6-22-17 [[13](#)]

Based on the respondent's opposition, this matter will be continued to August 3, 2017, at 9:00 a.m. This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The debtor shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date. The court will issue an order. No appearance is necessary.

2. [17-11005](#)-B-13 LINDA SNYDER

 SUSAN SALEHI/Atty. for dbt.
 DISMISSED
- ORDER TO SHOW CAUSE - FAILURE
 TO PAY FEES
 5-25-17 [[33](#)]

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

3. [17-11005](#)-B-13 LINDA SNYDER
 SJS-1
 LINDA SNYDER/MV
 SUSAN SALEHI/Atty. for dbt.
 DISMISSED
- MOTION TO CONFIRM PLAN
 5-18-17 [[28](#)]

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

4. [16-11209](#)-B-13 MOISES PALMA
 PLG-9
 MOISES PALMA/MV
 STEVEN ALPERT/Atty. for dbt.
 WITHDRAWN
- CONTINUED MOTION TO MODIFY PLAN
 5-4-17 [[105](#)]

The debtor's motion to modify the chapter 13 plan has been withdrawn. No appearance is necessary.

5. [17-10023](#)-B-13 RODNEY/VICKI SLATER
PK-4
RODNEY SLATER/MV

MOTION TO VALUE COLLATERAL OF
WILSHIRE COMMERCIAL CAPITAL,
LLC
6-9-17 [[53](#)]

PATRICK KAVANAGH/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 debtor is competent to testify as to the value of the 2006 Nissan Armada. 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 \$500. 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. [17-11723](#)-B-13 MICHAEL/LUCIA LOPEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-7-17 [[16](#)]

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.

7. [17-11723](#)-B-13 MICHAEL/LUCIA LOPEZ
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
SEAN FERRY/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR DEUTSCHE BANK
NATIONAL TRUST COMPANY
6-16-17 [[26](#)]

If this case is not dismissed pursuant to the OSC, calendar number 6, doc. # 16, then this objection will be overruled without prejudice. If the case is dismissed pursuant to the OSC, then this matter will be dropped from the calendar as moot. 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).

In addition, the moving papers were not filed in compliance with LBR 9014-1(e) (3).

The court notes that 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.

The court will issue an order. No appearance is necessary.

8. [17-11723](#)-B-13 MICHAEL/LUCIA LOPEZ
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
6-13-17 [[21](#)]

If this case is dismissed pursuant to the OSC, calendar number 6, doc. # 16, then the motion will be dropped from calendar as moot. If the case is not dismissed pursuant to the OSC, then the trustee's 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.

The record shows there has been unreasonable delay by debtors that is prejudicial to creditors in that the debtors have failed to appear at their §341 meeting of creditors and have failed to provide the trustee with the required documentation. In addition, the debtors have failed to file complete and accurate schedules, the plan was filed incomplete, and the debtors have failed to provide credit counseling certificates. Accordingly, the case will be dismissed.

9. [15-10233](#)-B-13 PEDRO/ZENAIDA NAVEIRAS
LKW-7

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
6-21-17 [[225](#)]

LEONARD WELSH/Atty. for dbt.

This motion was filed and served pursuant to LRB 9014-1(f)(2) and 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 LRB 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

10. [16-10433](#)-B-13 DEAN GALLOWAY
RSW-1
DEAN GALLOWAY/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN,

MOTION TO MODIFY PLAN
6-6-17 [[21](#)]

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. The trustee's opposition has been withdrawn and the defaults of all other respondents 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.

11. [17-10336](#)-B-13 ROBERT DUNCAN
MHM-1
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE
6-5-17 [[45](#)]

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the case will be dismissed. The record shows that there is a material default in the chapter 13 plan payments that has not been cured.

12. [17-11636](#)-B-13 SYLVIA CASTRO
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
6-13-17 [[16](#)]

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the case will be dismissed. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. The record shows that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a) (3) & (4).

13. [13-18038](#)-B-13 MARK MOORE AND TAMILEE
RSW-4 DERINGTON-MOORE
TAMILEE DERINGTON-MOORE/MV

NOTICE OF DEATH OF A DEBTOR,
MOTION FOR SUBSTITUTION AS
SUCCESSOR FOR DECEASED DEBTOR
6-7-17 [[137](#)]

ROBERT WILLIAMS/Atty. for dbt.

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. This was noticed per (f)(1) and no opposition was filed.

The request for substitution of the co-debtor as the debtor's successor will be granted. The motion for waiver of the certification requirements will be denied. There is no evidence that debtor's successor is unable to provide such certifications. LRB 1016-1(4). The court will deem the motion to be one also for continued administration of the chapter 13 case and will grant that motion. FRBP 1016.

14. [13-15149](#)-B-13 DENVER/BRENDA LATHAM
DMG-3
DENVER LATHAM/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
5-31-17 [[63](#)]

The Motion to Modify Plan has been withdrawn. No appearance is necessary.

15. [14-13564](#)-B-13 LEE/DEBORAH MCDOWELL
PK-9

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
6-22-17 [[166](#)]

PATRICK KAVANAGH/Atty. for dbt.

This matter will proceed as scheduled.

16. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-11
SHELBY KING/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
4-24-17 [[233](#)]

Pursuant to the court's order entered June 8, 2017, this plan is deemed to have been withdrawn and the motion will be denied as moot. The court will enter an order. No appearance is necessary.

17. [14-15878](#)-B-13 GORDON/DEBI LAIRD
RSW-3
GORDON LAIRD/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN,

MOTION TO MODIFY PLAN
5-15-17 [[62](#)]

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. The trustee's opposition has been withdrawn and the defaults of all other respondents 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.

18. [12-11479](#)-B-13 DAVID/JANELL COOLIDGE
MHM-1

OBJECTION TO DISCHARGE BY
MICHAEL H. MEYER
5-19-17 [[53](#)]

PATRICK KAVANAGH/Atty. for dbt.

Unless the trustee's objection is withdrawn prior to the hearing, this matter will proceed as scheduled.

19. [16-12580](#)-B-13 EDWARD PADILLA
RSW-3

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LABORERS LOCAL
AND THE HARTFORD
6-1-17 [[29](#)]

ROBERT WILLIAMS/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.

20. [16-11594](#)-B-13 MICHAEL/PAULA COUNTER
PLG-1
PAULA COUNTER/MV
RABIN POURNAZARIAN/Atty. for dbt.

MOTION TO APPROVE NOMINATION OF
DEBTOR'S REPRESENTATIVE
5-24-17 [[25](#)]

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

Local Bankruptcy Rule 1016-1 provides:

When the debtor has died or has become incompetent prior to a closing of a bankruptcy case, the provisions of Federal Rule of Civil Procedure 18(a) [Fed. R. Bankr. P. 7018, 9014(c)] apply to the following claims for relief which may be requested in a single motion:

- (1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025]; (applicable to APs and contested matters)
- (2) Continued administration of a case under chapter 11, 12, or 13 [Fed. R. Bank. P. 1016];
- (3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- (4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328]

The debtor's motion does not state what specific relief, other than appointment as a representative, is requested. Additional authority requested needs to be specified under Local Bankruptcy Rule 1016-1. A general appointment of a representative is not sufficient.

9:30 A.M.

1. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION
HAR-1 CORPORATION
UNITED SECURITY BANK/MV
T. BELDEN/Atty. for dbt.
HILTON RYDER/Atty. for mv.
- CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-15-17 [[114](#)]

Based on the order approving stipulation filed July 6, 2017, this matter has been continued to September 14, 2017, at 9:30 a.m., in Fresno, California. No appearance is necessary.

2. [17-10238](#)-B-11 SILO CITY, INC.
- JACOB EATON/Atty. for dbt.
- CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
1-25-17 [[1](#)]

The hearing will proceed as scheduled. Based on the status report, the court will inquire about the status of the proposed lease and the debtor's plans to collect the unpaid lease payments from 7th Standard.

3. [16-13849](#)-B-12 DON FALLERT
- D. GARDNER/Atty. for dbt.
- CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
10-24-16 [[1](#)]

The hearing will proceed as scheduled.

4. [16-13849](#)-B-12 DON FALLERT
DMG-7
DON FALLERT/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO CONFIRM CHAPTER 12
PLAN
5-31-17 [[147](#)]

The hearing will proceed as scheduled.

5. [15-13167](#)-B-12 DOUG KOPHAMER FARMS
LKW-22
- LEONARD WELSH/Atty. for dbt.
- MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
6-15-17 [[369](#)]

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. [17-11591](#)-B-11 5 C HOLDINGS, INC.
SW-1
ALLY BANK/MV
LEONARD WELSH/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-14-17 [[82](#)]

This matter has been resolved by a stipulation between the parties and order of the court. No appearance is necessary.

7. [17-11591](#)-B-11 5 C HOLDINGS, INC.
SW-2
ALLY BANK/MV
LEONARD WELSH/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-14-17 [[88](#)]

This matter has been resolved by a stipulation between the parties and order of the court. No appearance is necessary.

10:00 A.M.

1. [17-10026](#)-B-7 FRYE CONSTRUCTION, INC. MOTION TO EMPLOY PHILLIP
PWG-1 GILLET, JR. AS ATTORNEY(S)
JEFFREY VETTER/MV 5-18-17 [[20](#)]
LEONARD WELSH/Atty. for dbt.

This matter was filed and served pursuant to LBR 9014-1(f)(2) and will proceed as scheduled.

2. [16-11031](#)-B-7 GILBERT/OLIVIA GARCIA MOTION FOR COMPENSATION BY THE
KDG-3 LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB &
KIMBALL, LLP TRUSTEES
ATTORNEY(S)
5-31-17 [[79](#)]

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.

3. [17-11455](#)-B-7 PIERPOINT SPRINGS, LLC CONTINUED MOTION FOR RELIEF
JLG-1 FROM AUTOMATIC STAY
BANK OF THE SIERRA/MV 5-17-17 [[15](#)]
PETER FEAR/Atty. for dbt.
JESSICA GIANNETTA/Atty. for mv.

The hearing will proceed as scheduled. The tentative ruling is below.

Tentative Ruling-The motion will be DENIED. The court will issue an order.

Bank of the Sierra ("BOTS") requests stay relief to complete the non-judicial foreclosure of a commercial property located at 801 Highway 190, Camp Nelson, CA ("the property") on two grounds. First, BOTS alleges there is no equity in the property and under §362 (d)(2), stay relief should be granted. Second, under § 362 (d)(1), BOTS claims "cause" exists for stay relief since their interest is not adequately protected as the debtor has not paid any payments since October 2016 and the loan which is secured by the property is due and payable. BOTS also alleges "cause" for relief exists because the debtor filed the petition in bad faith. BOTS evidences

this ground referencing two quitclaim deeds: one from the debtor to Apostolic World Evangelism and Fellowship (an alleged affiliate) dated December 16, 2016 and one from "Apostolic World" to the debtor dated April 18, 2017 just before the filing of this case.

BOTS filed this motion on May 17, 2017. BOTS elected to notice the hearing under LBR 9014-1 (f) (2) which requires no opposition be filed before the hearing. Also, under LBR 4001-1 (a) (1) the time constraints of 11 U.S.C. § 362 (e) do not apply. At the first hearing, the trustee appeared and opposed the motion. The debtor has not opposed the motion. The court's tentative ruling at the first hearing May 31, 2017 was to grant the motion. Since the trustee appeared and opposed the motion, the court continued the hearing and set a briefing schedule. The trustee and BOTS have submitted their briefs and evidence and the record is now closed.

The trustee wants to market the property. The trustee claims the property is worth more than the amount due BOTS (BOTS is owed approximately \$312,000 as of May 16, 2017 according to BOTS' evidence (Doc. # 17)). The trustee references a LOI dated May 21, 2017 proposing a purchase for \$477,000. However, the trustee admits no formal offer has been made. The trustee has hired a broker who has listed the property at \$485,000. (Doc. # 34).

BOTS' motion on the grounds of lack of equity and necessity of the property for a reorganization (§ 362 (d) (2)) is DENIED. Under § 362 (g) BOTS has the burden of proof on the debtor's lack of equity in the property. The only evidence submitted by BOTS on this issue is the declaration of Mike McLennan (Doc. # 17) who references a "restricted" appraisal prepared by "a certified appraiser," Dennis L. Schneider (Doc. # 18). Mr. Schneider opines the value of the property is \$300,000. The appraisal is inadmissible hearsay FRE 802. Mr. McLennan is not a qualified expert on property valuation (See FRE 702). His duties at BOTS as a senior vice president do not include property appraisals, according to the evidence. Thus, Mr. McLennan's statements about the value of the property are not based on his perceptions but on the "restricted" appraisal. Since he is not an expert, Mr. McLennan's statements on the subject of value referencing the appraisal are inadmissible. Thus BOTS has no evidence as to the "equity" in the property and thus the motion fails on this ground for lack of proof.

Independently, even if the appraisal could be considered, it is not persuasive. First, the report is internally inconsistent. In one portion of the report, Mr. Schneider states there were no transfers for three years before the effective date of the appraisal. But in the previous paragraph he referenced the transfer between the debtor and "Apostolic World." Second, the report itself represents that the conclusions of the appraiser are not supported by data included in the report. Third, the report says Mr. Schneider "gathered information" on sales of improved property but there is no evaluation as to the "information's" similarity with the property. Fourth, the report states the description of the improvements is from a 2008 inspection. However, Mr. Schneider's description of the exterior improvements occurred on March 8, 2017.

BOTS' request that the court take judicial notice of Schedule D (Doc. #11) is of no assistance. The debtor claims the value of the property is \$550,000. The court does not find a value for the property. It is not necessary since BOTS did not prove a lack of equity.

BOTS' motion on the grounds that "cause" exists to grant relief is also DENIED. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the automatic stay must be determined on a case by case basis." *MacDonald v. MacDonald*, (In re *MacDonald*), 755 F. 2d 715, 717 (9th Cir. 1985). The lack of adequate protection is one of the many types of "cause" warranting relief. *Ellis v. Parr* (In re *Ellis*), 60 B.R. 432, 435 (9th Cir. BAP 1985). "The party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362 (d) (1). Once a prima facie case has been established, the burden shifts to the debtor (or trustee) to show that relief from the stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the stay should be denied." *In re Advanced Med. Spa Inc.*, No. BAP EC-16-1087, 2016 WL 6958130, at *4 (9th Cir. BAP Nov. 28, 2016). BOTS failed to meet their burden of proof for the following reasons.

First, there is no evidence that the property is depreciating in value. This is due, in part, to the fact that BOTS has not proven a lack of equity. See, *United Sav. Ass'n Of Tex. v. Timbers of Inwood Assocs., Ltd.*, 484 U.S. 365 (1988). A secured creditor is not entitled to demand as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. *In re Delta Resources, Inc.*, 54 F. 3d 722, 730 (11th Cir. 1995). There is no proof how, if at all, BOTS is harmed while the trustee is marketing the property.

Second, BOTS has not established any harm as a result of lack of payment at this time. "A debtor's persistent failure to make payments, standing alone, may constitute adequate cause for relief from the stay." *In re Marques*, 547 B.R. 841, 844 (B. Ct. C.D. CA 2016), citing *In re Aguilar*, BAP No. CC-14-1071-PaTaKu, 2014 WL 6981285, at *4 (9th Cir. Dec. 10, 2014) *aff'd* 677 F. App'x 328 (9th Cir. 2017). The evidence is the debtor stopped paying in October 2016 and that the loan is all due. This is not persistent failure to pay especially in light of the trustee's attempt to market the property and her assurance that the property will not be sold unless all liens are paid in full. (Doc. # 34). The lack of evidence on equity and no evidence concerning any danger to the property strongly militates against relief from stay at this time.

Third, BOTS' "bad faith" argument lacks merit. Lack of good faith in the filing of the bankruptcy petition is cause for stay relief. *In re Arnold*, 806 F. 2d 937, 939 (9th Cir. 1986); *In re Duvar Apt. Inc.*, 205 B.R. 196, 200 (9th Cir. BAP 1996). Bad faith depends on an amalgam of factors and not upon a specific fact. *Arnold* at 939 citing *Matter of Little Creek Development Co.*, 779 F. 2d 1068, 1072 (5th Cir. 1986). [In making a good faith determination] the court should examine the debtor's financial status, the debtor's motives and the local economic environment. *Arnold*, at 939. Good faith is lacking if the debtor's actions are a clear abuse of the bankruptcy process. *Id.*

The only factor relied upon by BOTS is the ill-advised transfers from the debtor to an affiliate and back to the debtor just before the filing of

the case. However, BOTS speculates about the debtor's motives for the transfers. There is no evidence of a "new debtor" syndrome or such similar activity. No "pattern of misconduct" is evidenced. BOTS has not articulated any "clear abuse of the bankruptcy process." In addition, BOTS says that the transfer was done to hinder their foreclosure but, in fact the property was transferred *back to the debtor* before filing, so there is no harm to BOTS evidenced either.

While substantive harm or harm to a creditor's procedural rights in addition to the debtor's bad faith justifies relief from the stay, *In re Yukon Enter. Inc.*, 39 B.R. 919, 921 (B. Ct. C.D. CA 1984) and *Duvar Apt.* 205 B.R. at 200, BOTS has articulated no harm except delay in pursuing their foreclosure. In considering harm to a creditor, delay in and of itself does not constitute bad faith. *Duvar* at 201 citing *In re Thirtieth Place, Inc.*, 30 B.R. 503, 506 (9th Cir. BAP 1983).

The motion is DENIED.

4. [17-10965](#)-B-7 DAVID/JESSICA CHAVEZ
JSP-2
DAVID CHAVEZ/MV
JOSEPH PEARL/Atty. for dbt.

MOTION TO DISMISS DUPLICATE
CASE
6-8-17 [[15](#)]

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. [17-11966](#)-B-7 ERICA CALISTRO
APN-1
SANTANDER CONSUMER USA INC./MV
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-15-17 [[14](#)]

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 and no insurance is protecting the collateral.

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

6. [17-11276](#)-B-7 BRIGIDO MORENO- MARTINEZ MOTION TO AVOID LIEN OF MIDLAND
DMG-1 AND SONIA RUIZ-MORENO FUNDING, LLC
BRIGIDO MORENO- MARTINEZ/MV 5-24-17 [[16](#)]
D. GARDNER/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. [17-11276](#)-B-7 BRIGIDO MORENO- MARTINEZ MOTION TO AVOID LIEN OF
DMG-2 AND SONIA RUIZ-MORENO PORTFOLIO RECOVERY ASSOCIATES,
BRIGIDO MORENO- MARTINEZ/MV LLC
5-24-17 [[21](#)]
D. GARDNER/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. [17-12187](#)-B-7 PAUL/JOAMY BALDERAS ORDER TO SHOW CAUSE - FAILURE
WILLIAM EDWARDS/Atty. for dbt. TO PAY FEES
\$335.00 FILING FEE PAID 6-16-17 [[14](#)]
6/20/17

The OSC will be vacated. The record shows that the required fee has been paid in full. No appearance is necessary.

9. [17-12193](#)-B-7 HENRY GALINATO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-19-17 [[20](#)]

The OSC is vacated. The debtor applied for a fee waiver which was denied. The court issued an order approving payment of filing fee in installments on July 7, 2017. The court will issue an order. No appearances is necessary.

10. [17-10335](#)-B-7 CHRISTOPHER COLE
RSW-1
CHRISTOPHER COLE/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF GEICO
CASUALTY COMPANY
6-29-17 [[21](#)]

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.

11. [16-12581](#)-B-7 JUAN/MARIA MARTINEZ
RSW-1
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO RECONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
6-29-17 [[44](#)]

This matter will proceed as scheduled.

11:00 A.M.

1. [17-11800](#)-B-7 BRANDON RANDLE PRO SE REAFFIRMATION AGREEMENT
WITH KERN FEDERAL CREDIT UNION
6-12-17 [[12](#)]

This matter will proceed as scheduled.

2. [17-10974](#)-B-7 DOREEN MADDOX REAFFIRMATION AGREEMENT WITH
AMERICAN HONDA FINANCE CORP.
5-25-17 [[19](#)]

ROBERT WILLIAMS/Atty. for dbt.

This reaffirmation agreement will be dropped from calendar without a disposition. Debtor's counsel will inform debtor that no appearance is necessary.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed March 19, 2017, and the lease was not assumed by the chapter 7 trustee within 60 days, 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.

3. [17-10951](#)-B-7 SARAH LAWRENCE PRO SE REAFFIRMATION AGREEMENT
WITH WESTLAKE FINANCIAL
SERVICES
6-27-17 [[21](#)]

This matter will proceed as scheduled.

1:30 P.M.

1.	<u>17-10029</u> -B-7	ERNESTO/MARTHA LOPEZ	MOTION FOR ENTRY OF DEFAULT
	<u>17-1003</u>	UST-1	JUDGMENT
	U.S. TRUSTEE V. LOPEZ ET AL		5-19-17 [<u>21</u>]
	GREGORY POWELL/Atty. for mv.		

The motion will be granted without oral argument based upon well-pled facts. The U.S. Trustee shall submit a proposed judgment 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 bankruptcy case has already been dismissed, however the defendants will be enjoined from filing, individually or jointly, another bankruptcy case in the Eastern District of California for a period of two years from January 6, 2017, without first seeking and receiving the authorization of the chief bankruptcy judge of the Eastern District of California. The Clerk of the Bankruptcy Court, and deputy clerks, operating at the discretion and control of the Clerk of the Court in the Eastern District of California, will be authorized to reject any petition attempted to be filed by defendants during the two year period if there is not prior authorization from the chief bankruptcy judge of the Eastern District of California.

2.	<u>16-11072</u> -B-13	ELLYN LOPEZ	CONTINUED PRE-TRIAL CONFERENCE
	<u>16-1073</u>		RE: AMENDED COMPLAINT
	LOANME, INC. V. LOPEZ		9-22-16 [<u>23</u>]
	DAVID BRODY/Atty. for pl.		
	RESPONSIVE PLEADING		

The record shows that this matter has been resolved pursuant to a stipulation between the parties. No appearance is necessary.

3. [16-10687](#)-B-13 HEATHER LEMA
[17-1040](#)
LEMA V. JP MORGAN CHASE BANK
ET AL
D. GARDNER/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
4-5-17 [[1](#)]

Based on the plaintiff's status report filed July 6, 2017 (Doc. #15), defendant JP Morgan Chase and the plaintiff will stipulate to dismissal of the adversary proceeding, however recordation of the reconveyance may take up to 90 days. This status conference will be continued to October 5, 2017, at 1:30 p.m. The plaintiff shall file and serve the status report on or before September 28, 2017. If a fully executed dismissal is filed before September 28, 2017, the continued status conference will be vacated. No appearance is necessary.

4. [17-10393](#)-B-7 JAMETTE BELL
[17-1049](#)
BELL V. NTAR ENTERPRISES
JAMETTE BELL/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
5-18-17 [[1](#)]

This matter will proceed as scheduled.