

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, August 31, 2017  
Place: Department B - Courtroom #13  
Fresno, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a) (FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS 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. [17-12721](#)-B-11 AVALON CARE CENTER - STATUS CONFERENCE RE: CHAPTER  
CHOWCHILLA, LLC 11 VOLUNTARY PETITION  
7-17-17 [[1](#)]  
HAGOP BEDOYAN/Atty. for dbt.

NO RULING.

2. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION CHAPTER 11 SMALL BUSINESS DISCLOSURE STATEMENT FILED BY DEBTOR PACE DIVERSIFIED CORPORATION 7-20-17 [[215](#)]
- T. BELDEN/Atty. for dbt.

NO RULING.

3. [17-11028](#)-B-11 PACE DIVERSIFIED  
BBR-7 CORPORATION  
PACE DIVERSIFIED  
CORPORATION/MV  
T. BELDEN/Atty. for dbt.

MOTION TO EXTEND EXCLUSIVITY  
PERIOD TO SOLICIT ACCEPTANCE OR  
REJECTION OF CHAPTER 11 PLAN  
7-20-17 [[217](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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 exclusivity periods under §1121(c) (3) will be extended 120 days and debtor will retain the exclusive right to seek acceptance or rejection of a plan through and including January 17, 2018.

4. [15-10039](#)-B-12 ANGELA PIMENTEL  
DRJ-6

MOTION BY DAVID R. JENKINS TO  
WITHDRAW AS ATTORNEY  
8-16-17 [[154](#)]

DAVID JENKINS/Atty. for dbt.

**TENTATIVE RULING**      This matter will proceed as scheduled.

**DISPOSITION:**            Granted.

**ORDER:**                    The moving party shall submit a proposed order after hearing consistent with the ruling below.

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 LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

5. [15-10039](#)-B-12 ANGELA PIMENTEL  
WW-1  
LUIS OLIVEIRA/MV  
DAVID JENKINS/Atty. for dbt.  
RILEY WALTER/Atty. for mv.  
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-1-17 [[146](#)]

**TENTATIVE RULING:** The hearing will proceed as scheduled.

**DISPOSITION:** The hearing will be continued to November 1, 2017 at 9:30 am. Any additional opposition to the motion shall be filed and served on or before October 18, 2017. Any reply to the additional opposition shall be filed and served on or before October 25, 2017. Before the next hearing, the debtor shall: (1) Amend all schedules to accurately reflect movant's claim; (2) file and serve a modified plan providing for movant's claim; (3) file and serve a motion permitted by law to avoid some or all of movant's lien, if necessary.

**ORDER:** The court will prepare the order.

Luis and Angela C. Oliveira ("Movants") and judgment creditors seek relief from the automatic stay to execute on real property (18177 Road 10 1/2 Chowchilla, CA) owned by Angela Pimentel ("the Debtor") for "cause" pursuant to 11 U.S.C. 362 § (d) (1). Movants filed a late claim and no objection has been made to the claim (the "Claim"). The "cause" asserted is the Debtor's failure to schedule the Claim in this case and the failure of the Debtor's confirmed chapter 12 plan to provide for the Claim.

In the Debtor's opposition she explains that the Claim was not scheduled because the Debtor believed the passage of time (the judgment is over 15 years old), the execution sale of another asset (dairy quota) over 12 years ago, and the Movant's failure to schedule this Claim in the Movants' previous (dismissed) Chapter 11, case led the debtor to reasonably conclude the Claim was either abandoned or legally unenforceable. Debtor also contends stay relief would be harmful to both her bankruptcy case and all creditors since the real property is necessary for the Debtor's reorganization in the chapter 12 case. She also asserts Movants were "lying in wait," delaying until now to assert their rights, and that a personal property lien search conducted by a title company did not reveal Movant's judgment. She finally says that she can modify the plan and perhaps set aside a portion of Movants' claimed lien because it interferes with Debtor's homestead exemption.

First, Movants have established a "colorable" claim to property of the bankruptcy estate. A party seeking stay relief need only establish a colorable claim to enforce a right against property of the estate. *In re Edwards*, 454 BR 100, 105 (9th Cir. BAP 2011) quoting *In re Veal*, 450 BR

897, 914-15 (9th Cir. BAP, 2011) and *Biggs v. Stovin (In re Luz Int'l Ltd)* 219 BR 837, 842 (9th Cir. BAP 1998). There is no dispute Movants have a judgment, that Movants recorded an abstract of judgment, that the abstract encumbers estate property, and that Movants renewed the judgment. Therefore, at the time Debtor filed this case the judgment had already been perfected. The Claim was not scheduled and the confirmed plan does not provide for the Claim. This constitutes sufficient proof of a "colorable" claim against property of the bankruptcy estate.

Second, Debtor's "defenses" to the enforceability of the claim are beyond the scope of a stay relief motion. Relief from stay proceedings are primarily procedural in nature, "they determine whether there are sufficient countervailing equities to release an individual creditor from the collective stay. One consequence of this broad inquiry is that a creditor's claim or security is not finally determined in a relief from stay proceeding." *Veal* at 914-15 (citations omitted). The issues involved in a stay motion are "limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization." *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985) *overruled on other grounds by Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007). Debtor raises several defenses to enforceability of Movant's claim and lien, including expiration of judgment, waiver of claim, estoppel to assert claim, equitable relief from the judgment, and so forth. These "defenses" go to the extent and validity of the judgment lien or are claims for affirmative equitable relief; each must be asserted in an adversary proceeding. FRBP 7001(2), (7) and (9).

Third, the Debtor has, for now, met her burden of proof in opposing the motion on the issue of "cause" for relief from stay. A party seeking relief from stay "for cause" must first establish cause exists, *In re Reisbeck*, 505 BR 546, 552 (Bank. Mont. 2014) citing *U.S. v. Gould (In re Gould)* 401 BR 415, 426 (9th Cir. BAP 2009) citing *Duvar Apt. Inc. v. FDIC (In re Duvar Apt. Inc.)* 205 BR 196, 200 (9th Cir. BAP 1996). Once a *prima facie* case has been established, the burden shifts to the Debtor to show that relief from the stay is not warranted. *Id.* "Cause" for stay relief is a generic concept without a specific definition that is committed to the sound discretion of the bankruptcy court on a case-by-case basis. *In re City of Stockton*, 484 BR 372 citing *Benedor Corp. v. Conejo Enters. Inc.*, 96 F 3d 346, 351-52 (9th Cir.1996). Movant has set forth a case for stay relief as indicated. The Debtor, however, has a basis to dispute "cause." Here, it appears that both parties operated under a mistake of law. The Movants contend they did not list the claim in their prior bankruptcy case because they believed it was not enforceable. Not until much later did they discover that their state court attorneys had renewed the judgment. Debtor also was mistaken about the enforceability of the judgment.

"A fundamental maxim of equity jurisprudence is 'one who seeks equity must do equity.'" *Dickson, Carlson & Camillo v. Pole*, 83 Cal.App.4th 436, 445 (2000). "This maxim means that a court will not grant equitable relief unless the plaintiff acknowledges or provides for the defendants equitable rights arising from the same subject matter." *Miller v. Washington Mutual Bank FA*, 776 F.Supp.2d 1064, 1076 (N.D.Ca. 2011). There is no mistake greater than the other here. The court notes that Movants are currently debtors in a chapter 12 case assigned to this court's other department (17-10427). In that case Movants list their judgment against the Debtor (Doc. # 33). In the context of this motion and at this time, the court is not convinced stay relief is appropriate. However, the reprieve for the Debtor is fleeting.

Fourth, the tasks for the Debtor to complete before the continued hearing are equitable under the circumstances. Ordinarily, "adequate protection" is the calculus to judge various equities applicable to a stay relief motion based on "cause." Adequate protection is not in play here since Movant is making no claim that the property at issue is depreciating or is not receiving proper care. No competent evidence of value has been presented. 11 U.S.C. § 362(d) permits a court to grant relief from stay "such as by . . . conditioning such stay . . . ." Certain circumstances "require the court to consider other interests (on a stay relief motion) and permits a flexible approach as circumstances may require." *Mila, Inc.*, 423 BR 537, 542 (9th Cir.BAP 2010), *BLX Group, Inc.*, 419 BR 457, 470 (Bank. Mont. 2009) ["(section) 362 vests this court with wide latitude in granting appropriate relief from the automatic stay"]. Here, Movants have a judgment that is nearly 15 years old and still accruing interest. According to the record, no action has been taken to enforce the judgment since the dairy quota sale twelve years ago. The property is necessary for the Debtor to perform under the terms of the chapter 12 plan. The debtor's options in dealing with the lien include, modification of the plan, correction of the schedules, and, if necessary, filing a motion affecting the lien if the lien impairs an exemption. The court is placing a time limit on these actions, appropriate given the Debtor's failure to list the Claim in the schedules or provide for the Claim in the plan. While other creditors will be prejudiced if the property is sold at an execution sale, at the same time Movants have colorable rights to enforce and should not be held in abeyance indefinitely.

Fifth, the court finds compelling circumstances for continuing the hearing to November 1, 2017, under 11 U.S.C. §362(e). In addition to the reasons set forth above, the court notes the Debtor will be without counsel after this hearing. The tasks the Debtor must accomplish will be very difficult to accomplish without counsel. The approximately sixty day continuance accommodates that reality. Also, should circumstances change and Movants discover additional facts suggesting cause exists for earlier relief, they are free to bring another motion.

Sixth, no attorney's fees will be awarded on this motion. Movants request attorney's fees, however there is nothing in the record to support that

claim. Even if fees were permissible under 11 U.S.C. § 506(b), which has not been established, Movant's judgment, the basis of the lien claim, does not provide for an award of attorney's fees. Accordingly, they will not be awarded. See FRBP 7054(b) (2) and 9014(c).

6. [11-15795](#)-B-12 EPIGMENIO JIMENEZ  
TOG-15  
EPIGMENIO JIMENEZ/MV  
THOMAS GILLIS/Atty. for dbt.

CONTINUED MOTION FOR ENTRY OF  
DISCHARGE  
7-5-17 [[121](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The clerk's office will enter a discharge in the normal course of the case.

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.

1:30 P.M.

1. [17-12401](#)-B-13 MAHYANTI JOHNSON  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE  
8-10-17 [[35](#)]

**TENTATIVE RULING** This matter will proceed as scheduled.

**DISPOSITION:** Unless the trustee's motion is withdrawn prior to or at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

**ORDER:** The minutes of the hearing will be the court's findings and conclusions.

This matter was noticed pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondent's default 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.

2. [17-11004](#)-B-13 SANTIAGO/VELIA VALDOVINOS  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS  
CASE  
7-14-17 [[46](#)]

**FINAL RULING** There will be no hearing on this matter.

**DISPOSITION:** Denied as moot.

**ORDER:** No appearance is necessary. The court will issue an order.

The basis for the trustee's motion was the failure of the debtors to confirm a chapter 13 plan. In light of the court's intent to grant the debtors' motion to confirm a plan, the motion will be denied.



3. [17-11004](#)-B-13 SANTIAGO/VELIA VALDOVINOS MOTION TO CONFIRM PLAN  
TOG-3 7-19-17 [[50](#)]  
SANTIAGO VALDOVINOS/MV  
THOMAS GILLIS/Atty. for dbt.

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

4. [17-13004](#)-B-13 JACQUELINE SCOTT MOTION TO EXTEND AUTOMATIC STAY  
RSW-1 8-17-17 [[14](#)]  
JACQUELINE SCOTT/MV  
ROBERT WILLIAMS/Atty. for dbt.

**TENTATIVE RULING**       This matter will proceed as scheduled.

**DISPOSITION:**            Granted.

**ORDER:**                    The minutes of the hearing will be the court's findings and conclusions.

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 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).

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. It appears that the dismissal of the prior case was not attributable to the debtor and that the automatic stay is necessary to protect the debtor's home. Accordingly, the motion will be granted and the automatic stay extended for all purposes, as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order after the hearing.

5. [17-12305](#)-B-13 AMY DICKINSON CAMPBELL MOTION TO DISMISS CASE  
MHM-1 AND ERIC CAMPBELL 7-28-17 [[25](#)]  
MICHAEL MEYER/MV

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The court will enter an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there has been unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the trustee with the required documentation; failure to provide Credit Counseling Certificates, and failure to file a feasible plan. Accordingly, the case will be dismissed.

6. [16-12309](#)-B-13 ELVIRA SABANGAN  
FW-3  
ELVIRA SABANGAN/MV  
GABRIEL WADDELL/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
8-3-17 [[40](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

The motion will be granted without oral argument. This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. The court does not approve or disapprove the terms of a mortgage modification outside of a chapter 13 plan. See *In re Wofford*, 449 B.R. 362 (Bankr. W.D. Wis. 2011). However, the court will authorize the debtor to enter into a modification agreement on terms to be negotiated between the debtor and the mortgagee so long as modification of the mortgage does not interfere with the debtor's duties and trustee's administration of the chapter 13 plan. The debtor must file and confirm a modified plan if this modification affects the debtor's performance under the current operative plan.

7. [17-12214](#)-B-13 KENNETH/JANE HOSTETLER  
MHM-1  
MICHAEL MEYER/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
7-28-17 [[34](#)]

**TENTATIVE RULING**      This matter will proceed as scheduled.

**DISPOSITION:**            Unless the trustee's motion is withdrawn prior to or at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

**ORDER:**                    The minutes of the hearing will be the court's findings and conclusions.

This matter was noticed pursuant to LBR 9014-1(f)(1) and a timely response was filed. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion; the debtors failed to file documents as required.

8. [17-12215](#)-B-13 GEORGE/BERENICE ARABIAN  
TCS-1  
GEORGE ARABIAN/MV  
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO STRIKE REAFFIRMATION  
AGREEMENT BY DEVON'S JEWELERS  
7-18-17 [[17](#)]

**FINAL RULING**                    There will be no hearing on this matter.

**DISPOSITION:**                    Granted.

**ORDER:**                            No appearance is necessary. The Moving Party shall  
submit a proposed order in conformance with the ruling  
below.

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 respondent's default will be entered.

It appears from the unopposed motion that the reaffirmation agreement was filed in absence of consent by, and signatures of, either the debtors or their counsel.

9. [17-12216](#)-B-13 THERESA CASTRO  
MHM-1  
MICHAEL MEYER/MV  
HENRY NUNEZ/Atty. for dbt.

MOTION TO DISMISS CASE  
7-28-17 [[18](#)]

**FINAL RULING**                    There will be no hearing on this matter.

**DISPOSITION:**                    The motion has been withdrawn.

**NO ORDER REQUIRED**            No appearance is necessary. The motion has been  
withdrawn.

10. [17-12121](#)-B-13 TERRY/ROBBIE JANNEY  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE  
7-27-17 [[29](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The court will enter an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there has been unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the trustee with the required documentation; failure to make all payments due under the plan; failure to file complete and accurate schedules and statements, and failure to provide Credit Counseling Certificates. Accordingly, the case will be dismissed.

11. [17-11124](#)-B-13 OLUSEGUN LERAMO  
FJA-1  
OLUSEGUN LERAMO/MV  
FRANCISCO ALDANA/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM  
PLAN  
6-5-17 [[27](#)]

**FINAL RULING**                    **There will be no hearing on this matter.**

**DISPOSITION:**                    **Denied without prejudice.**

**ORDER:**                            **No appearance is necessary. The court will issue an order.**

This matter was continued for the debtor to file a written response to the trustee's objection to confirmation, by August 17, 2017, or to file, serve, and set for hearing, a modified chapter 13 plan by August 24, 2017. Pursuant to the prior order entered July 27, 2017, providing that if the debtor failed to do either of the above, the motion would be denied without further hearing, the motion is denied without further hearing.

Although the debtor filed a modified plan on August 24, 2015, the record does not show that the plan was served on anyone or set for a hearing. In addition, the plan does not have a correct DC# (LBR 9014-1(c)) Docket Control Number FJA-1 has already been used.

12. [17-12235](#)-B-13 ROGER/FLORA STRICKLAND  
MHM-1  
MICHAEL MEYER/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE  
7-31-17 [[20](#)]

**FINAL RULING**                    There will be no hearing on this matter.

**DISPOSITION:**                    Granted.

**ORDER:**                            No appearance is necessary. The court will enter an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there has been unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the trustee with all of the required documentation. Accordingly, the case will be dismissed.



13. [17-10236](#)-B-13 PAUL/KATHLEEN LANGSTON  
FW-4  
PAUL LANGSTON/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
7-19-17 [[75](#)]

**FINAL RULING**                    There will be no hearing on this matter.

**DISPOSITION:**                    Continued to September 28, 2017, at 1:30 p.m.

**ORDER:**                            No appearance is necessary. The court will issue an order.

Based on the respondents' opposition, this matter will be continued to September 28, 2017, at 1:30 p.m. Unless the plan is confirmed at the continued hearing, the hearing will proceed as a scheduling conference. 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 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 if the matter is not resolved by the continued hearing date.

If the plan will not be in a position to be confirmed at the scheduled hearing, status conference statements shall be filed and served by the debtors and the objecting party on or before September 21, 2017. If the plan is not confirmed at the continued hearing, the court will enter a bar date by which time the debtors must confirm a plan or the case will be dismissed.

14. [17-12146](#)-B-13 EDGAR/REEANA CANSECO  
MHM-1  
MICHAEL MEYER/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE  
7-31-17 [[19](#)]

**FINAL RULING**                    There will be no hearing on this matter.

**DISPOSITION:**                    The motion has been withdrawn.

**NO ORDER REQUIRED**            No appearance is necessary. The motion has been withdrawn.

15. [17-13047](#)-B-13 CAROL SHIELDS  
DRJ-2  
CAROL SHIELDS/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
8-16-17 [[10](#)]

**TENTATIVE RULING** This matter will proceed as scheduled.

**DISPOSITION:** Granted.

**ORDER:** The minutes of the hearing will be the court's findings and conclusions.

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 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).

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. It appears that the prior case was dismissed for failure to make installment payments on the filing fee and that there was a miscommunication between the debtor and counsel regarding the effect of a prior discharge. Accordingly, the motion will be granted and the automatic stay extended for all purposes, as to all parties who received notice, unless terminated by further order of this court. If opposition is

presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order after the hearing.

16. [17-11654](#)-B-13 JASON PHILLIPS  
MHM-3  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
DISMISSED

MOTION TO DISMISS CASE  
7-31-17 [[66](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            The case has already been dismissed.

**NO ORDER REQUIRED**    No appearance is necessary. An order dismissing the case has already been entered.

17. [17-11570](#)-B-13 GREGGORY KIRKPATRICK  
MHG-2  
GREGGORY KIRKPATRICK/MV  
MARTIN GAMULIN/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
7-14-17 [[32](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Continued to September 28, 2017, at 1:30 p.m.

**ORDER:**                    No appearance is necessary. The court will issue an order.

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. At the continued hearing, if the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

18. [16-13874](#)-B-13 RICHARD DOMENICI  
DRJ-4  
RICHARD DOMENICI/MV  
DAVID JENKINS/Atty. for dbt.

MOTION TO SELL  
7-25-17 [[63](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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 respondent's default will be entered.

19. [17-12276](#)-B-13 RAY/MIRIAM VELASQUEZ  
MHM-1  
MICHAEL MEYER/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
7-28-17 [[18](#)]

**TENTATIVE RULING**       This matter will proceed as scheduled.

**DISPOSITION:**            Unless the trustee's motion is withdrawn prior to or at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

**ORDER:**                    The minutes of the hearing will be the court's findings and conclusions.

This matter was noticed pursuant to LBR 9014-1(f)(1) and a timely response was filed. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

20. [17-12377](#)-B-13 ROBIN VANTASSEL  
DWE-1  
WELLS FARGO BANK, N.A./MV  
DANE EXNOWSKI/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-1-17 [[21](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

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.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the case will be dismissed on the trustee's unopposed motion below at calendar number 21, DC# MHM-1.

The motion for relief under 11 U.S.C. §362(d)(4) will also be granted. It appears from the evidence submitted and from the record that the debtor's bankruptcy case was used as part of a scheme to delay, hinder, or defraud creditors that involved transfer of an interest in the subject real property and multiple bankruptcy filings affecting such real property.

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).

21. [17-12377](#)-B-13 ROBIN VANTASSEL  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE  
8-10-17 [[31](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The court will enter an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there has been unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the trustee with all of the required documentation; failure to file complete and accurate schedules, and failure to provide a Credit Counseling Certificate. Accordingly, the case will be dismissed.

22. [17-12082](#)-B-13 KEVIN THOMPSON  
MHM-1  
MICHAEL MEYER/MV  
JERRY LOWE/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO DISMISS CASE  
7-27-17 [[20](#)]

**TENTATIVE RULING**      This matter will proceed as scheduled.

**DISPOSITION:**            Unless the trustee's motion is withdrawn prior to or at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

**ORDER:**                    The minutes of the hearing will be the court's findings and conclusions.

This matter was noticed pursuant to LBR 9014-1(f)(1) and a timely response was filed. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

23. [16-12690](#)-B-13 KIMBERLY SHACKELFORD  
SAH-4  
KIMBERLY SHACKELFORD/MV  
SUSAN HEMB/Atty. for dbt.

CONTINUED MOTION TO MODIFY PLAN  
6-13-17 [[94](#)]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

24. [12-17599](#)-B-13 JAMES LOVELACE  
JDW-9  
JAMES LOVELACE/MV  
JOEL WINTER/Atty. for dbt.

MOTION TO APPROVE LOAN  
MODIFICATION  
8-15-17 [[117](#)]

**TENTATIVE RULING**      This matter will proceed as scheduled.

**DISPOSITION:**            Granted.

**ORDER:**                    The moving party shall submit a proposed order after hearing consistent with the ruling below.

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 LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The record shows that the payments under the plan have been completed.

25. 17-11059-B-13 SHANNON/LESLIE BAKER  
SAH-2  
SHANNON BAKER/MV  
SUSAN HEMB/Atty. for dbt.

CONTINUED MOTION TO CONFIRM  
PLAN  
7-7-17 [49]

**FINAL RULING**            There will be no hearing on this matter.

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall  
submit a proposed order in conformance with the ruling  
below.

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.