

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, January 5, 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 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.

9:00 A.M.

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| 1. 16-13605 -B-13 VICTORIA PILKINGTON
RSW-1
VICTORIA PILKINGTON/MV
ROBERT WILLIAMS/Atty. for dbt. | MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK
12-9-16 [18] |
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This motion will be denied without prejudice. No appearance is necessary. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 28 days' notice. The language in the notice requires written response within 14 days of the hearing, therefore the motion was also not filed in compliance with LBR 9014-1(f)(2).

The court notes that the respondent filed a conditional non-opposition on December 22, 2016.

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| 2. 16-12407 -B-13 KEVIN/NICCOLE LOUISE
MHM-2 STONE
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt. | CONTINUED MOTION TO DISMISS
CASE
10-27-16 [29] |
|--|--|

Unless it is withdrawn before the hearing, the trustee's motion to dismiss the case will be denied as moot. No appearance is necessary.

The trustee's motion to dismiss is based on the debtors' failure to file and set for hearing a motion to value the junior deed of trust on the debtors' residence and was continued to this date to provide the debtors with an opportunity to file such motion. In light of the motion filed on the calendar below at number 3, DC# PWG-2, which the court intends to grant, it appears that no further relief is necessary or appropriate.

3. [16-12407](#)-B-13 KEVIN/NICCOLE LOUISE
PWG-2 STONE
KEVIN STONE/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
U.S. BANK NATIONAL ASSOCIATION
12-6-16 [[46](#)]

The motion will be granted without oral argument based upon well-pled facts. The debtors 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 of Practice 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 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.

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 debtors 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.

4. [16-13810](#)-B-7 ALBINA BELMONTE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-28-16 [[21](#)]

\$80.00 INSTALLMENT FEE PAID
11/29/16, CONVERTED 11/29/16

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.

5. [16-13416](#)-B-13 EDGAR MIRELES
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
11-9-16 [[20](#)]

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 a civil minute 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.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors in that the debtor has failed to set a plan for hearing with notice to creditors. § 307(c)(1). Accordingly, the case will be dismissed.

6. [15-10928](#)-B-13 DAVID FOX
DMG-6

MOTION FOR COMPENSATION FOR D.
MAX GARDNER, DEBTORS
ATTORNEY(S)
12-2-16 [[125](#)]

D. GARDNER/Atty. for dbt.

This matter will proceed as scheduled. The motion was fully noticed and the defaults of responding parties will be entered.

Tentative Ruling: The motion will be denied without prejudice. The court may issue further orders as set forth below.

The court cannot enter an order approving fees that have not been accounted for in a way that the court can understand.

The application requests approval of compensation for the period from May 27, 2015, through November 29, 2016. The debtor's chapter 13 petition, however, was filed on March 11, 2015, 2-1/2 months before the beginning date of services that are the subject of this application. No order authorizing compensation in this case has been issued and the moving papers and the record are inconsistent regarding the receipt and application of fees in this case.

It appears that the applicant has "opted out" of payment pursuant to LBR 2016-1(c) and instead has agreed to "seek the court's approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R.

Bankr. P. 2002, 2016, and 2017." Pursuant to "The Disclosure of Compensation of Attorney for Debtor(s)" filed on March 25, 2015, the applicant received a \$2,500 retainer (the exhibits to the application show this was pursuant to a check written by the debtor on the same day that the petition was filed). The Disclosure states that \$1,298 was paid prior to the filing of the case. Consistent with this, is the local form, EDC 3-096, also filed by the applicant, "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys," which states that \$1,298 was paid by the debtor prior to the filing of the petition. (The court notes that the Rights and Responsibilities form is intended for use in cases under which attorneys have opted to be paid the "No-Look" fee, and so contains many terms that are inconsistent with, and conflict with, the fee agreement between the applicant and the debtor.) Unclear is whether this is an additional payment or whether it is included in the \$2,500. These two documents indicate that, when the petition was filed, the applicant held \$1,202 in trust (\$2,500-\$1,298). However, the application recites that no funds are still held in trust.

In addition, the optional "Fee Application EDC Fresno (Version 1.02 7/29/2013)," page 3, shows no hours and no fees for the first three project categories. This is inconsistent with the exhibit showing the fees charged for this work which appears to total 4.5 hours, amounting to \$1,327.50. Of this amount, only \$442.50 in fees was incurred prior to the filing of the petition. Accordingly, it appears that the applicant should have been holding \$2,057.50 in trust when the petition was filed.

The court also notes that the fee agreement between the applicant and the debtor provides for an hourly rate of \$235 per hour, however the applicant's invoice shows all work was charged at an hourly rate of \$295. In addition, the fee agreement provides for a "flat rate" for some work, including, "Assistance with 1 or 2 Reaffirmations-\$350." This is inconsistent with the applicant's "opt out" of the "no-look" flat rate provided for in LBR 2016-1(c), in that it is not possible for the court to approve fees based on reasonableness when those requested fees are not in connection with time records. In addition, although summarized by project category, the court cannot review the fees for reasonableness when the time records are not categorized by project category.

Despite the fact that no order for compensation has been sought or issued, it appears that the \$2,500 pre-filing retainer was applied in total to the debtor's account on March 31, 2015, 20 days after the petition was filed, which is prohibited by LBR 2016-1(6). Also, at that time, the invoice shows that the balance owing on that date was only \$1,917.50. And, there is nothing in the time records and invoice attached to the application as an exhibit disclosing a pre-petition payment in the amount of \$1,298.

Without complete clarification of these inconsistencies, the court will set an OSC as to why the fees paid before and after the petition were not excessive pursuant to FRBP 2017 and whether any of the fees paid should be returned to the estate under 11 U.S.C. §327.

7. [16-13738](#)-B-13 SOPHIA GUILLEN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-18-16 [[18](#)]

This OSC, together with the OSC at calendar number 22, 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 OSCs will be vacated.

If the OSCs are 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.

8. [16-13738](#)-B-13 SOPHIA GUILLEN
RAS-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
MATTHEW CLARK/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
12-14-16 [[28](#)]

This matter will be continued to March 9, 2017, at 9:00 a.m. The court will issue 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. 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.

9. [16-13240](#)-B-13 EDWARD/SHARON RODGERS
WFM-1
CITIMORTGAGE, INC./MV

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
CITIMORTGAGE, INC
10-13-16 [[14](#)]

ROBERT WILLIAMS/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.

This objection will proceed as scheduled. The matter was continued to provide an opportunity to the movant to file an amended proof of service that complies with the Local Rules of Bankruptcy Practice, which has been done.

10. [15-14646](#)-B-13 RANDAL/GRETTA STUDY
DMG-3

MOTION FOR COMPENSATION FOR D.
MAX GARDNER, DEBTORS
ATTORNEY(S)
12-2-16 [[67](#)]

D. GARDNER/Atty. for dbt.

This matter will proceed as scheduled. The motion was fully noticed and the defaults of responding parties will be entered.

Tentative Ruling: The motion will be denied without prejudice. The court may issue further orders as set forth below.

This motion suffers from many of the same problems as the motion at calendar number 6, above, although the hourly rate in the fee agreement and the application are consistent here. However, the court cannot determine how or whether the debtors' payment, listed in the application as \$1,694 but appearing nowhere in the billing records, was applied, nor the disposition of the \$2,000 listed as the "Ch 13 Flat Fee \$2,000 Pmt" on October 1, 2015 in the invoice. In addition, an explanation of the original and three amended forms: "Disclosure of Compensation of Attorney for Debtor(s)" filed during a 12 month period is necessary.

Without complete clarification of these inconsistencies, the court will set an OSC as to why the fees paid before and after the petition were not excessive pursuant to FRBP 2017 and whether any of the fees paid should be returned to the estate under 11 U.S.C. §327.

11. [16-12653](#)-B-13 EDWARD HITTU
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO DISMISS CASE
11-29-16 [[16](#)]

This matter will proceed as scheduled.

12. [15-12954](#)-B-13 MICHAEL HALL
PK-2
MICHAEL HALL/MV

OBJECTION TO CLAIM OF MIDLAND
CREDIT MANAGEMENT, INC., CLAIM
NUMBER 2 AND/OR MOTION FOR
REQUEST FOR COPY OF CONSUMER
CREDIT AGREEMENT
11-1-16 [[108](#)]

PATRICK KAVANAGH/Atty. for dbt.

This hearing has been vacated and the matter resolved by stipulation of the parties and order of the court entered December 30, 2016. No appearance is necessary.

13. [16-11954](#)-B-13 LAVONE/CHRISTINE HUNTER MOTION TO CONFIRM PLAN
PK-3 11-22-16 [[62](#)]
LAVONE HUNTER/MV
PATRICK KAVANAGH/Atty. for dbt.

This motion will be set for a continued hearing on February 9, 2017, at 9:00 a.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than January 26, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 2, 2017. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

14. [14-13564](#)-B-13 LEE/DEBORAH MCDOWELL MOTION TO MODIFY PLAN
PK-8 11-18-16 [[153](#)]
LEE MCDOWELL/MV
PATRICK KAVANAGH/Atty. for dbt.

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

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

15. [16-12966](#)-B-13 ALLISON SMITH MOTION TO DISMISS CASE
MHM-2 11-9-16 [[49](#)]
MICHAEL MEYER/MV
SUSAN SALEHI/Atty. for dbt.
DISMISSED

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

16. [16-12168](#)-B-13 JENNIFER RIVAS
MHM-1
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO DISMISS CASE
11-17-16 [[43](#)]

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 a civil minute 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. The record shows that there is a material default in plan payments that has not been cured.

17. [16-13670](#)-B-13 FRANCISCO/REBECCA MENDOZA
NLG-1
KERN SCHOOL FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY KERN SCHOOLS FEDERAL
CREDIT UNION
12-1-16 [[14](#)]

This matter will be continued to March 9, 2017, at 9:00 a.m. The court will issue 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. 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. [16-13577](#)-B-13 MARIA BENAVIDEZ
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO DISMISS CASE
11-8-16 [[17](#)]

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

19. [16-14383](#)-B-13 DANIEL AMADOR
PK-1
DVP, LP/MV
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-15-16 [[11](#)]

This matter will proceed as scheduled. The debtor has filed an opposition to the motion.

Tentative Ruling: the court intends to enter the trustee's default and grant the motion for relief from stay.

The automatic stay will be 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 movant shall submit a proposed order after hearing that specifically describes 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 Rule 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).

20. [16-13489](#)-B-13 JIMMY CANNON
MHM-1
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO DISMISS CASE
11-8-16 [[31](#)]

Unless the trustee's motion is withdrawn, this matter will proceed as scheduled. The debtor has filed an opposition to the trustee's motion to dismiss.

21. [16-10391](#)-B-13 MICHAEL PFEIFFER
DMG-3

MOTION FOR COMPENSATION FOR D.
MAX GARDNER, DEBTORS
ATTORNEY(S)
11-30-16 [[59](#)]

D. GARDNER/Atty. for dbt.

This matter will proceed as scheduled. The motion was fully noticed and the defaults of responding parties will be entered.

Tentative Ruling: The motion will be denied without prejudice. The court may issue further orders as set forth below.

In addition to some of the deficiencies addressed in the prior pre-hearing dispositions, the period of time in this application for which fees are requested begins on the date of the debtor's §341 meeting of creditors. However, the invoice/time entries show that the applicant performed work and received payment prior to that date. In addition, although no fees have been approved in this case, the application states that none of the \$1,500 pre-petition payment was held in trust. The time entries show, however, that the fee agreement was signed on December 31, 2015, and that applicant had performed pre-petition services and paid the filing fee, at a total charge of \$1,254, leaving a \$246 credit balance at the time the petition was filed and the order for relief was entered.

In addition, the attorney fee disclosure statement, filed with the petition, appears to set a fixed fee for services of \$6,000, showing the payment of \$1,200 and listing as "Balance Due," \$4,800. This is inconsistent with the confirmed amended chapter 13 plan, filed on the same day, which shows, at 2.06, that additional fees of \$6,800 shall be paid through the plan after notice and hearing pursuant to the applicable bankruptcy statutes and rules.

The court also notes that, in each of the three cases for which applicant seeks compensation, the fee agreements between the applicant and his clients contain the following language appearing to waive a standard rule of contract construction to the detriment of the client:

Ambiguity. Neither this Contract nor any ambiguity hereunder shall be construed against the party drafting it, but shall be construed fairly and equitably as though it was the joint product of the parties." (Sic).

This provision appears to be contrary to California authority regarding attorney fee agreements. "Attorney fee agreements are evaluated at the time of their making and must be fair, reasonable and fully explained to the client. Such contracts are strictly construed against the attorney." (*Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033, 1037, citations omitted.) Citing *Alderman, Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365, 1370), says, "'This is because . . . the attorney as the drafter of the fee agreement, is deemed to have superior knowledge in such matters.'" The *Alderman* court goes on to note, 'In order to protect clients and to assure fee agreements are fair and understood by clients, the Legislature enacted numerous statutes specifically delineating the required contents of most attorney fee agreements. (Bus. & Prof.Code, §§ 6146-6148.)'" See also, *In the Matter of Lindmark* (Review Dept.2004) 4 Cal. State Bar Ct. Rptr. 668, 676 (ambiguities in attorney-client fee agreements construed in client's favor and against attorney, who has superior knowledge); *In re Lindmark* (Review Depart. March 15, 2004), 2004 WL 541864. "Furthermore, it is well established that any ambiguities in attorney-client fee agreements are construed in the client's favor and against the attorney. (*Hollingsworth v. Lewis* (1928) 93 Cal .App. 526, 528.) In addition, the rule that ambiguities in a contract should be interpreted against the drafter applies with extra force when the contract has been drafted by the attorney."

Without complete clarification of these inconsistencies, the court will set an OSC as to why the fees paid before and after the petition were not excessive pursuant to FRBP 2017 and whether any of the fees paid should be returned to the estate under 11 U.S.C. §327.

22. [16-13738](#)-B-13 SOPHIA GUILLEN

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-18-16 [[34](#)]

This OSC will be called with calendar number 7, above.

23. 16-14506-B-13 STEPHANIE BRADICK
PK-1
ZIMMERMAN REAL ESTATE SERVICES
INC./MV
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-21-16 [10]

The motion for relief from the automatic stay under §362(d)(1) and (d)(2) will be denied as moot. This case has already been dismissed and no further available relief was requested. The court will enter a civil minute order. No appearance is necessary. This case filed December 16, 2016, was the debtor's second case pending within 12 months.

24. 14-11878-B-13 HOLLY DAVENPORT
RSW-4
HOLLY DAVENPORT/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO SELL AND/OR MOTION TO
INCUR DEBT
12-21-16 [69]

The motion will be denied without prejudice. The notice period fails to comply with Federal Rule of Bankruptcy Procedure 2002(a)(2) and no order shortening time was sought by movant. No appearance is necessary.

25. 16-14385-B-13 NANCY MCFADIN
SL-1
NANCY MCFADIN/MV
SCOTT LYONS/Atty. for dbt.
OST PENDING

MOTION TO EXTEND AUTOMATIC STAY
12-29-16 [18]

This matter will proceed as scheduled. Unless opposition is presented, the court intends to deny the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the 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 no opposition is offered at the hearing, the court will take up the merits of the motion. Based on the moving papers and the record, the court intends to deny the motion to extend the automatic stay.

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.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if Debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make any of the payments required under the plan. The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), citations omitted. Here, the evidence submitted by the debtor does not rebut the presumption of bad faith. Given the rationale for the prior dismissal, the court does not consider the debtor's declaration, devoid of any facts, as supporting evidence, as required by Local Rule of Bankruptcy Procedure 9014-1(d)(7), that the issue that precipitated the prior dismissal has been resolved.

In addition, in determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal.2006). Courts consider many factors - including those used to determine good faith under §§ 1307(c) 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? While the moving papers do not explain this, it appears from the record that the debtor is attempting to repay the issuer of a reverse mortgage funds advanced on her behalf to pay property taxes and homeowners insurance premiums.

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). There is no admissible evidence that the present plan is more likely to succeed than the plan filed in the prior case. There is no material change in the debtor's financial circumstances or in the plan terms.

9:30 A.M.

1. [16-13002](#)-B-12 WILLIAM/TRACY GREENLEE

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
8-17-16 [[1](#)]

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled. The court has reviewed the parties' status conference statements. It appears that the debtors have agreed to withdraw the proposed chapter 12 plan without the need of a formal objection.

The court notes that §1221 requires the debtors to file a chapter 12 plan within 90 days after filing the case, which date was November 15, 2016, unless the court grants a request for an extension. The court's discretion in this matter is limited. Although the debtors filed a chapter 12 plan within the time required, the withdrawal of the plan leaves the debtors without a pending plan for confirmation.

If the debtors do not obtain an extension to file a modified plan then the case may be converted, by the debtors only, or the case may be dismissed on request of either the debtors §1208 (a) and (b), or by a party. § 1208 (c) (5).

2. [16-13002](#)-B-12 WILLIAM/TRACY GREENLEE
LKW-2
WILLIAM GREENLEE/MV
LEONARD WELSH/Atty. for dbt.

MOTION TO CONFIRM CHAPTER 12
PLAN
11-11-16 [[46](#)]

This matter will proceed as scheduled.

3. [16-10643](#)-B-12 MARK FORREST
LKW-7

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
11-11-16 [[110](#)]

LEONARD WELSH/Atty. for dbt.

The motion will be deemed withdrawn without prejudice. The court will issue a civil minute order. No appearance is necessary.

This application was filed on November 11, 2016, and was denied without prejudice after hearing on December 6, 2016. The applicant's amended notice, filed on December 1, 2016, with a hearing date of January 5, 2017, in the caption, does not comply with LBR 9014-1(j) requiring court approval for a continuance.

10:00 A.M.

1. [12-18024](#)-B-7 MICHAEL BENGE
JMV-1
JEFFREY VETTER/MV

MOTION FOR COMPENSATION FOR
JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
12-7-16 [[67](#)]

FRANK SAMPLES/Atty. for dbt.
LISA HOLDER/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 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.

2. [16-13133](#)-B-7 JOYCELYN MAMAUAG
RDN-2
U.S. BANK TRUST, N.A./MV
VINCENT GORSKI/Atty. for dbt.
RANDALL NAIMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-16-16 [[33](#)]

This motion has been withdrawn. No appearance is necessary.

3. [16-13935](#)-B-7 KEVIN SNYDER
WFM-1
BANK OF AMERICA, N.A./MV
R. BELL/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-2-16 [[13](#)]

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. If the notice and motion requested a waiver of Federal Rule 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).

4. [16-13285](#)-B-7 PAUL COOPER
ELR-1

OPPOSITION/OBJECTION TO CHAPTER
7 TRUSTEE'S REPORT OF NO
DISTRIBUTION
12-6-16 [[26](#)]

ASHTON DUNN/Atty. for dbt.
ERIKA RASCON/Atty. for mv.
WITHDRAWN

This matter has been withdrawn. No appearance is necessary.

5. 16-13665-B-7 CHRISTOPHER/ANGELA
EGS-1 ELLENBURG
GUILD MORTGAGE COMPANY/MV
NEIL SCHWARTZ/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-20-16 [16]

This matter has been withdrawn. No appearance is necessary.

1:30 P.M.

1. [16-10016](#)-B-13 KEVIN DAVEY
[16-1074](#)
DAVEY V. OCWEN LOAN SERVICING,
LLC ET AL
VINCENT GORSKI/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: AMENDED
COMPLAINT
11-18-16 [[84](#)]

This matter will be continued to January 11, 2017, at 1:30 p.m., to be heard with the motion to dismiss the complaint set for that date on the Fresno calendar. No appearance is necessary.

2. [16-12965](#)-B-7 GREG SCOGGINS
[16-1098](#)
SCOGGINS V. NAVIENT SOLUTIONS,
INC.
SUSAN SALEHI/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT
10-11-16 [[1](#)]

This matter will proceed as scheduled.