

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, January 25, 2018
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. (Pacific time) 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. (Pacific time) 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 AM

1. [17-12857](#)-B-11 IN RE: SAC DEVELOPMENT, INC.
[RDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
1-11-2018 [[181](#)]

CIVIC HOLDINGS V-N TRUST/MV
JUSTIN HARRIS
REILLY WILKINSON/ATTY. FOR MV.
DEBTOR DISMISSED: 01/02/2018; CIVIC HOLDINGS V-N TRUST VS.

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 Moving Party shall submit a proposed order after hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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 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.

According to the Sindell declaration, after this case was filed the debtor purportedly lent funds to the owner of property in Berkeley, California discussed in the motion. If made, the loan was use of property of the estate without a court order in violation of 11 U.S.C. §363. The loan was secured by a deed of trust on property that was not owned by the debtor in this case. Also, the movant was not listed by the debtor as a creditor in this case. This case was dismissed on January 2, 2018.

Movant asks for stay relief, retroactive stay relief validating some post - petition acts, and prospective relief under 11 U.S.C. § 362(d)(4).

The proposed order shall specifically describe the property or action to which the order relates.

The order shall 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 that the case has been dismissed.

The request for adequate protection will be denied. Adequate protection is unnecessary in light of the relief granted herein.

The request for an award of attorney fees will be denied. Movant admits and the entire motion is based on a transaction that does not involve a contract between this debtor and movant. There is no contractual basis for the relief and movant does not provide evidence or authority establishing any other legal basis for an award of attorney's fees.

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

As for retroactive relief, "[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;

6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted). These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

The court grants the movant's request for retroactive relief. Factors number 3, 4, 6, 7, 10, 11, and 12 all lean towards granting retroactive relief.

The motion will be GRANTED. The stay is annulled to validate the post-petition notices and proceedings initiated by movant relating to the Berkeley property. Relief is also GRANTED under 11 U.S.C. § 362(d)(4).

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).

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**

STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION
9-30-2017 [[1](#)]

RILEY WALTER

NO RULING.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-14](#)

MOTION FOR ORDER FIXING BAR DATE FOR FILING PROOFS OF CLAIM
12-22-2017 [[290](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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. 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 general claims bar date will be April 10, 2018. Proofs of claim must be filed with the Clerk of the Bankruptcy Court, with copies sent to the Walter Wilhelm Law Group, at the following addresses:

Clerk of the Court
United States Bankruptcy Court
2500 Tulare Street, Rm. 2501
Fresno, CA 93721

Walter Wilhelm Law Group
205 E River Park Circle, Ste. 410
Fresno, CA 93720

Proofs of Claim will be deemed filed only when received by the Bankruptcy Court Clerk.

Within five court days of entry of the Order approving this motion, the Debtor will send by first-class mail the order and a notice of the Order and Bar Date and the other approved procedures and deadlines, along with a copy of Official Proof of Claim Form to all of its known creditors or potential creditors (as identified on the List of Creditors), all entities or persons that have filed a request for Special Notice, and the other parties required to be

served with notice of the Bar Date including any Committee that may be appointed in this case.

Within 10 court days of entry of an Order approving this Motion, the Debtor will publish the Notice one time in the "Visalia Times-Delta" to give notice to claimants of whom the Debtor is unaware of or of whom the Debtor does not have accurate, current address information.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-23](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
1-5-2018 [[309](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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 Moving Party shall submit a proposed order after hearing.

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 court finds that the debtor has used its best business judgment in determining to assume the contract with BETA Risk Management Authority, and the court authorizes the debtor to assume the contract. This motion is GRANTED.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-25](#)

MOTION FOR AUTHORIZING ASSUMPTION OF EXECUTORY CONTRACT
PURSUANT TO STIPULATION
1-11-2018 [[321](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

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 Moving Party
shall submit a proposed order after hearing.

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 court finds that the debtor has used its best business judgment in determining to assume the contract with Phoenix Health Systems, and the court authorizes the debtor to assume the contract. This motion is GRANTED.

1:30 PM

1. [17-13703](#)-B-13 **IN RE: TRINIDAD/JOSEFINA CONTRERAS**
[MHM-2](#)

MOTION TO DISMISS CASE
12-18-2017 [[30](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn 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. The court will issue an order.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and provided evidence that they made two plan payments. Both payments were two days late and the opposition, which is unverified, does not provide an excuse for the tardy payments. In fact the opposition is, in part, irrelevant as it mentions the tardy November 2017 payment when this motion was filed after the payment was received and does not list the November 2017 Plan payment as unpaid. The repetitive tardiness suggests the Plan, as confirmed, is not feasible and that is a basis to dismiss the case.

At the time of the hearing, an additional plan payment in the amount of \$955 will have come due. If the debtors are not current through January 25, 2018, then the court intends to dismiss the case.

2. [17-14303](#)-B-13 **IN RE: DAVID MACIAS**
[MHM-1](#)

MOTION TO DISMISS CASE
12-27-2017 [[18](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

ORDER: The court will issue 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 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 there has been unreasonable delay by the debtor that is prejudicial to creditors. It appears the debtor failed to appear at the scheduled 341 Meeting of Creditors, failed to provide the trustee with required documentation, and failed to file complete and accurate schedule H. Accordingly, the case will be dismissed.

3. [17-13005](#)-B-13 **IN RE: GREGORY/SHELLEY SNELLA**
[NES-2](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
12-22-2017 [\[38\]](#)

GREGORY SNELLA/MV
NEIL SCHWARTZ

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

DISPOSITION: Denied without prejudice.

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

This motion is denied without prejudice for lack of evidence. The motion states that the "value of the collateral" is stated in the debtors' declaration, but it is not - the declaration makes no statements on the value of the property. Docket #40. The debtors' declaration does not even reference the property. The only reference is in the motion where the movant references the schedules and the Plan. Neither is sufficient. The declaration does not reference anything. Even if it did, the Plan says the valuation is based on "Zillow" estimates which are not authenticated. Also, the debtors' are not qualified as "experts" who can base their opinion on a "third party source."

The only other "evidence" provided is their chapter 13 plan, but as stated the court cannot take the plan on its face as evidence of the value of the property. Therefore, this motion is DENIED WITHOUT PREJUDICE.

4. [17-14209](#)-B-13 **IN RE: AHARON/GRANUSH GASPARIAN**
[MHM-1](#)

MOTION TO DISMISS CASE
12-27-2017 [[25](#)]

MICHAEL MEYER/MV
KARNEY MEKHITARIAN

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

DISPOSITION: Granted.

ORDER: The court will issue 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 debtors that is prejudicial to creditors. It appears the debtors failed to provide the trustee with required documentation. Accordingly, the case will be dismissed.

5. [17-14011](#)-B-13 **IN RE: JUAN/MARIA PEREZ**
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE
CORPORATION
12-27-2017 [[25](#)]

JUAN PEREZ/MV
THOMAS GILLIS

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. 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 2015 Nissan Altima. 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 \$12,881.00. 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. [17-14112](#)-B-13 **IN RE: ARMANDO NATERA**
[MHM-1](#)

MOTION TO DISMISS CASE
12-21-2017 [[28](#)]

MICHAEL MEYER/MV
SCOTT LYONS
DISMISSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

An order dismissing the case has already been filed. This motion will be dropped from calendar.

7. [17-14113](#)-B-13 **IN RE: LUIS/MARIA JIMENEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
12-21-2017 [[25](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

8. [16-10320](#)-B-13 **IN RE: JAIME ALVARADO**
[NES-5](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
12-15-2017 [[46](#)]

NEIL SCHWARTZ

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 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

Counsel will be awarded \$6,297.00 in fees and \$663.00 in costs.

9. [15-14228](#)-B-13 **IN RE: OSCAR GUTIERREZ**
[GEG-5](#)

MOTION FOR COMPENSATION FOR GLEN E. GATES, DEBTORS
ATTORNEY(S)
12-12-2017 [[138](#)]

GLEN GATES
CONT'D TO 1/25 WITHOUT AN ORDER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This motion was decided on January 11, 2018. The first notice of hearing was scheduled for that date, but an amended notice of hearing was filed on December 21, 2017, which also changed the date of hearing to January 25th. Local Rule 9014-1(j) requires a court to approve the continuance. No request for a continuance was made, so the court did not approve this continuance.

10. [15-13333](#)-B-13 **IN RE: SELINA BARNETT**
[DRJ-3](#)

MOTION TO MODIFY PLAN
12-18-2017 [[56](#)]

SELINA BARNETT/MV
DAVID JENKINS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 15, 2018 at 1:30 P.M. in
accordance with the ruling below.

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

This motion will be set for a continued hearing on February 15, 2018 at 1:30 p.m. The court will issue an 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 debtor(s) shall file and serve a written response not later than February 3, 2018. 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 debtor elects 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 8, 2018. If the debtor does 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.

11. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-1](#)

MOTION TO CONFIRM PLAN
12-26-2017 [\[15\]](#)

TIMOTHY SABBATINI/MV
PETER BUNTING
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

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

First, the motion was not served in compliance with Federal Rule of Bankruptcy Procedure 2002(b) and Local Rule 9014-1(f)(1) and 3015-1(d)(1), which require service of a motion to confirm a chapter 13 plan on 42 days' notice where a written response must be filed within 14 days of the hearing.

Second, this motion was not served on anyone except the Trustee and the United States Trustee (Doc. #20). The creditors affected by the motion, Wells Fargo Dealer Services and TD Bank, NA were not served with the motion.

Third, the Plan is misleading. Section 2.09(c) of the Plan provides the mechanism for reducing the secured claims of specified creditors. The affected creditors here, assuming service of the Plan was adequate to affect their interests (which as shown below, it is not), have been advised that their secured claim would be the subject of a motion. The debtors here did not include any "Additional Provisions" clearly stating the creditors' claim would control the value of their secured interests for Plan purposes instead of a motion. The Plan is thus ambiguous at best and misleading at worst.

Fourth, service of the Plan by the "BNC" is insufficient to effect a valuation of the creditors' collateral. The debtors argue that the creditors' filed claims should control valuations of their collateral. The debtors rely on the creditors' "notice" of the Plan sent by the "BNC" as being sufficient service. The certificate of service of the notice (Doc. #12) shows service on Wells Fargo Dealer Services in Irvine which is consistent with the claim filed by this creditor. But for TD Bank, NA service by "BNC" was made by email and mail at an address in Mahwah, New Jersey which is not consistent

with the claims filed by that creditor. Those claims list an address in Dallas, Texas. Plus, the "service" of the Plan by "BNC" is inconsistent with FRBP 3012(b) which requires service under FRBP 7004 when collateral is valued. Neither creditor was served appropriately.

Fifth, no evidence supports the valuations. The debtors have not submitted a declaration attesting to value. The filing of the claims by the creditors listing a collateral value may be some evidence of collateral value (perhaps an admission by the creditors) but there is nothing supporting a finding of value presented by the debtors. So, barring an estoppel or similar defense, there is nothing preventing the creditors from changing the valuation at any time by filing amended claims. See LBR 3007(d)(7) and 3015-1(i). The absence of an order valuing the collateral makes the Plan not feasible 11 U.S.C. § 1325(a)(6) and perhaps not in compliance with §1325(a)(5)(B).

Sixth, there is no proof the debtors' are current on domestic support obligations (if applicable) 11 U.S.C. § 1325(a)(8) or submitted their tax returns required by 11 U.S.C. § 1325(a)(9).

Seventh, the debtors' have not proven feasibility. 11 U.S.C. § 1325(a)(6). This case was filed October 12, 2017, over ninety (90) days ago. The debtors filed Schedules I and J with the petition (Doc. # 1) then filed an amended Schedule I only on December 15, 2017 (Doc. #13) and a further amended I and J on January 17, 2018 (Doc. #26). Schedule J "Expenses" remain the same as when the petition was filed. But, there have been slight changes in income. For example, Mr. Sabbatini now has more taxes withheld, has a substantially lower "mandatory" contribution to a retirement plan and slightly less is withheld for insurance. Ms. Sabbatini has slightly more withheld for taxes and is starting to make "mandatory" contributions to a retirement plan. They also state that adoption assistance they presently receive will cease within a year when each dependent turns 18 but that is not going to happen for at least three years (their oldest dependent is 15 years old). No explanation for these changes or the apparent discrepancy regarding adoption assistance has been offered by the debtors. Current feasibility has not been established.

The motion is DENIED WITHOUT PREJUDICE.

12. [17-14735](#)-B-13 **IN RE: ARMANDO GONZALEZ**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL, INC
12-27-2017 [9]

ARMANDO GONZALEZ/MV
THOMAS GILLIS

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. 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 1998 Toyota Tacoma. 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 \$2,388.00. 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.

13. [17-14039](#)-B-13 **IN RE: PETER/ADRIANNA BISACCA**
[MHM-1](#)

MOTION TO DISMISS CASE
12-21-2017 [[28](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

14. [17-14339](#)-B-13 **IN RE: SHAWN WILLIAMS**
[MHM-1](#)

MOTION TO DISMISS CASE
12-28-2017 [[45](#)]

MICHAEL MEYER/MV
NIMA VOKSHORI
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

15. [17-11345](#)-B-13 **IN RE: VALINA WISNER**
[GEG-2](#)

MOTION FOR COMPENSATION FOR GLEN E. GATES, DEBTORS
ATTORNEY(S)
12-21-2017 [[62](#)]

GLEN GATES

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 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

Counsel will be awarded \$9,870.00 in fees.

16. [17-11047](#)-B-13 **IN RE: CURTIS ALLEN AND CHARLOTTE JACKSON**
[EPE-1](#)

MOTION FOR TURNOVER OF CERTIFICATE OF TITLE
12-28-2017 [[24](#)]

CURTIS ALLEN/MV
ERIC ESCAMILLA

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 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The court orders secured creditor Santander Consumer USA Inc. to turnover the certificate of title of the 2001 Lexus GS to debtor or debtor's attorney within 14 days of entry of this order.

17. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[FW-3](#)

MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
12-21-2017 [[28](#)]

KELLY HUFFMAN/MV
PETER FEAR

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. 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 all of debtor's assets except for vehicles. 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 \$55,143.07. 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.

18. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[FW-4](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
12-21-2017 [[32](#)]

KELLY HUFFMAN/MV
PETER FEAR

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. 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 all of debtor's assets except for vehicles. 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 claim will be deemed to be wholly unsecured. The Franchise Tax Board's first priority claim depletes the equity in the collateral, so the Internal Revenue Service's claim will be entirely unsecured. 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.

19. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
12-21-2017 [[36](#)]

MICHAEL MEYER/MV
PETER FEAR
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

20. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
12-28-2017 [[40](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn 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. The court will issue an order.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and indicated that all required documentation has been provided to the trustee. The debtor states (but not under oath) that the missing tax returns will be provided to the Trustee by the time of the continued meeting of creditors on February 6, 2018 and that all other information and amended schedules have been provided. No explanation is provided why they were not timely provided. The debtors' marital status does not, by itself, justify their failure to comply with the requirements of the bankruptcy code. Unless the trustee's motion is withdrawn at the hearing, the court intends to dismiss the case on the grounds stated in the motion.

21. [17-11059](#)-B-13 **IN RE: SHANNON/LESLIE BAKER**
[SAH-3](#)

MOTION TO INCUR DEBT
1-8-2018 [\[88\]](#)

SHANNON BAKER/MV
SUSAN HEMB

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was filed pursuant to Local Rule 9014-1(f)(2). No written opposition was required to be filed prior to the hearing, but the court takes note that the trustee filed an opposition.

This motion is DENIED. Debtors have defaulted on their plan by reducing their payments to Trustee after they surrendered the vehicle to TD Auto Finance, which they did without permission. The motion states that the reason for surrendering the vehicle was due to "substantial and expensive repairs which were totaling over \$4,500." Docket #88. Debtors then, without permission from the court, purchased a vehicle from a relative for \$10,000.00. Debtors secured financing through a different lender. The interest rate on this new loan is 13.64%, over twice the amount of the loan on the vehicle which was sold, and the monthly payment is over 10% greater.

Because the debtors did not seek approval from the court to surrender the old vehicle, lower their monthly payments to trustee, or incur debt to purchase a new vehicle, this motion is DENIED.

22. [17-14166](#)-B-13 **IN RE: JOHN/BOBBIE-ANN HEINRICH**
[MHM-1](#)

MOTION TO DISMISS CASE
12-28-2017 [\[23\]](#)

MICHAEL MEYER/MV
DISMISSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

An order dismissing the case has already been filed. This motion will be dropped from calendar.

23. [17-14575](#)-B-13 **IN RE: PAUL/CARRIE COLVIN**
[MAZ-1](#)

MOTION TO VALUE COLLATERAL OF GENERAL MOTORS FINANCIAL
12-14-2017 [[12](#)]

PAUL COLVIN/MV
MARK ZIMMERMAN

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

DISPOSITION: Denied without prejudice.

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

This motion is denied without prejudice for failure to comply with the Local Bankruptcy Rules ("LBR"), Federal Rules of Bankruptcy Procedure, and the declaration is deficient.

Frist, notice did not comply with LBR 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Second, service did not comply with Federal Rule of Bankruptcy Procedure 7004(b)(3) or 7004(b)(7). Rule 7004(b)(3) requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

Rule 7004(b)(7) states that service is "sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served . . . by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state." Without the court explaining the state law ad nauseam, California Code of Civil Procedure §§ 416.10 through 416.50 are the code sections that explain how to serve business entities like GM Financial in California.

The collateral, a 2013 Chevrolet Malibu, is GM Financial's security interest. Yet the Proof of Service shows the papers were sent to two entities: the Agent for Service of Process for General Motors LLC, and to GM Financial. General Motors LLC is not GM Financial. And the service to GM Financial was not done in compliance with 7004(b)(3).

Third, the debtors in their declaration state that they base the value of the collateral on a Kelly Blue Book valuation. Docket #14. Debtors' are not qualified as "experts" who can base their opinion on a "third party source," like Kelly Blue Book.

For all of the above reasons, this motion is DENEID WITHOUT PREJUDICE.

24. [16-13781](#)-B-13 **IN RE: GEREMY LATTA**
[NES-5](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
12-15-2017 [[57](#)]

NEIL SCHWARTZ

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 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

Counsel will be awarded \$5,295.00 in fees and \$413.00 in costs.

25. [17-12881](#)-B-13 **IN RE: RUBEN/KARIMA PARKS**
[JDW-4](#)

MOTION TO CONFIRM PLAN
11-29-2017 [[94](#)]

RUBEN PARKS/MV
JOEL WINTER
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 1, 2018.

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

This motion will be set for a continued hearing on March 1, 2018 at 1:30 p.m. The court will issue an 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 February 15, 2018. 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 debtors' 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 22, 2018. 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.

26. [17-14383](#)-B-13 **IN RE: MARTIN BAUTISTA AND ORALIA CHAVEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
12-27-2017 [[20](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

27. [17-14689](#)-B-13 **IN RE: YANCY GRAHAM**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-2017 [9]

R.F. GROUP, L.P./MV
SCOTT LYONS
NICHOLE GLOWIN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

28. [16-10391](#)-B-13 **IN RE: MICHAEL PFEIFFER**
[DMG-7](#)

OBJECTION TO CLAIM OF DEBRA MCGUIRE, CLAIM NUMBER 9-2
12-5-2017 [108]

MICHAEL PFEIFFER/MV
D. GARDNER
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: No disposition.

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

The hearing on this motion will be called as scheduled and 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 be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether the claim is considered to be a domestic support obligation and therefore entitled to priority status.