

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, March 1, 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. [17-12535](#)-B-11 **IN RE: OVADA MORERO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
6-30-2017 [[1](#)]

LEONARD WELSH

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: This case has been converted to chapter 7.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[DLM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-1-2018 [[395](#)]

REBECCA ZULIM/MV
RILEY WALTER
DONALD MABRY/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure.

Fed. R. Bankr. P. 7004(b)(9) requires movant to serve the debtor. Here, the certificate of service does not show that the debtor was served. Docket #400. Therefore 7004(b)(9) was not complied with.

Fed. R. Bankr. P. 4001(a)(1) requires that motions for relief from the automatic stay in a chapter 9 case be served on any committee of unsecured creditors, or if no committee has been appointed, on the creditors included on the list filed pursuant to Rule 1007.

1:30 PM

1. [17-14901](#)-B-13 **IN RE: MARCO/VERONICA NAVA**
[RPZ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CITIMORTGAGE, INC.
2-13-2018 [[23](#)]

CITIMORTGAGE, INC./MV
TIMOTHY SPRINGER
ROBERT ZAHRADKA/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 29, 2018 at 1:30 p.m.

ORDER: No appearance is necessary. The court will issue the 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 meeting has concluded, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary. The court notes the objection is moot once objector's claim is filed. Also, the debtor's opposition contains no evidence.

2. [16-14603](#)-B-13 **IN RE: ISRAEL REYES**
[TCS-1](#)

MOTION TO INCUR DEBT
2-14-2018 [[33](#)]

ISRAEL REYES/MV
TIMOTHY SPRINGER

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.

After reviewing the evidence and amended Schedules I and J, this motion is GRANTED. The debtor shall modify their plan should it be necessary. The order shall not be construed as a modification. The order also does not require the debtor to incur the debt.

The court reminds counsel that Local Bankruptcy Rules 9004-2(c)(1) and 9014-1(d)(4) require that exhibits, inter alia, filed in a motion "shall be filed as separate documents."

Here, the exhibits were included in the declaration of Israel Reyes, docket #35, and not filed separately.

3. [17-14004](#)-B-13 **IN RE: XAVIER/ELIZABETH BERMUDEZ**
[SAH-1](#)

MOTION TO MODIFY PLAN
1-12-2018 [[22](#)]

XAVIER BERMUDEZ/MV
SUSAN HEMB
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on February 23, 2018. Docket #40

4. [17-14005](#)-B-13 **IN RE: MARY KOTZMOYER**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-29-2018 [[28](#)]

JERRY LOWE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: No disposition. Hearing may be deemed a scheduling conference.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Preparation of the order will be determined at the hearing.

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

No written opposition was required, but the court notes that debtor filed written opposition on February 26, 2018. The court also notes

that the opposition was incorrectly addressed to the Honorable Fredrick E. Clement, and not the Honorable Rene Lastreto II.

The opposition states that the debtors have cured the issues raised in trustee's objection and that they are in fact meeting the disposable income requirement.

5. [17-14113](#)-B-13 **IN RE: LUIS/MARIA JIMENEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
1-26-2018 [[36](#)]

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.

6. [17-12717](#)-B-13 **IN RE: DALJIT SINGH**
[MHM-2](#)

MOTION TO DISMISS CASE
1-30-2018 [[107](#)]

MICHAEL MEYER/MV
HANK WALTH
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 12, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion will be continued to April 12, 2018, at 1:30 p.m., to be heard with the debtor's motion to confirm plan. No appearance is necessary.

7. [14-11928](#)-B-13 **IN RE: RICHARD KELLY**
[MAZ-4](#)

CONTINUED MOTION TO INCUR DEBT
2-1-2018 [[89](#)]

RICHARD KELLY/MV
MARK ZIMMERMAN

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 matter was continued because of problems with court call at the February 15, 2018 hearing. If movant does not appear at this hearing, the court may deny this motion without prejudice. The court's pre-hearing disposition dated February 15, 2018 is set forth below:

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
will 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.

This motion is GRANTED. The court has reviewed the movant's papers and the trustee's unsigned consent, and believes that the movant will be able to incur this debt and maintain plan payments. The trustee may consent at the hearing or in signed consent filed before the hearing.

8. [17-14735](#)-B-13 **IN RE: ARMANDO GONZALEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
1-26-2018 [[21](#)]

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.

9. [17-14637](#)-B-13 **IN RE: JIMMIE/VELMA PERRYMAN**
[MHM-1](#)

MOTION TO DISMISS CASE
1-26-2018 [[27](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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 that the debtors have failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

10. [17-14637](#)-B-13 **IN RE: JIMMIE/VELMA PERRYMAN**
[SL-1](#)

MOTION TO CONFIRM PLAN
1-15-2018 [[18](#)]

JIMMIE PERRYMAN/MV
SCOTT LYONS
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

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

Based upon the court's disposition in MHM-1 on this calendar (matter #9 above), this motion to confirm plan is dropped from calendar.

11. [17-14843](#)-B-13 **IN RE: MATTHEW/MYRA ALLRED**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
2-13-2018 [[23](#)]

BANK OF AMERICA, N.A./MV
SCOTT LYONS
JAMIE HANAWALT/ATTY. FOR MV.

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

DISPOSITION: Continued to March 29, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

The objection will be continued and set for further hearing on March 29, 2018 at 1:30 p.m. The court will issue an order. No appearance is necessary.

This objection to confirmation was noticed as a preliminary hearing. Unless this case is voluntarily converted to chapter 7 or dismissed or the objection has been withdrawn, the debtors shall file and serve a written response not later than March 15, 2018. The response shall specifically address each issue raised in the objection, 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 March 22, 2018. If the debtors do not timely file a modified plan or a written response, the objection will be sustained on the grounds stated and confirmation will be denied without a further hearing.

12. [17-14645](#)-B-13 **IN RE: CIRILO PADILLA**
[MHM-2](#)

MOTION TO DISMISS CASE
1-25-2018 [\[22\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN

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 that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4) and the debtor has failed to appear at the § 341 meeting of creditors. Accordingly, the case will be dismissed.

13. [17-14648](#)-B-13 **IN RE: FLIMON/LOURDES RAMIREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-12-2018 [\[30\]](#)

ERIC ESCAMILLA

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

DISPOSITION: The OSC will be vacated.

NO ORDER REQUIRED. The OSC will be vacated. The final installment was paid on February 26, 2018.

14. [17-14648](#)-B-13 **IN RE: FLIMON/LOURDES RAMIREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
1-29-2018 [[25](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA

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, stating that all documentation, except schedule C of their 2016 tax returns, had been complied with. The trustee filed a reply, indicating that what the debtors provided were not what had been requested.

Unless the trustee's motion is withdrawn at the hearing, the court intends to grant the motion and dismiss the case. The record shows that the debtors have failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) and (4).

15. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
2-9-2018 [[62](#)]

THOMAS GILLIS

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

DISPOSITION: Sustained.

ORDER: The court will issue the order.

This objection was filed and served pursuant to LRB 9014-1(f)(2).

Debtors filed a non-opposition to this objection on February 22, 2018, stating that they will file an amended plan and address the issues of the trustee.

Therefore this objection is SUSTAINED.

16. [17-14757](#)-B-13 **IN RE: LYDIA CORONADO**
[MHM-2](#)

MOTION TO DISMISS CASE
1-29-2018 [[27](#)]

MICHAEL MEYER/MV
HECTOR VEGA
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. Debtor's counsel filed a timely response, stating that some of the documentation had been complied with and included a copy of an email dated December 29, 2017 that was sent to the trustee. On February 21, 2018, the trustee filed a reply, indicating that his motion to dismiss was filed after receiving the email from debtor's counsel and the documents included in that email. The documents missing at the time of the motion have still not been received by the trustee.

Unless the trustee's motion is withdrawn at the hearing, the court intends to grant the motion and dismiss the case. The record shows that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) and (4), failed to file complete schedule I, failed to properly complete Official Form 122C-1, and failed to provide Credit counseling Certificates.

17. [17-11059](#)-B-13 **IN RE: SHANNON/LESLIE BAKER**
[SAH-4](#)

MOTION TO MODIFY PLAN
1-8-2018 [[98](#)]

SHANNON BAKER/MV
SUSAN HEMB

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant has withdrawn the motion.

18. [17-11059](#)-B-13 **IN RE: SHANNON/LESLIE BAKER**
[SAH-5](#)

MOTION TO MODIFY PLAN
2-2-2018 [[118](#)]

SHANNON BAKER/MV
SUSAN HEMB
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant has withdrawn the motion.

19. [17-13861](#)-B-13 **IN RE: DENISE TAYLOR**
[MHM-2](#)

MOTION TO DISMISS CASE
1-24-2018 [[37](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
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. Debtor's counsel filed a timely response, stating that the debtor intends to be current with her plan payments by the date of the hearing on the motion.

Unless the trustee's motion is withdrawn at the hearing, the court intends to grant the motion and dismiss the case. The record shows that there is a material default in the chapter 13 plan payments that has not been cured.

20. [17-14765](#)-B-13 **IN RE: MICAH/MARILOU GRAY**
[MHM-2](#)

MOTION TO DISMISS CASE
1-25-2018 [[17](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED: The motion has been withdrawn by the Moving
Party.

21. [17-14767](#)-B-13 **IN RE: VICTORIA KEENER**
[MHM-2](#)

MOTION TO DISMISS CASE
1-29-2018 [[17](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
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. Debtor's counsel filed a timely response on February 15, 2018, stating that the debtor anticipates providing the trustee with the missing documentation within 7 days. The response is not supported by evidence that the default has been cured and the trustee's motion has not been withdrawn.

The record shows that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) and (4). The case will be dismissed.

22. [18-10467](#)-B-13 **IN RE: STEVEN/TELVA RAMIREZ**
[SL-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
2-14-2018 [7]

STEVEN RAMIREZ/MV
SCOTT LYONS

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 court will issue the order.

This Motion to Impose 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.

Under 11 U.S.C. § 362(c)(4)(A), the automatic stay under subsection (a) will not go into effect if the debtor had two or more single or joint cases pending in the previous year but were dismissed.

This case was filed on February 14, 2018 and under 11 U.S.C. § 362(c)(4)(A), the automatic stay never went into effect. 11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(4)(D) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* 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*.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior cases were dismissed on the grounds that debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(4)(D)(i)(II). Debtor Telva Ramirez had two cases that were pending in the previous year that were dismissed. The first case was filed on March 15, 2017 and dismissed on April 13, 2017. Case no. 17-10917, docket #1, 16. The second case was filed on May 2, 2017 and dismissed on May 22, 2017. Case no. 17-11720, docket #1, 9. The court notes that debtor Steven Ramirez filed bankruptcy on June 5, 2017. Case no. 17-12194, docket #1. The case was dismissed on July 6, 2017. *Id.*, docket #16. All three cases were filed individually, and all three cases were dismissed for failure to timely file documents.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to impose the automatic stay as to all creditors.

The debtors' prior petitions were prepared by a petition preparation service, but debtors were under the assumption that the service was in fact a law office. Declaration, Docket #9, ¶9. This preparation service allegedly made certain representations to debtors that induced them to pay them over \$10,000 over a six-month period to help them modify their mortgage. *Id.* at ¶5. No such modification apparently occurred, because after debtors' second case was dismissed, debtors found out their home was being foreclosed on, at which point debtors contacted an attorney. *Id.* at ¶7. Debtors are confident that they will be able to prepare and confirm at Chapter 13 plan because Telva Ramirez will be able to go back to work and make the plan payments, and they are represented by an attorney.

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.

The court notes the written opposition filed by creditor The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWABS Inc., Asset-Backed Certificates, Series 2006-QH1 ("Secured Creditor"). The court also urges counsel to review the Local Rules of Practice ("LBR") available at the court's website.

LBR 9004-2(c)(1) and 9014-1(d)(4) require that exhibits, inter alia, filed in a motion "shall be filed as separate documents."

Here, the exhibits were included in the declaration of Israel Reyes, docket #20, and not filed separately.

23. [17-14768](#)-B-13 **IN RE: EUSTORGIO REYES**
[MHM-2](#)

MOTION TO DISMISS CASE
1-29-2018 [[20](#)]

MICHAEL MEYER/MV
JANINE ESQUIVEL
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. Debtor's counsel filed a timely response, stating that the missing documentation has been provided to the trustee and that amended schedules have been filed to accurately reflect assets, income, and exemptions. The response is not supported by evidence that the default has been cured and the trustee's motion has not been withdrawn.

The record shows that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) and (4). The case will be dismissed.

24. [17-10875](#)-B-13 **IN RE: GERALD STULLER AND BARBARA**
 WIKINSON-STULLER
 [MJD-4](#)

CONTINUED MOTION TO MODIFY PLAN
12-28-2017 [[91](#)]

GERALD STULLER/MV
SCOTT SAGARIA
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This matter is being continued because of problems with court call at the February 15, 2018 hearing. If movant does not appear at this hearing, the court may deny this motion without prejudice. The

modification is not comprehensible as sections 3.06, 3.07, and 3.08 contain mathematical formulas, not the amount the trustee must disburse. Additionally, the changes to those sections are not in compliance with section 1.02 of the modified plan.

The court notes the written response filed by debtors on February 28, 2018. The response is late and subject to being stricken. Local Rule of Practice 9014-1(1).

The previous pre-hearing disposition dated February 15, 2018 is set forth below:

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

Based on the trustee's opposition to this modification, the court will call this matter to allow the movant to explain to the court what sections 3.06, 3.07, and 3.08 of the plan mean. Absent withdrawal of the trustee's objection at the hearing, the motion will be DENIED WITHOUT PREJUDICE.

25. [17-14680](#)-B-13 IN RE: NELDA MCNEALY
[MHM-2](#)

MOTION TO DISMISS CASE
1-29-2018 [[17](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA
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. Debtor's counsel filed a timely response, stating that the missing documentation has been provided to the trustee and that amended schedule H has been filed. The response is supported by a declaration from counsel that is however, without foundation. Counsel states that debtor "has or will" provide the necessary documents to trustee and "has or will fulfill all requests from the trustee." Docket #24.

The record shows that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) and (4). The case will be dismissed.

26. [18-10386](#)-B-13 **IN RE: ANGEL RODRIGUEZ**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-15-2018 [[10](#)]

ANGEL RODRIGUEZ/MV
SCOTT LYONS

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 court will issue the order.

This Motion to Impose 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.

Under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

This case was filed on February 6, 2018 and the automatic stay will expire on March 8, 2018. 11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* 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*.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

The debtor was under stress at work because he only recently started working at that job after being unemployed for nearly a year and a half, was working overtime, sometimes six or seven days a week, in order to ensure that he would not be let go. He therefore did not make time to take the information to his attorney and complete the petition. Declaration, docket #12, ¶3. Debtor is now working more steadily in a salaried position and his employer is giving him more time flexibility in order to meet commitments related to this bankruptcy. *Id.* at ¶4a. The debtor has filed a plan which has been served on creditors. Docket #16.

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.

27. [17-13987](#)-B-13 **IN RE: JOSE/MELISSA HERRERA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-25-2018 [\[38\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
THOMAS GILLIS
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition 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.

This motion is GRANTED.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2014 Toyota Avalon.

The court concludes that cause exists to lift the stay because movant has not made post-petition payments to movant. In re Ellis, 60 B.R. 432 (9th Cir. BAP 1985).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. Movant may also file or amend its unsecured claim to allow movant to receive, or otherwise collect, any deficient amount that may exist on debtor's account after the sale of the property. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

28. [17-14689](#)-B-13 **IN RE: YANCY GRAHAM**
[MHM-2](#)

MOTION TO DISMISS CASE
1-25-2018 [[27](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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 that the debtor has failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), failed to file a complete and accurate Schedule H, and for unreasonable delay that is prejudicial to creditors. Accordingly, the case will be dismissed. Accordingly, the case will be dismissed.

29. [16-10391](#)-B-13 **IN RE: MICHAEL PFEIFFER**
[DMG-7](#)

CONTINUED FURTHER SCHEDULING CONFERENCE RE: OBJECTION TO
CLAIM OF DEBRA MCGUIRE, CLAIM NUMBER 9-2
12-5-2017 [[108](#)]

MICHAEL PFEIFFER/MV
D. GARDNER
RESPONSIVE PLEADING

NO RULING.

30. [17-13798](#)-B-13 **IN RE: JASON/MANDY LAWTON**
[MHM-2](#)

MOTION TO DISMISS CASE
1-29-2018 [\[95\]](#)

MICHAEL MEYER/MV
SUSAN HEMB

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 that the debtors have failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), failed to file a complete and accurate Schedule G, failed to accurately complete Official Form 122C-1, and for unreasonable delay that is prejudicial to creditors.

The court notes that debtor filed a very late opposition, just one day prior to the hearing. Local Rule of Practice ("LBR") 9014-1(f)(1)(B) states that "opposition...shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations...Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions."

As stated above, this motion was fully noticed in accordance with LBR 9014-1(f)(1). Opposition was due on or before February 15, 2018. The opposition was filed on February 28, 2018, just one day before the hearing. Even if the opposition was timely filed, it was not accompanied by evidence establishing its factual allegations. Debtor has not provided this court with any reason as to why the opposition was filed late. The failure of the debtor to timely file written opposition is deemed a waiver of opposition to the granting of this motion, and as such, and for the above reasons, and unless the

trustee's motion is withdrawn, the case will be dismissed. See LBR 9014-1(1).

31. [17-14799](#)-B-13 **IN RE: CARRIE CLOUD**

OBJECTION TO CONFIRMATION OF PLAN BY DITECH FINANCIAL LLC
2-13-2018 [\[16\]](#)

DITECH FINANCIAL LLC/MV
PETER BUNTING
RENEE PARKER/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

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

This objection is OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

This objection and its notice were filed on February 13, 2018. No proof of service has been filed since, and it is long past the three day deadline. Therefore this objection does not comply with the LBR.

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This objection did not have a DCN, and therefore does not comply with the LBR.

Therefore, this objection is OVERRULED WITHOUT PREJUDICE.