

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Monday, March 12, 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. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION

1-31-2017 [[1](#)]

PETER FEAR

NO RULING.

2. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[FRB-2](#)

MOTION TO DISMISS CASE
2-16-2018 [[229](#)]

CITIZENS BUSINESS BANK/MV
PETER FEAR
MICHAEL GOMEZ/ATTY. FOR MV.

NO RULING.

This matter may proceed as a scheduling conference.

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."

In this case, the one exhibit was attached to the Memorandum of Points and Authorities and not filed separately.

3. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[FW-12](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
2-12-2018 [[216](#)]

EDWARD UMADA/MV
PETER FEAR

NO RULING.

This matter may proceed as a scheduling conference.

4. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
2-9-2018 [[251](#)]

SANTANDER CONSUMER USA,
INC./MV
LEONARD WELSH
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Continued to April 12, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

At the request of movant, this matter is continued to April 12, 2018
at 9:30 a.m.

5. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
2-9-2018 [[257](#)]

SANTANDER CONSUMER USA,
INC./MV
LEONARD WELSH
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Continued to April 12, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

At the request of movant, this matter is continued to April 12, 2018
at 9:30 a.m.

6. [11-14556](#)-B-12 **IN RE: RICARDO/MARIA MALDONADO**
[TOG-16](#)

MOTION FOR ENTRY OF DISCHARGE
2-26-2018 [[339](#)]

RICARDO MALDONADO/MV
THOMAS GILLIS

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

DISPOSITION: Continued to March 29, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

This matter is continued to March 29, 2018 at 9:30 to be heard in conjunction with the continued motion to dismiss and a motion for compensation.

10:30

1. [17-10612](#)-B-13 **IN RE: ADAM/CHRISTINA RAMIREZ**
[17-1024](#) [ACR-1](#)

MOTION FOR RELIEF FROM JUDGEMENT/ORDER BARRING DEBTORS FROM
FILING BANKRUPTCY FOR TWO YEARS IN THE EASTERN DISTRICT OF
CALIFORNIA
2-12-2018 [[28](#)]

U.S. TRUSTEE V. RAMIREZ ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.
CLOSED: 06/05/2017;

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
the order.

This motion is DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

This motion is DENIED. This motion was brought under Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60(b). Fed. R. Civ. P. 60(b) gives a court the authority to relieve a party from a final judgment order, or proceeding for six reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under (Fed. R. Civ. P.) 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

The only grounds which this court might feasibly be able to grant this motion are Fed. R. Civ. P. 60(b)(1) and (b)(6). But the court does not find grounds to grant the motion under either rule.

Under Rule 60(b)(1), the debtor has not made any showing of mistake, inadvertence, surprise, or excusable neglect. Nowhere in debtor's declaration does he allege the aforementioned grounds. The Ninth

Circuit Bankruptcy Appellate Panel explained Rule 60(b)(6) as follows:

The catchall provision of Rule 60(b)(6) is used sparingly as an equitable remedy to prevent manifest injustice, and only where extraordinary circumstances prevented the party from taking timely action to prevent or correct an erroneous judgment. United States v. State of Washington, 394 F.3d 1152, 1157 (9th Cir. 2005). The movant must show both injury and that circumstances beyond its control prevented timely action to protect its interest; neglect or lack of diligence is not to be remedied through this rule. Lehman v. United States, 154 F.3d 1010, 1017 (9th Cir. 1998). Wooten v. Whitmore (In re Wooten), No. CC-07-1116-KMoD, 2007 Bankr. LEXIS 4895, at *17 (B.A.P. 9th Cir. Sep. 11, 2007).

The movant has not shown a manifest injustice, or extraordinary circumstances preventing them from taking timely action to prevent or correct the previous dismissals. The motions to dismiss went unopposed – no explanation was given to the court as to why payments weren't being made, why 341 meetings weren't being attended, and why documents weren't timely filed.

The court notes that the majority of this motion is spent explaining why seven of the last eight bankruptcy filings in the past eight years were filed in good faith. The only time debtors successfully completed bankruptcy was in chapter 7, their first bankruptcy. Of the other seven, six were dismissed for various reasons, including failure to timely file documents, becoming delinquent in plan payments shortly after confirmation, and failure to appear at the § 341 meetings. Case nos. 14-12647, 14-14680, 15-14708, 16-10358, 16-14350, 17-10612. The remaining case was dismissed without a hearing after debtor received a "Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are Not Timely Filed" and the debtor did not timely file the documents. Case no. 16-13889, Docket #13. The court also notes the debtor never filed an answer to the United State's Trustee's complaint in the adversary proceeding, and this motion was brought over eight months after the most recent case was dismissed. The debtor's history shows a lack of commitment to adhering to the rules and laws in bankruptcy.

For the above reasons, this motion is DENIED.

2. [17-11087](#)-B-7 **IN RE: JANETTA SCONIERS**
[17-1069](#)

ORDER TO SHOW CAUSE RE: DISMISSAL OF ADVERSARY PROCEEDING
2-2-2018 [[25](#)]

SCONIERS V. TOP EQUITY
INVESTMENT, LLC

NO RULING.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-1](#)

CONTINUED MOTION FOR REMAND
1-24-2018 [[17](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.

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

DISPOSITION: Continued to April 5, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is being continued pursuant to a stipulation by the parties.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-2](#)

MOTION TO DISMISS COUNTERCLAIM AND/OR MOTION TO STRIKE
1-29-2018 [[21](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
MARC LEVINSON/ATTY. FOR MV.
STIP. AND ORDER ECF #34 CONTINUING TO 4/5/18

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

DISPOSITION: Continued to April 5, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is being continued pursuant to a stipulation by the parties.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-3](#)

MOTION TO STRIKE
1-29-2018 [[26](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING, STIP. AND ORDER ECF #35 CONTINUING TO 4/5/18

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

DISPOSITION: Continued to April 5, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is being continued pursuant to a stipulation by the parties.

1:30 PM

1. [17-14901](#)-B-13 **IN RE: MARCO/VERONICA NAVA**
[MHM-2](#)

MOTION TO DISMISS CASE
2-9-2018 [[18](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

2. [17-14809](#)-B-13 **IN RE: SUSANA GONZALEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
2-9-2018 [[19](#)]

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.

3. [17-14513](#)-B-13 **IN RE: RANDALLCHAD MARTIN**
[SL-2](#)

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT
DEVELOPMENT DEPARTMENT
2-8-2018 [[22](#)]

RANDALLCHAD MARTIN/MV
STEPHEN LABIAK

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.

A judgment was entered against the debtor in favor of the State of California Employment Development Department for the sum of \$7,320.91 on April 28, 2014. Docket #25, Exhibit D. The abstract of judgment was recorded with Tulare County on the same day. *Id.* That lien attached to the debtor's interest in a residential real property in Visalia, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$160,000.00 as of the petition date. Docket #1, Schedule B. The unavoidable liens totaled \$113,855.04 on that same date, consisting of a first mortgage in favor California Housing Finance Agency. Docket #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000.00. Docket #1, Schedule C.

4. [17-11616](#)-B-13 **IN RE: SHIRLEY REESE**
[SAH-1](#)

OBJECTION TO CLAIM OF INSTANT CASH LOAN TILL PAYDAY.COM,
CLAIM NUMBER 20
1-19-2018 [[26](#)]

SHIRLEY REESE/MV
SUSAN HEMB

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

DISPOSITION: Sustained.

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.

The claim will be disallowed in full, or in part, without prejudice to claimant's right to amend the proof of claim, on the grounds stated in the objection; that is, the claim does not show when the loan was funded, when the last payment was made, or when Williamson & Brown, LLC (creditor) purchased this debt from Instant Cash Loan till Payday.com. Any amendment to the claim shall be filed and served on the trustee within 30 days from service of the order. The objecting party shall prepare the proposed order, serve the signed order on the creditor at its address of record and file a proof of service within 14 days.

5. [17-11616](#)-B-13 **IN RE: SHIRLEY REESE**
[SAH-2](#)

OBJECTION TO CLAIM OF INSTANT CASH LOAN CLAIM NUMBER 21
1-19-2018 [[30](#)]

SHIRLEY REESE/MV
SUSAN HEMB
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The objection has been withdrawn.

6. [16-12019](#)-B-13 **IN RE: MARIO/ESBEYDY MARTINEZ**
[PLG-1](#)

MOTION TO MODIFY PLAN
2-2-2018 [[31](#)]

MARIO MARTINEZ/MV
RABIN POURNAZARIAN
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

NO ORDER REQUIRED: Movant has filed another motion to modify plan
set for hearing on April 12, 2018.

7. 17-14131-B-13 IN RE: CAROL BADAWI
TCS-1

MOTION TO VALUE COLLATERAL OF EDUCATIONAL EMPLOYEES CREDIT UNION
2-7-2018 [21]

CAROL BADAWI/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Resolved by stipulation of the parties.

8. 17-13832-B-13 IN RE: DAVID BISHOP AND TIESHA GILL
MHM-2

MOTION TO DISMISS CASE
2-1-2018 [36]

MICHAEL MEYER/MV
PETER FEAR

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. 15-13333-B-13 IN RE: SELINA BARNETT
MHM-2

MOTION TO DISMISS CASE
2-7-2018 [69]

MICHAEL MEYER/MV
DAVID JENKINS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to continue this matter to
April 26, 2018 at 1:30 p.m.

ORDER: 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 late response. In his declaration, he explains that a timely response had been prepared, but due to circumstances beyond his

control, the facts surrounding the debtor's employment situation had changed and therefor caused the late filing of the response.

Debtor's counsel intends to file a modified plan and set it for hearing on April 26, 2018 at 1:30 p.m.

10. [17-14133](#)-B-13 **IN RE: BENJAMIN HARRIS**

ORDER TO SHOW CAUSE WHY THIS CASE SHOULD NOT BE CONVERTED TO
CHAPTER 7
2-14-2018 [[60](#)]

NEIL SCHWARTZ

NO RULING.

11. [17-14133](#)-B-13 **IN RE: BENJAMIN HARRIS**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
1-9-2018 [[38](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

NO RULING.

12. [17-14133](#)-B-13 **IN RE: BENJAMIN HARRIS**
[PPR-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON
MORTGAGE SERVICES, LLC
1-5-2018 [[29](#)]

CARRINGTON MORTGAGE SERVICES,
LLC/MV
NEIL SCHWARTZ
ALEXANDER MEISSNER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

13. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-3](#)

MOTION TO VALUE COLLATERAL OF TD RETAIL CARD SERVICES
2-9-2018 [[42](#)]

TIMOTHY SABBATINI/MV
PETER BUNTING

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.

The debtor is competent to testify as to the value of the kitchen table, chairs, two leather recliners and an entertainment center. 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 \$600.00. 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.

14. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-4](#)

MOTION TO VALUE COLLATERAL OF TD RETAIL CARD SERVICES
2-9-2018 [[47](#)]

TIMOTHY SABBATINI/MV
PETER BUNTING

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.

The debtor is competent to testify as to the value of the two beds. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). The respondent's secured claim will be fixed at \$500.00. 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.

15. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-5](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
2-9-2018 [[52](#)]

TIMOTHY SABBATINI/MV
PETER BUNTING

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.

The debtor is competent to testify as to the value of the 2014 Hyundai Sonata GLS. 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 \$13,698.00. 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.

16. [17-14339](#)-B-13 **IN RE: SHAWN WILLIAMS**
[MHM-2](#)

MOTION TO DISMISS CASE
2-9-2018 [\[70\]](#)

SHAWN WILLIAMS/MV
NIMA VOKSHORI

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

DISPOSITION: Withdrawn.

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

17. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[JDR-5](#)

AMENDED MOTION TO VALUE COLLATERAL OF 21ST MORTGAGE CORPORATION
2-7-2018 [\[75\]](#)

NICHOLAS GREEN/MV
JEFFREY ROWE

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.

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.

18. [13-12241](#)-B-13 **IN RE: STUART/LORI HOFFRAGE**
[MJA-1](#)

MOTION TO MODIFY PLAN
2-5-2018 [[21](#)]

STUART HOFFRAGE/MV
JOSEPH ARNOLD

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.

The motion will be granted without oral argument based on well-pled facts. 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.

19. [17-14843](#)-B-13 **IN RE: MATTHEW/MYRA ALLRED**
[MHM-1](#)

MOTION TO DISMISS CASE
2-9-2018 [[19](#)]

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.

20. [17-13047](#)-B-13 **IN RE: CAROL SHIELDS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-12-2018 [\[75\]](#)

HARLEY-DAVIDSON CREDIT
CORP./MV
DAVID JENKINS
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.

The movant, Harley-Davidson Credit Corp., seeks relief from the automatic stay with respect to a 2015 Harley-Davidson FLHX Street Glide. The movant has produced evidence that the vehicle has a value of \$18,125.00 and its secured claim is approximately \$24,348.65. Claim 1.

The court concludes that there is no equity in the vehicle, no evidence exists that it is necessary to a reorganization, nor can the trustee administer it for the benefit of the creditors. And the movant already has possession of the vehicle. Docket #75.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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.

21. [17-14255](#)-B-13 **IN RE: DAVID BAER**
[MHM-2](#)

MOTION TO DISMISS CASE
2-9-2018 [[36](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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, albeit without evidence, stating that the debtor was attempting to generate profit and loss statements. At this time, the court has no evidence that the Trustee's requirement has been met, and the Trustee has not withdrawn the motion. Therefore, the court intends to grant the motion to dismiss on the grounds stated in the motion.

22. [16-11356](#)-B-13 **IN RE: CHERYL DOEPEL**
[PLG-3](#)

MOTION TO MODIFY PLAN
1-31-2018 [[48](#)]

CHERYL DOEPEL/MV
RABIN POURNAZARIAN

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.

The motion will be granted without oral argument based on well-pled facts. 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.

23. [17-14856](#)-B-13 **IN RE: BRIAN/KARI COLEMAN**
[MHM-2](#)

MOTION TO DISMISS CASE
2-9-2018 [[19](#)]

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.

24. [17-14856](#)-B-13 **IN RE: BRIAN/KARI COLEMAN**
[SL-1](#)

MOTION TO VALUE COLLATERAL OF FRESNO POLICE DEPARTMENT
CREDIT UNION
2-21-2018 [[34](#)]

BRIAN COLEMAN/MV
SCOTT LYONS

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.

The declaration does not contain the debtor's opinion of the relevant value. 11 USC § 506(a)(2) requires the valuation to be "replacement value," not "good condition market value". The debtors' declaration states their opinion of the "good condition market value" of the 1996 Honda Accord, not the "replacement value." Docket #36, ¶3.

Nevertheless, despite the generally irrelevant valuation, there is no opposition. The "good condition market value" was based on the

debtors personal knowledge as the vehicle's owner-operator. See Enewally, 368 F.3d 1165, 1173 (9th Cir. 2004).

Finally, while the Blue Book quote may be admissible hearsay, Federal Rule of Evidence 803(17), it really provides an irrelevant value since the published value cited by the debtor is defined as a "private party sale." 11 U.S.C. § 506(a)(2) requires a valuation based on what a "retail merchant" would charge. The Blue Book quote does not limit the type of "private party" involved in the proposed sale.

Therefore this motion is GRANTED.

25. [17-11059](#)-B-13 **IN RE: SHANNON/LESLIE BAKER**
[MHM-2](#)

MOTION TO DISMISS CASE
2-6-2018 [[126](#)]

MICHAEL MEYER/MV
SUSAN HEMB
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 and set for a final hearing on April 12, 2018, at 1:30 p.m., to be heard with the debtors' motion to confirm modified plan. No appearance is necessary.

26. [17-14768](#)-B-13 **IN RE: EUSTORGIO REYES**
[ALG-1](#)

MOTION TO CONFIRM PLAN
1-29-2018 [[24](#)]

EUSTORGIO REYES/MV
JANINE ESQUIVEL
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. The case has been dismissed.

27. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[LKW-15](#)

MOTION TO MODIFY PLAN
1-30-2018 [[332](#)]

SHELBY KING/MV
LEONARD WELSH
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 5, 2018 at 9:00 a.m.

ORDER: The court will issue an order.

This matter is continued to April 5, 2018 at 9:00 a.m. in
Bakersfield, CA at the request of debtor's counsel.

28. [17-14374](#)-B-13 **IN RE: ANNA BALL**
[DMG-3](#)

MOTION TO CONFIRM PLAN
1-26-2018 [[48](#)]

ANNA BALL/MV
D. GARDNER

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.

The motion will be granted without oral argument based on well-pled facts. 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.

29. [17-14775](#)-B-13 **IN RE: TIM LOWMEXAY**
[JRL-1](#)

MOTION TO VALUE COLLATERAL OF SHELLPOINT MORTGAGE SERVICING
2-6-2018 [[13](#)]

TIM LOWMEXAY/MV
JERRY LOWE

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.

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 debtor 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.

30. [17-12086](#)-B-13 **IN RE: JEFFREY/TARA MORGAN**
[FW-2](#)

MOTION TO PURCHASE VEHICLE
2-14-2018 [\[26\]](#)

JEFFREY MORGAN/MV
PETER FEAR

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 Local Rule of Practice ("LBR") 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 authorizes the debtors to purchase a vehicle with ONLY the funds from the insurance payout and tax refunds as described in the motion. If, for whatever reason, those funds are insufficient to purchase a suitable vehicle, the debtors must file and serve another motion seeking authorization from the court. The filing, serving, and granting of such motion may precipitate the need for a modified plan.

31. [17-14689](#)-B-13 **IN RE: YANCY GRAHAM**
[NLG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-2-2018 [\[35\]](#)

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 as moot.

ORDER: The court will issue the order.

This motion will be DENIED AS MOOT pursuant to 11 U.S.C. § 362(c)(2)(B). This case was dismissed on March 2, 2018. Docket #44. Therefore no stay is in effect and this motion is DENIED AS MOOT.

32. [17-14894](#)-B-13 **IN RE: ISABEL BETANCOURT**
[MHM-1](#)

MOTION TO DISMISS CASE
2-9-2018 [[20](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Withdrawn.

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

33. [17-10432](#)-B-13 **IN RE: BRANDON/LESLIE SMART**
[TCS-2](#)

MOTION TO SELL
2-26-2018 [[37](#)]

BRANDON SMART/MV
TIMOTHY SPRINGER

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. 6004(a) and 2002(a)(2) require motions to sell
property of the estate be on at least 21 days' notice. This motion
was filed on 14 days' notice. Therefore notice of this motion did
not comply with the Fed. R. Bankr. P. and is DENIED WITHOUT
PREJUDICE.

34. [18-10642](#)-B-13 **IN RE: PETER SOLORIO**
[YG-1](#)

MOTION TO EXTEND AUTOMATIC STAY
2-26-2018 [\[8\]](#)

PETER SOLORIO/MV
YELENA GUREVICH

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 Local Rule of Practice ("LBR") 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.

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 26, 2018 and the automatic stay will expire on March 28, 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 on the grounds that debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

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.

Debtor's previous case was dismissed because he made his December payment on December 26, 2017 instead of the 25th, because the 25th was a holiday. Debtor had an 11 month history of making timely payments and has declared that he intends to make future payments in this case timely. Docket #10.

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 that the notice was not served as required by the Federal Rules of Bankruptcy Procedure and will consider consequences of that failure under LBR 9014-1(1) at the hearing.

35. [17-10507](#)-B-13 **IN RE: KRYSTAL WEDEKIND**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR GABRIEL WADDELL, DEBTORS ATTORNEY(S)
2-12-2018 [[19](#)]

GABRIEL WADDELL

NO RULING.