

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, March 29, 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**
[FW-13](#)

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL
2-1-2018 [[206](#)]

EDWARD UMADA/MV
PETER FEAR

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: A plan was confirmed on March 15, 2018.

Because a chapter 12 plan was confirmed on March 15, 2018 this motion to use cash collateral is moot and will be dropped from the calendar.

2. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[MHM-1](#)

MOTION TO DISMISS CASE
2-6-2018 [[212](#)]

MICHAEL MEYER/MV
PETER FEAR
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion is DENIED.

The basis for this motion is unreasonable delay by the debtor that is prejudicial to creditors on the grounds that over one year has passed since the filing of the petition and no plan has been confirmed, and neither confirmation hearing was concluded within 45 days of filing.

A plan was confirmed on March 15, 2018. The grounds of this motion are moot, and therefore this motion is DENIED.

3. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-19](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF EHRlich PLEDGER
LAW, LLP FOR JEAN PLEDGER, SPECIAL COUNSEL(S)
2-22-2018 [[439](#)]

JEAN PLEDGER/MV
T. BELDEN
JEAN PLEDGER/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 motion will be GRANTED. Special counsel Ehrlich, Pledger Law LLP requests fees of \$39,093.75 and costs of 122.50 for their services as special counsel for the estate for the period October 2, 2017 through December 31, 2017 for a total of \$39,216.25.

11 U.S.C. § 330 (a)(1) (A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) settlement of the Gardner lease litigation and settlement of the claims of MacPherson Oil Company and National Petroleum Associates (2) Preparation for an arbitration involving the debtor in possession and those parties (3) Attendance at numerous meetings involving the oil and gas issues facing the debtor here, and (4) Handling numerous oil and gas title issues. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$39,093.75 in fees and costs of \$122.50.

4. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-20](#)

MOTION FOR COMPENSATION FOR WAYNE LONG & CO., ACCOUNTANT(S)
2-22-2018 [[446](#)]

WAYNE LONG & COMPANY/MV
T. BELDEN

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.

Wayne Long & Co. shall be awarded \$6,552.50 in fees.

5. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-21](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BELDEN BLAINE
RAYTIS, LLP FOR T. SCOTT BELDEN, DEBTORS ATTORNEY(S)
2-22-2018 [[453](#)]

T. BELDEN

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 motion will be GRANTED. Debtor's general counsel, Belden, Blaine, Raytis, LLP request fees of \$29,532.00 and costs of \$1,143.07 for a total of \$30,675.07 for services rendered as debtor's counsel from September 1, 2017 through December 31, 2017.

11 U.S.C. § 330 (a)(1) (A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee applications for various professionals, (2) Attending various hearings dealing with resolution of various issues facing the debtor, (3) Negotiating a Plan of Reorganization and modifications of the Plan, (4) Preparation of a Disclosure Statement and amendments and obtaining approval of the Disclosure Statement, (5) Prosecution of a successful motion to confirm a modified Plan, and (6) Continuing to negotiate regarding ongoing litigation issues involving the debtor. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$29,532.00 in fees and \$1,143.07 in costs.

6. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-22](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALSWORTH WFBM,
LLP FOR RUDY PERRINO, SPECIAL COUNSEL(S)
2-22-2018 [[460](#)]

RUDY PERRINO/MV
T. BELDEN
RUDY PERRINO/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 Law Office of Walsworth WFBM, LLP shall be awarded \$59,925.00 in fees and \$6,671.21 in costs.

7. [11-14556](#)-B-12 **IN RE: RICARDO/MARIA MALDONADO**
[SSA-5](#)

MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, CREDITORS
ATTORNEY(S)
3-2-2018 [[343](#)]

THOMAS GILLIS

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 Federal Rule of Bankruptcy Procedure 2002(a)(6) 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.

Movant shall be awarded fees of \$4,110.00 and costs of \$73.86.

8. [11-14556](#)-B-12 **IN RE: RICARDO/MARIA MALDONADO**
[TOG-15](#)

MOTION TO MODIFY CHAPTER 12 PLAN
2-5-2018 [[325](#)]

RICARDO MALDONADO/MV
THOMAS GILLIS
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

9. [11-14556](#)-B-12 **IN RE: RICARDO/MARIA MALDONADO**
[TOG-16](#)

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

RICARDO MALDONADO/MV
THOMAS GILLIS
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 the order.

This motion is DENIED WITHOUT PREJUDICE. 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).

11 U.S.C. § 1228(a) states that "as soon as practicable after completion by the debtor of all payments under the plan...the court shall grant the debtor a discharge of all debts provided for by the plan." 11 U.S.C. § 347(a) requires the trustee to wait 90 "days after the final distribution under section...1226" before stopping payment on uncashed checks. After stopping payment, the trustee must pay the unclaimed funds to the court for disposition under 28 U.S.C. §§ 2401 et seq. When all checks have cleared the bank, the trustee generates and files the Final Report and Accounting. 11 U.S.C. §§ 704(a)(9), 1202(b)(1). As of March 15, 2018, not all checks have cleared in this case.

There is somewhat conflicting case law in the Eastern District of California regarding the time to enter the discharge; whether it is appropriate before or after the final report and accounting has been completed and filed. The Sacramento division in 2002, as trustee here cites, ruled that entering the discharge prior to the final report was inappropriate. See In re Avery, 272 B.R. 718, 728-31 (Cal. E.D. Bankr. 2002). Avery also stated that "in appropriate circumstances," it would enter a discharge prior to approval of a final report and account *Id.* at 731. In re Estrada illustrates what constitutes "appropriate circumstances." Even though Avery and Estrada are chapter 13 cases, the operating language of the 11 U.S.C. §§ 1228(a) and 1328(a) are similar enough to apply them to this chapter 12 case.

In In re Estrada, the trustee had inadvertently overpaid the unsecured creditors and was unable to prepare and generate a final report until he had retrieved the overpaid money and refunded

debtors. *In re Estrada*, 322 B.R. 149, 150-51 (Cal. E.D. Bankr. 2005). The court found that because the debtor's motion for entry of discharge was served on the trustee and all creditors, supported by evidence establishing that they have completed their plan payments, and that those payments were sufficient to fund the dividends promised to creditors, entry of the discharge was warranted. *Id.* at 152.

While the motion in this case was served to the mailing list and therefore all the creditors, it was not supported by convincing evidence establishing that the debtors have completed their plan payments, and thereby there was also no evidence that the payments were sufficient to fund the dividends promised to creditors. Therefore, under this District's precedent, entry of the discharge is not warranted at this time. Distribution of plan payments through the plan was not clear and was open to multiple interpretations, as demonstrated in the trustee's previously heard motion to dismiss. The complexity of the distribution scheme in addition to the lack of "appropriate circumstances" give this court reason to deny this motion without prejudice.

For the above mentioned reasons, this motion is DENIED WITHOUT PREJUDICE. Creditors have 33 days to object to the Final Report and Accounting after it has been generated and filed. Debtors may refile this motion in accordance with that timeline.

10. [15-13167](#)-B-12 **IN RE: DOUG KOPHAMER FARMS**
[MHM-2](#)

MOTION TO DISMISS CASE
2-6-2018 [\[455\]](#)

MICHAEL MEYER/MV
LEONARD WELSH

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

DISPOSITION: Denied as moot.

ORDER: The court will issue the order.

This motion is DENIED AS MOOT.

Debtor filed a "Notice of Conversion of Chapter 12 case to case under Chapter 7" on March 23, 2018. Docket #461. Therefore this motion will be DENIED AS MOOT.

1:30 PM

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

CONTINUED 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: Overruled as moot.

ORDER: The court will issue an order.

This objection OVERRULED AS MOOT.

Debtor filed claim number 7 on February 28, 2018 and by prior order of the court (docket #32) and by operation of law, this objection to confirmation of plan will be OVERRULED AS MOOT.

2. [17-13504](#)-B-13 **IN RE: SAMUEL/OLGA NEVAREZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
2-14-2018 [[43](#)]

SAMUEL NEVAREZ/MV
THOMAS GILLIS

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

DISPOSITION: Continued to April 26, 2018 at 1:30 p.m. The court sets a bar date of June 14, 2018.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on April 26, 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 April 12, 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 April 19, 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.

Pursuant to § 1324(b), the court will set June 14, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

3. [18-10306](#)-B-13 **IN RE: ALEJANDRO CERVANTES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-7-2018 [[22](#)]

THOMAS GILLIS
\$80.00 INSTALLMENT PAYMENT 3/14/18

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 record shows that the fee has been paid in full. No appearance is necessary.

4. [17-13507](#)-B-13 **IN RE: JUAN/MARIA ROBLES**
[TOG-1](#)

MOTION TO CONFIRM PLAN
2-7-2018 [[49](#)]

JUAN ROBLES/MV
THOMAS GILLIS
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 entered.

5. [17-14609](#)-B-13 **IN RE: MARK NOACK**
[TCS-1](#)

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
2-16-2018 [[37](#)]

MARK NOACK/MV
TIMOTHY SPRINGER

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 2012 Dodge Charger. 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 \$11,060.00. 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. [17-14609](#)-B-13 **IN RE: MARK NOACK**
[TCS-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. AND/OR
MOTION TO VALUE COLLATERAL OF IRWIN HOME EQUITY CORPORATION
, MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL LLC
2-16-2018 [[41](#)]

MARK NOACK/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
the 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: the
actual value of the real property.

7. [18-10014](#)-B-13 **IN RE: ALEXANDER RUIZ**
[PBB-2](#)

MOTION TO CONFIRM PLAN
2-1-2018 [[33](#)]

ALEXANDER RUIZ/MV
PETER BUNTING
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 12, 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
and trustee's objection to this motion has not been withdrawn, the
court will call the matter and may set an evidentiary hearing or
schedule further proceedings, if any are necessary.

8. [17-12717](#)-B-13 **IN RE: DALJIT SINGH**
[HRH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-13-2018 [\[138\]](#)

BMO HARRIS BANK N.A./MV
HANK WALTH
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

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.

The movant, BMO Harris Bank, N.A., seeks relief from the automatic stay with respect to a 2013 Great Dane Refrigerated trailer with 2013 Thermo-King SB330 Reefer Unit. The movant has produced evidence that the trailer has a value of \$30,000.00 and its secured claim is approximately \$29,773.95. Claim 3.

The court concludes that there is insufficient equity in the trailer or Reefer Unit to adequately protect movant and no evidence exists that it is necessary to a reorganization because the debtor intends to surrender it to movant. Docket #130.

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. 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 collateral is depreciating in value. Also the debtor intends to surrender the collateral.

9. [18-10121](#)-B-13 **IN RE: JOSE/MARTHA ACEVES**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-23-2018 [[20](#)]

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
JANINE ESQUIVEL
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, Nissan Motor Acceptance Corporation, seeks relief from the automatic stay with respect to a 2017 Nissan Sentra. The movant has produced evidence that the vehicle has a value of \$17,375.00 and its secured claim is approximately \$23,663.65. Claim 3.

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 can administer it for the benefit of the creditors. The movant already has possession of the vehicle. Docket #22.

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.

10. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CALIFORNIA FIELD
IRONWORKERS TRUST FUNDS
3-13-2018 [\[29\]](#)

BOARD OF TRUSTEES OF THE
CALIFORNIA IRONWORKERS FIELD
PETER FEAR
CHRISTOPHER MCDERMOTT/ATTY. FOR MV.

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

DISPOSITION: Continued to April 26, 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 and trustee's objection to this motion has not been withdrawn, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

11. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[RMP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR DITECH
FINANCIAL LLC
2-28-2018 [\[18\]](#)

DITECH FINANCIAL LLC/MV
PETER FEAR
JAMES LEWIN/ATTY. FOR MV.

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

DISPOSITION: Continued to April 26, 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 and trustee's objection to this motion has not been withdrawn, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

12. [16-12425](#)-B-13 **IN RE: GENEVIEVE SANTOS**
[ALG-4](#)

MOTION TO MODIFY PLAN
2-13-2018 [\[90\]](#)

GENEVIEVE SANTOS/MV
JANINE ESQUIVEL
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally 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 after complying with the court's orders.

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The court notes the trustee's opposition. The court also notes that neither supporting declaration explains the income and expense differences between the original and recently filed Schedules I and J.

After review of the motion, opposition, and supporting documents, the court finds that this motion to modify plan can be conditionally GRANTED. The conditions follow.

First, the order confirming plan shall include the following language: "All plan payments for months 1-18 shall total \$22,846.32. Commencing in month 19, plan payments shall be \$1,885.00." The debtor must also pay \$1,885.00 for February and March 2018 by March 25, 2018.

Second, the debtor shall provide competent evidence in the form of a declaration filed with the court and served on the trustee explaining the differences between the original and supplemental Schedules I and J. After the evidence is filed and served, the trustee and debtor can submit an order confirming the modified plan and the court will review the evidence and set an additional hearing, if necessary.

13. [15-11526](#)-B-13 **IN RE: DALE/MICHELLE SEAMONS**
[TCS-1](#)

MOTION TO MODIFY PLAN
2-5-2018 [[41](#)]

DALE SEAMONS/MV
TIMOTHY SPRINGER

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.

14. [17-14527](#)-B-13 **IN RE: GLORIA ALCALA**

MOTION TO CONFIRM PLAN
2-7-2018 [[52](#)]

GLORIA ALCALA/MV
HAYK GRIGORYAN

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

DISPOSITION: If this case is not dismissed (see item 14 below)
then this motion will be continued to April 26, 2018
at 1:30 p.m. The court sets a bar date of June 14,
2018. Otherwise, this motion will be DENIED AS MOOT.

ORDER: The court will issue an order if the case is not
dismissed.

This motion will be set for a continued hearing on April 26, 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 April 12, 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 April 19, 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.

Pursuant to § 1324(b), if the case is not dismissed, the court will set June 14, 2018 as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

The court also reminds movant's counsel of two Local Rules of Practice ("LBR").

There was no Docket Control Number ("DCN"). LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about 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.

The proof of service was not filed separately. The court reminds counsel that Local Bankruptcy Rules 9004-2(c)(1) and 9014-1(d)(4) require that proofs of service, inter alia, filed in a motion "shall be filed as separate documents."

15. [17-14527](#)-B-13 **IN RE: GLORIA ALCALA**
[MHM-3](#)

MOTION TO DISMISS CASE
2-12-2018 [\[57\]](#)

MICHAEL MEYER/MV
HAYK GRIGORYAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

16. [18-10233](#)-B-13 **IN RE: JOSE QUINTEROS**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF VALLEY FIRST CREDIT UNION
2-17-2018 [[15](#)]

JOSE QUINTEROS/MV
THOMAS GILLIS

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 2010 Honda Pilot. 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 \$11,169.00. 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.

17. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-2](#)

MOTION TO CONFIRM PLAN
2-9-2018 [[36](#)]

TIMOTHY SABBATINI/MV
PETER BUNTING

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

DISPOSITION: Continued to April 26, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This motion will be set for a continued hearing on April 26, 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 April 12, 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 April 19, 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.

18. [17-14637](#)-B-13 **IN RE: JIMMIE/VELMA PERRYMAN**
[MHM-2](#)

MOTION TO DISMISS CASE
2-20-2018 [[37](#)]

MICHAEL MEYER/MV
SCOTT LYONS
DISMISSED

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED: The case has already been dismissed on March 2, 2018 (Document No. 43).

19. [17-14039](#)-B-13 **IN RE: PETER/ADRIANNA BISACCA**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
2-8-2018 [[51](#)]

PETER BISACCA/MV
MARK ZIMMERMAN

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

DISPOSITION: Conditionally granted.

ORDER: The Moving Party shall submit a proposed order and serve and file the additional document in conformance with the ruling below.

The motion will be CONDITIONALLY 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. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

The court notes the trustee's objection to confirmation. The objection is based purely on a procedural deficiency. The plan was not filed separately on PACER as required by Local Rule of Practice 3015-1(d)(1). This motion is granted on the condition that movant re-file the plan separately on PACER. The court will not sign the order confirming plan until it receives confirmation of the separately re-filed plan from the debtors in the form of a filed and served supplemental document stating the Plan was properly filed.

20. [17-14339](#)-B-13 **IN RE: SHAWN WILLIAMS**
[MHM-3](#)

MOTION TO DISMISS CASE
2-14-2018 [\[74\]](#)

MICHAEL MEYER/MV
NIMA VOKSHORI

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

21. [18-10739](#)-B-13 **IN RE: LAO CHA**
[DRJ-2](#)

MOTION TO EXTEND AUTOMATIC STAY
3-5-2018 [\[8\]](#)

LAO CHA/MV
DAVID JENKINS

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 28, 2018 and the automatic stay will expire on March 30, 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 debtor fell behind in her plan payments due to unexpected expenses and a lack of reserved funds. Debtor attempted to become current but the final portion of the catch-up payments made via TFS were not received in accordance with the trustee's required deadlines. Debtors have a track record of making timely payments and not has an increased income, has made efforts to maintain reserved funds, and better understand the lead time required for the processing of TFS payments. 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.

22. [17-14843](#)-B-13 **IN RE: MATTHEW/MYRA ALLRED**
[AP-1](#)

CONTINUED 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.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

ORDER: The court will issue the order.

This objection is OVERRULED. Pursuant to the court's previous order, (docket #23) opposition was to be filed by March 15, 2018. The trustee filed timely "comments" opposing the objection.

The objection contends that because the plan does not provide for the objecting creditor's secured claim, it may not be confirmed.

11 U.S.C. § 1322(a) specifies the mandatory provisions to be included in a Chapter 13 Plan. Nothing in that section requires that a Plan "provide" for a secured claim.

11 U.S.C. § 1322(b) provides the optional provisions a debtor may include in a Plan. A claim secured only by the debtor's principal residence may not be modified. But, other secured claims may be modified. § 1322 (b)(2). A default on a secured claim on the principal residence and any other secured claim may be cured by regular monthly payments. Ongoing contract installment payments must be maintained while curing a pre-petition default. § 1322(b)(5).

If a debtor elects to provide for a secured claim, the debtor has three options: (1) provide treatment agreed to by the debtor and secured creditor (§ 1325 (a)(5)(A); (2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (§ 1325(a)(5)(B); or (3) surrender the collateral to the secured creditor (§ 1325(a)(5)(C).

When a Plan does not provide for a secured claim, confirmation of the Plan should not be denied solely for that reason. The claimholder may ask for stay relief to repossess or foreclose on its collateral. The lack of "provision for" a secured claim suggests the

collateral securing the claim is not necessary for a reorganization or that the claim will not be paid. This may be "cause" for stay relief under 11 U.S.C. § 362(d)(1). That said, if a debtor is current on the ignored claim, the debtor may want the opportunity to modify the Plan to cure any later default. The objection is OVERRULED.

23. [12-19258](#)-B-13 **IN RE: MARGERT LIMONES**
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
2-14-2018 [[121](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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.

Tierra Del Sol Homeowners Association ("Creditor") and its successors in interest are precluded from presenting any omitted information, which was required to be provided in the response to the Notice of Final Cure, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(i), in any form in any contested matter regarding debtor's first mortgage herein. Debtor has also cured the default on the loan with Creditor and is current on mortgage payments to Creditor through October 2017.

24. [15-10461](#)-B-13 **IN RE: GARY/INES FRANCIS**
[BCS-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SHEIN LAW
GROUP, PC FOR BENJAMIN C. SHEIN, DEBTORS ATTORNEY(S)
2-27-2018 [\[81\]](#)

BENJAMIN SHEIN

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.

Mr. Shein shall be awarded fees of \$1,885.50 and costs of \$126.54.

25. [18-10764](#)-B-13 **IN RE: CYNTHIA SANCHEZ**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
3-13-2018 [\[11\]](#)

CYNTHIA SANCHEZ/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 court will issue
the order.

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no

need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 March 3, 2018 and the automatic stay will expire on April 2, 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 the 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 debtor's petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor's previously filed case was filed on December 22, 2014 and dismissed on December 18, 2017. The case was dismissed for failure to make plan payments. Debtor fell behind in plan payments because she was unaware that some of the automatic payments had not been made, and she thought she thought she became caught up on the delinquent payments, she had not actually done so. Docket #13. She also did receive the Notice of Default and was therefore unaware that she was behind until her case was dismissed. *Id.* Debtor declares that she will be checking to make sure that each payment

made is in the full amount and on time in the future, and the unsecured creditors in this plan, as in the previous plan, are receiving 100% of their allowed claims. *Id.*

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.

26. [16-11072](#)-B-13 **IN RE: ELLYN LOPEZ**
[PK-3](#)

MOTION TO CONFIRM PLAN
2-12-2018 [[126](#)]

ELLYN LOPEZ/MV
PATRICK KAVANAGH

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.

The court reminds counsel about the rules about Docket Control Numbers ("DCN"). Local Rules of Practice 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about DCN. The DCN on this motion, PK-3, was used previously on a motion for compensation in November 2017.

27. [17-12373](#)-B-13 **IN RE: KATHERINE RUTHERFORD**
[HDN-3](#)

MOTION TO CONFIRM PLAN
2-9-2018 [[61](#)]

KATHERINE RUTHERFORD/MV
HENRY NUNEZ

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.

28. [17-14874](#)-B-13 **IN RE: RIGOBERTO/ESTELA ESTRADA**
[MHM-1](#)

MOTION TO DISMISS CASE
2-28-2018 [[17](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

29. [17-14575](#)-B-13 **IN RE: PAUL/CARRIE COLVIN**
[MAZ-2](#)

MOTION TO CONFIRM PLAN
2-13-2018 [[52](#)]

PAUL COLVIN/MV
MARK ZIMMERMAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

30. [17-14575](#)-B-13 **IN RE: PAUL/CARRIE COLVIN**
[MAZ-3](#)

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
2-13-2018 [\[57\]](#)

PAUL COLVIN/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

31. [18-10086](#)-B-13 **IN RE: RICHARD/SONIA NEWMAN**
[MHM-1](#)

MOTION TO DISMISS CASE
2-23-2018 [\[19\]](#)

MICHAEL MEYER/MV
STEPHEN LABIAK

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

32. [18-10286](#)-B-13 **IN RE: JOHN/BOBBIE-ANN HEINRICH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-6-2018 [\[15\]](#)

NO RULING.

An order granting a motion to pay the filing fee in installments was filed on January 30, 2018. Docket #6. An installment of \$79 came due on March 1, 2018, which was not paid.

Debtor must appear and explain to the court why the installment was not paid and why this case should not be dismissed or sanctions imposed on the debtor. If debtor fails to appear or debtor's explanation is inadequate, the court may dismiss the case.

33. [13-15897](#)-B-13 **IN RE: KERMIT/GERALDINE ALEXANDER**
[BCS-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SHEIN LAW
GROUP, PC FOR BENJAMIN C. SHEIN, DEBTORS ATTORNEY(S)
2-27-2018 [\[80\]](#)

BENJAMIN SHEIN

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.

Mr. Shein shall be awarded \$3,870.00 in fees and \$143.08 in costs.

34. [17-13798](#)-B-13 **IN RE: JASON/MANDY LAWTON**
[SAH-5](#)

CONTINUED MOTION TO CONFIRM PLAN
12-15-2017 [\[64\]](#)

JASON LAWTON/MV
SUSAN HEMB
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
entered.

35. [17-14462](#)-B-13 IN RE: GERALD/TERRI JOHNSON
[PLG-1](#)

MOTION TO VALUE COLLATERAL OF EQUITY-1 LOANS
3-14-2018 [\[35\]](#)

GERALD JOHNSON/MV
STEVEN ALPERT

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.

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.