

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, May 10, 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. [18-10908](#)-B-11 **IN RE: SHANICA BILLINGS**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-14-2018 [[1](#)]

SHANICA BILLINGS/ATTY. FOR MV.
DISMISSED, CLOSED

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.

2. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-29-2018 [[1](#)]

RILEY WALTER

NO RULING.

3. [18-11385](#)-B-11 **IN RE: MOHAMMAD KHAN**
[MJR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-23-2018 [[22](#)]

2614 SACRAMENTO STREET, LLC/MV
MARK ROMEO/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, 2614 Sacramento Street, LLC, seeks relief from the automatic stay with respect to a piece of real property located at 2614 Sacramento Street in San Francisco, CA. The movant is the holder of a Judgment for Possession of the Property rendered by the San Francisco Superior Court against debtor. Doc. #24, exh. #1.

The court concludes that there is "cause" to lift the stay and GRANT this motion. "Cause" is not defined in the bankruptcy code, but "is a broad and flexible concept which permits a bankruptcy court, as a court of equity, to respond to inherently fact-sensitive situations." In re A Partners, LLC, 344 B.R. 114, 127 (E.D. Cal. Bankr. 2006). Debtor has no ownership equity in the property, there is no lease, and neither the property nor its possession is claimed as an asset of the estate.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to recover possession of the real property and to dispose of any abandoned personal property pursuant to state law. No other relief is awarded.

The court notes that under 11 U.S.C. § 362(c)(3), the stay would terminate by operation of law on May 11, 2018. This would occur even if the debtor complied with the clerk's notice (Docket No. 4 below).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that movant holds a judgment for possession of the property.

4. [18-11385](#)-B-11 **IN RE: MOHAMMAD KHAN**
[MJR-2](#)

NOTICE OF INCOMPLETE FILING AND NOTICE OF INTENT TO DISMISS
CASE
4-10-2018 [\[2\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the documents are filed by May 8, 2018,
this case will be dismissed.

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

A "Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are not Timely Filed" was filed on April 12, 2018. This notice informed debtor that they had until April 24, 2018 to file

several missing documents with the bankruptcy clerk's office or the case would be dismissed. Doc. #9. On April 24, 2018, debtor filed a motion to extend that deadline to May 8, 2018. Doc. #29. The motion was granted and an order was entered that same day. Doc. #31.

Unless the documents are filed by May 8, 2018, this case will be DISMISSED.

1:30 PM

1. [18-10302](#)-B-13 **IN RE: ANDREA AFFRUNTI**
[CCH-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NAVY FEDERAL
CREDIT UNION
3-21-2018 [[16](#)]

NAVY FEDERAL CREDIT UNION/MV
MARK ZIMMERMAN
CAMARAY CALLIER-HENDERSON/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection.

2. [17-14004](#)-B-13 **IN RE: XAVIER/ELIZABETH BERMUDEZ**
[SAH-3](#)

CONTINUED MOTION TO MODIFY PLAN
2-23-2018 [[35](#)]

XAVIER BERMUDEZ/MV
SUSAN HEMB
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

3. [18-10504](#)-B-13 **IN RE: JUAN REYES**
[MHM-2](#)

MOTION TO DISMISS CASE
4-9-2018 [[28](#)]

MICHAEL MEYER/MV
YELENA GUREVICH

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.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The court notes that the debtor filed a timely response to the Trustee's Motion to Dismiss [MHM-3] (docket number 4 below), appearing to address the issues in this motion. Combining a response is procedurally improper. A response addressing the issues in each motion should have been filed separately.

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6. [17-10507](#)-B-13 **IN RE: KRYSTAL WEDEKIND**
[FW-2](#)

MOTION TO MODIFY PLAN
3-29-2018 [[28](#)]

KRYSTAL WEDEKIND/MV
GABRIEL WADDELL
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 14, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of the trustee, and to allow debtor time to provide further evidence of her wages and "anticipated" income, this matter is continued to June 14, 2018 at 1:30 p.m. No appearance is necessary.

7. [17-14609](#)-B-13 **IN RE: MARK NOACK**
[TCS-2](#)

FURTHER SCHEDULING CONFERENCE RE: 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
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 17, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' request, this matter will be continued to May 17, 2018 at 1:30 p.m. to allow creditor to complete its appraisal and allow the parties time to meet and confer regarding the results.

8. [17-12214](#)-B-13 **IN RE: KENNETH/JANE HOSTETLER**
[TCS-3](#)

OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 3
3-15-2018 [\[83\]](#)

KENNETH HOSTETLER/MV
TIMOTHY SPRINGER

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 objection was set for hearing on over 44 days' notice under LBR 3007(b)(1). Notice as required by Local Rule of Practice ("LBR") has to be set according to 3007-1. 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 3007(b)(1) 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The claim will be disallowed in part on the grounds stated in the objection. Based on the evidence submitted in support of the objection, the claim of Citibank, N.A., claim number 3, shall be fixed at \$29,164.06.

The request for attorney's fees under 28 U.S.C. § 1927 and 11 U.S.C. § 105 is denied. The court does not find that claimant "multiplied the proceedings in [this] case unreasonably and vexatiously." Also, the authority of this court to award sanctions under 28 U.S.C. § 1927 is unsettled. See, In re Perroton, 958 F.2d 889, 893 (9th Cir. 1991) and In re Larry's Apt. LLC, 249 F.3d 832, 840 (9th Cir. 2001). See also, In re Loyd, 304 B.R. 372, 376 (9th Cir. B.A.P. 2003)(Klein, J. dissenting).

9. [18-10121](#)-B-13 **IN RE: JOSE/MARTHA ACEVES**
[MHM-3](#)

MOTION TO DISMISS CASE
4-6-2018 [[51](#)]

MICHAEL MEYER/MV
JANINE ESQUIVEL

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

10. [18-10223](#)-B-13 **IN RE: ROBERT/JESSICA LIM**
[MHM-3](#)

MOTION TO DISMISS CASE
4-9-2018 [[28](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtors filed a timely response and indicated that they mistakenly paid their plan payments to their mortgage company. The debtors intend to be current with their plan payments before the scheduled hearing. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion.

11. [14-10524](#)-B-13 **IN RE: RONALD MANIORD**
[RSW-4](#)

MOTION TO SELL AND/OR MOTION TO INCUR DEBT
4-20-2018 [\[57\]](#)

RONALD MANIORD/MV
ROBERT WILLIAMS

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. 2002(a)(2) requires proposed sales of property of the estate other than in the ordinary course of business to be set for hearing on at least 21 days' notice. No request to reduce the notice period or modify notice requirements under FRBP 2002(a)(2) and 9006 were made or granted.

This motion was filed on April 20, 2018 and set for hearing on May 10, 2018. Doc. #58. May 10, 2018, is 20 days after April 20, 2018. Because this motion was not set for hearing on at least 21 days' notice, it is DENIED WITHOUT PREJUDICE.

12. [18-10325](#)-B-13 **IN RE: MA RAMOS**
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-19-2018 [\[26\]](#)

YAMAHA MOTOR FINANCE CORP./MV
THOMAS GILLIS
KAREL ROCHA/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, Yamaha Motor Finance Corp., seeks relief from the automatic stay with respect to a 2017 Yamaha EX1050CS. The movant has produced evidence that the vehicle has a value of \$6,440.00 and its secured claim is approximately \$8,085.72. Claim 2.

The court concludes that there is no equity in the vehicle, no evidence exists that it is necessary to a reorganization, and debtor surrendered the vehicle to movant on March 29, 2018. Doc. #31.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (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 movant has possession of the vehicle and it is depreciating in value.

13. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[GMJ-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION TO SELL
3-8-2018 [[252](#)]

SCOTT THORBURN/MV
PETER FEAR
DAVID GILMORE/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING: No hearing. Court deems motion is withdrawn.

DISPOSITION: Motion withdrawn.

ORDER: The court will issue the order.

This motion was continued to allow the parties to attempt to agree on a listing agreement. According to the joint status report (Document No. 299), the parties have done so and jointly agreed to a procedure in the event Mr. Thorburn objects to a proposed sale. The parties have agreed that any undisputed proceeds will be distributed. However, the court will not enter such an order now since there is no sale before the court.

Both parties agree further hearing on this motion is unnecessary. So, this motion is deemed WITHDRAWN.

14. [18-10233](#)-B-13 **IN RE: JOSE QUINTEROS**
[TOG-2](#)

MOTION TO CONFIRM PLAN
3-23-2018 [\[29\]](#)

JOSE QUINTEROS/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 14, 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. The debtor does not oppose the continuance (Document No. 49). At the continued hearing, if the § 341 meeting has concluded and trustee has not filed a timely objection, this motion may be granted. If a timely objection has been filed, the court may call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

15. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
2-13-2018 [\[59\]](#)

MICHAEL MEYER/MV
PETER BUNTING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT.

Because debtor's motion to confirm plan (PBB-6, matter #16 below) is granted, this motion to dismiss is DENIED AS MOOT.

16. [17-13934](#)-B-13 **IN RE: TIMOTHY/LORNA SABBATINI**
[PBB-6](#)

MOTION TO CONFIRM PLAN
3-26-2018 [[72](#)]

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.

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.

17. [18-10837](#)-B-13 **IN RE: ALFONSO GUERRERO-VALADEZ AND ANNA**
GUERRERO
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE
CORPORATION
4-11-2018 [[16](#)]

FREEDOM MORTGAGE
CORPORATION/MV
TIMOTHY SPRINGER
DANE EXNOWSKI/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice unless objecting
creditor, debtor and trustee agree the
confirmation order can resolve the dispute.

ORDER: Order preparation will be determined at the
hearing.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

This deficiency is enough to overrule the objection. But, the debtor filed a response (Document No. 21) admitting the monthly installment amount was omitted in reference to this creditor's claim in class 4 under the Plan. The debtor proposes the confirmation order address the deficiency.

Still, that may affect feasibility of this Plan. If the debtor, creditor and trustee all agree the confirmation order can address the problem, the objection will be SUSTAINED and the confirmation order will be signed by all parties. If not, the objection is OVERRULED WITHOUT PREJUDICE.

18. [18-10454](#)-B-13 **IN RE: MARCOS ALVAREZ AND CLAUDIA GARCIA**
[JM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LENDMARK FINANCIAL
SERVICES, LLC
4-25-2018 [\[29\]](#)

LENDMARK FINANCIAL SERVICES,
LLC/MV
THOMAS GILLIS
DONALD DUNNING/ATTY. FOR MV.

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

DISPOSITION: Continued to May 31, 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 this objection has not been withdrawn, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

19. [18-10454](#)-B-13 **IN RE: MARCOS ALVAREZ AND CLAUDIA GARCIA**
[MHM-2](#)

MOTION TO DISMISS CASE
4-6-2018 [\[23\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at
the hearing the court intends to grant the

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

20. 18-10454-B-13 IN RE: MARCOS ALVAREZ AND CLAUDIA GARCIA
 TOG-1

MARCOS ALVAREZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

Based on the record, the factual issues appear to include: what is the value of the 2006 Toyota Sienna CE minivan?

The court notes that the opposition filed against this motion was also labeled as an objection to confirmation of chapter 13 plan. Filing such an opposition that attempts to oppose the instant motion and the chapter 13 plan is improper. If creditor wishes to oppose plan confirmation, debtor must file a separate opposition.

The court also notes that Lendmark filed no evidence in support of their opposition. The debtor is competent to testify as to the value of the collateral and the testimony is currently unchallenged by contrary evidence, see, Federal Rule of Evidence 701; *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165 (9th Cir. 2004).

21. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
3-15-2018 [\[74\]](#)

VICTOR ISLAS/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.

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.

22. [18-11457](#)-B-13 **IN RE: GREGG/WENDY SCHOFIELD**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-18-2018 [\[8\]](#)

GREGG SCHOFIELD/MV
PETER BUNTING

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 April 13, 2018 and the automatic stay will expire on May 13, 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 debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor filed the previous and current case to cure their mortgage arrearage and deal with secured and unsecured priority taxes. The

previous case was dismissed for failure to make plan payments. Doc. #10. At that time, Mrs. Schofield was not employed. *Id.* Now, she is employed part-time and Mr. Schofield is still self-employed. Debtors have also made efforts to reduce obligations, ridding themselves of a storage unit and surrendering a newer vehicle for an older one which will meet their needs. *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.

23. [18-10467](#)-B-13 **IN RE: STEVEN/TELVA RAMIREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-9-2018 [[35](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors. The debtors failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4), and failed to comply with this court's order dated March 2, 2018 (Document No. 24). Accordingly, the case will be dismissed.

24. [17-14671](#)-B-13 **IN RE: ESTELA GARAY**
[PBB-2](#)

MOTION TO CONFIRM PLAN
3-21-2018 [\[37\]](#)

ESTELA GARAY/MV
PETER BUNTING
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 31, 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 has not filed a timely objection to this motion, the court will call the matter and may set an evidentiary hearing or schedule further proceedings, if any are necessary.

25. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[LKW-16](#)

MOTION TO SELL
4-12-2018 [\[351\]](#)

SHELBY KING/MV
LEONARD WELSH

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

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order signed by the Chapter 13 Trustee.

This objection was 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. It appears that the proposed sale is reasonable and will result in a price consistent with the market for this property. The debtor has authority to sell property of the estate under 11 U.S.C. § 1303. The Confirmed Plan provides for the sale of these real properties and the auction will be conducted within the time required by the Plan.

The 14-day stay under Federal Rule of Bankruptcy Procedure 6004(h) shall be waived.

This motion is GRANTED. Debtors are authorized to sell the real property identified in their Third Modified Plan ("the Rental Properties") at a public auction to be conducted by SVN Interstate Auction Company. Debtors are also authorized to use and distribute the proceeds from said sale consistent with the terms of the Third Modified Plan. The Chapter 13 Trustee shall sign the proposed order.

26. [18-10478](#)-B-13 **IN RE: CARLOS PADILLA**
[MHM-2](#)

MOTION TO DISMISS CASE
4-9-2018 [[21](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. The debtor failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

27. [18-10181](#)-B-13 **IN RE: MIGUEL HERNANDEZ**
[MHM-3](#)

MOTION TO DISMISS CASE
4-9-2018 [[34](#)]

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.

28. [18-10386](#)-B-13 **IN RE: ANGEL RODRIGUEZ**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
3-27-2018 [[34](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

ORDER: The court will prepare the order.

This matter was continued to this date for the Trustee to conclude the meeting of creditors. The meeting was concluded on May 1, 2018. The trustee has until May 8, 2018 to file an objection to Plan confirmation.

Bank of America ("B of A" or "objector") opposes Plan confirmation contending the Plan does not provide for the distribution of the full amount of the pre-petition arrearage B of A claims is owed. The Plan states the arrearage to be distributed to B of A is \$35,612.80; the proof of claim filed by B of A states the arrearage is \$37,538.69. (Claim #5 filed April 16, 2018). B of A argues the Plan cannot be confirmed under 11 U.S.C. §§ 1322(b)(5) and 1325(a)(5)(B)(ii).

B of A's proof of claim sets forth the arrearage the creditor claims is owed. Section 3.02 of the form Plan clarifies that the filed proof of claim controls the amount and classification of the claim

absent a contrary court order. No objection has been filed to B of A's claim. So, at this time, the Plan will need to be modified or the parties agree to the terms of a confirmation order to make distributions to B of A under the Plan. Since the Plan is not confirmed, the court will hear from objector, the debtor and the Trustee as to the status of the Plan at the hearing.

Since the proof of claim controls, this objection is OVERRULED.

29. [18-10488](#)-B-13 **IN RE: DEQUAN/ALEXIS KELSEY**
[MHM-2](#)

MOTION TO DISMISS CASE
4-6-2018 [[16](#)]

MICHAEL MEYER/MV
JOEL WINTER

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors. The debtors failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

30. [17-11691](#)-B-13 **IN RE: GUSTAVO/BLANCA ALCARAZ**
[TOG-1](#)

MOTION TO MODIFY PLAN
3-14-2018 [[30](#)]

GUSTAVO ALCARAZ/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.

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