

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, May 11, 2017
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**
2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.
3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.
4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.
5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 a.m.

1. [10-17316](#)-B-12 PEDRO/DIANA GONZALEZ MOTION FOR ENTRY OF DISCHARGE
FW-9 4-7-17 [[145](#)]
PEDRO GONZALEZ/MV
PETER FEAR/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered and the discharge be entered.

2. [17-10327](#)-B-12 EDWARD/LISA UMADA CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
1-31-17 [[1](#)]
PETER FEAR/Atty. for dbt.

This matter will proceed as scheduled.

3. [17-10327](#)-B-12 EDWARD/LISA UMADA
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
PETER FEAR/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-17-17 [[45](#)]

The record shows that this matter has been resolved by: stipulation filed May 5, 2017 (Doc. 57), between the debtors and Citizens Business Bank permitting use of cash collateral for adequate protection payments for the subject collateral; and stipulation filed May 9, 2017 (Doc. 66), between the debtors and the movant for adequate protection payments on this claim, pending confirmation of the debtors' chapter 12 plan. No appearance is necessary.

The movant, American Honda Finance Corporation, shall prepare a proposed order, with the "Stipulation for Adequate Protection Order Regarding Motion for Relief From the Automatic Stay" (Doc. 66) attached, approving that stipulation.

The debtors shall prepare a proposed order, with the "Stipulation Agreeing to Use Cash Collateral for Adequate Protection Payments" (Doc. 57) attached, approving that stipulation.

4. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
LKW-47 INC.
B&L EQUIPMENT RENTALS, INC./MV

MOTION FOR AUTHORITY TO ENTER
INTO INSURANCE PREMIUM FINANCE
AGREEMENT AND/OR MOTION FOR
ADEQUATE PROTECTION
4-21-17 [[716](#)]

LEONARD WELSH/Atty. for dbt.

This matter 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.

5. 17-11591-B-11 5 C HOLDINGS, INC.
LKW-12
5 C HOLDINGS, INC./MV

MOTION TO USE CASH COLLATERAL
AND/OR MOTION FOR ADEQUATE
PROTECTION
4-26-17 [12]

LEONARD WELSH/Atty. for dbt.
OST 4/26/17

This matter will proceed as scheduled.

1:30 P.M.

1. 17-10600-B-13 JOHNNIE/DARLA SMITH MOTION TO DISMISS CASE
MHM-1 4-4-17 [26]
MICHAEL MEYER/MV
RABIN POURNAZARIAN/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's motion has been withdrawn. No appearance is necessary.

2. [12-16505](#)-B-13 ERIC/JUDY GRAHAM
JMA-4
ERIC GRAHAM/MV

MICHAEL ARNOLD/Atty. for dbt.
DISMISSED
- MOTION TO ENTER STIPULATION AND
ORDER VACATING THE DISMISSAL OF
CASE ENTERED ON MARCH 17, 2017
4-10-17 [[78](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order, with the stipulation attached, approving the stipulation. The court will then enter the order vacating the dismissal. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered and the stipulation will be approved.

3. [13-12622](#)-B-13 ALONZO/LEA PADILLA
BCS-4

MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
4-10-17 [[53](#)]

BENJAMIN SHEIN/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

4. [12-18425](#)-B-13 MARK/MELISSA ARNETT
BCS-4

MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
4-10-17 [[81](#)]

BENJAMIN SHEIN/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

5. [15-14228](#)-B-13 OSCAR GUTIERREZ
GEG-4
OSCAR GUTIERREZ/MV
GLEN GATES/Atty. for dbt.

MOTION TO MODIFY PLAN
4-4-17 [[122](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

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.

6. [12-13538](#)-B-13 TYRONE PARKS AND LISA
MHM-5 STAR-PARKS
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.

MOTION TO DISMISS CASE
4-10-17 [[110](#)]

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

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 is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed.

7. [17-11338](#)-B-13 ANTHONY/VIRGINIA GONZALES MOTION TO EXTEND AUTOMATIC STAY
PBB-1 4-24-17 [9]
ANTHONY GONZALES/MV
PETER BUNTING/Atty. for dbt.

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The 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.

Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
 2. What has changed so that the present plan is likely to succeed?
- In re Elliot-Cook*, 357 B.R. 811, 814-15 (Bankr. N.D. Cal.2006)

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if 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). The prior case was dismissed because the debtors failed to make the payments required under the plan. The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). 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.

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 and that the debtors petition was filed in good faith, and it intends to grant the motion to extend/impose the automatic stay. The debtors' plan

provides for 100% payment to their unsecured creditors and it appears the debtors have remedied the withholding errors that caused them to be unable to make their plan payments. 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.

8. [17-10639](#)-B-13 ANTONIO TINOCO
MHM-1
MICHAEL MEYER/MV
DAVID EGLI/Atty. for dbt.

MOTION TO DISMISS CASE
3-31-17 [[20](#)]

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there is unreasonable delay by the debtor that is prejudicial to creditors, including: failure to provide the Trustee with the required documentation including the Class 1 Mortgage Checklist with payment coupon or last statement; failure to provide the 2016 State and Federal Tax Return; failure to provide proof of all income, i.e., pay advices; deed of trust and promissory note; and failure to set a feasible plan for hearing with notice to creditors. Accordingly, the case will be dismissed.

9. [12-19946](#)-B-13 TERRY/JODEL KING
DRJ-4
TERRY KING/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO MODIFY PLAN
3-30-17 [[94](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

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.

10. [17-10650](#)-B-13 JOSE TORRES
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
4-4-17 [[18](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

11. [17-10553](#)-B-13 JENNIFER GUTIERREZ
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
4-3-17 [[35](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

12. [17-10658](#)-B-13 SILVIA ABARCA
MHM-1
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
4-5-17 [[16](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

13. [14-10859](#)-B-13 RICHARD/BARBARA JOHNSON
BCS-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTORS ATTORNEY(S)
4-10-17 [[49](#)]

BENJAMIN SHEIN/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

14. [12-14660](#)-B-13 JESUS/YSIDRA SANTOS
MHM-3
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
4-10-17 [[69](#)]

This matter will proceed as scheduled.

The debtor's ex parte request for an order permitting a late-filed opposition was rejected and no subsequent proposed order is pending.

15. [17-10563](#)-B-13 INPREET SINGH
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
4-5-17 [[28](#)]

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The record shows there is unreasonable delay by the debtor that is prejudicial to creditors, including, failure to provide the trustee with the required 2016 State and Federal Tax Return; failure to cooperate with the trustee as required by failing to provide proof of income from hauling company and State and Federal tax returns. Accordingly, the case will be dismissed.

16. [17-10563](#)-B-13 INPREET SINGH
MHM-2
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
4-10-17 [[33](#)]

Because the court will grant the trustee's motion to dismiss above, at calendar number 15, DC number MHM-1, this matter will be denied as moot. The court will enter an order. No appearance is necessary.

17. [17-10870](#)-B-13 CAROL SHIELDS
DRJ-2
CAROL SHIELDS/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
VALLEY FIRST CREDIT UNION
3-29-17 [[11](#)]

The motion will be granted without oral argument based on well-pled facts. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.

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

The debtor is competent to testify as to the value of the 2013 Honda Accord. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$12,000. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

18. [17-10870](#)-B-13 CAROL SHIELDS
DRJ-3
CAROL SHIELDS/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
MEDALLION BANK
3-29-17 [[15](#)]

The motion will be granted without oral argument based on well-pled facts. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.

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

The debtor is competent to testify as to the value of the 2014 Coleman Catalina travel trailer. 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 \$20,000. 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.

This matter will proceed as scheduled. The parties shall be prepared to address the issues as follows:

1. Whether the increase of approximately \$28,000 in net proceeds from the sale of debtor's home due to correction of the cost-of-sale error renders the plan feasible and, if not, whether any shortfall could be remedied by the proposed use of exempt funds;
2. The debtor's argument that paying secured creditor Snap On differently than other secured creditors is not a violation of §1322(a)(3) because the other secured creditors are not in the same class as Snap On;
3. Whether the terms regarding payments to secured creditors that are listed in the "additional provisions" section of the debtor's plan are inconsistent with the Bankruptcy Code or inconsistent with the purpose of adequate protection so that the inclusion of those terms constitutes a violation of Section 6 of the form plan (see, *In re Brea*, 533 B.R. 283, 291 (9th BAP, 2015));
4. Whether Snap On is an impaired creditor and whether it would be unfair to its right to adequate protection to imply its consent to an early "balloon payment" of its claim, or whether it should be rescued from its apparent failure to "scour" the additional provisions to discover the treatment of its claim. The court notes that it actually appears that its treatment, although the opposite in timing, is consistent with the Ninth Circuit Bankruptcy Appellate Panel's decision in *In re Brea*, 533 B.R. at 291, cited by the trustee, in that the debtor's stated purpose for the early pay-off is the need to continue business dealings with that creditor. ("[T]he bankruptcy court must have discretion to fix any initial lump sum amount, the amount payable periodically, the frequency of payments, and the beginning date, all as dictated by the circumstances of the case and the sound exercise of that discretion." *Emphasis added*.) The court also notes parenthetically, that *Brea*'s plan, confirmation of which was upheld by the BAP, proposed paying one secured creditor in full in 15 months, and two different secured creditors in 12 months. The issue in *Brea* was the suspension of those monthly payments for seven months to allow payment of attorneys fees. *Id.*, 284.
5. Whether secured creditors Harley Davidson and Ally Financial LLC, who did not object to confirmation of the plan, are "impaired creditors" who would have grounds to object where the treatment of their claims under the plan complies with §1325(a)(5)(B), providing a "stream of payments" having a present value equal to their "allowed secured claims." See, *In re Smith*, 345 B.R. 637, 644 (9th BAP, 2010). In the absence of an objection, there is no way to determine that the payments proposed do not represent adequate protection.

20. [16-14574](#)-B-13 TIMOTHY/VICKIE WEATHERLY MOTION TO CONFIRM PLAN
SL-1 3-24-17 [[37](#)]
TIMOTHY WEATHERLY/MV
SCOTT LYONS/Atty. for dbt.

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

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.

21. [17-10076](#)-B-13 ALVINO GARCIA MOTION TO CONFIRM PLAN
JRL-2 3-22-17 [[46](#)]
ALVINO GARCIA/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

This matter will be continued to Wednesday, June 14, 2017, at 9:30 a.m. The court will issue an order. No appearance is necessary.

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 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

22. [17-10878](#)-B-13 LUIS TAVARES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-17-17 [[23](#)]
THOMAS GILLIS/Atty. for dbt.
PAID \$156 ON 4/24/17

The OSC will be vacated. No appearance is necessary.

The OSC was issued for the debtor's failure to make the payment due on April 12, 2017. The delinquent payment was made on or about April 26, 2017 and the debtor is current as of this hearing date. The OSC will be vacated and the case will remain pending because the payment was made. However as a sanction, the court will modify the order permitting the payment of filing fees in installments to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

23. [17-10483](#)-B-13 CONSOLACION ATAYDE AND MOTION TO DISMISS CASE
MHM-1 MARIA SORIANO 4-3-17 [[25](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's motion has been withdrawn. No appearance is necessary.

24. [17-10483](#)-B-13 CONSOLACION ATAYDE AND MOTION TO CONFIRM PLAN
TOG-1 MARIA SORIANO 3-27-17 [[18](#)]
CONSOLACION ATAYDE/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

This matter will be continued to Thursday, June 1, 2017, at 1:30 p.m. The court will issue an order. No appearance is necessary.

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 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

25. 17-10483-B-13 CONSOLACION ATAYDE AND
TOG-2 MARIA SORIANO
CONSOLACION ATAYDE/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
VALLEY BUSINESS BANK
4-7-17 [29]

The motion will be granted without oral argument based upon well-pled facts. The debtors shall submit a proposed order consistent with this ruling as set forth below. No appearance is necessary.

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

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.

26. [12-15887](#)-B-13 KENNETH/LENA BRADLEY
BCS-5

MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
4-10-17 [[73](#)]

BENJAMIN SHEIN/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

27. [16-10391](#)-B-13 MICHAEL PFEIFFER
DMG-4
MICHAEL PFEIFFER/MV
D. GARDNER/Atty. for dbt.

MOTION TO MODIFY PLAN
4-3-17 [[71](#)]

The motion will be conditionally granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

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 notes that, while it may be inferred that the modified chapter 13 plan was served on all creditors as required, the certificate of proof of service is less than clear. If applicable, prior to submitting the proposed confirmation order the debtor shall file a corrected certificate of proof of service that clearly indicates that the plan was so served. If the plan was not served on the creditors, however, then the motion will be denied without prejudice.

28. [17-10793](#)-B-13 PEDRO VELASQUEZ
TGM-1
ELIZON MASTER PARTICIPATION
TRUST I, U.S. BANK TRUST
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-12-17 [[24](#)]

This matter will proceed as scheduled. The motion was fully noticed and the debtor filed a timely opposition. The reply filed by movant on May 8, 2017, was late. Replies are due at least seven days before the hearing date (LBR 3007-1(b)(B)).

The court takes judicial notice of adversary proceeding number 17-01047 filed by the debtor on May 8, 2017, in which a status conference has been set for July 6, 2017. The facts recited in that complaint show that the foreclosure sale of the debtor's residence occurred pre-petition and prior to the arising of any automatic stay. The debtor's claims appear to be state law claims and no motion for a temporary injunction in this court has been filed.

By law a motion for relief from the automatic stay under §362 is limited in scope. Here, the record shows that the debtor's bankruptcy estate does not have an ownership interest in the subject property. Section 362(d)(1) provides that the court "shall" grant relief "for cause," including lack of adequate protection. Subsection (d)(2) also mandates relief where, "(A), the debtor does not have equity in such property; and (B) such property is not necessary to an effective reorganization."

After review of the moving papers and the opposition, the court intends to grant relief under §362(d)(1) and (2), however, relief under §362(d)(4) is not warranted because movant is not a secured creditor in this case.