

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday May 30 2019
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.

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. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
12-7-2018 [\[1\]](#)

JACOB EATON

NO RULING.

2. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[KDG-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB & KIMBALL, LLP FOR JACOB L. EATON,
DEBTORS ATTORNEY(S)
5-2-2019 [\[198\]](#)

JACOB EATON

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 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.

The motion will be GRANTED. Debtor's bankruptcy counsel, Klein, DeNatale, Goldner, Cooper, Rosenlieb, & Kimball, LLP, requests fees of \$49,972.50 and costs of \$566.75 for a total of \$50,539.25 for services rendered from January 11, 2019 through April 20, 2019.

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) Advising debtor about the administration of its chapter 12 case and its duties as debtor-in-possession, (2) Defending against stay relief motions, (3) Counseling debtor on use of cash collateral, (4) Administering claims, and (5) Beginning the work on a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$49,972.50 in fees and \$566.75 in costs.

3. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[MHM-2](#)

MOTION TO DISMISS CASE
5-2-2019 [[188](#)]

MICHAEL MEYER/MV
JACOB EATON

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 Local Rules of Practice ("LBR").

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on May 2, 2019 and set for hearing on May 30, 2019. Doc. #189, 191. May 2, 2019 is 28 days before May 30, 2019, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that "Pursuant to Local rule," written opposition was not required and any opposition must be presented at the hearing. Doc. #189. That is incorrect. Though the notice did not specify which "Local Rule," because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served at

least 14 days prior to the hearing or the case may be resolved without oral argument. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

4. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[DCJ-2](#)

MOTION TO EXTEND TIME TO FILE CHAPTER 12 PLAN
5-7-2019 [\[75\]](#)

KULWINDER SINGH/MV
DAVID JOHNSTON

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. 11 U.S.C. § 1221 states "[T]he debtor shall file a plan not later than 90 days after the order for relief under this chapter, except the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable."

The court finds that such circumstances exist. Due to the unexpected health problems plaguing movant's counsel's spouse, along with counsel's teaching responsibilities, counsel has not been able to devote the time and attention to plan preparation as needed. But counsel has represented that once the teaching duties end in mid-May, he "will have much more time to devote to preparation of the Chapter 12 plan in this case." Doc. #75. Therefore the time to file a chapter 12 plan is extended to and including June 6, 2019.

5. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[WW-13](#)**

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
5-15-2019 [\[198\]](#)

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER

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.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume . . . any . . . unexpired lease of the debtor."

Even though this motion is a motion to assume, not reject, the analysis is identical. "...[C]ourts are no more equipped to make subjective business decisions for...businesses..." Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

Unless opposition is presented at the hearing, the court finds that the presumption has not been rebutted, and therefore the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent.

The debtor-in-possession is authorized to assume and assign the non-residential real property lease, identified as the Medical Office Lease, effectively dated March 15, 2016, by and between the Debtor and Darrin Dutra, CD, as lessee (the "Contract"), for the lease of a 426 square foot office suite, commonly known as 1145 East Phelps Avenue, Suite 105A, Coalinga, CA to Coalinga Medical Center, LLC. Doc. #198. The 14 day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION
9-30-2017 [[1](#)]

RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[FWP-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
1-14-2019 [[993](#)]

CERNER CORPORATION/MV
RILEY WALTER
JASON RIOS/ATTY. FOR MV.

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

DISPOSITION: Continued to June 18, 2019 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #1419.

1:30 PM

1. [19-10100](#)-B-13 **IN RE: ASHLEY AMEZQUITA TRUJILLO**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
4-30-2019 [\[21\]](#)

ASHLEY AMEZQUITA TRUJILLO/MV
PETER BUNTING

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

DISPOSITION: Granted.

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

This motion 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.

The debtor is competent to testify as to the value of the 2015 Chevrolet Cruze LT. 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 \$11,056.00. 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.

2. [19-10704](#)-B-13 **IN RE: VIRGINIA RAMIREZ**
[TOG-1](#)

MOTION TO CONFIRM PLAN
4-11-2019 [\[14\]](#)

VIRGINIA RAMIREZ/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 3, 2019 at 1:30 p.m. The court
 sets August 15, 2019 as a bar date by which a
 chapter 13 plan must be confirmed or the case will
 be dismissed.

ORDER: The court will issue an order.

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, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response, or successfully prosecute a motion to value collateral pursuant to the trustee's opposition to this motion, not later than June 19, 2019. 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 debtor's position. The trustee shall file and serve a reply, if any, by June 26, 2019.

If the debtor elects 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 June 26, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b) and the Trustee's request, the court will set August 15, 2019 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. [19-10704](#)-B-13 **IN RE: VIRGINIA RAMIREZ**
[TOG-2](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
4-30-2019 [\[22\]](#)

VIRGINIA RAMIREZ/MV
THOMAS GILLIS

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

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).

The debtor is competent to testify as to the value of the 2016 GMC Terrain. However, the declaration does not contain the debtor's opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," not "fair market value," which is not specific enough. Doc. #24. Therefore the motion is DENIED WITHOUT PREJUDICE.

4. [19-10405](#)-B-13 **IN RE: MICHAEL HOLLINQUEST**
[WLG-1](#)

MOTION TO CONFIRM PLAN
4-11-2019 [\[32\]](#)

MICHAEL HOLLINQUEST/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

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 Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). Doc. #33. 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.

5. [15-10407](#)-B-13 **IN RE: STEPHEN/KYMBERLY SALTER**
[TCS-4](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
5-7-2019 [\[61\]](#)

STEPHEN SALTER/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, LLC in the sum of \$11,254.46 on November 24, 2014. Doc. #64. The abstract of judgment was recorded with Madera County on December 10, 2014. Id. That lien attached to the debtor's interest in a residential real property in Madera, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$311,302.00 as of the petition date. Id. The unavoidable liens totaled \$349,589.00 on that same date, consisting of a first deed of trust in favor of Seterus. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. [16-13707](#)-B-13 **IN RE: RAUL/MARGARITA LEAL**
[TOG-1](#)

MOTION TO SELL
4-27-2019 [\[40\]](#)

RAUL LEAL/MV
THOMAS GILLIS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion 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). Therefore, the defaults of the above-mentioned parties in interest, except the chapter 13 trustee and Wells Fargo Bank, N.A., are entered. 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 IN PART. 11 U.S.C. § 363(b)(1) allows the debtors-in-possession ("Debtors") to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore the debtor has the authority to sell estate property under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D.

Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The Debtors ask this court for authorization to sell 6192 W Birch Avenue in Fresno, CA ("Property") to Marlin and Andrea Robertson, subject to higher and better bids at the hearing, for \$275,000.00. Doc. #40.

Creditor Wells Fargo Bank, N.A. does not oppose the motion, but requests that the following language be included in the order granting the motion, if the motion is granted:

The loan secured by a lien on real property located at 6192 West Birch Avenue, Fresno, CA 93722 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly by Wells Fargo Bank N.A. Doc. #46.

The chapter 13 trustee opposes with a few reservations. Doc. #47. First, the trustee states that Debtors' applicable commitment period is three years pursuant to 11 U.S.C. § 1325(b)(4)(i). Additionally, the confirmed plan is for a period of 41 months. Doc. #28. The plan proposes to pay 0% to unsecured creditors, which total nearly \$30,000.00. Id. Debtors' proposal to pay the trustee \$2,917.67 will not close the case because the plan is 41 months and May 2019 is month 31. Doc. #47.

Second, the proceeds from the sale of the residence must be reinvested into a residence for the Debtors within six months of the date the Debtors receive the proceeds, or the proceeds will lose their exempt status. See California Code of Civil Procedure § 704.720(b).

The trustee requests that if the motion is granted, that the following language be included in the order:

1. That the bankruptcy estate reserves a revisionary interest in the sale proceeds up to the payment of 100% to unsecured creditors in order to meet liquidation and in the event of a conversion to chapter 7, and

2. Upon the running of the 6 months, the Debtors, if not

reinvested, shall turn over sale proceeds sufficient to fund 100% to unsecured creditors, plus interest at the federal judgment rate. Doc. #47.

With the proposed included language, it appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

The court will not modify the Plan to shorten its length using the procedure of a sale motion. The Debtor's applicable commitment period is at least 36 months. If the debtor wants to modify the plan they may do so by separate motion. 11 U.S.C. § 1329. The matter will be called to allow Debtors to address the proposed additions to an order granting the motion. Should the debtor satisfactorily address these issues, the hearing will proceed for higher and better bids.

7. [19-10808](#)-B-13 **IN RE: MALER ATTAREB**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-13-2019 [\[31\]](#)

MARK ZIMMERMAN

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full on May 21, 2019. Therefore, the OSC will be vacated.

8. [18-15011](#)-B-13 **IN RE: CARLOS/BRANDI MOLINA**
[MHM-3](#)

MOTION TO DISMISS CASE
4-23-2019 [\[37\]](#)

MICHAEL MEYER/MV
F. GIST

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that the debtors have failed to confirm a Chapter 13 Plan. 11 U.S.C. § 1307(c)(1). Accordingly, the case will be dismissed.

9. [16-13515](#)-B-13 **IN RE: MARIA TOVAR**
[PBB-1](#)

MOTION TO INCUR DEBT
5-9-2019 [\[30\]](#)

MARIA TOVAR/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 Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. After review of the attached evidence, the court finds that debtor is able to make the monthly payment for the mortgage to purchase a house. Debtor is authorized but not required to incur further debt in order to purchase real property with an estimated monthly payment of \$1,205.65. Should the debtor's budget prevent maintenance of current plan payments, debtor shall continue making plan payments until the plan is modified.

10. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
4-8-2019 [\[66\]](#)

MICHAEL MEYER/MV
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #107.

11. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-19-2019 [\[84\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Sustained.

ORDER: The court will issue the order sustaining the
objection.

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 sustaining of the objection. 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 objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on April 3, 2019 and this objection was filed on April 19, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee makes three objections: (1) that debtor's exemption of a 2000 VW Jetta in the amount of \$2,000.00 under California Code of Civil Procedure § 703.140(b)(4) is improper because the VW Jetta is not jewelry; (2) that debtor also has exempted \$1,500.00 worth of jewelry under that same section, and the exemption is only limited to \$1,600.00, therefore debtor has exceeded the exemption amount under that section; and (3) that debtor is ineligible to exempt the \$8,000.00 worth of "Music Studio, Sound and DJ equipment" under C.C.P. § 703.140(b)(6) because debtor testified at the § 341 meeting that he "stopped operating his DJ business in 2009 or 2010" and therefore the equipment has not been used to carry out debtor's trade or business for at least nine years. Doc. #84.

The court finds that the trustee is correct, and in the absence of any timely objection or opposing evidence, SUSTAINS the trustee's objection.

12. [18-15117](#)-B-13 **IN RE: MARIA GOMEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
4-12-2019 [\[24\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915,

917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that the debtor has failed to make all payments due under the plan. 11 U.S.C. § 1307(c)(1) and (c)(4). Accordingly, the case will be dismissed.

13. [19-11922](#)-B-13 **IN RE: KARLA JUDKINS**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-13-2019 [\[12\]](#)

KARLA JUDKINS/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 Local Rule of Practice ("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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11922. That case was filed on February 13, 2019 and was dismissed on March 14, 2019 for failure to timely file documents. This case was filed on May 3, 2019 and the automatic stay will expire on June 2, 2019.

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.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

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

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

Debtor filed the previous case without the assistance of counsel. She states that she "didn't understand all of the nuances required to be successful in Chapter 13 and my case was dismissed." Doc. #14. Debtor has now retained the services of Timothy C. Springer and asks that the stay be extended because she is "afraid that the bank may foreclose on my house." Id.

The court notes that the petition, all the schedules, and a chapter 13 plan have been filed in this case. The court is persuaded that circumstances have changed and completion of a chapter 13 case is more likely.

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.

14. [19-10227](#)-B-13 **IN RE: MA GUADALUPE SERRANO**
[TOG-1](#)

FURTHER STATUS CONFERENCE RE: MOTION TO VALUE COLLATERAL OF
FRANKLIN CREDIT MANAGEMENT CORPORATION
3-16-2019 [\[25\]](#)

MA GUADALUPE SERRANO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 18, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
June 18, 2019 at 1:30 p.m. to allow additional time for the parties
to pursue settlement discussions.

15. [19-10039](#)-B-13 **IN RE: JOSE/MARIA NAVEJAS**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
4-11-2019 [\[34\]](#)

JOSE NAVEJAS/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 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.

The debtor is competent to testify as to the value of the 2011 GMC Sierra. 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 \$8,566.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

16. [19-11740](#)-B-13 **IN RE: RICHARD/VERONICA ESPINOZA**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-13-2019 [\[18\]](#)

RICHARD ESPINOZA/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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

11 U.S.C. § 362(c) (3) (B) requires that motions to extend the automatic stay must be considered "after notice and a hearing completed before the expiration of the 30-day period. . . ." The 30-day period begins on the day the petition is filed and ends on the "30th day after the filing of the later case." See 11 U.S.C. § 362(c) (3) (A).

This case was filed on April 28, 2019. Doc. #1. The 30-day period terminates on May 28, 2019, two days before this hearing. Because this motion cannot be completed before the expiration of the 30-day period and there is no order shortening time, the court is unable to extend the automatic stay. The debtors are responsible for seasonably setting these motions for hearing. The motion is DENIED.

The court notes creditor Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust B's opposition. Doc. #22.

17. [19-10556](#)-B-13 **IN RE: REBECCA FREITAS**
[MHM-3](#)

MOTION TO DISMISS CASE
4-22-2019 [\[41\]](#)

MICHAEL MEYER/MV
DAVID JENKINS
RESPONSIVE PLEADING

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.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case because of unreasonable delay by the debtor that is prejudicial to creditors and for failure to file tax returns for the years 2015-2018. Trustee cites 11 U.S.C. § 1307(e), which states that a court "shall" dismiss a case if the debtor fails to file tax returns under § 1308.

Debtor's counsel responded, stating that the 2017 and 2018 tax returns have been filed, and though communication with debtor has not been consistent, debtor "advised counsel's staff via text on May 15, 2019, that the returns were mailed to the IRS." Doc. #58. No evidence was provided proving that fact.

Trustee replied, essentially stating that § 1307(e) requires the court to dismiss this case because the tax returns were not filed prior to the day before the § 341 meeting and debtor is not able to extend the period to file the returns. Doc. #63.

The court is persuaded that § 1307(e) requires it to dismiss the case. Trustee's first motion to dismiss (doc. #28) was also partly on the grounds that debtor failed to timely file tax returns, but Trustee withdrew that motion before the court ruled.

11 U.S.C. § 1308 provides:

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond-

(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

(B) for any return that is not past due as of the date of the filing of the petition, the later of--

(i) the date that is 120 days after the date of that meeting; or

(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under paragraph (1), if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under paragraph (1) is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under paragraph (1) for--

(A) a period of not more than 30 days for returns described in paragraph (1)(A); and

(B) a period not to extend after the applicable extended due date for a return described in paragraph (1)(B).

(c) For purposes of this section, the term "return" includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal."

The language of the statute is clear and unambiguous. Debtor was required to file several years' tax returns before the § 341 meeting. She did not. Therefore the case shall be dismissed.

18. [19-10563](#)-B-13 **IN RE: CARL/ATHENA FREBERG**
[MHM-3](#)

MOTION TO DISMISS CASE
4-29-2019 [\[38\]](#)

MICHAEL MEYER/MV
MARK ZIMMERMAN
CASE DISMISSED 5/17/19

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on May 17, 2019. Doc. #44.

19. [19-11265](#)-B-13 **IN RE: MARTIN/SUSANA SANCHEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-6-2019 [\[16\]](#)

MARK ZIMMERMAN
\$310.00 FILING FEE PAID 5/14/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full on May 14, 2019. Therefore, the OSC will be vacated.

20. [18-11375](#)-B-13 **IN RE: ERIC RUBIO**
 [TCS-2](#)

CONTINUED MOTION TO MODIFY PLAN
3-13-2019 [\[81\]](#)

ERIC RUBIO/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

NO RULING.

21. [18-15081](#)-B-13 **IN RE: OSCAR/MELISSA GARZA**
 [WDO-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL
SERVICES, INC.
2-5-2019 [\[17\]](#)

OSCAR GARZA/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

This matter has been resolved by stipulation of the parties. Doc.
#103.

22. [18-15081](#)-B-13 **IN RE: OSCAR/MELISSA GARZA**
[WDO-3](#)

MOTION TO CONFIRM PLAN
4-17-2019 [\[64\]](#)

OSCAR GARZA/MV
WILLIAM OLCOTT
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).

The chapter 13 trustee ("Trustee") opposes confirmation because debtors are delinquent over \$4,000.00 and due to stale schedules I and J, feasibility was not shown. Doc. #82. Debtors replied, stating that amended schedules I and J showing an ability to make the payment were filed and that debtors would be current at the time of the hearing. Doc. #91.

The court takes judicial notice of the amended schedules I and J (doc. #78, 79) which show an ability to make the plan payments of \$2,015.84 for months 1 through 15, but not the ability to make the payment of \$2,415.84 for months 16 through 60. Doc. #63. However, the court understands that predicated feasibility of a five year plan on current income can be problematic. Debtors could earn more wages, decrease expenses, or any number of factors could change. However, if debtors are not current by the hearing date, the motion will be denied. If debtors are current, then the motion may be granted.

23. [19-10181](#)-B-13 **IN RE: ARNULFO/LETICIA OLGUIN**
[PBB-2](#)

CONTINUED MOTION TO CONFIRM PLAN
3-26-2019 [\[27\]](#)

ARNULFO OLGUIN/MV
PETER BUNTING
RESPONSIVE PLEADING

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.

The chapter 13 trustee ("Trustee") opposed this motion because the plan does not provide for all of debtors' projected disposable income to be applied to unsecured creditors. Doc. #35, 11 U.S.C. § 1325(b)(1)(B). In order to verify disposable income, Trustee requested paystubs for March and April for both debtors.

Debtors provided the paystubs with their timely reply, and amended schedules I and J filed in March show an ability to make plan payments. Doc. #50.

The chapter 13 trustee responded, questioning why the April 26, 2019 paystub was substantially lower than the other two provided paystubs. Doc. #52. In fact, the April 26, 2019 paystub is less than half of the other paystubs.

This matter will be called to allow debtors to explain this discrepancy.

24. [18-15084](#)-B-13 **IN RE: ROBERT SANFORD**
[SL-1](#)

CONTINUED MOTION TO CONFIRM PLAN
3-21-2019 [\[35\]](#)

ROBERT SANFORD/MV
SCOTT LYONS
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Debtor filed an amended plan in accordance with the court's previous order. Doc. #56. This motion is DENIED AS MOOT.

25. [19-11090](#)-B-13 **IN RE: ANTONETTE WASHINGTON**
[MHM-2](#)

MOTION TO DISMISS CASE
4-25-2019 [\[27\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the required documentation. Accordingly, the case will be dismissed.

26. [14-10193](#)-B-13 **IN RE: MARTA MATA AND GUSTAVO SEGURA**
[MHM-3](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
4-19-2019 [\[95\]](#)

MICHAEL MEYER/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 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.

Federal Rule of Bankruptcy Procedure 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Fed. R. Bankr. P. 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

The record shows that the debtors have cured the default on the loan with Joyce Johnson and Warren Hackbarth, trustees, and are current on mortgage payments to the same through January 2019. Therefore, this motion is GRANTED.

27. [18-10894](#)-B-13 **IN RE: JUAN REBOLLERO**
[TOG-3](#)

MOTION TO MODIFY PLAN
3-13-2019 [\[71\]](#)

JUAN REBOLLERO/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 3, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

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, dismissed, or the trustee's

opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than June 19, 2019. 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 debtor's position. The trustee shall file and serve a reply, if any, by June 26, 2019.

If the debtor elects 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 June 26, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing. The court notes debtor's non-opposition. Doc. #81.

28. [18-13694](#)-B-13 **IN RE: ADRIAN/MARISELA PALAFOX**
[ALG-5](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL, INC.
4-17-2019 [\[63\]](#)

ADRIAN PALAFOX/MV
JANINE ESQUIVEL OJI
JANINE ESQUIVEL/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 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.

The debtors are competent to testify as to the value of the 2005 and 2006 Chevrolet Silverados. 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 \$8,325.00 for the 2005 Silverado and \$8,025.00 for the 2006 Silverado. 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.

29. [19-10795](#)-B-13 **IN RE: KIM SCHOLAR**
[MHM-2](#)

MOTION TO DISMISS CASE
4-25-2019 [\[28\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to provide the trustee with all of the required documentation. Accordingly, the case will be dismissed.

30. [19-11795](#)-B-13 **IN RE: CHRISTOPHER/REGINE DAVENPORT**
[PBB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
5-13-2019 [\[20\]](#)

CHRISTOPHER DAVENPORT/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 Local Rule of Practice ("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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then 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.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11795. That case was filed on March 12, 2019 and was dismissed on April 15, 2019 for failure to make plan payments. This case was filed on April 30, 2019 and the automatic stay will expire on May 30, 2019.

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.* Under

the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith. The prior case was dismissed because 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.

Debtors' previous case was dismissed for failure to make plan payments. Debtors state that they were unaware of the "amount of time it takes for payments to post" using the TFS website, and it was not until after the case was dismissed that they learned their payment was late. They filed chapter 13 again to stop any foreclosure proceedings against their home from resuming. Doc. #22.

The court takes judicial notice that all schedules and a chapter 13 plan have been filed in this case. Debtors' schedules show a very good chance at being able to successfully complete a chapter 13 plan. Doc. #1.

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.