

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, June 23, 2016
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 a civil minute 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. [15-14017](#)-B-11 CLUB ONE CASINO, INC.
BBR-6

CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF BELDEN BLAINE RAYTIS, LLP
FOR T. TODD ENGLAND, DEBTORS
ATTORNEY(S)
4-19-16 [[572](#)]

HAGOP BEDOYAN/Atty. for dbt.

Pursuant to the First Interim Order, entered May 19, 2016, the motion will be granted without oral argument for cause shown. The applicant shall submit a proposed order. No appearance is necessary.

Any opposition to this application for compensation was due on or before June 16, 2016, and none has been filed.

2. [15-10039](#)-B-12 ANGELA PIMENTEL
DRJ-4
ANGELA PIMENTEL/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF BRUCE
FRANCIS KENNEDY, CLAIM NUMBER 9
4-18-16 [[54](#)]

This matter will be called as scheduled. Unless the court is persuaded that an additional record is needed, the court will adopt this tentative ruling.

Tentative Ruling- -The objection to allowance of Claim #9 will be sustained in part and overruled in part. Claim #9 will be allowed as an unsecured claim in the amount of \$16,399.11, representing the amount listed in the proof of claim less the sum of attorney's fees claimant admits was incurred to withdraw from representation of the debtor and in obtaining a trial continuance. The balance of the objection is overruled.

Analysis- -The debtor's objection to the allowance of the proof of claim filed by her former counsel, Bruce Francis Kennedy, is based on 11 U.S.C. § 502(b)(4), which permits the court to disallow a claim for the services of an attorney of the debtor, "to the extent that- . . . such claim exceeds the reasonable value of such services."

Attorney Kennedy's claim (#9), filed May 21, 2015, in the amount of \$19,674.11 (the amount of fees claimed is not in dispute), was supported by 11 pages of billing records- partially redacted- covering the period from February 13, 2014 to August 1, 2014. Claimant asserts the claim is secured by "Right to setoff under 11 USC Section 553 against debtor's claim asserted against creditor." The basis for this assertion appears to be the fact that Attorney Kennedy holds funds in the amount of the claim in his trust account. The funds were derived from a distribution in a probate proceeding for the estate of debtor's deceased husband, Antonio Pimentel, in which Attorney Kennedy represented the debtor.

Upon objection, the proof of claim provides some evidence as to its validity and amount which is strong enough to carry over a mere formal objection without more. *Lundell v. Anchor Const. Specialties Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) citing *Wright v. Holm (In re: Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). To defeat the claim the objector must come forward with sufficient evidence to show facts tending to defeat the claim by probative force equal to that of the allegations in the proof of claim themselves. *Lundell*, 223 F.3d at 1039. The ultimate burden of persuasion remains at all times upon the claimant. *Id.*, *Holm*, 921 F.2d at 923.

The debtor raises three objections:

(1) The lack of a written agreement between Attorney Kennedy and the debtor and that, therefore, under Cal. Bus. & Prof. Code § 6148(c), any "agreement" was voidable at debtor's election (the debtor does not say in her objection that voiding the agreement is elected) and thus Attorney Kennedy is only entitled to a "reasonable fee."

(2) The claimant did not furnish sufficient evidence with the claim to determine a reasonable fee. (The debtor offers no evidence of what a "reasonable fee" would be in this case.)

(3) The claim is not secured since Attorney Kennedy is holding the funds in a trust account for debtor's benefit and there is no mutuality supporting an offset. Kennedy is a trustee and not holding the money in a mutual capacity with the debtor's "claim."

(The Debtor also requests an order requiring Kennedy to turn over the monies he is holding, however this would require an adversary proceeding under FRBP 7001 unless Attorney Kennedy is a "custodian" under 11 U.S.C. § 543. The debtor provides no evidence that Attorney Kennedy holds that status nor has she instituted an adversary proceeding in this objection. See FRBP 3007(b). The court will therefore not rule on that issue.)

The objection is supported by the debtor's declaration. She states that she consulted Attorney Kennedy to avoid a probate and that "the Attorney" referred her to "an independent paralegal" (non-existent under California law). She also states that, she received no cost-benefit analysis from Attorney Kennedy; she was not kept informed of the progress of the case; she never authorized a lien on any probate proceeds. She also implies that, since the fees awarded in the probate case and the amount Kennedy charged is so large, it is disproportionate to the amount at issue in the probate litigation.

Attorney Kennedy responds by essentially admitting he is only entitled to a reasonable fee but that, even under section 330 of the Bankruptcy Code, his fees would be "reasonable." He also argues that he is exempt from the "written fee agreement" requirement since the debtor paid some small fee bills early in the representation and thus there was an "implied" agreement under Cal. Bus. & Prof. Code § 6148 (b) (2). However, no evidence has been presented that Attorney Kennedy previously provided any services to the debtor here in any other matter, or evidence of the terms of the arrangement, or that if he did, the debtor paid anything. The court finds that Attorney Kennedy is subject to the "written fee agreement" requirement.

As to the set-off, Attorney Kennedy contends the set-off should be permitted notwithstanding the monies being held in trust. He also argues that the language in the debtor's plan contemplates that the court will decide the amount held in trust that he will keep and how much he must return to the bankruptcy estate.

Attorney Kennedy's declaration is detailed and sets forth the history of the probate, the debtor's animosity toward the executrix of the estate (her sister-in-law) and that efforts were made by Attorney Kennedy at the debtor's request to disqualify the executrix which were not successful. His attempts to settle the matter failed when the debtor changed her demands. His efforts to convince the Superior Court that a "spousal set

aside" would put the debtor in a better position did not convince the Superior Court.

After communications broke down between the debtor and Attorney Kennedy, the debtor did not return two withdrawal stipulations thus requiring him to bring a motion and obtain a continuance of the trial date. Those fees, in the amount of \$3275, are the source of the deduction mentioned above.

The debtor's reply contains no additional evidence. She argues that she is not judicially estopped by her confirmed plan (under either state or federal law) to object to Attorney Kennedy's claim. The debtor claims she reserved her rights to object under the terms of the Plan notwithstanding the seemingly logical inconsistency between her objecting to the claim now and acknowledging in the Plan that Attorney Kennedy can be paid from the monies he is holding in trust. The debtor correctly states that there is no evidence that Attorney Kennedy somehow relied to his detriment on the terms of the Plan. Attorney Kennedy did not object to confirmation of the Chapter 12 Plan. Further the debtor did state at confirmation that she believed Attorney Kennedy was entitled to nothing. As to requiring turnover, the court is not ruling on that issue for procedural reasons already stated.

Neither party has reserved the right to present testimony under LBR 3007-1(b) (1) (A), (B). The evidentiary record is therefore closed unless the court is convinced otherwise. *Id.*

The reasonableness of attorney's fees under section 502(b) (4) is a question of federal law. *In re Placide*, 459 B.R. 64, 73 (9th Cir. BAP 2011). Bankruptcy courts have wide discretion in determining the reasonableness of the fees. *Id.* A claim for attorney's fees is unreasonable under federal law to the extent the attorney seeks fees that are disproportionate to the likely recovery. *Id.* The "Lodestar" does not inhibit a bankruptcy court's "reasonableness" inquiry. *See, Placide*, 459 B.R. at 73; *Unsecured Creditor's Committee v. Puget Sound Plywood, Inc.*, 924 F. 2d 955, 961 (9th Cir. 1991); *Digesti & Peck v. Kitchen Factors, Inc.* (*In re: Kitchen Factors, Inc.*), 143 B.R. 560, 562 (9th Cir. BAP 1992).

Under § 502(b) (4), the claimant bears the burden of proof on the question of reasonableness of compensation. *Placide*, 459 B.R. at 72 (*cits. omitted*). In addition to detailing the history of the case and the efforts he made, Attorney Kennedy asks the court to take judicial notice of the "extraordinary" fees awarded to the debtor's opposition counsel in the probate proceeding as an indication of the reasonableness of his fees. While the court will take judicial notice of opposition counsel's fees, that evidence is interesting but not particularly persuasive. The Superior Court judge was not required to apply a "reasonableness" test in the case of a debtor with an attorney's claim. In addition, there is no evidence of additional or other factors that opposition counsel was forced to deal with in the probate proceeding. The debtor's objection impliedly raises a "disproportionality" challenge without using those terms. However as to

reasonableness itself, the debtor's evidence is very scant. The debtor's evidence shows that her intention when she consulted with Attorney Kennedy was to avoid probate, that she did not sign an agreement or agree to give Attorney Kennedy a lien; she was concerned about the executrix's "conflict of interest;" she was not kept informed of the status of proceedings; she never received a "cost-benefit" analysis of the litigation.

As to the issue of reasonableness/disproportionality of the fees, the only evidence is that debtor was not kept informed and she did not get a "cost benefit analysis." On the "informed" issue, Attorney Kennedy's uncontroverted evidence of 92 phone calls and the billing reflecting conversations with the debtor and between the debtor and the paralegal belies that fact. Whether more contact was appropriate would require speculation on the part of the court.

As to the "cost-benefit" issue, the debtor's evidence does not include one important fact, would she have done anything differently if she had that analysis? The evidence suggests not, because it appears much of the process was driven by the animosity between the debtor and the executrix. Anything further would be speculative and the debtor did not present the type of evidence needed to raise a factual issue on that point. Even if such information would have changed the debtor's strategy it does not mean the fees charged were unreasonable. After all, according to the evidence, although a settlement was reached, the debtor changed her demand. Thus at some moment, further fees were under debtor's control. More importantly there is no evidence that Attorney Kennedy knew or should have known that the services he performed would have resulted in the fees being disproportionate to the recovery. Since the amount of the probate proceeds were finite, it would be very difficult to speculate on not only the fees the debtor would incur but those of her opponent's counsel as well at the outset of the case given the "conflict of interest" challenge.

In contrast are the \$3,275 in fees that Attorney Kennedy incurred in trying to get out of the case. It is not reasonable for the debtor to be charged that under 502(b) (4). It should have been clear to Attorney Kennedy fairly early that the attorney/client relationship was deteriorating and withdrawal should have been considered. Although the debtor did not deliver a signed substitution of counsel, nevertheless, fees for those services should not be charged against the debtor as "reasonable."

State law governs the nature, extent and validity of a lien in bankruptcy proceedings. *Diamant v. Kasparian (In re: S. Cal. Plastics, Inc.)*, 165 F. 3d 1243, 1248 (9th Cir. 1999). An attorney's charging lien attaches to a specific fund or other property created or secured through the attorney's efforts; a possessory lien allows the attorney to retain a client's records or other property until the client pays for the legal fees owed. *Evans v. Stockton & Hing (In re: Sw. Restaurant Sys. Inc.)*, 607 F. 2d 1243, 1246 (9th Cir., 1979). In California an attorney is required to enter into a written contract with the client where the client's expenses will exceed

\$1000. Cal. Bus & Prof. Code § 6148(a)(1). A charging lien can only arise by written contract in California and the contract must be fair, reasonable and freely disclosed in writing because establishment of such a lien is an "adverse interest" against the client. *In re; Modtech Holdings, Inc.*, 505 Fed. Appx. 668 (9th Cir. 2013); *Fletcher v. Davis*, 33 Cal. 4th 61, 14 Cal Rptr. 3d 58 (2004); *Beery v. State Bar*, 43 Cal. 3d 802; 239 Cal. Rptr. 121 (1987).

A possessory lien may arise only when the attorney has a prior lien agreement with the client, achieves a successful settlement for the client, and receives payment of the settlement funds into the attorney's trust account. *Bendon v. Andrade & Assocs. (In re: Colt Eng'g Inc.)*, 288 B.R. 861, 873 (Bankr. C.D. Cal. 2003). Recognition of such a lien may be limited to funds coming into an attorney's possession by way of a fee award, payment of a judgment in which the attorney asserts a lien pursuant to a contingent fee contract, a deposit on account of fees and costs, or similar situations. *Id.*, at 876; *In re Winnett*, 97 B.R. 7, 11 (Bankr. E.D. Cal. 1989).

Here there is no written contract between Attorney Kennedy and the debtor. Even assuming an attorney's possessory lien is still viable after *Fletcher*, neither a charging lien nor a possessory lien would apply under these circumstances. The only basis for a secured lien claim by Attorney Kennedy is a potential set-off under 11 U.S.C. § 553. However, the requirement of mutuality is not met here. Attorney Kennedy holds the funds as a trustee for the debtor's benefit. Attorney Kennedy cites Alan N. Resnick, *et al*, 5 Collier on Bankruptcy (16th Edition, 2013) 553.03[3] [c] [iii] p. 553-34, to argue the mutuality requirement does not apply because he is holding the funds subject to his claim. However, the editors of Collier on Bankruptcy observe, at page 553-35: "In each of these situations, [where funds are being held by the creditor in order to protect a creditor] the evident purpose of the deposit is to protect the rights of the very creditor seeking set-off, and, as general rule, the arrangement should be honored in the set-off context."

There is no "arrangement" here, both parties admitting no contract for such an arrangement exists. Since there is no basis for a lien claim on the proceeds, Attorney Kennedy's claim is unsecured.

1:30 P.M.

1. [16-11301](#)-B-13 SAMUEL CASTILLO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
5-26-16 [[25](#)]

The motion will be granted. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

It appears from the uncontroverted evidence that the debtor is ineligible, pursuant to § 109(e), to be a debtor in chapter 13. Accordingly, the case will be dismissed for cause shown.

2. [15-14405](#)-B-13 PRITPAL CHAHAL
MHM-3
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-11-16 [[45](#)]

This matter will proceed as scheduled. If the debtor is not current through May 25, 2016, then the court intends to dismiss the case at the hearing.

Furthermore, if the case is not dismissed at the hearing, the trustee's declaration that the debtor has failed to timely make the June 25th plan payment will result in dismissal without further notice.

3. [15-14606](#)-B-13 ALEX/PRISCILLA PANG
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-11-16 [[20](#)]

The motion will be granted. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' 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 FRBP 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 for cause shown.

4. [16-10309](#)-B-13 MILO/LEANN HODGES
KLF-1
GREENWICH CAPITAL FINANCIAL
PRODUCTS, INC./MV

SCOTT LYONS/Atty. for dbt.
MICHAEL KOGAN/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
GREENWICH CAPITAL FINANCIAL
PRODUCTS, INC.
2-29-16 [[14](#)]

This matter will be continued to August 11, 2016, at 1:30 p.m., to be heard with the motion to confirm the modified plan. The court will prepare a minute order. No appearance is necessary.

5. [11-15712](#)-B-13 RONALD KEELING AND ANGELA CONTINUED MOTION TO VALUE
 SL-1 LAVERNE KEELING COLLATERAL OF NATIONSTAR
 RONALD KEELING/MV MORTGAGE LLC
 5-5-16 [[41](#)]

 SCOTT LYONS/Atty. for dbt.

This motion was continued to permit the debtor to file additional evidence that the respondent would not be prejudiced by the granting of this motion late in the case. It appears from the evidence submitted and the record, including the declaration by the attorney, that the respondent will receive \$13,507.29 on its unsecured claim, the same percentage that the other unsecured creditors have received on their claims. Accordingly, the motion will be granted without oral argument based upon well-pled facts. The debtors shall submit a proposed order that reflects the disposition of respondent's claim and that is consistent with this ruling. 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 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 FRBP 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.

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.

6. [15-10412](#)-B-13 SAMUEL/MARIA ZENDEJAS MOTION TO DISMISS CASE
 MHM-2 5-11-16 [[34](#)]
 MICHAEL MEYER/MV
 GEOFFREY ADALIAN/Atty. for dbt.
 WITHDRAWN

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

7. [15-11214](#)-B-13 PAMELA HAILEY
MHM-3
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE
5-11-16 [[40](#)]

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

8. [15-13519](#)-B-13 SERGIO PEREZ
DRJ-3
SERGIO PEREZ/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO CONFIRM PLAN
5-3-16 [[41](#)]

The motion will be granted. 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, 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.

9. [15-13519](#)-B-13 SERGIO PEREZ
MHM-3
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO DISMISS CASE
5-24-16 [[53](#)]

This motion will be denied without prejudice. The trustee's motion to dismiss the case was based on the debtor's failure to confirm a chapter 13 plan. Based on the disposition of the motion at #8, DRJ-3, it appears the motion is now moot. No appearance is necessary.

10. [14-13922](#)-B-13 DAVID ARNONE
MHM-4
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
DISMISSED

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
3-9-16 [[66](#)]

This objection will be overruled as moot. The case was dismissed on June 7, 2016. No appearance is necessary.

11. [15-11526](#)-B-13 DALE/MICHELLE SEAMONS
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-11-16 [[27](#)]

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

12. [16-11626](#)-B-13 ROBERTO RODRIGUEZ-YANEZ MOTION TO VALUE COLLATERAL OF
MAZ-1 SANTANDER CONSUMER USA
ROBERTO RODRIGUEZ-YANEZ/MV 5-19-16 [[16](#)]
MARK ZIMMERMAN/Atty. for dbt.

The motion will be granted. 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 and there was no opposition. The default of responding parties is hereby entered. The debtor is competent to testify as to the value of the debtor's 2006 Cadillac DTS. Based on the evidence presented, the respondent's secured claim will be fixed at \$5,764. 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.

13. [15-11327](#)-B-13 NORMAN/LESLIE OGLETREE MOTION TO MODIFY PLAN
CGF-2 3-23-16 [[43](#)]
NORMAN OGLETREE/MV
CHRISTOPHER FISHER/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN,

The motion will be granted. 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 and the trustee's opposition was withdrawn. The defaults of all other respondents will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [15-11327](#)-B-13 NORMAN/LESLIE OGLETREE MOTION TO DISMISS CASE
MHM-2 5-11-16 [[53](#)]
MICHAEL MEYER/MV
CHRISTOPHER FISHER/Atty. for dbt.
RESPONSIVE PLEADING

This motion will be denied without prejudice as moot based on the disposition of #13 above, CGF-2. No appearance is necessary.

It appears that the confirmed modified plan resolves the basis for the trustee's motion.

15. [16-11829](#)-B-13 GUADALUPE MACIAS
SL-1
STEPHEN LABIAK/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
5-26-16 [[9](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' default and grant the motion.

This motion to extend the automatic stay was timely noticed to all creditors. Based on the court's review of the evidence submitted in support of the motion and the record, it appears this case was filed in good faith. In the debtor's prior case the debtor paid to the trustee approximately \$19,444. No motions for relief from stay were filed in that case.

The debtor became delinquent in her plan payments when she began to support her ailing mother and the case was dismissed based on that failure. The debtor continues to care for her mother, however her income has increased and her current plan increases the dividend to the unsecured creditors from 0% to 100%.

16. [11-16631](#)-B-13 TONY/ELISA CARLOS
MHM-6
MICHAEL MEYER/MV
PETER FEAR/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-12-16 [[125](#)]

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

17. [15-11432](#)-B-13 CHRISTINA GARCIA
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
5-11-16 [[59](#)]

The motion will proceed as scheduled. Unless the trustee requires more time to respond, the court intends to deny the motion without prejudice.

The trustee's motion to dismiss because of a default in plan payments was fully noticed in compliance with the Local Rules. The court approved an application to file a late response and, two days before the hearing date, the debtor filed a response to the motion in conjunction with filing a modified plan that addresses the basis of the trustee's motion.

18. [13-16433](#)-B-13 WALTER/VIRGINIA ELLIOTT
MHM-1
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
5-11-16 [[31](#)]

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

19. [14-15638](#)-B-13 MARTIN DOMINGUEZ AND MOTION TO DISMISS CASE
MHM-1 SOFIA GONZALEZ 5-11-16 [[40](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

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

20. [16-11038](#)-B-13 DANNY/TERI WATSON MOTION TO REDUCE THE SECURED
PBB-1 CLAIM OF ALLY FINANCIAL
DANNY WATSON/MV 5-23-16 [[25](#)]
PETER BUNTING/Atty. for dbt.

This motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.

Although not so styled, this matter is essentially an objection to a claim and requires notice with 44 days pursuant to LBR 3007-1(b)(1). Under the alternative notice provision, LBR 3007-1(b)(2), 30 days' notice is permitted but in that case prior written opposition cannot be required.

21. [16-11347](#)-B-13 MIGUEL AGUIRRE MOTION TO DISMISS CASE
MHM-1 5-25-16 [[19](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

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

22. [16-10148](#)-B-13 DEBORAH GIRARD
JCW-1
CITIMORTGAGE, INC./MV
JERRY LOWE/Atty. for dbt.
JENNIFER WONG/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-20-16 [[40](#)]

The motion will be granted. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules. The debtor filed a notice of non-opposition and the trustee's default will be entered. The automatic stay will be terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay. There is a default in the payments due the movant and the debtor claims no interest in the subject property.

The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for an award of attorney fees, that request will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

The motion for relief under 11 U.S.C. §362(d)(4) is also granted. While there is no evidence that the debtor was complicit in the scheme, it appears from the evidence submitted and from the record that the debtor's bankruptcy case was used as part of a scheme to delay, hinder, or defraud creditors that involved transfer of a portion of the subject real property and multiple bankruptcy filings affecting such real property. An interest in the subject property was transferred to the debtor without movant's consent or knowledge shortly before the bankruptcy case was filed. The proposed order must comply with 362(d)(4).

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

23. [14-12249](#)-B-13 ARTHUR/MAUREEN VILLAGRANA MOTION TO DISMISS CASE
MHM-3 5-11-16 [[53](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled. If the debtor is not current through May 25, 2016, then the court intends to dismiss the case at the hearing.

Furthermore, if the case is not dismissed at the hearing, the trustee's declaration that the debtor has failed to timely make the June 25th plan payment will result in dismissal without further notice.

24. [15-14864](#)-B-13 LINDA SEE OBJECTION TO CLAIM OF TULARE
FW-1 COUNTY TAX COLLECTOR, CLAIM
LINDA SEE/MV NUMBER 1
5-5-16 [[20](#)]
PETER FEAR/Atty. for dbt.

The objection will be sustained without oral argument. The objecting party shall submit a proposed order. No appearance is necessary.

The record reflects that the objection is unopposed and the respondent's default will be entered. The claim will be disallowed in full on the grounds stated in the objection. Based on the evidence submitted in support of the objection, the secured tax claim of respondent has already been satisfied.

25. [15-14864](#)-B-13 LINDA SEE MOTION TO CONFIRM PLAN
FW-2 5-5-16 [[26](#)]
LINDA SEE/MV
PETER FEAR/Atty. for dbt.

The motion will be granted. 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, 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.

26. [16-10866](#)-B-13 MICHELLE YORK CONTINUED AMENDED MOTION TO
MHM-1 DISMISS CASE
MICHAEL MEYER/MV 5-3-16 [[27](#)]
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

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

27. [16-10866](#)-B-13 MICHELLE YORK

MRG-1

STONEGATE MORTGAGE

CORPORATION/MV

DAVID JENKINS/Atty. for dbt.

MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.

CONTINUED OBJECTION TO

CONFIRMATION OF PLAN BY

STONEGATE MORTGAGE CORPORATION

5-3-16 [[29](#)]

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rules of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall immediately commence formal discovery, meet and confer, set deposition dates if necessary, and be prepared for the court to set deadlines and an early evidentiary hearing.

28. [16-10866](#)-B-13 MICHELLE YORK
PJL-1
PEOPLEPLEASE HOLDINGS, INC./MV

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
PEOPLEPLEASE LLC, PLC SERVICES
LLC, AND PEOPLEPLEASE HOLDINGS,
INC.
5-3-16 [[32](#)]

DAVID JENKINS/Atty. for dbt.
PAUL LAURIN/Atty. for mv.

This hearing will proceed as a scheduling conference with regard to the §1325(a) "liquidation test" plan objection as it relates to the debtor's equity in her cabin. The issue of the debtor's "good faith" will be consolidated with and decided in conjunction with the stay relief motion (PJL-2) where movant has made the same arguments. The court will issue a civil minute order after the hearing.

Analysis- - This is a contested matter under FRBP 9014. See FRBP 3015(f). FRCP 42 applies in contested matters. See, FRBP 7042, 9014(c). FRCP 42(a) gives the court discretion, where there is a common issue of law or fact, to join for hearing any matter at issue or to issue any other orders to avoid unnecessary costs or delay. FRCP 42(b) permits a court to separately try issues "for convenience, to avoid prejudice, or to expedite and economize. . . ."

In its objection to confirmation, "Peopleplease" (objector or movant) raises two issues. The first of these challenges the debtor's good faith in filing the bankruptcy petition and in filing the plan. Because the same issue is raised in the stay relief motion (PJL-2) and holding two hearings on the same issue is wasteful, the issue of good faith will be decided in the stay relief motion and that ruling will be applied in deciding plan confirmation.

The second issue movant raises is the §1325(a)(4) "liquidation test" based on the alleged value of a cabin. Objector claims that the unsecured creditors would receive more on their claims if the cabin was liquidated in a Chapter 7 case. Neither the debtor nor the chapter 13 trustee were required to file a response to the objection and neither has done so.

However, in the motion for relief from stay, PJL-2 (where objector curiously raised the same argument as in this objection), the debtor contends objector's analysis did not account for liquidation costs and that the debtor is working with the Chapter 13 Trustee to draft a plan that meets the requirements of §1325(a).

The issue of the cabin's value is one of fact and will require an evidentiary hearing. In order to expedite the confirmation process, the court will use its discretion under FRCP 42(b) to separately try the cabin liquidation value issue. The parties should be prepared to set cut off dates, commence discovery and set an early evidentiary hearing date.

29. [16-10866](#)-B-13 MICHELLE YORK
PJL-2
PEOPLEPLEASE HOLDINGS, INC./MV
DAVID JENKINS/Atty. for dbt.
PAUL LAURIN/Atty. for mv.

AMENDED MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-6-16 [[77](#)]

This hearing will proceed as scheduled. If the court is convinced that no further record is necessary, the Court will adopt this tentative ruling.

Tentative Ruling. As stated above at #28, PJL-1, the §1325(a)(4) liquidation issue is relevant to the issue of plan confirmation and will be decided in an evidentiary hearing in conjunction with that motion.

The motion for relief, so far as it is based on an allegation of bad faith on the part of the debtor, will be denied.

The motion will be granted in part and denied in part for cause shown as specified below. The stay will be modified to permit the South Carolina litigation to go forward for the sole purpose of liquidating the movant's unsecured claim. No injunctive relief may be ordered against the debtor in that litigation and no collection proceeding may be instituted against the debtor or her estate. The order shall be prepared by movant, with counsel for the debtor approving as to form only.

Analysis. Peopleplease ("movant") was involved in trade secret and customer list litigation against the debtor and two others when the debtor filed her bankruptcy petition on March 18, 2016. That case is pending in the South Carolina Court of Common Pleas for the Ninth Judicial Circuit Case No. 2015-CP-10-355 ("the Litigation"). According to movant, the Litigation will not be ready for trial until July 10, 2016.

Pre-petition and during the course of the Litigation the parties participated in settlement discussions and mediation efforts. Movant contends that a settlement was reached and that drafts of that settlement agreement were in final form and circulating among counsel when this case was filed. Movant argues that the debtor engaged in delay tactics, did not cooperate in discovery, and violated the terms of her employment agreements, and that these alleged acts evidence "bad faith" on the part of the debtor in filing her bankruptcy petition.

Movant seeks relief, *inter alia*, in order to obtain the debtor's testimony in prosecuting its claims against the remaining third-party defendant and to liquidate its claim against the debtor. Movant avers "cause" pursuant to § 362(d)(1) for relief based on: the imminency of the trial date, that fact that the debtor is not the only defendant (one of the three defendants has already been dismissed from the Litigation), and that the debtor participated in the Litigation for a year. They also claim the debtor does not have a legitimate reason to file bankruptcy and that she only filed her case to frustrate the Litigation.

The debtor opposes any relief. She contends that she filed her bankruptcy petition four months before any trial date thus it was not an "eve of trial filing." In addition, she says that she wanted to exhaust all settlement possibilities before filing bankruptcy but she could not accept the movant's "last and final offer" because it would "seriously impinge" on her future earnings. She also states there are other creditors (12) in her case and that the reason she does not have more debt than is listed is because she has been covering her expenses by borrowing from her retirement account. The debtor has indicated that she is willing to cooperate with the Litigation as far as testifying as a third party witness.

Neither party has reserved the right to request the court hear testimony pursuant to LBR 4001-1(a) and 9014-1(f) (1). Both parties thus consent to the court resolving material factual disputes and the motion pursuant to FRCP 43(c). *Id.* Unless the court orders otherwise, the evidentiary record is closed. *Id.*

Good Faith. A bad faith commencement of a bankruptcy case justifies and is cause for lifting the automatic stay. *Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 25 (2000). In the Ninth Circuit bad faith is determined by a review of the totality of the circumstances. *Eisen v. Curry (In re Eisen)*, 14 F. 3d 469,470 (9th Cir. 1994). This inquiry includes an examination of the debtor's financial status, motives and the local economic environment. *In re Arnold*, 806 F. 2d 937, 939 (9th Cir. 1986). Petitions in bankruptcy arising out of a two-party dispute do not *per se* constitute a bad faith filing by the debtors. *In re Stolrow's, Inc.*, 84 B.R. 167, 171 (9th Cir. BAP 1988). Typical bad faith two-party dispute cases may involve delays on the eve of trial (litigation tactics), forum shopping, new-debtor syndrome (special purpose entities) repeat filers, and repeatedly delayed foreclosure sales. *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. BAP 2014).

None of the *indicia* of bad faith under Ninth Circuit law are present in this case. Whether or not the debtor's pre-petition conduct violated her employment agreements is a pre-petition claim issue. While it is possible that those actions, if proven, might support nondischargeable claims, that is up to the creditor to pursue, if at all, in an adversary proceeding.

The bankruptcy case was not filed on the eve of trial and there has been nothing that prevented the debtor, over the last four months or now, from testifying at a deposition. No one disputes the fact that the debtor mentioned bankruptcy as an option during the settlement discussions.

The debtor has other creditors in addition to movant. Her lack of steady income and physical condition limitations are undisputed at this time. The debtor borrowed money from her retirement account to "stay afloat" which militates against her filing of the bankruptcy being tactical only. The movant has not submitted evidence that the debtor signed a settlement agreement. Based on her declaration, her decision not to sign the settlement agreement is a rational one. There is nothing in movant's papers suggesting any other resolution was discussed except debtor agreeing

to hamper her income-producing potential. Movant has not demonstrated that this debtor committed "a clear abuse of the bankruptcy process." *Arnold*, 806 F. 2d at 939.

The authorities submitted by movant on the bad faith issue are not persuasive. *In re Norman Chris Brown*, 237 B.R. 740, 744 (Bankr. C.D.Cal., 1999) involved a prepetition judgment enjoining that debtor, which is not the case here. The unpublished case cited, *In re Drocco*, 2010 Bankr. LEXIS 593 *9-11 (Bankr. N.D.Cal., Feb. 25, 2010) is not helpful. In that case the litigation had virtually concluded before the bankruptcy was filed. Further, the authorities relied upon by the court in *Drocco*, and also cited by movant, were all "eve of trial" bankruptcy cases.

"Cause" for stay relief. In order to obtain relief from the automatic stay, the party seeking relief must first establish a *prima facie* case that cause for relief exists under § 362(d)(1). *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 558 (Bankr. C.D.Cal., 2004). Once a *prima facie* case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. *Id.* *Plumberex* relies on twelve non-exclusive factors, *In re Curtis*, 40 B.R. 795 (Bankr. D.Utah, 1984) that a bankruptcy court might weigh in determining whether to lift the stay to permit pending litigation to continue in another forum. *Plumberex*, 311 B.R. at 559. These "*Curtis*" factors are appropriate non-exclusive factors to consider in deciding whether to grant relief from the automatic stay allowing pending litigation to continue in another forum. *In re Kronemyer*, 405 B.R. 915, 925 (9th Cir. BAP 2009). Not all of the twelve factors are relevant in every case, nor is a court required to give each of the *Curtis* factors equal weight in making its determination. *Plumberex*, 311 B.R. at 560.

The pertinent questions in applying these factors to the case at hand, include, pursuant to the limited relief that the court intends to grant, will it result in a partial or complete resolution of the issues? Here the limited relief proposed will resolve the amount of the claim, if any, against the estate, however the proposed relief will not permit the state court to enjoin the debtor from her livelihood.

Will proceeding in the Litigation interfere with the bankruptcy case? Is it connected with the bankruptcy case? The delay in liquidating the movant's claim, however slight, clearly affects this case, however liquidation of the claim would be necessary in any event.

Does the action involve third parties; does the debtor function only as a bailee or conduit for the goods or proceeds in question? According to the record and evidence before the court, goods or proceeds are not at issue in the Litigation. However, the action does involve at least one third-party. A different third-party defendant was dismissed from the litigation previously.

Whether the litigation in another forum would prejudice the interests of other creditors and other interested parties? No evidence has been submitted regarding the cost of completing the Litigation. Trial of a claim objection would also cost funds. Relief to pursue an injunction as requested by movant will not be granted, thus the creditor's interests are not prejudiced any more than contested proceedings involving allowance of a claim in bankruptcy court.

If a judgment is entered in favor of the creditor, would the judgment be subject to subordination under § 510(c)? There is no evidence of a counter claim being asserted by the debtor in the Litigation, thus this inquiry would be speculative.

If the movant is successful in the Litigation, would the result be a lien that would be avoidable under 11 U.S.C. § 522(f)? The court's intended disposition does not permit any collection proceedings against the debtor or her estate.

Are the interests of judicial economy and the expeditious and economical determination of litigation for the parties served by the court's intended disposition? Judicial economy is a factor to be considered by bankruptcy courts when deciding lift stay issues. *Piombo Corp. v. Castlerock Prop. (In re Castlerock Prop.)*, 781 F. 2d 159, 163 (9th Cir. 1986). The Litigation involves other defendants. The South Carolina court has had the Litigation for a year. Discovery has been conducted. Mediation sessions have occurred. Discovery orders have been entered. The South Carolina court is perfectly able to resolve what is essentially a state law issue. The bankruptcy court alone determines dischargeability of debts. Whether issue preclusion will occur remains to be seen and does not justify preventing the Litigation from proceeding.

What is the extent of the progression of the foreign proceeding to the point where the parties are prepared for trial? Movant claims they have pursued the litigation against the third-party defendants notwithstanding this bankruptcy case and they are ready for trial. The other third-party in the Litigation may be ready, though the evidence is not clear on that point. The debtor has not presented evidence on this issue one way or the other, but the court can presume the debtor is not ready for trial. If she needs time, the court of Common Pleas can be asked to accommodate her.

The debtor has always been subject to laws compelling testimony from third-parties. If the debtor wants to oppose the relief, liquidation of the claim in the South Carolina court, that is her choice, however liquidation of the claim will be litigated in any case.

In a comparison of the "balance of the hurt" between the parties in this chapter 13 case, it is obvious that movant's claim must be liquidated at some moment. The Litigation is very close to a trial date. Liquidating the claim would not occur any faster in this court. Chapter 13 cases need to progress quickly to plan confirmation and the feasibility of the debtor's plan will need to be determined quickly so the creditors with allowed claims can be paid and the debtor receive her discharge. The other creditors benefit from the faster determination which will occur if the limited relief from stay to proceed with the Litigation is granted. The debtor would have to litigate the claim in any event. Overall, the relevant *Curtis* factors favor the limited relief granted here.

30. [11-14667](#)-B-13 KENNETH/JENNIFER WEBB
FW-4
KENNETH WEBB/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
5-26-16 [[52](#)]

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 consistent with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' 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 FRBP 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 requirements for entry of *nunc pro tunc* approval have been met. This claim was listed in the petition and litigation was underway when the case was filed. The debtors have disclosed the details of the settlement and the attorney's compensation, the total value of which was well below the debtors' available exemptions.

31. [16-10068](#)-B-13 GIBRAT RODRIGUEZ
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE
5-9-16 [[18](#)]

The motion will be granted. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 for cause shown.

32. [15-14770](#)-B-13 KENNETH/JANE HOSTETLER
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
5-24-16 [[33](#)]

The motion will be denied without prejudice. The court will issue a civil minute order. No appearance is necessary.

Although this matter was fully noticed in compliance with the Local Rules and no opposition by the debtors was filed, the essential basis of the trustee's motion was the debtors' failure to file a motion to value their 2012 Ford Fusion. On June 8, 2016, the debtors filed a motion to value that vehicle which has been set for July 21, 2016.

33. [16-11471](#)-B-13 DONNA REYNA
FW-1
DONNA REYNA/MV
GABRIEL WADDELL/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
JULIO VELAZQUEZ
5-20-16 [[8](#)]

The motion will be granted without oral argument based upon well-pled facts. The debtor 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 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 FRBP 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 debtor may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

34. [12-17275](#)-B-13 SUKHWINDER/JASWINDER MOTION TO DISMISS CASE
MHM-1 PADDA 5-12-16 [[72](#)]
MICHAEL MEYER/MV
BENJAMIN SHEIN/Atty. for dbt.
WITHDRAWN

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

35. [16-11377](#)-B-13 SANJEEV ATHALE MOTION TO CONFIRM PLAN
PBB-1 5-9-16 [[17](#)]
SANJEEV ATHALE/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

This matter will be continued to July 21, 2016, at 1:30 p.m. The court will prepare and enter a civil minute 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. If the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

36. [16-10787](#)-B-13 ALBERTO/ANGELICA MORENO MOTION TO DISMISS CASE
MHM-1 5-10-16 [[29](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
WITHDRAWN

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