

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date:
Thursday, June 29, 2017
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 A.M.

1. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
3-23-17 [[1](#)]
T. BELDEN/Atty. for dbt.

This matter will proceed as scheduled.

2. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION
BBR-3 PACE DIVERSIFIED CORPORATION/MV
T. BELDEN/Atty. for dbt.
- EVIDENTIARY HEARING RE: AMENDED MOTION TO USE CASH COLLATERAL, AMENDED MOTION FOR A FINAL HEARING ON USE OF CASH COLLATERAL
4-3-17 [[45](#)]

The evidentiary hearing will be continued pursuant to a stipulation between the parties. The court will issue a scheduling order. No appearance is required.

3. [17-11028](#)-B-11 PACE DIVERSIFIED CORPORATION MOTION FOR COMPENSATION BY THE
BBR-4 CORPORATION LAW OFFICE OF BELDEN BLAINE
RAYTIS, LLP FOR T. SCOTT
BELDEN, DEBTORS ATTORNEY(S)
6-8-17 [[141](#)]
T. BELDEN/Atty. for dbt.

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

4. [17-10238](#)-B-11 SILO CITY, INC.
EAT-2
U.S. BANK TRUST, N.A./MV
JACOB EATON/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-30-17 [[84](#)]

The motion will be granted without oral argument for cause shown. 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 of Practice and there was no opposition. The defaults of all respondents will be entered. The automatic stay is 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.

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.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the estate claims no interest in this collateral. 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 an interest in the subject real property. Accordingly, the motion for relief under 11 U.S.C. §362(d)(4) is also granted.

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).

5. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER
FW-17

MOTION FOR COMPENSATION FOR
MITCHELL J. GREEN, SPECIAL
COUNSEL(S)
5-19-17 [[175](#)]

PETER FEAR/Atty. for dbt.

This hearing will be dropped. A noticed hearing for compensation is not required when the amount of the fees requested is less than \$1,000. The court will enter an order approving the fees based on this application. No appearance is necessary.

6. 17-11028-B-11 PACE DIVERSIFIED
BBR-5 CORPORATION
PACE DIVERSIFIED
CORPORATION/MV
T. BELDEN/Atty. for dbt.

MOTION TO EXTEND TIME TO ASSUME
OR REJECT ALLEGED LEASES ON
NONRESIDENTIAL REAL PROPERTY
6-15-17 [153]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

1:30 P.M.

1. [17-10605](#)-B-13 BERTHA SANCHEZ
RCO-1
WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
JASON KOLBE/Atty. for mv.
DISMISSED
- OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
6-2-17 [[32](#)]

This case has already been dismissed. No appearance is necessary.

2. [16-14414](#)-B-13 GERARDO REYES
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- CONTINUED MOTION TO DISMISS
CASE
5-2-17 [[74](#)]

This matter will proceed as scheduled.

3. [16-14414](#)-B-13 GERARDO REYES
TOG-3
GERARDO REYES/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING
- MOTION TO CONFIRM PLAN
5-18-17 [[79](#)]

This matter will proceed as scheduled. It appears that motion could be granted and the plan confirmed with the trustee's suggested amendment pursuant to the order confirming the plan.

4. [17-12214](#)-B-13 KENNETH/JANE HOSTETLER
TCS-1
KENNETH HOSTETLER/MV
TIMOTHY SPRINGER/Atty. for dbt.
- MOTION TO EXTEND AUTOMATIC STAY
6-10-17 [[8](#)]

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

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

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), citations omitted.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay. Since the prior case was dismissed the debtors have surrendered their automobile and thus lowered the amount of their plan payment. It appears the debtors need the protection of the automatic stay to reorganize and pay the arrearages on their home. 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.

5. [17-11323](#)-B-13 BERNICE ROGERS
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
5-31-17 [[19](#)]

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

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

The record shows that there has been unreasonable delay, including debtor's failure to appear at the scheduled 341 Meeting of Creditors; failure to provide the Trustee with the required documentation; to file complete and accurate schedules and Statement of Financial Affairs; and filing an incomplete plan that does not appear feasible. Accordingly, the case will be dismissed.

6. [17-11524](#)-B-13 DIONICIA PARKS
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
6-1-17 [[18](#)]

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

7. [17-11425](#)-B-13 STACY SCHREINER
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
6-1-17 [[29](#)]

This case has already been dismissed for failure to pay fees. No appearance is necessary.

8. [17-10432](#)-B-13 BRANDON/LESLIE SMART
TCS-1
BRANDON SMART/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
VALLEY FIRST CREDIT UNION
5-23-17 [[22](#)]

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

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

The debtor is competent to testify as to the value of the 2009 MiniCooper. 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 \$6,132. 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.

9. [17-10236](#)-B-13 PAUL/KATHLEEN LANGSTON
FW-3
PAUL LANGSTON/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
5-5-17 [[49](#)]

This motion will be set for a continued hearing on August 17, 2017, at 1:30 p.m. The court will issue an order. No appearance is necessary.

The trustee and a creditor have filed a detailed objections to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or both the trustee's and creditor's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than August 3, 2017. The response shall specifically address each issue raised in the oppositions to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 10, 2017. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

10. [17-11337](#)-B-13 CHRISTOPHER FRITZ
PBB-1
CHRISTOPHER FRITZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ALLY BANK
5-19-17 [[12](#)]

Based on the respondent's opposition, this matter will be continued to August 24, 2017, at 1:30 p.m., for further briefing by the parties. The debtor's brief is to be served and filed at least two weeks prior to hearing. Respondent's brief shall be served and filed not later than seven days before the continued hearing date.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The debtor shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, if necessary exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date. The court will issue an order. No appearance is necessary.

11. [17-11337](#)-B-13 CHRISTOPHER FRITZ
PBB-2
CHRISTOPHER FRITZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO SELL
6-9-17 [[19](#)]

The motion to sell will be denied without prejudice. The court will enter an order. No appearance is necessary.

This motion for a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, does not comply with the notice period prescribed by FRBP 2002(a)(2) and there is no order issued for cause shown shortening the time or directing another method of giving notice.

12. [17-11338](#)-B-13 ANTHONY/VIRGINIA GONZALES
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-1-17 [[28](#)]

Unless the trustee withdraws his motion, this matter will proceed as scheduled. The debtors have filed a timely response, however it was not supported by evidence as required. If the trustee does not withdraw the motion at the hearing, the court intends to dismiss the case on the grounds stated in the motion.

13. [17-11345](#)-B-13 VALINA WISNER
MHM-1
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.

MOTION TO DISMISS CASE
5-31-17 [[27](#)]

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

14. [17-11646](#)-B-13 JESSICA BLANCO
RTB-1
MXNXOXP, INC./MV
TIMOTHY SPRINGER/Atty. for dbt.
RICHARD BAUM/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY MXNXOXP, INC.
5-30-17 [[17](#)]

This matter will be continued to August 24, 2017, at 1:30 p.m. The court will issue an order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

15. [17-10948](#)-B-13 IDA FEUERSINGER
PBB-1
IDA FEUERSINGER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE/BEST BUY
5-22-17 [[14](#)]

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

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

The debtor is competent to testify as to the value of the major appliances, including a refrigerator, dishwasher, clothes washer and dryer. 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 \$400. 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. [17-10948](#)-B-13 IDA FEUERSINGER
PBB-2
IDA FEUERSINGER/MV

MOTION TO VALUE COLLATERAL OF
LENDMARK FINANCIAL SERVICES,
LLC
5-22-17 [[20](#)]

PETER BUNTING/Atty. for dbt.

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

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

The debtor is competent to testify as to the value of the 2005 Honda Accord LX. 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 \$6,103. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

17. [17-10350](#)-B-13 ISAIAH JONES
LR-1
ISAIAH JONES/MV
LAUREN RODE/Atty. for dbt.
DISMISSED

MOTION TO CONFIRM PLAN
5-3-17 [[31](#)]

This case has already been dismissed. No appearance is necessary.

18. [17-10350](#)-B-13 ISAIAH JONES
MHM-3
MICHAEL MEYER/MV
LAUREN RODE/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
6-1-17 [[50](#)]

This case has already been dismissed. No appearance is necessary.

19. [17-10064](#)-B-13 JOE HAYES
MHM-2
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
5-31-17 [[65](#)]

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

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

The record shows that the debtor has failed to appear at his \$341 meeting of creditors. Accordingly, the case will be dismissed.

20. [12-11970](#)-B-13 RANDY DESHAZIER
MHM-3
MICHAEL MEYER/MV

TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
5-16-17 [[112](#)]

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered. The court finds that the debtor has cured the pre-petition default on his loan with U. S. Bank National Association, and that the debtor is current on his mortgage payment to U. S. Bank National Association through September 2013.

21. [15-13571](#)-B-13 LARRY/MARTHA BLACK
JRL-5
LARRY BLACK/MV
JERRY LOWE/Atty. for dbt.

MOTION TO MODIFY PLAN
5-10-17 [[80](#)]

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

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

22. [17-11373](#)-B-13 RAMON MENDOZA
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO DISMISS CASE
5-26-17 [[23](#)]

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

23. [12-17275](#)-B-13 SUKHWINDER/JASWINDER
BCS-7 PADDA

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTORS ATTORNEY(S)
5-31-17 [[100](#)]

BENJAMIN SHEIN/Atty. for dbt.

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

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

24. [14-11975](#)-B-13 MICHAEL TAYLOR
GH-3
MICHAEL TAYLOR/MV
GARY HUSS/Atty. for dbt.
PLAN WITHDRAWN

MOTION TO MODIFY PLAN
3-9-17 [[74](#)]

This motion has been withdrawn. No appearance is necessary.

25. [17-11376](#)-B-13 HECTOR MERCADO MUNOZ AND
MHM-1 MIRTA MERCADO CARDENAS
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
6-1-17 [[44](#)]

Unless the trustee withdraws his motion, this matter will proceed as scheduled. The debtors have filed an untimely response that was not supported by evidence as required. If the trustee does not withdraw the motion at the hearing, the court intends to dismiss the case on the grounds stated in the motion.

26. [17-11376](#)-B-13 HECTOR MERCADO MUNOZ AND
RRD-1 MIRTA MERCADO CARDENAS
DAWN LINDSAY/MV

OBJECTION TO CONFIRMATION OF
PLAN BY WILLIAM LINDSAY AND
DAWN LINDSAY
6-1-17 [[31](#)]

JERRY LOWE/Atty. for dbt.
RENNEE DEHESA/Atty. for mv.

This objection will be denied without prejudice. The court will enter an order. No appearance is necessary.

The record does not show that this objection was served on the debtors. In addition, the pleadings were not double spaced. Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section I.B.

Finally, it is premature. 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.

27. [17-11376](#)-B-13 HECTOR MERCADO MUNOZ AND MOTION TO DISMISS CASE
RRD-2 MIRTA MERCADO CARDENAS 6-1-17 [[35](#)]
DAWN LINDSAY/MV
JERRY LOWE/Atty. for dbt.
RENNEE DEHESA/Atty. for mv.

The motion will be granted in part and denied in part. The request in the motion to strike the debtors' late response will be granted. The motion to dismiss will be denied without prejudice because it was not served on the debtors. In addition, it was not noticed pursuant to LRB 9014-1(f)(2) as required by LBR 3015-1(c)(4) The court will enter an order. No appearance is necessary.

The moving papers were not served on the debtors at the address of record in effect at the time of service. The striking of the debtors' late opposition, which had waived that service defect, acts to revive the initial defect in the service of the motion.

In addition, the pleadings were not double spaced. Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section I.B.

28. [17-11377](#)-B-13 AVON SHAKESPEARE MOTION TO DISMISS CASE
MHM-1 5-31-17 [[28](#)]
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.

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

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

The record shows there has been unreasonable delay by the Debtor that is prejudicial to creditors, including failure to appear at the scheduled 341 Meeting of Creditors; failure to provide the Trustee with required documentation; and failure to provide Credit Counseling Certificate. Accordingly, the case will be dismissed.

29. [17-11398](#)-B-13 REYNALDO/MARIA PERALES
MHM-1
MICHAEL MEYER/MV
JANINE ESQUIVEL/Atty. for dbt.

MOTION TO DISMISS CASE
5-26-17 [[18](#)]

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

30. [14-10524](#)-B-13 RONALD MANIORD
RSW-3
RONALD MANIORD/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO INCUR DEBT
6-14-17 [[47](#)]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

31. 17-12109-B-13 FRANK RUIZ
PK-1
FRANK RUIZ/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
6-15-17 [14]

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

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

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), citations omitted.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtor's petition was filed in good faith, and it intends to grant the motion to extend/impose the automatic stay. The debtor failed to make payments under the plan because he needed to assist his grandmother. The situation has changed so that his assistance is no longer necessary. The debtor requires the automatic stay to protect his home pending confirmation of a plan. 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.