

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, July 27, 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. [17-10327](#)-B-12 EDWARD/LISA UMADA CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
1-31-17 [[1](#)]
PETER FEAR/Atty. for dbt.

This matter will proceed as scheduled. The court has reviewed the debtors' status report and intends to set dates for discovery deadlines and for a continued status conference.

2. [17-10327](#)-B-12 EDWARD/LISA UMADA
FW-4
EDWARD UMADA/MV

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled. The court has reviewed the debtors' status report and intends to set dates for discovery deadlines and for a continued status conference.

3. [16-10643](#)-B-12 MARK FORREST
LKW-12
MARK FORREST/MV
LEONARD WELSH/Atty. for dbt.
- OBJECTION TO CLAIM OF AUGUSTIN
MADRIGAL, CLAIM NUMBER 8
6-13-17 [[179](#)]

The claim objection has been withdrawn. No appearance is necessary.

4. [16-13345](#)-B-11 JONATHAN/PATRICIA MAYER MOTION FOR COMPENSATION FOR
FW-18 BIECHMAN ACCOUNTANCY
CORPORATION, ACCOUNTANT(S)
6-28-17 [[189](#)]

PETER FEAR/Atty. for dbt.

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

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

1:30 P.M.

1. [12-16505](#)-B-13 ERIC/JUDY GRAHAM
JMA-5
ERIC GRAHAM/MV

MOTION FOR SUBSTITUTION AS THE
REPRESENTATIVE FOR DECEASED;
CONTINUED ADMINISTRATION OF
CASE UNDER CH 13; EXEMPTION
FROM FINANCIAL MANAGEMENT
COURSE; WAIVER OF SECTION 1328
CERTIFICATE REQUIREMENTS
6-27-17 [[89](#)]

MICHAEL ARNOLD/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.

The court will order as follows: the debtor Eric Graham will be substituted as the representative for the deceased, Joint Debtor, Judy Graham pursuant to Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025; (2) Continued administration of the case under Chapter 13 pursuant to Fed. R. Bank. P. 1016; (3) Waiver of post-petition education requirement for entry of discharge pursuant to 11 U.S.C. sections 727(a)(11), 1325(g); and, (4) Waiver of certification requirements for entry of discharge in a Chapter 13 case pursuant to 11 U.S.C. section 1328.

2. [17-11606](#)-B-13 MARIA ECHEVERRIA
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-13-17 [[12](#)]

Unless the trustee has withdrawn his motion prior to the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules of Practice. The debtor's response is not supported by evidence that the default has been cured and the trustee's motion has not been withdrawn. The case will be dismissed.

3. [09-60107](#)-B-13 MARTINO/MICHELLE STARACE MOTION TO AVOID LIEN OF MICHAEL
DRJ-7 GRAHAM DBA VALLEY PUMP AND
MARTINO STARACE/MV DAIRY SYSTEMS
7-11-17 [[129](#)]
DAVID JENKINS/Atty. for dbt.

This motion was filed and served pursuant to LRB 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 LRB 9014-1(f)(2). The court will issue an order if a further hearing is necessary. It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

4. [17-10907](#)-B-13 MARICRUZ FLORES MOTION TO CONFIRM PLAN
TOG-1 6-5-17 [[16](#)]
MARICRUZ FLORES/MV
THOMAS GILLIS/Atty. for dbt.

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

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

5. [15-14409](#)-B-13 ALICIA RIZO MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WILSHIRE CONSUMER CREDIT/MV 6-16-17 [[48](#)]
WILLIAM OLCOTT/Atty. for dbt.
ROBERT ZAHRADKA/Atty. for mv.

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The secured claim relating to this collateral is provided for in Class 4 of the debtor's confirmed chapter 13 plan. Upon confirmation of the chapter 13 plan, the automatic stay was modified for this claim to permit enforcement of the creditor's remedies with regard to the collateral in the event of a default under applicable law. No attorney's fees will be awarded in relation to this motion.

6. [17-12010](#)-B-13 JOSE RAYA
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-26-17 [[22](#)]

This motion will be continued to August 24, 2017, at 1:30 p.m., to be heard with the debtor's motion to confirm a modified plan. The court will enter an order. No appearance is necessary.

The trustee's motion is based on the debtor's failure to confirm a plan. The debtor has filed an amended plan and the objecting creditor has filed a notice of non-opposition to the amended plan.

7. [17-11712](#)-B-13 ADAN MANRIQUEZ ZAMORA

FREDDIE MAC/MV
SCOTT LYONS/Atty. for dbt.
SEAN FERRY/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY FREDDIE MAC
5-31-17 [[20](#)]

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

The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).

The moving papers were not filed in compliance with LBR 9014-1(e) (3).

The pleadings do not comply with the 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 V.A & B.

The court notes that objector has still not yet filed a proof of claim and the objection was filed without admissible supporting evidence as required by Local Rule of Bankruptcy Procedure 9014-1(d) (7).

8. [17-12214](#)-B-13 KENNETH/JANE HOSTETLER
JHW-1
AMERICREDIT FINANCIAL
SERVICES, INC./MV
TIMOTHY SPRINGER/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-21-17 [[13](#)]

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 debtors' and the trustee's defaults 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.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in movant's possession, is not listed in the debtors' plan and is a depreciating asset.

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).

9. [14-10818](#)-B-13 ROBERT/BONNIE GONZALES
SL-1
ROBERT GONZALES/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH J & V
PROPERTIES, INC.
6-8-17 [[30](#)]

STEPHEN LABIAK/Atty. for dbt.

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

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

It appears from the moving papers that the debtor-in-possession has considered the factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee or debtor-in-possession reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

Accordingly, it appears that the the compromise pursuant to FRBP 9019 is a reasonable exercise of the DIP's business judgment. The order should be limited to the claims compromised as described in the motion.

10. [17-11124](#)-B-13 OLUSEGUN LERAMO
FJA-1
OLUSEGUN LERAMO/MV
FRANCISCO ALDANA/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
6-5-17 [[27](#)]

This motion will be set for a continued hearing August 31, 2017, at 1:30 p.m. The court will issue an order. No appearance is necessary. If a plan is not confirmed at the continued hearing, the court intends to set a bar date by which time a plan must be confirmed.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. In addition, two holders of secured claims, U.S. Bank and Wells Fargo N.A., have also filed objections.

Unless this case is voluntarily converted to chapter 7 or dismissed or all of the objections have been withdrawn, the debtor shall file and serve a written response not later than August 17, 2017. 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. 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 August 24, 2017. If the debtor does 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.

11. [17-11524](#)-B-13 DIONICIA PARKS
MHM-2
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
6-26-17 [[24](#)]

Unless it is withdrawn before the hearing, the trustee's motion to dismiss the case will be denied as moot. No appearance is necessary.

The trustee's motion is based on the debtor's failure to file, serve, and set for a hearing a chapter 13 plan. The record shows that the debtor filed a plan on June 27, 2017, that is set for a hearing in August.

12. [17-11425](#)-B-13 STACY SCHREINER
MHM-2
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
6-12-17 [[33](#)]

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

13. [17-11926](#)-B-13 RHONDA URBAN
MHM-1
MICHAEL MEYER/MV
MARK NELSON/Atty. for dbt.

MOTION TO DISMISS CASE
6-23-17 [[22](#)]

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 provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) & (4). Accordingly, the case will be dismissed.

14. [17-11926](#)-B-13 RHONDA URBAN
MSN-1
RHONDA URBAN/MV
MARK NELSON/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
FRANCHISE TAX BOARD
6-2-17 [[13](#)]

The motion will be denied as moot. The court intends to grant the trustee's motion to dismiss at calendar # 13 (DC# MHM-1). The court will enter an order. No appearance is necessary.

15. [17-11129](#)-B-13 ROGELIO SALCEDO AND
MHM-1 FRANCES RUIZ
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-14-17 [[22](#)]

This motion will be continued to September 14, 2017, at 1:30 p.m. to be heard with the debtors' amended plan. The court will issue an order. No appearance is necessary.

16. [17-11129](#)-B-13 ROGELIO SALCEDO AND
TOG-3 FRANCES RUIZ
ROGELIO SALCEDO/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
MECHANICS BANK
6-22-17 [[33](#)]

The motion has been withdrawn. No appearance is necessary.

17. [17-11129](#)-B-13 ROGELIO SALCEDO AND
TOG-4 FRANCES RUIZ
ROGELIO SALCEDO/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL GROUP, LLC.
6-22-17 [[38](#)]

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 2000 Chevy Silverado. 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 \$1,931. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

18. [16-11231](#)-B-13 ROSA MURILLO
FW-3
ROSA MURILLO/MV
GABRIEL WADDELL/Atty. for dbt.

MOTION TO MODIFY PLAN
6-5-17 [[29](#)]

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.

19. [17-12034](#)-B-13 DAVID HOLLINGSWORTH

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-27-17 [[21](#)]

This matter will be called as scheduled. If the installment payments now due have not been paid by the time of the hearing, the case will be dismissed. If the installment payments now due are fully paid by the time of the hearing, the OSC will be vacated.

If the OSC is vacated, the court will modify the order permitting the payment of filing fees in installments to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

20. [17-12034](#)-B-13 DAVID HOLLINGSWORTH
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
6-29-17 [[22](#)]

If the case is not dismissed pursuant to the OSC at calendar # 19, then the trustee's 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 provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) & (4).

This case was filed May 23, 2017. The debtor has failed to set a plan for hearing with notice to creditors.

If the case is dismissed pursuant to the OSC above, then this motion will be denied as moot.

21. [17-11135](#)-B-13 MARIA MACIEL
MHM-2

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-26-17 [[31](#)]

THOMAS GILLIS/Atty. for dbt.

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. If a plan is not confirmed at the continued hearing, the court intends to set a bar date by which time a plan must be confirmed.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan and the debtor has requested that the matter be continued for three weeks.

Unless this case is voluntarily converted to chapter 7 or dismissed or all of the objections have been withdrawn, the debtor shall file and serve a written response not later than August 3, 2017. 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. 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 August 10, 2017. If the debtor does 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.

22. [10-11043](#)-B-13 EDWARD AGUIRRE AND
DRJ-2 SUSANNE GONZALES
EDWARD AGUIRRE/MV
M. ENMARK/Atty. for dbt.

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA) N.A.
6-29-17 [[107](#)]

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 respondent's defaults will be entered.

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

23. [10-11043](#)-B-13 EDWARD AGUIRRE AND
DRJ-3 SUSANNE GONZALES
EDWARD AGUIRRE/MV
M. ENMARK/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES
6-29-17 [[116](#)]

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 respondent's defaults will be entered.

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

24. [10-11043](#)-B-13 EDWARD AGUIRRE AND
DRJ-4 SUSANNE GONZALES
EDWARD AGUIRRE/MV
M. ENMARK/Atty. for dbt.

MOTION TO AVOID LIEN OF
BENEFICIAL CALIFORNIA, INC.
6-29-17 [[121](#)]

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 respondent's defaults will be entered.

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

25. [17-11345](#)-B-13 VALINA WISNER
RMP-1
DITECH FINANCIAL LLC/MV

GLEN GATES/Atty. for dbt.
RENEE PARKER/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY DITECH
FINANCIAL LLC
5-25-17 [[18](#)]

The amended objection has been withdrawn. No appearance is necessary.

26. [17-11646](#)-B-13 JESSICA BLANCO
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
6-15-17 [[28](#)]

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

27. [17-12452](#)-B-13 DELORES ARZAMENDI

DISMISSED

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-11-17 [[11](#)]

The OSC will be vacated. This case has already been dismissed. No appearance is necessary.

28. [17-11654](#)-B-13 JASON PHILLIPS
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-15-17 [[33](#)]

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

29. [15-10257](#)-B-13 JUAN CALVILLO
MHM-1

MARK ZIMMERMAN/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

MOTION TO RECONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
6-14-17 [[115](#)]

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 respondent's default will be entered. The case will be reconverted to chapter 7.

30. [16-12868](#)-B-13 TERELL WAGGONER
TCS-2
TERELL WAGGONER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO MODIFY PLAN
6-6-17 [[34](#)]

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.

31. [17-11570](#)-B-13 GREGGORY KIRKPATRICK
MHM-1
MICHAEL MEYER/MV
MARTIN GAMULIN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
6-16-17 [[22](#)]

Unless the trustee has withdrawn his motion prior to the hearing, this matter will proceed as scheduled.

The chapter 13 trustee's motion to dismiss is based on the debtor's failure to timely provide the trustee with the required documentation, failure to set a plan for hearing with notice to creditors, and failure to file complete and accurate schedules and Statement of Financial Affairs. The debtor timely filed a response however the trustee's motion has not been withdrawn.

32. [13-16073](#)-B-13 THOMAS/NORMA FETALVERO
AP-1
WELLS FARGO BANK, N.A./MV
DAVID JENKINS/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-8-17 [[29](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The secured claim relating to this collateral is provided for in Class 4 of the debtors' confirmed chapter 13 plan. Upon confirmation of the chapter 13 plan, the automatic stay was modified for this claim to permit enforcement of the creditor's remedies with regard to the collateral in the event of a default under applicable law. No attorney's fees will be awarded in relation to this motion.

33. [14-13573](#)-B-13 GREGORY/HEATHER VITUCCI MOTION TO SELL
HDN-5 6-15-17 [[117](#)]
GREGORY VITUCCI/MV
HENRY NUNEZ/Atty. for dbt.

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

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

34. [17-11373](#)-B-13 RAMON MENDOZA MOTION TO CONFIRM PLAN
TOG-1 6-7-17 [[33](#)]
RAMON MENDOZA/MV
THOMAS GILLIS/Atty. for dbt.

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

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

35. [14-13374](#)-B-13 DAVID MARTINEZ MOTION TO MODIFY PLAN
TCS-2 6-20-17 [[34](#)]
DAVID MARTINEZ/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

This motion has been withdrawn. No appearance is necessary.

36. [17-11174](#)-B-13 JOSE RAMOS AND GABRIELA OBJECTION TO CONFIRMATION OF
MHM-2 HERNANDEZ PLAN BY TRUSTEE MICHAEL H.
MEYER
6-27-17 [[42](#)]

THOMAS GILLIS/Atty. for dbt.
NON-OPPOSITION

This objection to confirmation of the chapter 13 plan will be overruled without prejudice. No appearance is necessary.

The debtor has filed and set for hearing a modified plan. The plan to which this objection relates is deemed withdrawn.

37. [17-10875](#)-B-13 GERALD STULLER AND MOTION TO DISMISS CASE
MHM-1 BARBARA WIKINSON-STULLER 6-12-17 [[41](#)]
MICHAEL MEYER/MV
SCOTT SAGARIA/Atty. for dbt.
RESPONSIVE PLEADING

Unless the trustee's motion is withdrawn, the motion will be continued to August 17, 2017, at 1:30 p.m., to be heard with the debtors motion to confirm a modified plan. The court will enter an order. No appearance is necessary.

38. [17-10875](#)-B-13 GERALD STULLER AND OBJECTION TO CONFIRMATION OF
MHM-2 BARBARA WIKINSON-STULLER PLAN BY TRUSTEE MICHAEL H.
MEYER
6-20-17 [[46](#)]

SCOTT SAGARIA/Atty. for dbt.

This objection to confirmation of the chapter 13 plan will be overruled without prejudice. No appearance is necessary.

The debtor has withdrawn the plan to which this objection relates and have filed and set for hearing a modified plan.

39. [17-10076](#)-B-13 ALVINO GARCIA CONTINUED MOTION TO CONFIRM
JRL-2 PLAN
ALVINO GARCIA/MV 3-22-17 [[46](#)]
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

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

40. [12-11880](#)-B-13 SCOTTY/VERONICA EVERHART
MHM-1
MICHAEL MEYER/MV

OBJECTION TO CLAIM OF CAPITAL
ONE AUTO FINANCE, CLAIM NUMBER
5
6-5-17 [[63](#)]

DAVID JENKINS/Atty. for dbt.

The objection will be sustained without oral argument based on well-pled facts. The objecting party shall submit a proposed 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 claim will be disallowed in in part on the grounds stated in the objection. Based on the evidence submitted in support of the objection, it appears that this claim has already been satisfied.

41. [17-12186](#)-B-13 ROBERT ESPINOZA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-17 [[19](#)]

SCOTT LYONS/Atty. for dbt.
\$79.00 INSTALLMENT PAYMENT
7/10/17

The OSC will be vacated. The record shows that the installment fees now due have been paid. No appearance is necessary.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

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 the automatic stay. It appears that the income and health-based reasons for the failure to make plan payments have been resolved. 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.

43. [17-10187](#)-B-13 PETER SOLORIO
LR-2
PETER SOLORIO/MV
LAUREN RODE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
6-29-17 [[42](#)]

The motion will be continued to August 17, 2017, at 1:30 p.m. The form of the proof of service does not comply with LBR 9014-1(d)(2) and/or 9004-1 and needs to be amended (see Local Rules, Appendix II, EDC.002-901, Revised Guidelines for the Preparation of Documents (5)). The court will issue an order. Movant shall file a conforming certificate of proof of service on or before August 10, 2017. No appearance is necessary.

44. [17-10187](#)-B-13 PETER SOLORIO
MHM-2
MICHAEL MEYER/MV
LAUREN RODE/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
6-5-17 [[36](#)]

This matter will be continued to August 17, 2017, at 1:30 p.m., to be heard with the debtor's motion to value collateral. The court will enter an order. No appearance is necessary.

45. [17-12487](#)-B-13 STACY SCHRIENER
JRL-1
STACY SCHRIENER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO IMPOSE AUTOMATIC STAY
7-11-17 [[9](#)]

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

The Motion to Impose 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. 11 U.S.C. §362(c)(4)(A)(i) provides that for purposes of subparagraph (B), a case is presumptively filed in bad faith as to all creditors, if more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period. The current case is the third such case pending within 12 months. The subsequently filed case is also presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. §362(c)(3)(C)(i)(II)(aa), as was the case in the first case. Inadvertence or negligence, generally, are not a "substantial excuse." In addition, 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, which was the case with the second case, 11 U.S.C. §362(c)(3)(C)(i)(II)(cc), however the case was actually dismissed for failure to pay court filing fees.. 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, it appears that the debtor needs the protection of the automatic stay to prevent foreclosure of her residence pending plan confirmation. The court is persuaded that the presumption has been rebutted, that the debtor's petition was filed in good faith, and it intends to grant the motion to impose the automatic stay. It appears that the debtor's issues were primarily due to lack of counsel, and she is represented in this case. Although she was represented in the prior case, it appears that the representation did not occur early enough to prevent her problem obtaining credit counseling. The motion will be granted and the automatic stay imposed 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.

46. [17-11695](#)-B-13 HUMBERTO RUIZ AND TERESA MOTION TO DISMISS CASE
MHM-1 SOLORIO 6-15-17 [[17](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

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

47. [17-11695](#)-B-13 HUMBERTO RUIZ AND TERESA MOTION TO VALUE COLLATERAL OF
TOG-1 SOLORIO CHRYSLER CAPITAL
HUMBERTO RUIZ/MV 6-22-17 [[25](#)]
THOMAS GILLIS/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 2014 Dodge Durango. 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 \$19,018. 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.

48. [17-11695](#)-B-13 HUMBERTO RUIZ AND TERESA
TOG-2 SOLORIO
HUMBERTO RUIZ/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
GOLDEN 1 CREDIT UNION
6-22-17 [[30](#)]

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

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

The debtor is competent to testify as to the value of the 2014 Dodge Ram 1500. 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 \$29,522. 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

49. [12-60199](#)-B-13 WENDEE WILLIAMS
BCS-3

MOTION BY BENJAMIN C. SHEIN TO
WITHDRAW AS ATTORNEY
6-21-17 [[52](#)]

BENJAMIN SHEIN/Atty. for dbt.

This matter will proceed as scheduled. The court intends to inquire as to whether movant's efforts to contact his client were reasonable and whether the notice of this hearing was returned as undeliverable or whether it can presume to have been delivered.

50. [12-60199](#)-B-13 WENDEE WILLIAMS
BCS-4

MOTION FOR COMPENSATION FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
6-26-17 [[58](#)]

BENJAMIN SHEIN/Atty. for dbt.

This matter will proceed as scheduled. The court intends to inquire as to whether movant's efforts to contact his client were reasonable and whether the notice of this hearing was returned as undeliverable or whether it can presume to have been delivered.