

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, August 24, 2017  
Place: Department B – Courtroom #13  
Fresno, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a) (FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. one business day before the hearing.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

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

9:30 A.M.

1.	<a href="#">17-12535</a> -B-11	OVADA MORERO	MOTION TO SELL
	LKW-4		7-19-17 [ <a href="#">30</a> ]
	OVADA MORERO/MV		
	LEONARD WELSH/Atty. for dbt.		
	RESPONSIVE PLEADING		

**TENTATIVE RULING**      This matter will proceed as scheduled.

**DISPOSITION:**              Granted.

**ORDER:**                      The moving party shall submit a proposed order after the hearing.

Secured creditor, 1st Bank Yuma ("Yuma"), has filed an opposition to this motion to sell real property in Arizona. Secured creditors James Haile and Rodney Haile filed a joinder on August 10, 2017, which the court deems to be an opposition to the motion. Joinders are not permitted on contested matters without prior court order. (See FRBP 9014(c), which omits reference to the joinder rules unless there is a misjoinder in the original pleading.)

Yuma concedes it is an over-secured creditor, yet objects to the sale on various grounds that seem irrelevant. The debtor has not asked for a sale free and clear of any liens and therefore, in the absence of their consent, the real property cannot be sold unless Yuma, the Hailes, and any other lienholders are fully satisfied.

The court notes that no unsecured creditors, the only parties that are at risk in the proposed sale, have filed oppositions. The court also notes that, except for the \$6,000 paid by the debtor pre-petition which will be used for marketing costs, the costs of sale will be paid by the auction company and, through a 10% buyer's premium and closing costs, by the buyer.

The court will not grant stay relief to either Yuma or the Hailes without a separate motion establishing grounds under 11 USC §362.

1:30 P.M.

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

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

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

**DISPOSITION:**            Denied as moot.

**ORDER:**                    No appearance is necessary. The court will issue an order.

This motion was continued to be heard with the debtor's motion to confirm a chapter 13 plan. In light of the court's intention to grant that motion, below at calendar number 2 (DC # TOG-2) the trustee's motion will be denied as moot.

2. [17-12010](#)-B-13 JOSE RAYA  
TOG-2  
JOSE RAYA/MV  
THOMAS GILLIS/Atty. for dbt.  
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN  
7-7-17 [[34](#)]

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

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

3. [17-12010](#)-B-13 JOSE RAYA  
TOG-3  
JOSE RAYA/MV  
THOMAS GILLIS/Atty. for dbt.  
NON-OPPOSITION

MOTION TO VALUE COLLATERAL OF  
KINECTA  
7-11-17 [[45](#)]

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

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The moving party shall submit a proposed order that is consistent with the ruling below.

The motion will be granted without oral argument based on well-pled facts. This motion to value respondent's collateral was fully noticed in compliance with the Local Rules of Practice and the respondent filed a notice of non-opposition. No party filed an opposition and the defaults of those respondents 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 Chevy Malibu. 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 \$13,302. 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.

4. [13-10213](#)-B-13 MEILANI PARSONS  
MHM-1  
MICHAEL MEYER/MV  
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE  
7-13-17 [[31](#)]

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

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The court will issue an order.

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

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

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

5. [17-12121](#)-B-13 TERRY/ROBBIE JANNEY

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-4-17 [[40](#)]

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

**DISPOSITION:**            The OSC will be vacated.

**ORDER:**                    No appearance is necessary. The court will issue an order.

The record shows that the installment fees now due have been paid. 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.

6. [17-11337](#)-B-13 CHRISTOPHER FRITZ  
PBB-1  
CHRISTOPHER FRITZ/MV  
PETER BUNTING/Atty. for dbt.  
RESPONSIVE PLEADING

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

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

**DISPOSITION:**            Denied as moot.

**ORDER:**                    No appearance is necessary.

This matter has been resolved by stipulation by the parties and order of the court entered August 16, 2017.

7. [17-11646](#)-B-13 JESSICA BLANCO  
RTB-1  
MXNXOXP, INC./MV  
  
TIMOTHY SPRINGER/Atty. for dbt.  
RICHARD BAUM/Atty. for mv.  
RESPONSIVE PLEADING

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

**TENTATIVE RULING**    This matter will proceed as scheduled.

**DISPOSITION:**            The court intends to inquire: from the debtor, as to the status of the objection to the objector's proof of claim; from the objecting creditor, as to the sufficiency of its evidence under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

**ORDER:**                    Unless the court orders otherwise, the minutes of the hearing will be the court's findings and conclusions.

The Supreme Court, in *Till*, 541 U.S. at 479, made it clear that it is the creditor who bears the burden of proof as to any risk factors which justify a particular interest rate. The Supreme Court specified a "formula approach" under which the court arrives at the appropriate interest rate by "beginning with the national prime rate and then adjusting upward based upon any risk factors," which include, "the circumstances of the estate, the nature of the security, and the duration and feasibility of the plan." Accordingly, it is clear that "starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors[.]" *In re Tapang*, 540 B.R. 701, 707 (9th Cir. BAP 2015), citing *Till*.

MOTION TO CONFIRM PLAN  
7-7-17 [49]

ORDER:                No appearance is necessary.    The court will issue an order.

MOTION FOR EXEMPTION FROM  
FINANCIAL MANAGEMENT COURSE  
AND/OR MOTION FOR WAIVER OF  
CERTIFICATION UNDER 11 U.S.C.  
1328  
7-25-17 [64]

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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 requirements under §1328 and LBR 5009-1 will be waived so that the deceased debtor's discharge may be entered.

10. [16-11473](#)-B-13 SHELBY/CAROL KING  
LKW-13

MOTION FOR COMPENSATION FOR  
LEONARD K. WELSH, DEBTORS  
ATTORNEY(S)  
7-19-17 [[290](#)]

LEONARD WELSH/Atty. for dbt.

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

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

11. [17-10875](#)-B-13 GERALD STULLER AND  
MJD-3 BARBARA WIKINSON-STULLER  
GERALD STULLER/MV  
SCOTT SAGARIA/Atty. for dbt.

MOTION TO CONFIRM PLAN  
7-12-17 [[65](#)]

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

**DISPOSITION:**            Granted.

**ORDER:**                    No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

12. [17-12979](#)-B-13 MERCED PEREZ  
SL-1  
MERCED PEREZ/MV  
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY  
8-7-17 [[11](#)]

TENTATIVE RULING This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The 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 debtor fell behind in plan payments when the debtor's daughter required financial assistance. The debtor has received a pay raise and also is no longer providing financial assistance to daughter. 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.

13. [17-12979](#)-B-13 MERCED PEREZ  
SL-2  
MERCED PEREZ/MV

MOTION TO VALUE COLLATERAL OF  
EDUCATIONAL EMPLOYEES CREDIT  
UNION  
8-8-17 [[15](#)]

SCOTT LYONS/Atty. for dbt.

**TENTATIVE RULING** This matter will proceed as scheduled.

**DISPOSITION:** Granted.

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

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion based on well-pled facts as follows.

This motion to value respondent's collateral was served as a preliminary matter. If no appearance in opposition is presented at the hearing, 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 2007 Acura TL. Based on the evidence presented, the respondent's secured claim will be fixed at \$4,234. The proposed order submitted after the hearing shall specifically identify the collateral, and if applicable, the proof of claim to which it relates and will be effective upon confirmation of the chapter 13 plan.

14. [17-12283](#)-B-13 TAJENDER SINGH  
MHM-1  
MICHAEL MEYER/MV  
WILLIAM ROMAINE/Atty. for dbt.

MOTION TO DISMISS CASE  
7-26-17 [[48](#)]

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

**DISPOSITION:**            **Denied as moot.**

**NO ORDER REQUIRED**    **No appearance is necessary. An order dismissing the case has already been entered.**

15. [17-12794](#)-B-13 HARDIAL BHULLAR  
  
ROSALINA NUNEZ/Atty. for dbt.  
DISMISSED

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-3-17 [[11](#)]

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

**DISPOSITION:**            **Denied as moot.**

**NO ORDER REQUIRED**    **No appearance is necessary. An order dismissing the case has already been entered.**