

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, August 25, 2016
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

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

4. Matters Resolved by Stipulation:

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

5. Resubmittal of Denied Matters:

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

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

9:30 A.M.

1. [15-14017](#)-B-11 CLUB ONE CASINO, INC. CONTINUED STATUS CONFERENCE RE:
[15-1146](#) COMPLAINT
 KMGH, INC. ET AL V. LONG ET AL 12-1-15 [[1](#)]
 ORI KATZ/Atty. for pl.

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

2. [15-14017](#)-B-11 CLUB ONE CASINO, INC. CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
10-14-15 [[1](#)]
HAGOP BEDOYAN/Attv. for dbt.

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

3. [15-14017](#)-B-11 CLUB ONE CASINO, INC.
BBR-6
- CONTINUED MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF BELDEN BLAINE RYTIS, LLP
FOR T. TODD ENGLAND, DEBTORS
ATTORNEY(S)
4-19-16 [[572](#)]
- HAGOP BEDOYAN/Atty. for dbt.

This matter will be continued to September 15, 2016, at 9:30 a.m., with the other matters in the case. The prior order will remain in effect. No appearance is necessary.

4. [15-14017](#)-B-11 CLUB ONE CASINO, INC.
WW-2
ELAINE LONG/MV

CONTINUED MOTION FOR ABSTENTION
AND/OR MOTION TO DISMISS CASE ,
MOTION TO APPOINT TRUSTEE
11-21-15 [[178](#)]

HAGOP BEDOYAN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

5. [15-14017](#)-B-11 CLUB ONE CASINO, INC.
WW-3
ELAINE LONG/MV

CONTINUED MOTION TO CONSOLIDATE
LEAD CASE 15-14017 WITH
15-14021
11-21-15 [[189](#)]

HAGOP BEDOYAN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.
RESPONSIVE PLEADING

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

6. [15-14021](#)-B-11 CLUB ONE ACQUISITION
CORP.

CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
10-14-15 [[1](#)]

T. BELDEN/Atty. for dbt.

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

7. [15-14021](#)-B-11 CLUB ONE ACQUISITION CONTINUED MOTION FOR ABSTENTION
WW-2 CORP. AND/OR MOTION TO DISMISS CASE ,
ELAINE LONG/MV MOTION TO APPOINT TRUSTEE
11-21-15 [[52](#)]

T. BELDEN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

8. [15-14021](#)-B-11 CLUB ONE ACQUISITION CONTINUED MOTION TO CONSOLIDATE
WW-3 CORP. LEAD CASE 15-14017 WITH
ELAINE LONG/MV 15-14021
11-21-15 [[46](#)]

T. BELDEN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.

Based on the status report filed by the debtors on August 18, 2016, this matter will be continued to September 15, 2016, at 9:30 a.m. The court will enter a civil minute order. No appearance is necessary.

If by the continued date the debtors have informed the parties and the court that the plan has become "effective," the court will drop the continued status conference from calendar.

9. [10-61331](#)-B-12 NICHOLAS SOARES MOTION FOR COMPENSATION BY THE
FW-5 LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
8-3-16 [[88](#)]

PETER FEAR/Atty. for dbt.

The motion will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion based upon well-pled facts. The moving party shall submit a proposed order after the hearing.

The applicant was employed to represent the debtor pursuant to the terms and conditions of § 327 and §§ 329-331 on October 27, 2010. Since June 1, 2011, the applicant has represented the debtor in the case as detailed in the exhibits filed August 3, 2016, Doc # 92 and the debtor has consented to the payment of the fees.

10. [16-10643](#)-B-12 MARK FORREST

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
3-2-16 [[1](#)]

LEONARD WELSH/Atty. for dbt.

This matter will be continued to September 29, 2016, at 9:30 a.m., to be heard with the debtor's motion to confirm a chapter 12 plan. The court will enter a civil minute order. No appearance is necessary.

11. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
DHR-4 INC.
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS/MV
LEONARD WELSH/Atty. for dbt.
DANIEL REISS/Atty. for mv.

MOTION TO COMPEL
8-5-16 [[443](#)]

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

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

1:30 P.M.

1. [16-12002](#)-B-13 BRIAN PRICE MOTION TO DISMISS CASE
MHM-1 7-21-16 [[19](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

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

2. [14-13807](#)-B-13 GABRIEL/DEBRA BUENTELLO RESCHEDULED HEARING RE: MOTION
MHM-2 TO DISMISS CASE
MICHAEL MEYER/MV 6-7-16 [[47](#)]
JEFF REICH/Atty. for dbt.

The motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

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

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

3. [16-12308](#)-B-13 YELIZAVETA BENZA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-1-16 [[13](#)]

The court intends to dismiss this case for cause on the grounds stated in the OSC, including unreasonable delay based on the failure to file the documents as set forth in the order to show cause. The debtor is excused from appearing unless the debtor has grounds, supported by evidence, to oppose dismissal and wishes to be heard. No appearance is necessary.

4. [14-11518](#)-B-13 ROBERTO ROBLES
SAH-3

MOTION FOR COMPENSATION FOR
SUSAN A. HEMB, DEBTORS
ATTORNEY(S)
7-8-16 [[69](#)]

SUSAN HEMB/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules 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 FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

5. [16-12021](#)-B-13 KIMBERLY WOODY-SMITH
MHM-1
MICHAEL MEYER/MV
SCOTT SAGARIA/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
7-19-16 [[18](#)]

If the trustee's motion is not withdrawn prior to the hearing, the matter will proceed as scheduled.

6. [13-17524](#)-B-13 SCOTT/HOLLY KRAGH
MHM-2
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
7-13-16 [[27](#)]

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

7. [15-11025](#)-B-13 LEE NESS
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
7-13-16 [[22](#)]

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

The case has been converted to one under chapter 7 and plan payments are no longer relevant.

8. [16-11925](#)-B-13 LUDGERO ALVES
MHM-1
MICHAEL MEYER/MV
SCOTT SAGARIA/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
7-19-16 [[19](#)]

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

9. [16-12027](#)-B-13 CECILIA DURAN
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
7-18-16 [[16](#)]

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

10. [12-16828](#)-B-13 MARY BOCANEGRA
PBB-3
MARY BOCANEGRA/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
7-15-16 [[92](#)]

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, 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.

11. [14-14028](#)-B-13 GEORGETTE AVEDIKIAN
MHM-3
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
7-13-16 [[124](#)]

The trustee's motion to dismiss will be continued to September 29, 2016, at 1:30 p.m., to be heard with the debtor's motion to confirm a modified plan. The court will enter a civil minute order. No appearance is necessary.

12. [16-12231](#)-B-13 AURORA TORRES

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-27-16 [[19](#)]

THOMAS GILLIS/Atty. for dbt.
\$77.00 INSTALLMENT PAYMENT
7/29/16

This matter will proceed as scheduled. If the installment fees are not current by the time of the hearing then the court intends to dismiss the case on the grounds stated in the OSC.

If the installment fees are current at the time of the hearing, then the court intends to issue a civil minute order providing that the case may be dismissed without further notice if any installment fee is not paid when it comes due.

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

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

The motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This motion to dismiss was continued to be heard with the debtor's continued motion to confirm a modified plan, below at calendar number 14 (DC # TCS-4). The record shows that there is a material default in the chapter 13 plan payments that has not been cured and the court intends to deny the motion to confirm the plan.

14. [15-11432](#)-B-13 CHRISTINA GARCIA
TCS-4
CHRISTINA GARCIA/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

FINAL HEARING RE: MOTION TO
MODIFY PLAN
6-21-16 [[65](#)]

The motion to confirm a modified plan will be denied. The court will enter a civil minute order. No appearance is necessary.

This motion to confirm a modified plan was continued to provide the debtor with the opportunity to either respond to the trustee's objection or to file, serve, and set for a hearing a modified plan. The debtor has done neither therefore her default will be entered.

NIGEL MARIN/MV
NIGEL MARIN/Atty. for mv.
ORDER #34

This matter will proceed as scheduled. Unless opposition is presented, the court intends to deny the motion to impose the automatic stay. The court will issue a civil minute order after the hearing.

The Motion to Extend [Impose] the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, 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 no opposition is offered at the hearing, the court will take up the merits of the motion. Based on the moving papers and the record, the court intends to deny the motion to extend/impose the automatic stay.

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.

Here, the debtor's moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The record does not support a finding that the filing of the subsequent case was in good faith as to the creditors to be stayed as required by 11 U.S.C. §362(c) (4) (B). The evidence submitted by the debtor does not rebut the applicable presumption of bad faith required to impose the automatic stay.

This case is presumed to have been filed in bad faith for two separate and independent grounds. First, the debtor has had more than one case pending in last 12 months, in fact the debtor has filed five *pro se* chapter 13 cases in the past 18 months, three of which were filed within 12 months of this case. Pursuant to 11 U.S.C. §362(c) (3) (C), 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.

Second, pursuant to 11 U.S.C. §362(c) (3) (C) (i) (II) (aa), the subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. Inadvertence or negligence, generally, are not a "substantial excuse." Here, at least two of the debtor's previous cases were dismissed for failure to file documents, including the prior case, number 16-11147, filed April 5, 2016.

The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C). "This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, 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*. Here, the evidence submitted by the debtor does not rebut the presumption.

The court takes judicial notice of the record in the debtor's prior cases. The debtor does not deny his numerous filings or that he was unable to pursue them to completion. In his motion/declaration he states, "Debtor did not in any way file those past claims in bad-faith. Debtor just had a series of compounding uncontrollable demands that did not allow for Debtor to meet his obligations with this courts deadline for documents."

The debtor's excuses for these failures include, the inability to afford to hire an attorney, physical and mental conditions that make it difficult for him to concentrate, his difficult job conditions as an employee of the Social Security Administration, and the time requirements as an evening doctoral student and as the parent of a child living in San Francisco. The debtor submitted documentary evidence, *inter alia*, as to his medical conditions, however that evidence was more than a year old. It appears that the debtor has even volunteered to become a union representative at his workplace, requiring him to "learn new relevant information outside of his time and place of employment." The debtor made the decision to continue to proceed without an attorney and recites the unfairness and his difficulties filing as a *pro se* chapter 13 debtor.

In an unreported case transferred on appeal from the Ninth Circuit B.A.P., the District Court in, *In re Roberts v. Association of Apartment Owners of Liona Kona*, 2015 WL 7257918 (Nov. 16, 2015), noted, "Under § 362(c)(3)(C)(i)(III)(bb), the presumption essentially focuses on whether a debtor files the second case with a realistic prospect of success because his or her circumstances have improved since the filing of the previous, unsuccessful case. See, e.g., *In re Collins*, 335 B.R. 646, 652 (Bankr. S.D. Texas 2005) ('Section 362(c)(3)(C)(i)(III)(bb) asks the Court to determine whether the Debtor is likely to confirm a plan and perform under that plan.') (*emphasis added*).

In this case, as there, the debtor does not present evidence sufficient to overcome the presumption of bad faith. In *Roberts* the court found the debtor's motion, "devoid of supporting evidence or analysis. . . . [citing] *In re Castaneda*, 342 B.R. 90, 96 (S.D. Cal. 2006) ('[M]ere statements by the movant in the motion do not carry any evidentiary weight. The movant must provide detailed, competent, evidence sufficient to satisfy all elements of § 362(c)(3)(B) and, if applicable, to rebut the presumption of bad faith in §§ 362(c)(3)(C)(i) and (ii).')

The chapter 13 trustee, the U.S. Trustee, and the court, have spent much time administering the debtor's multiple cases. Although the debtor represents that he made "best efforts in good faith to navigate through the bankruptcy process," and that he has "learned so much" from his prior efforts, nothing in the debtor's moving papers suggest that the current case will have a different outcome than the previous four cases. In the prior case the U.S. Trustee brought an adversary proceeding and the court entered a default judgment for the U.S. Trustee barring the debtor from filing another case for two-year bars. The present case, however, had been filed prior to the effective date of that judgment.

16. [16-12134](#)-B-13 NIGEL MARIN
MHM-1
MICHAEL MEYER/MV
ORDER #34

RESCHEDULED HEARING RE: MOTION
TO DISMISS CASE
7-28-16 [[31](#)]

This matter will proceed as scheduled. The trustee's motion to dismiss for cause was fully noticed and the debtor filed an opposition. The court intends to grant the trustee's motion and dismiss the case.

The trustee's motion is based on his contention that the debtor filed the bankruptcy petition in bad faith. The debtor's opposition to the trustee's motion mirrors those in the BAPCPA motion, calendar # 15 above. Because the facts support a presumption that the case was filed in bad faith, and because the debtor has failed to overcome that presumption, as detailed above at calendar # 15, the court will grant the trustee's motion and dismiss the case.

17. [16-11038](#)-B-13 DANNY/TERI WATSON
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO DISMISS CASE
7-25-16 [[34](#)]

Unless the trustee's motion is withdrawn prior to the hearing, this matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to deny the motion without prejudice. The motion was fully noticed and the debtors filed a response. The trustee's motion was brought because the debtors had not filed a motion to value the collateral for Merco Credit Union's secured claim and subsequently to confirm a chapter 13 plan. The record shows that Merco and the debtors have stipulated to valuation of Merco's collateral and an order approving the stipulation has been signed. Accordingly, it appears that no further relief is necessary or appropriate.

18. [12-60450](#)-B-13 LEROY/ZELLA PETTAWAY
MHM-2
MICHAEL MEYER/MV

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
7-15-16 [[124](#)]

ROBERT WILLIAMS/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules 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 FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

19. [16-11554](#)-B-13 BRIAN CHIARITO
JRL-1
BRIAN CHIARITO/MV
JERRY LOWE/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-20-16 [[25](#)]

Based on the trustee's response to the motion, this matter will be rescheduled to September 15, 2016, at 1:30 p.m. No appearance is necessary.

20. [16-11555](#)-B-13 ANTHONY/AMY THOMPSON
APN-1
WELL FARGO BANK, N.A./MV

JERRY LOWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
WITHDRAWN

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
6-8-16 [[13](#)]

The objection to confirmation has been withdrawn. No appearance is necessary.

21. [16-11555](#)-B-13 ANTHONY/AMY THOMPSON
PPR-1
BANK OF AMERICA, N.A./MV

JERRY LOWE/Atty. for dbt.
JONATHAN VAKNIN/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
6-17-16 [[23](#)]

This objection to confirmation of a chapter 13 plan will be overruled without prejudice. The court will prepare and enter a civil minute order. No appearance is necessary.

The debtors have filed a modified plan that has been set for hearing at a later date. The plan that is the subject of this objection is deemed withdrawn.

22. [16-10866](#)-B-13 MICHELLE YORK
MRG-1
STONEGATE MORTGAGE
CORPORATION/MV

FURTHER STATUS CONFERENCE RE:
OBJECTION TO CONFIRMATION OF
PLAN BY STONEGATE MORTGAGE
CORPORATION
5-3-16 [[29](#)]

DAVID JENKINS/Atty. for dbt.
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.

This matter will be continued to September 15, 2016, at 1:30 p.m., to be heard with the trustee's objection to confirmation. The court will enter a civil minute order. No appearance is necessary.

23. [16-10866](#)-B-13 MICHELLE YORK
PJL-1
PEOPLEPLEASE HOLDINGS, INC./MV

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

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

This matter will be continued to September 15, 2016, at 1:30 p.m., to be heard with the trustee's objection to confirmation. The court will enter a civil minute order. No appearance is necessary.

24. [15-14770](#)-B-13 KENNETH/JANE HOSTETLER
TCS-2
KENNETH HOSTETLER/MV

CONTINUED MOTION TO VALUE
COLLATERAL OF AMERICREDIT
FINANCIAL SERVICES, INC.
6-8-16 [[38](#)]

TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

It appears this matter has been settled by stipulation of the parties and will be dropped from calendar. An order approving the stipulation will be entered when the proposed order is properly re-submitted with the stipulation attached. No appearance is necessary.

25. [16-11470](#)-B-13 JOSHUA/BRANDY BARKLEY
TCS-1
JOSHUA BARKLEY/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO CONFIRM PLAN
7-14-16 [[33](#)]

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, there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

26. [16-11470](#)-B-13 JOSHUA/BRANDY BARKLEY
TCS-2
JOSHUA BARKLEY/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CAPITOL ONE AUTO FINANCE
7-15-16 [[40](#)]

This motion to value collateral will be denied as moot. No appearance is necessary.

There is no case or controversy. The creditor has filed a proof of secured claim, which values its collateral for less than the amount stated in the motion. In the Eastern District of California, the amount and classification of a claim is determined by the proof of claim and applicable non-bankruptcy law. No further relief is required unless the granting of a motion will affect the treatment of the claim.

27. [11-14473](#)-B-13 OLIVIA LIMA
DRJ-1
OLIVIA LIMA/MV

AMENDED/CORRECTED OBJECTION TO
CLAIM OF JOHN D. OLIVEIRA DBA
MICK OLIVEIRA FARMS, CLAIM
NUMBER 3
7-13-16 [[64](#)]

M. ENMARK/Atty. for dbt.

This objection will be overruled. The court will enter a civil minute order. No appearance is necessary.

The debtor filed this objection to the claim of John D. Oliveira DBA Mick Oliveira Farms ("Claim # 3"), on the grounds that the claim was discharged in the debtor's 2010 bankruptcy case, filed December 2, 2010, and converted shortly thereafter from chapter 13 to chapter 7. A discharge was entered May 6, 2011 from which this claim was not excepted.

Although the debt that underlies Claim #3 was listed in the prior case as an unsecured non-priority claim for "corn silage" and "filed work done," Claim # 3 in this case is listed as secured by an abstract of judgment recorded October 5, 2010, a date before the filing of the prior case. In the prior case the lien created by the abstract of judgment was not avoided. Accordingly, the chapter 7 discharge had no affect on this encumbrance on the residence. See, *In re Echevarria*, 212 B.R. 185 (1st Cir. BAP, 1997) ("[A] discharge extinguishes only in personam claims; it generally has no effect on in rem claims against property. *Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 92 (4th Cir.1995) (citing *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 2154, 115 L.Ed.2d 66 (1991)), and that to extinguish or modify a lien during the bankruptcy process, the debtor must take some affirmative step toward that end. *Cen-Pen Corp.* 58 F.3d at 92 (*citations omitted*)."

28. [16-11377](#)-B-13 SANJEEV ATHALE
THA-1
BRUNA BLACK/MV
PETER BUNTING/Atty. for dbt.
THOMAS ARMSTRONG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-10-16 [[55](#)]

This matter will be dropped from calendar. Upon the debtor's request and order of the court the case has been dismissed. No appearance is necessary.

29. [12-14680](#)-B-13 CARLOS FERNANDEZ
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
7-14-16 [[58](#)]

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

30. [14-15485](#)-B-13 JACOB MARTINEZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
7-13-16 [[54](#)]

This motion will be continued to September 29, 2016, at 1:30 p.m., to be heard with the debtor's motion to confirm a modified plan. No appearance is necessary.

31. [15-14487](#)-B-13 MICHAEL/ANGELA JOHNSON
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
7-13-16 [[22](#)]

The motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The record shows that there is a material default in the chapter 13 plan payments that has not been cured.

32. [16-11988](#)-B-13 RUBEN/KARIMA PARKS
MHM-1
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.

MOTION TO DISMISS CASE
7-18-16 [[18](#)]

The motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The record shows there has been unreasonable delay by the debtors that is prejudicial to creditors, including failure to provide the trustee with the following required documentation: Class 1 Mortgage Checklist with payment coupon or last statement; 2015 State and Federal Tax Returns and copy of deed of trust.

33. [16-12091](#)-B-13 GEORGE NICHOLSON
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
7-18-16 [[18](#)]

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

34. [12-11592](#)-B-13 JOHNNY ROMERO AND CLARA
ER-5 SILVA-ROMERO
JOHNNY ROMERO/MV
EDDIE RUIZ/Atty. for dbt.
DISMISSED: 02/26/2016

MOTION TO VACATE DISMISSAL OF
CASE
8-4-16 [[93](#)]

This matter will proceed as scheduled. The court intends to deny the motion to vacate dismissal of the case.

The debtors ask the court to vacate the February 26, 2016, dismissal of their case, however their arguments are more applicable to an opposition to the motion to dismiss. The moving papers are devoid of any explanation of why they did not file a response to the trustee's motion to dismiss, other than the lack of funds with which to make their chapter 13 plan payment.

FRCP 60, applicable to cases under the Bankruptcy Code, gives the court the power in appropriate cases to provide relief from judgments and orders. The mere inability of debtors to make plan payments in February is not grounds to reinstate a case in August.

35. [16-12893](#)-B-13 LOURDES OMEGA
SL-1
LOURDES OMEGA/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
8-11-16 [[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 Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, 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)

The subsequently filed case is 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). Inadvertence or negligence, generally, are not a "substantial excuse." The prior case was dismissed because of the debtor's failure to file the required documents and schedules.

The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C). "This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, 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. Here, the presumption has been rebutted.

The debtor filed her prior case without the assistance of an attorney. She was unable to understand what was necessary and to provide the necessary documents within the time required. The debtor is represented in this subsequent case and the record shows that all documents, including a chapter 13 plan, have been filed. It also appears from the record that the debtor requires the opportunity to reorganize in order to preserve her residence which is listed in class 1 of the plan.

36. [16-11999](#)-B-13 MANUEL QUICHOCHO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
7-18-16 [\[19\]](#)

The motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The record shows the debtor has failed to appear at the §341 meeting of creditors.

37. [16-12966](#)-B-13 ALLISON SMITH
SJS-1
ALLISON SMITH/MV
SUSAN SALEHI/Atty. for dbt.
OST 8/18/16

MOTION TO EXTEND AUTOMATIC STAY
8-16-16 [[11](#)]

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 set for hearing and an order shortening time was issued. The court notes that the application to shorten time was identified with the wrong Docket Control number. Pursuant to LR 9014-1(c)(4), an application for an order shortening time is to be designated with the same Docket Control number as the motion to which it relates.

Because the motion is heard on shortened time, the Debtor, 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)

The subsequently filed case is presumed to be filed in bad faith if 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 presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C). "This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, 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*. Here, the debtor's difficulty in timely submitting her plan payments was due to the lack of accuracy and timeliness on the part of others for which she should not be held responsible. It appears that these problems have been resolved and that the debtor will not be affected by this in the new case. In addition,

it appears that the debtor requires the opportunity to reorganize in order to preserve her residence, which is listed in class 1 of the plan.

38. [16-12843](#)-B-13 MIRIAM RIVERA
DJP-2
MARY GALUSHA/MV
DON POOL/Atty. for mv.
OST 8/16/16

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-17-16 [[20](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtor's default and grant the motion for relief from stay under 11 U.S.C. §362(d)(4). 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 multiple bankruptcy filings affecting such real property.

The debtor is a borrower on the debt secured by her home along with two other borrowers. It appears that the other two borrowers have filed three bankruptcy petitions involving this property, each of which has been dismissed.

If opposition is presented at the hearing, the court will determine if further hearing is necessary. LBR 9014-1(f)(2)(C). The tentative ruling is below.

The automatic stay will be terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The movant shall submit a proposed order after hearing that complies with 362(d)(4) and that specifically describes the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

39. [16-11900](#)-B-13 EMANUEL/KAREN DOZIER
RSW-2
EMANUEL DOZIER/MV
ROBERT WILLIAMS/Atty. for dbt.
OST #45 8/18/16

MOTION TO INCUR DEBT
8-17-16 [[39](#)]

This matter will proceed as scheduled.