

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, October 23, 2019  
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.

**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 AM**

1. [19-10423](#)-B-12    **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[FRB-10](#)

MOTION FOR APPROVAL OF CLASS 4.1 506(B) CLAIM  
9-19-2019    [[173](#)]

FARM CREDIT SERVICES OF AMERICA, PCA/MV  
DAVID JOHNSTON  
MICHAEL GOMEZ/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:        Dropped from calendar.

ORDER:                The parties shall submit an order.

2. [18-11651](#)-B-11    **IN RE: GREGORY TE VELDE**  
[MB-71](#)

MOTION TO EMPLOY RITCHIE BROS. AUCTIONEERS AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING  
PAYMENT OF AUCTIONEER FEES AND EXPENSES AND/OR MOTION TO SELL  
FREE AND CLEAR OF LIENS  
9-25-2019    [[2762](#)]

RANDY SUGARMAN/MV  
MICHAEL COLLINS  
JOHN MACCONAGHY/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Granted in part and denied in part.

ORDER:                The minutes of the hearing will be the court's  
findings and conclusions. The Moving Party  
shall submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by  
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the  
creditors, the debtor, the U.S. Trustee, or any other party in  
interest to file written opposition at least 14 days prior to the  
hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

This motion is GRANTED. The chapter 11 trustee ("Trustee") requires a second order authorizing him to sell certain surplus vehicles and equipment located at the G.J. te Velde Ranch and Pacific Rim dairy at a public auction free and clear of liens, to employ Ritchie Bros. Auctioneers ("Auctioneer") as auctioneer, and to compensate Auctioneer.

11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis."

11 U.S.C. § 363(f) permits a chapter 11 trustee ("Trustee") to sell estate property outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if such entities consent" and "such interest is in bona fide dispute."

The Surplus Vehicles and Equipment may be subject to certain UCC-1 Financing liens in favor of various parties, which are set forth below:

(i) A UCC-1 Financing Lien in favor of Rabo AgriFinance, LLC, ("Rabo") successor to Rabobank, N.A., in the approximate amount of \$44,000,000 as of the Petition Date, as evidenced by a UCC-1 Financing Statement filed on September 23, 2010, in the Office of the California Secretary of State as Document No. 10-7245872480 and thereafter amended and continued.

Trustee is informed and believes that Rabo consents to this sale within the meaning of Section 363(f)(2), provided that it is paid the net proceeds of sale for the uncertificated equipment described below remaining after expenses.

(ii) A UCC-1 Financing Lien in favor of J.D. Heiskell Holdings, LLC ("JDHH") in the alleged amount of approximately \$7,900,000 as of the Petition Date, as evidenced by a UCC-1 Financing Statement filed on August 26, 2016 in the Office of the California Secretary of State as Document No. 16-543473131 and thereafter amended.

(iii) A UCC-1 Financing Lien in favor of Overland Stock Yards, Inc., in the alleged amount of approximately \$1,700,000, as of the Petition Date, as evidenced by a UCC-1 Financing Statement filed on October 11, 2017, in the Office of the California Secretary of State as Document No. 17- 91346140.

Trustee believes that the Surplus Vehicles and Equipment are of two types: certificated self-propelled motor vehicles designed primarily for use on public roads; e.g., a 1998 International Flatbed Truck, and uncertificated farm implements used for working the soil; e.g.,

a Roto Grind Model 1090. Trustee is informed and believes and on that basis alleges that none of the lienholders identified above contends that its lien has attached to the first type. Trustee concedes that all of the UCC-1 Financing Liens set forth above have attached to these items of the second type in order of priority under State law.

To the extent the lienholders are not in agreement with Trustee's contentions as to the DMV certificated vehicles, these liens are in "bona fide dispute" as the term is used in 11 U.S.C. § 363(f)(4). Specifically, as to the DMV certificated vehicles, Trustee alleges that none of the above noted lienholders are identified as such on the certificate of title for the subject chattel as required by Cal. Vehicle Code Sections 6300, 6301, and 6303, and any UCC-1 Financing Lien which might otherwise attach to said chattels is voidable pursuant to Bankruptcy Code Section 544(a)(1) and (2).

"The purpose of § 363(f)(4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate's assets need not be delayed while such disputes are being litigated." Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001) (citations omitted). The sale proceeds are then usually held subject to the disputed interest. Id. Once the dispute is resolved, the proceeds are then distributed pursuant to the court's order and judgment. Id.

"In ruling on a motion to sell estate property free and clear under § 363(f)(4), 'a court need not determine the probable outcome of the dispute, but merely whether one exists.' In re Kellogg-Taxe, No. 2:12-bk-51208-RN, 2014 Bankr. LEXIS 1033, at \*22-23 (Bankr. C.D. Cal. Mar. 17, 2014) (citing In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). The parties must establish factual grounds to show an objective basis for the dispute. Id. (citing In re Gaylord Grain L.L.C., 306 B.R. 624, 627 (8th Cir. B.A.P. 2004)).

No party has opposed this motion, but the court has received no evidence from Rabo that it consents to the sale. If the court receives evidence of Rabo's consent, then the motion will be granted and the Trustee will be authorized to (1) to employ Auctioneer's services to sell the estate property, free and clear of liens, at auction, and; (2) to compensate Auctioneer at a 15% commission (or a 25% commission for any lot selling at less than \$2,500.00).

Unless JDHH and Overland Stockyards consent, the net proceeds shall be held subject to the disputed interests. The parties shall confer on suggested logistics for retaining the net proceeds.

3. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[MB-72](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH SINECO CONSTRUCTION, LLC AND BOARDMAN TREE FARM, LLC AND/OR  
MOTION TO RELEASE OF FUNDS FROM BLOCKED ACCOUNT  
9-25-2019    [[2767](#)]

RANDY SUGARMAN/MV  
MICHAEL COLLINS  
JOHN MACCONAGHY/ATTY. FOR MV.

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

DISPOSITION:         Granted.

ORDER:                The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

This motion is GRANTED. It appears from the moving papers that the chapter 11 trustee ("Trustee") has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a.     the probability of success in the litigation;
- b.     the difficulties, if any, to be encountered in the matter of collection;
- c.     the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d.     the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

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

Trustee requests approval of a settlement agreement between the estate and Sineco Construction, LLC ("Sinenco"), and a corresponding order authorizing the release of \$284,438.80 held by Trustee in a blocked account pursuant to a prior adequate protection order of this court. Doc. #2767. Sineco performed pre-petition construction services for the debtor and held a claim of approximately \$145,000.00 in labor and materials as of the petition date.

After resolution of an adversary proceeding involving Trustee, Sineco, and Boardman Tree Farm ("Boardman"), the court directed Trustee to hold back the \$284,438.80 "to be distributed to either Sineco, Boardman, or both, pending the outcome of the priority dispute." Doc. #1799.

Sineco claims that it has a valid construction lien in the principal amount of approximately \$145,000, plus interest and attorneys fees in excess of \$100,000, which has attached to the Blocked Account, and is senior in priority to Boardman.

Boardman is neutral as to the underlying validity of Sineco's claim, but contends that it is senior in priority to Sineco and that Sineco is wholly unsecured.

Trustee concluded that Sineco had a valid underlying claim for unpaid work. However, it was Trustee's view that only \$40,000 +/- of this sum was entitled to priority over Boardman (due to a unique provision of Oregon law which allows unpaid charges for labor to "prime" a prior recorded deed of trust). Trustee contends that the balance of the Sineco claim is unsecured, but that Sineco is barred from any distribution as an unsecured creditor because it failed to timely file a Proof of Claim.

After extensive negotiations among Boardman, Sineco, and Trustee, the dispute was settled, the terms of which are:

- (1) The sum of \$75,000 will be released to Sineco from the Blocked Account on account of its construction lien claim;
- (2) The balance of approximately \$209,438.80 will be released to BTF on account of the unpaid balance of its deed of trust;
- (3) Sineco shall be deemed to have an allowed general unsecured claim in the amount of \$15,000.00, payable in the same manner as all other general unsecured claims, arising out of the matters alleged in the Adversary Proceeding and the Motion to Reject Executory Contract filed in the Main Case, and;
- (4) The Parties will exchange mutual releases, and all litigation among them pertaining to the Sineco claim will be dismissed.

This is only a summary. The complete settlement is attached as an exhibit. See doc. #2770.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the

difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is not assured as priority is at issue and the matter is factually intense; collection is not a factor in this matter; the litigation is incredibly complex and moving forward is expected to increase legal fees six figures easily, which would decrease the net to the estate; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of Trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

4. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION  
9-7-2018 [[1](#)]

RILEY WALTER

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

DISPOSITION: Continued to January 28, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

After reviewing the debtor's status report, the court is continuing the status conference to January 28, 2020 at 9:30 a.m. The disclosure statement is set to be heard on December 12, 2019. Debtor shall file a status report not later than January 21, 2019.

5. [18-13678](#)-B-7     **IN RE: VERSA MARKETING, INC.**  
[WW-1](#)

RESCHEDULED HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR  
MOTION FOR CREATION OF A PACA TRUST ACCOUNT  
11-15-2018    [[108](#)]

VERSA MARKETING, INC./MV  
RILEY WALTER  
RESPONSIVE PLEADING

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

DISPOSITION:                 Dropped from calendar.

NO ORDER REQUIRED:         The case was converted to chapter 7.

6. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WW-108](#)

CONTINUED OBJECTION TO CLAIM OF SOUTHERN INYO HEALTHCARE  
DISTRICT, CLAIM NUMBER 235, AND/OR OBJECTION TO CLAIM OF  
SOUTHERN INYO HEALTHCARE DISTRICT, CLAIM NUMBER 238  
5-6-2019    [[1392](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER

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

DISPOSITION:                 Continued to December 12, 2019 at 9:30 a.m.

ORDER:                        The court will issue an order.

The parties stipulated to continuing the matter to December 12, 2019 at 9:30 a.m. Southern Inyo Healthcare District's opposition to the objection shall be filed and served not later than November 28, 2019. Debtor's reply, if any, shall be filed and served not later than December 5, 2019.



11:00 AM

1. [17-11028](#)-B-11 IN RE: PACE DIVERSIFIED CORPORATION

[18-1006](#)  
[BBR-6](#)

LIMITED BRIEFING FOR THE ISSUE OF RE-DEPOSING NON-PARTY WITNESS  
YVONNE HICKS AND DEPOSING THIRD PARTY WITNESS REBECCA CRAMER  
10-9-2019 [[131](#)]

PACE DIVERSIFIED CORPORATION ET AL V. MACPHERSON OIL  
T. BELDEN/ATTY. FOR PL.

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

DISPOSITION: Under Submission

ORDER: The court will issue an order.

Under LBR 9014-1(h), the court determines that the resolution of this discovery motion does not require oral argument. The court will determine the matter based on the submissions of the parties subject to the court setting another hearing date, should the court determine that a further hearing is necessary.

1:30 PM

1. [14-13502](#)-B-13     **IN RE: LEO BERGER**  
[MHM-2](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1  
9-19-2019    [[53](#)]

MICHAEL MEYER/MV  
DAVID JENKINS

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

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in  
conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

Federal Rule of Bankruptcy Procedure 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

Fed. R. Bankr. P. 3002.1(h) states that on motion by the trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

The record shows that the debtors have cured the default on the loan with U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust

2019-SL1, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc. and are current on mortgage payments to the same through July 2019. Therefore, this motion is GRANTED.

2. [19-11512](#)-B-13     **IN RE: TEOFILO/CHRISTY RODRIGUEZ**  
[SLL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN LABIAK, DEBTORS ATTORNEY(S)  
9-23-2019    [[58](#)]

STEPHEN LABIAK

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

DISPOSITION:         Denied without prejudice.

ORDER:                The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

3. [19-13515](#)-B-13     **IN RE: BURLEY/TEODORA LINHART**  
[MHM-1](#)

MOTION TO DISMISS CASE  
9-20-2019    [[17](#)]

MICHAEL MEYER/MV  
GLEN GATES  
DISMISSED 10/8/19

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

DISPOSITION:         Denied as moot.

ORDER:                The court will issue an order.

The case was dismissed on October 8, 2019. Doc. #22.

4. [19-11024](#)-B-13    **IN RE: MARY HENDRIX**  
[PK-3](#)

CONTINUED MOTION TO INCUR DEBT  
9-4-2019    [[39](#)]

MARY HENDRIX/MV  
PATRICK KAVANAGH  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order dismissing the case has already been entered.

5. [16-11844](#)-B-13    **IN RE: DALE/BRENDA KAUNDART**  
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.  
FOR PETER L. FEAR, DEBTORS ATTORNEY(S)  
9-13-2019    [[38](#)]

PETER FEAR

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

DISPOSITION:                    Granted.

ORDER:                            The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

This motion is GRANTED. Movant is awarded \$2,548.00 in fees and \$130.20 in costs.

6. [18-14561](#)-B-13    **IN RE: KRISTI GARCIA**  
[BDB-3](#)

MOTION TO MODIFY PLAN  
9-13-2019    [\[55\]](#)

KRISTI GARCIA/MV  
BENNY BARCO

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

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [19-12365](#)-B-13     **IN RE: SCOTT PARSONS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
10-7-2019    [[28](#)]

DAVID JENKINS  
FINAL INSTALLMENT OF \$76.00 PAID ON 10/7/19

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

DISPOSITION:         The OSC will be vacated.

ORDER:                The court will issue an order.

The record shows that the installment fees have been paid in full.  
Therefore, the Order to Show Cause will be vacated.

8. [19-13167](#)-B-13     **IN RE: AURORA FERRELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-30-2019    [[30](#)]

PETER BUNTING  
DISMISSED 9/30/19

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

DISPOSITION:         Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on September 30, 2019. Doc.  
#31. The Order to Show Cause will be DROPPED AS MOOT. No appearance  
is necessary.

9. [15-12681](#)-B-13     **IN RE: MICHAEL/YVONNE MIRIGIAN**  
[MHM-1](#)

FURTHER STATUS CONFERENCE RE: MOTION TO MODIFY PLAN  
6-21-2019    [[38](#)]

MICHAEL MEYER/MV  
DAVID JENKINS  
WITHDRAWN

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

DISPOSITION:         Dropped from calendar.

NO ORDER REQUIRED:    Movant withdrew the motion. Doc. #59.

10. [19-12288](#)-B-13     **IN RE: EDWARD/NIKKI TREADWAY**  
[SAH-4](#)

CONTINUED MOTION TO CONFIRM PLAN  
8-8-2019    [[54](#)]

EDWARD TREADWAY/MV  
SUSAN HEMB

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

DISPOSITION:         Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Pursuant to the court's prior order (doc. #66), debtor was to either (1) file and serve a written response to the chapter 13 trustee's opposition to this motion not later than October 9, 2019, or (2) file, serve, and set for hearing a motion to confirm a modified plan not later than October 16, 2019, or the motion would be denied on the grounds stated in the opposition. Debtor did neither. Therefore the motion is DENIED WITHOUT PREJUDICE.

11. [19-13902](#)-B-13     **IN RE: HEZEKIAH SHERWOOD**  
[JMM-3](#)

MOTION TO EXTEND AUTOMATIC STAY  
10-11-2019    [[25](#)]

HEZEKIAH SHERWOOD/MV  
JEFFREY MEISNER  
OST 10/11/19

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 court will issue the order.

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time. Doc. #24. 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.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-11475. That case was filed on April 12, 2019 and was dismissed on July 23, 2019 for failure to file necessary documents. This case was filed on September 15, 2019 and the automatic stay will expire on October 23, 2018 (pursuant to the court's order shortening time, doc. #24).

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

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, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor's previous case was dismissed for cause for the unreasonable delay due to debtor's failure to timely provide required documentation to the chapter 13 trustee's office, failure to file tax returns for the years 2017 and 2018, and for failure to file



complete and accurate Schedule H and Statement of Financial Affairs. Doc. #27. Debtor re-filed a chapter 13 petition to postpone a pending non-judicial foreclosure sale on real estate in Bakersfield, CA. Id. Debtor's wages have increased, he states he has filed all required tax returns, and it appears that the petition and accompanying documents have been filed in their entirety. Id.

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.