

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, November 9, 2017
Place: Department B - 510 19th Street
Bakersfield, 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. (Pacific time) 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. (Pacific time) 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.

9:00 AM

1. [17-12600](#)-B-13 **IN RE: CURTIS/CHRISTINE HUDGINS**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-11-2017 [[30](#)]

STEVEN ALPERT

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to sustain the trustee's objection to confirmation. The plan does not comply with 11 U.S.C. §§ 1325(a)(4), 1322(d), and 1324(b).

Pursuant to §1324(b), the court intends to set February 1, 2018, as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed on the trustee's declaration.

2. [17-11502](#)-B-13 **IN RE: LANCE PADILLA**
[RSW-2](#)

MOTION TO MODIFY PLAN
9-12-2017 [[45](#)]

LANCE PADILLA/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

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

This matter will proceed as scheduled. If the debtors are not current at the time of hearing, the court intends to sustain the trustee's objection and deny, without prejudice, the motion to confirm the modified plan.

If the debtors are current at the time of hearing and the trustee withdraws the objection, then the court will grant the motion and confirm the modified plan.

If the trustee's objection is sustained then, within 14 days, the debtor shall file and serve and set for a hearing a modified plan that addresses the grounds for the objection.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

3. [17-13005](#)-B-13 **IN RE: GREGORY/SHELLEY SNELLA**
[NES-2](#)

MOTION TO CONFIRM PLAN
9-22-2017 [[20](#)]

GREGORY SNELLA/MV
NEIL SCHWARTZ
RESPONSIVE PLEADING

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

DISPOSITION: No disposition.

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

This motion will be set for a continued hearing on February 1, 2018 at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than January 18, 2018. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later

than January 25, 2017. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

4. [17-11906](#)-B-13 **IN RE: TRACY FLAHERTY**
[MHM-2](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
9-12-2017 [[38](#)]

ROBERT WILLIAMS
RESPONSIVE PLEADING

NO RULING.

5. [17-11906](#)-B-13 **IN RE: TRACY FLAHERTY**
[MHM-3](#)

MOTION TO DISMISS CASE
9-11-2017 [[33](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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 an order.

This matter was noticed pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless the trustee's motion is withdrawn at the hearing, the court intends to grant the motion to dismiss on the grounds stated in the motion. The debtor's response is not supported by evidence that the default has been cured and the trustee's motion has not been withdrawn. The 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.

6. [15-12709](#)-B-13 **IN RE: LORI KITCHEN**
[WDO-3](#)

CONTINUED MOTION TO MODIFY PLAN
8-30-2017 [[66](#)]

LORI KITCHEN/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

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

This matter will proceed as scheduled. If the debtors are not current at the time of hearing, the court intends to sustain the trustee's objection and deny, without prejudice, the motion to confirm the modified plan.

If the debtors are current at the time of hearing and the trustee withdraws the objection, then the court will grant the motion and confirm the modified plan.

If the trustee's objection is sustained then, within 14 days, the debtor shall file and serve and set for a hearing a modified plan that addresses the grounds for the objection.

7. [12-14510](#)-B-13 **IN RE: LOUISE GREGORY**
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE
3002.1
10-12-2017 [[36](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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.

8. [17-13514](#)-B-13 **IN RE: ANDY RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-18-2017 [[18](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Case dismissed.

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

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, 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.

9. [17-13122](#)-B-13 **IN RE: TANYA MADDOX**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-11-2017 [[15](#)]

ROBERT WILLIAMS
WITHDRAWN BY MOVANT

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: No appearance necessary. The objection has been withdrawn.

10. [13-17324](#)-B-13 **IN RE: JOSE ARMENTA**
[NES-5](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
10-10-2017 [[30](#)]

NEIL SCHWARTZ

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at
<http://www.caeb.circ9.dcn/LocalRules.aspx>.

11. [16-11129](#)-B-13 **IN RE: DAVID/LINDA MILAZZO**
[LKW-8](#)

MOTION TO MODIFY PLAN
9-21-2017 [[147](#)]

DAVID MILAZZO/MV
LEONARD WELSH

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

12. [16-11129](#)-B-13 **IN RE: DAVID/LINDA MILAZZO**
[LKW-9](#)

MOTION TO SELL
10-18-2017 [[153](#)]

DAVID MILAZZO/MV
LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled for
higher and better bids.

DISPOSITION: Granted.

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

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

13. [15-14330](#)-B-13 **IN RE: JOSE/PAULA BUSTAMANTE**
[DMG-6](#)

MOTION TO MODIFY PLAN
10-3-2017 [[136](#)]

JOSE BUSTAMANTE/MV
D. GARDNER

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

14. 17-13637-B-13 IN RE: ALYSSA SANCHEZ
NMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-29-2017 [7]

TREASURER/TAX COLLECTOR FOR
KERN COUNTY/MV
NICOLE MISNER/ATTY. FOR MV.
DISMISSED

FINAL RULING: There will be no hearing on this.

DISPOSITION: Dropped from calendar.

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

15. 17-13542-B-13 IN RE: GONZALO/REGINA RUIZ
PK-1

MOTION TO VALUE COLLATERAL OF ALTA ONE FEDERAL CREDIT UNION
9-27-2017 [8]

GONZALO RUIZ/MV
PATRICK KAVANAGH

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

DISPOSITION: Deny.

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

This motion is denied. Service did not comply with Federal Rules of Bankruptcy Procedure 9014(b), 7004(b)(3), 7004(b)(7) [California Code of Civil Procedure § 416.40].

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

16. [17-13046](#)-B-13 **IN RE: BERNARD NAWORSKI**
[MHM-1](#)

MOTION TO DISMISS CASE
10-12-2017 [[22](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS

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. Accordingly, the case will be dismissed.

17. [17-13248](#)-B-13 **IN RE: JEANETTE HUMECKY**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF DITECH
10-26-2017 [[17](#)]

JEANETTE HUMECKY/MV
ROBERT WILLIAMS

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 Moving Party shall submit a proposed order after hearing.

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.

Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. Since the movant is the surviving spouse, she is entitled to one half of the community property belonging to her husband at the time of his death. California Probate Code § 6401. She owns the other half of the community property interest in the residence, which is the subject of the motion. See California Probate Code, § 7000 et seq. The debtor may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

18. [17-13248](#)-B-13 **IN RE: JEANETTE HUMECKY**
[RSW-2](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
10-26-2017 [[22](#)]

JEANETTE HUMECKY/MV
ROBERT WILLIAMS

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

DISPOSITION: Denied without prejudice.

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

Federal Rule of Bankruptcy Procedure 4003(b)(1), which permits a party in interest to file an objection to the list of property claimed as exempt within 30 days after any amendment to the list is filed. Schedule C was amended and filed on October 25, 2017. The hearing for this matter is inside the 30 day window. Therefore, this matter will be denied without prejudice to allow parties in interest to file an objection.

19. [16-11853](#)-B-13 **IN RE: VICTOR VILLALVAZO**
[MHM-3](#)

MOTION TO DISMISS CASE
9-13-2017 [[89](#)]

MICHAEL MEYER/MV
RICHARD STURDEVANT
RESPONSIVE PLEADING

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 an order.

Unless the trustee's motion is withdrawn at the hearing, the court intends to grant the motion to dismiss on the grounds stated in the motion.

This matter was fully noticed in compliance with the Local Rules of Practice. The trustee's motion is based on material default by the debtor with respect to a term of a confirmed plan and for unreasonable delay that is prejudicial to creditors. The debtor filed a timely response indicating a modified plan would be filed, served and set for hearing. Upon review of the case, the court finds that the debtor has not filed a modified plan. Accordingly, the case will be dismissed.

20. [16-11954](#)-B-13 **IN RE: LAVONE/CHRISTINE HUNTER**
[PK-6](#)

MOTION TO MODIFY PLAN
9-5-2017 [[102](#)]

LAVONE HUNTER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

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

Debtor's response to trustee's detailed objection agreed to the trustee's objections, but argued that the minor errors could be resolved in the order confirming plan. Additionally, debtor

acknowledged the delinquency of \$500, and declared that they would be able to make the increased payments from this point forward, but it would take them a short time to cure the arrearage. The court will make its final ruling upon hearing from both parties.

21. [17-12758](#)-B-13 **IN RE: JERRICK/SANDRA BLOCK**
[MHM-1](#)

MOTION TO DISMISS CASE
9-12-2017 [[30](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

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 an order.

Unless the trustee's motion is withdrawn at the hearing, the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

22. [17-11667](#)-B-13 **IN RE: MIGUEL VIVEROS**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
8-16-2017 [[26](#)]

MICHAEL MEYER/MV
PHILLIP GILLET

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

DISPOSITION: Granted.

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

Pursuant to the court's minutes at the last hearing, this motion to dismiss will be granted. The valuation motion that is being

heard in conjunction with this motion, matter #23, is denied and therefore the plan cannot be confirmed.

23. [17-11667](#)-B-13 **IN RE: MIGUEL VIVEROS**
[PWG-1](#)

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
10-3-2017 [[32](#)]

MIGUEL VIVEROS/MV
PHILLIP GILLET

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

DISPOSITION: Denied.

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

First, the debtor is competent to testify as to the value of the 1997 Chevrolet Suburban. However, the declaration does not contain the debtor's opinion of the relevant value. 11 USC § 506(a)(2) requires the valuation to be "replacement value," not fair market value. The debtor's declaration states his opinion of the fair market value of the 1997 Suburban, not the "replacement value."

Second, the debtor was not qualified as an expert. Thus any opinion based on Edmunds.com is necessarily not the debtor's opinion. Federal Rules of Evidence 701.

Third, even if the Edmunds.com evaluation was relevant, which it is not, the declaration does not authenticate the Edmunds.com evaluation. The motion is DENIED.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

24. [17-13171](#)-B-13 **IN RE: ISAIAH JONES**
[MHM-1](#)

MOTION TO DISMISS CASE
10-12-2017 [[26](#)]

MICHAEL MEYER/MV
LAUREN RODE

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. Accordingly, the case will be dismissed.

25. [17-13171](#)-B-13 **IN RE: ISAIAH JONES**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, NATIONAL ASSOCIATION
9-11-2017 [[16](#)]

U.S. BANK, NATIONAL
ASSOCIATION/MV
LAUREN RODE
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

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

The trustee's motion to dismiss will be granted unless withdrawn.
Therefore this objection will be overruled as moot.

9:30 AM

1. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
1-25-2017 [[1](#)]

JACOB EATON

NO RULING.

2. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
10-11-2017 [[140](#)]

TCF EQUIPMENT FINANCE, INC./MV
JACOB EATON
VINCENT FROUNJIAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Resolved by stipulation of the parties.

ORDER: As directed by the court at the hearing.

Resolved by stipulation of the parties. The matter will proceed as
scheduled.

3. [15-14685](#)-B-11 **IN RE: B&L EQUIPMENT RENTALS, INC.**
[LKW-51](#)

OBJECTION TO CLAIM OF ARAMARK UNIFORM & CAREER APPAREL, LLC,
CLAIM NUMBER 48
9-20-2017 [[846](#)]

B&L EQUIPMENT RENTALS, INC./MV
LEONARD WELSH

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: No appearance is necessary. The
objection has been withdrawn.

4. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[LKW-8](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
10-11-2017 [[167](#)]

LEONARD WELSH

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at
<http://www.caeb.circ9.dcn/LocalRules.aspx>.

5. [17-14129](#)-B-11 **IN RE: REAL HOSPITALITY, LLC**
[TGF-1](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION TO PROVIDE
ADEQUATE PROTECTION
11-6-2017 [[10](#)]

REAL HOSPITALITY, LLC/MV
VINCENT GORSKI
OST 11/6/17

NO RULING.

6. [17-14129](#)-B-11 **IN RE: REAL HOSPITALITY, LLC**
[TGF-2](#)

MOTION TO PAY WAGES AND OTHER COMPENSATION, REIMBURSE
BUSINESS EXPENSES, MAKE PAYMENTS FOR PAYROLL DEDUCTIONS,
CONTRIBUTE TO BENEFIT PROGRAMS, PAY WORKERS' COMPENSATION
OBLIGATIONS, PAY ALL COSTS AND EXPENSES INCIDENT TO THE
FOREGOING PAYMENTS AND CONTRIBUTIONS

11-6-2017 [[15](#)]

REAL HOSPITALITY, LLC/MV
VINCENT GORSKI
OST 11/6/17

NO RULING.

10:00 AM

1. [12-60305](#)-B-7 **IN RE: EMMETT BLANTON**
[DMG-6](#)

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
10-2-2017 [[46](#)]

EMMETT BLANTON/MV
J. IRIGOYEN

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

2. [17-13570](#)-B-7 **IN RE: JUANITA GIBSON**
[ETW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE OF STAY
10-4-2017 [[11](#)]

MICHAEL A. KUCHARSKI FAMILY
TRUST DATED 11-23-10/MV
STEVEN ALPERT
EDWARD WEBER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The motion is GRANTED to permit non-judicial
foreclosure. Relief under 11 U.S.C.
§ 362(d)(4) is DENIED.

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

The Kucharski Trust asks the court for stay relief to permit the conclusion of a non-judicial foreclosure on real property commonly known as 2749 Cold Creek Ave. Rosamond, CA ("the property"). Movant's evidence sets forth the note secured by a deed and trust and chronicles a year of attempting to enforce the note that has not been paid for one year (Doc. # 14). Approximately \$154,000 is owed. Id.

The chapter 7 Trustee has not filed opposition to the motion and the Trustee's default shall be entered.

The debtor opposes the motion, claiming in her declaration that she transferred title to the property under false pretenses. She was allegedly told she would receive the property back after her property was refinanced. The original transferee was Mariet Sandoval who received the Grant Deed from the debtor on November 11, 2015 (recorded January 11, 2016) (Doc. # 15). The property was then transferred to Otis Cooper on July 29, 2016. Cooper borrowed the funds from movant on September 7, 2016 and movant's deed of trust was recorded September 20, 2016. Id. The debtor also states that Cooper encumbered the property to "Crown Partners" who eventually reconveyed its' deed of trust to movant after debtor commenced a lawsuit in the Kern County Superior Court. Debtor obtained a TRO stopping movant's foreclosure but the Preliminary Injunction was denied by the Superior Court. Cooper filed a bankruptcy case in the Central District of California which was eventually dismissed.

The opposition was tardily filed. LBR 9014-1 clearly requires opposition to be filed fourteen (14) days before the hearing. That date was October 26, 2017. The opposition was filed October 30, 2017-four days late. Accordingly, the opposition could be stricken under LBR 9014-1 (1). The court notes that debtor's counsel filed a change of address on October 17, 2017 and the motion was served at the old address. An application could have been made to extend the

time to file opposition, but that was not done. Even if the court does not strike the opposition, the motion would still be granted for the following reasons.

First, any fraud/quiet title claim of the debtor is now a claim of the Chapter 7 trustee. 11 U.S.C. § 541. The Trustee has not opposed the motion for stay relief. Evidently the trustee has determined that there is no need to oppose this motion. The debtor's claim has not been abandoned by the Trustee. The Trustee may make a claim to set aside the transfer to Sandoval and a claim against the mediate transferee, Cooper. That is up to the trustee. Until the debtor's fraud/quiet title claims are abandoned, they are the trustee's to assert.

Second, the debtor's fraud/quiet title claims are not appropriately adjudicated on a stay relief motion. Stay relief proceedings are summary in nature and do not involve inquiry into validity of the underlying claims. *Johnson v. Righetti (in re Johnson)*, 756 F. 2d 738, 740 (9th Cir., 1985) (overruled on other grounds *Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007); *In re Veal*, 450 BR 897, 914-15 (9th Cir. BAP, 2011). The affirmative claim the debtor filed with the Kern County Superior Court can proceed as it is not stayed. It is not an action against the debtor. 11 U.S.C. § 362(a)(1).

Third, there is no dispute that record title was not in the debtor's name at the time the petition was filed. (Docs. #15 and 18). The debtor held a contingent right to ownership of the property which she was enforcing in the Superior Court Action when the petition was filed. While that right is property of the estate, as mentioned above, at this time it is the trustee's right to assert. The debtor can compel the abandonment of the claim or the trustee can abandon the claim. Nothing in the docket suggests abandonment has been started or accomplished. Once the claim is abandoned the stay would not apply anyway. See, 11 U.S.C. § 362 (c)(1).

Fourth, the movant has established "cause" for relief from the stay. Stay relief can be granted for "cause." 11 U.S.C. § 362(d)(1). Discretionary relief from the stay must be determined on a case by case basis. *MacDonald v. MacDonald (In re MacDonald)*, 755 F.2d 715, 717 (9th Cir. 1985). "The party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied." *Lapierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. BAP EC-16-1087, 2016 WL 6958130, at *4 (9th Cir. BAP Nov. 28, 2016).

Here there is no dispute that the property is not in the debtor's name. There is also no dispute that the loan has not been paid for approximately one year. Persistent failure to make monthly payments is "cause" for stay relief. *Price v. Del. State Police Fed. Credit Union (In re Price)*, 370 F. 3d 362, 373 (3d Cir. 2004). The debtor presents a very sympathetic case. She claims she made payments to the individuals to whom she transferred the property or an entity

they own or control and the payments have not been made to the movant. Debtor's remedy is to pursue those who defrauded her. If the trustee chooses not to do so the debtor can do so once the claim is abandoned. There is no evidence before the court that the movant was a part of an alleged scheme to deprive the debtor of title to the property. Rather, the loan was made but payments have not been made. The Superior Court has already dealt with the issue and a stay relief motion is not the forum to decide the issue.

Fifth, movant is not entitled to relief under § 362(d)(4). Movant has not presented any evidence that the debtor here was involved in any scheme to delay or defraud the movant. Perhaps those to whom the debtor transferred the property were, but the claims of the movant regarding this are hollow. The only evidence supporting the claim was Cooper's filing of a bankruptcy case, but that certainly is not symptomatic of the usual scenario where this type of relief is granted. Further, the stay of the order granting relief under FRBP 4001 (a) (3) will NOT be waived. Movant has proved no exigency. Finally, there will be no attorney's fees awarded movant as this motion does not involve a contractual obligation of the debtor.

Motion is GRANTED.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

3. 13-11982-B-7 **IN RE: CHARLES/ANDREIA CUEVAS**
TGF-3

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
10-10-2017 [\[40\]](#)

CHARLES CUEVAS/MV
GARY HOOD

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 filed and served pursuant to LRB 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion in part and deny in part. If opposition is presented at the hearing, the court will consider the opposition and

whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

It appears from the evidence submitted and the record that the debtor Andreia Cuevas is entitled to avoid this lien that impairs an exemption to which she would otherwise have been entitled. However, there was no evidence submitted to suggest that the residence of Charles Cuevas had a lien that impaired an exemption to which he would otherwise have been entitled. The evidence submitted shows the creditor's abstract of judgment named only Andreia Cuevas as a judgment debtor. This motion is GRANTED as to Andreia Cuevas' interest only. This motion is DENIED as to Charles Cuevas interest in either property.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

11:00 AM

1. [17-12947](#)-B-7 **IN RE: BILL/ADRIANA BINION**

PRO SE REAFFIRMATION AGREEMENT WITH VCFS AUTO LEASING CO LSR
10-18-2017 [[19](#)]

PETER LIVELY

FINAL RULING: There will be no hearing on this matter. Debtors' counsel will inform debtors that no appearance is necessary.

DISPOSITION: Denied.

ORDER: The court will issue an order.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed July 31, 2017 and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate. Therefore, the Reaffirmation Agreement with VCFS Auto Leasing Co. LSR will be denied.

2. [17-13180](#)-B-7 **IN RE: DANIEL/ROSA BUSTOS**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
9-21-2017 [[12](#)]

PATRICK KAVANAGH

FINAL RULING: There will be no hearing on this matter. Debtors' counsel shall notify the debtor(s) that no appearance is necessary.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor(s)' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtors would be able to make the payments.

1:30 PM

1. [17-11827](#)-B-7 **IN RE: AMARJEET SINGH AND AMANDEEP SIDHU**
[17-1079](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-9-2017 [[12](#)]

AMERICAN EXPRESS BANK, FSB ET
AL V. SINGH
KEN WHITTALL-SCHERFEE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 14, 2017 at 1:30 p.m.

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

Pursuant to the summons reissued on October 10, 2017, this status
conference will be continued to December 14, 2017 at 1:30 p.m. in
Bakersfield.

2. [17-11827](#)-B-7 **IN RE: AMARJEET SINGH AND AMANDEEP SIDHU**
[17-1079](#) [DMG-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-29-2017 [[9](#)]

AMERICAN EXPRESS BANK, FSB ET
AL V. SINGH
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: No appearance is necessary. The motion
has been withdrawn.

3. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[17-1023](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-8-2017 [[1](#)]

INTERNATIONAL FIDELITY
INSURANCE COMPANY V. KING ET
ROBERT BERENS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court notes no status report was filed by November 2, 2017 as ordered. The court will consider the appropriate solution for failure to file a status report.

4. [17-10393](#)-B-7 **IN RE: JAMETTE BELL**
[17-1049](#)

ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT DISMISS THE
CASE
10-3-2017 [[12](#)]

BELL V. NTAR ENTERPRISES

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted and the adversary proceeding will be dismissed.

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

Pursuant to the order, plaintiff was to serve and file an opposition on or before October 26, 2017, otherwise the court may dismiss the adversary proceeding without hearing. No opposition has been filed, therefore the court will dismiss the adversary proceeding.