

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday November 30 2017
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (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.

9:30 AM

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

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-2017 [[114](#)]

UNITED SECURITY BANK/MV
T. BELDEN
HILTON RYDER/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The movant has withdrawn the motion.

2. [17-14129](#)-B-11 **IN RE: REAL HOSPITALITY, LLC**
[TGF-1](#)

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

REAL HOSPITALITY, LLC/MV
VINCENT GORSKI
RESPONSIVE PLEADING

NO RULING.

3. [17-12535](#)-B-11 **IN RE: OVADA MORERO**
[DJM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-27-2017 [[112](#)]

LORI JOHNSON/MV
LEONARD WELSH
DAVID MCGLOTHLIN/ATTY. FOR MV.

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 motion was filed and served pursuant to LBR 9014-1(f)(1) and no opposition was filed.

A court hearing a motion for relief from the automatic stay must apply the Curtis factors in making its decision on whether to grant the motion. *In re Kronmeyer*, 405 B.R. 915, 921 (9th Cir. BAP 2009). Among the relevant Curtis factors here are (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the foreign proceeding involves the debtor as a fiduciary; (7) whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (10) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; and (12) the impact of the stay on the parties and the "balance of hurt." *In re Curtis*, 40 B.R. 795, 799-801 (Utah Bank. Ct. 1984).

The movant has established a prima facie case of cause for relief from the automatic stay. By permitting the potential creditor to continue the case in state court, it could result in a partial or complete resolution of the issue. There is no connection with the bankruptcy case, the foreign proceeding does not involve the debtor as a fiduciary, and this litigation, limited to permitting the creditor to seek a declaration of liability in order to seek recovery from the debtor's insurer, is not likely to prejudice the interests of other creditors or other interested parties. Lastly, all parties would need to consent to have the bankruptcy court hear the matter.

These factors weigh in favor of lifting the stay for the movant, but only for the limited purpose of seeking a declaration of liability. Stay relief proceedings are summary in nature. No further proceedings regarding this claim shall occur without further order of the court.

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

CONTINUED 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

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

DISPOSITION: Resolved by stipulation of the parties.

ORDER: No order is necessary.

This matter has been resolved by stipulation of the parties.

5. [17-12857](#)-B-11 **IN RE: SAC DEVELOPMENT, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
7-26-2017 [[1](#)]

JUSTIN HARRIS

NO RULING.

6. [17-12857](#)-B-11 **IN RE: SAC DEVELOPMENT, INC.**
[DJP-1](#)

CONTINUED MOTION TO DISMISS CASE
10-19-2017 [\[65\]](#)

MMN FARM MANAGEMENT, LLC/MV
JUSTIN HARRIS
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Granted. The order dismissing the case will
not be effective until January 2, 2018.

ORDER: The court will issue the order.

MMN Farm Management LLC ("Movant") asks the court to dismiss this Chapter 11 case on two grounds: it was filed in bad faith; and there is loss and diminution of the estate with no likelihood of reorganization. Movant provides no evidence of loss or diminution of the estate. Movant and debtor's predecessor were embroiled in litigation before the filing of this case. The trial court ruled against debtor's predecessor and that ruling is on appeal. The dispute between the debtor and movant as relevant here surrounds unimproved real property in Tulare County which is property of this bankruptcy estate. Movant is the beneficiary of a second deed of trust encumbering that property, has received no debt service from debtor or its predecessor for years and has been "forced" to service the debt secured by the first deed of trust.

Complicating the motion is a pending sale for the real property which, if completed, will fully pay the encumbrances and approximately \$28,000.00 of unpaid property taxes. The debtor has intimated in the sale motion that there may be a dispute as to the balance owed movant. This court has not been asked to decide that issue and will not in this motion or in connection with the motion to approve the sale. See, FRBP 7001. Movant claims the sale is not *bona fide* and is a ruse to further stall movant's non-judicial foreclosure. The foreclosure progressed to the point where a Notice of Sale could be recorded. This bankruptcy case intervened.

Movant claims the case was filed in bad faith because there are only five creditors in the case including the two which are secured by the debtor's real property; this is a single asset real estate case and given the transfer of the property by debtor's predecessor to the debtor, the transferor, transferee and the putative principal of both, Shabbir A. Chaudry, schemed to delay movant's foreclosure. Movant casts doubt on Mr. Chaudry's veracity by referencing a declaration filed in the Superior Court litigation which conflicted with record ownership of the property. In addition Mr. Chaudry evidently testified in the meeting of creditors that he was not the manager of debtor's predecessor but only held a Power of Attorney which was also inconsistent with prior testimony under oath.

Debtor responds that the sale will cure all ills since the creditors will be paid in full from the proceeds. This contention brings sharply into focus the fate of the motion for an order approving the sale of the property which is scheduled to be heard at the same time. Debtor also rehabilitates Mr. Chaudry at least with regard to the ownership issue by stating he simply did not know the deed transferring the property to the debtor was recorded before he gave the challenged testimony.

11 U.S.C. § 1112(b)(1) provides that "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause". The 9th circuit has held that a lack of good faith in filing a chapter 11 petition establishes "cause" for dismissal under § 1112(b). *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). "'The existence of good faith depends on an amalgam of factors and not upon a specific fact.'" *Id.* (quoting *Idaho Department of Lands v. Arnold (In re Arnold)*, 806 F.2d 937, 939 (9th Cir. 1986)).

On a motion to dismiss under 11 U.S.C. § 1112(b), the debtor bears the burden to prove the chapter 11 petition was filed in good faith. *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013) (citing *Soto v. Leavitt (In re Leavitt)*, 209 B.R. 935, 940 (9th Cir. B.A.P. 1997)). In seeking to determine whether the petition was filed in good faith, the debtor's "subjective intent" is not determinative. *In re Marsch*, 36 F.3d at 828. Rather, the good faith inquiry focuses on the manifest purpose of the petition filing and whether the debtor is seeking to achieve thereby "objectives outside the legitimate scope of the bankruptcy laws." *Id.* Put another way, the good faith standard requires the bankruptcy court to ascertain "whether [the] debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *Id.* (citing *In re Arnold*, 806 F.2d at 939).

The bankruptcy court must consider the totality of the circumstances when determining whether the debtor acted in bad faith. *Meadowbrook Investors Group v. Thirtieth Place, Inc. (In re Thirtieth Place, Inc.)*, 30 B.R. 503, 505 (9th Cir. B.A.P. 1983) (finding of bad faith "require[s] an examination of all the particular facts and circumstances in each case"). Courts have developed helpful lists of circumstantial factors that might indicate bad faith. The bankruptcy court does not need to consider all of the factors, nor does it have to weigh them equally. A bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present. *Mahmood v. Khatib (In re Mahmood)*, CC-16-1210-TaFC, 2017 WL 1032569, at *4 (9th Cir. B.A.P. Mar. 17, 2017). In *St. Paul Self Storage Limited Partnership v. Port Authority of St. Paul (In re St. Paul Self Storage Limited Partnership)*, 185 B.R. 580, 582-83 (9th Cir. B.A.P. 1995) a list of factors that might indicate whether a chapter 11 case has been filed in bad faith for purposes of dismissal under 11 U.S.C. § 1112(b) were reviewed. Those factors are:

- 1) The debtor has only one asset;

- 2) The debtor has an ongoing business to reorganize;
- 3) There are any unsecured creditors;
- 4) The debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments; and
- 5) The case is essentially a two party dispute capable of prompt adjudication in state court.

First, the debtor only lists one substantial asset in its schedules. Other than a small checking account with a balance of less than \$500 (Doc. No. 35) the debtor lists real estate with a value of \$4.4 million (Doc. No. 35). The debtor is owned 100% by Mr. Chaudry (*id.*). The real estate is encumbered by three claims: a first deed of trust securing \$675,000; a second deed of trust under which movant is a beneficiary securing \$453,000; and a property tax lien in favor of the Tulare County Tax Collector which secures approximately \$29,000. There is essentially only one asset in this case and accordingly this factor militates in favor of a finding of "cause."

Second, the debtor appears to have no ongoing business to reorganize. The statement of affairs, when eventually filed by the debtor in this case, revealed that there was no revenue received by this debtor dating back to January 1, 2015 (Doc. No. 33). Based upon the monthly operating reports, which have been filed thus far, that condition has not changed (Doc. Nos. 40, 55, and 106). This factor also militates in favor of a finding of "cause."

Third, there are unsecured creditor claims. The taxing authorities (Internal Revenue Service and the Franchise Tax Board) have each filed claims, and indeed, the debtor listed those claims in its schedules. Accordingly, this factor militates against a finding of "cause" or is neutral.

Fourth, the debtor here has no cash flow or source of income to sustain a plan of reorganization or to make adequate protection payments. No offer has been made by the debtor to provide adequate protection payments to the movant or the beneficiary of the first deed of trust encumbering the property. That is consistent with what the debtor's statement of affairs and monthly operating reports reveal that there is no income stream that is being generated by the real estate. The only income the debtor can expect to receive will be if the sale of the unimproved real property concludes. Other than the sale, there is no income the debtor expects and the debtor has not identified any source of income to make adequate protection payments, let alone fund a plan of reorganization. Accordingly, this factor militates in favor of the finding of "cause."

Fifth, the two-party dispute issue. Here, the two-party dispute has already been adjudicated by the California Superior Court. The adjudication was not in the debtor's favor and the debtor has chosen to appeal. Neither the debtor nor movant has provided the court with any proof as to the status of the appeal. Accordingly, this court cannot find that there will be a "trapped" adjudication in state court.

Independently, a petition in bankruptcy arising out of a two-party dispute does not per se constitute bad faith filing by the debtor. The courts find bad faith based on two-party disputes where "'it is an apparent two-party dispute if it can be resolved outside of the bankruptcy court's jurisdiction.'" *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014) (quoting *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch, LLC)*, 2011 WL 4502102, at *10 (9th Cir. B.A.P. Aug. 26, 2011)) (citing *North Central Development Co. v. Landmark Capital Co. (In re Landmark Capital Co.)*, 27 B.R. 273, 279 (Bankr. D.Ariz. 1983)). Here there is no evidence of "forum shopping" by the debtor. The debtor did not prevail in the superior court litigation and is pursuing its appeal rights. Since there was an alleged transfer of the property in contemplation of unsuccessful litigation, there could be a basis for movant to file a fraudulent transfer action in the superior court. Ordinarily, the unsecured claimant constituency would have an interest in the outcome of the fraudulent transfer litigation, however, here, except for the taxing authorities, no such constituency exists. This factor is therefore neutral in determining whether "cause" exists for dismissal or conversion.

Another troubling issue that may support "cause" is the apparent tendency of this bankruptcy case to be "hijacked" by unrelated third parties for the protection of the automatic stay. Earlier in this case, without dispute from the debtor or any other party in interest, the court granted relief from the automatic stay to permit a lender to foreclose on property in the bay area which was purportedly transferred to this debtor by an unknown third party. A review of the claims register in this case reveals potentially another scenario. Nationstar Mortgage, through a trustee, filed a claim for \$1.3 million secured by a property located at 24505 Peachland Avenue, Santa Clarita, California. A review of the claim does not show any connection with this debtor. However, it is certainly curious that this case seems to provide "cover" for "case hijacking" schemes.

If the bankruptcy court determines that cause exists to convert or dismiss, it must also (1) decide whether dismissal, conversion, or the appointment of a trustee or an examiner is in the best interests of creditors and the estate, and (2) identify whether there are unusual circumstances establishing if dismissal or conversion is not in the best interests of creditors and the estate. 11 U.S.C. § 1112(b)(1), (b)(2); *In re Sullivan*, 522 B.R. at 612. 11 U.S.C. § 1112(b) does not define unusual circumstances. The phrase has been found to contemplate conditions that are not common in chapter 11 cases. See *In re Production International, Inc.*, 395 B.R. 101, 109 (Bankr. D.Ariz. 2008).

After weighing all facts and circumstances, the court finds cause to conditionally dismiss the case. The purpose of filing the case was to facilitate a sale of the property. This is not a business that plans to reorganize and the business generates no income. No business is being conducted either. The business has no employees and is owned 100% by its principal. There is no dispute as to the amount of the obligations secured by the real property. The debtor

claims that it does not know the amount of MMN's claim and has asked MMN for information supporting the claim without an adequate response from MMN. However, there has been no challenge to any claim in this case and if there is a dispute as to the amount of MMN's claim, it can be resolved through state court litigation and does not need to be resolved in this court. Further, no creditor has opposed dismissal.

Having found "cause" to conditionally dismiss, the question becomes whether the case should be converted to chapter 7. The only creditors with unsecured claims that have filed claims are the taxing authorities. While they are certainly creditors with legitimate claims in the absence of a claim objection, they have not taken a position in this case. Conversion of the case to chapter 7 will simply add a level of administrative expense to the estate and delay the closing of a potential sale of the property while the chapter 7 trustee "gets up to speed" and perhaps hires additional professionals. There may be a risk of administrative tax claims as well. Thus, dismissal is in the best interests of creditors.

The court finds no unusual circumstances justifying denial of the motion. The conditions surrounding this motion and bankruptcy case are not unusual for a single asset chapter 11 case. There is a piece of real estate and a disgruntled creditor who has pursued legal rights only to be frustrated by the bankruptcy laws.

While dismissal is appropriate, the court finds that delaying the effectiveness of the order is also appropriate in this case. The sale at the opening bid price will satisfy the claims encumbered by the property. At the same time, MMN and other secured claimants should not be indefinitely delayed from proceeding with foreclosure. Delaying the effectiveness of the order will allow escrow to close and if it does not close, the creditors will be free to proceed with their state law remedies.

Motion is GRANTED. Order will be effective January 2, 2018.

7. [17-12857](#)-B-11 **IN RE: SAC DEVELOPMENT, INC.**
[HLF-5](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR GRAHAM AND
ASSOCIATES, BROKER(S)
11-2-2017 [[95](#)]

SAC DEVELOPMENT, INC./MV
JUSTIN HARRIS

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better bids.

ORDER: Movant to prepare order. Order to be approved
 as to form by counsel for MMN Farm Management,
 LLC.

The debtor in possession asks the court to approve the proposed sale, subject to higher and better bids, of 537.88 acres of agricultural land in Tulare County. The "stalking horse" bidder is Milton Pace, or his assignee. The purchase price is \$3,000,000 subject to overbid. According to the moving papers, the sale is to close 7 days after bankruptcy court approval. There is a \$50,000 initial deposit which has been paid.

The debtor in possession also requests that if there is a dispute as to the amount due secured creditor MMN Farm Management, LLC, that amount should be held by a title company or in a blocked account and released only upon court order. According to the declaration of Mr. Chaudry (Doc. No. 97), repeated attempts have been made by the debtor in possession to obtain information on the amount due MMN. The debtor also requests a "good faith" finding under 11 U.S.C. § 363(m) if there is a successful overbid (Doc. Nos. 95-100).

The motion is opposed by MMN (Doc. Nos. 110-111). MMN argues that the proposed sale is deficient for 5 reasons. First, the deposit under the purchase and sale agreement is fully refundable, meaning that Mr. Pace, or his assignee, are not at risk. Second, MMN argues that the purchase and sale agreement does not state when escrow will close. Indeed, there was some ambiguity in the motion. The motion suggests the sale can close in 7 days after bankruptcy court approval, and that will be extended to 30 days if there is a successful overbid. In its reply, the debtor submits an addendum dated November 2, 2017 (Doc. No. 119), clarifying the sale will close 7 days after court approval. Third, MMN claims there is an inadequate description of the real estate to be purchased, such that the contract may be unenforceable. In reply, the debtor submits a "Text Overflow Addendum" dated October 16, 2017 (Doc. No. 119) listing the affected Assessor's Parcel Numbers. Fourth, MMN contends that there has been no evidence that any of the contingencies contained in the purchase and sale agreement have been removed. Those contingencies are a loan qualification and appraisal. In reply, the debtor's "Text Overflow Addendum" states

the loan contingency remains until closing. However, no mention is made that the appraisal contingency still applies. Finally, MMN contends that there is no proof that the balance of the \$850,000 cash to be paid by the buyer has been deposited in escrow, or will otherwise be promptly forthcoming.

The approval of a sale under 11 U.S.C. § 363 is subject to the bankruptcy court's discretion. *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (9th Cir. B.A.P. 2001). Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sale, or lease, other than in the ordinary course of business, property of the estate" Section 363(b)(1). "The trustee (and, ultimately, the bankruptcy court) must assure that the estate receives optimal value as to the asset to be sold." *DeBilio v. Golden (In re DeBilio)*, B.A.P. No. CC-13-1441-TaPaKi, 2014 WL 4476585, at *6 (9th Cir. B.A.P. Sept. 11, 2014) (citing § 363(b)(1); *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288-89 (9th Cir. B.A.P. 2005)). "Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection. Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's." (*In re Lahijani*, 325 B.R. at 289. "In the Ninth Circuit, a § 363(b)(1) sale does not require a good faith finding.") *Id.* (citing *In re Thomas*, 287 B.R. at 785). ("While no bankruptcy judge is likely to approve a sale that does not appear to be in 'good faith,' an actual finding of 'good faith' is not an essential element for approval of a sale under § 363(b)."). As a prerequisite to obtaining sale authorization, the trustee needs to demonstrate that the proposed sale would yield optimal value for the bankruptcy estate. *Lahijani*, 325 B.R. at 288-89 (9th Cir. B.A.P. 2005).

Here, the debtor in possession has articulated a business reason for the sale of the real property: if completed, the proceeds of the sale will be enough to pay all creditors in full, including objecting creditor (Chaudry declaration Doc. No. 97). In addition, Mr. Chaudry states that he believes the sale will generate a higher price than would be received on foreclosure.

Independently, the debtor in possession has offered the declaration of Jason Castle, the real estate agent for MD Graham & Associates, the listing broker. Mr. Castle states that he is familiar with the properties in the area and that the sale price is consistent with comparable properties. Also, overbidding is expected. Finally, the commission proposed appears reasonable. The listing broker will receive a 4% commission on the sale as noticed. Should an overbid occur, and the successful overbidder is not represented by the estate's listing broker, the listing broker will be entitled to 50% of the commission. If the successful overbidder is represented by the listing broker, a 3% commission may be awarded.

There is no evidence the remaining \$850,000 cash from the buyer has been deposited or is forthcoming. To be sure, the lack of such proof does lead to doubts about whether the sale will promptly close. But at this time, no other buyer has been identified. Also, the court's disposition of the concurrent motions to dismiss provides protection for objector here.

The "refundable" deposit is a contractual term which on its face is not unreasonable absent other evidence of fraud, deceit or collusion. While a "non-refundable" deposit would be better from the estate's perspective, such deposit would not change MMN's lien position. Also, if the buyer does not complete the sale, the disposition of the dismissal motions resolves the objector's delay concerns.

A good faith finding is not necessary to approve a sale in the Ninth Circuit. *In re Lahijani*, 325 B.R. at 289. The bankruptcy code does not define the term "good faith" for purposes of § 363(m), but the Ninth Circuit Court of Appeals, repeatedly, has stated that, in this context, a lack of good faith "typically [is] shown by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." See *Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570, 577 (9th Cir. 1988); see also *Onouli-Kona Land Company v. Estate of Richards (In re Onouli-Kona Land Company)*, 846 F.2d 1170, 1173 (9th Cir. 1988); *Community Thrift & Loan v. Suchy (In re Suchy)*, 786 F.2d 900, 902 (9th Cir. 1985). The Ninth Circuit has also said that a good faith purchaser is "one who buys in good faith and for value." *Ewell v. Vievert (In re Ewell)*, 958 F.2d 256, 281 (9th Cir. 1982).

Based on these and other Ninth Circuit authorities, the Bankruptcy Appellate Panel for the Ninth Circuit has held that the following factors are relevant to the good faith determination: (1) compliance with approved sale procedures; (2) arms-length negotiations, leading to a sale reflecting a purchase price at, or near, the market value of the property; (3) opportunity for competitive bidding; (4) knowledge in advance of the sale of who the proposed purchaser is; and (5) the absence of any evidence of fraud, collusion or grossly unfair advantage over other bidders. *Zuercher Trust of 1999 v. Schoenmann (In re Zuercher Trust of 1999)*, 2016 WL 721485, at *9 (memorandum decision) (9th Cir. B.A.P. Feb. 22, 2016).

First, there was no evidence that the proposed buyer here has not complied with approved sale procedures. The debtor has not asked for or received an order approving particular sale procedures in this case. There is an overbid minimum of \$100,000, but no party has objected to that limit. Second, there is no evidence that the negotiations for the purchase of the subject real property was anything other than arms-length. The declaration of Mr. Castle establishes that the purchase price proposed by the sale is at, or near, the market value of subject real property. Third, the sale here was noticed for competitive bidding. There is no objection

that there has been inadequate notice of the opportunity for competitive bidding in this case. Fourth, the proposed purchaser has been known since this motion was filed. Finally, fifth, no party has provided any evidence of fraud, collusion or grossly unfair advantage over other bidders. Objector's claims of the debtor's "bad faith" in filing this case do not establish that fraud or collusion has tainted the sale process.

Accordingly, the sale will be approved subject to higher and better bids. The motion is GRANTED.

8. [17-12857](#)-B-11 **IN RE: SAC DEVELOPMENT, INC.**
[UST-1](#)

CONTINUED MOTION TO DISMISS CASE
10-4-2017 [[46](#)]

TRACY DAVIS/MV
JUSTIN HARRIS
ROBIN TUBESING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

This motion will be conditionally denied as moot. MMN Farm Management LLC's Motion to Dismiss is granted. (DJP-1, docket #65).

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[ASM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-12-2017 [[60](#)]

THOMAS GRIESBACH/MV
RILEY WALTER
AIDA MACEDO/ATTY. FOR MV.

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 motion for relief from the automatic stay was fully noticed under Local Rule 9014-2(f)(1). The debtor filed an opposition and movant filed a response to that opposition.

In making its decision to grant or deny a motion for relief from the automatic stay, a bankruptcy court must consider the "Curtis Factors." In re Kronemeyer, 405 B.R. 915, 921 (9th Cir. 2009). The relevant factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; and (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. Additionally, the movants have stated that they will only be looking to insurance proceeds and NOT property of the debtor, so the interests of other creditors will not be prejudiced. Additionally, the state court action is a personal injury tort action, and not a matter the bankruptcy court can hear. The debtor also did not meet their burden of proof. Debtor has not submitted any evidence that the \$100,000 deductible under the insurance policy is yet to be paid on this claim. Further, the debtor presented no evidence the claim at issue will not be "covered" if the debtor is found liable. The debtor has not met its burden of proof under 11 U.S.C. § 362(g).

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim and to seek relief against the insurance policy, only.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[JAB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-14-2017 [[198](#)]

JOHN TORREZ/MV
RILEY WALTER
JAMES BULGER/ATTY. FOR MV.

NO RULING.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-8](#)

MOTION FOR AN ORDER LIMITING NOTICE
11-16-2017 [[223](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This 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.

12. [17-10238](#)-B-11 **IN RE: SILO CITY, INC.**
[KDG-7](#)

MOTION TO APPROVE LEASE AGREEMENT WITH AMERICAN BIO-MINERAL
TECHNOLOGIES LLC
11-16-2017 [[187](#)]

SILO CITY, INC./MV
JACOB EATON

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This 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.

1:30 PM

1. [11-18400](#)-B-13 **IN RE: RICARDO/LORI RAMIREZ**
[FW-3](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, NA
11-2-2017 [[121](#)]

RICARDO RAMIREZ/MV
GABRIEL WADDELL

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.

A judgment was entered against the debtor in favor of Wells Fargo Bank, NA for the sum of \$14,527.25 on June 17, 2011. The abstract of judgment was recorded with Merced County on June 29, 2011. That lien attached to the debtor's interest in a residential real property in Merced, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$184,000.00 as of the petition date. Docket 1, [Schedule A]. The unavoidable liens totaled \$452,094.49 on that same date, consisting of a first trust deed in favor of Bank of America Home Loans. Docket 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100.00 in Amended Schedule C. Docket 116.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. [15-14801](#)-B-13 **IN RE: DAVID ESCALANTE**
[MHM-2](#)

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
10-24-2017 [[75](#)]

MICHAEL ARNOLD
MICHAEL MEYER/ATTY. FOR MV.

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 motion was filed and served pursuant to LRB 9014-1(f)(1) and will proceed as scheduled. Unless the debtor is current on his plan payments as of this hearing date, the court intends to grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

3. [17-13504](#)-B-13 **IN RE: SAMUEL/OLGA NEVAREZ**
[MHM-1](#)

MOTION TO DISMISS CASE
10-30-2017 [[18](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn by Moving Party.

NO ORDER REQUIRED.

The Trustee has withdrawn the motion.

4. [17-13507](#)-B-13 **IN RE: JUAN/MARIA ROBLES**
[MHM-1](#)

MOTION TO DISMISS CASE
10-30-2017 [[15](#)]

MICHAEL MEYER/MV
THOMAS GILLIS

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

DISPOSITION: Withdrawn by Moving Party.

NO ORDER REQUIRED.

The Trustee has withdrawn the motion.

5. [16-13610](#)-B-13 **IN RE: RUDY/DIANE CASTANON**
[PBB-2](#)

MOTION TO MODIFY PLAN
10-23-2017 [[51](#)]

RUDY CASTANON/MV
PETER BUNTING.

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.

6. [17-12214](#)-B-13 **IN RE: KENNETH/JANE HOSTETLER**
[TCS-2](#)

OBJECTION TO CLAIM OF CITIBANK, N.A., CLAIM NUMBER 3
10-11-2017 [\[61\]](#)

KENNETH HOSTETLER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

ORDER: No order is required

Pursuant to the November 17, 2017 order and November 16, 2017 minutes, this matter is dropped from calendar. This objection was initially scheduled to be heard on November 16, 2017 at 1:30 p.m. The objection was then re-filed with a hearing date of November 30, 2017 at 1:30 p.m. Pursuant to LR 9014-1(j), continuances must be approved by the court. This continuance was not approved by the court.

Additionally, the language in the notice was not complaint under LR 3007-1(b)(2). The hearing was not noticed on 44 days, so the notice needed to state that a party in interest is not required to file written opposition. The notice and amended notice both stated that written opposition was required.

7. [17-13415](#)-B-13 **IN RE: RAMON/GLORIA MONTEJANO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-13-2017 [\[24\]](#)

SCOTT LYONS
INSTALLMENT FEE PAID \$90 11/15/17

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

DISPOSITION: The OSC will be vacated.

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

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

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

8. [17-12717](#)-B-13 **IN RE: DALJIT SINGH**
[MHM-1](#)

MOTION TO DISMISS CASE
10-24-2017 [[43](#)]

MICHAEL MEYER/MV
HANK WALTH
FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The moving papers include a previously used docket control number and are not in compliance with LBR 9014-1(c). Therefore, the motion will be denied without prejudice.

9. [17-10318](#)-B-13 **IN RE: ALBERT/DEE ANNA KNAUER**
[TCS-1](#)

OBJECTION TO CLAIM OF COMM 2006-C8 SHAW AVENUE CLOVIS, CLAIM
NUMBER 3
10-6-2017 [[36](#)]

ALBERT KNAUER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Continued to January 11, 2018 at 1:30 p.m.

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

This matter will be continued to January 11, 2018 at 1:30 p.m. Unilateral or joint status reports shall be filed and served on or before January 4, 2018.

10. [17-13521](#)-B-13 **IN RE: JOSE MAGANA**
[MHM-1](#)

MOTION TO DISMISS CASE
10-26-2017 [[17](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: 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.

11. [17-11124](#)-B-13 **IN RE: OLUSEGUN LERAMO**
[FJA-1](#)

CONTINUED MOTION TO CONFIRM PLAN
8-25-2017 [[66](#)]

OLUSEGUN LERAMO/MV
FRANCISCO ALDANA
CASE DISMISSED 11/1/17

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

DISPOSITION: None.

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

12. [17-11124](#)-B-13 **IN RE: OLUSEGUN LERAMO**
[FJA-4](#)

MOTION TO CONFIRM PLAN
10-26-2017 [[84](#)]

OLUSEGUN LERAMO/MV
FRANCISCO ALDANA
CASE DISMISSED 11/1/17

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

DISPOSITION: None.

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

13. [17-13630](#)-B-13 **IN RE: MOHAMMAD KHAN**
[MHM-1](#)

MOTION TO DISMISS CASE
11-1-2017 [[24](#)]

MICHAEL MEYER/MV
JERRY LOWE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted, unless withdrawn prior to or at the
hearing.

ORDER: The court will issue an order.

This matter 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. Specifically, debtor's declaration states he will provide pay stubs but he admits he has not done so through the date he signed the declaration. Accordingly, unless the trustee's motion is withdrawn prior to, or at the hearing, the motion will be granted and the case dismissed.

14. [17-14133](#)-B-13 **IN RE: BENJAMIN HARRIS**
[PPR-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
11-13-2017 [9]

CARRINGTON MORTGAGE SERVICES,
LLC/MV
NEIL SCHWARTZ
ALEXANDER MEISSNER/ATTY. FOR MV.

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

DISPOSITION: Overruled.

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

First, this objection is overruled for failure to comply with Local
Rules 3015-1(c)(4) and 9014-1(d)(3).

Second, the objection states a proof of claim has been filed by this
creditor. The Plan provides the proof of claim controls the amount
of the claim unless the court rules otherwise after an appropriate
proceeding. (§ 2.04).

Third, the objection is premature as the Trustee has not concluded
the meeting of creditors. (Doc. #14).

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>.

15. [16-13640](#)-B-13 **IN RE: JAMES/RACHAEL RAY**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-20-2017 [[28](#)]

CIT BANK, N.A./MV
DAVID JENKINS
JAMIE HANAWALT/ATTY. FOR MV.

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 motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor(s) and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

The order shall provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The request for an award of attorney fees will be denied without prejudice. 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. In addition, any future request for an award of attorneys' fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C.A. §506(b).

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).

16. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[JDR-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
10-12-2017 [[27](#)]

NICHOLAS GREEN/MV
JEFFREY ROWE

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to value respondent's collateral was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent(s) default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The debtor is competent to testify as to the value of the 2015 Nissan Versa. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$9,721.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

17. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[JDR-2](#)

MOTION TO CONFIRM PLAN
10-12-2017 [[34](#)]

NICHOLAS GREEN/MV
JEFFREY ROWE

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based on well-pled facts. This motion to confirm a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

18. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[JDR-3](#)

MOTION TO VALUE COLLATERAL OF 21ST MORTGAGE CORPORATION
10-12-2017 [[41](#)]

NICHOLAS GREEN/MV
JEFFREY ROWE

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based upon well-pled facts.

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules of Practice and there was 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.

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. The debtor(s) 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.

19. [14-11145](#)-B-13 **IN RE: THOMAS/ESMERALDA HUCKABEE**
[BCS-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SHEIN LAW
GROUP, PC FOR BENJAMIN C. SHEIN, DEBTORS ATTORNEY(S)
10-31-2017 [[45](#)]

BENJAMIN SHEIN

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>.

20. [17-13047](#)-B-13 **IN RE: CAROL SHIELDS**
[DRJ-5](#)

MOTION TO VALUE COLLATERAL OF VALLEY FIRST CREDIT UNION
11-2-2017 [[57](#)]

CAROL SHIELDS/MV
DAVID JENKINS

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

DISPOSITION: Denied without prejudice.

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

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 her opinion of the fair market value of the 2013 Honda Accord, not the "replacement value." The motion qualifies the debtor's opinion "as defined and limited by section 506(a)(2)." However, the motion is not fact, just allegations. The declaration does not reference the relevant value. Therefore the motion is denied without prejudice.

21. [17-13047](#)-B-13 **IN RE: CAROL SHIELDS**
[TGM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY
HARLEY-DAVIDSON
8-24-2017 [[17](#)]

HARLEY-DAVIDSON/MV
DAVID JENKINS
TYNEIA MERRITT/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Withdrawn by Moving Party.

ORDER: No order is required.

The movant withdrew the objection.

22. [17-12549](#)-B-13 **IN RE: GERALD/RETHA MAXWELL**
[DRJ-2](#)

MOTION TO VALUE COLLATERAL OF BANK OF THE SIERRA
11-1-2017 [[31](#)]

GERALD MAXWELL/MV
DAVID JENKINS

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

DISPOSITION: Denied without prejudice.

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

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 her opinion of the fair market value of the 2007 Keystone Everest Trailer, not the "replacement value." Further, there is no evidence provided suggesting the "collateral" (Keystone Everest Trailer) is anything other than used for personal, family, or household purposes. Therefore the motion is denied without prejudice.

23. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[FW-1](#)

MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
11-2-2017 [[7](#)]

KELLY HUFFMAN/MV
PETER FEAR

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

DISPOSITION: Denied without prejudice.

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

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 their opinion of the fair market value of "all assets of the Debtor, except for vehicles," not the "replacement value." Further, the assets include business assets, which presumably were not acquired for personal, family, or household purposes. Thus, the generic description in the debtor's declaration is not sufficient for the court to find the personal property values are consistent with the "replacement value" required by 11 U.S.C. § 506(a)(2). Therefore the motion is denied without prejudice.

24. [17-14051](#)-B-13 **IN RE: KELLY HUFFMAN AND ELIA RODRIGUEZ**
[FW-2](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
11-2-2017 [[11](#)]

KELLY HUFFMAN/MV
PETER FEAR

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

DISPOSITION: Denied without prejudice.

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

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 their opinion of the fair market value of "all assets of the Debtor, except for vehicles," not the "replacement value." Further, the assets include business assets, which presumably were not acquired for personal, family, or household purposes. Thus, the generic description in the debtor's declaration is not sufficient for the court to find the personal property values are consistent with the "replacement value" required by 11 U.S.C. § 506(a)(2). Therefore the motion is denied without prejudice.

25. [16-11954](#)-B-13 **IN RE: LAVONE/CHRISTINE HUNTER**
[PK-6](#)

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

LAVONE HUNTER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

The court continued this objection at the request of debtor's counsel. The objection is based on the debtor's delinquency in making payments to the trustee. Pursuant to the minutes at the November 9, 2017 hearing, if the debtors are not current at the time of this hearing, the trustee's objection will be sustained and the motion DENIED.

26. [17-12758](#)-B-13 **IN RE: JERRICK/SANDRA BLOCK**
[MHM-1](#)

CONTINUED 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.

The court continued this motion at the request of debtor's counsel. The motion is based on the debtor's delinquency in making payments to the trustee. If the debtors are not current at the time of this hearing without good reason, the trustee's motion will be granted.

27. [17-13465](#)-B-13 **IN RE: HARDIAL BHULLAR**
[MHM-1](#)

MOTION TO DISMISS CASE
10-26-2017 [[24](#)]

MICHAEL MEYER/MV
ROSALINA NUNEZ

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted, unless withdrawn prior to or at the hearing.

ORDER: The court will issue an order.

This matter 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.

Also, the opposition is ambiguous. The debtor claims to now know the "corrected full amount" of the arrearage. The debtor says there will be a timely filed "proposed amended plan payment," providing for the arrearage. The court presumes that means a modified plan will be filed. However, as of November 27, 2017, a modified plan has not been filed.

Accordingly, unless the trustee's motion is withdrawn prior to, or at the hearing, the motion will be granted and the case dismissed.

28. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-4](#)

MOTION TO CONFIRM PLAN
10-19-2017 [[98](#)]

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice and the objection
will be sustained.

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Don Roberto Jewelers, Inc. in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(i) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Additionally, the payment as proposed in this plan will not sufficiently pay the claim of Christopher Callison (Claim 8-2), which the debtor has objected to. The trustee believes, however, that a plan can still be confirmed while the disputed claim is being resolved. Still, the proposed plan will still take over 65 months to fund even with the arrears claim being \$10,500. Additionally, the plan payment of \$2,134.00 is not sufficient to pay the one lump payment of \$3,000.00 in attorney fees in the first month. In order for this plan to fund, the attorney would need to agree to reduce his fees to \$50.00 per month and the debtor would need to increase his plan payment to \$2,184.28.

At the request of the Trustee, the court is also setting a bar date of February 15, 2018 for a plan to be confirmed or the case will be dismissed on the Trustee's ex parte application.

29. [17-12881](#)-B-13 **IN RE: RUBEN/KARIMA PARKS**
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-20-2017 [[24](#)]

WELLS FARGO BANK, N.A./MV
JOEL WINTER
DANE EXNOWSKI/ATTY. FOR MV.
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 Moving Party
shall submit a proposed order after hearing.

This matter was continued to allow two motions to value collateral to be heard. The court concluded both motions on November 1, 2017. (Docket #85 and #86). Additionally, the October 19, 2017 order (Docket #80) stated that the motion was being continued after the two Motions to Value Collateral are heard in order to give debtors opportunity to file a plan that will allow them to cure the issues raised by movant in this motion.

As of November 28, 2017, no plan has been filed. Because the motions to value collateral have been concluded, the only reason left to deny the stay would be if the plan included terms that provided for the property at subject in the stay. Since no plan has been filed, there is no reason to continue the motion for relief from the automatic stay.

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay. The debtors have not made 21 required payments and the property is not adequately protected.

The proposed order shall specifically describe the property or action to which the order relates.

The order shall provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in movant's possession.

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).

30. [17-10187](#)-B-13 **IN RE: PETER SOLORIO**
[YG-1](#)

MOTION TO CONFIRM PLAN
10-20-2017 [[82](#)]

PETER SOLORIO/MV
MARSHALL MOUSHIGIAN
WITHDRAWN

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

DISPOSITION: Withdrawn by Moving Party.

ORDER: No order is required.

The movant withdrew the motion.

31. [17-13987](#)-B-13 **IN RE: JOSE/MELISSA HERRERA**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF SUNTRUST MORTGAGE
10-28-2017 [[15](#)]

JOSE HERRERA/MV
THOMAS GILLIS

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

DISPOSITION: Granted.

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

The motion will be granted without oral argument based upon well-pled facts.

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules of Practice and there was 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.

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. The debtor(s) 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.

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>.

32. [17-14255](#)-B-13 **IN RE: DAVID BAER**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
11-17-2017 [9]

DAVID BAER/MV
TIMOTHY SPRINGER
OST 11/20/17

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.

The Motion to Extend the Automatic Stay was set for hearing on shortened time. Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. 811, 814-15 (Bankr. N.D. Cal.2006)

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The prior case was dismissed because the debtor failed to make the payments required under the plan. The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), citations omitted.

However, based on the moving papers and the record, and unless opposition is given at the hearing, the court is persuaded that the presumption has been rebutted and that the debtor's petition was filed in good faith, and it intends to grant the motion to extend/impose the automatic stay. In his declaration, debtor stated that he failed to complete the plan in his prior bankruptcy case because the payments were too high. He has since received a raise at his job and has someone to help him make the payments. It should also be noted that the debtor paid nearly \$50,000 to the trustee over a period of 23 months. 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.