

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, December 6, 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.
UNITED STATES BANKRUPTCY COURT

9:30 AM

1. [17-12721](#)-B-11 IN RE: AVALON CARE CENTER - CHOWCHILLA, LLC

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
7-17-2017 [[1](#)]

HAGOP BEDOYAN

NO RULING.

2. [17-12721](#)-B-11 IN RE: AVALON CARE CENTER - CHOWCHILLA, LLC
[KDG-7](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH AVALON HEALTH CARE, INC. AND BEVERLY
HEALTHCARE CALIFORNIA, INC.
11-15-2017 [[109](#)]

AVALON CARE CENTER -
CHOWCHILLA, LLC/MV
HAGOP BEDOYAN

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.

The trustee requests approval of the "Settlement Agreement" between the estate and Beverly Healthcare California, INC. The claims were precipitated by maintenance obligations at a long-term care facility that was subleased by Debtor from Beverly under a sublease agreement.

Under the terms of the compromise, the litigation commenced by Beverly against Debtor and Avalon Health will be dismissed; Beverly and Debtor will mutually release claims in exchange for Beverly

being paid \$363,298.22 payable through Beverly retaining the \$111,000.00 security deposit held in the name of Avalon Chowchilla, and 48 monthly payments, due on the first of each month after the court approves the "Settlement Agreement," made by Avalon Health in the amount of \$5,256.21, amongst other terms included in the "Settlement Agreement."

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: debtor admits that its probability of success in defeating Beverly's claim for facility maintenance costs is low. It would be unlikely that Debtor could show its obligation to Beverly is less than the \$111,000.00 security deposit. The litigation would be very complex, expensive, inconvenient, and cause delay in the case. Debtor would have to hire experts, retain counsel to litigate, and a trial date could be set as long as a year in the future. The wait could be even longer if the losing party decides to appeal the court's decision. Settlement will immediately resolve the issue. Lastly, approving the "Settlement Agreement" negates the need for time and money consuming litigation, a paramount interest of the creditors.

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

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

Additionally, counsel is reminded that the time stated in LR 9014-1(d)(3)(B)(iii) is 4:00 p.m., not 2:00 p.m., as stated in movant's Notice of Hearing, docket #110.

3. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION

1-31-2017 [[1](#)]

PETER FEAR

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

DISPOSITION: Continued to January 11, 2018 at 9:30 a.m.

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

This matter is being continued to be heard in conjunction with the
Motion/Application to Confirm Chapter 12 plan set for January 11,
2018 at 9:30 a.m. Docket Control Number FW-10. Docket #178.

4. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[FW-4](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
5-8-2017 [[59](#)]

EDWARD UMADA/MV
PETER FEAR
RESPONSIVE PLEADING

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

DISPOSITION: Plan is deemed withdrawn.

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

This plan is deemed to have been withdrawn since the debtors have
filed a modified plan. Docket Control Number FW-10. The
confirmation hearing for that plan is January 11, 2018.

5. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**

CHAPTER 11 PLAN
10-6-2017 [[310](#)]

T. BELDEN

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

DISPOSITION: Continued to December 21, 2017 at 9:30 a.m. The default of all responding parties except the Law offices of George Martin, Inc. and Parris Law Firm will be entered.

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

At the request of the debtor, this matter is continued to December 21, 2017 at 9:30 a.m. The deadline for filing documents in support of confirmation of the plan is extended to December 14, 2017.

6. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[BBR-14](#)

MOTION FOR ORDER APPROVING ASSUMPTION OF ALLEGED REAL
PROPERTY LEASES
10-20-2017 [[320](#)]

PACE DIVERSIFIED
CORPORATION/MV
T. BELDEN

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>.

7. [17-13239](#)-B-12 **IN RE: JOE/MARIA NASCIMENTO**
[WW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WALTER WILHELM
FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
11-14-2017 [[102](#)]

RILEY WALTER

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.

This motion is denied for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

8. [17-12998](#)-B-12 **IN RE: LJB FARMS, LLC**
[KDG-5](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
10-4-2017 [[84](#)]

LJB FARMS, LLC/MV
JACOB EATON
RESPONSIVE PLEADING

NO RULING.

9. [17-12857](#)-B-11 **IN RE: SAC DEVELOPMENT, INC.**
[BRL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-28-2017 [[125](#)]

CARMELITA GARNER/MV
JUSTIN HARRIS
BENJAMIN LEVINSON/ATTY. FOR MV.
OST 11/28/17

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 Moving Party
shall submit a proposed order after hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and an order shortening notice and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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.

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 not contain any finding or reference that debtor is in bad faith or part of a scheme to hinder, delay or defraud movant.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the purported deed of trust was filed fraudulently by an entity other than the debtor and for the purpose of stalling a foreclosure sale.

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).

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>.

1:30 PM

1. [17-13703](#)-B-13 **IN RE: TRINIDAD/JOSEFINA CONTRERAS**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-20-2017 [[20](#)]

WELLS FARGO BANK, N.A./MV
THOMAS GILLIS
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

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

This objection is overruled for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

2. [17-13907](#)-B-13 **IN RE: CARLOS/ROSEMARY NUNEZ**
[TCS-1](#)

MOTION TO CONFIRM PLAN
10-23-2017 [[13](#)]

CARLOS NUNEZ/MV
TIMOTHY SPRINGER

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 or modify a chapter 13 plan was fully

noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [17-13825](#)-B-13 **IN RE: FRANCISCO ZUNIGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-6-2017 [[21](#)]

GABRIEL WADDELL

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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 OSC will be vacated and 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.

4. [16-12227](#)-B-13 **IN RE: RAMON MARTINEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
11-2-2017 [[55](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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.

5. [15-14228](#)-B-13 **IN RE: OSCAR GUTIERREZ**
[TGM-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH OSCAR GUTIERREZ
11-3-2017 [[130](#)]

PETER FEAR/MV
GLEN GATES
TRUDI MANFREDO/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 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.

It appears from the moving papers that the trustee has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and that the Debtor-in-Possession or Trustee has considered the factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee or debtor-in-possession reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

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

6. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[FW-5](#)

MOTION TO CONFIRM PLAN
10-30-2017 [[113](#)]

PAUL LANGSTON/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 motion was not served in compliance with FRBP 2002(b) and LBR 9014-1(f)(1) and 3015-1(d)(1), which require service of a motion to confirm a chapter 13 plan on 42 days' notice.

7. [17-14339](#)-B-13 **IN RE: SHAWN WILLIAMS**
[NSV-1](#)

MOTION TO IMPOSE AUTOMATIC STAY
11-20-2017 [[10](#)]

SHAWN WILLIAMS/MV
NIMA VOKSHORI

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 Motion to Impose the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in

this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because 2 previous cases under this title in which the individual was a debtor were pending within the 1-year period and both cases previously filed by the debtor were dismissed because the debtor failed to file necessary documents as required without substantial excuse. 11 U.S.C. §362(c)(4)(D)(i)(I), (II). 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*.

The debtor here has not met the burden of proof for imposition of the automatic stay for several reasons.

First, there is no competent evidence supporting the motion. The only evidence before the court is the declaration of the attorney for the debtor containing either hearsay or speculation without foundation. For example, counsel opines about the needs of the debtor but provides no foundation for that statement. Counsel also reports the content of communications between the debtor and a "senior case manager" which is double hearsay. Also, counsel states the legal conclusion that the case is filed in good faith; not according to 11 U.S.C. § 362 (e)(4). The case is presumptively filed in bad faith subject to clear and convincing evidence to the contrary. Counsel's declaration is not clear and convincing evidence.

Second, the debtor's two cases pending in the previous year were dismissed for failure to file documents. The debtor also received separate extensions from the court to file documents in the previous cases and the documents were not filed. Even in this case, with

counsel employed, not all documents were filed with the petition and the clerk had to issue a notice of deficiency.

Third, assuming this case has a better chance of proceeding to conclusion, which is doubtful on this record, the motion provides no substantial excuse for the failure of the debtor to file documents in the previous two cases. 11 U.S.C. § 362 (e)(4)(D)(i)(II). The law is clear that inadvertence or negligence is not an excuse. No evidence is before the court why on two previous occasions the necessary documents were not filed. The only excuse is that debtor did not have counsel. That is not an explanation from the debtor, but debtor's counsel's explanation.

Fourth, no changed circumstance other than representation by counsel has been presented to the court justifying imposition of the automatic stay. In *In re Whitaker*, 341 B.R. 336, 345 (Bankr. S.D.GA 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. . . If [the instant] case [is] under chapter. . . 13 there must be some substantial change." The debtor filed no schedules in the previous cases. There is no comparative data supporting a substantial change. A review of the schedules filed in this case shows a debtor saddled with substantial student loan and medical debt which, under the debtor's proposed plan, will be paid nothing. Also, the proposed Plan payments over 60 months exceed the debtor's income. The debtor must rely on "a significant other" and a relative to fund the plan. This is a "below median" debtor. Without any evidence there is no rational way to compare the debtor's previous situation with the present situation. That is the debtor's burden and it is not met here.

Fifth, the primary purpose for filing this third case, according to debtor's counsel, is to prevent foreclosure. However, the schedules and Plan show an arrearage of \$68,000.00. Based on the proposed continuing mortgage payments set forth in the Plan, the obligation to Wells Fargo is in substantial default. This circumstance has not just arisen. Given the substantial arrearage and the debtor's alleged efforts (according to her counsel) to obtain a loan modification without success, the debtor has had opportunities to resolve these issues many times. Without clear and convincing evidence to disprove bad faith, the court has, unfortunately, no choice.

The motion is DENIED.

8. [17-13653](#)-B-13 **IN RE: LARRY/BEATRICE CONTRERAS**
[GEL-2](#)

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
11-6-2017 [[30](#)]

LARRY CONTRERAS/MV
GABRIEL LIBERMAN
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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 2003 GMC Yukon 1500 SLE. 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 \$6,050.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

9. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[TOG-1](#)

MOTION TO VALUE COLLATERAL OF CITI FINANCIAL SERVICES
11-2-2017 [[10](#)]

VICTOR ISLAS/MV
THOMAS GILLIS

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.

This motion is denied for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

10. [17-11059](#)-B-13 **IN RE: SHANNON/LESLIE BAKER**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-8-2017 [[70](#)]

TD AUTO FINANCE LLC/MV
SUSAN HEMB
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Denied.

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

This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The motion will be denied.

The movant, TD Auto Finance LLC, seeks relief from the automatic stay with respect to a 2010 Ford Flex. The movant has produced

evidence that the vehicle has a value of \$11,975 and its secured claim is approximately \$6,381.96. Claim #4-1.

On October 19, 2017, the debtors surrendered the vehicle to the dealership, and the movant took possession of the vehicle on October 23, 2017.

In their motion, movants claim that the debtors are in default for payments coming due July 9, 2017 through October 9, 2017, each in the amount of \$468.65. Docket#70, ¶8. Deanna Hazelton, an attorney with the Trustee's Office, filed a declaration claiming that on the contrary, the Trustee's Office has in fact been making all timely payments to the creditor and attached as an exhibit the payments made to movant. Declaration of Deanna K. Hazelton, docket #80; exhibit A, docket #81.

Local Rule 4001-1(b) contains certain requirements that the movant must complete if their motion for relief from stay in a chapter 13 case alleges that the debtor or trustee has failed to maintain post-petition payments on an obligation secured by personal property. Movant's motion is just the kind described in this rule.

Movant has not complied with this rule because they have not stated if they notified the debtor or trustee prior to the filing of the motion of the alleged delinquency and given an opportunity to cure it. Neither have they stated whether a contract or applicable nonbankruptcy law requires that the debtor be given a statement, payment coupon, invoice, or other comparable document and whether such document was sent to the debtor or the trustee for any post-petition payments allegedly not made by the debtor or the trustee.

11. [17-13798](#)-B-13 **IN RE: JASON/MANDY LAWTON**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-13-2017 [\[15\]](#)

WELLS FARGO BANK, N.A./MV
SUSAN HEMB
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

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

This objection is overruled for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice

in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

12. [17-13932](#)-B-13 **IN RE: OSCAR HERNANDEZ-SANDOVAL AND NIDIA PAYAN**

OBJECTION TO CONFIRMATION OF PLAN BY PROTECTIVE FINANCIAL, LLC
11-20-2017 [[19](#)]

PROTECTIVE FINANCIAL, LLC/MV
KRISTY HERNANDEZ
SCOTT HARTLEY/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

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

This objection is overruled for failure to comply with Local Bankruptcy Rules 9014-1(c) and 9014-1(d)(3)(B)(iii).

New Local Rules of Practice in the Eastern District became effective on September 26, 2017. Rule 9014-1(c) requires all motions filed with the court to include a Docket Control Number. No such number was included on the motion. Additionally, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

13. [17-13932](#)-B-13 **IN RE: OSCAR HERNANDEZ-SANDOVAL AND NIDIA
PAYAN**

OBJECTION TO CONFIRMATION OF PLAN BY THE PERMANENTE MEDICAL
GROUP

11-20-2017 [[20](#)]

THE PERMANENTE MEDICAL
GROUP/MV
KRISTY HERNANDEZ
SCOTT HARTLEY/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

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

This objection is overruled for failure to comply with Local
Bankruptcy Rules 9014-1(c) and 9014-1(d)(3)(B)(iii).

New Local Rules of Practice in the Eastern District became effective
on September 26, 2017. Rule 9014-1(c) requires all motions filed
with the court to include a Docket Control Number. No such number
was included on the motion. Additionally, Rule 9014-1(d)(3)(B),
which is about noticing requirements, requires movants to notify
respondents that they can determine whether the matter has been
resolved without oral argument or if the court has issued a
tentative ruling by checking the Court's website at
www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

14. [17-14466](#)-B-13 **IN RE: JENNIFER GUTIERREZ
[SL-1](#)**

MOTION TO EXTEND AUTOMATIC STAY
11-22-2017 [[7](#)]

JENNIFER GUTIERREZ/MV
SCOTT LYONS

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 properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

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

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the previous case filed pending within 1 year of the filing of this case was dismissed because the debtor failed to make plan payments without substantial excuse. 11 U.S.C. §362(c)(4)(D)(i)(II). The party with the burden of proof may rebut the presumption of bad faith by clear and convincing evidence. §362(c)(3)(c). This evidence standard has been defined, in *Singh v. Holder*, 649 F.3d 1161, 1165, n. 7 (9th Cir. 2011), as "between a preponderance of the evidence and proof beyond a reasonable doubt." It may further be defined as a level of proof that will produce in the mind of the fact finder a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), *citations omitted*.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtor's petition was filed in good faith, and it intends to grant the motion to impose the automatic stay. In the prior bankruptcy case, the debtor's husband was in a motorcycle accident and debtor needed to take time off from work to care for him. Debtor's husband has recovered from the accident and returned to work at RR Donnelly in Visalia, CA. Debtor has also received a raise at her job. 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.