

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, January 4, 2018
Place: Department B - 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

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

9:00 AM

1. [15-12709](#)-B-13 IN RE: LORI KITCHEN
[WDO-4](#)

MOTION TO MODIFY PLAN
11-30-2017 [[87](#)]

LORI KITCHEN/MV
WILLIAM OLCOTT

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.

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.

2. [17-14316](#)-B-13 **IN RE: RICK/SHAWN LOPEZ**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CALIFORNIA FRANCHISE TAX BOARD
12-12-2017 [[13](#)]

RICK LOPEZ/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Based on the evidence offered in support of the motion, the California Franchise Tax Board's claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtors 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.

3. [16-11129](#)-B-13 **IN RE: DAVID/LINDA MILAZZO**
[LKW-10](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
12-5-2017 [[171](#)]

LEONARD WELSH

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

DISPOSITION: Granted.

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

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

Counsel will be awarded \$8,740.00 in fees and \$171.61 in costs.

4. [17-13844](#)-B-13 **IN RE: EDWARD GUTIERREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-7-2017 [[32](#)]

CASE DISMISSED

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

DISPOSITION: The matter will be dropped as moot.

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

7. [16-11072](#)-B-13 **IN RE: ELLYN LOPEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
11-3-2017 [[90](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH

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

DISPOSITION: Conditionally denied. If a modified plan is not confirmed by March 29, 2018, the case will be dismissed on the trustee's ex parte application.

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

The court is setting a bar date for plan confirmation in matter PK-2 (#8 on this calendar). This motion will be granted on the trustee's ex parte application if a plan is not confirmed by the bar date.

8. [16-11072](#)-B-13 **IN RE: ELLYN LOPEZ**
[PK-2](#)

MOTION TO CONFIRM PLAN
11-15-2017 [[95](#)]

ELLYN LOPEZ/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to sustain the trustee's objection to confirmation. The plan fails to provide for a plan payment for month 9.

Pursuant to §1324(b), the court intends to set March 29, 2018, as a bar date by which a chapter 13 plan must be confirmed or objections to claims must be filed or the case will be dismissed on the trustee's declaration.

Based on the amended schedules I and J, the court has noted some differences in both income and expenses since the filing. However, the debtor's declaration does not contain an explanation for the changes. For example, the debtor is making slightly less income than

when the case was filed. Also, the debtor is paying more expenses in some areas and less in others (i.e., health insurance).

9. [16-11072](#)-B-13 **IN RE: ELLYN LOPEZ**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
11-15-2017 [[101](#)]

PATRICK KAVANAGH

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

DISPOSITION: Granted.

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

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

Counsel will be awarded \$30,000.00 in fees.

10. [17-10379](#)-B-13 **IN RE: NICOLE SCOTT**
[SJS-1](#)

MOTION FOR COMPENSATION FOR SUSAN J. SALEHI, DEBTORS
ATTORNEY(S)
12-15-2017 [[27](#)]

SUSAN SALEHI

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.

This motion is denied without prejudice for failure to comply with
Federal Rule of Bankruptcy Procedure 2002(a)(6) and Local Bankruptcy
Rule 9014-1(d)(3)(B)(iii).

Rule 2002(a)(6) requires at least 21 days' notice to parties in
interest on a hearing on any entity's request for compensation or
reimbursement of expenses if the request exceeds \$1,000. The
party's request here is for \$2,000.00. Notice was given on December
15, 2017, 20 days before the hearing. No request to modify the
notice period was made.

Additionally, 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.

Therefore, the notice does not comply with the rules and the motion
will be DENIED WITHOUT PREJUDICE.

11. [13-14390](#)-B-13 **IN RE: SHIN/MICHIKO YOSHIKAWA**
[MHM-3](#)

MOTION TO DISMISS CASE
11-28-2017 [[113](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn prior to or at the hearing, the court intends to grant the Motion to Dismiss on the grounds stated in the motion.

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

This matter was noticed pursuant to LBR 9014-1(f)(1) and a timely response was filed. If the trustee's motion is not withdrawn at the hearing, the court intends to grant the motion and dismiss the case on the grounds stated in the motion; there is a material default by the debtors with respect to a term of a confirmed plan.

The trustee contends the debtors have not provided six Profit and Loss statements or contracts and not provided two years of tax returns. The debtor's claim they have provided 2016 Profit and Loss statements (disputed by trustee) and have not provided 2016 tax returns which were due April 2017. Debtors claim Mr. Yoshikawa is ill. However, the debtors fail to explain the lengthy delays in providing the information required by the plan. The debtors request a continuance to February without any evidence they will be able to comply.

12. [17-14711](#)-B-13 **IN RE: ELLIOT BADGER AND BRENDA VAQUERA**
[RSW-1](#)

MOTION TO EXTEND AUTOMATIC STAY
12-19-2017 [8]

ELLIOT BADGER/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The 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 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 in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay. Mr. Badger has bipolar disorder, and one of the compulsive actions over which he has no control is spending without thinking. However, now that his wife has taken over finances, debtor believes that he can complete the plan. The monthly plan payment is \$1,959.00 and the monthly net income is \$3,237.87. 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.

10:00 AM

1. [17-13376](#)-B-7 **IN RE: LUIS/NORMA URENA**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-7-2017 [[20](#)]

NATIONSTAR MORTGAGE LLC/MV
R. BELL
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Denied as moot in part as to the debtor and denied
without prejudice in part as to the trustee's
interest.

ORDER: The court will issue an order.

This motion will be DENIED AS MOOT IN PART and DENIED WITHOUT
PREJUDICE IN PART.

The stay was terminated as to the debtors by operation of law when
the debtors received their discharge on December 19, 2017 under 11
U.S.C. § 362 (c)(2). No relief is necessary and so the motion will
be DENIED AS MOOT IN PART as to the interests of the debtor.

Relief is denied as to the trustee for procedural reasons. The
motion was originally noticed under LBR 9014-1(f)(1) which requires
service 28 days before the hearing. The original notice failed to
include the new LBR 9014-1(d)(3)(B) language. Movant filed an
amended Notice of Hearing on December 20, 2017 (Doc. No. 27) to
include the new LBR 9014-1(d)(3)(B) language but failed to comply
with LBR 9014-1(f)(2) which provides, *inter alia*, that the notice
must state no opposition needs to be filed before the hearing if the
motion is to be heard on less than 28 days' notice. No order
shortening or modifying notice was sought or obtained. Therefore the
motion will be DENIED WITHOUT PREJUDICE IN PART as to the trustee's
interests.

2. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2017 [[19](#)]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
HAGOP BEDOYAN
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Withdrawn by Moving Party.

NO ORDER REQUIRED.

This motion for relief from stay was withdrawn by the Moving Party.

3. [17-12997](#)-B-7 **IN RE: PILAR/MARY RAMIREZ**
[JSP-1](#)

MOTION TO REDEEM AND/OR MOTION FOR COMPENSATION FOR JOSEPH
S. PEARL, DEBTORS ATTORNEY(S)
11-20-2017 [[15](#)]

PILAR RAMIREZ/MV
JOSEPH PEARL

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.

This motion is denied without prejudice for failure to comply with
the Local Bankruptcy Rules ("LBR").

LBR 9014-1(d)(3)(B)(iii) 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. In this case, the notice did not include this
language. Additionally, the Bakersfield Court address is incorrect.

LBR 9014-1(e)(2) requires that the proof of service, in the form of
a certificate of service, be filed with the Clerk no more than three
days after the moving papers were filed. In this case, movant did
not file a certificate of service.

LBR 9014-1(d)(5) requires that every motion shall be filed
separately from any other request, unless the motion asks for relief
in the alternative based on the same rule or motion or as provided

by the local rules. This motion asks the court for both a redemption order and approval of attorney fees. Neither of those requests can be considered as relief in an alternative form, and the local rules do not permit joinder of those issues.

Also, even if there were no procedural problems, the motion would still be DENIED because the only evidence supporting the motion is a "Vehicle Condition Report" which is not presented with any foundation. Plus, the attorney fee request, even if proper on a redemption motion, is unsupported. The motion is also untimely. 11 U.S.C. § 362(h)(1). The motion is DENIED WITHOUT PREJUDICE.

10:30 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[WW-7](#)

MOTION FOR ADMINISTRATIVE EXPENSES
11-30-2017 [[367](#)]

MACPHERSON OIL COMPANY/MV
T. BELDEN
RILEY WALTER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as a scheduling
conference.

DISPOSITION: None. Any continued date will be set at the
hearing.

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

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

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: what
amounts, if any, are owed to the claimants from the debtor under
both the Gardner and Section 17 interests. Also, what, if any, is
the nature of both parties' interests in Section 17.

The legal issues appear to include: whether the claimants are
entitled to their administrative claim.

2. [16-10643](#)-B-12 **IN RE: MARK FORREST**
[LKW-14](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
12-12-2017 [[202](#)]

LEONARD WELSH

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

Counsel will be awarded \$4,867.50 in fees and \$42.82 in costs.

3. [17-11591](#)-B-11 **IN RE: 5 C HOLDINGS, INC.**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
12-7-2017 [[189](#)]

LEONARD WELSH

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Creditor's Committee filed a timely, limited objection, objecting to the payment of the requested fees until all other allowed fees are paid, including fees allowed to the counsel of the Creditor's Committee as ordered on December 16, 2017. Additionally, the Committee has asked the court to order the accountant to file and serve a motion for compensation as the accountant has not done so since its appointment early on in this case.

Unless movant can convince the court otherwise, movant will be awarded \$4,325.00 in fees and \$58.43 in costs, but debtor shall not pay those fees until all other allowed fees are paid. Additionally, debtor shall submit an application for allowance of fees to its accountant, and set for hearing no later than February 8, 2018 at 10:30 a.m.

11:30 AM

1. [17-13690](#)-B-7 **IN RE: JUANA VASQUEZ**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
12-7-2017 [[13](#)]

OSCAR SWINTON

FINAL RULING: There will be no hearing on this matter.
 Counsel shall notify his clients that no
 appearance is necessary.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. In addition, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement.