

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, February 1, 2017
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [14-13200](#)-B-7 WAYNE/KAREN MARTIN MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
SETERUS, INC./MV 12-30-16 [86]
PETER BUNTING/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
DISCHARGED

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtors because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. Movant shall submit a proposed order. No appearance 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 proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied. The movant has failed to prove there is any equity in the collateral and thus no fees can be awarded pursuant to §506(b). Adequate protection is unnecessary in light of the relief granted herein.

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).

2. [15-12902](#)-B-7 MISAEAL AGUAYO
JES-4
JAMES SALVEN/MV

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF JAMES E. SALVEN
FOR JAMES E. SALVEN,
ACCOUNTANT(S)
11-10-16 [[43](#)]

JOHN BIANCO/Atty. for dbt.

The motion will be granted in part and denied in part without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults 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.

The motion will be granted as to the accountant time listed to "compile data re sale for return- .9; input data, review and finalize tax returns- 1.2; final processing and clearance letters- 1.0; prepare, file, and serve fee app- .8."

The motion will be denied as to the time charged for "prepare final fee application-1.1; serve fee application and est. time for hearing-1.0." This appears to be a duplicate for work that was already billed. The record does not show any application for interim fees, therefore there was no need for a "final fee application." In addition, no hearing will be required on this motion, so the estimated time for the hearing is inapplicable. Time was already listed for filing and serving the fee application. Additional time billed for serving the fee application should not be lumped with the estimated time for appearance at the hearing.

Finally, the fees for "prepare emp app-1.0" will be denied. The record shows that the employment application was prepared and filed by the trustee, JES-3, as was appropriate. The fees will be approved in the amount of \$975. The costs will be approved in the amount of \$210.40.

3. 15-13503-B-7 JANA RIPIPORTELLA
JES-2
JAMES SALVEN/MV
EDWARD KERNS/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
11-21-16 [73]

The motion will be granted in part and denied in part without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults 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.

The motion will be granted as to 9.2 hours. The motion will be denied with respect for .8 hours listed for "review for conflicts and prepare employment app-.8."

The court notes that the employment application is titled: "Trustee Peter L. Fear's Application for Authority to Employ Certified Public Accountant, Combined with Declaration in Support Thereof." The top left had corner lists, "James E. Salven, Certified Public Accountant, 8427 N. Millbrook, Suite 101, Fresno, CA 93720, (559) 230-1095." The DC No. Is JES-1. The application prays that the court "approve the employment of Salven for the purposes of rendering tax and accounting services to the estate as set forth above and as may be required by the Trustee, subject to the approval of any compensation by the court in accordance with Section 328(a)." The application is then dated and signed by Peter L. Fear, Trustee.

Generally the chapter 7 trustee prepares fee applications professionals that are not attorneys. Mr. Salven's employment was not sought for legal representation and, as a non-attorney, Mr. Salven is not authorized to represent the Trustee. It is not appropriate for Mr. Salven to charge the estate for the preparation and filing of an application for his employment on behalf of the trustee.

The application is approved in the amount of \$2,300 and costs \$342.14.

4. [15-14816](#)-B-7 MICHAEL SPRADLEY
RWR-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF COLEMAN AND
HOROWITT, LLP FOR RUSSELL W.
REYNOLDS, TRUSTEES ATTORNEY(S)
12-29-16 [[43](#)]

GABRIEL WADDELL/Atty. for dbt.

This matter will proceed as scheduled.

5. [13-10633](#)-B-7 OSCAR WALKER
JES-1
JAMES SALVEN/MV
JOSEPH HORSWILL/Atty. for dbt.

MOTION TO SELL
12-6-16 [[21](#)]

The matter will proceed as scheduled for submission of higher and better bids, if any.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults 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. It appears from the moving papers that the trustee has considered the standards of *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), and that the compromise pursuant to FRBP 9019 is a reasonable exercise of the trustee's business judgment.

6. [16-14437](#)-B-7 BRETT/KRISTIE MOGLIA
SW-1
ALLY FINANCIAL INC./MV
PETER FEAR/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-13-17 [[9](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtors' and the trustee's defaults and enter the following ruling granting the motion for relief from stay.

Tentative Ruling:

The automatic stay will be 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 movant shall submit a proposed order after hearing that specifically describes the property or action to which the order relates. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted as the vehicle is not in movant's possession and is depreciating.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied. The movant has failed to prove there is any equity in the collateral and thus no fees can be awarded pursuant to §506(b). Adequate protection is unnecessary in light of the relief granted herein.

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).

7. [16-13760](#)-B-7 CONCEPCION RAMIREZ
JES-1
JAMES SALVEN/MV

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-14-16 [[28](#)]

This matter will proceed as scheduled. It appears that the debtor's interest in the subject automobiles is solely as a co-signer on her family members' auto loans.

8. [16-12266](#)-B-7 AVTAR SINGH
DJP-1
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GURMEET SINGH
DEOL
1-4-17 [[43](#)]

MARK ZIMMERMAN/Atty. for dbt.
DON POOL/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults 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. It appears from the moving papers that the trustee has considered the standards of *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), and that the compromise pursuant to FRBP 9019 is a reasonable exercise of the trustee's business judgment.

9. [16-12266](#)-B-7 AVTAR SINGH
DJP-2
TRUDI MANFREDO/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GURVINDER SINGH
1-4-17 [[48](#)]

MARK ZIMMERMAN/Atty. for dbt.
DON POOL/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order. The court notes that the trustee's declaration, as well as the settlement agreement itself, are neither dated nor signed. The order shall provide that it will not be effective until and unless corrected documents, that are both dated and signed, are filed with the court. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults 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. It appears from the moving papers that the trustee has considered the standards of *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), and that the compromise pursuant to FRBP 9019 is a reasonable exercise of the trustee's business judgment.

10. [16-11869](#)-B-7 RICHARD/PEGGY BRESCIONE
JES-1
JAMES SALVEN/MV
PETER FEAR/Atty. for dbt.

MOTION FOR ADMINISTRATIVE
EXPENSES
12-5-16 [[59](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults 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. An interim distribution will be authorized to pay the taxes as an administrative expense.

11. [16-13175](#)-B-7 LYNELL GLOVER
UST-1
TRACY DAVIS/MV

JAMES MILLER/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE PURSUANT TO 11 U.S.C.
SECTION 707(B)
11-22-16 [[21](#)]

Based on the U.S. Trustee's status report, this matter will be continued to March 15, 2017, at 9:30 a.m. The court will enter an order. No appearance is necessary.

12. 16-13390-B-7 BANCHOP KANGDOUANGHNOT
APN-1
WELLS FARGO BANK, N.A./MV
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-3-17 [18]

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtor because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. Movant shall submit a proposed order. No appearance 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 proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted as the evidence is that the vehicle is in the debtor's possession and is depreciating.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied. The movant has failed to prove there is any equity in the collateral and thus no fees can be awarded pursuant to §506(b). Adequate protection is unnecessary in light of the relief granted herein.

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).