UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, February 2, 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.

1:30 P.M.

1. 14-12704-B-13 JUAN/MARIA BUSTAMANTE — MOTION TO MODIFY PLAN
TOG-3 — 12-21-16 [32]
JUAN BUSTAMANTE/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

This motion has been withdrawn. No appearance is necessary.

2. 12-12412-B-13 GREGRI/JESSICA DEGRANGE
FW-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER FEAR, DEBTORS ATTORNEY(S)
12-19-16 [79]

PETER FEAR/Atty. for dbt.

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion for compensation was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered.

The court notes that the applicant originally opted to be paid $3,500 pursuant to LBR 2016-1(c). The applicant has provided a marginal narrative explaining the "significant and unanticipated" work involved in the case. It is arguable whether any of the work listed could be said to be unanticipated in a 60-month plan, however the work was substantial, no one has objected, and the case appears to have been successful. The movant's burden of proof was met here primarily as it was based on the debtor's change in employment status.

3. 16-13925-B-13 CRISTIN FLORES
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

MOTION TO DISMISS CASE
12-28-16 [19]

This case has already been dismissed. No appearance is necessary.

4. 17-10028-B-13 MANSOUR/PHEBE TOPALIAN
BDB-1
MANSOUR TOPALIAN/MV
BENNY BARCO/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
1-17-17 [10]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the debtor, 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 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. It appears the debtors' became behind in their previous case because they assisted their son. That son now lives with debtors and therefore the assistance should no longer be necessary. The son contributes to household expenses making the debtors' situation different than before. In addition, the debtors are attempting to reorganize to save their home, and so the chapter 13 automatic stay is necessary. Accordingly, 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.

5. 16-13833-B-13 KELLY AVILA
JDR-1
KELLY AVILA/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO CONFIRM PLAN
12-22-16 [23]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

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.

6. 16-13950-B-13 SUSAN COX
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
12-19-16 [26]

The trustee's motion has been withdrawn. No appearance is necessary.

7. 16-10361-B-13 LODGERIO/ANTONIA JORGE
PLG-2
LODGERIO JORGE/MV
STEVEN ALPERT/Atty. for dbt.

OBJECTION TO CLAIM OF CAVALRY SPV 1, LLC, CLAIM NUMBER 8
12-19-16 [82]

The objection will be sustained without oral argument based on well-pled facts. The objecting 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 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 claim will be disallowed in full on the grounds stated in the objection. Based on the evidence submitted in support of the objection and from the proof of claim itself, it appears this claim is time-barred by the applicable statute of limitations.

8. 17-10064-B-13 JOE HAYES — MOTION TO IMPOSE AUTOMATIC STAY
JRL-1 — 1-18-17 [13]
JOE HAYES/MV
JERRY LOWE/Atty. for dbt.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the debtor, 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.

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period. 11 U.S.C. §362(c)(3)(C). In addition, the presumption also arises if the debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. §362(c)(3)(C)(i)(II)(aa). Inadvertence or negligence, generally, are not a "substantial excuse."

Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a). 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. The evidence shows that the debtor was a victim of fraud and was misled by others into filing the prior two cases pro se without intending to proceed with the case. In this subsequent case the debtor has retained counsel and the record shows that

all of the documents have been filed. The debtor's proposed chapter 13 plan provides for 100% payment of unsecured claims.

Accordingly, the motion will be granted and the automatic stay imposed 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.

9. 16-14365-B-13 TOG-1
ESTEBAN ARIAS AND SOFIA HERNANDEZ
ESTEBAN ARIAS/MV
THOMAS GILLIS/Atty. for dbt.
MOTION TO VALUE COLLATERAL OF KAY JEWELERS, INC.
1-4-17 [18]

The motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

The named respondent in the motion is "Kay Jewelers, Inc." Based on the proof of claim, the holder of this lien appears to be "Sterling Jewelers Inc. DBA Kay Jewelers." It does not appear that "Kay Jewelers" is a corporation, and mailing to the attention of the "Proof of Service Officer" is not notice on an agent for service of process or officer of a corporation.

10. 17-10076-B-13 JRL-1
ALVINO GARCIA
ALVINO GARCIA/MV
JERRY LOWE/Atty. for dbt.
MOTION TO IMPOSE AUTOMATIC STAY
1-18-17 [12]

This matter will be called as scheduled.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the debtor, 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, however opposition has been filed by the holder of a secured claim.

11. 16-11878-B-13 SHANA SHIELDS
JDM-4
SHANA SHIELDS/MV
JAMES MILLER/Atty. for dbt.

OBJECTION TO CLAIM OF NETCREDIT, CLAIM NUMBER 20-1
12-19-16 [55]

The objection will be sustained without oral argument based on well-pled facts. The objecting 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 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 claim will be disallowed in full on the grounds stated in the objection. Based on the evidence submitted in support of the objection it appears that the claim was filed after the bar date.

12. 16-14385-B-13 NANCY MCFADIN
SL-2
NANCY MCFADIN/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
1-18-17 [28]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by LBR 9014-1(f)(2). Consequently, the debtor, 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 debtor's petition was filed in good faith, and it intends to grant the motion to extend/impose the automatic stay. According to the debtor's declaration and the declaration by her daughter submitted in support of this motion, the debtor suffers from short-term memory issues and her daughter will be assisting her in complying with her obligations in this case. 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.

13. 16-14386-B-13 REE BRUCE — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-11-17 [19]

JERRY LOWE/Atty. for dbt.

This matter will proceed as scheduled.

14. 16-13487-B-13 SHANIE MATEIRO
HDP-1
TRINITY FINANCIAL SERVICES LLC/MV
AMANDA BILLYARD/Atty. for dbt.
HENRY PALOCI/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO VACATE
1-5-17 [40]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to issue the following ruling denying the motion without prejudice and striking the debtor's sur-reply. The court will issue an order after the hearing.

The movant requests an order setting aside, vacating, or reversing its order, dated December 14, 2016, granting the debtor's motion to value the collateral securing its lien.

The movant appears to bring the motion on two alternative grounds. Citing only FRCP 5(b)(1), movant first suggests that the court made an "unintentional mistake" in finding that service was proper. Movant contends that, because movant's attorney appeared in the debtor's previous case, and because the debtor's attorney in this case was the same attorney in the previous case, service of the valuation motion in this case was required to be made on that attorney. This is simply not the case and the movant cites no law otherwise. The law is that service under FRCP 5(b)(made applicable by FRBP 7005) is required only after a party has appeared through their attorney. *See* FRBP 9014. Here, the motion to value was served in accordance with Rule 7004. *See* FRBP 9014(b). Dreambuilder Investments LLC and Trinity Financial Services LLC ("Trinity") were served with the motion properly. (Doc. #23).

Second, movant contends that it was "excusable neglect" on its part not to notify its attorney when it received the debtor's motion to value the collateral. The record shows that the debtor served the motion on the entity and individual designated by the movant for service of process for Trinity Financial Services, LLC, as listed on the California Secretary of State's website. (Incorp Services, Inc., is listed as its agent for service of process. Incorp Services, Inc., lists Diane Kalinowski, at 5716 Corsa Ave., Ste 110, Westlake Village, CA 91362-7354.) The motion is not accompanied by any admissible evidence to support movant's contention that it should be excused from its default in the valuation motion. Mr. Paloci's declaration states that Trinity did not advise him that it received the motion to value (Doc. #42). Mr. Paloci states that Trinity "assumed" that he would have received notice as well. First, Mr. Paloci is not a competent witness to testify as to his client's state of mind. Second, the testimony is inconsistent with movant's position. Trinity notified Mr. Paloci when the debtor's chapter 7 case was filed and he filed a successful stay relief motion. Thus, Trinity is not unsophisticated or unfamiliar with the importance of notice. Notably absent from movant's motion is any evidence that Trinity acted in any way supporting the necessity of service on its counsel.

The debtor's valuation motion was supported by an appraisal valuing the Boron real property at $80,000 (Doc. #22) as of August 21, 2016, approximately 30 days prior to the filing of this case. In contrast, movant contends the property is worth $135,000, however this motion is not supported by admissible evidence that movant would prevail in the valuation motion should the court vacate the order. Mr. Paloci is not qualified as a valuation expert and is not competent to testify as to value. In his declaration in reply, Mr. Paloci states he has been practicing real estate law for approximately 20 years and during part of that time he was a real estate broker. In addition to being inappropriate reply evidence, even if the court accepted the statements, it changes nothing. Mr. Paloci is not testifying as an expert. Also, he admits his basis for valuation are third party sources which are hearsay. He provides no evidence of reliability. Finally, since he is not an expert his testimony cannot rely on third party sources.

In reply, Trinity argues it is not an insured depository institution, thus service under Rule 7004(h) does not apply and argues that *In re Frates*, 507 B.R. 298 (9th Cir., 2014), does not apply to this case. The issue in *Frates* was not counsel's authority to receive service but, rather, the requirement that counsel be served, since California law seemingly contradicted bankruptcy service rules. Movant ignores the fact that in this case debtor did comply with bankruptcy service rules. The issue here is whether movant's counsel should also have received service.

Neither debtor nor Trinity presented any evidence that Trinity explicitly conveyed on Mr. Paloci the authority to accept service of process in *this* bankruptcy case. *See*, FRBP 7004(b)(8). If agency to accept service is to be implied, it must be implied by the circumstances accompanying the attorney's appointment which indicates the extent of authority the client intended to confer. *In re Focus Media Inc.*, 387 F.3d 1077, 1083 (9th Cir., 2004). Moreover, an agent's authority to act cannot be established solely by the agent's actions. Rather, the authority must be established by an act of the principal. *Focus Media,* 387 at 1084. *See also Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (BAP 9th Cir., 2004) ("Debtor did not provide any evidence that attorney was either explicitly or implicitly appointed by Beneficial to receive service of process."). The court rejects movant's unsupported accusation that debtor's counsel purposely avoided serving its counsel. Rather, the evidence is that debtor's counsel complied with the requirements of FRBP 7004 in serving the motion to value. Further, it is befuddling that neither the motion nor the reply contained any evidence from Trinity as to the representations made by their attorney, Mr. Paloci. No relevant statement as to counsel's authority is included in the motion.

The court is also aware, however, that the effect of the December 14, 2016, order valuing movant's secured claim at $0, subject to certain conditions, is of significant importance. The Supreme Court in *Jones v. Flowers*, 547 U.S. 220, 234 (2008) emphasized "the need for 'reasonable additional steps' when a property right would be extinguished and there is reason to doubt

the efficacy of notice." (*Followed in, In re Meyer*, 373 B.R. 84, 93 (9th Cir. BAP, 2007) (J. Klein, *concurring*). When the court granted the motion to value, it did not extinguish Trinity's property right. Rather, the court merely valued Trinity's collateral. Federal Rule of Bankruptcy Procedure 3012 permits that procedure by motion. If the conditions in the order are met, the movant's claim is found to be wholly unsecured. In *Jones*, the Supreme Court reiterated that due process requires notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Jones*, 547 U.S. at 226, quoting *Mullane v. Cent. Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). The notice that is required "will vary with the circumstances and conditions." *Jones*, 547 U.S. at 227, *quoting Walker v. City of Hutchison*, 352 U.S. 112, 115 (1956); *Meyer*, 373 B.R. at 93-94. If there is reason to think notice may not have been effective, then "additional reasonable steps" may be needed "if practicable to do so." *Meyer,* 373 B.R. at 94, *quoting Jones*, 547 U.S. at 233.

Mr. Paloci was counsel for Trinity in the debtor's prior chapter 7 case (16-11242). Trinity filed a stay relief motion and was awarded stay relief. Mr. Paloci filed that motion. Debtor's current counsel was also debtor's counsel in the previous case. On this record, however, it is not possible to determine how or if notice of the motion to value the Boron real property was of doubtful effectiveness. More fundamentally, there is no evidence of Trinity's excuse other than Mr. Paloci's conjecture. No evidence of Mr. Paloci's implied agency relationship is present either. As to Trinity's alleged contrary valuation evidence, this court takes judicial notice of the fact that, in the chapter 7 case, and only 7-1/2 months ago, Trinity accepted the debtor's position that the Boron real property was worth $112,127 (see Doc. # 27 in case 16-11242), however contends here that it is worth $135,000. No explanation for this discrepancy is provided.

The court is aware the debtor filed a sur-reply on January 30, 2017 (Doc. #56) responding the Trinity's reply. The Local Rules do not provide for sur-replies absent a prior court order. LBR 9014-1(f)(1)(C),(D). The court therefore strikes the sur-reply. LBR 9014-1(l).