

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 15, 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.	17-10019 -B-7	SANDRA BENNETT	MOTION FOR RELIEF FROM
	SRH-1		AUTOMATIC STAY
	DANIEL BARTAL/MV		1-31-17 [21]
	STEVEN HRDLICKA/Atty. for mv.		
	DANIEL BARTAL VS.		

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

The proof of service does not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2016), Section II.D.

The court notes that the facts listed in the motion and declaration show that the automatic stay does not apply to the state court litigation, the unlawful detainer. It appears that movant obtained a writ of possession prior to the filing of this petition. In that the debtor did not avail herself of the protection of § 362(1)(1), the automatic stay would not apply to the unlawful detainer litigation, however, the motion was filed without admissible supporting evidence as required by LBR 9014-1(d)(7). The declaration of movant's attorney, without more, is insufficient to make the required findings of fact. Further, because the automatic stay did not arise and the debtor has not reserved possessory rights as permitted by law, the movant is not entitled to an order under §362(j).

2. [16-12821](#)-B-7 FRANCESCO SIMONE
JRL-2
FRANCESCO SIMONE/MV

MARIO LANGONE/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF NATIONWIDE MUTUAL INSURANCE
COMPANY
11-9-16 [[23](#)]

The motion will be denied. The court will enter an order. No appearance is necessary.

This motion was continued to permit the debtor to submit evidence that he held an ownership interest in his exempt residence at the time the judgment lien attached. Pursuant to the debtor's second supplemental declaration, he did not hold such an interest. Without citation to any authority for the proposition, he contends that he held an "equitable" interest and therefore may avoid the judicial lien recorded on January 16, 2007, in the amount of \$4,715.33. The quit claim deed by which the debtor holds an interest in the residence was recorded in 2011. Pursuant to *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991), and *In re Pederson*, 230 B.R. 158 (BAP 9th 1999) [debtor's homestead exemption on after-acquired property is subject to the lien which cannot be avoided]. While a lien can be avoided on exempt property by motion under FRBP 4003(d), the determination of whether the debtor has an interest in real property that may be exempted requires an adversary proceeding. FRBP 7001(2).

3. [16-12226](#)-B-7 MICHAEL GRIFFIN AND NANCY
JES-1 PAGE-GRIFFIN
JAMES SALVEN/MV
JERRY LOWE/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
10-6-16 [[46](#)]

This matter will proceed as scheduled. The court has reviewed the trustee's status conference statement filed February 10, 2017, and intends to inquire as to the general terms of the proposed stipulation being circulated for signatures. If this matter is continued at this hearing, the court will issue an order.

4. [16-13426](#)-B-7 LORENA LIGHT
JVH-1
LORENA LIGHT/MV
JEFFREY HERNANDEZ/Atty. for dbt.

MOTION TO EXTEND TIME
1-17-17 [[19](#)]

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. The time for the debtor to file any reaffirmation agreements will be extended for 30 days to February 2, 2017.

The court notes that this deadline extension has already passed, however the debtor has until her discharge is entered to enter into a reaffirmation agreement.

5. [17-10229](#)-B-7 PAUL BUNYAN
PK-1
LORA BOZARTH/MV
PATRICK KAVANAGH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-31-17 [[14](#)]

This motion for relief from the automatic stay will be denied without prejudice. The court will enter an order. No appearance is necessary.

The movant failed to file a separate relief from stay information sheet pursuant to LBR 4001-1(a)(3). Although it appears that the information sheet was served, and it was filed as a part of the proof of service, the local rule requires that it is filed separately.

This motion will be denied for various technical and substantive reasons. The court will enter an order. No appearance is necessary.

The court notes that the debtor was represented by an attorney when they filed this bankruptcy case. The debtors have now filed *pro se* pleadings seeking to reopen in order to avoid the judicial lien filed against them prior to the filing of their case.

First, before the court can consider this motion, the fee for reopening a closed case, or approval of a fee waiver, is required.

Second, the moving papers do not comply with the local bankruptcy rules, including the following:

1. The record does not establish that the motion was served on the named respondent, Mohawk Factoring, Inc., in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(3) (corporation, partnership or unincorporated association). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Information regarding service on a corporation may be obtained from the California Secretary of State's Internet Website, see <http://kepler.sos.ca.gov/>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004.
2. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 28 days' notice. The language in the notice requires written response within 14 days of the hearing, therefore the motion was also not filed in compliance with LBR 9014-1(f)(2). No order shortening or modifying notice was sought or obtained.
3. The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).
4. The moving papers were not filed in compliance with LBR 9014-1(d)(3), which requires the notice to be separately filed.
5. The motion was filed without admissible supporting evidence: a) of the value of the property to be protected as of the time of the filing of the petition and the amount of the unavoidable first mortgage; b) that the debtors owned an interest in the subject real property prior to the recording of the abstract of judgement (*Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991)), as required by Local Rule of Bankruptcy Procedure 9014-1(d)(7).

7. [16-12042](#)-B-7 NATHAN SALAZAR
SL-2
NATHAN SALAZAR/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK, FSB
1-19-17 [[30](#)]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondent's default 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.

8. [16-14055](#)-B-7 JORGE ALCALAN
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
12-20-16 [[11](#)]

THOMAS GILLIS/Atty. for dbt.

The motion is conditionally denied. Debtor's counsel shall notify his client that no appearance is necessary at this hearing. The court will issue an order.

The debtor shall attend the meeting of creditors rescheduled for February 15, 2017, at 9:30 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

9. [16-11462](#)-B-7 DWAYNE/MAGDALENA SHARP
RHT-3
ROBERT HAWKINS/MV
PETER BUNTING/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
1-25-17 [[34](#)]

This matter 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.

10. [16-13665](#)-B-7 CHRISTOPHER/ANGELA CONTINUED MOTION FOR RELIEF
EGS-2 ELLENBURG FROM AUTOMATIC STAY
GUILD MORTGAGE COMPANY/MV 1-5-17 [[23](#)]
NEIL SCHWARTZ/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.
DISCHARGED

This matter was continued at the movant's request. On January 25, 2017, the movant filed the notice of continued hearing. Accordingly, this matter will proceed as scheduled.

11. [16-12669](#)-B-7 TERESA GARCIA MOTION TO SELL
JES-2 11-8-16 [[21](#)]
JAMES SALVEN/MV

This motion will proceed as scheduled only for submission of higher and better bids, if any.

The motion was fully noticed in compliance with the Local Rules of Practice and no opposition was filed. 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. The moving party shall submit a proposed order after the hearing.

12. [15-14470](#)-B-7 RAUL/RAQUEL REYES MOTION TO SELL
TGM-3 1-16-17 [[41](#)]
PETER FEAR/MV
STEVE FOX/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

This motion will proceed as scheduled only for submission of higher and better bids, if any.

The motion was fully noticed in compliance with the Local Rules of Practice and no opposition was filed. 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. The moving party shall submit a proposed order after the hearing.

13. [16-14472](#)-B-7 SWARAN SINGH
JWC-1
WELLS FARGO EQUIPMENT FINANCE,
INC./MV
JENNIFER CRASTZ/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-27-17 [[24](#)]

This motion was served pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. The court intends to inquire as to movant's interest in collateral 1, which is listed with an intention to surrender on debtor's Statement of Intent, however the same document indicates that Hitachi holds the secured claim. More information may be required.

14. [17-10186](#)-B-7 MICHAEL BEGGS
JDR-1
MICHAEL BEGGS/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
1-26-17 [[7](#)]

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.

15. [16-14294](#)-B-7 BRIAN WILLIAMS
RLM-1
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY/MV
ERIC ESCAMILLA/Atty. for dbt.
RICHARD MAHFOUZ/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-18-17 [[22](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the debtor's insurance policy only under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the action to which the order relates. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

16. 16-13697-B-7 SCOTT/KELLY ALLRED
TMT-2
TRUDI MANFREDO/MV
PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
1-18-17 [27]

This motion will proceed as scheduled only for submission of higher and better bids, if any.

The motion was fully noticed in compliance with the Local Rules of Practice and no opposition was filed. 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. The moving party shall submit a proposed order after the hearing.

17. 16-14009-B-7 LAURA BAUTISTA

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
1-5-17 [43]

DISMISSED

This matter will proceed as scheduled.

11:00 A.M.

1. [16-14600](#)-B-7 STEPHANIE/PETER FARIAS PRO SE REAFFIRMATION AGREEMENT
WITH ALLY FINANCIAL
1-17-17 [[17](#)]

This matter will proceed as scheduled.

2. [16-14132](#)-B-7 REYNALDO/MARIA CERVANTES REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
1-19-17 [[13](#)]

TIMOTHY SPRINGER/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when they 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). In this case, the certification of the debtors' attorney indicates that there is a presumption of undue hardship that has not been rebutted. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [16-14167](#)-B-7 TINA MURKOWSKI PRO SE REAFFIRMATION AGREEMENT
WITH TD RETAIL CARD SERVICES/
MOR FURNITURE
1-27-17 [[13](#)]

MICHAEL ARNOLD/Atty. for dbt.

The hearing will be dropped from calendar. No appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. 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. The debtor shall have 14 days to re-file the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 P.M.

1. [16-12310](#)-B-13 ROBIN RANK
[16-1092](#)
MCT GROUP, INC. V. RANK
ALAN WILLIAMS/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-23-16 [[1](#)]

This matter will proceed as scheduled. The court will inquire into progress toward settlement.

2. [16-10643](#)-B-12 MARK FORREST
[16-1088](#)
MADRIGAL V. FORREST
DANIEL STEIN/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-29-16 [[1](#)]

This matter will proceed as scheduled. Based on the court's review of the plaintiff's status conference statement filed February 8, 2017, the hearing will proceed as a scheduling conference. The parties shall be prepared to set dates for pre-trial proceedings.