

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**  
**Honorable René Lastreto**  
**Hearing Date: Wednesday, May 25, 2016**  
**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 a civil minute 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. [16-11005](#)-B-7 FRANCISCO/CINDY SUAREZ MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
BMW FINANCIAL SERVICES NA, 4-20-16 [[10](#)]  
LLC/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

The motion will be granted. 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 and there was no opposition. The debtors' default will be entered. 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 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. 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 without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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). No appearance is necessary.

2. [16-10110](#)-B-7 KIO YOON

KIO YOON/MV  
KIO YOON/Atty. for mv.  
DISMISSED

MOTION TO VACATE DISMISSAL OF  
CASE  
4-28-16 [[70](#)]

The motion will be denied. No appearance is necessary. The court will enter a civil minute order.

The notice and/or pleadings do not comply with Local Bankruptcy Rule 9014-1(c) and Appendix II, EDC.002-901, Eastern District Bankruptcy Court's Guidelines for the Preparation of Documents (effective December 29, 2008). The motion did not have a docket control number, the notice and motion were not filed as separate documents, and the proof of service was not filed as a separate document. Also, the proof of service that was filed with the moving papers did not show that any party in interest was served.

In addition, the movant presented no factual or legal bases for FRCP 60(b) relief. None of the facts submitted are "newly discovered" (FRCP 60(b)(2) incorporated by FRBP 9024). While the movant does suggest that, while the case was pending, movant made mistakes (i.e., movant asserts an attempt to "re-schedule" the §341(a) meeting, failure to timely file schedules, etc.), the movant was given opportunities to do so by the trustee and by the court. Thus, that ground for the motion lacks merit.

Finally, the court did not issue an order finding this case was filed in "bad faith." The court did state on the record that a subsequent bankruptcy filing may be viewed by a judge as filed in "bad faith." However, no such finding was made in this case.

3. [16-10112](#)-B-7 CHANG WOO

CHANG WOO/MV  
CHANG WOO/Atty. for mv.  
DISMISSED

MOTION TO VACATE DISMISSAL OF  
CASE

4-28-16 [[71](#)]

The motion will be denied. No appearance is necessary. The court will enter a civil minute order.

The notice and/or pleadings do not comply with Local Bankruptcy Rule 9014-1(c) and Appendix II, EDC.002-901, Eastern District Bankruptcy Court's Guidelines for the Preparation of Documents (effective December 29, 2008). The motion did not have a docket control number, the notice and motion were not filed as separate documents, and the proof of service was not filed as a separate document. Also, the proof of service that was filed with the moving papers did not show that any party in interest was served.

In addition, the movant presented no factual or legal bases for FRCP 60(b) relief. None of the facts submitted are "newly discovered" (FRCP 60(b)(2) incorporated by FRBP 9024). While the movant does suggest that, while the case was pending, movant made mistakes (i.e., movant asserts an attempt to "re-schedule" the §341(a) meeting, failure to timely file schedules, etc.), the movant was given opportunities to do so by the trustee and by the court. Thus, that ground for the motion lacks merit.

Finally, the court did not issue an order finding this case was filed in "bad faith." The court did state on the record that a subsequent bankruptcy filing may be viewed by a judge as filed in "bad faith." However, no such finding was made in this case.

4. [16-10115](#)-B-7 KYOUNG HAN  
KYOUNG HAN/MV  
KYOUNG HAN/Atty. for mv.  
DISMISSED

MOTION TO VACATE DISMISSAL OF  
CASE  
4-28-16 [[73](#)]

The motion will be denied. No appearance is necessary. The court will enter a civil minute order.

The notice and/or pleadings do not comply with Local Bankruptcy Rule 9014-1(c) and Appendix II, EDC.002-901, Eastern District Bankruptcy Court's Guidelines for the Preparation of Documents (effective December 29, 2008). The motion did not have a docket control number, the notice and motion were not filed as separate documents, and the proof of service was not filed as a separate document. Also, the proof of service that was filed with the moving papers did not show that any party in interest was served.

In addition, the movant presented no factual or legal bases for FRCP 60(b) relief. None of the facts submitted are "newly discovered" (FRCP 60(b)(2) incorporated by FRBP 9024). While the movant does suggest that, while the case was pending, movant made mistakes (i.e., movant asserts an attempt to "re-schedule" the §341(a) meeting, failure to timely file schedules, etc.), the movant was given opportunities to do so by the trustee and by the court. Thus, that ground for the motion lacks merit.

Finally, the court did not issue an order finding this case was filed in "bad faith." The court did state on the record that a subsequent bankruptcy filing may be viewed by a judge as filed in "bad faith." However, no such finding was made in this case.

5. [15-14225](#)-B-7 LETICIA CAMACHO  
CAA-2  
CARLOS GARCIA/MV  
GLEN GATES/Atty. for dbt.  
CYNTHIA ARROYO/Atty. for mv.

MOTION BY CYNTHIA A. ARROYO TO  
WITHDRAW AS ATTORNEY  
4-25-16 [[60](#)]

The motion will be granted. The moving party shall submit a proposed order as specified below. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Carlos Garcia was served at P.O. Box 53, Orange Cove, CA, 93646. Accordingly, his default will be entered and the motion will be granted without oral argument for cause shown. The order shall state the last know address(es) of Carlos Garcia.

6. [16-11629](#)-B-7 LEOPOLLO SOTO  
WAR-1  
JAMES FLEMING/MV  
WILLIAM ROMAINE/Atty. for mv.

MOTION TO DISMISS CASE  
5-11-16 [[14](#)]

**The motion will be continued to June 22, 2016, at 9:30 a.m. No appearance is necessary. The court will enter a civil minute order.**

**The form of the proof of service does not comply with Local Bankruptcy Rule 9014-1(d) (2) and/or 9004-1 and needs to be amended (see Local Rules, Appendix II, EDC.002-901, Revised Guidelines for the Preparation of Documents (5)).**

**The court notes that the motion would have been denied on its merits as §109(h) (1) is not jurisdictional. 28 U.S.C. §1334, §157(a), and §157(b) (2) (A).**

7. [14-13430](#)-B-7 STEPHEN/JENNIFER FORD  
PFT-5  
PETER FEAR/MV  
MICHAEL ARNOLD/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL  
4-20-16 [[76](#)]

**The motion will be granted. The hearing will go forward for higher and better bids.**

**This motion to sell property of the estate was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' default will be entered. The sale will be approved subject to higher and better bids. FRBP 6004(h) will be waived.**

**The moving party shall submit a proposed order after the hearing.**

8. [15-12668](#)-B-7 JOHN/JULIE KENT  
RWR-2  
JAMES SALVEN/MV

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH KASPARIAN PAINT  
CENTER  
4-21-16 [[19](#)]

PETER BUNTING/Atty. for dbt.  
RUSSELL REYNOLDS/Atty. for mv.

**The motion will be granted. No appearance is necessary.**

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' default will be entered and the motion will be granted based on the court's review of the record and well-pled facts.**

**The moving party shall submit a proposed order.**

9. [16-10871](#)-B-7 CHRISTINE TAMONTRI-WELLS OPPOSITION RE: TRUSTEE'S MOTION  
TMT-1 TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
4-19-16 [[17](#)]

JOEL WINTER/Atty. for dbt.

**No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for June 6, 2016, at 8:30 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.**

10. [16-11080](#)-B-7 JAVIER/CECELIA IBARRA MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A./MV 4-26-16 [[15](#)]  
SCOTT LYONS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

**The motion will be granted. 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 and there was no opposition. The debtors' default will be entered. 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 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will 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 without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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). No appearance is necessary.

11. [16-10995](#)-B-7 JILL HOFFMAN  
JRL-1  
AUTO DEPOT/MV  
TIMOTHY SPRINGER/Atty. for dbt.  
JERRY LOWE/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-27-16 [[15](#)]

**The motion will be denied without prejudice. No appearance is necessary. The court will enter a civil minute order.**

**The moving papers were not served on the debtor at the address of record in effect at the time of service.**

12. [16-11198](#)-B-7 AARON/LINDA FORD  
KR-1  
VEROS CREDIT/MV  
MARK ZIMMERMAN/Atty. for dbt.  
KAREL ROCHA/Atty. for mv.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-6-16 [[13](#)]

**This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtors' defaults and grant the motion for relief from stay.**

**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 movant shall submit a proposed order after hearing that specifically describes 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 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will 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 without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.**

**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). No appearance is necessary.**

13. [15-13617](#)-B-7 JOSE/YOLANDA GUTIERREZ  
PFT-2  
PETER FEAR/MV

CONTINUED MOTION TO EMPLOY  
GUARANTEE REAL ESTATE AS  
BROKER(S)  
4-18-16 [[30](#)]

MARK ZIMMERMAN/Atty. for dbt.  
PETER FEAR/Atty. for mv.

**The motion will be granted. No appearance is necessary. The trustee shall prepare a proposed order.**

This motion was originally filed as an *ex parte* motion for employment of a real estate broker. Based on its review of the the scheduled value of the real property and the debtors' claimed exemptions, the court set the matter for a hearing. No response was timely filed and the defaults of debtors were entered. The motion was continued at the trustee's request and the trustee filed a supplemental declaration on May 4, 2016, setting forth the reasons for hiring a real estate broker notwithstanding the scheduled value and claimed exemptions. Based on the court's review of the record and the trustee's supplemental declaration, the motion will be granted.

1:30 P.M.

1. [15-11311](#)-B-7 CHRISTOPHER/KERRI TYSON PRETRIAL CONFERENCE RE: AMENDED  
[15-1087](#) COMPLAINT  
TYSON V. AMERICAN EDUCATION 10-29-15 [[25](#)]  
SERVICES, INC. ET AL  
SCOTT LYONS/Atty. for pl.  
RESPONSIVE PLEADING

**This matter will be called as scheduled. The parties should be prepared for the court to set a trial date. The court will consider sanctions for the parties' failure to file pretrial statements pursuant to the court's scheduling order issued January 20, 2016. The parties are reminded that pursuant to the scheduling order, only trial counsel shall appear and no telephonic appearances will be permitted.**

2. [15-11120](#)-B-7 NANCY ANGIN CONTINUED STATUS CONFERENCE RE:  
[15-1080](#) AMENDED COMPLAINT  
UNITED STATES V. ANGIN 10-1-15 [[16](#)]  
JEFFREY LODGE/Atty. for pl.  
DISMISSED 5/12/16

**This adversary proceeding has already been dismissed pursuant to stipulation of the parties and order of the court entered May 12, 2016. No appearance is necessary.**

3. [15-14225](#)-B-7 LETICIA CAMACHO CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
CARLOS GARCIA/MV 12-23-15 [[15](#)]  
GLEN GATES/Atty. for dbt.  
CYNTHIA ARROYO/Atty. for mv.  
DISCHARGED, RESPONSIVE  
PLEADING

**This matter will proceed as a status conference with calendar items numbers 4, 5, and 6.**

4. [15-14225](#)-B-7 LETICIA CAMACHO CONTINUED STATUS CONFERENCE RE:  
[16-1009](#) COMPLAINT  
CAMACHO V. GARCIA ET AL 1-19-16 [[1](#)]  
GLEN GATES/Atty. for pl.  
RESPONSIVE PLEADING

**This matter will be called as scheduled. The court will consider ordering sanctions for plaintiff's failure to file a status report by May 18, 2016, as ordered. Also, the court will issue an Order to Show Cause why the case should not be dismissed for failure to prosecute.**

5. [15-14228](#)-B-13 OSCAR GUTIERREZ CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
12-23-15 [[21](#)]  
CARLOS GARCIA/MV  
GLEN GATES/Atty. for dbt.  
CYNTHIA ARROYO/Atty. for mv.  
RESPONSIVE PLEADING

**This matter will proceed as a status conference with calendar items numbers 3, 4, and 6.**

6. [15-14228](#)-B-13 OSCAR GUTIERREZ CONTINUED STATUS CONFERENCE RE:  
[16-1010](#) COMPLAINT  
GUTIERREZ V. GARCIA ET AL 1-19-16 [[1](#)]  
GLEN GATES/Atty. for pl.

**This matter will be called as scheduled. The court will consider ordering sanctions for plaintiff's failure to file a status report by May 18, 2016, as ordered. Also, the court will issue an Order to Show Cause why the case should not be dismissed for failure to prosecute.**

7. [11-61329](#)-B-7 SHERREY DEAVER MOTION FOR ENTRY OF DEFAULT  
[16-1021](#) UST-1 JUDGMENT  
U.S. TRUSTEE V. DEAVER 4-22-16 [[13](#)]  
ROBIN TUBESING/Atty. for mv.

**The motion will be granted. No appearance is necessary. The U.S. Trustee shall submit a proposed order.**

The debtor's default has already been entered. A default judgment will be entered based on the court's review of the record and well-pled facts. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters. 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 plaintiff has done so here.

The debtor filed a chapter 7 bankruptcy petition on October 13, 2011, which she converted to chapter 13 after the chapter 7 trustee discovered undisclosed assets. The debtor amended schedules B and I to disclose her interest in an inheritance and trust and a monthly distribution from the latter. She confirmed a plan that paid all allowed claims in full plus statutory interest. The debtor's schedules did not disclose her actual distribution from the trust and, during the course of the case the debtor received her entire interest in the trust, approximately \$80,000. Prior to completion of the plan the case was re-converted to chapter 7 because of the debtor's failure to make plan payments. An accounting of the disposition of the trust proceeds requested by the chapter 7 trustee was never provided. The debtor's discharge will be denied.

8. [15-14833](#)-B-7 FRED ALLEN  
[16-1035](#)  
STERLING PACIFIC LENDING, INC.  
V. ALLEN  
PETER FEAR/Atty. for pl.  
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT  
3-28-16 [[1](#)]

**This matter will be called as scheduled.**

9. [15-14440](#)-B-13 CESAR RODRIGUEZ  
[15-1144](#) UST-1  
U.S. TRUSTEE V. RODRIGUEZ  
GREGORY POWELL/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT  
JUDGMENT  
3-24-16 [[12](#)]

**The motion will be granted. No appearance is necessary. The U.S. Trustee shall submit a proposed order.**

The debtor's default has already been entered. A default judgment will be entered based on the court's review of the record and well-pled facts. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters. 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 plaintiff has done so here.

The debtor has filed five cases in fewer than seven years. A chapter 7 discharge was entered in the first case, filed June 6, 2009. The subsequent four cases did not disclose the prior cases and each were dismissed for, either, failing to make plan payments, failing to timely file documents, or failing to appear at the §341 meeting of creditors. The debtor will be enjoined from filing a bankruptcy case without prior order of the court for a period of two years.

10. [16-10169](#)-B-13 FRANK/MARY ANNE DORES  
FW-1  
FRANK DORES/MV  
PETER FEAR/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION FOR CONTEMPT  
1-28-16 [[7](#)]

**The matter will be called as scheduled. Documents resolving the issues were not submitted, therefore it will proceed as a status conference with calendar number 11. Telephonic appearances will be permitted.**

11. [16-10169](#)-B-13 FRANK/MARY ANNE DORES  
FW-1  
BUNNETT & CO., INC./MV

CONTINUED AMENDED MOTION FOR  
RELIEF FROM AUTOMATIC STAY,  
AMENDED MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
3-15-16 [[73](#)]

PETER FEAR/Atty. for dbt.  
ANDREW MINEAR/Atty. for mv.  
RESPONSIVE PLEADING

**The matter will be called as scheduled. Documents resolving the issues were not submitted, therefore it will proceed as a status conference with calendar number 10. Telephonic appearances will be permitted.**