

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Friday, July 7, 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. [13-14140](#)-B-13 JIM/PAMILA HESTILY MOTION TO MODIFY PLAN
SL-6 5-15-17 [[116](#)]
JIM HESTILY/MV
STEPHEN LABIAK/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled unless the debtors file a stipulation before the hearing agreeing to increase the plan payment in the order confirming that is consistent with the trustee's objection.

2. [12-12441](#)-B-13 JOHN/SHERIANN PAWLIK MOTION TO DETERMINE FINAL CURE
MHM-2 AND MORTGAGE PAYMENT RULE
MICHAEL MEYER/MV 3002.1
6-6-17 [[124](#)]
JULIUS ENGEL/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered. The court will find that: (1) Federal National Mortgage Association c/o Seterus Inc., and its successors in interest are precluded from presenting any omitted information, which was required to be provided in the response to the Notice of Final Cure, pursuant to 3002.1(i), in any form in any contested matter regarding Debtors' first mortgage herein; (2) Debtors have cured the default on the loan with Federal National Mortgage Association c/o Seterus Inc.; and (3) Debtors are current on mortgage payments to Federal National Mortgage Association c/o Seterus Inc., through March 2017.

3. [17-10650](#)-B-13 JOSE TORRES
MHM-2

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
5-15-17 [[31](#)]

THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

Unless the Trustee withdraws the objection, the hearing will proceed as scheduled.

Tentative Ruling- Unless the trustee is satisfied with the debtor's proposed resolution of the disposable income dispute, the court will deny confirmation of the plan. The debtor will have until September 14, 2017, to confirm a Plan or the case will be dismissed on the Trustees *ex parte* application.

This objection was continued to July 7, 2017 to permit the chapter 13 trustee and the debtor to submit briefs on the issue of whether the debtor was providing all of his disposable income under his proposed plan to fund payments to unsecured creditors. The trustee filed a timely supplemental objection. The debtor was required to file and serve his brief by June 30, 2017. The debtor did not do so. Instead, the debtor filed a response on July 3, 2017.

The response does not discuss the issue of the debtor's disposable income. Instead, the debtor now asserts that the Order Confirming Plan can provide for 100% payment to unsecured creditors with allowed claims plus interest of three quarters of one percent (.25%). The debtor consents to the Order Confirming Plan providing that \$540 per month will be paid for months one through four and the payments will increase to \$565 per month for months five through thirty six.

The claim deadline for unsecured claims has passed. Governmental entities have until August 26, 2017 to file claims. The court notes that the debtor's schedules do not show any priority claims owed. Further, the proposed plan classifies the debtor's two creditors with claims secured by liens on his residence in Class 4, to be paid directly to those creditors.

In determining projected disposable income, a below-median income debtor is permitted expenses that are "reasonably necessary" for the debtor's maintenance and support. 11 U.S.C. § 1325(b) (2). This standard is equivalent to pre-BAPCPA tests and cases decided before BAPCPA are still persuasive. Whether a budget item is a necessary expense is a matter which must be determined on a case-by-case basis. *In re Smith*, 207 BR 888, 890 (9th Cir, BAP 1996) *citing*, *In re Gillead*, 171 B.R. 886, 890 (Bankr. E.D. CA, 1994). The focus of the inquiry must be whether the expense is reasonably necessary to be expended for the maintenance or support of the debtor or dependents. *Id.* Adjustments in this amount are permissible where they are known or virtually certain at the time of confirmation. *Hamilton v. Lanning*, 560 U.S. 505, 524 (2010).

Here, the debtor has provided no evidence on the disposable income issue. Instead, the debtor filed a short declaration that said, in effect, that after consultation with his spouse the debtor had under-estimated his real expenses. The trustee has indicated that in many categories the debtors expenses are above those permitted by similarly situated above-median income debtors and exceed the local standards of §707(b).

At the hearing the court will inquire whether the trustee is satisfied with the debtor's proposed resolution of this dispute. If not, then the court will deny confirmation of the plan. If confirmation is denied, the debtor will have until September 14, 2017, to confirm a plan or the case will be dismissed on the Trustees *ex parte* application.

4. [13-13052](#)-B-13 KELVIN HALSEY
BCS-5

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC FOR BENJAMIN C. SHEIN,
DEBTORS ATTORNEY(S)
6-8-17 [[63](#)]

BENJAMIN SHEIN/Atty. for dbt.

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

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

5. [17-11654](#)-B-13 JASON PHILLIPS
JRL-2
JASON PHILLIPS/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

MOTION TO CONFIRM PLAN
5-26-17 [[20](#)]

This matter will be dropped from calendar. The debtor has withdrawn the motion to confirm a chapter 13 plan. No appearance is necessary.

6. [17-11657](#)-B-13 DAVID/LINDA FALKE
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER
6-16-17 [[20](#)]

This matter will proceed as scheduled unless the debtors file a stipulation before the hearing agreeing to increase the plan payment in the order confirming that is consistent with the trustee's objection.

7. [15-10461](#)-B-13 GARY/INES FRANCIS
BCS-6

AMENDED MOTION FOR COMPENSATION
BY THE LAW OFFICE OF LAW OFFICE
OF SHEIN LAW GROUP, PC FOR
BENJAMIN C. SHEIN, DEBTORS
ATTORNEY(S)
6-8-17 [[72](#)]

BENJAMIN SHEIN/Atty. for dbt.

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

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

8. [17-10870](#)-B-13 CAROL SHIELDS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-16-17 [[34](#)]

DAVID JENKINS/Atty. for dbt.

Based on the court's ruling below at calendar number 9, this OSC will be vacated.

9. [17-10870](#)-B-13 CAROL SHIELDS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-16-17 [[33](#)]

DAVID JENKINS/Atty. for dbt.
NON-OPPOSITION

Based on the debtor's non opposition filed June 23, 2017 (Doc.#39), the case will be dismissed on the grounds stated in the Order to Show Cause.

10. [17-10870](#)-B-13 CAROL SHIELDS
TGM-1
MEDALLION BANK/MV
DAVID JENKINS/Atty. for dbt.
TYNEIA MERRITT/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
MEDALLION BANK
4-14-17 [[23](#)]

Based on the disposition of the OSC at calendar number 9, above, and on the debtor's notice of withdrawal of the motion to confirm the plan, this objection will be overruled as moot. The court will enter an order. No appearance is necessary.

11. [17-10875](#)-B-13 GERALD STULLER AND
AP-1 BARBARA WIKINSON-STULLER
WELLS FARGO BANK, N.A./MV
SCOTT SAGARIA/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
5-1-17 [[28](#)]

The objection will be overruled as moot. The record shows that the debtors have filed, served, and set for hearing a modified plan. The court will enter an order. No appearance is necessary..

12. [17-11377](#)-B-13 AVON SHAKESPEARE
RMP-1
SPECIALIZED LOAN SERVICING
LLC/MV
JANINE ESQUIVEL/Atty. for dbt.
RENEE PARKER/Atty. for mv.

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY
SPECIALIZED LOAN SERVICING LLC
5-10-17 [[20](#)]

This matter will be continued to August 17, 2017, at 1:30 p.m. The court will issue an order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

13. [17-10878](#)-B-13 LUIS TAVARES
TOG-1
LUIS TAVARES/MV
THOMAS GILLIS/Atty. for dbt.
DISMISSED

CONTINUED MOTION TO CONFIRM
PLAN
4-20-17 [[25](#)]

This matter will be dropped from calendar. The case has already been dismissed. No appearance is necessary.

14. [16-12679](#)-B-13 PAUL HAND
TSC-1
BANK OF AMERICA, N.A./MV
STEPHEN LABIAK/Atty. for dbt.
THERON COVEY/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-2-17 [[46](#)]

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 subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The collateral is not listed in the debtor's confirmed chapter 13 plan and is a depreciating asset.

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).

15. [17-10483](#)-B-13 CONSOLACION ATAYDE AND
TOG-1 MARIA SORIANO
CONSOLACION ATAYDE/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
3-27-17 [[18](#)]

The trustee's objection to confirmation has been withdrawn. No appearance is necessary.

16. [16-11684](#)-B-13 REBECCA VILLA
FW-1

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
6-8-17 [[19](#)]

GABRIEL WADDELL/Atty. for dbt.

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

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

17. [16-14385](#)-B-13 NANCY MCFADIN
AP-1
CIT BANK, N.A./MV
SCOTT LYONS/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-7-17 [[47](#)]

This matter will proceed as scheduled. The court intends to inquire as to the status of payments under the plan in Class 3.02 and what relationship that claim has to this motion for relief from CIT Bank, N.A.

18. [17-10187](#)-B-13 PETER SOLORIO
MHM-2
MICHAEL MEYER/MV
LAUREN RODE/Atty. for dbt.

MOTION TO DISMISS CASE
6-5-17 [[36](#)]

Unless the motion is withdrawn prior to the hearing, this matter will proceed as scheduled.

19. [16-10294](#)-B-13 LINA CONTRERAS
WAR-4
LINA CONTRERAS/MV

WILLIAM ROMAINE/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB
6-23-17 [[143](#)]

This matter was noticed pursuant to LBR 9014-(f)(2) and 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.

Based on the record and the pleadings the court deems this motion to be one to avoid the lien of respondent, in the debtor's interest only, as to the property claimed as exempt under Cal. Code Civ. Pro. §704.140(b).

20. [16-10294](#)-B-13 LINA CONTRERAS
WAR-2
LINA CONTRERAS/MV
WILLIAM ROMAINE/Atty. for dbt.

CONTINUED MOTION TO CONFIRM
PLAN
5-4-17 [113]

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.

21. [17-11337](#)-B-13 CHRISTOPHER FRITZ
PBB-3
CHRISTOPHER FRITZ/MV
PETER BUNTING/Atty. for dbt.
OST 6/29/17

MOTION TO SELL
6-29-17 [31]

This matter will proceed as scheduled.