

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, October 9, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS 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 AM

1. [17-10327](#)-B-12 IN RE: EDWARD/LISA UMADA
[FW-17](#)

MOTION TO SELL AND/OR MOTION TO PAY
9-18-2018 [[340](#)]

EDWARD UMADA/MV
PETER FEAR

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and 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.

The court notes Lisa Umada's supplemental declaration (doc. #347) and the Citizens Business Bank's ("CBB") response (doc. #349).

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the debtor-in-possession to "sell, or lease, other than in the ordinary course of business, property of the estate."

The chapter 12 debtor asks this court for authorization to sell 40.02 acres of real estate to "West of the Pecos, LLC," subject to higher and better bids at the hearing, for \$722,000.00.

It appears that the sale of the real estate is a reasonable exercise of the trustee's business judgment.

Any party wishing to overbid must deposit with debtor's counsel certified monies in the amount of \$10,000.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be

applied toward the purchase price. Overbidders must provide written proof of the financial ability to cover the purchase amount and that they can close the sale within 15 days of the delivery of a certified copy of the court's order approving this motion and can execute a purchase agreement for the property. Overbidders must be present at the hearing, make overbids in the amount of \$5,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

The 14-day stay under Federal Rule of Bankruptcy Procedure 6004(h) is waived. Debtor is authorized to pay Pearson Realty 5% of the sale price or, in the event the subject property is sold to an overbid buyer, splitting the 5% commission 50/50 between Pearson Realty and the overbid buyer's broker. Debtor is authorized to execute all documents necessary to effectuate the sale of the real estate. The settlement agent is authorized to pay from escrow the usual and customary closing costs, include the property taxes and commission described above, estimated capital gains taxes in the amount of \$44,361.00 to the state of California and \$59,985.00 to the United States, Chapter 12 trustee fees on the amount paid to Citizens Business Bank, and the remaining net proceeds directly to Citizens Business Bank.

The trustee is to execute the proposed sale order and must accept the escrow closing statement as a condition to closing.

CBB shall sign off on the form of the order granting this motion.

2. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
9-10-2018 [5]

RILEY WALTER
RESPONSIVE PLEADING

NO RULING.

1:30 PM

1. [18-12803](#)-B-13 **IN RE: INPREET SINGH**
[MHM-2](#)

MOTION TO DISMISS CASE
9-6-2018 [[26](#)]

MICHAEL MEYER/MV
JERRY LOWE

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on September 28, 2018 (Document No. 32).

2. [14-11518](#)-B-13 **IN RE: ROBERTO ROBLES**
[SAH-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEMB LAW GROUP
FOR SUSAN A. HEMB, DEBTORS ATTORNEY(S)
8-30-2018 [[79](#)]

SUSAN HEMB

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

3. [18-12921](#)-B-13 **IN RE: FANNY CERVANTEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
9-7-2018 [[23](#)]

MICHAEL MEYER/MV
SCOTT LYONS

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on September 25, 2018 (Document No. 34).

4. [18-10222](#)-B-13 **IN RE: DOMINIC BURRIEL**
[MHM-5](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-26-2018 [[97](#)]

MICHAEL MEYER/MV
PETER FEAR
RESPONSIVE PLEADING

NO RULING.

5. [17-11523](#)-B-13 **IN RE: TRINIDAD LOPEZ**
[DRJ-3](#)

MOTION TO MODIFY PLAN
9-7-2018 [[33](#)]

TRINIDAD LOPEZ/MV
DAVID JENKINS

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

On motions to modify plans proposed after confirmation, LBR 3015-1(d)(2) requires 35 days' notice.

This motion and the accompanying documents were filed and served on September 7, 2018 and set for hearing on October 9, 2018. Doc. #34, 38. October 9, 2018 is 32 days after September 7, 2018, and

therefore this hearing was not set on 35 days' notice as required by LBR 3015-1(d)(2). No request for an Order Shortening Notice was made or approved.

6. [18-11825](#)-B-13 **IN RE: JESSICA RAMOS**
[MHM-2](#)

MOTION TO DISMISS CASE
9-6-2018 [[45](#)]

MICHAEL MEYER/MV
PETER CIANCHETTA
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #59.

7. [18-12936](#)-B-13 **IN RE: LAWRENCE TOVAR AND CRYSTELLA COYOTE**
[MHM-2](#)

MOTION TO DISMISS CASE
9-7-2018 [[19](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion is GRANTED. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to provide documents requested by the chapter 13 trustee. Doc. #21. Debtor timely opposed. Doc. #25. The debtors' declaration stated that they provided all the requested documents, and they were unable to provide one of them because it essentially does not exist. Doc. #26.

The court finds that unless the trustee withdraws this motion, dismissal would be in the best interests of creditors and the estate. There are no assets to warrant conversion.

For the above reasons, this motion is GRANTED.

8. [18-12437](#)-B-13 **IN RE: ANDREA AFFRONTI**
[MHM-1](#)

MOTION TO DISMISS CASE
9-11-2018 [[18](#)]

MICHAEL MEYER/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to October 25, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to October 25, 2018 at 1:30 p.m.

The chapter 13 trustee's fully noticed motion asks the court to dismiss debtor's case on the grounds that debtor has failed to confirm a chapter 13 plan, pursuant to 11 U.S.C. § 1307(c). The case has been pending for nearly four months.

According to the motion, "[t]rustee's office cannot submit the Order Confirming Plan as required by Local Rule 3015-1(e), until an order is entered valuing the 2015 Nissan Rogue held by Nissan." Doc. #18.

Debtor timely opposed, though without evidence, stating that debtor has set for hearing a motion to value the 2015 Nissan Rogue on October 17, 2018 at 9:30 a.m. Doc. #27. The court takes judicial notice of that fact.

Therefore, this motion is continued to the next chapter 13 hearing date, October 25, 2018 at 1:30 p.m., in order for debtor's motion to be heard AND for debtor's counsel to submit an order to be signed by the court. At the continued hearing, if an order has not been entered due to the delay of debtor, then the court intends to grant this motion.

9. [18-13053](#)-B-13 **IN RE: BUCK/TIFFANNIE RATCHFORD**
[MHM-2](#)

MOTION TO DISMISS CASE
9-7-2018 [[20](#)]

MICHAEL MEYER/MV
STEPHEN LABIAK
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #32.

10. [18-13064](#)-B-13 **IN RE: STEVEN CHAVEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
9-6-2018 [[26](#)]

MICHAEL MEYER/MV
SHARLENE ROBERTS-CAUDLE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice if a modified plan is
filed and set for hearing before this hearing.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
the order.

This motion is DENIED WITHOUT PREJUDICE.

First, this motion was not timely opposed. The court takes judicial notice of the debtor's declaration filed in opposition of the chapter 13 trustee's second motion to dismiss (MHM-2, matter #11 below) that is applicable to this motion. However, that is not the proper procedure. Each motion must be responded to individually in accordance with the Local Rules of Practice.

This motion is DENIED WITHOUT PREJUDICE.

Here, the trustee has requested dismissal pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4) because the debtor is delinquent in the amount of \$8,766.13. Doc. #28. Debtor's declaration states that due to his misunderstanding, he did not believe payments had to be made yet. Doc. #35. Debtor also stated that a modified plan would be filed shortly to cure the arrearage.

The court finds that dismissal would not yet be in the best interests of creditors and the estate. If a modified plan is filed,

served, and set for hearing before this hearing, then this matter may be continued to the confirmation hearing date.

11. [18-13064](#)-B-13 **IN RE: STEVEN CHAVEZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-7-2018 [[30](#)]

MICHAEL MEYER/MV
SHARLENE ROBERTS-CAUDLE

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

This motion is DENIED WITHOUT PREJUDICE. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause.

Here, the trustee has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors for failing to provide requested documents to the trustee's office and for failing to make all payments under the plan. Doc. #20. Debtor timely opposed, stating that "the holder of the first and second mortgage secured by my residence gave me incorrect information," among other things, and for those reasons he was unable to provide the trustee with the necessary documents. He states that he is "working as fast as possible to obtain the documents required by the trustee" and is "getting another copy of the Class 1 Mortgage Checklist and will complete that form so that it can be provided to the trustee's office." Doc. #35.

This matter will be called to verify that the trustee has all the necessary documents prior to this hearing. If the trustee does not, the court may continue the motion a short time due to the issues with the mortgage holder.

12. [18-12869](#)-B-13 **IN RE: RAMIRO/TEENA GUTIERREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-7-2018 [[24](#)]

MICHAEL MEYER/MV
ERIC ESCAMILLA

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #34.

13. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[MHM-3](#)

MOTION TO DISMISS CASE
9-10-2018 [[59](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #68.

14. [18-10973](#)-B-13 **IN RE: GLENN BEVER**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
5-4-2018 [[34](#)]

MICHAEL MEYER/MV
NANCY KLEPAC
RESPONSIVE PLEADING

NO RULING.

15. [18-10973](#)-B-13 **IN RE: GLENN BEVER**
[MHM-2](#)

MOTION TO DISMISS CASE
9-6-2018 [\[98\]](#)

MICHAEL MEYER/MV
NANCY KLEPAC

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #113.

16. [18-11375](#)-B-13 **IN RE: ERIC RUBIO**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
8-6-2018 [\[43\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #61.

17. [18-13076](#)-B-13 **IN RE: JASON/IRENE FORBIS**
[MHM-2](#)

MOTION TO DISMISS CASE
9-10-2018 [\[20\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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 record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors. The debtors failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

18. [18-12879](#)-B-13 **IN RE: GERALD STULLER AND BARBARA WILKINSON-STULLER**

[MHM-2](#)

MOTION TO DISMISS CASE
9-7-2018 [[66](#)]

MICHAEL MEYER/MV
SCOTT SAGARIA
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #88.

19. [11-10380](#)-B-13 **IN RE: RICHARD/JACKIE OROZCO**

[FW-3](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE
INJUNCTION
9-6-2018 [[95](#)]

RICHARD OROZCO/MV
PETER FEAR

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to October 25, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Per stipulation and order (doc. #110), this motion will be continued to October 25, 2018 at 1:30 p.m. Respondent will have until October 11, 2018 to file a response.

20. [18-12980](#)-B-13 **IN RE: FRANCISCO/MICHELLE GUIZAR**
[MHM-2](#)

MOTION TO DISMISS CASE
9-7-2018 [[18](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #41.

21. [18-11894](#)-B-13 **IN RE: SERENA ASKEW**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-13-2018 [[21](#)]

THOMAS GILLIS
\$77.00 FINAL INSTALLMENT PAYMENT ON 9/18/18

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due were paid in full on September 18, 2018. Accordingly, the OSC will be vacated.

22. [18-12397](#)-B-13 **IN RE: EDWARD SANTIAGO**
[MHM-3](#)

MOTION TO DISMISS CASE
9-6-2018 [[30](#)]

MICHAEL MEYER/MV
NICHOLAS WAJDA
DISMISSED 9/14/18

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case has already been dismissed on September 14, 2018 (Document No. 37).