

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, October 19, 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. [11-17800](#)-B-7 LAKHVIR SINGH
NES-1
LAKHVIR SINGH/MV

MOTION TO AVOID LIEN OF NILES
PLAZA, A LIMITED PARTNERSHIP, A
CALIFORNIA LIMITED PARTNERSHIP
9-15-16 [[52](#)]

NEIL SCHWARTZ/Atty. for dbt.

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. It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which they otherwise would have been entitled.

2. [16-10214](#)-B-7 GLENN BEVER
GWB-1
GLENN BEVER/MV
GLENN BEVER/Atty. for mv.

OBJECTION TO CLAIM OF CAVALRY
SPY I, LLC, CLAIM NUMBER 1
8-31-16 [[66](#)]

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 is time-barred by the applicable California statute of limitations.

3. [14-13915](#)-B-7 PAUL FRANKEL AND
JDR-2 ELIZABETH BEALONIS
PAUL FRANKEL/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA) N.A.
9-30-16 [[93](#)]

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 a civil minute order.

4. [14-13915](#)-B-7 PAUL FRANKEL AND
JDR-3 ELIZABETH BEALONIS
PAUL FRANKEL/MV
JEFFREY ROWE/Atty. for dbt.

MOTION TO AVOID LIEN OF KELKRIS
ASSOCIATES, INC.
9-30-16 [[98](#)]

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 a civil minute order.

5. [14-12536](#)-B-7 THOMAS CUTLER
JTW-2
JANZEN, TAMBERI & WONG/MV

PETER FEAR/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI & WONG,
ACCOUNTANT(S)
9-16-16 [[132](#)]

The motion will be granted without oral argument based upon well-pled facts. The applicant shall submit a proposed order as specified below. 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, however the application period began March 2, 2016.

6. [14-12536](#)-B-7 THOMAS CUTLER
RHT-10
ROBERT HAWKINS/MV

PETER FEAR/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION FOR COMPENSATION FOR
ROBERT HAWKINS, CHAPTER 7
TRUSTEE(S)
9-16-16 [[139](#)]

The motion will be granted without oral argument based upon well-pled facts. The applicant 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.

7. [15-12140](#)-B-7 JOSE IBANEZ
PBB-5
JOSE IBANEZ/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF TD BANK
USA, N.A.
9-16-16 [[47](#)]

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. It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

8. [12-19946](#)-B-7 TERRY/JODEL KING
UST-1
TRACY DAVIS/MV
DAVID JENKINS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
9-20-16 [[52](#)]

The matter has been resolved by stipulation of the parties. No appearance is necessary.

9. [12-15547](#)-B-7 DONNA/EVERETT DAVIS
RH-8
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GLENIS GAMBRELL
AND/OR MOTION TO SELL
9-21-16 [[235](#)]

GARY HUSS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

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. It appears from the moving papers that the trustee has considered the standards of *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), and that the compromise pursuant to FRBP 9019 is a reasonable exercise of the trustee's business judgment.

10. [16-13247](#)-B-7 ISAIAS/RUBY LUNA
SW-1
ALLY BANK/MV
SCOTT LYONS/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-3-16 [[12](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtors' default 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 record shows that cause exists to terminate the automatic stay.

The movant shall submit a proposed order after hearing that specifically describes the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule 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).

11. [15-12564](#)-B-7 PROCESS & PACKAGING
JTW-2 MACHINE CORP.
JANZEN, TAMBERI & WONG/MV

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S)
9-19-16 [[32](#)]

RAYMOND ISLEIB/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The applicant shall submit a proposed order as specified below. 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, however the application period began June 8, 2016.

12. [16-12173](#)-B-7 ALFONSO CERVANTES AND
UST-1 ANITA CHAVEZ-CERVANTES
TRACY DAVIS/MV
HENRY NUNEZ/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
9-20-16 [[13](#)]

Based on the respondents' opposition, this matter will be continued to December 7, 2016, at 9:30 a.m. This matter is now deemed to be a contested matter.

Factual issues include, without limitation, debtors' marital status and whether the debtors share household expenses.

Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The debtors shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date. The court will issue a civil minute order. No appearance is necessary.

13. [14-10398](#)-B-7 LAURA GEIGER
JTW-2
JANZEN, TAMBERI & WONG/MV

PETER FEAR/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI & WONG,
ACCOUNTANT(S)
9-19-16 [[114](#)]

The motion will be granted without oral argument based upon well-pled facts. The applicant shall submit a proposed order as specified below. 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, however the application period began June 27, 2016.

11:00 A.M.

1. [16-13368](#)-B-7 REO SALDIVAR

PRO SE REAFFIRMATION AGREEMENT
WITH CARMAX AUTO FINANCE
10-3-16 [[14](#)]

This matter will be called as scheduled.

1:30 P.M.

1. [16-10016](#)-B-13 KEVIN DAVEY
[16-1074](#) EAT-1
DAVEY V. OCWEN LOAN SERVICING,
LLC ET AL

MOTION TO DISMISS CAUSE(S) OF
ACTION FROM AMENDED COMPLAINT
AND/OR MOTION FOR A MORE
DEFINITE STATEMENT
9-21-16 [[61](#)]

UNKNOWN TIME OF FILING/Atty. for mv.
RESPONSIVE PLEADING

This matter will be continued to November 3, 2016, at 1:30 p.m., on the Bakersfield calendar. No appearance is necessary. A new summons has been issued in this proceeding and, accordingly, this matter will be called in conjunction with the status conference on the amended complaint.

2. 16-10169-B-13 FRANK/MARY ANNE DORES
AMM-5
BUNNETT & CO., INC./MV
PETER FEAR/Atty. for dbt.
ANDREW MINEAR/Atty. for mv.

MOTION TO COMPEL
10-11-16 [224]

This matter will proceed as scheduled.