

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, October 20, 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. [15-14017](#)-B-11 CLUB ONE CASINO, INC.
BBR-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BELDEN BLAINE
RAYTIS, LLP FOR T. TODD EGLAND,
DEBTORS ATTORNEY(S)
9-26-16 [[741](#)]

HAGOP BEDOYAN/Atty. for dbt.

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.

1:30 P.M.

1. [12-12021](#)-B-13 PABLO SANCHEZ
GH-2
PABLO SANCHEZ/MV
GARY HUSS/Atty. for dbt.

MOTION FOR HARDSHIP DISCHARGE
9-12-16 [[39](#)]

This motion for a hardship discharge will be continued to November 10, 2016, at 10:30 a.m., for submission of additional evidence. No appearance is necessary.

The motion was filed without admissible supporting evidence, as required by LBR 9014-1(d)(7), that § 1328(b)(2) has been satisfied.

In lieu of submitting the additional evidence the debtor may submit a proposed order that has been signed by the chapter 13 trustee.

2. [16-11829](#)-B-13 GUADALUPE MACIAS
MHM-2
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO DISMISS CASE
9-21-16 [[40](#)]

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue a civil minute 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 record shows there has been unreasonable delay that is prejudicial to creditors, including the debtor's failure to appear at her §341 meeting of creditors and failure to commence making plan payments. Accordingly, the case will be dismissed.

3. [16-12633](#)-B-13 IRMA VILLA CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 8-29-16 [[20](#)]
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's motion has been withdrawn. No appearance is necessary.

4. [16-12741](#)-B-13 KEVIN CONLEY AMENDED MOTION TO DISMISS CASE
MHM-1 9-22-16 [[22](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.

The trustee's motion has been withdrawn. No appearance is necessary.

5. [16-12843](#)-B-13 MIRIAM RIVERA MOTION TO DISMISS CASE
MHM-1 9-19-16 [[40](#)]
MICHAEL MEYER/MV
DISMISSED

This matter will be dropped from calendar. This case has already been dismissed.

6. [11-62347](#)-B-13 HOWARD/TANIA LEWIS MOTION FOR COMPENSATION BY THE
FW-5 LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL,
DEBTORS ATTORNEY(S)
9-15-16 [[58](#)]

PETER FEAR/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.

7. [16-12150](#)-B-13 JOSE ALCANTAR
SL-2
JOSE ALCANTAR/MV

SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO VALUE
COLLATERAL OF PORTFOLIO
SERVICES, INC.
8-23-16 [[36](#)]

This matter will proceed as scheduled.

8. [16-11656](#)-B-13 CARL/MARI WHITFORD
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
8-12-16 [[34](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

9. [16-12558](#)-B-13 WAYNE CUNNINGHAM
MHM-1
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
9-1-16 [[22](#)]

This matter will be denied as moot. No appearance is necessary. On October 7, 2016, the debtor filed and served a motion/request to voluntarily dismiss his case. Accordingly, the case is dismissed.

10. [16-12968](#)-B-13 ANNA MORALEZ

U.S. BANK, NATIONAL
ASSOCIATION/MV
TIMOTHY SPRINGER/Atty. for dbt.
CHRISTINA O/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
10-4-16 [[22](#)]

This matter will be continued to November 17, 2016, at 1:30 p.m. The court will issue a civil minute 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.

11. [16-12690](#)-B-13 KIMBERLY SHACKELFORD
MHM-1
MICHAEL MEYER/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
9-19-16 [[21](#)]

The trustee's motion has been withdrawn. No appearance is necessary.

12. 16-13491-B-13 CURTIS ALLEN AND
EPE-3 CHARLOTTE JACKSON
CURTIS ALLEN/MV
ERIC ESCAMILLA/Atty. for dbt.
OST 10/11/16

MOTION TO EXTEND AUTOMATIC STAY
10-10-16 [11]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Extend the Automatic Stay was set on shortened time on the debtors' request and order of the court. Consequently, the debtor, creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?
In re Elliot-Cook, 357 B.R. 811, 814-15 (Bankr. N.D. Cal.2006)

The prior case was dismissed because the debtors failed to make their plan payments and, thus, this subsequently filed case is presumed to be filed in bad faith. 11 U.S.C. §362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at §362(c)(3)(c). "This evidence standard is stricter than the preponderance of the evidence standard. It is defined as that degree or measure of proof which will produce in the mind of the trier of fact, a firm belief or conviction that the allegations sought to be established are true; it is "evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case." *In re Castaneda*, 342 B.R. 90, (Bankr. S.D. Cal. 2006), citations omitted.

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted and that the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay. The evidence submitted shows that the debtors' delinquency was due to a reduction in income as a result of the co-debtor's unemployment. The debtors' income has improved and is more stable now, and the protection of the automatic stay is

necessary to prevent garnishment of the debtor's wages. The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court.

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.

13. [16-10168](#)-B-13 MOISES TURCIOS
PPR-1
BRUCE WARREN/MV

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
9-1-16 [[72](#)]

PATRICK KAVANAGH/Atty. for dbt.
CASSANDRA RICHEY/Atty. for mv.

This matter will proceed as scheduled.