

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, October 31, 2017
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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a) (FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. one business day before the hearing.

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. [17-13410](#)-B-7 PATRICIA APODACA MOTION FOR RELIEF FROM
[BDA](#)-1 AUTOMATIC STAY
BMW FINANCIAL SERVICES NA, 10-12-17 [[13](#)]
LLC/MV
BRET ALLEN/Atty. for mv.

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 Moving Party shall submit a proposed order after hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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 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.

If an award of attorney fees has been requested, it will be denied without prejudice. 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. In addition, any future request for an award of attorneys fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C.A. §506(b).

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral 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).

2. [17-11711](#)-B-7 MOTHER MARY'S INC. MOTION TO SELL
[RHT](#)-3 10-3-17 [[24](#)]
ROBERT HAWKINS/MV
DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: No appearance is necessary. The motion has been withdrawn.

Movant has withdrawn the motion.

3. [17-12713](#)-B-7 GUSTAVO/ESTHER PRADO MOTION TO AVOID LIEN OF MIDLAND
[TCS](#)-1 FUNDING, LLC
GUSTAVO PRADO/MV 10-17-17 [[16](#)]
TIMOTHY SPRINGER/Atty. for dbt.

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 Moving Party shall submit a proposed order after hearing.

This motion was filed and served pursuant to LRB 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 LRB 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at

<http://www.caeb.circ9.dcn/LocalRules.aspx>.

4. 17-13344-B-7 ALEN LEE JR. AND MELISSA MOTION FOR RELIEF FROM
APN-1 FREDERICK AUTOMATIC STAY
SANTANDER CONSUMER USA, 9-27-17 [13]
INC./MV
R. BELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' 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 moving papers show the collateral is uninsured 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).

5. 17-11851-B-7 CLASSIC HERNANDEZ MOTION TO AVOID LIEN OF UNIFUND
GT-4 CCR, LLC
CLASSIC HERNANDEZ/MV 9-20-17 [38]
GRISELDA TORRES/Atty. for dbt.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

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.

6. 15-13455-B-7 HIROAKI TERANISHI
JES-2
JAMES SALVEN/MV
ROSALINA NUNEZ/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
9-26-17 [111]

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

7. 15-13455-B-7 HIROAKI TERANISHI
TGM-5

MOTION FOR COMPENSATION FOR
TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
9-28-17 [119]

ROSALINA NUNEZ/Atty. for dbt.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

8. 17-13155-B-7 BRIAN/MELINDA HOLLAND
MEL-1
THE BANK OF NEW YORK MELLON/MV
MARK ZIMMERMAN/Atty. for dbt.
MEGAN LEES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-28-17 [19]

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' 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.

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.

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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).

9. 16-10771-B-7 CHRIS/KIMBERLY KATELEY MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
10-3-17 [95]
MARK ZIMMERMAN/Atty. for dbt.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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.

Movant is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

10. 17-13272-B-7 LIAM EVANS
ASW-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
CAREN CASTLE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-3-17 [30]

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

DISPOSITION: Denied in part and granted in part.

ORDER: No appearance is necessary. The court will issue the order.

Debtor filed his first bankruptcy case in the Northern District of California on July 5, 2017 (Case No. 17-51600-MEH-7) which was dismissed on July 25, 2017. Debtor filed his second bankruptcy case on August 22, 2017, Debtor filed another bankruptcy case in the Northern District (17-52010 MEH-7), which was transferred to the Eastern District of California on August 23, 2017.

In cases where an individual debtor has already filed a chapter 7 case, and within one year after dismissal files another chapter 7, the automatic stay only lasts for 30 days. 11 U.S.C. § 362(C)(3). Under 11 U.S.C. § 362(c)(3)(B) however, the court may extend the automatic stay if notice and a hearing are completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. The debtor did not request such a hearing and therefore the stay was lifted 30 days after the transfer of the case here to the Eastern District.

No attorney's fees will be awarded. No § 362(d)(4) relief will be granted because the stay has been terminated by operation of law and the movant is not a creditor with claim secured by the subject real property, they are the owners of the property through a foreclosure sale.

This motion will be deemed as a request under § 362(j) for an order confirming that the automatic stay has been terminated under § 362(c)(3).

11. 17-13488-B-7 LAURA BARAJAS
YG-2
LAURA BARAJAS/MV
YELENA GUREVICH/Atty. for dbt.
DISMISSED 10/11/2017

MOTION TO VACATE DISMISSAL OF
CASE
10-15-17 [23]

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 Moving Party shall submit a proposed order after hearing.

This motion was filed and served pursuant to LRB 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.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

1:30 PM

1. 16-11605-B-7 CAROLYN CHARLTON
16-1078
CHARLTON V. CHARLTON
NANETTE BEAUMONT/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
2-16-17 [25]

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

DISPOSITION: Continued to December 20, 2017 at 1:30 p.m.

ORDER: No appearance is necessary. The court will issue an order.

The parties have stipulated to continuing with BDRP, therefore the court will continue the matter to allow the parties to complete the process.

2. 17-10620-B-7 REBEKAH CHERRY
17-1054
CHERRY V. NAVIENT (DEPT. OF
EDUCATION) ET AL
REBEKAH CHERRY/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
8-30-17 [16]

NO RULING.

Plaintiff did not promptly serve the newly re-issued summons and her complaint on the defendants within seven days of the summons being issued as required by law and per the instruction given by the court at the last hearing.

Additionally, service on the defendants was improper. The record does not establish that the summons and complaint were served on the named respondent in compliance with Roster of Governmental Agencies, EDC 2-785 (Rev. 5/2/17), Federal Rule of Bankruptcy Procedure 7004(b)(1) (service on an individual), or 7004(b)(3) (corporation, partnership or unincorporated association). In re Villar, 317 B.R. 88 (9th Cir. BAP 2004). Information regarding service on a corporation may be obtained from the California Secretary of State's Internet Website, see <http://kepler.sos.ca.gov/>. For an updated Roster of Governmental Agencies, EDC 2-785, see <http://www.caeb.uscourts.gov/documents/forms/edc/EDC.002-785.pdf>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004.

3. 14-13880-B-7 JUAN GONZALES
17-1045
SALVEN V. GONZALEZ ET AL
DAVID JENKINS/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
5-5-17 [1]

NO RULING.