

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, November 17, 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. 16-10169-B-13 FRANK/MARY ANNE DORES
AMM-5
BUNNETT & CO., INC./MV
PETER FEAR/Atty. for dbt.
MATTHEW PREWITT/Atty. for mv.
FINDINGS OF FACT

CONTINUED MOTION TO COMPEL
10-11-16 [224]

1:30 P.M.

1. [15-14800](#)-B-13 RICHARD LIMA CONTINUED MOTION TO DISMISS
MHH-2 CASE
MICHAEL MEYER/MV 9-6-16 [[64](#)]
RESPONSIVE PLEADING

This motion was continued to be heard with the debtor's motion to confirm a modified plan. The motion will be denied because the court intends to grant the motion, below at calendar #2 (RAL-2) for confirmation of the modified plan. No appearance is necessary. The court will issue a civil minute order.

2. [15-14800](#)-B-13 RICHARD LIMA MOTION TO MODIFY PLAN
RAL-2 10-7-16 [[75](#)]
RICHARD LIMA/MV
RICHARD LIMA/Atty. for mv.
RESPONSIVE PLEADING

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; the trustee filed an opposition and the debtor has agreed to the trustee's suggested changes. There is no other opposition and those respondents' defaults 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.

3. [16-11900](#)-B-13 EMANUEL/KAREN DOZIER MOTION TO CONFIRM PLAN
RSW-4 10-3-16 [[60](#)]
EMANUEL DOZIER/MV
ROBERT WILLIAMS/Atty. for dbt.

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.

4. [15-12304](#)-B-13 DAWN NATION
RCO-1
WELLS FARGO BANK, N.A./MV

MARK ZIMMERMAN/Atty. for dbt.
BRETT RYAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-17-16 [[34](#)]

This motion for relief from the automatic stay will be denied as moot. The court will enter a civil minute order. No appearance is necessary.

The secured claim relating to this collateral is provided for in either Class 3 or Class 4 of the debtor's confirmed chapter 13 plan. Upon confirmation of the chapter 13 plan, the automatic stay was modified for this claim to permit enforcement of the creditor's remedies with regard to the collateral in the event of a default under applicable law. No attorney's fees will be awarded in relation to this motion.

5. [16-13305](#)-B-13 JAMES MUNRO

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
PETER BUNTING/Atty. for dbt.
CHRISTINA O/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
11-1-16 [[22](#)]

The objection will be overruled without prejudice. No appearance is necessary.

The objection was filed without admissible supporting evidence, of the alleged delinquency, as required by LBR 9014-1(d)(7). The court notes that the creditor has not yet filed a proof of claim.

6. [15-14606](#)-B-13 ALEX/PRISCILLA PANG
JRL-2
ALEX PANG/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
9-1-16 [[54](#)]

The motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.

This motion was continued to permit the debtors to file and serve a written response, to the trustee's opposition to confirmation, not later than October 27, 2016 that specifically addresses each issue raised by the trustee, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. No such response having been filed, the motion to confirm the debtors' modified plan will be denied.

7. [15-14606](#)-B-13 ALEX/PRISCILLA PANG
MHM-1
MICHAEL MEYER/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
5-11-16 [[20](#)]

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 respondents' 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 that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed.

8. [11-19615](#)-B-13 JOHN/YOLANDA GARDINI
MHM-3
MICHAEL MEYER/MV

CHRISTIE LEE/Atty. for dbt.

OBJECTION TO CLAIM OF
CITIFINANCIAL SERVICES INC.,
CLAIM NUMBER 12
10-4-16 [[64](#)]

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/in part on the grounds stated in the objection. Based on the evidence submitted in support of the objection, claim number 12 filed by Citifinancial Services Inc., will be allowed in the amount of \$33,623.30, which is the amount that the trustee has paid to date to Citifinancial Services Inc, and any and all other amounts will be disallowed.

13. [16-13237](#)-B-13 GUADALUPE ZAMUDIO MOTION TO DISMISS CASE
MHM-1 10-19-16 [[17](#)]
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
WITHDRAWN

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

14. [16-11555](#)-B-13 ANTHONY/AMY THOMPSON MOTION TO CONFIRM PLAN
JRL-3 10-5-16 [[105](#)]
ANTHONY THOMPSON/MV
JERRY LOWE/Atty. for dbt.

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.

15. [16-11656](#)-B-13 CARL/MARI WHITFORD MOTION TO DISMISS CASE
MHM-2 10-19-16 [[46](#)]
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
WITHDRAWN

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

16. [16-10866](#)-B-13 MICHELLE YORK MOTION TO CONFIRM PLAN
DRJ-2 9-9-16 [[110](#)]
MICHELLE YORK/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

The hearing on this motion will be called as scheduled. If the dispute is not resolved at the hearing, the matter will proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

17. [16-12168](#)-B-13 JENNIFER RIVAS
PK-3
JENNIFER RIVAS/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
EXETER FINANCE, CORP.
10-19-16 [[37](#)]

The motion will be granted without oral argument based on well-pled facts. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.

This motion to value respondent's collateral 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 debtor is competent to testify as to the value of the 2013 Chevrolet Equinox. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$15743. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

18. [16-12968](#)-B-13 ANNA MORALEZ

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

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

This matter will be continued to December 15, 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.

19. [16-13874](#)-B-13 RICHARD DOMENICI
DRJ-2
RICHARD DOMENICI/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
11-3-16 [8]

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 properly set for hearing on the notice required by LBR 9014-1(f)(2). 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)

In this case the presumption of bad faith arises. The prior case was dismissed for failure to make plan payments. 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 debtor's petition was filed in good faith, and it intends to grant the motion to extend the automatic stay. The debtor has obtained a loan modification and the return to unsecured debtors is now 0%. While the plan payments have increased, it appears from the moving papers that the debtor's business income fluctuates. While the debtor had the ability to bring the plan payments current in the prior plan, on counsel's advice he did not remit the funds that would do so until it was too late. The debtor

declares that he now has a better understanding of his obligations under chapter 13. 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.

20. [16-11878](#)-B-13 SHANA SHIELDS
JDM-3
SHANA SHIELDS/MV

MOTION TO VALUE COLLATERAL OF
AMERICAN HONDA FINANCE
CORPORATION
10-3-16 [[32](#)]

JAMES MILLER/Atty. for dbt.

The motion will be granted without oral argument based on well-pled facts. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.

This motion to value respondent's collateral 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 debtor is competent to testify as to the value of the 2012 Acura TL. In the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$ 15,573. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

21. [16-12490](#)-B-13 MARIANO AGUIRRE
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
WITHDRAWN

CONTINUED MOTION TO DISMISS
CASE
8-29-16 [[16](#)]

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

22. [16-13491](#)-B-13 CURTIS ALLEN AND
CHARLOTTE JACKSON

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-31-16 [[37](#)]

ERIC ESCAMILLA/Atty. for dbt.
INSTALLMENT FEE PAID 11/8/16

The OSC will be vacated. No appearance is necessary.

The OSC was issued for the debtor's failure to make the payment due October 26, 2016. The delinquent payment was made on or about November 8, 2016. The OSC will be vacated and the case will remain pending because the payment was made. However as a sanction, the court will modify the order permitting the payment of filing fees in installments to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

23. [14-14028](#)-B-13 GEORGETTE AVEDIKIAN
MHM-3
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

CONTINUED MOTION TO DISMISS
CASE
7-13-16 [[124](#)]

This motion to dismiss the case was continued to be heard with the debtor's motion to confirm a modified chapter 13 plan. If the plan is not confirmed at the hearing, calendar #11 (DRJ-9), then the court intends to dismiss the case.

24. 16-13999-B-13 ESTEBAN ZAVALA
PK-2
ESTEBAN ZAVALA/MV
PATRICK KAVANAGH/Atty. for dbt.
OST

MOTION TO EXTEND AUTOMATIC STAY
11-10-16 [17]

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

The court granted the debtor's Motion for an Order Shortening Time and pursuant to that order, this Motion to Extend the Automatic Stay was properly set for an expedited hearing. 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).

Here, the prior case appears to have been filed for the purpose of preventing loss of the debtor's home after a diagnosis and treatment for cancer caused significant loss of work. A plan was finally confirmed, but the case was dismissed because of a default in plan payments caused by a related medical issue that has now been resolved. It appears that the debtor has new and stable employment that will permit him to complete a chapter 13 plan. No motions for relief from the automatic stay were filed in the prior case.

Nevertheless, in this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith if debtor failed to perform the terms of a plan confirmed by the court. 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 debtor's petition was filed in good faith, and it intends to grant the motion to extend/impose the automatic stay. The debtor appears to have resolved his medical issues and has new and stable employment. 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.