

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, December 21, 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. [16-14009](#)-B-7 LAURA BAUTISTA MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
LAURA BAUTISTA/MV 11-2-16 [6]
LAURA BAUTISTA/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

2. [15-12834](#)-B-7 JOHN HARRIS MOTION FOR COMPENSATION FOR
THA-2 THOMAS H. ARMSTRONG, TRUSTEES
ATTORNEY(S)
11-22-16 [67]
JERRY LOWE/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. The fees will be granted to be payable at the trustee's discretion.

3. [15-12547](#)-B-7 DWAYNE/SHEILA WILSON CONTINUED MOTION TO AVOID LIEN
RSW-5 OF ARTHUR BELL
DWAYNE WILSON/MV 11-21-16 [[68](#)]
ROBERT WILLIAMS/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 debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

4. [13-16155](#)-B-7 MICHAEL WEILERT AND MOTION FOR COMPENSATION BY THE
FW-18 GENEVIEVE DE MONTREMARE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR,
TRUSTEES ATTORNEY(S)
11-23-16 [[520](#)]

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. The fees will be granted on an interim basis to be payable at the trustee's discretion.

5. [13-16155](#)-B-7 MICHAEL WEILERT AND
FW-19 GENEVIEVE DE MONTREMARE
JAMES SALVEN/MV
PETER FEAR/Atty. for mv.
JOINDER FILED

MOTION TO APPROVE INTERIM
DISTRIBUTION
11-23-16 [[527](#)]

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. The interim distribution will be approved.

6. 16-14067-B-7 MARIO VARGAS
JHW-1
TD AUTO FINANCE LLC/MV
CHRISTOPHER FISHER/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-22-16 [12]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's 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. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not 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).

7. [16-13175](#)-B-7 LYNELL GLOVER
UST-1
TRACY DAVIS/MV
JAMES MILLER/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
11-22-16 [21]

Based on the respondent's opposition and on the U.S. Trustee's reply, this matter will be continued to February 1, 2017, at 9:30 a.m. 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 immediately commence formal discovery, 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. If the matter remains pending, movant shall file a status report on or before January 25, 2017. The court will issue a civil minute order. No appearance is necessary.

The United States Trustee raises two alternative grounds for dismissal: (1) that granting relief under Chapter 7 would be an abuse of that chapter not rebutted by special circumstances; (2) that the totality of the debtor's financial circumstances demonstrates abuse.

The factual disputes remaining to be determined include, without limitation, the following: (a) What and when is the appropriate allocation of the bonus (STIP) payments for determination of Current Monthly Income? See, *In re Katz*, 451 BR 512, 516 (Bankr. C.D.Cal., 2011). (b) Does the debtor's current "financial situation" demonstrate abuse? (c) While the debtor concedes that retirement loan payments are not appropriate deductions, what are the debtor's tax obligations? (d) After fixing the tax debt as a monthly obligation, what will be the debtor's monthly disposable income? (e) What foreseeable circumstances would change the debtor's current monthly income?

8. 16-13088-B-7 JOSHUA LEE
UST-1
TRACY DAVIS/MV
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
11-23-16 [15]

Based on the respondent's opposition pursuant to a letter filed in the docket and the reply of the U.S. Trustee, this matter will be continued to February 1, 2017, at 9:30 a.m. 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 immediately commence formal discovery, 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. If the matter remains pending, movant shall file a status report on or before January 25, 2017. No appearance is necessary.

The United States Trustee contends that, considering the totality of the debtor's financial circumstances, the filing of this Chapter 7 case demonstrates abuse. The factual disputes remaining to be determined include, without limitation, the following: (a) What is this debtor's disposable monthly income calculated according to applicable law? (b) What effect, if any, does the debtor's employment contract, which the debtor claims is "at will," have on the outcome, and, (c) What effect does the debtor's change of residence have on the calculation of current monthly income?

The court notes that the debtor here did not file a response in conformance the LBR 9014-1. The response contained no competent evidence. While the debtor's letter was received and filed by the clerk, that letter and the other documents submitted are not evidence that can be considered by this court. Since further evidence will need to be submitted by both parties which may include oral testimony at a later hearing to be scheduled at the continued hearing date, the court has reviewed the letter. However, the debtor should heed that *pro se* litigants, "must follow the same rules of procedure that govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir., 1987) (citation omitted), overruled on other grounds by *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir., 2012), and they "should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir., 1986). "The hazards which beset a layman when he seeks to represent himself are obvious. He who proceeds *pro se* with full knowledge and understanding of the risks does so with no greater rights than a litigant represented by a lawyer, and the trial court is under no obligation to become an 'advocate' for or to assist and guide the *pro se* layman through the trial thicket." *Jacobsen*, 790 F.2d at 1365 n. 5 (quoting *United States v. Pinkey*, 548 F.2d 305 (10th Cir.1977)).

9. [16-13798](#)-B-7 DONALD/MONICA STILES
JHW-1
AMERICREDIT FINANCIAL
SERVICES, INC./MV
DAVID JENKINS/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-17-16 [[10](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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 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).

1:30 P.M.

1. [16-10003](#)-B-7 MELLANIE RAPOZO MOTION TO STRIKE
[16-1050](#) KJK-3 11-14-16 [[56](#)]
SELLERS V. RAPOZO
KLAUS KOLB/Atty. for mv.
RESPONSIVE PLEADING

This matter will be continued to January 25, 2017, at 1:30 p.m. in Fresno. A stipulation of the parties has been filed requesting that this adversary proceeding to be assigned to BDRP. The court will sign an order when one is properly submitted. The parties will submit a joint status conference statement on or before 5:00 p.m. on January 18, 2017, advising the court of the outcome of the BDRP process.

2. [11-60647](#)-B-13 RON/CYNTHIA KURISU CONTINUED MOTION TO DETERMINE
MHM-1 FINAL CURE AND MORTGAGE PAYMENT
MICHAEL MEYER/MV RULE 3002.1
11-3-16 [[47](#)]

JAMES MILLER/Atty. for dbt.
RESPONSIVE PLEADING

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

3. [16-10169](#)-B-13 FRANK/MARY ANNE DORES FURTHER SCHEDULING CONFERENCE
AMM-2 RE: MOTION TO DISMISS CASE
BUNNETT & CO., INC./MV 8-17-16 [[161](#)]
PETER FEAR/Atty. for dbt.
ANDREW MINEAR/Atty. for mv.

This matter will proceed as scheduled.

4. [16-10169](#)-B-13 FRANK/MARY ANNE DORES FURTHER SCHEDULING CONFERENCE
FW-1 RE: MOTION FOR CONTEMPT
FRANK DORES/MV 1-28-16 [[7](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

5. [16-10169](#)-B-13 FRANK/MARY ANNE DORES FURTHER SCHEDULING CONFERENCE
FW-1 RE: AMENDEDMOTION TO CONFIRM
BUNNETT & CO., INC./MV 3-15-16 [[73](#)]

PETER FEAR/Atty. for dbt.
ANDREW MINEAR/Atty. for mv.

This matter will proceed as scheduled.

6. [16-12980](#)-B-7 JOSE LOPEZ
[16-1087](#) UST-1
U.S. TRUSTEE V. LOPEZ
GREGORY POWELL/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
11-9-16 [[11](#)]

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 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. A default judgment will be entered in this case.