

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, December 22, 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. UNITED

9:30 A.M.

1. [10-17316](#)-B-12 PEDRO/DIANA GONZALEZ
FW-8

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
11-22-16 [[132](#)]

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. The court notes that the application for compensation erroneously lists the date the employment application was filed as October 1, 2011, when in fact the record shows that application was filed October 1, 2010. 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 application for compensation will be granted.

1:30 P.M.

1. [16-13912](#)-B-13 MATTHEW STRONG

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-2-16 [[19](#)]

JAMES MILLER/Atty. for dbt.
\$100.00 INSTALLMENT PAYMENT
12/5/16

The OSC will be vacated. No appearance is necessary. The court will issue a civil minute order conforming with this ruling.

The OSC was issued for the debtor's failure to make the payment due November 28, 2016. The delinquent payment was made on or about December 5, 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.

2. [15-10233](#)-B-13 PEDRO/ZENAIDA NAVEIRAS

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-29-16 [[151](#)]

MRG-1
USMR FUND 6 LLC/MV
LEONARD WELSH/Atty. for dbt.
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

3. 16-14349-B-13 JON-LEE HAWARDEN
PLG-1
JON-LEE HAWARDEN/MV
L. HURST/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
12-6-16 [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 in that the prior case was dismissed for failure to make plan payments. The presumption of bad faith may be rebutted by clear and convincing evidence. §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. It appears that the circumstances that caused the delinquency in plan payments in the prior case have been resolved. 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.

4. [16-13950](#)-B-13 SUSAN COX

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-5-16 [[20](#)]

This matter will be called as scheduled. If the installment payments now due have not been paid by the time of the hearing, the case will be dismissed. If the installment payments now due are fully paid by the time of the hearing, the OSC will be vacated.

If the OSC is vacated, 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.

5. [16-13251](#)-B-13 JONATHAN YU
MHM-2
MICHAEL MEYER/MV
GABRIEL WADDELL/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
11-18-16 [[52](#)]

Unless the trustee has withdrawn his motion prior to the hearing, the motion will proceed. The debtor has filed an opposition, with evidence, contending that the debtor has made payments that cure the arrearage and that he is now current with his plan payments.

If the trustee's motion has not been withdrawn, the court will inquire as to what further is needed by the debtor to avoid dismissal of the case.

6. [16-11656](#)-B-13 CARL/MARI WHITFORD
SL-1
CARL WHITFORD/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO CONFIRM PLAN
11-7-16 [[51](#)]

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.

7. [16-13467](#)-B-13 CAMILO GALACGAC AND
MHM-1 VIOLETA CORTEZ GALACGAC
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-10-16 [[15](#)]

This matter has been withdrawn. No appearance is necessary.

8. [16-13573](#)-B-13 LEANDRO/VIRGINIA BADILLO MOTION TO DISMISS CASE
MHM-1 11-14-16 [[16](#)]
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

This matter has been withdrawn. No appearance is necessary.

9. [16-11878](#)-B-13 SHANA SHIELDS MOTION FOR RELIEF FROM
ETL-1 AUTOMATIC STAY AND/OR MOTION
HARLEY-DAVIDSON CREDIT FOR RELIEF FROM CO-DEBTOR STAY,
CORP./MV MOTION FOR ADEQUATE
PROTECTION
11-16-16 [[37](#)]

JAMES MILLER/Atty. for dbt.
ERICA LOFTIS/Atty. for mv.
RESPONSIVE PLEADING

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The secured claim relating to this collateral is provided for in Class 3 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.

The court notes that the debtor filed a notice of non-opposition.

10. [16-13980](#)-B-13 CARMEN BELTRAN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-6-16 [[15](#)]

DAVID JENKINS/Atty. for dbt.

The OSC will be vacated. The record shows that the required fee has been paid in full. No appearance is necessary.

11. [16-12690](#)-B-13 KIMBERLY SHACKELFORD CONTINUED MOTION TO DISMISS
MHM-2 CASE
MICHAEL MEYER/MV 9-20-16 [[25](#)]
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

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

12. [16-12690](#)-B-13 KIMBERLY SHACKELFORD OBJECTION TO DEBTOR'S CLAIM OF
MHM-3 EXEMPTIONS
MICHAEL MEYER/MV 11-10-16 [[59](#)]
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

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

13. [16-12690](#)-B-13 KIMBERLY SHACKELFORD
SAH-2
KIMBERLY SHACKELFORD/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
11-7-16 [[51](#)]

This matter will be dropped from calendar. The record shows that the debtor has withdrawn her motion to confirm the chapter 13 plan filed on November 7, 2016, DC# SAH-2, and, on December 16, 2016, filed a modified plan, DC# SAH-3, set for a hearing on February 16, 2017. The court will issue a civil minute order. No appearance is necessary.