

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, January 3, 2019
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.

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. [18-14210](#)-B-7 IN RE: MELISSA/JAMES MITCHELL
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-27-2018 [\[15\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for January 7, 2019 at 1:00 p.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

2. [18-14710](#)-B-7 **IN RE: SAMANTHA PRICHARD**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
11-21-2018 [\[5\]](#)

SAMANTHA PRICHARD/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion is DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

28 U.S.C. § 1930 provides that in order for the court to waive the filing fee in a chapter 7 bankruptcy case, the individual's income must be less than 150% of the official income poverty line and be unable to pay the fee in installments.

The Office of Management and Budget's Poverty Thresholds for 2018 for a family size of one is \$12,140.00. One-hundred fifty percent of that amount is \$18,120.00. Debtor's Schedule I shows a monthly gross income of \$1,603.00 – \$19,236.00 annually. Doc. #1. However, Debtor's Statement of Financial Affairs also shows gross income of \$2,328.00 in 2017 and \$17,838.00 in 2016. The court notes the discrepancies in yearly income when Schedule J shows the debtor has been steadily employed for 12 years.

The court finds that debtor's gross income exceeds the 150% threshold of the official income poverty line. The motion is DENIED.

3. [18-14222](#)-B-7 **IN RE: LIZETH RIOS**

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-27-2018 [\[14\]](#)

NO RULING.

Debtor did not state why she did not appear at the § 341 meeting of creditors. Debtor must appear at this hearing and explain to the court why she missed the meeting. If debtor does not appear, the

case shall be dismissed.

4. [18-14626](#)-B-7 **IN RE: SANDRA PETTY**
[CJO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2018 [\[10\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
ASHTON DUNN
CHRISTINA O/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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. The collateral is a parcel of real property commonly known as 1149 Broadway St., Inyokern, CA 93527. Doc. #13. The collateral has a value of \$119,591.00 and the amount owed is \$116,586.54. Doc. #14.

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).

5. [18-14630](#)-B-7 **IN RE: VICTOR JIMENEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-27-2018 [\[7\]](#)

FORD MOTOR CREDIT COMPANY/MV
LAYNE HAYDEN
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: 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 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. The collateral is a 2017 Ford Fusion. Doc. #11. The collateral has a value of \$18,427.00 and debtor owes \$31,499.33. *Id.*

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).

6. [18-14676](#)-B-7 **IN RE: EDUARDO NAVARRO**
[BPC-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2018 [\[17\]](#)

THE GOLDEN 1 CREDIT UNION/MV
MARIO LANGONE
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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. The collateral is a 2016 Ford Mustang. Doc. #13. The collateral has a value in between \$21,263.00 and \$26,681.00. *Id.* The debtor owes \$37,769.47. *Id.*

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).

7. [18-14688](#)-B-7 **IN RE: JUAN/JEANETE JAIME**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-2018 [\[12\]](#)

THE GOLDEN 1 CREDIT UNION/MV
THOMAS GILLIS
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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 debtors' 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. The collateral is a 2017 Dodge Ram. Doc. #14. The collateral has a value in between \$19,908.00 and \$26,114.00. *Id.* The debtor owes \$34,068.16. *Id.*

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).

8. [18-13218](#)-B-7 **IN RE: VAN LAI**
[JES-1](#)

MOTION TO EMPLOY COLDWELL BANKER GONELLA REALTY AS BROKER(S)
12-5-2018 [[132](#)]

JAMES SALVEN/MV
JAMES SALVEN/ATTY. FOR MV.

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

DISPOSITION: Continued to January 3, 2019 at 1:30 p.m.

NO ORDER REQUIRED. The court has already issued an order. Doc.
#143.

The trustee's motion to employ has been continued to January 3,
2019, at 1:30 p.m. by court order filed on December 20, 2018. Doc.
#143.

9. [18-13802](#)-B-7 **IN RE: ELVIA OLIVA**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-26-2018 [[23](#)]

THOMAS GILLIS

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for
January 7, 2019 at 2:00 p.m. If the debtor fails to do so, the
chapter 7 trustee may file a declaration with a proposed order and
the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter
7 trustee and the U.S. Trustee to object to the debtor's discharge
or file motions for abuse, other than presumed abuse, under § 707,
is extended to 60 days after the conclusion of the meeting of
creditors.

11:00 AM

1. [18-14273](#)-B-7 **IN RE: DANIEL/DIANA HERNANDEZ**

REAFFIRMATION AGREEMENT WITH MECHANICS BANK
11-20-2018 [[11](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [18-13697](#)-B-7 **IN RE: JOHN/PA MELIKIAN**

PRO SE REAFFIRMATION AGREEMENT WITH PINGORA LOAN SERVICING,
LLC
12-10-2018 [[31](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an order.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

1:30 PM

1. [18-12371](#)-B-7 **IN RE: AMBER CASTRO**
[18-1078](#)

STATUS CONFERENCE RE: COMPLAINT
11-7-2018 [[1](#)]

CASTRO V. DENNING
JOEL WINTER/ATTY. FOR PL.

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

DISPOSITION: Continued to February 27, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Defendant has not yet answered the complaint. Therefore this status conference is continued to February 27, 2019 at 1:30 p.m.

The court notes that the summons appears to have been served on November 26, 2018, outside the permitted time for service after a summons is issued. See Federal Rule of Bankruptcy Procedure 7004(e).

2. [18-13218](#)-B-7 **IN RE: VAN LAI**
[JES-1](#)

RESCHEDULED HEARING RE: MOTION TO EMPLOY COLDWELL BANKER
GONELLA REALTY AS BROKER(S)
12-5-2018 [[132](#)]

JAMES SALVEN/MV

NO RULING.