

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, January 7, 2016
Place: U.S. Courthouse, 510 19th Street
Bakersfield, 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.

9:00 A.M.

- | | | | |
|----|--------------------------------------|----------------|---------------------------------------|
| 1. | <u>15-11200</u> -B-7 | ROSA BALMORI | STATUS CONFERENCE RE: COMPLAINT |
| | <u>15-1132</u> | | 10-27-15 [<u>1</u>] |
| | U.S. TRUSTEE V. BALMORI | | |
| | GREGORY POWELL/Atty. for pl. | | |
| 2. | <u>13-10692</u> -B-7 | LUDOVICO PEREZ | ORDER TO SHOW CAUSE - FAILURE |
| | <u>14-1116</u> | | TO PROSECUTE |
| | MAURICIO'S GRILL AND CANTINA, | | 12-9-15 [<u>85</u>] |
| | INC. V. PEREZ | | |

10:00 A.M.

1. [15-13432](#)-B-7 FRANCISCO/MARIA MILLAN MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 12-1-15 [[18](#)]
R. BELL/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors default will be entered and the motion will be granted without oral argument for cause shown. 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 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 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. 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. No appearance is necessary.

2. [15-11935](#)-B-7 LEROY WEBER MOTION TO SELL
JMV-2 12-8-15 [[52](#)]
JEFFREY VETTER/MV
KENNETH HENJUM/Atty. for dbt.
JEFFREY VETTER/Atty. for mv.

This motion to sell assets was fully noticed in compliance with the Local Rules and there is no opposition. The respondent(s) default will be entered and the motion will be granted subject to the following: The agreed terms permit payment to be made after this hearing. Accordingly, unless the court orders otherwise, the trustee may not release any property of the bankruptcy estate unless and until the purchase price has been paid in full. The trustee shall submit an appropriate order in conformity with this ruling.

3. [15-13045](#)-B-7 SEAN/ASHLEY WHALEY
MDE-1
SYSTEMS & SERVICES
TECHNOLOGIES, INC./MV
R. BELL/Atty. for dbt.
MARK ESTLE/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-24-15 [[29](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtors' because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. 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 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. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. 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. No appearance is necessary.

4. [13-13163](#)-B-7 AMERICA QUISPE
TGF-4

MOTION FOR COMPENSATION FOR
VINCENT A. GORSKI, TRUSTEES
ATTORNEY(S)
12-16-15 [[106](#)]

5. [15-14683](#)-B-7 SHANE/KELLY MERKLING

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-14-15 [[11](#)]

SHAWN DOAN/Atty. for dbt.
FEE PAID IN FULL 12/14/15

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

6. [12-15487](#)-B-7 ANTHONY LEONIS
MKK-2
M. KLEIN/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION FOR COMPENSATION FOR M.
KATHLEEN KLEIN, ACCOUNTANT(S)
12-7-15 [[164](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

7. [12-15487](#)-B-7 ANTHONY LEONIS
RP-3
RANDELL PARKER/MV

ROBERT WILLIAMS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION FOR COMPENSATION FOR
RANDELL PARKER, CHAPTER 7
TRUSTEE(S)
12-8-15 [[170](#)]

8. [12-15487](#)-B-7 ANTHONY LEONIS
TGM-7

ROBERT WILLIAMS/Atty. for dbt.

MOTION FOR COMPENSATION FOR
TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
11-13-15 [[151](#)]

9. [15-13622](#)-B-7 CODY WEEDON
JMV-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
12-5-15 [[14](#)]

This motion will be continued to February 4, 2016, at 10:00 a.m., on the Bakersfield calendar. The trustee shall withdraw his motion to dismiss if the debtor appears at the re-scheduled §341 meeting of creditors. No appearance is necessary.

11:00 A.M.

1. [15-14073](#)-B-7 DANIEL/CYNTHIA VIDAL REAFFIRMATION AGREEMENT WITH
NISSAN MOTOR ACCEPTANCE
CORPORATION
12-7-15 [[16](#)]

ASHTON DUNN/Atty. for dbt.
RESCINDED

This hearing to review and approve a reaffirmation agreement will be dropped from calendar. The debtors have filed a notice of rescission of the agreement.

The court notes that Part D of the Agreement contains a mathematical error.

2. [15-13276](#)-B-7 BRIAN SIMPSON REAFFIRMATION AGREEMENT WITH
U.S. BANK NATIONAL ASSOCIATION
11-23-15 [[14](#)]

ILYSE KLAVIR/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement certifying that he or she has explained the agreement to the debtor, but did not check the box to state an opinion that the reaffirmed debt will not create an undue hardship. 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. Counsel shall notify his or her client that no appearance is necessary.

3. [15-13276](#)-B-7 BRIAN SIMPSON PRO SE REAFFIRMATION AGREEMENT
WITH NISSAN-INFINITI LT
12-1-15 [[16](#)]

ILYSE KLAVIR/Atty. for dbt.

The hearing will be dropped from calendar. The court intends to deny approval of this reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c) (3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. In addition, 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. No appearance is necessary.

4. [15-14436](#)-B-7 DONNA SPELL

PRO SE REAFFIRMATION AGREEMENT
WITH ALTAONE FEDERAL CREDIT
UNION
12-3-15 [[9](#)]

STEVEN STANLEY/Atty. for dbt.

This matter will be dropped from calendar. No appearance is necessary. This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney.

In addition, the agreement was filed without signatures of any of the parties to the agreement.

Finally, 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 P.M.

1. [11-11104](#)-B-13 BRENT/SHELLEY BROWN
JKS-1
CENTEX HOMES/MV
PHILLIP GILLET/Atty. for dbt.
JOHN SCHLICHTING/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-10-15 [[108](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' defaults will be entered and the motion will be granted without oral argument for cause shown. The automatic stay will be modified in order to permit litigation in the state court action to liquidate the movant's claim as to any insurance proceeds only. The stay is not modified as to any action against the debtors and no relief from the automatic stay as to movant's claims against the debtors is authorized. The proposed order shall specifically describe the action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted. Unless the court expressly orders otherwise, the proposed order shall not include any other relief. 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. No appearance is necessary.

2. [11-13917](#)-B-13 WESLEY/TERESA HAMMER
PK-3

MOTION FOR COMPENSATION FOR
PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
11-25-15 [[62](#)]

PATRICK KAVANAGH/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent(s) default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

3. [15-13522](#)-B-13 MARIA CARREON
RSW-2
MARIA CARREON/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONFIRM PLAN
11-13-15 [[30](#)]

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

4. [15-12826](#)-B-13 JOE/TINA MARIE GRANILLO OBJECTION TO CLAIM OF PHILLIP
SJS-3 GILLET, CLAIM NUMBER 1
JOE GRANILLO/MV 11-16-15 [[50](#)]
SUSAN SALEHI/Atty. for dbt.

The objection to proof of claim will be overruled without prejudice. The objection fails to comply with Local Bankruptcy Rule 3007-1(a) and/or Local Bankruptcy Rule 3007-1(b). A copy of the proof of claim was not included with the moving papers.

In addition, the objection was not served on the claimant at the address set forth in the proof of claim pursuant to Federal Rules of Bankruptcy Procedure 3007 and Local Bankruptcy Rule 3007-1(c). No appearance is necessary.

5. [13-16227](#)-B-13 DAVID/DIANA MITCHELL MOTION TO DISMISS CASE
MHM-3 11-12-15 [[90](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondents' default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

6. [15-10928](#)-B-13 DAVID FOX MOTION TO MODIFY PLAN
DMG-4 11-30-15 [[104](#)]
DAVID FOX/MV
D. GARDNER/Atty. for dbt.

This motion to confirm a modified chapter 13 plan will be denied without prejudice. The record does not show that the debtor filed and served the proposed modified plan, in its entirety, with the moving papers in compliance with Local Bankruptcy Rule 3015-1(c)(3) & (d)(1). No appearance is necessary.

7. [15-13630](#)-B-13 JAIME/RUTH GARZA MOTION FOR COMPENSATION FOR
PK-2 PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
12-17-15 [[43](#)]
PATRICK KAVANAGH/Atty. for dbt.

8. [15-14034](#)-B-13 MICHAEL/LUCIA LOPEZ STATUS CONFERENCE RE: COMPLAINT
[15-1133](#) 10-29-15 [[1](#)]
U.S. TRUSTEE V. LOPEZ ET AL
TERRI DIDION/Atty. for pl.
RESPONSIVE PLEADING

Based on the U.S. Trustee's Scheduling Conference Statement, the status conference will be continued to March 3, 2016, at 1:30 p.m., on the Bakersfield calendar. No appearance is necessary.

9. [15-14034](#)-B-13 MICHAEL/LUCIA LOPEZ MOTION TO DISMISS CASE
MHM-1 12-17-15 [[37](#)]
MICHAEL MEYER/MV

10. [15-10242](#)-B-13 JASON/MERI MATTHEUS MOTION TO DISMISS CASE
MHM-1 11-12-15 [[46](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

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

11. [12-17745](#)-B-13 F. OLIVER COOPER MOTION TO DISMISS CASE
MHM-3 11-6-15 [[127](#)]
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.
WITHDRAWN

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

12. [13-16747](#)-B-13 DIANA YBARRA MOTION TO DISMISS CASE
MHM-1 11-12-15 [[23](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
WITHDRAWN

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

13. [11-62148](#)-B-13 JOHN/TAMMY OLINGER MOTION TO DISMISS CASE
MHM-3 11-6-15 [[53](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
WITHDRAWN

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

14. [15-13652](#)-B-13 MERCEDITA ABRAHAM
MHM-1
MICHAEL MEYER/MV
RICHARD SNYDER/Atty. for dbt.

MOTION TO DISMISS CASE
11-23-15 [[50](#)]

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition.

In his motion the trustee notes that the schedules show non-exempt assets totaling \$234,189.99, however there is no motion for conversion before the court.

The record shows that the debtor has failed to provide a Credit Counseling Certificate, has failed to provide the trustee with required documentation, and has failed to provide evidence of a regular income. Accordingly, the respondent's default will be entered and the motion will be granted for cause without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

15. [15-14459](#)-B-13 KENNETH/JILL BURDICK

WILLIAM OLCOTT/Atty. for dbt.
FILING FEE PAID IN FULL
12/7/15

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-2-15 [[10](#)]

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

16. [11-10760](#)-B-13 RUBEN CARRILLO AND
MHM-1 SOCORRO LOPEZ
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
11-6-15 [[61](#)]

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

17. [12-12261](#)-B-13 ROEL/BERNADETTE GUINTO
MHM-4
MICHAEL MEYER/MV
D. GARDNER/Atty. for dbt.
MICHAEL MEYER/Atty. for mv.

MOTION TO DISMISS CASE
11-17-15 [[96](#)]

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondents default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

18. [15-11478](#)-B-13 JOSE/MARIBEL MOJARRO MOTION TO DISMISS CASE
MHM-2 11-12-15 [[44](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules and there is no opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the respondents default will be entered and the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

19. [15-13378](#)-B-13 JAMES ZOPPE ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-2-15 [[55](#)]
CASE DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

20. [11-16485](#)-B-13 MICHAEL MANN MOTION TO DISMISS CASE
MHM-4 11-6-15 [[192](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

The chapter 13 trustee's motion to dismiss was fully noticed in compliance with the Local Rules. The debtor has filed a notice of non-opposition. The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare and enter a civil minute order. No appearance is necessary.

21. [14-11754](#)-B-13 BRETT/RENEE SMITH MOTION TO APPROVE LOAN
CJO-1 MODIFICATION
DITECH FINANCIAL/MV 12-23-15 [[55](#)]
NEIL SCHWARTZ/Atty. for dbt.
CHRISTINA O/Atty. for mv.