

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY

**DATE:** MAY 2, 2019

**CALENDAR:** 9:00 A.M. CHAPTERS 13 AND 12 CASES

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.

1. [19-10507](#)-A-13     **IN RE: TUCKER/JAMIE MAXFIELD**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-3-2019    [\[21\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER

### **Final Ruling**

The motion withdrawn, the matter will be dropped as moot.

2. [18-12908](#)-A-13     **IN RE: CODY/CELESTE BERG**  
[MHM-5](#)

MOTION TO DISMISS CASE  
4-4-2019    [\[81\]](#)

MICHAEL MEYER/MV  
NICHOLAS WAJDA  
RESPONSIVE PLEADING

### **No Ruling**

3. [19-10511](#)-A-13     **IN RE: AYESHA KHAN**  
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-20-2019    [\[21\]](#)

WILMINGTON TRUST, NATIONAL  
ASSOCIATION/MV  
NICHOLE GLOWIN/ATTY. FOR MV.  
DISMISSED 03/15/2019

### **Final Ruling**

The case dismissed, the motion will be denied as moot.

4. [19-10228](#)-A-13     **IN RE: ARMIDA CEDARIO**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
MICHAEL H. MEYER  
3-19-2019    [\[16\]](#)

THOMAS GILLIS  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Objection:** The trustee's Objection to Confirmation of Plan

**Notice:** LBR 3015-1(c)(4), Continued from April 11

**Disposition:** Sustained and confirmation denied

**Order:** Civil minute order

The trustee objects to confirmation because the plan fails the hypothetical liquidation test. See 11 U.S.C. § 1325(a)(4). Specifically, the debtor has not accounted in the hypothetical liquidation test for a scheduled real property she has labeled as belonging to her son.

The hearing on this objection was continued from April 11 in order for the debtor to provide evidence of ownership interest in a real property. The debtor has now filed a non-opposition, stating she does not oppose sustaining of the objection, as she is planning to file an amended 100% plan. Accordingly, the objection will be sustained.

### **75-DAY ORDER**

A chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's objection to confirmation has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing, if any,

IT IS ORDERED that the objection is sustained. The court denies confirmation of the chapter 13 plan.

IT IS FURTHER ORDERED that a Chapter 13 plan must be confirmed no later than the first hearing date available after the 75-day period that commences on the date of this hearing. If a Chapter 13 plan has not been confirmed by such bar date, the court may dismiss the case on the trustee's motion. See 11 U.S.C. § 1307(c)(1).

5. [14-11045](#)-A-13     **IN RE: CATHERINE NELSON**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-1-2019    [[87](#)]

MICHAEL MEYER/MV  
PETER FEAR  
RESPONSIVE PLEADING

### **Final Ruling**

The motion withdrawn, the matter will be dropped as moot.

6. [18-15048](#)-A-13     **IN RE: ALDO ESCRIBENS AND ANA CASTILLO**  
[SL-3](#)

MOTION TO CONFIRM PLAN  
3-25-2019    [[38](#)]

ALDO ESCRIBENS/MV  
STEPHEN LABIAK  
RESPONSIVE PLEADING

### **No Ruling**

7. [18-14155](#)-A-13     **IN RE: SANDRA BOMBITA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
4-2-2019    [[25](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER  
RESPONSIVE PLEADING

### **No Ruling**

8. [19-10555](#)-A-13     **IN RE: TARA SYSAKNOI**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-3-2019    [[22](#)]

MICHAEL MEYER/MV  
STEVEN ALPERT  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter will be dropped as moot.

9. [15-12062](#)-A-13     **IN RE: JUAN/GINA CIENFUEGOS**  
[PBB-5](#)

MOTION TO REFINANCE  
4-18-2019    [[64](#)]

JUAN CIENFUEGOS/MV  
PETER BUNTING

**No Ruling**

10. [18-11377](#)-A-13     **IN RE: ERIC/TARA BOHLANDER**  
[PBB-4](#)

MOTION TO MODIFY PLAN  
3-28-2019    [[52](#)]

ERIC BOHLANDER/MV  
PETER BUNTING  
RESPONSIVE PLEADING

**No Ruling**

11. [19-10681](#)-A-13     **IN RE: MARIA NINO**  
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-26-2019    [\[12\]](#)

WILMINGTON TRUST, NATIONAL  
ASSOCIATION/MV  
DARLENE VIGIL/ATTY. FOR MV.

### **Tentative Ruling**

**Motion:** 362(d)(4) In Rem and Prospective Stay Relief to Pursue Unlawful Detainer Action and Writ of Possession

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part and denied in part

**Order:** Civil minute order

**Subject & Remedy Sought:** Exercise state law rights and remedies to obtain possession of real property located at 700 E. 3<sup>rd</sup> Street, Garage Unit, Bakersfield, California, including all actions necessary to pursue an unlawful detainer action and execute a writ of possession; 362(d)(4) in rem relief

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

Here, the movant purchased the subject property in a pre-petition foreclosure sale. The movant is the owner of the property and the debtor does not have ownership interest in the property. The court sees nothing the debtor can reorganize with respect to the property. This is cause for the granting of relief from stay.

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to enforce its rights and remedies to obtain possession of the real property described above and to pursue an unlawful detainer action through judgment and execution of a writ of possession if necessary.

The moving party may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding.

However, the court will deny section 362(d)(4) relief. Such relief is available only to creditors who are secured by the property. *Ellis v. Yu (In re Ellis)*, 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wilmington Trust, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to enforce its rights and remedies against the debtor to obtain possession of real property located at 700 E. 3<sup>rd</sup> Street, Garage Unit, Bakersfield, California and to pursue an unlawful detainer action through judgment and execution of a writ of possession, if necessary.

IT IS FURTHER ORDERED that the movant may also file post-judgment motions, and appeals. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any money judgment against debtor, except by (1) filing a proof of claim in this court or (2) filing an adversary proceeding to determine the debt nondischargeable, and executing on a favorable judgment entered in such adversary proceeding. And the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

IT IS FURTHER ORDERED that there shall be no other relief. Relief under 11 U.S.C. § 362(d)(4) is denied.

12. [18-14586](#)-A-13     **IN RE: JAMES/LAURA JORGENSEN**  
[NEA-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
1-9-2019    [[31](#)]

JAMES JORGENSEN/MV  
NICHOLAS ANIOTZBEHERE  
RESPONSIVE PLEADING

**No Ruling**

13. [14-11597](#)-A-13     **IN RE: TERRY/KELLEY CLEMENTS**  
[MHM-2](#)

MOTION TO DISMISS CASE  
4-2-2019    [[39](#)]

MICHAEL MEYER/MV  
SCOTT COBEN  
RESPONSIVE PLEADING

**Final Ruling**

The motion withdrawn, the matter will be dropped as moot.