

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, June 1, 2017
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 an 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. [17-10443](#)-B-11 ASHO ASSOCIATES, INC.
UST-1
TRACY DAVIS/MV

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
5-2-17 [[37](#)]

TODD TUROCI/Atty. for dbt.
TERRI DIDION/Atty. for mv.

The motion will be continued to June 8, 2017, on the Bakersfield calendar at 9:30 a.m., to be heard with the court's Order to Show Cause.

This matter was fully noticed in compliance with the Local Rules of Practice and no opposition was filed. 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. Accordingly, the respondents' defaults will be entered. It appears there is cause to convert or dismiss the case for cause pursuant to §1112(b)(1).

It appears that the assets of the estate may include significant claims against other parties including Salimar. Therefore, at the continued hearing the court will entertain arguments regarding whether the conversion of the case to chapter 7 or dismissal is in the "best interests of creditors and the estate."

In the case of conversion of the case to chapter 7, the issue of lack of representation of the corporate debtor also must be addressed. See, e.g., *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 202 (1993) (reiterating that "a corporation may appear in the federal courts only through licensed counsel").

1:30 P.M.

1. [17-11004](#)-B-13 SANTIAGO/VELIA VALDOVINOS OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
5-15-17 [[33](#)]

THOMAS GILLIS/Atty. for dbt.

This matter was noticed pursuant to LBR 9014-1(f) (2) and will proceed as scheduled. The court will invite the debtors' response to the issues raised by the chapter 13 trustee in the objection.

2. [17-10612](#)-B-13 ADAM/CHRISTINA RAMIREZ MOTION TO DISMISS CASE
MHM-1 5-17-17 [[34](#)]
MICHAEL MEYER/MV

This matter was noticed pursuant to LBR 9014-1(f) (2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. 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 record shows there has been unreasonable delay by the pro se debtors that is prejudicial to creditors. It appears the debtors have failed to commence making plan payments; failed to appear at the scheduled and continued 341 Meeting of Creditors; failed to provide the Trustee with the required documentation including: Class 1 Mortgage Checklist with payment coupon or last statement; 2016 State and Federal Tax Return; proof of all income, i.e., pay advices; profit and loss statements; rental income; unemployment compensation, social security income; disability; and retirement for the six months prior to filing; failed to provide the Trustee with 2016 Federal Tax Return; and, failed to set a plan for hearing with notice to creditors.

3. [16-14414](#)-B-13 GERARDO REYES MOTION TO DISMISS CASE
MHM-2 5-2-17 [[74](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

This motion is based on the debtor's failure to confirm a chapter 13 plan. Unless the motion is withdrawn prior to the hearing, and based on the debtor's response and review of the record, this matter will be continued to June 29, 2017, at 1:30, to be heard with the debtor's motion to confirm a modified plan filed May 18, 2017 (doc.# 79). The court will enter an order. No appearance is necessary.

4. [17-10919](#)-B-13 PETER PASTOR
MHM-1
MICHAEL MEYER/MV
KARNEY MEKHITARIAN/Atty. for dbt.

MOTION TO DISMISS CASE
5-2-17 [[16](#)]

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

5. [17-10236](#)-B-13 PAUL/KATHLEEN LANGSTON
FW-2
PAUL LANGSTON/MV
PETER FEAR/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CARMAX BUSINESS SERVICES LLC
5-3-17 [[44](#)]

The motion will be granted without oral argument based on well-pled facts. The moving party shall submit a proposed order consistent with this ruling. No appearance is necessary.

This motion to value respondent's collateral 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.

The debtor is competent to testify as to the value of the 2006 Audi A4 Sedan. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir, 2004). The respondent's secured claim will be fixed at \$3,534. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

6. [17-11246](#)-B-13 MARIANO AGUIRRE

U.S. BANK NATIONAL
ASSOCIATION/MV
DAVID JENKINS/Atty. for dbt.
SEAN FERRY/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
4-27-17 [[18](#)]

The objection will be overruled without prejudice. The court will enter an order. No appearance is necessary.

The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).

In addition, the proof of service fails to comply with LBR 9014-1(e)(3).

Finally, while the moving creditor has still not filed a proof of claim, it alleges that the debtor has understated the arrearage on its claim in class 1 by an amount that will require an increase in the monthly payments by approximately \$27. However, the objection was filed without admissible supporting evidence as required by LBR 9014-1(d)(7).

7. [17-10650](#)-B-13 JOSE TORRES
MHM-2

THOMAS GILLIS/Atty. for dbt.

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
5-15-17 [[31](#)]

Unless the objection is withdrawn this matter will proceed as scheduled. The court has reviewed the debtor's response filed May 25, 2017, and will inquire as to the status of the trustee's objection to confirmation.

8. [17-11256](#)-B-13 VARGHA ESHRAGHI
AP-1
WELLS FARGO BANK, N.A./MV
JAMIE HANAWALT/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-1-17 [[20](#)]

The motion will be granted without oral argument for cause shown. The movant shall submit a conforming proposed order that complies with 362(d)(4), 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.

After this motion was filed the automatic stay terminated by force of law when the case was dismissed for failure to timely file documents. However, because the motion was filed before the case was dismissed the court is not precluded from entering judgment granting relief pursuant to 11 U.S.C. §362(d)(4). It appears from the evidence submitted and from the record that the debtor's bankruptcy case was used as part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting such real property. The record shows that this is the debtor's sixth bankruptcy case that has involved the subject real property, that the debtor has failed to make 80 payments and that the account is in arrears for approximately \$113,371.62. This creditor received relief from the automatic stay in the debtor's chapter 7 case filed in September 2010.

The proposed order shall specifically describe the property or action to which the order relates.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

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).

9. [14-11975](#)-B-13 MICHAEL TAYLOR
GH-4
MICHAEL TAYLOR/MV
GARY HUSS/Atty. for dbt.

MOTION TO INCUR DEBT
5-3-17 [[83](#)]

This matter will proceed as scheduled. The court intends to inquire as to the status of the plan payments at the hearing. Those payments must be current by the time of the hearing or the motion will be denied. See LBR 3015-1(i) (1) (B).

10. [17-10878](#)-B-13 LUIS TAVARES
MHM-1
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
5-2-17 [[30](#)]

This matter will be continued to Friday, July 7, 2017, at 9:30 a.m., to be heard with the motion to confirm the plan.

However, if all the documents required by §521(a) (3) (4) and listed in the trustee's motion to dismiss have not been received by the trustee by June 6, 2017, then the court will dismiss the case on the trustee's *ex parte* motion and the continued matter will be dropped from calendar. The court will issue an order. No appearance is necessary.

11. [17-10878](#)-B-13 LUIS TAVARES
TOG-1
LUIS TAVARES/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
4-20-17 [[25](#)]

This matter will be continued to Friday, July 7, 2017, at 9:30 a.m. The court will issue an order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and only the trustee filed an objection. 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. Accordingly, the defaults of all other respondents will be entered.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 has been concluded and the trustee has not supplemented this objection, based on prematurity of the motion, the matter will be predisposed and removed from calendar. If the trustee has supplemented his opposition then the court will call the matter.

12. [17-10483](#)-B-13 CONSOLACION ATAYDE AND
TOG-1 MARIA SORIANO
CONSOLACION ATAYDE/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
3-27-17 [[18](#)]

This matter will be continued to Friday, July 7, 2017, at 9:30 a.m. The court will issue an order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

13. [17-10793](#)-B-13 PEDRO VELASQUEZ
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
5-2-17 [[39](#)]

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an 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.

The record shows that there has been unreasonable delay because of, failure to provide the trustee with required documentation including a complete Class 1 Mortgage Checklist with payment coupon or last statemet, and the promissory note. Accordingly, the case will be dismissed.