

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, August 10, 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.

9:30 A.M.

1. [16-10706](#)-B-7 ARLEEN MAROZIK MOTION TO EMPLOY GUARANTEE REAL
PFT-1 ESTATE AS BROKER(S)
PETER FEAR/MV 7-6-16 [[19](#)]
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
ORDER #23

This matter will proceed as scheduled. Movant should be prepared to show that the proposed employment and anticipated sale of the asset will result in a meaningful distribution for the unsecured creditors pursuant to the standards set by the U.S. Department of Justice in the Handbook for Chapter 7 Trustees, Chapter 4.C.9.a.

Based on the debtor's valuation in the schedules and the hearsay statement of the trustee that the proposed broker can sell the property for between \$320,000 and \$330,000, the trustee's commission exceeds the anticipated net recovery. That recovery may be more if the property sells for over \$320,000 but that is speculative as is both potential recovery from lien avoidance litigation and "working with debtor's counsel." The evidence before the court thus far does not satisfy the directive of the court's July 8, 2016 order.

2. [16-12612](#)-B-7 ANURADHA REDDY ORDER TO SHOW CAUSE FOR FAILURE
TO PAY FILING FEE
7-25-16 [[6](#)]

This matter will proceed as scheduled. This matter was set on preliminary notice under LBR 9014-1(f)(2) and written opposition was not required. The court has reviewed the written opposition which was submitted. The court intends to enter other respondent's defaults and dismiss the case pursuant to the OSC.

3. [16-12239](#)-B-7 JENNIFER GRAHAM MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
JENNIFER GRAHAM/MV 6-22-16 [[5](#)]
JENNIFER GRAHAM/Atty. for mv.
DISMISSED

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

4. [16-12239](#)-B-7 JENNIFER GRAHAM
NLG-1
R.F. GROUP, L.P./MV
NICHOLE GLOWIN/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-11-16 [[24](#)]

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

5. [16-11643](#)-B-7 HECTOR ZAVALZA
EAT-1
WELLS FARGO BANK, N.A./MV
ERIC ESCAMILLA/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-12-16 [[21](#)]

The motion will be granted under 11 U.S.C. § 362(d)(1). No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default 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 uncontroverted evidence is that there have not been payments on this obligation for 16 months. There is, based on the motion, a very small equity cushion (approximately \$1500). That is not sufficient adequate protection for over \$100,000 encumbrance. Because of the small equity cushion, relief from the stay under 11 U.S.C. § 362 (d) (2) is unavailable.

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.

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.

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. [15-12645](#)-B-7 KENNETH KLIEWER
RHT-2
ROBERT HAWKINS/MV
JOEL WINTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
7-13-16 [[36](#)]

The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order as specified below. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

It appears that the sale is a reasonable exercise of the trustee's business judgment. The motion seeks authority to sell a 2007 Honda Accord SE to the debtor for \$2500. The money has been collected by the Trustee. No party in interest has objected to the sale.

7. [16-10951](#)-B-7 MARK RAMIREZ
MAZ-1
MARK RAMIREZ/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
7-11-16 [[25](#)]

This motion to convert the chapter 7 case to one under chapter 13 has been withdrawn by the debtor as the case was converted without a hearing. No appearance is necessary.

8. [15-11256](#)-B-7 SUPASIRI/SHAUNA
SJS-4 SIRAYANONE
SUPASIRI SIRAYANONE/MV
SCOTT SAGARIA/Atty. for dbt.
RESPONSIVE PLEADING

MOTION FOR VIOLATION OF THE
DISCHARGE INJUNCTION
6-20-16 [[42](#)]

This matter has been transferred to Judge Clement in Department A pursuant to order dated August 2, 2016. The hearing set on this calendar will be rescheduled to August 24, 2016, at 9:00 a.m. in Department A, Courtroom 11. No appearance is necessary.

9. [15-14759](#)-B-7 MIGUEL/CYNTHIA CORTEZ
TMT-1
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.

MOTION FOR TURNOVER OF PROPERTY
7-6-16 [[23](#)]

The motion will be granted in part and denied in part without prejudice and without oral argument based upon well-pled facts as specified below. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

The trustee's motion requests turnover of any tax refunds that constitute property of the estate, those tax refunds, if any, that are attributable *pro rata* to the period between January 1, 2015, and December 11, 2015. That request will be granted. Any such tax refunds, if they exist, are the property of this bankruptcy estate and the trustee is obliged to collect and administer them.

The trustee has cited no authority to show that any documents that may have been received or created by the debtor, post-petition, are property of the estate and subject to a turn-over order. Therefore, as to these, the turnover motion will be denied without prejudice to other avenues of discovery available to the trustee (e.g. FRBP 2004 examination).

10. [16-10763](#)-B-7 THOMAS GODIN
EAT-1
U.S. BANK TRUST, N.A./MV
SCOTT LYONS/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-30-16 [[16](#)]

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 debtor because his discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. No appearance 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 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.

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.

The motion for relief under 11 U.S.C. §362(d)(4) is also granted. 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 transfer of a portion of the subject real property. It appears from the evidence submitted in support of the motion that the movant's borrowers transferred an interest in the property to the debtor pre-petition without consent of the lienholder. The proposed order must comply with 362(d)(4).

The court is not making a finding regarding any complicity on the part of the debtors and any order shall not include such a finding.

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).

11. [16-10763](#)-B-7 THOMAS GODIN
EAT-1
WELLS FARGO BANK N.A./MV
SCOTT LYONS/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-8-16 [[24](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered. The automatic stay is terminated retroactive to March 11, 2016, 12:32 pm on the date the petition was filed, as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

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.

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.

The motion also requests that the automatic stay be annulled to validate a foreclosure sale which occurred at 12:32 pm on March 14, 2016. That is the same date as this case was filed. This case was filed at approximately 11:00 am March 14, 2016. Given the numerous bankruptcy filings affecting this property in the past 4 years, annulment of the automatic stay will be granted.

The motion for relief under 11 U.S.C. §362(d)(4) is also granted. 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 transfer of a portion of the subject real property. It appears from the evidence submitted in support of the motion that the movant's borrowers transferred an interest in the property to the debtor pre-petition without consent of the lienholder. The proposed order must comply with 362(d)(4).

The court does not find the debtor was complicit in any scheme to hinder, delay or defraud this creditor. The order should include such a finding.

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).

12. [14-14765](#)-B-7 ROBERT/SHARRYLE EURICH
AP-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-8-16 [[32](#)]

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. No appearance is necessary.

The motion seeks relief from stay for movant to exercise its rights as to real property located at 7179 N. Nan Ness Blvd., Fresno, California. The evidence is the movant is owed nearly \$602,000. Before the petition was filed the obligation was in default for substantial missed payments. Post-petition, no payments have been made. The value of the property, based on the evidence, is less than what is owed. Accordingly stay relief is appropriate under 11 U.S.C. § 362 (d) (1) and (d) (2).

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.

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.

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).

13. [16-11265](#)-B-7 DAVID/HERMINIA RUIZ
EPE-1
DAVID RUIZ/MV
ERIC ESCAMILLA/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO REDEEM AND APPROVE
ASSOCIATED FINANCING
7-12-16 [[18](#)]

This motion has been withdrawn by the debtors. No appearance is necessary.

14. [16-11772](#)-B-7 ROSEMARY GARCIA
EPE-1
ROSEMARY GARCIA/MV
ERIC ESCAMILLA/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO REDEEM AND/OR MOTION
TO INCUR DEBT
7-12-16 [[19](#)]

This motion will be denied. The court will enter a civil minute order. No appearance is necessary.

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).

The debtors were required by § 521(a)(2)(A) to both, file a Statement of Intent listing her intent to redeem the subject property and to serve that lienholder with the Statement of Intent to FRBP 7004. There is no evidence that the Statement of Intent was timely and properly served on Ally Financial. The vehicle was neither exempted or abandoned based on the schedules and the record in this case.

The creditor filed a response to the motion indicating that it was willing to accept less than is owed for the vehicle. Any such post-petition agreement, however, is not subject to the bankruptcy court's jurisdiction.

15. [16-11795](#)-B-7 ELVIRA ROWE
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
6-22-16 [[11](#)]

JERRY LOWE/Atty. for dbt.

No appearance is necessary. The court will issue a civil minute order.

The debtor shall attend the meeting of creditors rescheduled for August 15, 2016 at 9:30 a.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 to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

Debtor's counsel shall notify his client that no appearance is necessary at this hearing.

16. [16-11944](#)-B-7 RICHARD HERNANDEZ
RHT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341 (A) MEETING
OF CREDITORS
7-5-16 [[11](#)]

DISMISSED

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

11:00 A.M.

1. [16-11703](#)-B-7 JERRY/ALLISON SCHUBER REAFFIRMATION AGREEMENT WITH
SPRINGLEAF FINANCIAL SERVICES,
INC.
7-13-16 [[19](#)]

PAUL JAMES/Atty. for dbt.

Approval of the Reaffirmation Agreement will be denied. 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. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

2. [16-12370](#)-B-7 ESTELLA VERDIN PRO SE REAFFIRMATION AGREEMENT
WITH BMW BANK OF NORTH AMERICA
7-20-16 [17]

This matter will proceed as scheduled.

1:30 P.M.

1. [15-14225](#)-B-7 LETICIA CAMACHO
[16-1009](#)
CAMACHO V. GARCIA ET AL
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-19-16 [[1](#)]

This matter will proceed as scheduled.

At the prior hearing the court gave notice pursuant to FRCP 4(m) [FRBP 7004] that it intended to dismiss the complaint without prejudice as to those defendants who have not yet been served at this hearing. The plaintiff was ordered to file a status conference statement not later than August 3, 2016. The record in the adversary proceeding shows that the defendants were served with stale summons on June 21, 2016 and therefore have still not been properly served with the summons and complaint.

The plaintiff filed a status report in which she indicates the intention to request the court determine that service on the remaining unserved defendants is sufficient, however cited no authority for that request.

2. [15-14228](#)-B-13 OSCAR GUTIERREZ
[16-1010](#)
GUTIERREZ V. GARCIA ET AL
GLEN GATES/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-19-16 [[1](#)]

This matter will proceed as scheduled.

At the prior hearing the court gave notice pursuant to FRCP 4(m) [FRBP 7004] that it intended to dismiss the complaint without prejudice as to those defendants who have not yet been served at this hearing. The plaintiff was ordered to file a status conference statement not later than August 3, 2016. The record in the adversary proceeding shows that the defendants were served with stale summons on June 21, 2016 and therefore have still not been properly served with the summons and complaint.

The plaintiff filed a status report in which he indicates the intention to request the court determine that service on the remaining unserved defendants is sufficient, however cited no authority for that request.