

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, August 11, 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. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS, MOTION FOR COMPENSATION BY THE
DHR-3 INC. LAW OFFICE OF LEVENE, NEALE,
BENDER, YOO & BRILL L.L.P. FOR
DANIEL H. REISS, CREDITOR COMM.
ATY(S)
7-21-16 [[421](#)]

LEONARD WELSH/Atty. for dbt.

This matter was dropped from calendar pursuant to the court's civil minute order entered August 4, 2016, in connection with the same matter. If the motion had not been dropped from calendar, it would have been denied without prejudice. The record does not show that the client has consented to payment of the fees requested. No appearance is necessary.

2. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS, CONTINUED MOTION FOR ORDER
LKW-1 INC. APPROVING STIPULATION RE:
B&L EQUIPMENT RENTALS, INC./MV DEBTOR'S USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION
12-11-15 [16]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

1:30 P.M.

1. [16-10302](#)-B-13 JASON/ASHLEY WILLIAMS MOTION TO DISMISS CASE
MHM-2 6-20-16 [[44](#)]
MICHAEL MEYER/MV
RANDY RISNER/Atty. for dbt.

This motion will be continued to September 8, 2016, at 1:30 p.m. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' 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 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.

By prior order the debtors were given the opportunity to file a response to the trustee's objection to confirmation of their modified plan by September 1, 2016, or to file, serve, and set for hearing a new modified plan on the September 8, 2016, calendar. If the debtors do neither, then the court intends to dismiss the case prior to the hearing.

2. [16-11507](#)-B-13 JESUS SOTO MOTION TO DISMISS CASE
MHM-1 6-20-16 [[13](#)]
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.

The motion will be granted without oral argument for cause shown. The court will issue a civil minute order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' 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 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.

The record shows that there is a material default in the chapter 13 plan payments that has not been cured. Accordingly, the case will be dismissed.

3. [16-10309](#)-B-13 MILO/LEANN HODGES
KLF-1
GREENWICH CAPITAL FINANCIAL
PRODUCTS, INC./MV

SCOTT LYONS/Atty. for dbt.
MICHAEL KOGAN/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
GREENWICH CAPITAL FINANCIAL
PRODUCTS, INC.
2-29-16 [[14](#)]

The objection has been withdrawn. The court will enter a civil minute order. No appearance is necessary.

4. [16-10832](#)-B-13 ISRAEL AYON RODRIGUEZ

SCOTT LYONS/Atty. for dbt.

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-21-16 [[38](#)]

The record shows that the required fee has been paid. No appearance is necessary.

5. [16-12433](#)-B-13 GARLAND MCALESTER

DISMISSED

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-19-16 [[11](#)]

This case has already been dismissed. No appearance is necessary.

6. [16-11339](#)-B-13 JOSE FARIAS
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
6-20-16 [[33](#)]

This case has already been dismissed. No appearance is necessary.

7. [16-11043](#)-B-13 MARK/RISE MARTIN
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
5-16-16 [[37](#)]

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

8. [16-11144](#)-B-13 CARLOS NAVARRETTE
APN-1
WELLS FARGO BANK, N.A./MV

TIMOTHY SPRINGER/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
5-10-16 [[24](#)]

If the objection to confirmation is not withdrawn prior to the hearing, the hearing will proceed as a status conference and the parties should be prepared for the court to set a date for an evidentiary hearing.

9. [16-12550](#)-B-13 MICHAEL/ASHLEY ESPINOSA
SL-1
MICHAEL ESPINOSA/MV
SCOTT LYONS/Atty. for dbt.

AMENDED MOTION TO EXTEND
AUTOMATIC STAY
7-26-16 [[12](#)]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to grant the motion.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
 2. What has changed so that the present plan is likely to succeed?
- In re Elliot-Cook*, 357 B.R. 811, 814-15 (Bankr. N.D. Cal.2006)

In this case the presumption of bad faith does not arise. "Where there is no presumption of bad faith and no party objects, a request to extend the stay should be liberally granted." *In re Elliott-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006), citing *In re Warneck*, 336 B.R. 181, 182 (Bankr.S.D.N.Y.2006).

Based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the debtors' petition was filed in good faith and intends to grant the motion to extend the automatic stay. The motion will be granted and the automatic stay extended for all purposes, as to all parties who received notice, unless terminated by further order of this court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2). The court will issue a minute order after the hearing.

10. [16-11656](#)-B-13 CARL/MARI WHITFORD
ASW-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
SCOTT LYONS/Atty. for dbt.
CAREN CASTLE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
6-30-16 [[22](#)]

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 and from the co-debtor 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 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)

11. [16-10361](#)-B-13 LODGERIO/ANTONIA JORGE
MHM-1
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.

MOTION TO DISMISS CASE
6-20-16 [[35](#)]

If the motion is not withdrawn prior to the hearing, it will be denied as moot. The court will enter a civil minute order. No appearance is necessary.

The trustee's motion is based on the debtors' failure to confirm a chapter 13 plan. The trustee has withdrawn his objection to confirmation of the debtors' plan below at calendar number 13 (PLG-1). Accordingly, the court intends to grant that motion which renders this motion moot.

12. [16-10361](#)-B-13 LODGERIO/ANTONIA JORGE
MHM-2
MICHAEL MEYER/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
6-24-16 [[39](#)]

If the motion is not withdrawn prior to the hearing, it will be denied as moot. The court will enter a civil minute order. No appearance is necessary.

The trustee's motion is based on the debtors' failure to confirm a chapter 13 plan. The trustee has withdrawn his objection to confirmation of the debtors' plan below at calendar number 13 (PLG-1). Accordingly, the court intends to grant that motion which renders this motion moot.

13. [16-10361](#)-B-13 LODGERIO/ANTONIA JORGE
PLG-1
LODGERIO JORGE/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
6-30-16 [[43](#)]

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

This motion to confirm a chapter 13 plan was fully noticed in compliance with the Local Rules. The trustee's opposition has been withdrawn and the other respondents' defaults will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [11-63265](#)-B-13 JERRY/VERONIQUE SIGALA
GEG-4
JERRY SIGALA/MV

OBJECTION TO CLAIM OF NATIONAL
CAPITAL MANAGEMENT, LLC, CLAIM
NUMBER 1 AND/OR OBJECTION TO
CLAIM OF PORTFOLIO RECOVERY
ASSOCIATES, LLC, CLAIM NUMBER
18
7-12-16 [[89](#)]

GLEN GATES/Atty. for dbt.

The objection will be overruled without prejudice. The court will enter a civil minute order. No appearance is necessary.

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

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 objection is not supported by evidence to show that the proof of claim should be allowed in the amount \$3,832 only.

The proof of claim was filed in the amount of \$6,133; the debtors contend that it should have been filed in the amount of \$3,832, on account of payments made to the creditor during the pendency of a prior chapter 13 case.

The record shows that in the prior case Citifinancial Auto Corporation, respondent's predecessor, filed a proof of claim in the amount of \$7,125.55, and that the claim was allowed in the amount of \$4,960 after the debtors' successful motion to value the collateral for the claim. The Trustee's Final Report shows that the claim was paid down in the principal amount of \$1,595.78 during the first case. It appears that, in the absence of missed payments or accrued interest between case 1 and case 2, the claim should have been filed in the approximate amount of \$5,529.77.

The debtors did not file a motion to value the collateral for the claim in this second case and the order valuing the collateral in the prior case has no force or effect since that case was dismissed.

15. [16-11868](#)-B-13 PAUL/AMANDAH GUILLEN
MHM-1
MICHAEL MEYER/MV

OBJECTION TO CONFIRMATION OF
PLAN BY MICHAEL H. MEYER AND/OR
MOTION TO REQUEST FOR BAR DATE
7-19-16 [[15](#)]

PETER BUNTING/Atty. for dbt.

This objection to confirmation of a chapter 13 plan will be overruled without prejudice. The court will prepare and enter a civil minute order. No appearance is necessary.

The debtors have filed a modified plan that has been served and set for a hearing on September 15, 2016. The plan that is the subject of this objection is deemed withdrawn.

16. [14-13573](#)-B-13 GREGORY/HEATHER VITUCCI
JB-1
STATE BOARD OF EQUALIZATION/MV

MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
7-13-16 [[90](#)]

HENRY NUNEZ/Atty. for dbt.
JILL BOWERS/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled. The court intends to grant the motion to dismiss or convert. Although the debtors filed a response it was late and not based on substantive facts. Any defect in the motion was cured when a second declaration with attached exhibits was filed and served on the debtors.

If substantive opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2). The court will issue a minute order after the hearing.

17. [14-11175](#)-B-13 DANNY/SARA BAEZA
KMM-3
DANNY BAEZA/MV
KARNEY MEKHITARIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
7-11-16 [[67](#)]

The debtors' motion to sell the 2010 Honda will be granted if the debtors will consent to restructure of the transaction consistent with the trustee's opposition, otherwise it will be denied without prejudice.

The debtors may submit a proposed order that has been approved and signed by the trustee.

18. [16-12679](#)-B-13 PAUL HAND
SL-1
PAUL HAND/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
7-28-16 [[10](#)]

The debtor filed this motion pursuant to § 362(c)(3) to extend the automatic stay. The motion will be denied as moot. The court will enter a civil minute order. No appearance is necessary.

The debtor's prior case was a chapter 7 in which the debtor received a discharge. By its terms, §362(c)(3) only applies where the prior case was dismissed and so is inapplicable here.

19. [11-16697](#)-B-13 RONALD/DONNA HOFFART
RS-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FINANCIAL RELIEF
LAW CENTER FOR RICHARD
STURDEVANT, DEBTORS ATTORNEY(S)
7-6-16 [[187](#)]

ANDY WARSHAW/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party 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, which the movant has done here.