

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, November 16, 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. [16-12604](#)-B-7 BENNIE MCLIN
JES-1
JAMES SALVEN/MV

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-21-16 [[37](#)]

This objection will be sustained. The debtor shall have until November 30, 2016, to file an amended schedule C. The court will enter a civil minute order. No appearance is necessary.

The pleadings and record appear to show that the debtor has approximately \$70,000 in equity in his residence which he has attempted to exempt under Cal. Civ. Code §704.730, which protects up to \$75,000 for an individual and up to \$100,000 for, inter alia, a married couple. The debtor listed his claimed exemption as "100% of market value," instead of listing the amount of the claimed exemption, however, which is the reason the objection will be sustained.

The trustee also objects to the debtor's claim of exemption, under §704.020, in his household goods, at "100% of fair market value." The total value of the goods must be listed. This exemption covers all of the debtor's "ordinarily and reasonably necessary" household goods.

The trustee also objects to the debtor's claim of exemption in his "Vehicles" with a listed value of \$17,001. This exemption is claimed under §704.010, which permits exemption only up to \$2,300.

Schedule D shows that the debtor owes "BMW Financial" \$9,000 for a "2007 BMW 328.i" with a fair market value of \$7,000. The record shows that "BMW Bank of North America" has received an order for relief from stay with regard to that vehicle. The record shows that the debtor owns three other vehicles, with a total value of \$8,001, that are unencumbered.

The court notes that the record shows the debtor is involved in pending family law litigation and is subject to a domestic support order. It is not clear from the record that the other party in those matters has received notice of this bankruptcy case.

2. [15-14816](#)-B-7 MICHAEL SPRADLEY
RWR-3
JAMES SALVEN/MV

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR LONDON
PROPERTIES, LTD., BROKER(S)
10-19-16 [[35](#)]

GABRIEL WADDELL/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

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 of Practice 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 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.

3. [16-12627](#)-B-7 RAMAN/PARAMJIT JOHAL
BSH-1
RAMAN JOHAL/MV
BRIAN HADDIX/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
10-13-16 [[19](#)]

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 of Practice 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 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 court notes that the chapter 7 trustee concluded the §341 meeting of creditors on August 25, 2016, and issued a notice of assets. Subsequently, on October 13, 2016, the debtors filed amended schedules A/B and C, and this motion, on the same day. No objection to those amendments has been filed and, at the time of this hearing, the amended claim of exemptions will be final.

4. [15-13932](#)-B-7 VICTOR PASNICK MOTION TO SELL
RHT-5 10-20-16 [[79](#)]
ROBERT HAWKINS/MV
PETER FEAR/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This matter will proceed as scheduled. This motion to sell property of the estate was noticed as a preliminary matter and subject to higher and better bids at the time of the hearing.

5. [15-13932](#)-B-7 VICTOR PASNICK MOTION TO SELL
RHT-6 10-20-16 [[84](#)]
ROBERT HAWKINS/MV
PETER FEAR/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled. This motion is related to the compromise approved by the court in an order entered April 14, 2016 (RHT-2). A holder of a secured claim against property of the estate, which property is part of the proposed transfer, has filed a limited opposition.

6. [16-13133](#)-B-7 JOYCELYN MAMAUAG MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
HSBC BANK USA, NATIONAL 10-13-16 [[21](#)]
ASSOCIATION/MV
VINCENT GORSKI/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.

The motion will be granted in part and denied in part 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 of Practice and there was no opposition. The debtor's default will be entered. The automatic stay is terminated pursuant to §362(d)(1) as it applies to the movant's right to enforce its remedies against the subject property identified as 1251 East Court St., Pixley, CA 93256, APN 299-091-006, under applicable nonbankruptcy law. (The court notes that the debtor does not list an interest in property in Pixley, but lists property at 1251 Court St., Earlimart, CA 93219.)

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. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not 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. Such a motion shall be filed and served within 10 days of this hearing date. If such motion is not so filed and served then the claim for fees shall be deemed withdrawn.

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).

The request for relief pursuant to §362(d)(4) will be denied without prejudice. Although the motion recites that the relief should be granted based on bad faith, there is no admissible evidence in the pleadings or on the docket to support such a finding.

In addition to this deficiency, the pleadings contain several material misrepresentations. First, although the pleadings recite lack of an equity cushion as additional cause, the movant's own papers show equity of approximately \$32,000, compared with a value of \$123,151 in addition to costs of sale. Second, the movant recites in the motion that the debtor's Statement of Intent as to this property is surrender; the debtor's Statement of Intent instead lists "Retain the property and pay pursuant to contract" (sic).

7. [16-12646](#)-B-7 PERRY CROUCH
RJP-1
PERRY CROUCH/MV
RABIN POURNAZARIAN/Atty. for dbt.

CONTINUED MOTION TO REDEEM
9-8-16 [[22](#)]

This motion was continued to permit the debtor to file evidence that the requirements of the bankruptcy code applicable to redemption had been met. The requirements not having been met, the motion is denied. The court will enter a civil minute order. No appearance is necessary.

While the debtor filed no response, the debtor did file an amended Statement of Intent on October 12, 2016, serving it only on the debtor and the trustee, indicating an intent to redeem the subject property. The Statement of Intent was not filed within 30 days of the filing of the petition or meeting of creditors nor was it served on the respondent.

8. [16-10949](#)-B-7 CHERYL STOCKTON
JES-1
JAMES SALVEN/MV

MOTION TO EMPLOY JEFFREY S.
BAIRD AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
9-27-16 [[20](#)]

MARK ZIMMERMAN/Atty. for dbt.

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

This matter was fully noticed in compliance with the Local Rules of Practice 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 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 proposed employment and sale appear to be a reasonable exercise of the trustee's business judgment and will be granted on the terms disclosed in the moving papers, namely the auctioneer's compensation is authorized as 15% of gross sales price, and expenses which are estimated up to \$400 for storage, transportation, and sale. No request for compensation paid in the form of a "buyer's premium" has been requested and, therefore, any "buyer's premium" collected is property of the estate and shall be turned over to the trustee.

9. [16-13857](#)-B-7 BENTURA JIMENEZ
SL-1
BENTURA JIMENEZ/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
10-28-16 [[9](#)]

This motion to compel abandonment of the property of the estate will be continued to December 1, 2016, at 10:00 a.m., on the Bakersfield calendar. No appearance is necessary.

The motion appears to be premature, because the time to object to the debtor's amended schedule of exemptions, filed on the same day that this motion was filed, and adding property that the debtor now seeks to abandon, has not yet run.

In lieu of appearing at the continued motion the debtor may submit a stipulation and proposed order signed by the trustee.

10. [16-12669](#)-B-7 TERESA GARCIA
JES-1
JAMES SALVEN/MV

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-26-16 [[17](#)]

The objection will be sustained 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 of Practice 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 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.

11. [16-11787](#)-B-7 PAUL/CHRISTINA CORTINAS
JES-1
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.
WITHDRAWN

MOTION FOR TURNOVER OF PROPERTY
10-13-16 [[35](#)]

This matter has been withdrawn. No appearance is necessary.

12. [16-13298](#)-B-7 JUAN OROZCO CHAVEZ

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
10-14-16 [[28](#)]

The debtor shall attend the meeting of creditors rescheduled for December 1, 2016, at 12:00 p.m., in Fresno. 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. No appearance is necessary.

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.

1:30 P.M.

1. [15-12702](#)-B-7 MARTIN STEBBEN STATUS CONFERENCE RE: COMPLAINT
 [16-1044](#) 4-15-16 [[1](#)]
 FEAR V. CITI/CITIBANK SOUTH
 DAKOTA, N.A.
 ROBERT HAWKINS/Atty. for pl.

This matter will be dropped from calendar. No appearance is necessary.

While a summons reissued on September 20, 2016, the record does not show that it was ever served on anyone.

The court notes that the clerk's office has issued a Notice of Intent to Dismiss pursuant to the court's civil minute order dated September 14, 2016.

2. [11-63503](#)-B-7 FRANK/ALICIA ITALIANE FURTHER STATUS CONFERENCE RE:
 [12-1053](#) BMF-1 AMENDED COMPLAINT
 JEFFREY CATANZARITE FAMILY 10-18-12 [[21](#)]
 LIMITED PARTNERSHIP ET V. LANE
 BRENT FINCH/Atty. for pl.
 ADVERSARY REOPENED

This matter will proceed as scheduled.