

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, December 15, 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. [15-14017](#)-B-11 CLUB ONE CASINO, INC. MOTION FOR FINAL DECREE AND
ORDER CLOSING CASE
11-17-16 [[767](#)]
HAGOP BEDOYAN/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 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.

2. [15-14021](#)-B-11 CLUB ONE ACQUISITION CORP. MOTION FOR FINAL DECREE AND
ORDER CLOSING CASE
11-17-16 [[224](#)]
T. BELDEN/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 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. [16-13849](#)-B-12 DON FALLERT

STATUS CONFERENCE RE: CHAPTER
12 VOLUNTARY PETITION
INDIVIDUAL
10-24-16 [[1](#)]

D. GARDNER/Atty. for dbt.

This matter will proceed as scheduled.

4. [15-14685](#)-B-11 B&L EQUIPMENT RENTALS,
SW-1 INC.
B&L EQUIPMENT RENTALS, INC./MV

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY AND/OR STIPULATION FOR
ADEQUATE PROTECTION
11-14-16 [[562](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

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. The official committee of unsecured creditors filed a limited opposition which has now been withdrawn. There is no opposition and the defaults of those respondents 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 request for an order approving the stipulation for relief from stay will be granted.

1:30 P.M.

1. [16-13700](#)-B-13 WAYNE CUNNINGHAM MOTION TO DISMISS CASE
MHM-1 11-16-16 [[29](#)]
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.

The trustee's motion has been withdrawn. This matter will be dropped from calendar. The court will enter a civil minute order. No appearance is necessary.

2. [16-13702](#)-B-13 REBECCA MARTINEZ MOTION TO DISMISS CASE
MHM-1 11-14-16 [[18](#)]
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.

The trustee's motion has been withdrawn. This matter will be dropped from calendar. The court will enter a civil minute order. No appearance is necessary.

3. [16-13702](#)-B-13 REBECCA MARTINEZ MOTION TO CONFIRM PLAN
MR-1 11-14-16 [[22](#)]
REBECCA MARTINEZ/MV
MATIN RAJABOV/Atty. for dbt.
RESPONSIVE PLEADING

This motion to confirm a chapter 13 plan will be denied without prejudice. The court will issue a civil minute order. No appearance is necessary.

The motion is premature because 20 days have not passed since the conclusion of the debtor's \$341 meeting of creditors.

In addition, the motion was not filed in compliance with FRBP 2002(b) and LBR 9014-1(f)(1) and 3015-1(d)(1), which require service of a motion to confirm a chapter 13 plan on 42 days' notice where a written response must be filed within 14 days of the hearing.

4. [14-14729](#)-B-13 JANET ALCANTRA-BLAJOS CONTINUED MOTION FOR
PPR-1 ADMINISTRATIVE EXPENSES
U.S. BANK, NATIONAL 8-15-16 [[41](#)]
ASSOCIATION/MV
PETER BUNTING/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.
RESPONSIVE PLEADING

The motion has been withdrawn. This matter will be dropped from calendar. The court will enter a civil minute order. No appearance is necessary.

5. [11-60847](#)-B-13 NOBORU/ELIZABETH KITAOKA MOTION TO DETERMINE FINAL CURE
MHM-1 AND MORTGAGE PAYMENT RULE
MICHAEL MEYER/MV 3002.1
11-7-16 [[77](#)]

M. ENMARK/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's motion has been withdrawn. This matter will be dropped from calendar. The court will enter a civil minute order. No appearance is necessary.

6. [16-13565](#)-B-13 ROBERT/SANDRA ALEXANDER MOTION TO DISMISS CASE
MHM-1 11-16-16 [[29](#)]
MICHAEL MEYER/MV

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 a civil minute 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 record shows that the debtors have failed to provide the trustee with all of the documentation required by 11 U.S.C. §521(a)(3) & (4), including the Class 1 Mortgage Checklist with payment coupon or last statement; 2015 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. Accordingly, the case will be dismissed.

7. [16-12968](#)-B-13 ANNA MORALEZ
U.S. BANK, NATIONAL
ASSOCIATION/MV
TIMOTHY SPRINGER/Atty. for dbt.
CHRISTINA O/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY U.S.
BANK NATIONAL ASSOCIATION
10-4-16 [[22](#)]

If the objection is not withdrawn prior to the hearing, the hearing on this motion will be called as scheduled and will proceed as a scheduling conference. This matter was continued to permit the trustee to conclude the debtor's §341 meeting of creditors which was concluded November 29, 2016.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

8. [16-12969](#)-B-13 DONNA URIARTE
AAM-3
DONNA URIARTE/MV
ANDREW MOHER/Atty. for dbt.

MOTION TO CONFIRM PLAN
11-1-16 [[31](#)]

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 or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default 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.

9. [16-13669](#)-B-13 ANDY/MELANIE MONTEJANO
MHM-1
MICHAEL MEYER/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO DISMISS CASE
11-14-16 [[25](#)]

The record shows that this case has already been dismissed for failure to pay fees. No appearance is necessary.

10. [16-13671](#)-B-13 DAVID MORALES
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
11-16-16 [[16](#)]

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 a civil minute 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 there has been unreasonable delay by the debtor that is prejudicial to creditors, including failure to provide the trustee with the debtor's 2015 State and Federal Tax Return. Accordingly, the case will be dismissed.

11. [14-15875](#)-B-13 RICHARD/VERONICA ESPINOZA
TCS-5
RICHARD ESPINOZA/MV
TIMOTHY SPRINGER/Atty. for dbt.
DISMISSED

MOTION TO MODIFY PLAN
11-4-16 [[95](#)]

This case has already been dismissed. The matter will be dropped from calendar. The court will enter a civil minute order. No appearance is necessary.

12. [15-13579](#)-B-13 CRAIG/SOMMER BETTENCOURT
FW-2
CRAIG BETTENCOURT/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
11-10-16 [[41](#)]

This matter will proceed as scheduled. The motion was fully noticed and the chapter 13 trustee filed an opposition to confirmation. The default of all other respondents will be entered.

The debtor has filed and served a modified plan and, on the date of the hearing, December 15, 2016, will ask the court for an order confirming that plan. On the same date, at calendar number 13, DC# FW-3, the debtors will also request an order authorizing the sale of their residence, the exemption of which was unopposed and which has now become final. Although the trustee hints at a lack of good faith, this opposition to confirmation is based solely on the alleged failure of the proposed modified plan to meet the liquidation analysis. The trustee contends that the modified plan, which continues to provide a 0% dividend to the unsecured creditors, might not meet the liquidation analysis if, at a future date six months and one day from the date the debtors actually receive proceeds from the proposed sale, those proceeds have not been reinvested in an exempt homestead. It appears the threshold issue is a question of law, namely the nature of the debtor's homestead exemption under CCP §704.730.

The statutes the court is required to apply, and the facts as they exist, appear to be unambiguous. The "effective date of the plan," at which time liquidation test is applied, is the date of confirmation of the modified plan. "A request for modification [of a chapter 13 plan] may be made '[a]t any time after confirmation of the plan but before the completion of payments under such plan.' § 1329(a). The Debtor's . . . Chapter 13 Plan was confirmed . . . and may be modified before completion of the payments, which would require the bankruptcy court to apply the best interests test of §1325(a)(4) again. See § 1329(b)(1)." *Emphasis added, citations omitted. In re Urban*, 375 B.R. 882, 886 (9th BAP, 2007).

The Bankruptcy Code, § 1325(a)(4), directs that the court "shall confirm a plan," if, as of the date of [modified] plan confirmation the distribution to unsecured creditors is not less than if the estate of the debtor were liquidated under chapter 7 of this title on [the date of confirmation the modified plan]." *Emphasis added*. This is a "snapshot" test and it appears uncontroverted that the proposed plan satisfies that test since, at the time of confirmation, the homestead is exempt and is not part of the freshly-applied liquidation test.

"Pursuant to federal bankruptcy procedure, exemptions are claimed when the case is commenced and become final thirty days after the conclusion of the meeting of creditors." *In re Donaldson*, 156 B.R. 51, 53 (Bankr.N.D.Cal.1993), *aff'd*, No. C-93-3658-FMS (N.D.Cal. Jan. 6, 1994).

The trustee is not without remedy if the hypothetical proceeds of the sale of the debtors' homestead sale lose their exempt status. In re Jacobson, 676 F.3d 1193 (9th Cir., 2012). However, any action here would seem to be premature.

13. [15-13579](#)-B-13 CRAIG/SOMMER BETTENCOURT MOTION TO SELL
FW-3 11-10-16 [[49](#)]
CRAIG BETTENCOURT/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

14. [16-12679](#)-B-13 PAUL HAND MOTION TO DISMISS CASE
MHM-1 11-17-16 [[33](#)]
MICHAEL MEYER/MV
STEPHEN LABIAK/Atty. for dbt.

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 a civil minute 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 there is a material default in plan payments.

15. [15-12780](#)-B-13 CRAIG NICKEL ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
11-28-16 [[28](#)]

PETER BUNTING/Atty. for dbt.
\$25.00 TRANSFER FILING FEE
PAID 11/18/16

The record shows that the required fee has been paid. The OSC will be vacated. No appearance is necessary.

16. [12-16782](#)-B-13 DWIGHT/MARISSA ROSENQUIST MOTION TO MODIFY PLAN
MEV-5 11-4-16 [[97](#)]
DWIGHT ROSENQUIST/MV
MARC VOISENAT/Atty. for dbt.
RESPONSIVE PLEADING

This motion will be set for a continued hearing on January 26, 2017, at 1:30 p.m. The court will issue a civil minute order. No appearance is necessary.

The trustee has filed a detailed objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7 or dismissed or the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than January 12, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than January 19, 2017. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

17. [16-12690](#)-B-13 KIMBERLY SHACKELFORD MOTION TO CONFIRM PLAN
SAH-1 10-11-16 [[37](#)]
KIMBERLY SHACKELFORD/MV
SUSAN HEMB/Atty. for dbt.
PLAN WITHDRAWN

This matter will be dropped from calendar. The debtor has withdrawn the motion to confirm a chapter 13 plan. The court will enter a civil minute order. No appearance is necessary.

18. [16-13491](#)-B-13 CURTIS ALLEN AND MOTION TO CONFIRM PLAN
EPE-4 CHARLOTTE JACKSON 11-1-16 [[38](#)]
CURTIS ALLEN/MV
ERIC ESCAMILLA/Atty. for dbt.

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 or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default 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.

19. [16-13496](#)-B-13 JOSE HERNANDEZ
MHM-1
MICHAEL MEYER/MV

MOTION TO DISMISS CASE
11-16-16 [[26](#)]

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 a civil minute 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 by the Debtor that is prejudicial to creditors, including failure to provide the trustee with the documents required by the Bankruptcy Code including the Class 1 Mortgage Checklist with payment coupon or last statement; 2015 State and Federal Tax Return; proof of all income for the six months prior to filing, failure to file complete and accurate schedules and statements, failure to provide Credit Counseling Certificates, failure to set a plan and provide missing documents as required by the court's Order Extending Time to File Missing Documents. Accordingly, the case will be dismissed.

20. [16-13496](#)-B-13 JOSE HERNANDEZ
WJS-1
NIRMAL AUJLA/MV

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
AND/OR MOTION TO IMPOSE A 180
DAY BAR AGAINST REFILEING
11-29-16 [[30](#)]

WALTER SCHMIDT/Atty. for mv.

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

In light of the court's intention to grant the trustee's motion for dismissal above at calendar number 19, DC# MHM-1, this motion for dismissal of the case will be denied as moot.

The motion to impose a 180-day bar against re-filing will be denied. The motion was filed without evidence, as required by LBR 9014-1(d)(7), that injunctive relief is necessary. The record shows that this case is the debtor's third chapter 13 case in fewer than five months, the prior two cases having been dismissed for failure to file documents. As with the current case, pursuant to the provisions of §362(c)(4) the automatic stay will not arise upon the filing of any future bankruptcy case filed by the debtor until approximately January 2018.