

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 21, 2015 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	12-40315-D-7	OLUSEGUN/YVONNE LERAMO	MOTION FOR ADMINISTRATIVE EXPENSES 12-1-14 [286]
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Final ruling:

The hearing on this motion is continued to February 4, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

2.	12-40315-D-7 TGF-3	OLUSEGUN/YVONNE LERAMO	MOTION FOR COMPENSATION FOR VINCENT A. GORSKI, DEBTOR'S ATTORNEY(S) 11-26-14 [279]
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Final ruling:

The hearing on this motion is continued to February 4, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

3. 14-25816-D-11 DEEPAL WANNAKUWATTE MOTION FOR APPROVAL OF
DNL-9 INTER-ESTATE AGREEMENT
12-3-14 [289]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

4. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION FOR RELIEF
KO-1 FROM AUTOMATIC STAY
COMMUNITY 1ST BANK VS. 11-19-14 [268]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

5. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION FOR RELIEF
WFH-1 FROM AUTOMATIC STAY
IMG FUNDING, LLC VS. 9-10-14 [169]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

6. 14-25820-D-11 INTERNATIONAL MOTION TO COMPROMISE
FWP-16 MANUFACTURING GROUP, INC. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WANNAKUWATTE
ESTATES AND/OR MOTION FOR
SUBSTANTIVE CONSOLIDATION WITH
CERTAIN NON-DEBTOR ENTITIES AS
PART OF THE SETTLEMENT
12-3-14 [331]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

7. 14-25820-D-11 INTERNATIONAL MOTION FOR RELIEF FROM
KO-1 MANUFACTURING GROUP, INC. AUTOMATIC STAY
COMMUNITY 1ST BANK VS. 12-22-14 [363]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

8. 14-25820-D-11 INTERNATIONAL CONTINUED MOTION FOR RELIEF
WFH-1 MANUFACTURING GROUP, INC. FROM AUTOMATIC STAY
IMG FUNDING, LLC VS. 9-10-14 [224]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

9. 14-26423-D-7 MICHAEL WIEST MOTION TO AVOID LIEN OF GREEN
DBJ-1 TREE SERVICING, LLC
11-21-14 [46]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

10. 13-25230-D-7 JACK VALENCIA MOTION TO AVOID LIEN OF TARGET
GJS-3 NATIONAL BANK U.S.C.
12-4-14 [27]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

Final ruling:

This is the motion of the United States Trustee (the "UST") to dismiss this chapter 7 case pursuant to § 707(b)(1) of the Bankruptcy Code, based on the presumption of abuse, under § 707(b)(2), and based on the totality of the circumstances, under § 707(b)(3)(B). The debtor has not filed opposition. For the following reasons, the court will grant the motion and dismiss the case if the debtor does not voluntarily convert the case to chapter 13 on or before January 30, 2015.

As the UST points out, the debtor's monthly disposable income ("MDI"), as shown on her Form 22A, is \$1,418.76, which over 60 months would yield \$85,125.60. Because that figure is greater than \$12,475, the court "shall presume abuse exists" § 707(b)(2)(A)(i). On page 1 of her Form 22A, the debtor has admitted that the presumption of abuse arises. The debtor has listed on her Form 22A two categories of expenses she claims in the form should be additional deductions from her MDI - \$334 per month for taxes and insurance on a rental property and \$1,250 per month for maintenance and repairs to the rental property, a total of \$1,584 per month. Deducting that amount from the debtor's MDI would yield a negative number, such that the debtor would be unable to repay any of her unsecured debt. According to the debtor's schedules, the rental property is overencumbered; it generates \$850 per month in rents and the mortgage payment on the property is \$834. Thus, according to her own figures, the debtor loses \$1,568 per month on the property.

The Code provides that in a § 707(b)(1) motion, "the presumption of abuse may only be rebutted by demonstrating special circumstances . . . to the extent such special circumstances [] justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." § 707(b)(2)(B). The Code gives as examples "a serious medical condition or a call or order to active duty in the Armed Forces." *Id.* Although those are only examples, the debtor's choice to retain a rental property that has no equity and generates significant negative cash flow each month is not akin to the examples of special circumstances cited in the Code. Nor could the debtor argue the additional expenses of maintaining the property and paying taxes and insurance on it are expenses for which there is no reasonable alternative. The reasonable alternative is clear - the debtor could surrender the property.¹ The court concludes that the debtor has failed to demonstrate special circumstances that would overcome the presumption of abuse, and the case should be dismissed pursuant to § 707(b)(1) and (2).²

For the reasons stated, the court grants the motion and the case will be dismissed unless the debtor converts the case to chapter 13 on or before January 30, 2015. No appearance is necessary on January 21, 2015.

¹ The UST cites *Egebjerg v. Anderson (In re Egebjerg)*, 574 F.3d 1045 (9th Cir. 2009), where the court observed that the examples given by the Code - a serious medical condition and a call to active military duty - "share a commonality; they both constitute situations which not only put a strain on a debtor's household budget, but they arise from circumstances normally beyond the debtor's control." 574 F.3d at 1053 (citation and internal quotation marks omitted). As the UST

concludes, the debtor's continuing to incur the expenses of the rental property are hardly beyond her control.

2 The debtor having failed to rebut the presumption of abuse, the court has no need to consider the UST's alternative argument - that the case should be dismissed under § 707(b)(1) and (3).

12. 14-27645-D-7 BETSY WANNAKUWATTE MOTION FOR APPROVAL OF
DNL-2 INTER-ESTATE AGREEMENT
12-3-14 [102]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

13. 14-27645-D-7 BETSY WANNAKUWATTE CONTINUED MOTION TO EXTEND
DNL-4 DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
11-19-14 [92]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

14. 14-27645-D-7 BETSY WANNAKUWATTE CONTINUED MOTION FOR RELIEF
KO-1 FROM AUTOMATIC STAY
COMMUNITY 1ST BANK VS.
11-19-14 [75]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

15. 14-25678-D-7 SARAH WANNAKUWATTE MOTION FOR APPROVAL OF
DNL-2 INTER-ESTATE AGREEMENT
12-2-14 [54]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

16. 14-25678-D-7 SARAH WANNAKUWATTE CONTINUED MOTION TO EXTEND
DNL-3 DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
11-19-14 [50]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

17. 14-25678-D-7 SARAH WANNAKUWATTE MOTION FOR RELIEF FROM
KO-1 AUTOMATIC STAY
COMMUNITY 1ST BANK VS. 12-22-14 [72]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

18. 14-25816-D-11 DEEPAL WANNAKUWATTE MOTION FOR ORDER EXCUSING
KO-2 COMPLIANCE WITH 11 U.S.C. 543
TURNOVER REQUIREMENT
1-6-15 [308]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

19. 14-25820-D-11 INTERNATIONAL MOTION FOR ORDER EXCUSING
KO-2 MANUFACTURING GROUP, INC. COMPLIANCE WITH 11 U.S.C. 543
TURNOVER REQUIREMENT
1-6-15 [389]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

20. 14-27645-D-7 BETSY WANNAKUWATTE MOTION FOR ORDER EXCUSING
KO-2 COMPLIANCE WITH 11 U.S.C
SECTION 543 TURNOVER
REQUIREMENT
1-6-15 [126]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

21. 14-30476-D-7 JESUS SANCHEZ-AGUIRRE
TAA-1

TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341 (A) MEETING OF CREDITORS
12-22-14 [20]

Final ruling:

The hearing on this motion is continued to February 4, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.

22. 14-25678-D-7 SARAH WANNAKUWATTE
KO-2

MOTION FOR ORDER EXCUSING
COMPLIANCE WITH 11 U.S.C. § 543
TURNOVER REQUIREMENT
1-6-15 [85]

Final ruling:

The hearing on this motion is continued to January 28, 2015 at 10:00 a.m. No appearance is necessary on January 21, 2015.