

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, January 31, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS 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 AM

1. [15-13712](#)-B-7 **IN RE: LEO LOOZA**
[JDW-3](#)

MOTION TO AVOID LIEN OF CACH, LLC
1-12-2018 [[44](#)]

LEO LOOZA/MV
JOEL WINTER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE. On debtor's Schedule C, debtor does not actually claim any value exempt on the real property located at "3068 N McArthur, Fresno, CA 93727." Despite the debtor's explanation in the motion, unless the debtor claims *some* amount as exempt, the court cannot set aside the lien the judgment debtor wishes to avoid.

2. [14-11619](#)-B-7 **IN RE: DONALD ANGLE AND MARY HOLLAUER**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-28-2017 [[85](#)]

DEUTSCHE BANK TRUST COMPANY
AMERICAS/MV
BENNY BARCO
SEAN FERRY/ATTY. FOR MV.
DISCHARGED

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted in part and denied as moot in part.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice 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.

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 an award of attorney fees has been requested, it will be denied. 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. Attorneys' fees are also denied as movant's evidence establishes there is no equity in the collateral. 11 U.S.C. § 506(b).

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the discharge has been entered and no stay is in effect as to the debtor's interest and the trustee has not opposed the motion.

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).

3. [12-19625](#)-B-7 **IN RE: LUCAS RIANTO**
[JDW-2](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
1-12-2018 [\[34\]](#)

LUCAS RIANTO/MV
JAMES MILLER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue an order.

The notice of the hearing is not accurate. Notice was filed on January 12, 2018 and set for hearing on January 31, 2018. The notice states that written opposition must be filed by the respondent within 14 days of the hearing. Docket #35. This is appropriate only for a motion set for hearing on at least 28 days' notice. Local Rule 9014-1(f)(1). However, because less than 28 days' of notice of

the hearing was given in this instance, Local Rule 9014-1(f)(2) is applicable. It specifies that no party in interest is required to file written opposition to the motion, but may present it at the hearing. Local Rule 9014-1(f)(2)(C). The respondent was told that it was necessary to file and serve written opposition even though this was not necessary. Therefore, the notice was materially deficient. This motion is DENIED WITHOUT PREJUDICE.

4. [17-14356](#)-B-7 **IN RE: GENEVIEVE CANTOR**
[JES-1](#)

MOTION TO EMPLOY BAIRD'S AUCTION AND APPRAISALS AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
1-2-2018 [[16](#)]

JAMES SALVEN/MV
GRISELDA TORRES
JAMES SALVEN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The proposed employment of Baird's Auction and Appraisals as auctioneer and sale of a 2014 Ford F-150 truck 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 the gross sales price, and expenses which are estimated up to \$300. A request for compensation paid in the form of a "10% buyer's premium" has been made and is approved as well.

5. [14-13880](#)-B-7 **IN RE: JUAN GONZALES**
[DRJ-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RAMON GONZALEZ, ANTONIO GONZALEZ GUERRERO AND
GUSTAVO GONZALEZ VICTOR
12-18-2017 [[31](#)]

JAMES SALVEN/MV
GREG BLEVINS
DAVID JENKINS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

It appears from the moving papers that the trustee has considered
the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987)
and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of
collection;
- c. the complexity of the litigation involved, and the expense,
inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference
to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to FRBP 9019 is
a reasonable exercise of the trustee's business judgment. The order
should be limited to the claims compromised as described in the
motion.

The trustee requests approval of a settlement agreement between the
estate and three defendants.

Under the terms of the compromise, the defendants will pay
\$32,000.00 to the estate, in full satisfaction of the claims. The
trustee expects the estate to net the entire amount and pay
unsecured creditors of allowed claims in full. Trustee's counsel
has agreed to reduce his fee request should it be necessary.

On a motion by the trustee and after notice and a hearing, the court
may approve a compromise or settlement. Fed. R. Bankr. P. 9019.
Approval of a compromise must be based upon considerations of
fairness and equity. *In re A & C Properties*, 784 F.2d 1377, 1381
(9th Cir. 1986). The court must consider and balance four factors:
1) the probability of success in the litigation; 2) the
difficulties, if any, to be encountered in the matter of collection;
3) the complexity of the litigation involved, and the expense,
inconvenience, and delay necessarily attending it; and 4) the

paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success in this case is very high, approaching certainty. The facts and law are clear; collection would not be difficult as the property is either free and clear of any and all liens or substantially free and clear of liens, and is worth at least \$300,000.00; the litigation is not overly complex; and the creditors will greatly benefit from the net to the estate; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

11:00 AM

1. [17-14242](#)-B-7 **IN RE: GABRIEL RAMIREZ**

REAFFIRMATION AGREEMENT WITH BALBOA THRIFT & LOAN
1-2-2018 [[17](#)]

JERRY LOWE

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Rescinded.

NO ORDER REQUIRED.

The Debtor has filed a notice of rescission of reaffirmation agreement on January 26, 2018.

2. [17-13857](#)-B-7 **IN RE: CHAD WARD**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA
INC.
1-9-2018 [[14](#)]

NO RULING.

3. [17-13887](#)-B-7 **IN RE: CYNTHIA ESPINOZA**

REAFFIRMATION AGREEMENT WITH VW CREDIT, INC.
1-9-2018 [[12](#)]

TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: No appearance is necessary. The court will issue an order.

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 debtor's 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.

1:30 PM

1. [14-13880](#)-B-7 **IN RE: JUAN GONZALES**
[17-1045](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-5-2017 [[1](#)]

SALVEN V. GONZALEZ ET AL
DAVID JENKINS/ATTY. FOR PL.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The court will issue
the order.

The Motion to Approve Settlement, Case no. 14-13880, DRJ-2, has been granted. The movant shall file a motion to dismiss this adversary proceeding within 30 days of entry of this order.

2. [17-11087](#)-B-7 **IN RE: JANETTA SCONIERS**
[17-1069](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-4-2017 [[1](#)]

SCONIERS V. TOP EQUITY
INVESTMENT, LLC
JANETTA SCONIERS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL
12-28-2017 [[1](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
UNKNOWN TIME OF FILING/ATTY. FOR PL.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to February 28, 2018 at 1:30 p.m.

ORDER: No appearance is necessary. The court will issue an
order.

This motion is being continued to be heard in conjunction with
plaintiff's Motion for Remand set for hearing on February 28, 2018.