

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee

Hearing Date: Thursday, May 1, 2014

Place: U.S. Courthouse, 510 19th Street
Bakersfield, 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.

9:00 A.M.

- | | | | |
|----|--------------------------------------|--------------------------|-------------------------------------|
| 1. | <u>13-16914</u> -B-7 | GREGORY CARDOZA AND ANNA | CONTINUED STATUS CONFERENCE RE: |
| | <u>14-1010</u> | MENDOZA | AMENDED COMPLAINT |
| | TERRY V. MENDOZA | | 3-26-14 <u>[18]</u> |
| | ROBERT BRUMFIELD/Atty. for pl. | | |
| 2. | <u>13-16914</u> -B-7 | GREGORY CARDOZA AND ANNA | MOTION TO DISMISS ADVERSARY |
| | <u>14-1010</u> | MENDOZA CRS-2 | PROCEEDING/NOTICE OF REMOVAL |
| | TERRY V. MENDOZA | | 4-16-14 <u>[28]</u> |
| | CYNTHIA SCULLY/Atty. for mv. | | |

9:30 A.M.

1. [12-15446](#)-B-7 M. DEAN GARDNER
[12-1167](#)
AJSD BAKERSFIELD, LLC V.
GARDNER
EDNA WENNING/Atty. for pl.

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT
1-24-13 [[16](#)]

10:00 A.M.

1. [13-17828](#)-B-7 STELLA ESTRADA MOTION TO EXAMINE DEBTOR'S
PK-1 TRANSACTIONS WITH ATTORNEYS
STELLA ESTRADA/MV 3-31-14 [[16](#)]
PATRICK KAVANAGH/Atty. for dbt.
2. [13-15845](#)-B-7 ELOY RODRIGUEZ AND ANGELA MOTION TO AVOID LIEN OF ALTAONE
PK-2 VASS-RODRIGUEZ FEDERAL CREDIT UNION
ELOY RODRIGUEZ/MV 4-3-14 [[30](#)]
PATRICK KAVANAGH/Atty. for dbt.

With regard to the debtors' residence on Maria Court, this matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

With regard to the Helena Street/Upjohn Avenue property, this matter will be continued to June 5, 2014, at 10:00 a.m. The debtors shall file supporting evidence to show that the debtors held an interest in the Helena Street/Upjohn Avenue property to which the judgment lien could have attached at the time the abstract of judgment was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667. The court will prepare a minute order.

3. [13-16953](#)-B-7 STEPHEN/LINDA MACKEY MOTION TO COMPEL ABANDONMENT
LKW-1 4-8-14 [[38](#)]
STEPHEN MACKEY/MV
LEONARD WELSH/Atty. for dbt.
4. [11-13995](#)-B-7 FELIPE/SILVIA GUERRA CONTINUED MOTION TO AVOID LIEN
FPS-1 OF ATLANTIC CREDIT AND FINANCE
FELIPE GUERRA/MV INC.
2-20-14 [[26](#)]
FRANK SAMPLES/Atty. for dbt.

This matter will be continued again to June 5, 2014, at 10:00 a.m., for supplemental evidence. The debtors shall file evidence to show that the co-debtor possessed an interest in the Esperanza Drive property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667. No appearance is necessary.

In response to the court's prior civil minute order, the co-debtor lodged evidence to show that the Esperanza Drive property was her residence at the time the judgment lien was recorded, but that does not establish that she actually owned the property or otherwise held an interest to which the judgment lien would have attached at the time.

10:30 A.M.

1.	<u>14-10302</u> -B-7	KENNETH/KOLLENE MACDONALD	MOTION FOR RELIEF FROM
	BTB-1		AUTOMATIC STAY
	SILVER STATE SCHOOLS CREDIT		3-14-14 [<u>24</u>]
	UNION/MV		
	PETER TRACY/Atty. for dbt.		
	BRUCE BAUER/Atty. for mv.		

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* 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. No appearance is necessary.

2. [13-17907](#)-B-7 JAMES/AMY DOTY
PD-1
NATIONSTAR MORTGAGE LLC/MV
NEIL SCHWARTZ/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-24-14 [[17](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* 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. No appearance is necessary.

3. [13-16210](#)-B-7 KURTIS/SARAH CAID
APN-1
SANTANDER CONSUMER USA INC./MV
FRANK SAMPLES/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-19-14 [[48](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* 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. No appearance is necessary.

4. [14-10942](#)-B-7 FEDERICO/PATRICIA
APN-1 RODRIGUEZ
WELLS FARGO FINANCIAL/MV
ROBERT WILLIAMS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-2-14 [[13](#)]

This motion for relief from the automatic stay will be denied as moot. The debtor(s) is (are) an individual(s). The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by § 521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. § 362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

5. [14-10944](#)-B-7 LILIA MARTIN
JHW-1
TD AUTO FINANCE LLC/MV
ROBERT WILLIAMS/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-12-14 [[9](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* 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. No appearance is necessary.

6. [13-16953](#)-B-7 STEPHEN/LINDA MACKEY
JCW-1
MIDFIRST BANK/MV
LEONARD WELSH/Atty. for dbt.
JENNIFER WONG/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-21-14 [[32](#)]

This matter has been rescheduled by stipulation between the moving party and the trustee to July 31, 2014, at 10:30 a.m.

7. [13-15357](#)-B-7 CARL/DELAINEA BLACK
KDG-1
JOHN GSCHWEND/MV
KURT VAN SCIVER/Atty. for mv.
JOHN GSCHWEND VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-3-14 [[82](#)]

8. [14-10582](#)-B-7 KARLA MUNOZ
TJS-1
JPMORGAN CHASE BANK, N.A./MV
NEIL SCHWARTZ/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-12-14 [[9](#)]

This motion for relief from the automatic stay will be denied as moot. The debtor(s) is (are) an individual(s). The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by § 521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. § 362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

9. [14-10298](#)-B-7 CLAUDIA MALDONADO
BHT-1
PLANTIUM HOME MORTGAGE
CORPORATION/MV
CURTIS FLOYD/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-14-14 [[16](#)]

10. [13-16953](#)-B-7 STEPHEN/LINDA MACKEY
SW-1
WELLS FARGO BANK, N.A./MV
LEONARD WELSH/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-15-14 [[47](#)]

This motion for relief from the automatic stay will be denied as moot. The debtor(s) is (are) an individual(s). The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by § 521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. § 362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

11:00 A.M.

1. [14-11148](#)-B-7 STEVEN/LORIE DICKEY

PRO SE REAFFIRMATION AGREEMENT
WITH NUVISION FEDERAL CREDIT
UNION
4-14-14 [[13](#)]

CURTIS FLOYD/Atty. for dbt.

The hearing will be dropped from calendar. The court is not approving or denying approval of the reaffirmation agreement. Debtor(s) was (were) represented by counsel when he/she/they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The Debtor(s) shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney. No appearance is necessary at this hearing.

2. [14-10359](#)-B-7 MARY GUERRERO

REAFFIRMATION AGREEMENT WITH
FINANCE AND THRIFT COMPANY
3-18-14 [[10](#)]

STEVEN STANLEY/Atty. for dbt.

This hearing to review and approve a reaffirmation agreement will be dropped from calendar. No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §§ 524(c) and 524(k), and it was signed by the debtor(s)' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement. Debtor(s)' counsel shall notify the debtor(s) that no appearance is necessary.

3. [14-10765](#)-B-7 DEEPAK/PATRICIA MOITRA

PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO BANK, N.A.
4-2-14 [[18](#)]

4. [14-10879](#)-B-7 FILIBERTO/ROSARIO COTA

REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
3-19-14 [[12](#)]

D. GARDNER/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtors' attorney signed the reaffirmation agreement certifying that he has explained the agreement to the debtors, but did not check the box to state an opinion that the reaffirmed debt will not create an undue hardship. The bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Specifically, schedule B states that this debt relates to an automobile owned by the debtors' daughter, schedule J does not include this car payment, and the debtors do not have sufficient disposable income to make the payment. No appearance is necessary.