

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MAY 10, 2017
CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

4. [15-13184](#)-A-7 DEBBY RENNA MOTION FOR ENTRY OF DEFAULT
[17-1006](#) UST-1 JUDGMENT
U.S. TRUSTEE V. RENNA 3-29-17 [[14](#)]
ROBIN TUBESING/Atty. for mv.

Final Ruling

Motion: Entry of Default Judgment

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Granted

Order: Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b) (2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

Under Federal Rule of Civil Procedure 8(b) (6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b) (6), *incorporated by* Fed. R. Bankr. P. 7008(a). Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b) (2), *incorporated by* Fed. R. Bankr. P. 7055.

5. [15-13991](#)-A-7 JERAD/ALICE SANDERS MOTION TO DISMISS ADVERSARY
[16-1016](#) PROCEEDING/NOTICE OF REMOVAL
NUNEZ AG, INC. V. SANDERS ET 4-10-17 [[44](#)]
AL
TERRENCE EGLAND/Atty. for mv.

Final Ruling

Motion: Dismiss Adversary Complaint Objecting to Discharge

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISMISSAL UNDER RULE 7041

"Rule 41 [of the Federal Rules of Civil Procedure] applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court

containing terms and conditions which the court deems proper." Fed. R. Bankr. P. 7041. "Most bankruptcy judges require a plaintiff seeking to dismiss a § 727 action to give notice to any trustee appointed in the case, the U.S. Trustee and all creditors, informing the noticed parties they have a right to substitute in as plaintiff in the action instead of having the action dismissed." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 20:264, at 20-37 (rev. 2014); accord *In re Speece*, 159 B.R. 314, 321 (Bankr. E.D. Cal. 1993) (citing Fed. R. Bankr. P. 7041) ("[T]he rules of procedure forbid voluntary dismissal without notice to the case trustee and to the United States trustee, either of whom were entitled to bring the action in the first instance, so that they may have an opportunity to protect the rights of their constituencies.").

Plaintiff has moved to dismiss the complaint in the present adversary proceeding. Rule 7041 applies. Notice has been given to all creditors, the trustee, and the U.S. Trustee, and none has objected or requested to be substituted in for the plaintiff. Accordingly, the court will grant the motion and dismiss the adversary complaint.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Plaintiff motion to dismiss the complaint objecting to discharge under § 727 has been presented to the court and notice has been provided to all creditors, the case trustee, and the U.S. Trustee. Having entered the default of respondent creditors, the case trustee, and the U.S. Trustee for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court orders that the complaint in this adversary proceeding be dismissed without prejudice under Fed. R. Bankr. P. 7041 and Fed. R. Civ. P. 41(a)(2). A complaint objecting to discharge under § 727 may be re-filed by the plaintiff or another creditor, the case trustee, or the U.S. Trustee, subject to the limitations of Fed. R. Bankr. P. 4004.

6. [15-13991](#)-A-7 JERAD/ALICE SANDERS MOTION TO DISMISS ADVERSARY
[16-1016](#) PROCEEDING/NOTICE OF REMOVAL
NUNEZ AG, INC. V. SANDERS ET 4-10-17 [49]
AL
TERRENCE EGLAND/Atty. for mv.

Final Ruling

This motion is a duplicate of the motion at docket no. 44 in this adversary case. Because the case has been dismissed, the court will deny this motion as moot.