

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 1, 2016 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.	16-22602-D-7	MAX MOLINA	MOTION FOR RELIEF FROM
	EJS-1		AUTOMATIC STAY
	SRIDHAR NAGANURI VS.		4-29-16 [19]

Final ruling:

This case was dismissed on May 13, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

2. 16-21007-D-7 ELIZABETH PAZ MOTION FOR DENIAL OF DISCHARGE
UST-1 OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
4-22-16 [20]

Final ruling:

This is the motion of the United States Trustee for denial of the debtor's discharge pursuant to § 727(a)(8) of the Bankruptcy Code. On May 11, 2016, the debtor filed a motion to convert the case to chapter 13, which she set for hearing on June 15, 2016. If that motion is granted, the present motion will be moot. Thus, the court will continue the hearing on this motion to June 15, 2016, at 10:00 a.m., to be heard with the debtor's motion to convert. The hearing will be continued by minute order. No appearance is necessary on June 1, 2016.

3. 16-21318-D-7 TRACIE BRYANT MOTION FOR RELIEF FROM
GSR-1 AUTOMATIC STAY AND/OR MOTION
LUCIA VIEIRA VS. FOR ADEQUATE PROTECTION
5-2-16 [14]

Final ruling:

This is Lucia Vieira's (the "Movant") motion for relief from stay. The Movant asserts, and it is not disputed, that the debtor's lease of the subject property was terminated pre-petition and as a result the debtor has only have a possessory interest in the property. Accordingly, cause exists for relief from stay under Bankruptcy Code § 362(d)(1). As the debtor has only a possessory interest in the property, relief from stay will be granted under Code § 362(d)(1) and the court will waive FRBP 4001(1)(a)(3) by minute order. No appearance is necessary.

4. 16-21920-D-7 DAYNE/WHITNEY DELANO MOTION TO COMPEL ABANDONMENT
FF-1 4-27-16 [11]

5. 06-22225-D-7 BETSEY LEBBOS MOTION FOR ADMINISTRATIVE
MPD-16 EXPENSES AND/OR MOTION FOR
COMPENSATION FOR ERNST AND HAAS
MANAGEMENT COMPANY, INC., OTHER
PROFESSIONAL(S)
5-3-16 [617]

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 Trustee's Motion for Order Allowing (1) Payment of Administrative Claims Under 11 U.S.C. § 503(b)(1) and (2) Compensation under 11 U.S.C. § 330 is supported by the record. As such the court will grant the Trustee's Motion for Order Allowing (1) Payment of Administrative Claims Under 11 U.S.C. § 503(b)(1) and (2) Compensation under 11 U.S.C. § 330. Moving party is to submit an appropriate order. No appearance is necessary.

6. 16-22725-D-11 PETER/CATHLEEN VERBOOM STATUS CONFERENCE RE: VOLUNTARY
PETITION
4-28-16 [1]

7. 15-29031-D-7 OKSANA KOPCHUK MOTION TO EXTEND DEADLINE TO
DNL-3 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-28-16 [66]

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 to extend deadline to file a complaint objecting to discharge of the debtor to July 29, 2016 is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of the debtor to July 29, 2016. Moving party is to submit an appropriate order. No appearance is necessary.

8. 15-29031-D-7 OKSANA KOPCHUK MOTION FOR ENTRY OF DEFAULT
16-2015 DNL-1 JUDGMENT
SMITH V. KOPCHUK 4-22-16 [21]

9. 14-27645-D-7 BETSY WANNAKUWATTE MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 5-5-16 [175]
COMPANY VS.

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 debtor received her discharge on February 10, 2016 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

10. 16-20948-D-7 AMRIK/INDERJIT DULAI MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
CHAMPION MORTGAGE COMPANY 4-28-16 [25]
VS.

11. 16-20154-D-7 DANIEL MILHOAN MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
QUICKEN LOANS, INC. VS. 4-29-16 [21]

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 debtor received his discharge on May 3, 2016 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

12. 13-27258-D-7 TALANNA WILLIAMS MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 4-25-16 [115]
SERVICES, INC. VS.

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 debtor received her discharge on May 17, 2016 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

13. 15-26465-D-7 SCOTT POMEROY CONTINUED AMENDED OBJECTION TO
GJH-1 DEBTOR'S CLAIM OF EXEMPTIONS
4-6-16 [37]

Final ruling:

The hearing on this objection is continued to June 15, 2016 at 10:00 a.m. No appearance is necessary on June 1, 2016.

14. 16-21765-D-7 DEBORAH ELLER MOTION FOR RELIEF FROM
WFM-1 AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 4-28-16 [24]

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. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

15. 16-21466-D-7 TIA PERRYMAN MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 4-25-16 [22]
SERVICES, INC. VS.

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. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

16. 16-22878-D-12 THOMAS/JOY GALINDO STATUS CONFERENCE RE: CHAPTER
12 VOLUNTARY PETITION
5-3-16 [1]

17. 16-22285-D-7 YOLANDA HARRIS MOTION TO AVOID LIEN OF
EAT-1 BENEFICIAL CALIFORNIA, INC.
4-25-16 [9]

Final ruling:

This matter is resolved without oral argument. This is the debtor's motion to avoid an alleged judicial lien held by Beneficial California, Inc. ("Beneficial"). The motion was brought pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P.

55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion.

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added, internal quotation marks omitted).

Here, the debtor has not satisfied the fourth test in that she has not demonstrated Beneficial has a judicial lien at all. In this regard, the debtor confuses the creation of a judgment lien on real property with the creation of a judgment lien on personal property. The motion states:

Beneficial California, Inc, creditor, recorded a judicial lien against the debtor's personal property in Calaveras County, California in the amount of \$14,840.00. The said judicial lien is entered of record as follows: Calaveras County Recorder, San Andreas, California, Doc-09-15330 Recorded November 12, 2009 in favor of Beneficial California Inc. (attached as Exhibit A)

Debtor's Motion, DN 9, at 2:1-5 (emphasis added).

The only evidence of a potential lien is, as the motion indicates, a copy of an abstract of judgment recorded in Calaveras County. However, the debtor's Schedule A in this case lists no real property, and her motion confirms she is seeking to avoid a judicial lien "on certain personal property owned by the Debtor." Debtor's Motion, DN 9, at 1:20-21 (emphasis added). Under California law, a judicial lien on real property is created by the recording of an abstract of judgment with the county recorder of the county in which the property is located. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). A judicial lien on personal property is created by the filing of a notice of judgment lien in the office of the Secretary of State. Cal. Code Civ. Proc. §§ 697.510(a), 697.530(a). There is no evidence and no allegation that Beneficial ever filed a notice of judgment lien with the Secretary of State's office. Thus, there is no evidence and no reason to believe Beneficial has a judgment lien against the debtor's personal property. And as the debtor owns no real property, Beneficial does not have a judgment lien against any real property of the debtor.¹

Because the moving party has failed to demonstrate that Beneficial holds a judicial lien that may be avoided under § 522(f)(1)(A), the motion will be denied by minute order. No appearance is necessary.

1 As an aside, the court notes that the moving party failed to serve Beneficial in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Beneficial only through a law firm

that is apparently a successor to the firm that obtained Beneficial's abstract of judgment, which is not sufficient (see In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004)), and through CT Corporation System, whereas the records of the California Secretary of State show Beneficial as a "merged out" corporation. As a result, service on C T Corporation System was not sufficient. See Cal. Corp. Code §§ 2113(a), 2114(b).

18. 13-21199-D-7 JAMES SCOTT MOTION FOR COMPENSATION FOR J.
JMH-1 MICHAEL HOPPER, CHAPTER 7
TRUSTEE
5-3-16 [362]
19. 16-22725-D-11 PETER/CATHLEEN VERBOOM MOTION TO SELL
WWB-8 5-9-16 [63]
20. 16-22725-D-11 PETER/CATHLEEN VERBOOM CONTINUED MOTION TO USE CASH
WWB-1 COLLATERAL
4-29-16 [27]

21. 16-22725-D-11 PETER/CATHLEEN VERBOOM MOTION TO APPROVE STIPULATION
WJH-1 FOR RELEASE OF PERSONAL
PROPERTY SALE PROCEEDS
5-10-16 [69]

Tentative ruling:

This is the motion of Bank of the West (the "Bank") for approval of a stipulation between the Bank and the debtors for the release of certain sale proceeds to the Bank. The stipulation, in essence, provides for the disposition of cash collateral. Thus, the court will require service on the creditors on the list of 20 largest unsecured creditors, as required by Fed. R. Bankr. P. 4001(d)(1)(C), whereas the Bank served only the debtors, their attorney, the United States Trustee, and the attorney for A.L. Gilbert Company. In addition, the court notes that neither the moving papers nor the stipulation itself indicates the amount of the sale proceeds proposed to be paid to the Bank, and the Return of Sale, which discloses the amount of the auction proceeds, was not served on any creditors except the Bank.

For these reasons, the court is not prepared to consider the motion at this time. Upon request, the court will continue the hearing, the moving party to file a notice of continued hearing, which includes the amount of the proceeds proposed to be paid to the Bank, and serve it on the creditors on the list of 20 largest unsecured creditors and all parties requesting special notice at their designated addresses. The court will hear the matter.

22. 16-22725-D-11 PETER/CATHLEEN VERBOOM MOTION TO APPROVE STIPULATION
WJH-2 FOR RELIEF FROM THE AUTOMATIC
STAY
5-17-16 [86]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

23. 16-22727-D-7 DONALD/LYNN SMITHSON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-12-16 [13]

24. 16-21659-D-7 TRONG NGUYEN
PA-1

MOTION TO COMPEL, MOTION TO
SURRENDER NONRESIDENTIAL REAL
PROPERTY AND/OR MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-18-16 [35]

25. 15-29890-D-7 GRAIL SEMICONDUCTOR
HSM-1

CONTINUED MOTION BY HOWARD S.
NEVINS TO WITHDRAW AS ATTORNEY
4-26-16 [253]

26. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-4

CONTINUED MOTION TO USE CASH
COLLATERAL
5-12-16 [284]

27. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-3

MOTION TO EMPLOY MAYER BROWN
JSM AS SPECIAL COUNSEL O.S.T.
5-12-16 [279]