

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, June 13, 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. [17-14304](#)-B-7 **IN RE: XCOR AEROSPACE INC, A CALIFORNIA CORPORATION**
[KDG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB & KIMBALL, LLP FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
5-16-2018 [[97](#)]

RILEY WALTER

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

DISPOSITION: Continued to July 12, 2018 at 10:00 - Bakersfield for submission of further evidence unless applicant submits an order conforming with this ruling.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be continued to July 12, 2018 at 10:00 a.m. in Bakersfield, CA. Trustee's counsel, The Law Office of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP for Lisa Holder, requests fees of \$26,100.00 and costs of \$821.54 for a total of \$26,921.54 for services rendered as trustee's counsel from November 98, 2017 through May 16, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Analyzed debtor's assets, (2) Analyzed secured creditors' offers to purchase assets, (3) Prosecuted a relief from stay motion, and (4) Analyzed the assumption and rejection of unexpired leases.

11 U.S.C § 330 (a)(1)(A) also provides that a court *may* award "reasonable compensation for actual necessary services rendered by [an] attorney and by any paraprofessional person employed by any such [attorney]." The court has a duty to review fee applications notwithstanding the lack of objection. In re Auto Parts Club, Inc., 211 B.R. 29, 33 (9th Cir. BAP 1997) citing In re Busy Beaver Building Centers, Inc., 19 F.3d 833, 841 (3rd Cir. 1994). The applicant bears the burden of proof. Dalessio v. Pauchon (in re Dalessio), 74 B.R. 721, 724 (9th Cir. BAP 1987). The professional must exercise billing judgment. Unsecured Creditors Committee v. Puget Sound Plywood Inc., 924 F.2d 955, 958-59 (9th Cir. 1991).

The court has reviewed the fee application and finds proof of certain time entries by Ms. Clemans less than clear. Ms. Clemans is an experienced paralegal with decades of experience in the bankruptcy field in this district. But, it appears that some of the entries for her time on this case are "lumped" entries (more than one task included in one entry) or appear to be charges for clerical services rather than services requiring professional judgment. The former is not in conformance with the burden of proof and the latter are not allowable without substantially more explanation. See, In re Pacific Express, 56 B.R. 859, 865 (Bankr. E.D. Cal. 1985).

After reviewing the documents submitted in support of the application, here are the dates, time listed and a summary of the questioned entries:

January 26, 2018 - email exchange with client re: asset sale (.2)

January 26, 2018 - a lumped entry which included preparation of a service list which would be clerical. (2.0)

January 26, 2018 - a lumped entry which included preparation of a Notice of Hearing. (1.0)

February 21, 2018 - Preparation of order for sale (.8). This is duplicative with time by attorney Holder that date totaling 1.1 hours "analyzing and reviewing order."

February 28, 2018 - Revising sale order (.3).

May 8-14, 2018 - Preparation of fee application (6.0). Also duplicative when attorney Holder spent 2.0 hours on the same tasks.

This hearing is continued to July 12, 2018 at 10:00 am in Bakersfield. Additional evidence and briefing shall be submitted on or before June 28, 2018. Alternatively, within 14 calendar days,

applicant may submit an order approving the fees requested less \$1802.50 (\$175 per hour x. 10.3 hours).

2. [12-16409](#)-B-7 **IN RE: AURELIO RODRIGUEZ**
[IER-5](#)

MOTION TO AVOID LIEN OF BANK OF STOCKTON
4-15-2018 [\[50\]](#)

AURELIO RODRIGUEZ/MV
ISMAEL RODRIGUEZ

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

A judgment was entered against the debtor in favor of the Bank of Stockton in the sum of \$11,696.13 on April 15, 2008. Doc. #53, exh. C. The abstract of judgment was recorded with Tulare County on April 25, 2008. *Id.* That lien attached to the debtor's interest in a residential real property in Tulare, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$102,700.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$124,605.62 on that same date, consisting of a first deed of trust in favor Citimortgage, Inc. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00. Doc. #49, amended Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the

debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. [18-10118](#)-B-7 **IN RE: FRANK AIELLO**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-10-2018 [[25](#)]

GEORGIA HOUSING AND FINANCE
AUTHORITY/MV
PATRICK KAVANAGH
JOHN SCHLOTTER/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Granted in part as to the trustee's interest and denied as moot in part as to the debtor's interest.

ORDER: 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 pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on February 27, 2018. Docket #22. The motion will be GRANTED IN PART 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. The order shall provide the motion is DENIED AS MOOT as to the debtors.

The collateral is a parcel of real property commonly known as 321 Oglethorpe Way, Thomaston, GA 30286. Doc. #30. The collateral has a value of \$45,000.00 and the amount owed is \$55,846.55. Doc. #25.

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.

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under

applicable bankruptcy law. No more, no less.

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).

4. [18-10674](#)-B-7 **IN RE: JASON HARVILL**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-4-2018 [[19](#)]

TD AUTO FINANCE LLC/MV
MARK ZIMMERMAN
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: 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 debtors' and the trustee's defaults will be entered. 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 record shows that cause exists to terminate the automatic stay.

The collateral is a 2017 GMC Acadia. Doc. #24. The collateral has a value of \$37,327.00 and debtor owes \$46,913.94. Doc. #21.

The proposed order shall specifically describe the property or action to which the order relates.

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).

5. [18-10375](#)-B-7 **IN RE: GARY VILLANUEVA AND RACQUEL JOHNSON**

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2018 [[37](#)]

BRIDGECREST CREDIT COMPANY,
LLC/MV
ERIC ESCAMILLA
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c). The DCN is to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

11:00 AM

1. [18-11041](#)-B-7 **IN RE: FIDEL SAUCEDO- CISNEROS AND MARICSA MORA**

PRO SE REAFFIRMATION AGREEMENT WITH MECHANICS BANK
5-21-2018 [[15](#)]

THOMAS GILLIS

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when 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). In this case, the debtors' attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. [18-11579](#)-B-7 **IN RE: PERRY/PAULA WYATT**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
5-23-2018 [[12](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when 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 debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MC-1](#)

PRE-TRIAL CONFERENCE RE: MOTION FOR RELIEF FROM AUTOMATIC
STAY
12-8-2017 [[119](#)]

CHRISTOPHER CALLISON/MV
MARTIN GAMULIN
MIKE CHAPPARS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

2. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[MHG-3](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF CHRISTOPHER
SCOTT CALLISON, CLAIM NUMBER 8
9-8-2017 [[64](#)]

GREGGORY KIRKPATRICK/MV
MARTIN GAMULIN
RESPONSIVE PLEADING

NO RULING.

3. [11-15871](#)-B-13 **IN RE: RANDY/PATRICIA BOYD**
[17-1082](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-26-2017 [[1](#)]

BOYD ET AL V. VERIPRO
SOLUTIONS, INC. ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING, CASE DISMISSED 5/29/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #40.