

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, July 10, 2014
Place: Department B – Courtroom #12
Fresno, 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. [13-16954](#)-B-11 MADERA ROOFING, INC. MOTION FOR COMPENSATION BY THE
CRD-1 LAW OFFICE OF RUTAN AND TUCKER,
LLP FOR CAROLINE R. DJANG,
DEBTOR'S ATTORNEY(S)
6-5-14 [[334](#)]
- ERIC FROMME/Atty. for dbt.
RESPONSIVE PLEADING

This matter will be rescheduled to August 7, 2014, at 9:00 a.m., for further responses by the applicant. The court will enter a separate order. No appearance is necessary.

2. [13-16954](#)-B-11 MADERA ROOFING, INC. MOTION BY ERIC J. FROMME TO
EJF-15 WITHDRAW AS ATTORNEY
6-19-14 [[369](#)]
- ERIC FROMME/Atty. for dbt.

3. [13-13388](#)-B-11 GEORGE/MARILYN LANTING MOTION TO EMPLOY SCHUIL AND
TCS-7 ASSOCIATES AS REALTOR(S)
6-25-14 [[236](#)]
- GEORGE LANTING/MV
NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING,
WITHDRAWN

The matter has been withdrawn. No appearance is necessary.

4. [13-13388](#)-B-11 GEORGE/MARILYN LANTING MOTION TO SELL
TCS-8 6-25-14 [[243](#)]
- GEORGE LANTING/MV
NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING,
WITHDRAWN

The matter has been withdrawn. No appearance is necessary.

5. [13-13388](#)-B-11 GEORGE/MARILYN LANTING MOTION TO SELL
TCS-9 6-25-14 [[247](#)]
- GEORGE LANTING/MV
NANCY KLEPAC/Atty. for dbt.
RESPONSIVE PLEADING,
WITHDRAWN

The matter has been withdrawn. No appearance is necessary.

JACOB EATON/Atty. for dbt.

This motion will be continued to July 30, 2014, at 3:00 a.m., in Bakersfield, for supplemental information. On April 25, 2014, the court approved KDG's first application for compensation of services rendered through March 19, 2014, in the amount of \$45,086. KDG is now requesting an additional award of more than \$34,000 for two months of service through May 19, 2014. The debtor is also requesting compensation for Glassratner and the Captial Group totaling more than \$34,000 for services rendered during essentially the same period. The court cannot tell from the applications, or from its review of the record, what has been accomplished in this case by KDG during the billing period other than a few ministerial and administrative matters. The application offers no information regarding the status of the chapter 11 plan which the debtor has projected to be filed by July 31, 2014.

The court has an independent duty to review applications for compensation of professionals. "[T]he court should review a fee application to ensure the applicant exercises the same "billing judgment" as do non-bankruptcy attorneys by, for example, writing off unproductive research time, duplicative services, redundant costs precipitated by overstaffing, or other expenses with regard to which the professional generally assumes the cost as overhead in corresponding non-bankruptcy matters, or for which analogous non-bankruptcy clients typically decline to pay." *In re Busy Beaver Bldg. Centers, Inc.*, 19 F.3d 833 (C.A.3 (Pa.), 1994).

From its review of the employment applications for professionals, the court is unable to determine how the responsibilities for this case have been delegated. The employment application for KDG stated: "The Debtor-in-Possession will require the services of bankruptcy counsel under a general retainer for representation in the Chapter 11 case." The "Included Services" were listed as:

1. "Consulting with Debtor-in-Possession concerning their present financial situation, the realistically achievable goals, and the efficacy of various forms of bankruptcy as a means to achieve their goals.
2. Preparing the documents necessary to commence the bankruptcy case.
3. Advising Debtor-in-Possession concerning its duties as a debtor-in-possession in a Chapter 11 case.
4. If it appears that it can propose a viable plan, helping the formulation of the Chapter 11 plan, drafting the plan and disclosure statement, and prosecuting legal proceedings to seek confirmation of the plan.

- . If necessary, preparing and prosecuting such pleadings as complaints to avoid preferential transfers or transfers deemed fraudulent as to creditors, motions for authority to borrow money, sell property, or compromise claims and objections to claim."

Specifically excluded were:

1. Auditing/Investigation.
2. Accounting/Tax Advice.
3. Business or Financial Advice.
4. Employment of Experts.
5. Litigation.

First, the court notes that KDG billed approximately \$900 for the ill-advised and disapproved employment application for Moss Tucker as "special counsel" for unspecified litigation purposes. The application fails to show how this legal service was necessary or beneficial to the bankruptcy estate.

The employment of multiple professionals responsible for overlapping duties inevitably leads to inefficiencies. In this case, each of the professionals employed, Glassratner Advisory Group, LLC, ("Glassratner"), Frazier, LLP, ("Frazier"), and Klein, Denatale, Goldner, Cooper, Rosenlieb and Kimball, LLP ("KDG") have employment applications with overlapping duties, including that for the debtor's chapter 11 plan of reorganization. This arrangement almost inevitably leads to duplicative services and inefficiencies.

For example, On April 2, 2014, KDG billed \$541.50 related to an "Action Plan" for the chapter 11 plan:

- .2 hours for "Telephone calls to and prepared e-mail to [Glassratner] regarding plan."
- .4 hours for "Prepared for telephone conference regarding Action Plan for developing Plan of Reorganization."
- 1.2 hours for "Telephone conference with Jim Wilson, [Glassratner], Bob Matlick, and Amanda Hebesha regarding Action Plan for developing Plan of Reorganization."
- .1 hours for "exchanged e-mail with Craig Barbarosh regarding Plan of Reorganization."

On the same day, apparently in connection with the same conference call, two different partners at Frazier billed a total of \$762 for:

- 1.25 hours, "Conference call-Doug Tucker, Moss Tucker, [Glassratner], and [KDN] re: restructure plan
- 1.6 hours, "Phone call- Jim Wilson & [KDG], [Glassratner] re: Reorganization."

And, also on the same day and apparently in connection with the same conference call, Glassratner billed \$300 for 1 hour, "Telephone conference with Debtor, [KDG], and [Frazier] regarding plan issues."

Nevertheless, despite many, many telephone conferences and e-mail communications between these professionals, a chapter 11 plan has yet to be filed.

7. [14-10588](#)-B-11 J & D WILSON AND SONS MOTION FOR COMPENSATION FOR
KDG-16 DAIRY FRAZER, LLP, ACCOUNTANT(S).
FRAZER, LLP/MV 6-12-14 [[198](#)]
JACOB EATON/Atty. for dbt.

This motion will be continued to July 30, 2014, at 3:00 p.m., in Bakersfield, for consideration with the fee application of debtor's counsel and the supplemental information provided therewith. No appearance is necessary.

8. [14-10588](#)-B-11 J & D WILSON AND SONS MOTION FOR COMPENSATION FOR
KDG-17 DAIRY GLASSRATNER ADVISORY AND
GLASSRATNER ADVISORY & CAPITAL CAPITAL GROUP, LLC, OTHER
GROUP, LLC/MV PROFESSIONAL(S).
6-12-14 [[205](#)]
JACOB EATON/Atty. for dbt.

This motion will be continued to July 30, 2014, at 3:00 p.m., in Bakersfield, for consideration with the fee application of debtor's counsel and the supplemental information provided therewith. No appearance is necessary.

10:30 A.M.

1. [11-12668](#)-B-13 ALVINA FISCHER
[13-1139](#)
FISCHER V. EVERBANK ET AL
NANCY KLEPAC/Atty. for pl. CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-31-13 [[1](#)]

2. [14-10371](#)-B-7 SUSANA VITO
[14-1051](#)
EDUCATIONAL EMPLOYEES CREDIT
UNION V. VITO STATUS CONFERENCE RE: COMPLAINT
DON POOL/Atty. for pl. 5-6-14 [[1](#)]
STIPULATION/JUDGMENT FILED
6/3/14

**The matter has been settled and the adversary proceeding has been closed.
No appearance is necessary.**

1:30 P.M.

1. [14-11210](#)-B-13 JOHN LUCE MOTION TO CONFIRM PLAN
GGL-3 5-20-14 [[37](#)]
JOHN LUCE/MV
GEORGE LOGAN/Atty. for dbt.
RESPONSIVE PLEADING
2. [14-11111](#)-B-13 PHILLIP/MARNIE HAMILTON MOTION TO MODIFY PLAN
TCS-1 6-3-14 [[25](#)]
PHILLIP HAMILTON/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING
3. [14-12623](#)-B-13 ADRIAN/DANA BAUTISTA MOTION TO VALUE COLLATERAL OF
TOG-1 PATELCO CREDIT UNION
ADRIAN BAUTISTA/MV 6-5-14 [[12](#)]
THOMAS GILLIS/Atty. for dbt.

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor(s) may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. *Unless the chapter 13 plan has been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.* The debtor(s) shall submit a proposed order consistent with this ruling. No appearance is necessary. *This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.*

4. [12-60537](#)-B-13 LARRY/PEGGY LOFTIN MOTION TO MODIFY PLAN
MAZ-3 5-21-14 [[50](#)]
LARRY LOFTIN/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and the trustee has filed an opposition. Based on the debtors' reply to the trustee's objection, the motion will be granted without oral argument for cause shown. The trustee's objection is to be resolved in a proposed confirmation order submitted by the debtors for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

5. [10-10438](#)-B-13 RONNIE/CHARLOTTE RACKLEY MOTION FOR COMPENSATION BY THE
PLF-5 LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR,
DEBTOR'S ATTORNEY(S).
6-9-14 [[75](#)]

PETER FEAR/Atty. for dbt.

This matter will be continued to July 24, 2014, at 1:30 p.m., for supplemental information. The court is unable to reconcile from the application the amount of the additional fees requested with the amount of fees already paid. No appearance is necessary.

6. [14-11047](#)-B-13 JANITZY FLORES OBJECTION TO DEBTOR'S CLAIM OF
MHM-1 EXEMPTIONS
MICHAEL MEYER/MV 6-12-14 [[43](#)]
SCOTT LYONS/Atty. for dbt.

The trustee's objection has been withdrawn. No appearance is necessary.

7. [14-12248](#)-B-13 EDDIE GUZMAN MOTION TO CONFIRM PLAN
PBB-1 5-20-14 [[17](#)]
EDDIE GUZMAN/MV
PETER BUNTING/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan 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 debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

8. [14-11361](#)-B-13 DAVID/GLORIA RIVERA MOTION TO VALUE COLLATERAL OF
PLF-1 PREMIER VALLEY BANK
DAVID RIVERA/MV 6-3-14 [[32](#)]
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Based on the respondent's opposition, this matter will be continued to August 7, 2014, at 1:30 p.m. This matter is now deemed to be a contested matter. Pursuant to FRBP 9014(c), the federal rules of discovery apply to contested matters. The debtors shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date.

This contested matter will be consolidated with DC no. PLF-2 for all purposes including discovery and trial if necessary. The court will prepare a civil minute order. No appearance is necessary.

9. [14-11361](#)-B-13 DAVID/GLORIA RIVERA
PLF-2
DAVID RIVERA/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
PREMIER VALLEY BANK
6-5-14 [[37](#)]

Based on the respondent's opposition, this matter will be continued to August 7, 2014, at 1:30 p.m. This matter is now deemed to be a contested matter. Pursuant to FRBP 9014(c), the federal rules of discovery apply to contested matters. The debtors shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date.

This contested matter will be consolidated with DC no. PLF-1 for all purposes including discovery and trial if necessary. The court will prepare a civil minute order. No appearance is necessary.

10. [10-15863](#)-B-13 ERNESTO/LINDA AMPARAN
GMA-1
ERNESTO AMPARAN/MV
GEOFFREY ADALIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION FOR ENTRY OF DISCHARGE
5-28-14 [[39](#)]

This motion will be denied without prejudice. The procedure for entry of chapter 13 discharge is set forth in Local Rule 5009-1. The motion does not provide a reason why the discharge cannot be entered pursuant to the Local Rules. No appearance is necessary.

11. [14-11671](#)-B-13 GLENN BAILES
BHT-1
OCWEN LOAN SERVICING, LLC/MV

F. GIST/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY OCWEN
LOAN SERVICING, LLC
4-30-14 [[19](#)]

12. [14-10684](#)-B-13 NADER SHOKRY
PLG-2
NADER SHOKRY/MV

MOTION TO AVOID LIEN OF
COLLECTIBLES MANAGEMENT
RESOURCES, A GENERAL
PARTNERSHIP
6-4-14 [[50](#)]

RABIN POURNAZARIAN/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

13. [09-10890](#)-B-13 WALTER/SHARON WEBB
MHM-1
MICHAEL MEYER/MV

OBJECTION TO DEBTORS 11 U.S.C.
SEC. 1328 CERTIFICATION BY
MICHAEL H. MEYER
5-22-14 [[36](#)]

DAVID JENKINS/Atty. for dbt.
WITHDRAWN

The trustee's objection has been withdrawn. No appearance is necessary.

14. [10-19193](#)-B-13 ENRIQUE/SUSANA MEDINA
TOG-11
ENRIQUE MEDINA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO COMPEL
5-31-14 [[46](#)]

2:00 P.M.

1. [14-12224](#)-B-13 BARRY ELDER
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-16-14 [[18](#)]

GARY HUSS/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's objection has been withdrawn. No appearance is necessary.

2. [14-10431](#)-B-13 ANTHONY/CHERI BEASLEY
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN
3-25-14 [[24](#)]

GARY HUSS/Atty. for dbt.

3. [14-11671](#)-B-13 GLENN BAILES
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
6-17-14 [[35](#)]

F. GIST/Atty. for dbt.

This matter will be advanced to the 1:30 p.m. calendar and called with the continued hearing on Ocwen's objection to the plan. No appearance is necessary at 2:00 p.m.

4. [13-16845](#)-B-7 KEYSTONE MINE MANAGEMENT
DMT-1 II
JOHN HAGESTAD/MV
PHILLIP GILLET/Atty. for dbt.
WILLIAM LOBEL/Atty. for mv.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-14-14 [[130](#)]

2:30 P.M.

1. 12-17199-B-7 GURSEV KAUR
12-1188
VETTER V. KAUR
RENE LASTRETO/Atty. for pl.

TRIAL RE: AMENDED COMPLAINT
11-16-12 [6]

The defendant's motion has been withdrawn and this special set evidentiary hearing has been vacated by order dated July 9, 2014. No appearance is necessary.