

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

July 31, 2013 at 1:00 p.m.

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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.

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1.	12-32504-D-11	THOMMAS/VIRGINIA YARAK	APPROVAL OF AMENDED DISCLOSURE
	ABS-45		STATEMENT FILED BY DEBTOR
			6-18-13 [470]

Final ruling:

By minute order filed May 27, 2013, the court denied the motion of Thommas Yarak and Virginia Yarak (the "debtors") for an order approving a disclosure statement, having ruled that the debtors had failed to give notice of the hearing in compliance with Fed. R. Bankr. P. 2002(b). The court's ruling was set forth in the civil minutes for May 22, 2013 on the debtors' motion, Docket Control No. ABS-41.

On June 14, 2013, the debtors filed and served a motion, and on June 18, 2013, the debtors filed and served an amended motion, Docket Control No. ABS-45, for approval of a disclosure statement and for certain related relief. (Together, the motion and amended motion are referred to herein as the "Motion.") The Motion will be denied for three reasons.

First, notice of the hearing did not comply with applicable rules. On June 14, 2013 and June 18, 2013, the debtors filed a notice of hearing and an amended notice

of hearing, which purported to set the motion and amended motion for hearing on July 17, 2013 and July 31, 2013, respectively. In both the notice of hearing and the amended notice of hearing, the debtors quoted Fed. R. Bankr. P. 3017(a) as providing that objections to a disclosure statement shall be filed and served "at any time before the disclosure statement is approved or by an earlier date as the court may fix." Fed. R. Bankr. P. 3017(a). The notice and amended notice did not state a deadline for the filing of such written objections.

As indicated, Fed. R. Bankr. P. 3017(a) expressly requires that objections to a disclosure statement be "filed and served;" in other words, that objections be made in writing. Pursuant to the local rules of this court, any motion for which a written opposition will be required must be filed and served at least 28 days prior to the hearing date. LBR 9014-1(f)(2)(C) ("When fewer than twenty-eight (28) days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the motion."). Further, when written opposition will be required, such opposition must be filed and served at least 14 days prior to the hearing date (LBR 9014(f)(1)(B)), and the notice of hearing must advise potential respondents of the requirement to file and serve written opposition and of the deadline for doing so (LBR 9014-1(d)(3)). The notice must also contain certain cautionary language. See id.

Pursuant to Fed. R. Bankr. P. 2002(b), parties-in-interest must be given 28 days' notice by mail of the time fixed for filing objections to disclosure statements, and as seen above, in this court, where written opposition will be required, it must be filed at least 14 days prior to the hearing date. Thus, in order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), the motion and notice of the hearing must be served at least 42 days prior to the hearing date.

In this case, the notice of hearing and the amended notice of hearing advised potential respondents that if they objected to the relief requested, they "must file a written response to this pleading . . . ." However, neither the notice nor the amended notice advised respondents of the deadline for filing the response, and neither contained the additional required cautionary language; thus, neither complied with the court's local rules. (The original motion and original notice of hearing did not comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1) for the further reason that they were served only 33 days prior to the hearing date set forth in those documents.)

Second, it is not clear which of the several "second" disclosure statements is the subject of the motion. On April 16, 2013, the debtors filed a document entitled "Second Disclosure Statement;" on June 14, 2013, they filed an "Amended - Second Disclosure Statement," and on June 18, 2013, they filed another "Amended - Second Disclosure Statement." Although the latter two documents appear at first glance to be the same except for the hearing date on each, the court and creditors should not need to go through these lengthy documents to determine whether they are different.

Finally, it appears each of those three disclosure statements was served on the entire creditor body, whereas a disclosure statement (together with the plan it supports) are to be mailed, along with the notice of hearing on the disclosure statement, only to the debtor, any trustee or committee, the SEC, and any party-in-interest who has requested in writing a copy of the disclosure statement or plan. Fed. R. Bankr. P. 3017(a).

For the reasons stated, the Motion will be denied by minute order. No appearance is necessary.

2. 12-32054-D-11 AJW PROPERTIES, LLC

CONTINUED MOTION TO CONVERT OR  
DISMISS CASE  
12-13-12 [35]

3. 12-32054-D-11 AJW PROPERTIES, LLC

CONTINUED CONFIRMATION OF PLAN  
OF REORGANIZATION BY DEBTOR  
3-5-13 [56]