

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, July 31, 2014
Place: U.S. Courthouse, 510 19th Street
Bakersfield, 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.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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.

1. [14-12935](#)-B-7 URSULA MANNING-STEWART ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-19-14 [[14](#)]
FINAL PAYMENT 6/30/14

The record shows that the required fee has been paid in full. The OSC will be dropped from calendar. No appearance is necessary.

2. [14-11447](#)-B-7 JAMES/PAMELA WILLINGHAM MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
TRACY DAVIS/MV 6-26-14 [[18](#)]
CYNTHIA SCULLY/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

This matter will be continued to September 4, 2014, at 10:00 a.m., for further briefing. The presumption of abuse appears to arise by operation of law if the debtors' monthly disposable income exceeds \$208. The debtors admit in their means test that they have disposable income of at least \$91.44. The debtors also deduct \$400 of "older car" ownership costs for their 2003 and 2006 automobiles. The 9th Circuit Bankruptcy Appellate Panel has recently ruled that the "older car" deduction does not apply in chapter 13. *In re Luedtke*, 508 B.R. 408 (9th Cir.BAP,2014). Without this deduction, the presumption of abuse arises. The parties may submit briefing regarding whether the *Luedtke* holding and rationale should or should not also apply in a chapter 7 case. Any supplemental briefs shall be filed and served no later than September 20. Reply briefs shall be filed and served not later than September 27. The court will prepare a minute order. No appearance is necessary.

3. [14-11954](#)-B-7 JOSE/PAULA BUSTAMANTE MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
TRACY DAVIS/MV 6-27-14 [[19](#)]
D. GARDNER/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

4. [14-12572](#)-B-7 AMARYLLIS MOORE
LKW-1
AMARYLLIS MOORE/MV

LEONARD WELSH/Atty. for dbt.

CONTINUED MOTION FOR ORDER
APPOINTING TANA DEE WILLIAMS AS
"NEXT FRIEND" FOR DEBTOR
5-16-14 [[5](#)]

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

5. [14-12572](#)-B-7 AMARYLLIS MOORE
LKW-2
AMARYLLIS MOORE/MV

LEONARD WELSH/Atty. for dbt.

CONTINUED MOTION FOR ORDER
WAIVING REQUIREMENT THAT DEBTOR
COMPLETE CREDIT COUNSELING
COURSE, DEBTOR EDUCATION
COURSE, AND ATTEND MEETING OF
CREDITORS
5-16-14 [[11](#)]

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

6. [13-10985](#)-B-7 JAY PATEL
VG-2
VINCENT GORSKI/MV
PATRICK KAVANAGH/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO SELL
7-2-14 [[60](#)]

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

The trustee will be authorized to sell the estate's interest in the property for substantially less than its fair market value based on the trustee's representations that the sale is sufficient to pay all claims, including all unsecured creditors in full with interest. The court reserves the power to adjust the trustee's compensation upon submission of the final report to assure full payment of all claims in the event of a shortfall.

The trustee has only requested permission to sell (abandon) the estate's interest in the property. It is not clear from the moving papers why the trustee also needs to hire a probate attorney for this asset. Any application to employ a probate attorney shall be noticed and set for hearing with a full explanation of why the estate should bear the cost of probating this asset for the benefit of the debtor and his brother.

7. [14-10594](#)-B-7 LEOPOLDO/YESENIA VARGAS
UST-1
TRACY DAVIS/MV

PHILLIP GILLET/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE PURSUANT TO 11 U.S.C.
SECTION 707 (B)
5-16-14 [[23](#)]

10:30 A.M.

1.	<u>14-12507</u> -B-7	GUADALUPE/DENISE GARZA	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	SANTANDER CONSUMER USA INC./MV		6-9-14 [<u>15</u>]
	TYSON TAKEUCHI/Atty. for dbt.		
	AUSTIN NAGEL/Atty. for mv.		

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. 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. 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

2. [14-11617](#)-B-7 VIRGINIA IRWIN
RCO-1
SUN WEST MORTGAGE COMPANY,
INC./MV
NEIL SCHWARTZ/Atty. for dbt.
KRISTI WELLS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-23-14 [[16](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted 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. 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

3. [13-16953](#)-B-7 STEPHEN/LINDA MACKEY

RESCHEDULED MOTION FOR RELIEF
FROM AUTOMATIC STAY

JCW-1

3-21-14 [[32](#)]

MIDFIRST BANK/MV

LEONARD WELSH/Atty. for dbt.

JENNIFER WONG/Atty. for mv.

RESCHEDULING ORDER 4/25,

DISCHARGED

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted 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. 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

4. [13-13163](#)-B-7 AMERICA QUISPE

RESCHEDULED MOTION FOR RELIEF
FROM AUTOMATIC STAY

PD-1

5-23-14 [[66](#)]

WELLS FARGO BANK, N.A./MV

JONATHAN CAHILL/Atty. for mv.

DISCHARGED, RESPONSIVE

PLEADING

This motion will be denied without prejudice. The court has authorized the chapter 7 trustee to sell this property and pay the movant's secured claim through escrow. No appearance is necessary.

5. [14-11881](#)-B-7 KELLI VAN NEST

AMENDED MOTION FOR RELIEF FROM
AUTOMATIC STAY

BMO-1

7-15-14 [[17](#)]

ALTAONE FEDERAL CREDIT

UNION/MV

ROBERT WILLIAMS/Atty. for dbt.

BRANDON ORMONDE/Atty. for mv.

6. [14-12885](#)-B-7 JOSEPH/JOSEPHINE
JHW-1 LITTLEJOHN
AMERICREDIT FINANCIAL
SERIVCES, INC./MV
ROBERT WILLIAMS/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-2-14 [[15](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. 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. 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 Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

11:00 A.M.

1. [14-12148](#)-B-7 JULIE SMITH

PRO SE REAFFIRMATION AGREEMENT
WITH KERN FEDERAL CREDIT UNION
6-2-14 [[9](#)]