

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 30, 2017
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. 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. 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 A.M.

1. [17-12311](#)-B-7 RICHARD/DIANA GONCHAR MOTION FOR RELIEF FROM
TGM-1 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 7-31-17 [[15](#)]
CORPORATION/MV
R. BELL/Atty. for dbt.
TYNEIA MERRITT/Atty. for mv.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. 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 proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is being surrendered and is a depreciating asset.

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).

2. [16-10521](#)-B-7 ALAN ENGLE
DRJ-2
ROCKY PIPKIN/MV
DAVID JENKINS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-16-17 [[203](#)]

TENTATIVE RULING This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The moving party shall submit a proposed order after the hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f) (2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f) (2). The court will issue an order if a further hearing is necessary.

The automatic stay is modified as it applies to the movant's right to liquidate his claim in the Tulare County Superior Court. The record shows that cause exists to modify the automatic stay. The movant is not authorized to pursue any other remedy or collection without further order of this court. This court cannot liquidate this claim without both parties' consent under 28 U.S.C. §157. The debtor does not consent. Neither party has asked the district court to withdraw the reference.

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

3. [16-10521](#)-B-7 ALAN ENGLE
PBB-1
ALAN ENGLE/MV

CONTINUED FURTHER STATUS
CONFERENCE RE: OBJECTION TO
CLAIM OF ROCKY J. PIPKIN, CLAIM
NUMBER 3
2-15-17 [[118](#)]

ALAN ENGLE/Atty. for mv.
RESPONSIVE PLEADING

NO RULING.

4. [10-15127](#)-B-7 NORMA BAKER
WEE-10
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF
HFC/HSBC
8-16-17 [[163](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which she would otherwise have been entitled.

5. [10-15127](#)-B-7 NORMA BAKER
WEE-8
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE
8-2-17 [[155](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which she would otherwise have been entitled.

6. [10-15127](#)-B-7 NORMA BAKER
WEE-9
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE
8-2-17 [[159](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which she would otherwise have been entitled.

7. [15-13932](#)-B-7 VICTOR PASNICK
RHT-16
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MCCORMICK,
BARSTOW, SHEPPARD, WAYTE &
CARRUTH, LLP
8-2-17 [[280](#)]

PETER FEAR/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted in part and denied in part.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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 as to the motion for compromise, which the movant has done here. Accordingly, the respondents' defaults will be entered.

It appears from the moving papers that the trustee has considered the factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee or debtor-in-possession reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable;

and has relied on the advice of special counsel. Accordingly, it appears that the the compromise pursuant to FRBP 9019 is a reasonable exercise of the DIP's business judgment. The order should be limited to the claims compromised as described in the motion.

The motion for approval of attorney fees is denied without prejudice. FRBP 9014(c) does not incorporate joinder of claims in contested matters (FRCP 18 is made applicable to bankruptcy adversary proceedings pursuant to FRBP 7018). The request for approval of fees is a separate claim requiring a separate motion. See 11 U.S.C. §§328(a) and 330; FRBP 2002(a)(6) and 2016.

8. [17-12456](#)-B-7 AMBROCIO HERNANDEZ
ABG-1
KINECTA FEDERAL CREDIT
UNION/MV
MARK ZIMMERMAN/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-28-17 [[16](#)]

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

DISPOSITION: **Granted.**

ORDER: **No appearance is necessary. 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 debtor's 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 proposed order shall specifically describe the property or action to which the order relates.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is being surrendered and is a depreciating asset.

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).

9. [17-10960](#)-B-7 CAREY/PAULA JOHNSON
JES-1
JAMES SALVEN/MV
ERIC ESCAMILLA/Atty. for dbt.

MOTION TO SELL
7-26-17 [[19](#)]

FINAL RULING This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: Moving Party shall submit a proposed order after hearing.

This motion will proceed as scheduled only for submission of higher and better bids, if any.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

10. [17-11560](#)-B-7 MARIA DE LA LUZ DOMINE MOTION TO COMPEL ABANDONMENT
MAR-1 ENRIQUEZ 7-28-17 [[15](#)]
MARIA DE LA LUZ DOMINE
ENRIQUEZ/MV
MICHAEL RIVERA/Atty. for dbt.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered. The debtor's business as described in schedule C will be abandoned.

The court notes that the debtor filed her petition April 14, 2017, complete with her schedule B which listed a business license for "Food Stand Tacos Durnago," and which exempted equipment listed as "Food stand. Tables and chair. Roaster. Food Warmer. Pots and pans. Refrigerator. 2 tables, chairs," valued at \$2,500. There were no objections to the debtor's exemptions.

During the approximately 4-1/2 months since the case was filed it appears that the debtor has been operating her taco food stand. This motion, for which the debtor paid a filing fee of \$181, was filed July 28, 2017. On August 3, 2017, the \$341 meeting of creditors was concluded and the trustee's report of no distribution filed. The debtor's discharge was entered August 14, 2017.

11. [17-11669](#)-B-7 TERESA LEE
PFT-1
PETER FEAR/MV
TIMOTHY SPRINGER/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO SELL
7-18-17 [[11](#)]

FINAL RULING This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: Moving Party shall submit a proposed order after hearing.

This motion will proceed as scheduled only for submission of higher and better bids, if any.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

12. [16-10771](#)-B-7 CHRIS/KIMBERLY KATELEY
TGM-5
PETER FEAR/MV
MARK ZIMMERMAN/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
8-1-17 [[81](#)]

FINAL RULING This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: Moving Party shall submit a proposed order after hearing.

This motion will proceed as scheduled only for submission of higher and better bids, if any.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

13. [17-12572](#)-B-7 DONALD/ELONIECE HOOKS
JRL-1
DONALD HOOKS/MV
JERRY LOWE/Atty. for dbt.

MOTION TO AVOID LIEN OF
WORLDWIDE ASSET PURCHASING, LLC
7-28-17 [[18](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue an order.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rules of Bankruptcy Procedure 9014(c). 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.

Here, the moving papers do not present "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The debtors did not exempt their homestead in their bankruptcy schedules. In order to avoid the judgment lien, the homestead must be listed as exempt on the debtors' schedule C. Unless the homestead is claimed as exempt there is no predicate for 11 U.S.C. §522(f) relief. The schedule C filed July 12, 2017, does not show a homestead exemption is claimed.

Movant is reminded that creditors and the trustee have 30 days after any amendment to exemptions is filed to object to the amended exemption. FRBP 4003(b) (1).

14. [17-10489](#)-B-7 JAMIE MEDEIROS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-9-17 [[49](#)]

This matter will proceed as scheduled. If the fees due at the time of the hearing, for filing an amended schedule E/F in the amount of \$31, have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

15. [17-12790](#)-B-7 BRANDY ELLIS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-9-17 [[21](#)]

MARK ZIMMERMAN/Atty. for dbt.

TENTATIVE RULING This matter will proceed as scheduled.

DISPOSITION: If the required fee has not been paid by the time or hearing, or an agreement to pay the filing fee in installments has not been filed, then the case will be dismissed at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions.

The court notes that the debtor paid her attorney \$1,200 to represent her in this chapter 7 bankruptcy case.

16. [16-14199](#)-B-7 HARLAN/VIRGINIA TYLER
FW-3
JAMES SALVEN/MV

MOTION TO EMPLOY NEIL OVERHOLTZ
AND HUNTER LINVILLE AS SPECIAL
COUNSEL
8-2-17 [[33](#)]

RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: No appearance is necessary. The court will issue an order.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rules of Bankruptcy Procedure 9014(c). 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.

Here, the moving papers do not present "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The court has reviewed the moving papers in the trustee's application to employ special counsel. The facts appear to be as follows:

7/20/2012	Debtor hires proposed special counsel in connection with mass tort litigation;
4/28/2015	"Master settlement agreement" in mass tort litigation reached;
<u>11/21/2016</u>	<u>Bankruptcy case filed, disclosing litigation and date of "Master settlement agreement" as well as identity and location of attorneys representing debtor in litigation</u>
12/20/2016	Trustee files no asset case report;
2/3/2017	Trustee files notice of assets;
2/21/2017	The debtors' discharges are entered;
5/25/2017	Trustee files application for employment of general counsel for purposes of filing <i>nunc pro tunc</i> application to employ special counsel and resolve possible lien issues;

6/22/2017

Trustee files motion to approve stipulation as to exempt/non-exempt proceeds from settlement and for direct payment to debtor;

8/8/2017

Trustee files this application to employ special counsel nunc pro tunc.

The court declines to exercise its equitable power to approve employment of special counsel nunc pro tunc, for several reasons, including the absence of any explanation for the delay and the failure to show that employment will provide any benefit for the estate and the lack of any exceptional circumstances.

The trustee contends that the exceptional circumstances justifying *nunc pro tunc* approval are, first, the fact that proposed special counsel has already performed services benefitting the estate, however this is precisely the circumstances that make it a *nunc pro tunc* application. Second, the trustee claims the exceptional circumstance is the fact that proposed special counsel put a "bankruptcy hold" on the tort case when it discovered the bankruptcy. That is not exceptional.

The reasons cited by the trustee in his contention that employment of proposed special counsel will be beneficial to the estate are not persuasive. The estate is already being administered by an experienced chapter 7 trustee who is being assisted by able general counsel.

As set forth below, based on the Linville declaration and possible application of Texas law, the law firm may have a disqualifying interest in the settlement proceeds.

Finally, employment of proposed special counsel is not necessary to bring the proceeds of the settlement into the estate; this claim and any proceeds connected with it, to the extent it was "owned" by the debtors, became property of the estate when the petition was filed.

The court notes that the "Attorney Retainer Contract," between the debtor and proposed special counsel which was filed as Exhibit A to the application, contains a choice of law provision at paragraph 21 specifying that Texas law will govern any dispute arising out of the contract. It also provides, at page 2 paragraph 12:

Client hereby transfers and assigns to Attorney an undivided interest in Client's claims. The undivided interest hereby assigned to Attorney by Client is equivalent to the fees, costs, and expenses, including the percentage of any recovery as defined in paragraphs 7a and c above, that Client, by this agreement, promises to pay to Attorney. The undivided interest assigned by this agreement is a present, not an executory, interest.

In that the tort litigation appears to have been materially completed pre-petition, the status of proposed counsel under Texas law appears to be that of, at the least, a creditor with a potentially secured claim in the proceeds, or perhaps, as of the petition date, an assignee of a portion of the debtors' interest. The trustee should evaluate that interest. See, *In re Patton*, 358 B.R. 911 (Bankr. S.D.TX 2007); *In re Lyons*, 439 B.R. 401 (Bankr. S.D.TX 2010); *in re Dykeswill, Ltd.*, 365 B.R. 683, 688 (S.D. TX, 2007).

The motion is DENIED.

11:00 A.M.

1. [17-12652](#)-B-7 NICK/MONICA SALAS

PRO SE REAFFIRMATION AGREEMENT
WITH WESTAMERICA BANK
8-11-17 [[23](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [17-10620](#)-B-7 REBEKAH CHERRY
[17-1054](#)
CHERRY V. NAVIENT (DEPT. OF
EDUCATION) ET AL
REBEKAH CHERRY/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
7-21-17 [[10](#)]

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The court will issue an
order.

The record does not show that the summons and complaint were served in compliance with Federal Rules of Bankruptcy Procedure 7004(b) & (e). The clerk of the court will issue a notice of intent to dismiss for unreasonable delay and failure to prosecute if the plaintiff does not properly serve the amended complaint with a reissued summons within 30 days.