

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 19, 2018 at 10:00 a.m.

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.**

1.	18-22400-D-7 JMH-1	GREGORY BORDELON	MOTION TO SELL 8-22-18 [17]
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2.	18-24600-D-7	MARYLOU FLOWERS	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 7-23-18 [4]
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3. 16-27201-D-7 JEREMIAH ALTON CONTINUED STATUS CONFERENCE RE:
18-2083 COMPLAINT
ALTON V. NAVY FEDERAL CREDIT 5-31-18 [1]
UNION

Final ruling:

This status conference is continued to September 27, 2018 at 10:00 a.m. No appearance is necessary on September 19, 2018.

4. 18-23107-D-7 MISTY MCENTEE-CHOO MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY AND/OR MOTION
MB FINANCIAL BANK, N.A. VS. FOR ADEQUATE PROTECTION
8-15-18 [18]

Final ruling:

The matter is resolved without oral argument. The court records indicate that no timely opposition has been filed. The debtor received her discharge on August 29, 2018 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c) (3)). Accordingly, the motion will be denied as to the debtor as moot. The moving papers establish there is no equity in the property and the property is not necessary for an effective reorganization, or post-petition payments are not being made. Based on the foregoing, the court finds the moving party's interests are not adequately protected and cause exists for granting relief from stay. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a) (3) by minute order. There will be no further relief afforded. No appearance is necessary.

5. 18-24710-D-7 LARISA POSTELNYAK MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
7-27-18 [5]

6. 16-24643-D-7 GAVIN MEHL MOTION TO AVOID LIEN OF 770
GGM-4 "L" STREET INVESTMENT
GROUP, LLC
7-16-18 [41]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by 770 "L" Street Investment Group, LLC ("770 'L' Street"). The debtor brought a motion two years ago to avoid a judicial lien purportedly held by First National Mortgage Sources, LLC ("First National"). The motion was denied for two reasons. First, the debtor had failed to serve First National in strict compliance with Fed. R. Bankr. P. 7004(b) (3), as required by Fed. R. Bankr. P. 9014(b). Second, the abstract of

judgment filed as an exhibit to the motion named the judgment creditor (and the plaintiff in the lawsuit) as 770 "L" Street, not First National. First National was named in the caption of the abstract of judgment as a defendant in the lawsuit. In other words, it appeared the debtor had failed to serve the actual holder of the judicial lien, 770 "L" Street.

This time, the motion, notice of hearing, and debtor's declaration correctly identify the holder of the judicial lien as 770 "L" Street. However, the debtor again served First National, not 770 "L" Street. The court takes judicial notice from the Secretary of State's website that 770 "L" Street has surrendered its right to do business in California and revoked its designation of agent for service of process. Thus, the debtor will need to serve 770 "L" Street either (1) as provided in Cal. Corp. Code § 2114(b) (both sentences must be complied with) or (2) to the attention of an officer or managing or general agent, pursuant to Fed. R. Bankr. P. 7004(b)(3). Pursuant to Fed. R. Bankr. P. 7004(b)(3) and the preamble to Rule 7004(b), service is to be made by first-class mail, not certified mail. As indicated in the court's ruling on the debtor's first motion, service on the attorneys who obtained 770 "L" Street's abstract of judgment will be insufficient because there is no evidence those attorneys are authorized to receive service of process on behalf of 770 "L" Street in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

For the reasons stated, the motion will be denied. In the alternative, the court will consider a request to continue the hearing to permit the moving party to correct the service defect. The moving party should also file and serve a copy of 770 "L" Street's abstract of judgment, as he did with his first motion, so 770 "L" Street may readily identify the lien the debtor proposes to void by this motion.

The court will hear the matter.

7. 18-22453-D-11 ECS REFINING, INC.
CHRISTOPHER PRESTON VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-6-18 [387]

Final ruling:

The motion is denied for the following reasons: (1) moving party failed to file a separate Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1; (2) the notice failed to include information required for filing opposition as required by LBR 9014-1(d)(4); (3) the notice failed to give the full address of the court; and (4) moving party failed to include an appropriate docket control number as required by LBR 9014-1(c). As a result of these procedural defects, the motion will be denied by minute order. No appearance is necessary.

8. 18-22453-D-11 ECS REFINING, INC.
RPM-1
ACAR LEASING LTD VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-15-18 [432]

Final ruling:

This matter is resolved without oral argument. This is ACAR Leasing LTD's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed and that the Chapter 11 trustee filed a statement of non-opposition. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor, or estate, is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

9. 18-20060-D-7 JAMES/KRISTIN MARTIN
18-2050 DLG-1
PRICE V. MARTIN

MOTION TO CONSOLIDATE LEAD CASE
18-2050 WITH 18-2048 AND
18-2049
8-14-18 [33]

Tentative ruling:

This is the plaintiff's motion to consolidate this adversary proceeding with two other adversary proceedings against the same defendant. The defendant has filed opposition and the plaintiff has filed a reply. For the following reasons, the motion will be granted and the three adversary proceedings will be consolidated for trial.

The three adversary proceedings involve substantial common questions of law and fact, in particular regarding the defendant's alleged conduct. The plaintiff's attorney expects to call the plaintiffs in the other two adversary proceedings as witnesses in this proceeding and believes they are likely to call his client as a witness in their proceedings. There may also be other common witnesses in all three proceedings. For these reasons, consolidation of the adversary proceedings for trial will avoid duplication and enhance judicial efficiency and economy.

The defendant cites the presence of his spouse as an additional defendant in the other two adversary proceedings but not this one, but offers no argument as to why this would cause prejudice to either him or his spouse. The complaints in the other two proceedings do not allege separate conduct by the defendant's spouse; thus, there is no reason to suppose her presence as a co-defendant would raise individual issues in those cases. The court does not see any potential prejudice to the defendant from the fact that the plaintiff in this case is represented by counsel whereas the plaintiffs in the other two cases are pro se. The trial of these cases will be a bench trial, not a jury trial, so the court does not expect there will be any confusion as a result of consolidation. The fact that the damages incurred by each plaintiff will raise individual issues does not outweigh the advantages that will be gained from consolidation. Finally, each of the plaintiffs in the other two cases has filed a declaration stating she would like her case consolidated with the other two.

For the reasons stated, the motion will be granted. The court will hear the matter.

10. 18-24769-D-7 MARIA ROMO
PPR-1
PRESTIGE FINANCIAL SERVICES
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-15-18 [11]

Final ruling:

This matter is resolved without oral argument. This is Prestige Financial Services' motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

11. 18-25073-D-7 ESTELLE YANCEY
VVF-1
STATEWIDE AUTO SALES VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-22-18 [12]

Final ruling:

This matter is resolved without oral argument. This is Statewide Auto Sales' motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

12. 15-28774-D-7 OTASHE GOLDEN
SSA-6

MOTION TO EMPLOY JAMES STRUCK
AS SPECIAL COUNSEL
8-24-18 [83]

Tentative ruling:

This is the trustee's motion to employ James Struck as special counsel. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, opposition, if any will be entertained at the hearing. However, the court has an initial concern.

Pursuant to LBR 2014-1(a), the verified statement accompanying an application to employ a professional must close with this statement: "Except as set forth above, I have no connection with the debtor, creditors, or any party in interest, their respective attorneys, accountants, or the U.S. Trustee." The declaration of James Struck closes with that statement except that, at the end of the statement, Mr. Struck has added this clause: "[no connections . . .] with the exception of the underlying litigation matter referenced as Otashe Golden, et al. V. Lodi Memorial Hospital, et al. [case number]." Mr. Struck has not set forth what connections he

has or has had with the litigation.¹ Thus, the court cannot draw the necessary conclusions for Mr. Struck's employment pursuant to § 327(a).

The court will hear the matter.

1 This is in contrast with certain other attorneys' declarations filed by the trustee in January of 2017, in which each attorney stated he had no connections with the exception of the underlying litigation, "for which [he] was retained by the Debtor on February 24, 2016." See Tabak and Jameison Decls., filed Jan. 20, 2017, at 2:5-6.

13. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR COMPENSATION BY THE
DMC-4 LAW OFFICE OF DIAMOND MCCARTHY,
LLP FOR CHRISTOPHER D.
SULLIVAN, SPECIAL COUNSEL(S)
8-22-18 [1062]

Final ruling:

Pursuant to a notice of continued hearing filed by the moving party, the hearing on this motion has been continued to October 3, 2018, at 10:00 a.m. No appearance is necessary on September 19, 2018.

14. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO COMPROMISE
DNL-42 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SEDGWICK
FUNDINGCO, LLC
8-22-18 [1066]

Final ruling:

Pursuant to a notice of continued hearing filed by the moving party, the hearing on this motion has been continued to October 3, 2018, at 10:00 a.m. No appearance is necessary on September 19, 2018.

15. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO SUBSTITUTE PARTY
17-2249 DNL-1 8-22-18 [40]
CARELLO V. 1ST CLASS LEGAL
(IS) LIMITED ET AL

Final ruling:

Pursuant to a notice of continued hearing filed by the moving party, the hearing on this motion has been continued to October 3, 2018, at 10:00 a.m. No appearance is necessary on September 19, 2018.

16. 18-23396-D-11 METRO PALISADES, LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-31-18 [1]
17. 16-22727-D-7 DONALD/LYNN SMITHSON MOTION TO AVOID LIEN OF MIDLAND
MOH-1 FUNDING, LLC
8-29-18 [32]
18. 18-22453-D-11 ECS REFINING, INC. CONTINUED MOTION TO WAIVE
REQUIREMENT TO DESIGNATE LOCAL
COUNSEL
8-14-18 [420]
19. 18-24159-D-7 STEVEN/ROBIN KATHY PAUL MOTION FOR RELIEF FROM
BPC-1 AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION 8-31-18 [15]
VS.

20. 16-27672-D-7 DAVID LIND
DNL-22

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR RE/MAX
GOLD, BROKER(S)
8-29-18 [598]

21. 16-27672-D-7 DAVID LIND
DNL-21

MOTION FOR STAY PENDING APPEAL
9-4-18 [604]

Final ruling:

This is the debtor's motion for a stay pending appeal of the court's order filed August 14, 2018 approving the sale by the trustee of the real property known as 3434 West Sargent Road, Lodi, California (the "Sale Order"). On September 4, 2018, the debtor filed a handwritten document, with a copy of the Sale Order attached. As the debtor had failed to set the motion for hearing, the court issued an order setting it for hearing on September 19, 2018.

On September 4, 2018, the clerk's office transmitted the debtor's handwritten document to the Bankruptcy Appellate Panel (the "Panel") as a notice of appeal, and on September 6, 2018, the Panel issued an Order Denying Motion for Stay Pending Appeal and Requiring Response re Timeliness of Appeal. A copy of the Panel's order appears on this court's docket as DN 624. As the Panel has already ruled on this motion, the motion will be removed from this court's calendar. No appearance is necessary.

22. 18-23396-D-11 METRO PALISADES, LLC
RAH-4

CONTINUED MOTION TO BORROW
8-17-18 [71]