

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 3, 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.

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|----|-----------------------|-----------------------|--|
| 1. | 12-30407-D-7 MHK-5 | DAVID/KATHLEEN HANSON | MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU & KASSEN BROCK TRUSTEE'S ATTORNEY(S) 9-4-18 [79] |
|----|-----------------------|-----------------------|--|

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

2. 18-22712-D-7 HERBERT/SHIRLEY KEENER MOTION TO SELL AND/OR MOTION
SCB-4 FOR COMPENSATION FOR BOB
BRAZEAL, REALTOR(S)
8-28-18 [35]
3. 18-24116-D-7 TERRY/YVONNE HERVEY CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 13
7-19-18 [23]
4. 17-20731-D-11 CS360 TOWERS, LLC OBJECTION TO CLAIM OF MARK D.
DB-25 CHISICK, CLAIM NUMBER 15
8-13-18 [448]

Final ruling:

This matter was resolved by stipulated order entered on September 26, 2018. As such the matter removed from calendar. No appearance is necessary.

5. 17-20731-D-11 CS360 TOWERS, LLC MOTION TO COMPROMISE
DB-26 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ARTHUR J.
WILLIAMS JR. AND CHRISTOPHER
WILLIAMS
8-14-18 [453]

Tentative ruling:

This is the trustee's motion for approval of a compromise with certain creditors. The moving party served the notice of hearing, motion, and supporting papers on the United States Trustee and the attorney for the other settling parties. The moving party served only the notice of hearing on all other parties-in-interest, including the debtor's counsel, creditors requesting special notice, and general creditors. The notice of hearing fails to comply with LBR 9014-1(d)(3)(B)(iv), which requires that, when only the notice of hearing is served, the notice must "sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion,"

and in any event, requires that the motion and supporting papers be served on parties requesting special notice.

The description of the background of the dispute and the terms of the compromise required five pages in the trustee's motion, yet the notice of hearing only gave the names of the parties to the compromise and stated that "[t]he terms of the compromise are memorialized in a settlement agreement, attached as Exhibit A to the Exhibit List filed with the Motion." Notice of Hearing, filed Aug. 29, 2018, at 2:9-11. This is obviously insufficient to allow parties-in-interest to determine whether to oppose the motion. The court will consider continuing the hearing to permit the moving party to remedy this notice defect. The court will hear the matter.

6. 18-22534-D-7 DENNIS HUNDLEY MOTION FOR RELIEF FROM
MEL-1 AUTOMATIC STAY
8-23-18 [44]
BANK OF AMERICA, N.A. VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on September 17, 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 court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

7. 12-33136-D-7 GEORGE/IRENE ROSE MOTION TO AVOID LIEN OF
MKM-5 NORTHERN CALIFORNIA GLAZIERS
TRUST FUNDS, ET AL.
8-31-18 [61]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

8. 12-33136-D-7 GEORGE/IRENE ROSE
MKM-6

MOTION TO AVOID LIEN OF
NORTHERN CALIFORNIA GLAZIERS
TRUST FUNDS, ET AL.
8-31-18 [68]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

9. 14-27267-D-7 SARAD/USHA CHAND
ICE-2

MOTION FOR COMPENSATION FOR
IRMA C. EDMONDS, CHAPTER 7 TRUSTEE
8-24-18 [475]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the Trustee's request for fees is reasonable and appropriate compensation under Bankruptcy Code § 326. As such, the court will grant the motion by minute order. No appearance is necessary.

10. 18-20071-D-7 BRIAN PULEO

OBJECTION TO CHAPTER 7
TRUSTEE'S REPORT OF NO
DISTRIBUTION
8-16-18 [48]

11. 16-27672-D-7 DAVID LIND
DW-1
COMMUNITY PARTNERSHIP FOR
REVITALIZATION, GREEN
GROWERS, LLC VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-24-18 [550]

Final ruling:

Per the stipulated order entered on October 1, 2018, this motion is dismissed. No appearance is necessary.

12. 16-27672-D-7 DAVID LIND CONTINUED MOTION FOR RELIEF
DW-2 FROM AUTOMATIC STAY
COMMUNITY PARTNERSHIP FOR 7-24-18 [558]
REVITALIZATION, GREEN
GROWERS, LLC VS.

Final ruling:

Per the stipulated order entered on October 1, 2018, the hearing on this motion is continued to October 17, 2018 at 10:00 a.m. No appearance is necessary on October 3, 2018.

13. 17-22275-D-7 CALIFORNIA GOLF MOTION FOR COMPENSATION FOR
DNL-12 PROPERTIES, LLC DBA RIVER GONZALES & ASSOCIATES, INC.,
ACCOUNTANT(S)
9-5-18 [150]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

14. 17-22275-D-7 CALIFORNIA GOLF MOTION FOR COMPENSATION FOR
DNL-13 PROPERTIES, LLC DBA RIVER SUSAN K. SMITH, CHAPTER 7
TRUSTEE
9-5-18 [142]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the Trustee's request for fees is reasonable and appropriate compensation under Bankruptcy Code § 326. As such, the court will grant the motion by minute order. No appearance is necessary.

15. 17-22275-D-7 CALIFORNIA GOLF MOTION FOR COMPENSATION BY THE
DNL-14 PROPERTIES, LLC DBA RIVER LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
9-5-18 [155]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

16. 18-23078-D-7 MELISSA FAVELLO MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
CAB WEST, LLC VS. 8-31-18 [28]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on August 20, 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 court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

17. 11-37779-D-7 R.C./SUSAN OWENS MOTION TO COMPROMISE
DNL-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH IN RE: NATIONAL
FOOTBALL LEAGUE PLAYERS'
CONCUSSION INJURY LITIGATION
9-4-18 [31]

18. 18-23582-D-7 COLLEEN SCHENDEL MOTION FOR RELIEF FROM
JMP-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A. 8-24-18 [21]
VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor received her discharge on September 19, 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 court finds a hearing is not necessary as to the trustee because the trustee has filed a Statement of Non-Opposition. As such, the court will grant relief from stay as to the trustee and the estate by minute order. There will be no further relief afforded. No appearance is necessary.

19. 17-20689-D-11 MONUMENT SECURITY, INC. OBJECTION TO CLAIM OF LARRY
ET-22 FULKERSON, CLAIM NUMBER 14
8-7-18 [309]

Tentative ruling:

This is the debtor's objection to the claim of Larry Fulkerson, Claim No. 14 on the court's claims register. The court points out the following defects:

First, the notice of hearing states, "If you oppose Debtor's objection, or if you want the court to consider your views on this matter, not later than 14 days after the mailing of this notice, you or your attorney must file an opposition or a written request for a hearing." This language is contrary to LBR 3007-1(b)(1)(A). The moving party served the objection on August 7, 2018; thus, under the language of the notice, written opposition would have been due by August 21, 2018, whereas under the local rule, it would have been due by September 19, 2018. Further, the local rule does not provide that an opposing party must or may file a written request for a hearing; instead, the hearing is set by the party filing the objection. Finally, the notice of hearing does not include the language required by LBR 9014-1(d)(3)(B)(ii) and (iii), both of which apply to claim objections. See second sentence of LBR 9014-1(a).

Second, the debtor served the claimant at the address on his proof of claim, but failed to also serve him at his different address listed on the debtor's Schedule E/F, as required by LBR 3007-1(c).

Third, the supporting declaration of Spencer Short is insufficient to overcome the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f), and the debtor has made no persuasive argument that the claim, on its face, is not entitled to prima facie validity. The proof of claim states the basis of the claim as "wrongful termination/medical condition discrimination, Sac County Sup. Court, Case No. 34-2015-00177383." In support of the debtor's objection, Mr. Short testifies he is "Chief Counsel for Debtor," and has been since November 2016.¹ The court assumes Mr. Short has acted as the debtor's counsel in the pending state court litigation referred to in the proof of claim and in Mr. Short's declaration.

Mr. Short purports to have personal knowledge of each of the following statements and testifies to them under penalty of perjury:

2. On April 2, 2015 Larry Fulkerson filed a complaint alleging discrimination based on a medical condition, wrongful termination in violation of public policy and intentional infliction of emotional distress against Debtor, Monument Security Inc. (See [court name and case number]).
3. Debtor disputes Mr. Fulkerson's claims against Debtor and actively defended itself in this litigation until the matter was stayed upon the filing of this Chapter 11 Bankruptcy.
4. Debtor believes that the termination of Larry Fulkerson was lawful and proper based on the circumstances and that the evidence will prove the same.
5. Debtor further believes that its potential exposure is significantly less than claimed in Larry Fulkerson's Claim filed with this Court, Claim No. 14.

Short Decl., filed Aug. 7, 2018, at 1:24-2:7. The court believes Mr. Short has personal knowledge of the allegations set forth in paragraphs 2 and 3.

As for the allegations in paragraphs 4 and 5, however, although it may be true that the debtor believes those things, that does not make them true. To the extent Mr. Short believes those things to be true, he is stating, at best, his opinions, without foundation and without demonstrating he has any personal knowledge of the

facts underlying the opinions. To the extent his opinions are intended as the opinions of an expert witness, his testimony is conclusory in the extreme and does not begin to satisfy the requirements of Fed. R. Evid. 702, incorporated herein by Fed. R. Bankr. P. 9017. Thus, the debtor has submitted no admissible evidence tending to any extent to overcome the prima facie validity of Mr. Fulkerson's claim.

The debtor contends the proof of claim lacks sufficient supporting evidence and lacks sufficient documentation to entitle it to prima facie validity. The debtor is not correct. The requirement that a proof of claim be supported by documentation is in Fed. R. Bankr. P. 3001(c)(1) - such documentation is required only for a claim that is based on a writing. Mr. Fulkerson's claim is not based on a writing. And the notion that a proof of claim must be supported by evidence reflects a misunderstanding or lack of appreciation of the meaning of prima facie validity, as used in Rule 3001(f).

The court notes that this objection, notice of hearing, and supporting papers were served addressed to 61 sets of names and addresses in addition to the claimant's, which was not required under any rule. The estate should not be charged for the cost of copies or postage for unnecessary service.

Alternatively, the court will continue the hearing to allow for the debtor to address the service and evidentiary defects.

The court will hear the matter.

1 The court notes the debtor has never applied for authority to employ either Mr. Short or anyone else as special counsel, as required by § 327(a) of the Code.

20. 15-29890-D-7 GRAIL SEMICONDUCTOR CONTINUED MOTION FOR
DMC-4 OF DIAMOND MCCARTHY LLP FOR
CHRISTOPHER D. SULLIVAN,
SPECIAL COUNSEL(S)
8-22-18 [1062]

The court will use this hearing as a preliminary hearing/status conference.

21. 15-29890-D-7 GRAIL SEMICONDUCTOR CONTINUED MOTION TO COMPROMISE
DNL-42 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SEDGWICK
FUNDINGCO, LLC
8-22-18 [1066]

The court will use this hearing as a preliminary hearing/status conference.

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

23. 18-24116-D-7 TERRY/YVONNE HERVEY MOTION FOR OMNIBUS RELIEF FOR
BHS-1 SUGGESTION OF DEATH
 9-10-18 [39]

24. 18-25516-D-7 JOSE/TAMMY REYES ORDER TO SHOW CAUSE - FAILURE
 TO PAY FEES
 9-14-18 [11]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

25. 18-22624-D-7 HEATHER OXTOT MOTION FOR RELIEF FROM
LHL-1 AUTOMATIC STAY
KEITH STARR VS. 9-19-18 [22]

26. 18-25533-D-7 RAYMOND/ANA GARCIA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-18 [11]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

27. 18-25534-D-7 PHAISANE LALUANGPHET

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-18 [12]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

28. 18-24539-D-7 ZENAIDA PERFECTO

TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
8-29-18 [12]

29. 18-25545-D-7 SONG KIM

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-18 [12]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

30. 18-22453-D-11 ECS REFINING, INC. MOTION TO APPROVE STIPULATION
FWP-23 9-19-18 [524]

31. 18-20774-D-11 S360 RENTALS, LLC MOTION TO QUASH
KSR-10 9-7-18 [145]

Final ruling:

The hearing on this motion is continued to October 17, 2018 at 10:00 a.m. No appearance is necessary on October 3, 2018.

32. 18-20774-D-11 S360 RENTALS, LLC MOTION TO QUASH
KSR-11 9-7-18 [151]

Final ruling:

The hearing on this motion is continued to October 17, 2018 at 10:00 a.m. No appearance is necessary on October 3, 2018.

33. 18-24384-D-7 CHERYL EVANSON MOTION TO COMPEL ABANDONMENT
LBG-1 9-11-18 [14]

34. 18-24295-D-7 CANDACE KIRVEN-PRAYER MOTION TO REDEEM
HDR-4 9-12-18 [27]
35. 18-22453-D-11 ECS REFINING, INC. MOTION TO USE CASH COLLATERAL
FWP-24 AND/OR MOTION FOR SCHEDULING A
FINAL HEARING AND MOTION FOR
GRANTING RELATED RELIEF O.S.T.
9-28-18 [559]