

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, October 3, 2013
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.

9:30 A.M.

1. [12-19125](#)-B-13 JOHN/BRENDA OWENS
[13-1018](#)
AMERICAN EXPRESS CENTURION
BANK V. OWENS ET AL

FINAL PRE-TRIAL CONFERENCE RE:
(62 (DISCHARGEABILITY -
523(A)(2), FALSE PRETENSES,
FALSE REPRESENTATION, ACTUAL
FRAUD)) : COMPLAINT 13-01018 BY
AMERICAN EXPRESS CENTURION BANK
AGAINST JOHN OWENS, BRENDA
DIANE OWENS.
2-11-13 [[1](#)]

JOHN O'DONNELL/Atty. for pl.
FRANK SAMPLES/Atty. for def.

2. [12-19125](#)-B-13 JOHN/BRENDA OWENS
[13-1018](#) JMO-1
AMERICAN EXPRESS CENTURION
BANK V. OWENS ET AL
JOHN O'DONNELL/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO COMPEL
AND/OR MOTION TO STRIKE
5-23-13 [[21](#)]

10:00 A.M.

1. [13-14026](#)-B-7 R & S DENTAL STUDIO,
TGM-2 INC.
RANDELL PARKER/MV
- MOTION TO EMPLOY GOULD AUCTION
& APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
8-16-13 [[25](#)]
- LEONARD WELSH/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

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

2. [12-16130](#)-B-7 FRANK BELLINO JR AND
VG-1 TERRY BELLINO
VINCENT GORSKI/MV
- MOTION FOR ORDER AUTHORIZING
TRUSTEE TO COMPROMISE CLAIM
9-8-13 [[20](#)]
- ASHTON DUNN/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

This motion will be denied without prejudice. The motion was not served until 22 days before the hearing. The notice says that opposition is due eight days after service. The notice period does not comply with LBR 9014-1(f) (1). No appearance is necessary.

3. [13-14732](#)-B-7 LAWRENCE SADLER III AND MICHELE SADLER MOTION TO AVOID LIEN OF INTERNATIONAL CREDIT RECOVERY, INC. AND/OR MOTION TO AVOID LIEN OF JONATHAN NEIL AND ASSOCIATES, INC. , MOTION TO AVOID LIEN OF DAL-TILE SSC WEST, INC. , MOTION/APPLICATION TO AVOID LIEN OF ARROW FINANCIAL SERVICES, LLC
JSP-1
LAWRENCE SADLER III/MV
8-31-13 [[14](#)]

JOSEPH PEARL/Atty. for dbt.

As to respondents Jonathan Neil and Associates, Inc., and Arrow Financial Services, LLC., this matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown.

As to respondents International Creditor Recovery Inc., and Dal-tile SSC West, Inc., the motion will be denied without prejudice. The record does not establish that the motion was served on the named respondents in compliance with Federal Rule of Bankruptcy Procedure 7004(b) (1) (service on an individual), 7004(b) (3) (corporation, partnership or unincorporated association) or 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Information regarding service on a corporation may be obtained from the California Secretary of State's Internet Website, see <http://kepler.sos.ca.gov/>. For a directory of FDIC Insured Institutions, see <http://www3.fdic.gov/idasp/main.asp>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004. The moving party shall submit a proposed order. No appearance is necessary.

4. [09-61446](#)-B-7 ADAM CABRERA MOTION TO AVOID LIEN OF COLLECTIBLES MANAGEMENT RESOURCES
FPS-1
ADAM CABRERA/MV
8-30-13 [[25](#)]

FRANK SAMPLES/Atty. for dbt.

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

5. [11-14579](#)-B-7 JEREMY HELPER
JEFFREY VETTER/MV
LEONARD WELSH/Atty. for dbt.
D. GARDNER/Atty. for mv.

OBJECTION TO CLAIM OF HOLLY
HERRON, CLAIM NUMBER 18-1
7-15-13 [[67](#)]

The objection will be sustained without oral argument with leave to amend. The record reflects that the objection is unopposed. The claim will be disallowed in full, or in part, on the grounds stated in the objection, without prejudice to the claimant's right to file an amended proof of claim. Any amendment to the claim shall be filed and served on the trustee within 30 days from service of the order. It does not appear from the record that the Debtor's liability has been adjudicated and the claim is therefore not enforceable against the Debtor at this time under applicable non-bankruptcy law. The objecting party shall prepare the proposed order, serve the signed order on the creditor at its address of record and file a proof of service within 14 days. No appearance is necessary.

6. [13-13382](#)-B-7 ARTURO BAEZ
FPS-1
ARTURO BAEZ/MV
FRANK SAMPLES/Atty. for dbt.

MOTION TO AVOID LIEN OF
DISCOVER BANK
8-7-13 [[14](#)]

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

7. [13-13586](#)-B-7 LARRY WHITBEY
CEF-1
LARRY WHITBEY/MV

MOTION TO AVOID LIEN OF
CITIFINANCIAL SERVICES, INC.
AND/OR MOTION TO VALUE
COLLATERAL OF CITIFINANCIAL
SERVICES, INC.
8-21-13 [[15](#)]

CURTIS FLOYD/Atty. for dbt.

This matter will be continued to October 31, 2013, at 10:00 a.m., for supplemental briefing regarding the application of §522(f)(1)(B) to a motor vehicle. See §522(f)(4)(B)(v). The court will prepare a minute order. No appearance is necessary.

8. [13-10688](#)-B-7 NATIVIDAD/LIBRADA CHAVEZ
KDG-2
RANDELL PARKER/MV
VINCENT GORSKI/Atty. for dbt.
LISA HOLDER/Atty. for mv.

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION
9-12-13 [[44](#)]

9. [13-15893](#)-B-7 MICHAEL COSTELLOE
PWG-1
MICHAEL COSTELLOE/MV
PHILLIP GILLET/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
9-20-13 [[11](#)]

10. [12-18995](#)-B-7 LORIN/KYMBERLI SMALLEY
DMG-1 COUNTER MOTION TO COMPEL
LORIN SMALLEY/MV ABANDONMENT
NEIL SCHWARTZ/Atty. for dbt. 9-18-13 [[43](#)]
D. GARDNER/Atty. for mv.
11. [12-18995](#)-B-7 LORIN/KYMBERLI SMALLEY
TGF-2 OBJECTION TO DEBTORS' CLAIM OF
RANDELL PARKER/MV EXEMPTIONS
NEIL SCHWARTZ/Atty. for dbt. 7-3-13 [[22](#)]
VINCENT GORSKI/Atty. for mv.
12. [12-18995](#)-B-7 LORIN/KYMBERLI SMALLEY
TGF-3 MOTION FOR TURNOVER OF PROPERTY
RANDELL PARKER/MV 9-3-13 [[33](#)]
NEIL SCHWARTZ/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
13. [13-12998](#)-B-7 KIMBERLY SHAW
FPS-1 MOTION TO AVOID LIEN OF ASSET
KIMBERLY SHAW/MV ACCEPTANCE LLC
FRANK SAMPLES/Atty. for dbt. 8-2-13 [[19](#)]

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

10:30 A.M.

1. 13-13305-B-7 BENNETT/TRACEY ROSENBERG MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 8-9-13 [21]
COMPANY/MV
PATRICK KAVANAGH/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
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.

2. [13-14606](#)-B-7 DUANE TRAPPEN
PD-1
WELLS FARGO BANK, N.A./MV
PATRICK KAVANAGH/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-7-13 [[23](#)]

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. [13-14606](#)-B-7 DUANE TRAPPEN
PKB-1
GREEN TREE SERVICING LLC/MV
PATRICK KAVANAGH/Atty. for dbt.
PATRICK BRUSO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-23-13 [[30](#)]

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. [13-14213](#)-B-7 GARRETT/AMANDA FRANKLAND
PD-1
FLAGSTAR BANK/MV
LEONARD WELSH/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-19-13 [[14](#)]

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.

5. [13-14247](#)-B-7 THAD RICE AND DIANA MOTION FOR RELIEF FROM
RCO-1 CAMPBELL-RICE AUTOMATIC STAY
JPMORGAN CHASE BANK, NATIONAL 8-22-13 [[14](#)]
ASSOCIATION/MV
ROBERT WILLIAMS/Atty. for dbt.
KRISTI WELLS/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 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.

6. [13-14475](#)-B-7 PAUL/THELMA STEPHENSON MOTION FOR RELIEF FROM
WELLS FARGO BANK NA/MV AUTOMATIC STAY
R. BELL/Atty. for dbt. 8-28-13 [[11](#)]
KENNETH FREEDMAN/Atty. for mv.

The motion will be denied without prejudice. The moving papers do not include an appropriate docket control number as required by Local Rule 9014-1(c).

In addition, the form and/or content of the notice do not comply with Local Rule 9014-1(d)(2).

Also, the proof of service fails to comply with Local Rule 9014-1(e)(3). Finally, the moving papers were not served on the Debtors at their mailing address of record. No appearance is necessary. No appearance is necessary.

7. [13-15787](#)-B-7 GREGORY/HEATHER REX MOTION FOR RELIEF FROM
JLH-1 AUTOMATIC STAY
ALTAONE FEDERAL CREDIT 9-17-13 [[9](#)]
UNION/MV
NEIL SCHWARTZ/Atty. for dbt.
JOSEPH HORSWILL/Atty. for mv.

8. [13-14595](#)-B-7 MARTIN/MARTINA FLORES
RCO-1
U.S. BANK NATIONAL
ASSOCIATION/MV
VINCENT GORSKI/Atty. for dbt.
KRISTI WELLS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-30-13 [[22](#)]

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.

9. [13-15198](#)-B-7 WALTER/LANE PADGETT
MRG-1
CAPITAL ONE, N.A./MV
STEVEN ALPERT/Atty. for dbt.
MICHELLE GHIDOTTI-GONSALVES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-21-13 [[11](#)]

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.

10. [13-14399](#)-B-7 MIGUEL GARCIA-VALENZUELA MOTION FOR RELIEF FROM
JHW-1 AND FELICIA GARCIA AUTOMATIC STAY
TD AUTO FINANCE LLC/MV 8-5-13 [[11](#)]
CURTIS FLOYD/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

This motion for relief from the automatic stay will be denied as moot. The debtor(s) is (are) an individual(s). The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by § 521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. § 362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

11:00 A.M.

1. [13-15154](#)-B-7 ADRIANA PULIDO PRO SE REAFFIRMATION AGREEMENT
WITH CHEVRON VALLEY CREDIT
UNION
9-12-13 [[16](#)]

 2. [13-13177](#)-B-7 ANTONIO BRAVO AMENDED REAFFIRMATION AGREEMENT
WITH BMW BANK OF NORTH AMERICA,
INC.
7-1-13 [[12](#)]
- ROBERT WILLIAMS/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In addition, this agreement does not appear to relate to the debtor's automobile. No appearance is necessary.

3. [13-14995](#)-B-7 JAMES/DORENE TAPLIN PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO DEALER
SERVICES
8-30-13 [[17](#)]

4. [13-15298](#)-B-7 SERGIO RODRIGUEZ PRO SE REAFFIRMATION AGREEMENT
WITH CHEVRON VALLEY CREDIT
UNION
9-12-13 [[16](#)]