

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Wednesday, November 18, 2015
Place: Department C – Courtroom #12
Fresno, 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.

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.

1:30 P.M.

1. [15-10705](#)-C-11 CHARLOTTE SALWASSER STATUS CONFERENCE RE: COMPLAINT
[15-1113](#) 9-15-15 [[1](#)]
5T FARMS ET AL V. SALWASSER
RILEY WALTER/Atty. for pl.

Based on the stipulation and order dated November 4, 2015, this status conference will be rescheduled to January 20, 2016, at 1:30 p.m. No appearance is necessary.

2. [15-10705](#)-C-11 CHARLOTTE SALWASSER MOTION TO SELL
DMG-4 10-9-15 [[647](#)]
CHARLOTTE SALWASSER/MV
D. GARDNER/Atty. for dbt.
RESPONSIVE PLEADING
3. [15-10705](#)-C-11 CHARLOTTE SALWASSER MOTION FOR COMPENSATION FOR D.
DMG-5 MAX GARDNER, DEBTORS
ATTORNEY(S)
10-20-15 [[667](#)]

D. GARDNER/Atty. for dbt.
4. [15-10705](#)-C-11 CHARLOTTE SALWASSER MOTION FOR COMPENSATION FOR ANN
DMG-6 B. WILSON, SPECIAL COUNSEL(S)
ANN WILSON/MV 10-28-15 [[678](#)]
D. GARDNER/Atty. for dbt.
ANN WILSON/Atty. for mv.
5. [15-10705](#)-C-11 CHARLOTTE SALWASSER MOTION TO SELL
DMG-7 10-28-15 [[684](#)]
CHARLOTTE SALWASSER/MV
D. GARDNER/Atty. for dbt.
6. [15-10705](#)-C-11 CHARLOTTE SALWASSER MOTION FOR COMPENSATION FOR
SAS-2 SHERYL A. STRAIN, ACCOUNTANT(S)
SHERYL STRAIN/MV 10-14-15 [[656](#)]
D. GARDNER/Atty. for dbt.

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

7. [10-12709](#)-C-11 ENNIS COMMERCIAL
[12-1033](#) PROPERTIES, LLC
ENNIS COMMERCIAL PROPERTIES,
LLC V. NICHOLSON ET AL
MICHAEL GOMEZ/Atty. for pl.
RESPONSIVE PLEADING
CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
2-7-14 [[76](#)]
8. [10-62315](#)-C-11 BEN ENNIS
[13-1108](#)
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for pl.
RESPONSIVE PLEADING
CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-12-14 [[46](#)]
9. [10-62315](#)-C-11 BEN ENNIS
[13-1108](#) LRP-26
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for mv.
MOTION IN LIMINE NO. 1
10-21-15 [[436](#)]

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

10. [10-62315](#)-C-11 BEN ENNIS
[13-1108](#) LRP-27
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for mv.
MOTION IN LIMINE NO. 2
10-21-15 [[442](#)]

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

11. [10-62315](#)-C-11 BEN ENNIS
[13-1108](#) LRP-28
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for mv.
MOTION IN LIMINE NO. 3
10-21-15 [[638](#)]

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

12. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE NO. 4
[13-1108](#) LRP-29 10-21-15 [[677](#)]
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

13. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE NO. 5
[13-1108](#) LRP-30 10-21-15 [[686](#)]
STAPLETON ET AL V. NICHOLSON
ET AL
MICHAEL GOMEZ/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

14. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE TO EXCLUDE
[13-1108](#) WJH-1 EVIDENCE, DOCUMENTS AND
STAPLETON ET AL V. NICHOLSON WITNESSES NOT DISCLOSED IN
ET AL DISCOVERY
10-21-15 [[613](#)]
KURT VOTE/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

15. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE TO EXCLUDE
[13-1108](#) WJH-2 EVIDENCE OF SETTLEMENT
STAPLETON ET AL V. NICHOLSON NEGOTIATIONS
ET AL 10-21-15 [[616](#)]
KURT VOTE/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

16. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE TO EXCLUDE
[13-1108](#) WJH-3 EVIDENCE OF FINANCIAL CONDITION
STAPLETON ET AL V. NICHOLSON OF DEFENDANTS
ET AL 10-21-15 [[618](#)]
KURT VOTE/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

17. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE TO PRECLUDE
[13-1108](#) WJH-4 IRRELEVANT AND IMPROPER
STAPLETON ET AL V. NICHOLSON PROPOSED EXHIBITS
ET AL 10-21-15 [[446](#)]
KURT VOTE/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

18. [10-62315](#)-C-11 BEN ENNIS MOTION IN LIMINE TO EXCLUDE
[13-1108](#) WJH-5 PLAINTIFF'S EXPERT REPORTS, OR
STAPLETON ET AL V. NICHOLSON PORTIONS THEREOF (EXHIBITS
ET AL #341, 342, 344)
10-21-15 [[620](#)]
KURT VOTE/Atty. for mv.

Pursuant to the civil minute order dated October 25, 2015, this matter has been stayed pending a further order of the court. No appearance is necessary.

19. [09-19728](#)-C-9 SIERRA KINGS HEALTH CARE MOTION TO ENTER FINAL DECREE
WW-102 DISTRICT AND CLOSE CASE
SIERRA KINGS HEALTH CARE 10-14-15 [[1302](#)]
DISTRICT/MV
RILEY WALTER/Atty. for dbt.

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

20. [12-12945](#)-C-7 STEVEN AYLER MOTION FOR ENTRY OF DEFAULT
[15-1003](#) MDP-2 JUDGMENT
CATERPILLAR FINANCIAL SERVICES 9-11-15 [[42](#)]
CORPORATION V. AYLER
MARK PONIATOWSKI/Atty. for mv.

This motion will be continued to December 16, 2015, at 1:30 p.m., for supplemental evidence regarding the plaintiff's efforts to repossess and liquidate the backhoe after the court denied its motion for relief from stay on August 27, 2015. The court also requests clarification as to whether the alleged conversion of the backhoe occurred pre-petition or post-petition. If the tort of conversion occurred post-petition, then enforcement of the damage claim is not a violation of the discharge injunction, even though the injured party may also hold a discharged debt. See *In re Schlichtmann*, 375 B.R. 41, 97 (Bankr. D. Mass. 2007). Further, the court notes that the writ of possession and the contempt order issued by the Los Angeles County Superior Court in 2011 do not appear to apply to the backhoe described in paragraph 6 of the First Amended Complaint. No appearance is necessary.

21. [15-10161](#)-C-11 FRESNO COUNTY CONTINUED MOTION TO DISMISS
UST-1 SPORTSMEN'S CLUB CASE
TRACY DAVIS/MV 9-2-15 [[47](#)]
PETER FEAR/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

If the motion to dismiss is not withdrawn, this matter will be continued to December 16, 2015, at 1:30 p.m., to be heard with the debtor's motion to approve a disclosure statement. If the U.S. Trustee still wants the court to dismiss the case, the U.S. Trustee shall submit further briefing regarding the adequacy of the debtor's proposed chapter 11 plan. The court will prepare a minute order. No appearance is necessary.

22. [13-16062](#)-C-7 MICHAEL WEILERT, M.D., MOTION FOR COMPENSATION FOR
JTW-2 INC. JANZEN, TAMBERI AND WONG,
JANZEN, TAMBERI & WONG/MV ACCOUNTANT(S)
10-20-15 [[136](#)]
RILEY WALTER/Atty. for dbt.

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

23. [15-11079](#)-C-11 WEST COAST GROWERS, INC. CONTINUED STATUS CONFERENCE RE:
[15-1081](#) A CALIFORNIA CORPORATION COMPLAINT
5T FARMS ET AL V. WEST COAST 7-1-15 [[1](#)]
GROWERS, INC.
RILEY WALTER/Atty. for pl.

24. [15-11079](#)-C-11 WEST COAST GROWERS, INC. CONTINUED ORDER TO SHOW CAUSE
A CALIFORNIA CORPORATION REGARDING DISMISSAL OF CASE OR
CONVERSION TO CHAPTER 7
9-16-15 [[521](#)]
HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

25. [15-11079](#)-C-11 WEST COAST GROWERS, INC. CONTINUED MOTION FOR ORDER
KDG-5 A CALIFORNIA CORPORATION AUTHORIZING
WEST COAST GROWERS, INC. A DEBTOR-IN-POSSESSION TO MAKE
CALIFORNIA CORPORATION/MV FIRST INTERIM DISTRIBUTION TO
2014 GROWERS
4-23-15 [[117](#)]
HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

26. [15-11080](#)-C-11 SALWASSER, INC.
APN-1
NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
PETER FEAR/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-15-15 [[132](#)]

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 to the extent that it applies. 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.

27. [13-13388](#)-C-11 GEORGE/MARILYN LANTING
TCS-14
GEORGE LANTING/MV
NANCY KLEPAC/Atty. for dbt.

MOTION TO SELL
10-28-15 [[370](#)]