

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Tuesday, November 26, 2013
Place: Department B – 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.

9:00 A.M.

1. [13-12336](#)-B-7 BEVERLY RAINE CONTINUED STATUS CONFERENCE RE:
[13-1092](#) COMPLAINT
MOXLEY V. RAINE 8-29-13 [[1](#)]
MICHAEL SMITH/Atty. for pl.

This matter will be dropped from calendar based on the ruling below. No appearance is necessary.

2. [13-12336](#)-B-7 BEVERLY RAINE MOTION TO DISMISS ADVERSARY
[13-1092](#) MMW-1 PROCEEDING/NOTICE OF REMOVAL
MOXLEY V. RAINE 9-30-13 [[8](#)]
JUSTIN HARRIS/Atty. for mv.
RESPONSIVE PLEADING

The court intends to grant the motion and dismiss the compliant without leave to amend. The claims pled in the complaint for relief under §§ 523(a)(2)(A) and 523(a)(4) are time-barred under Rule 4007(c). The plaintiff's motion to reopen this case did not request relief from Rule 4007(c) and the clerk's order reopening the case and fixing a deadline for seeking further relief in the reopened case cannot be construed as a waiver of Rule 4007(c). The plaintiff admits that she had timely notice of the bankruptcy so § 523(a)(3) does not appear to be applicable. No other grounds for relief under § 523 are pled or suggested in the opposing papers. No appearance is necessary.

The defendants's motion for an award of attorney's fees and costs under Rule 9011(c)(1)(B) will be denied. The court is not persuaded that sanctions (which must be paid to the court) are warranted under Rule 9011(c)(1)(B). Attorney's fees and costs may only be awarded to the prevailing party under Rule 9011(c)(1)(A) and only after the moving party has "precisely complied" with the "safe harbor" procedure of Rule 9011(c)(1)(A). *In re Markus*, 268 B.R. 556, 565-66 (9th Cir. BAP 2001). The court will enter a civil minute order. No appearance is necessary.

3. [13-11841](#)-B-7 MIGUEL BATISTA MOTION FOR ENTRY OF DEFAULT
[13-1091](#) UST-2 JUDGMENT
U.S. TRUSTEE V. BATISTA 10-4-13 [[12](#)]
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

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 Debtor's default has been entered and the Debtor has not requested an order vacating the default. Based on the evidence presented and well-pled facts in the complaint, the court is persuaded that the Debtor's discharge should be denied pursuant to 11 U.S.C. §§ 727(a)(4)(A) and (a)(6)(A). Plaintiff shall submit a proposed order and judgment. No appearance is necessary.

4. [13-11841](#)-B-7 MIGUEL BATISTA
TMT-3
TRUDI MANFREDO/MV

THOMAS GILLIS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

CONTINUED MOTION TO SURCHARGE
DEBTOR'S EXEMPTION AND/OR
MOTION FOR TURNOVER OF PROPERTY
7-9-13 [[27](#)]

5. [13-11841](#)-B-7 MIGUEL BATISTA
TMT-4
TRUDI MANFREDO/MV
THOMAS GILLIS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR CONTEMPT
AND/OR MOTION FOR SANCTIONS
8-9-13 [[65](#)]

6. [12-18845](#)-B-7 TIMOTHY ATMAJIAN
[12-1187](#)
ASHFORD ET AL V. ATMAJIAN,
M.D.
THORNTON DAVIDSON/Atty. for pl.
DISMISSED

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
8-12-13 [[49](#)]

This adversary proceeding has already been dismissed. The scheduled hearing will therefore be dropped from calendar. No appearance is necessary.

7. [12-18845](#)-B-7 TIMOTHY ATMAJIAN
[12-1187](#) MTL-1
ASHFORD ET AL V. ATMAJIAN,
M.D.
HENRY CHIU/Atty. for mv.
DISMISSED

MOTION FOR PROTECTIVE ORDER
10-8-13 [[55](#)]

This adversary proceeding has already been dismissed. The scheduled hearing will therefore be dropped from calendar. No appearance is necessary.

8. [12-60054](#)-B-7 DWIGHT/NELLIE LONG
[13-1038](#)
GROSS MORTGAGE CORPORATION V.
LONG
DWIGHT LONG/Atty. for mv.

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
10-9-13 [[47](#)]

9. [12-60054](#)-B-7 DWIGHT/NELLIE LONG
[13-1038](#)
GROSS MORTGAGE CORPORATION V.
LONG
HANNO POWELL/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-17-13 [[45](#)]

10:00 A.M.

1. [13-13003](#)-B-7 ROYCE/DOROTHY TAWNEY MOTION TO SELL
TMT-2 10-29-13 [[24](#)]
TRUDI MANFREDO/MV
GARY HUSS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

2. [13-17006](#)-B-7 OMAR/LOANA VALLEJO MOTION TO COMPEL ABANDONMENT
TOG-2 11-4-13 [[12](#)]
OMAR VALLEJO/MV
THOMAS GILLIS/Atty. for dbt.

3. [01-10110](#)-B-7 PACESETTER INDUSTRIES, MOTION TO EMPLOY EZRA N.
TMT-1 INC. GOLDMAN AS ATTORNEY(S)
TRUDI MANFREDO/MV 10-29-13 [[300](#)]
HILTON RYDER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

4. [13-17010](#)-B-7 CHARLEY/TABATHA STEWART MOTION TO COMPEL ABANDONMENT
PBB-1 11-4-13 [[9](#)]
CHARLEY STEWART/MV
PETER BUNTING/Atty. for dbt.

5. [12-17425](#)-B-7 BETTINA VILLANUEVA MOTION TO AVOID LIEN OF NORTH
MBB-1 STAR CAPITAL ACQUISITION
BETTINA VILLANUEVA/MV 10-10-13 [[50](#)]
BETTINA VILLANUEVA/Atty. for mv.

6. [12-17425](#)-B-7 BETTINA VILLANUEVA MOTION TO AVOID LIEN OF BRETT
MBB-1 TAYLOR
BETTINA VILLANUEVA/MV 10-10-13 [[52](#)]
BETTINA VILLANUEVA/Atty. for mv.

7. [12-17425](#)-B-7 BETTINA VILLANUEVA MOTION TO AVOID LIEN OF NORTH
MBB-1 STAR CAPITAL ACQUISITION LLC
BETTINA VILLANUEVA/MV 10-10-13 [[54](#)]
BETTINA VILLANUEVA/Atty. for mv.

8. [13-11841](#)-B-7 MIGUEL BATISTA MOTION FOR ENTRY OF DEFAULT
TMT-5 JUDGMENT
11-5-13 [[103](#)]
THOMAS GILLIS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

This matter will be advanced to the 9:00 a.m. calendar and called with the related matters in the same case. No appearance is necessary at 10:00 a.m.

9. [12-60444](#)-B-7 CARLOS/MARIA GUTIERREZ OBJECTION TO DEBTOR'S CLAIM OF
DRJ-2 EXEMPTIONS
JAMES SALVEN/MV 10-17-13 [[71](#)]
THOMAS GILLIS/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

10. [12-60444](#)-B-7 CARLOS/MARIA GUTIERREZ MOTION FOR TURNOVER OF PROPERTY
DRJ-3 11-4-13 [[86](#)]
JAMES SALVEN/MV
THOMAS GILLIS/Atty. for dbt.
DAVID JENKINS/Atty. for mv.

11. [12-60444](#)-B-7 CARLOS/MARIA GUTIERREZ CONTINUED MOTION TO COMPEL
TOG-6 ABANDONMENT
CARLOS GUTIERREZ/MV 9-20-13 [[47](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

12. [13-16662](#)-B-7 EMMA QUINTERO MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
EMMA QUINTERO/MV 10-11-13 [[5](#)]
GEORGE ALONSO/Atty. for dbt.
RESPONSIVE PLEADING, ORDER
FOR INSTALLMENT **10/23/13**

The debtor(s) application to waive the chapter 7 filing fee will be deemed withdrawn. The trustee's objection will be overruled as moot. In response to the trustee's objection, the debtor(s) has/have consented to pay the filing fee in installments. No appearance is necessary.

13. [13-16364](#)-B-7 MARTHA ACEVES MOTION TO COMPEL ABANDONMENT
ALG-1 10-18-13 [[24](#)]
MARTHA ACEVES/MV
JANINE ESQUIVEL/Atty. for dbt.

14. [13-16364](#)-B-7 MARTHA ACEVES CONTINUED MOTION FOR ORDER
PFT-1 REQUIRING DEBTOR TO SHUT DOWN
PETER FEAR/MV BUSINESS
10-11-13 [[15](#)]
JANINE ESQUIVEL/Atty. for dbt.
PETER FEAR/Atty. for mv.

15. [13-15969](#)-B-7 JAMES BAGGOTT AND CAMILLE MOTION TO DISMISS CASE
YG-2 BRYANT 11-18-13 [[18](#)]
JAMES BAGGOTT/MV
YELENA GUREVICH/Atty. for dbt.

Based on the trustee's opposition, and unavailability to attend the hearing, this matter will be continued to December 11, 2013, at 10:00 a.m. The Debtors shall file and serve on the Trustee and the U.S. Trustee a detailed response, supported by evidence, to the issues raised in the Trustee's opposition not later than December 6, 2013. The court will prepare a minute order. No appearance is necessary.

16. [10-19825](#)-B-7 FRANCISCO/MARIA PARREIRA MOTION TO SELL
HAR-2 11-18-13 [[232](#)]
SHERYL STRAIN/MV
RILEY WALTER/Atty. for dbt.
HILTON RYDER/Atty. for mv.
OST 11/19

10:30 A.M.

1. [13-16410](#)-B-7 DAVID EVANS CONTINUED HEARING RE: MOTION
CB-1 FOR RELIEF FROM AUTOMATIC STAY
FAIR HOUSING COUNCIL OF 9-29-13 [[6](#)]
CENTRAL CALIFORNIA, INC./MV
REYNALDO PULIDO/Atty. for dbt.
CHRISTOPHER BRANCART/Atty. for mv.
RESPONSIVE PLEADING

2. [13-15819](#)-B-7 RYAN ROLOFF MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 10-21-13 [[13](#)]
COMPANY/MV
JEFF REICH/Atty. for dbt.
MARK ESTLE/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 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.

3. [13-16540](#)-B-7 EDWIN JESS/EVELYN BALANON MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 11-7-13 [[11](#)]
BENNY BARCO/Atty. for dbt.
TORIANA HOLMES/Atty. for mv.
NON-OPPOSITION

4. [13-15554](#)-B-7 RICHARD/KAYING ELMER MOTION FOR RELIEF FROM
RMD-1 AUTOMATIC STAY
U.S. BANK NATIONAL 10-23-13 [[29](#)]
ASSOCIATION/MV
RICHARD WHEELER/Atty. for dbt.
RYAN DAVIES/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 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. [13-16173](#)-B-7 TROY LEWELLING MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
AMERICREDIT FINANCIAL 10-16-13 [[12](#)]
SERVICES, INC./MV
DEDE AGRAVA/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. [13-15224](#)-B-7 JOI HERNANDEZ PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO FINANCIAL
NATIONAL BANK
10-31-13 [[22](#)]

2. [13-16537](#)-B-7 PAWANINDER/SATWINDER GILL PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
10-30-13 [[17](#)]

11:30 A.M.

1. [13-16845](#)-B-11 KEYSTONE MINE MANAGEMENT MOTION TO EMPLOY PHILLIP W.
PWG-1 II GILLET, JR. AS ATTORNEY(S)
KEYSTONE MINE MANAGEMENT II/MV 11-5-13 [[9](#)]
PHILLIP GILLET/Atty. for dbt.
ORDER 11/21