

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 28, 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.	18-24400-D-7	SANDRA PROCOPIO	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	WELLS FARGO BANK, N.A. VS.		10-24-18 [14]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s 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.

2. 18-25504-D-7 TREVOR/NIKKITA NEWELL MOTION FOR RELIEF FROM
MEL-1 AUTOMATIC STAY
U.S. BANK NATIONAL 10-24-18 [15]
ASSOCIATION VS.

Final ruling:

This matter is resolved without oral argument. This is U.S. Bank N.A.'s 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 debtors are 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.

3. 18-20906-D-7 VLADIMIR NIKITIN MOTION TO EMPLOY SEAN GAVIN AS
DNL-2 SPECIAL COUNSEL
10-29-18 [52]

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 to employ Sean Gavin as special counsel pursuant to a contingency fee agreement is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

4. 18-22712-D-7 HERBERT/SHIRLEY KEENER MOTION FOR COMPENSATION FOR
SCB-7 GARY R. FARRAR, CHAPTER 7
TRUSTEE
10-26-18 [62]

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 by the Chapter 7 trustee are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code §§ 326 and 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

5. 18-25828-D-7 DAVID OLIVARES MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-14-18 [2]

6. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-27 RICHARD TSAI, CLAIM NUMBER 13-1
9-24-18 [460]

Final ruling:

**The hearing on this objection is continued to December 12, 2018 at 10:00 a.m.
No appearance is necessary on November 28, 2018.**

7. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-28 MINDER CHENG, CLAIM NUMBER 18-1
9-24-18 [463]

Final ruling:

**The hearing on this objection is continued to December 12, 2018 at 10:00 a.m.
No appearance is necessary on November 28, 2018.**

8. 18-24932-D-7 RANDALL/PENNEY GOODWIN OBJECTION TO DEBTOR'S CLAIM OF
DNL-2 EXEMPTIONS
10-24-18 [35]

9. 18-24946-D-7 NANCY PITMAN MOTION FOR RELIEF FROM
RPZ-1 AUTOMATIC STAY
PROF-2013-S3 LEGAL TITLE 10-29-18 [16]
TRUST IV VS.

10. 18-25947-D-7 MICHELE KNOX ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-1-18 [20]

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.

11. 18-22453-D-7 ECS REFINING, INC. MOTION FOR RELIEF FROM
BAP-1 AUTOMATIC STAY
10-31-18 [707]

12. 17-25856-D-7 MOHAMED LHAOUI AND ZAHRA MOTION FOR RELIEF FROM
APN-1 DAOUZ AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 10-23-18 [16]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed and the trustee has 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 debtors are 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.

13. 13-90863-D-13 LEONCIO ALVARADO CONTINUED ORDER TO SHOW CAUSE
9-5-18 [201]

DEBTOR DISMISSED: 09/09/2015

14. 16-27672-D-7 DAVID LIND
DNL-24

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM TRUSTEES
ATTORNEY(S)
10-31-18 [688]

Tentative ruling:

This is the application of counsel for the chapter 7 trustee in this case (the "Applicant") for a first interim allowance of compensation. The motion was brought pursuant to LBR 9014-1(f) (1) and no opposition has been filed. However, the court has one question. The application and supporting declaration both state in a footnote that the amount requested includes \$1,152.50 for chapter 11 work omitted from a prior application. The court has reviewed the Applicant's time sheets filed with the application and finds seven entries for services performed on January 23, 2017 and February 17, 2017 (that is, relatively early in the chapter 11 period) that total \$1,152.50. The same entries, identical as to date of service, timekeeper, hourly rate, number of hours, and amount billed, appear in the time sheets in support of the Applicant's application for an allowance of compensation for services during the chapter 11 phase of the case. Thus, it appears the \$1,152.50 in fees were included in, not omitted from, the earlier application. With that exception, the court is prepared to conclude that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a).

The court will hear the matter.

15. 17-20689-D-11 MONUMENT SECURITY, INC.
ET-27

OBJECTION TO CLAIM OF LARRY
FULKERSON, CLAIM NUMBER 14
10-15-18 [352]

16. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-48

MOTION FOR COMPENSATION FOR IAN
DE WITT, SPECIAL COUNSEL(S)
10-31-18 [1139]

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.

17. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR COMPENSATION FOR
DNL-49 BACHECKI, CROM & CO., LLP,
ACCOUNTANT(S)
10-31-18 [1145]

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.

18. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR COMPENSATION FOR
DNL-50 JAMIE LEADER, SPECIAL
COUNSEL(S)
10-31-18 [1133]

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.

19. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR COMPENSATION FOR
DNL-52 JESUS PAOLO U. PROTACIO,
SPECIAL COUNSEL(S)
10-31-18 [1151]

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.

20. 18-25693-D-7 ERIC DAVIS CONTINUED MOTION FOR RELIEF
EMM-1 FROM AUTOMATIC STAY
BROKER SOLUTIONS, INC. VS. 10-2-18 [11]

21. 18-25294-D-7 GHAZI/FADWA RASHID
FF-1

MOTION TO AVOID LIEN OF FORD
MOTOR CREDIT COMPANY
10-29-18 [14]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Ford Motor Credit Company ("Ford"). The motion will be denied because the moving parties failed to serve Ford in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Ford (1) through the attorneys who obtained its abstract of judgment; (2) by certified mail to CT Corporation System to the attention of three named but unidentified individuals; and (3) at a street address to the attention of three named but unidentified individuals. The first method was insufficient because there is no evidence the attorneys are authorized to receive service of process on behalf of Ford 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).

The second method was insufficient because service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as Ford, must be by first-class mail, not certified mail. Compare Rule 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h). The second method was insufficient for the additional reason that Ford's agent for service of process is CT Corporation System, not an individual. The third method was insufficient because service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process, whereas there is no evidence the three named individuals fall into any of those categories.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

22. 18-21899-D-7 TODD LUSH
BHS-3

MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY
10-19-18 [38]

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.

23. 18-20604-D-11 BOB COOK COMPANY LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-2-18 [1]
24. 18-20604-D-11 BOB COOK COMPANY LLC CONTINUED MOTION TO DISMISS
GEL-5 CASE
10-26-18 [67]
25. 18-27136-D-11 ARCADE OLD SAC LLC ORDER TO SHOW CAUSE
11-14-18 [8]
26. 18-22453-D-7 ECS REFINING, INC. CONTINUED MOTION TO USE CASH
WFH-2 COLLATERAL
10-12-18 [632]

27. 18-26372-D-7 BOOTLEGGERS OLD TOWN MOTION TO COMPEL ABANDONMENT
RAP-1 TAVERN & GRILL, INC. 11-8-18 [19]

Tentative ruling:

This is the motion of interested party Carl Franklin to compel the trustee to abandon the estate's interest in certain real and personal property. The moving party served the debtor, the debtor's attorney, the chapter 7 trustee, and the United States Trustee, but failed to serve the other creditors in the case. Thus, the moving party failed to serve the motion in accordance with Fed. R. Bankr. P. 6007.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors" On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, although the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of Fed. R. Bankr. P. 6007. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

The court intends to continue the hearing to December 12, 2018 at 10:00 a.m., to allow the moving party to file a notice of continued hearing (pursuant to LBR 9014-1(f)(2) - no written opposition required) and serve it on all creditors in this case, including those listed on the debtor's Schedules E/F, G, and H, no later than November 28, 2018. The original notice of hearing contained sufficient information to comply with LBR 9014-1(d)(3)(B)(iv); thus, if the same information is included in the notice of continued hearing, the moving party need not serve the motion or supporting documents.