

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 30, 2016
CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-12321](#)-A-7 RIGOBERTO/CORINNA AVINA MOTION TO SET ASIDE THE DEFAULT
[16-1089](#) 11-2-16 [[12](#)]
FAMILIES AND SCHOOLS TOGETHER
FEDERAL CREDIT UNION V. AVINA
RESPONSIVE PLEADING

Tentative Ruling

Motion: Relief from Entry of Default

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Grant

Order: Civil minute order

Defendants Rigoberto Avina and Corinna Avila ("Avilas") move for relief from entry of default entered against them. Plaintiff Families and Schools Together Federal Credit Union ("Families and Schools") opposes the motion.

DISCUSSION

Federal Rule of Civil Procedure 60(b) allows the court to relieve a party of an order obtained against that party as a result of mistake, inadvertence or excusable neglect. Fed. R. Civ. P. 60(b)(1), incorporated by Fed. R. Bank. P. 9024. In most instances, relief must be sought within one year of order. In ruling on a 60(b) motion the court should consider (1) the danger of prejudice to the adverse party; (2) the length of delay caused by the neglect and the impact of that delay on the proceedings; (3) the reason for the delay; and (4) whether the moving party has acted in good faith.

Here, Defendants Rigoberto Avina and Corinna Avila are pro se. They misunderstood the date for their response. Motion at 3:21-27, November 2, 2016, ECF # 12. The delay between the entry of default and the motion for relief from the order is less than one month. Defendants have tendered a proposed answer to the complaint, from which the court infers a sincere desire for hearing on the merits and good faith. Given the age of the adversary complaint (slightly more than two months), prejudice is minimal, if it exists at all. The motion will be granted.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Rigoberto Avina and Corinna Avila's motion has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and the Clerk shall vacate the entry of default.

IT IS FURTHER ORDERED that defendants Rigoberto Avina and Corinna Avila shall file a response to the complaint not later than the close of business on December 21, 2016.

2. [16-12321](#)-A-7 RIGOBERTO/CORINNA AVINA CONTINUED STATUS CONFERENCE RE:
[16-1089](#) COMPLAINT
FAMILIES AND SCHOOLS TOGETHER 9-13-16 [[1](#)]
FEDERAL CREDIT UNION V. AVINA
RUSSELL REYNOLDS/Atty. for pl.

No tentative ruling.

3. [15-10966](#)-A-7 RODNEY HARON PRETRIAL CONFERENCE RE:
[15-1122](#) COMPLAINT
HAWKINS V. NEVADA PROPERTY 1 10-18-15 [[1](#)]
LLC
ORDER VACATING 8/23/16, SET
FOR 3/22/17

Final Ruling

This matter was continued to March 22, 2017, at 10:00 a.m. Amended Scheduling Order § 1.0, October 11, 2016, ECF # 67.

4. [15-10966](#)-A-7 RODNEY HARON CONTINUED STATUS CONFERENCE RE:
[15-1123](#) COMPLAINT
HAWKINS V. HRHH GAMING, LLC ET 10-18-15 [[1](#)]
AL
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to January 10, 2017, at 10:00 a.m. In the event that the adversary proceeding has not been resolved by judgment or dismissal, not later than January 3, 2017, the plaintiff shall file a status report.

5. [15-10966](#)-A-7 RODNEY HARON CONTINUED STATUS CONFERENCE RE:
[15-1124](#) COMPLAINT
HAWKINS V. HARVEYS TAHOE 10-18-15 [[1](#)]
MANAGEMENT COMPANY, INC.
RESPONSIVE PLEADING

Final Ruling

The status conference is continued to January 10, 2017, at 10:00 a.m. In the event that the adversary proceeding has not been resolved by judgment or dismissal, not later than January 3, 2017, the plaintiff shall file a status report.

9. [16-12277](#)-A-7 MARCELA MARTINEZ
[16-1081](#)
TRAVIS CREDIT UNION V.
MARTINEZ
JOHN MENDONZA/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-27-16 [[1](#)]

Tentative Ruling

The court does not believe (but does not actually decide) that it has jurisdiction over counter-claim for indemnity and/or contribution against Razzari Nissan. 28 U.S.C. §§ 1334(b), 157(a); *Ziglin v. Peterson (In re Peterson)*, 104 B.R. 94 (Bankr. E.D. Wis. 1989). The parties are asked to consider this authority prior to the date of the hearing.

If requested the party will continue the status conference to allow the defendant to move to amend the pleadings, e.g. add a counter-claim (if the defendant believes the court has jurisdiction), answer to assert equitable defenses or otherwise. If no such request is made the court will issue a scheduling order allowing discovery.