

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 3, 2019 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. | 18-27101 -D-7 | KENNETH PEDIGO | MOTION FOR RELIEF FROM |
| | APN -1 | | AUTOMATIC STAY |
| | TOYOTA MOTOR CREDIT | | 11-30-18 [11] |
| | CORPORATION VS. | | |

Final ruling:

The matter is resolved without oral argument. The court's records indicate that the trustee has filed a statement of non-opposition, no other timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

2. [18-20603](#)-D-7 GARY/ROBERTA CULBERTSON MOTION TO AVOID LIEN OF
[PGM](#)-4 ALLIANCE CREDIT
11-23-18 [[53](#)]

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 is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

3. [18-26817](#)-D-7 JUSTIN STOPKA MOTION FOR RELIEF FROM
[PPR](#)-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 11-29-18 [[27](#)]
COMPANY VS.

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that the trustee has filed a statement of non-opposition and no other timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

4. [18-25027](#)-D-7 ELIZABET GABRIEL MOTION FOR RELIEF FROM
[APN](#)-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 11-27-18 [[16](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that the trustee has filed a statement of non-opposition and no other timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on November 26, 2018 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

5. [18-27136](#)-D-11 ARCADE OLD SAC LLC ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-29-18 [[23](#)]

Final ruling:

This case was dismissed on December 18, 2018. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.

6. [18-26537](#)-D-7 MONIKA WHITFIELD
[JDM](#)-1
TRAVIS CREDIT UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-5-18 [[12](#)]

Final ruling:

This matter is resolved without oral argument. This is Travis Credit Union'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.

7. [18-26942](#)-D-7 HOLLY STEENSON
[SLH](#)-1

MOTION TO COMPEL ABANDONMENT
11-27-18 [[9](#)]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtor's motion to compel the trustee to abandon property and the debtor has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

8. [18-26942](#)-D-7 HOLLY STEENSON
[SLH](#)-2

MOTION TO AVOID LIEN OF CACH,
LLC
11-29-18 [[14](#)]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by CACH, LLC ("CACH"). The motion will be denied because the moving party failed to serve CACH in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served CACH only through the attorneys who obtained its abstract of judgment, whereas there is no evidence the attorneys are authorized to receive service of process on behalf of CACH 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).

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

9. [18-26942](#)-D-7 HOLLY STEENSON
[SLH](#)-3

MOTION TO AVOID LIEN OF CACH,
LLC
11-29-18 [[19](#)]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by CACH, LLC ("CACH"). The motion will be denied because the moving party failed to serve CACH in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served CACH only through the attorneys who obtained its abstract of judgment, whereas there is no evidence the attorneys are authorized to receive service of process on behalf of CACH 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).

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

10. [18-27045](#)-D-7 EDWARD/ANGELA FOREMAN

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER FEE
11-8-18 [[5](#)]

11. [18-24646](#)-D-7 STEVEN/JILL WICK
[JHW](#)-1
SANTANDER CONSUMER USA, INC.
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-20-18 [[58](#)]

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'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 debtors are 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.

12. [18-25553](#)-D-7 MIHA AHRONOVITZ
[EGS](#)-1
BAYVIEW LOAN SERVICING, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-1-18 [[27](#)]

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 is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates he will surrender the property, the court will also waive FRBP 4001(a) (3) by minute order. There will be no further relief afforded. No appearance is necessary.

13. [18-27559](#)-D-11 BOB COOK COMPANY LLC

STATUS CONFERENCE RE: VOLUNTARY
PETITION
12-4-18 [[1](#)]

Final ruling:

This case was dismissed on December 14, 2018. As a result the status conference is concluded. Matter removed from calendar as moot. No appearance is necessary.

14. [18-25161](#)-D-7 JANICE STEWART
[AB](#)-1

MOTION TO AVOID LIEN OF CACH OF
COLORADO, LLC
11-15-18 [[12](#)]

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 is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

15. [18-24662](#)-D-7 CHRISTINA BLACK-MORRIS
[MOH](#)-1

MOTION TO AVOID LIEN OF BANK OF
AMERICA, N.A.
11-19-18 [[14](#)]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by Bank of America, N.A. (the "Bank"). The motion will be denied because the moving party has not properly claimed an exemption in the property. There are four basic elements of an avoidable lien under § 522(f) (1) (A):

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f) (1).

In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). The moving party failed to claim an exemption in the property on the Schedule C filed with her petition. Two days after this motion was filed, the moving party filed as an exhibit to the motion copies of an amendment cover sheet and amended Schedule C on which she purports to claim an exemption in the property. However, the amendment cover sheet and amended schedule have not been filed with the court; thus, the exemption has not been properly claimed.

If the amendment cover sheet and amended schedule have been filed by the time of the hearing, the court will hear the matter. If they have not, the court will consider continuing the hearing.

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| 16. | 18-25771 -D-7 | THERESA SELLARS | MOTION FOR RELIEF FROM |
| | NLG -1 | | AUTOMATIC STAY |
| | CALIFORNIA HOUSING FINANCE | | 11-16-18 [14] |
| | AGENCY VS. | | |

Final ruling:

This matter is resolved without oral argument. This is California Housing Finance Agency's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed and that the debtor 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 the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

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| 17. | 11-46172 -D-12 | VIRENDA/SUMAN MISHRA | CONTINUED MOTION FOR SUMMARY |
| | 17-2156 | PGM-3 | JUDGMENT AND/OR MOTION FOR |
| | MISHRA ET AL V. WELLS FARGO | | SUMMARY JUDGMENT |
| | BANK, N.A. | | 10-31-18 [122] |

Tentative ruling:

This is the motion of the plaintiffs in this adversary proceeding, who are also the debtors in the underlying chapter 12 case (the "debtors"), for summary judgment against the defendant, Wells Fargo Bank, N.A. (the "Bank"), or in the alternative, for partial summary judgment.¹ The Bank has filed opposition and the debtors have filed a reply. As is often necessary to complete the pre-hearing dispositions prior to the hearing date, the court prepared much of this ruling before the debtors filed their reply. The portion already prepared stands; a paragraph at the end addresses the reply. For the following reasons, the motion will be denied.

Summary judgment is appropriate when there exists "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Supreme Court discussed the standards for summary judgment in a trilogy of cases: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no issues of material fact exist. Anderson, 477 U.S. at 255. A genuine issue of material fact

exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories, and any affidavits. Celotex, 477 U.S. at 323. To demonstrate the presence or absence of a genuine dispute, a party must cite to specific materials in the record or submit an affidavit or declaration by a competent witness based on personal knowledge. See Fed. R. Civ. P. 56(c)(1), (4). Where the movant bears the burden of persuasion as to the claim, it must point to evidence in the record that satisfies its claim. Anderson, 477 U.S. at 252. Once the moving party has met its initial burden, the non-moving party must show specific facts demonstrating the existence of genuine issues of fact for trial. Id. at 256.

The debtors contend they made all the required mortgage payments falling due during the term of their chapter 12 plan to the trustee, who disbursed them to the Bank. They further contend the Bank failed to properly credit the debtors' account with those payments and later the payments the debtors made toward the pre-petition arrears, as provided for in the confirmed plan.² Instead, according to the debtors, the Bank commenced foreclosure, alleging defaults that were inaccurate under the terms of the plan and the order confirming it. The motion will be denied based on the issue of the ongoing mortgage payments made during the plan term; thus, the court need not address the issue of the arrears payments. As to the ongoing mortgage payments, the Bank contends the total of the payments made was less than the total required by the plan because the debtors failed to adjust the amount of the payments to account for interest rate adjustments and escrow account changes.

The debtors' proposed plan provided: "Upon filing of the Chapter 12 Plan Trustee is to commence monthly disbursements December 25, 2011 to Class 1 Claim Holder, [the Bank] in the amount of \$720.00 for on-going [payments]" Debtors' Second Amended Chapter 12 Plan, filed Jan. 18, 2013 in the parent case, ¶ 6.2. The parties disagreed as to the amount of the payment, but ultimately, on October 17, 2013, the court entered an order, prepared by the debtors' counsel and signed off on by the trustee's and the Bank's counsel, confirming the plan but modifying it as follows: "The Monthly Contract Installment Amount to [the Bank] under Class 1 is \$1068.08, which includes \$754.86 in principal and interest; \$212.44 in taxes and \$100.78 in Hazard Insurance." Amended Order filed Oct. 17, 2013, at 2:11-14.

The real problem, it seems to the court, is not that the mortgage payment was not adjusted periodically, as claimed by the Bank. It is that the debtors did not begin making mortgage payments, nor did the trustee or the Bank apparently look for any, until early in 2013, over a year into the plan term, whereas the confirmed plan, as quoted above, required the monthly contract installments to begin December 25, 2011. The Bank's payment records, which the debtors do not dispute, show no payments at all in December of 2011 or the entire year 2012.³ Moreover, when the debtors finally began making the ongoing mortgage payment, in early 2013, it was at \$720 per month, per the plan they were hoping to confirm, not the \$1,068.08 required by the order they ultimately submitted to the court (with the approval of the trustee and the Bank).

As a result, the total of the ongoing mortgage payments made by the debtors during the plan term was only \$56,427.04 but it should have been \$64,084.80 (60 months at \$1,068.08 each). The court is unable to determine why the trustee's and the Bank's counsel signed off on the form of the order confirming the plan because, according to the trustee's Creditor Disbursement History, the Bank's Exhibit P, the debtors were far from current on the post-petition mortgage payments at the time. And although the debtors made a sizeable catch-up payment three months after the

plan was confirmed, it was far from enough to bring them post-petition current.⁴ In short, the debtors have failed to demonstrate they made all the post-petition mortgage payments required by the plan, as they claim, and they are not entitled to judgment as a matter of law.

The debtors have filed a reply in which they appear to recognize that if the plan is interpreted as the court has done above, they would have been in immediate default as soon as it was confirmed, which is accurate.⁵ Thus, they now claim they contemplated the phrase "arrearage payments," as used in the order confirming the plan, as including both pre- and post-confirmation arrears, whereas the Bank contemplated it as including pre-petition arrears only. The debtors also suggest the trustee would agree with them; that is, he would testify it was his understanding the phrase included both pre- and post-confirmation arrears. Arguments about who "contemplated" what and who "understood" what, in and of themselves, demonstrate why the motion must be denied: there exist genuine issues of material fact. The debtors conclude their reply by requesting the court grant "partial summary judgment" in their favor. Based on the present record, however, there are no issues on which there is no genuine dispute as to any material fact.

The court will hear the matter.

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- 1 The debtors are not specific as to what this "partial summary judgment" would be.
 - 2 The plan was unusual in that payments toward the pre-petition arrears were not to begin until after the plan was completed.
 - 3 The court would add that the Bank's payment records are in tiny print, extremely difficult to decipher, and appear to include duplicate entries. The court will not consider future filings by the Bank similar to the first ten pages of the Bank's Exhibit K.
 - 4 If the debtors were making payments directly to the Bank in 2012, the court has not been informed of them and they do not appear in the Bank's payment records.
 - 5 The debtors did not take this position in their motion. Instead, they claimed (1) they had "satisfied the condition of the on-going mortgage payment being paid to the Chapter 12 Trustee" (Debtors' Memo., filed Oct. 31, 2018, at 1:21-22), and (2) they had "performed their end of the bargain in completing a five (5) year plan, making five years of on-going payments," Id. at 5:8-10.

18. [15-28774](#)-D-7 OTASHE GOLDEN
[SSA](#)-7

MOTION FOR ADMINISTRATIVE
EXPENSES
12-5-18 [[95](#)]

19. [18-25282](#)-D-7 LEONORA ROCHA-SPEARS
[DPR](#)-1

MOTION TO AVOID LIEN OF SFM-6,
LLC
11-15-18 [[20](#)]

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 is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

20. [12-30983](#)-D-7 KEVIN INGALLS
[LBG](#)-2

MOTION TO AVOID LIEN OF MCT
GROUP
11-29-18 [[25](#)]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by MCT Group. The motion will be denied for the following reasons: (1) the notice of hearing states that the hearing will take place at 501 I Street - Suite 3-200, whereas that is the suite number of the clerk's office; and (2) the notice of hearing provides inconsistent information. Initially, it states that if you do not want the court to avoid the lien or if you want the court to consider your views, "please note that no party in interest shall be required to file a written opposition and that opposition, if any, shall be presented at the hearing." The notice goes on to state, however, that "[i]f you mail your response to the Court for filing, you must mail it early enough so the Court will receive it no less than 14 days before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtors' attorney at the address on the first page of this Notice of Hearing on Motion as well as [the trustee and the U.S. Trustee]." The notice concludes with this caution: "If you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion, in some circumstances without even conducting an actual hearing."

It is not appropriate to include in a notice pursuant to LBR 9014-1(f)(2) the requirement that potential respondents mail copies of any written response to the moving party, trustee, and U.S. Trustee or the caution that if potential respondents do not take these steps (plural), the court may decide no one opposes the motion and may grant it, without even conducting an actual hearing. For a motion brought pursuant to LBR 9014-1(f)(2), nothing is required other than appearing at the hearing. The suggestion that the court might grant the motion without even conducting a hearing is especially inappropriate, but there is in fact no requirement that a party opposing an (f)(2) motion mail any written response he or she may decide to file to anyone.

For the reasons stated, the motion will be denied by minute order. In the alternative, the court will consider continuing the hearing to permit the moving party to correct these notice defects. The court will hear the matter.

21. [17-20689](#)-D-7 MONUMENT SECURITY, INC. MOTION TO CONVERT CASE TO
[ET](#)-30 CHAPTER 7
12-3-18 [[393](#)]

Final ruling:

Item no. 21 is removed from calendar as the motion was granted by order filed December 4, 2018.

22. [15-29890](#)-D-7 GRAIL SEMICONDUCTOR MOTION FOR COMPENSATION BY THE
[DNL](#)-47 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
12-6-18 [[1171](#)]

23. [15-29890](#)-D-7 GRAIL SEMICONDUCTOR MOTION TO COMPROMISE
[DNL](#)-53 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MITCHELL
NEWDELMAN, FRANK HOLZE AND
WILLIS HIGGINS
12-6-18 [[1177](#)]

24. [14-25201](#)-D-7 RAM GOPAL ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-14-18 [[52](#)]

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.

25. [15-29103](#)-D-7 ROCK RIDGE PROPERTIES,
[DNL](#)-6 INC. MOTION TO SELL FREE AND CLEAR
OF LIENS AND/OR MOTION FOR
COMPENSATION FOR TRANZON ASSET
STRATEGIES, AUCTIONEER(S)
12-13-18 [[70](#)]

Tentative ruling:

This is the trustee's motion to sell certain real property via Internet auction and to compensate her auctioneer. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. In any event, however, the court is not prepared to permit the property to be sold free and clear of the interests of certain parties-in-interest, as requested by the trustee, as a result of the service issue discussed below.

The trustee seeks to sell the property free and clear of three deeds of trust. Two of the deeds of trust are in favor of Andrew Bakos; the third is in favor of Andrew Bakos and nine other individuals or entities, as to various fractional interests. The trustee served this motion on Andrew Bakos but failed to serve the motion, notice of hearing, or any other document on the nine other individuals or entities holding fractional interests. The proof of service includes Western Progressive LLC as Trustee and the court cannot determine why, as this entity was not scheduled by the debtor and has not filed a proof of claim or a request for special notice. If the trustee claims the nine individuals and entities are represented by Western Progressive LLC, the court will require some form of proof and some evidence as to why the nine individuals and entities cannot be served at their own addresses.

The court will hear the matter.

26. [18-27179](#)-D-7 GLORIA RANGEL ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-14-18 [[31](#)]

27. [18-26483](#)-D-7 TRACEY DAVIS MOTION TO COMPEL ABANDONMENT
[CRW](#)-1 12-13-18 [[17](#)]

Tentative ruling:

This is the trustee's motion for various forms of relief, described below. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court intends to continue the hearing and require the trustee to correct the following service defects.

Pursuant to the court's order limiting notice in this case, the trustee was required to serve, among others, the holders of the 20 largest general unsecured claims. Nothing in the order purported to override Fed. R. Bankr. P. 2002(g), which requires service on a creditor at the address on its proof of claim, if different from its address on the debtor's schedules. Here, Philadelphia Indemnity Insurance Company and Toyota Motor Credit have filed claims (Toyota, 10 claims) listing addresses different from those listed on the schedules, whereas the trustee served them only at their addresses on the schedules. The trustee served Bedrock Protection Agency, LLC, also the holder of one of the 20 largest unsecured claims, at the address on its proof of claim where it requested payments be sent, not the address on the proof of claim at which notices are to be sent. The trustee served Bone Robertson McBride Inc., also holder of one of the 20 largest claims, at an address different from the address on the debtor's schedules, whereas Bone has not filed a proof of claim or a request for special notice, and thus, was required to be served at the address on the schedules. Fed. R. Bankr. P. 2002(g)(2). Finally, the trustee served Tammye Read, who filed a request for special notice, using the wrong city, state, and zip code.

The court has the following additional concerns. The trustee presently has on hand \$420,000. He seeks authority to make what is, in essence, an early distribution to Citibank in the amount of \$118,211.91, which the trustee says is the total of the amounts remaining due "on account of non-purchase money securities issued to the Debtor by Citibank" Trustee's Motion, filed Dec. 12, 2018 ("Mot."), at 2:10-11. The trustee also states that the debtor's Schedule D identifies these debts as "first priority." *Id.* at 2:9. The debtor's Schedule D does not, however, state the date either of the two Citibank debts was incurred and Citibank has not filed a proof of claim. Thus, other than the debtor's listing of the order of priorities, the court has no declaratory or documentary evidence demonstrating that Citibank's claim has priority over the secured claim of the Internal Revenue Service. If the motion is granted and the trustee pays \$118,211.91 to Citibank, there will remain on hand an amount that is less than the amount of the IRS's secured claim, even after the avoiding of a portion of the IRS's lien, as requested in this motion.

It appears Citibank's claims are not on account of "non-purchase money securities issued to the debtor by Citibank," but instead, according to the debtor's Schedule D, are on account of loans secured by non-purchase money security interests in the debtor's accounts receivable 90 days old or less. The court recognizes that the majority of the debtor's assets are accounts receivable, but there is a significant amount that were older than 90 days at the time the petition was filed. The trustee will need to submit evidence that the \$420,000 presently on hand represents proceeds of Citibank's collateral. He has not even made such an allegation; it is merely assumed.

Next, the trustee seeks to "set[] aside \$255,031.95" (Mot. at 1:23) of the IRS's claim for the benefit of unsecured creditors, pursuant to § 724(a) of the Bankruptcy Code. That is the amount shown on the IRS's most recent amended proof of claim as being on account of penalties. The trustee will need to demonstrate that either (1) the IRS has consented to this avoidance of a portion of its lien - by affirmative action and not by defaulting on this motion; or (2) a noticed motion, as opposed to an adversary proceeding, was sufficient for this relief. The Rule Reference to § 724 in the Norton Quick Reference Bankruptcy Code and Rules cites only Rule 7001(2), and the court reads Rule 3012 as governing proceedings to determine the amounts of claims and not to avoid a lien.

The court will hear the matter.