

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 15, 2019 at 10:00 a.m.

1. **09-92325-E-7**
LBF-2

SERGIO/SANDRA MIRANDA
Randall Walton

MOTION TO AVOID LIEN OF CARL
WILLIAMS
11-30-18 [26]

Final Ruling: No appearance at the January 15, 2019 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the U.S. Trustee December 19, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Avoid Judicial Lien is Continued to January 24, 2019 at 10:30 p.m. to be heard at Modesto.

The debtors, Sergio Miranda and Sandra Miranda ("Debtor"), filed this Motion to Avoid Judicial Lien on November 30, 2018. Dckt. 26.

Debtor filed its original Notice on November 30, 2018, seeking to set the hearing on the Motion for January 15, 2019 at 10:00 a.m. in Modesto Dckt. 27. Realizing its error (the January 15 date being a Sacramento hearing date), Debtor filed an Amended Notice on December 19, 2018, seeking to re-set the hearing for January 24, 2019 at 10:30 a.m. Dckt. 36.

January 24, 2019 at 10:30 a.m.

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In its Opposition filed January 3, 2019, Creditor presents in its Opposition caption the incorrect date, stating “January 15, 2009.” Dckt. 38. In Debtor’s Reply, it again uses the date of “January 15, 2019” used in the original Notice. Dckt. 42.

DISCUSSION

Once a motion has been filed and Contested Matter set for hearing, the proper practice is not to re-notice the hearing as a means for moving the hearing date. Such practice would allow potential abuse of the court’s docket.

However, here Debtor initially filed its hearing date at a day where hearings were not being held in Modesto, California. Debtor provided significant notice of the Motion in the Amended Notice (36 days’ notice). Therefore, the court shall treat the Amended Notice as an *Ex Parte* request for a continuance and shall continue the hearing on the Motion to January 24, 2019 at 10:30 p.m. to be heard at Modesto.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by Sergio Miranda and Sandra Miranda (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid Judicial Lien is Continued to January 24, 2019 at 10:30 p.m. to be heard at Modesto.