

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 27, 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.	18-23708-D-7	STANLEY ASBURY AND	MOTION FOR RELIEF FROM
	VC-1	KATHRINE STEWART ASBURY	AUTOMATIC STAY
	FLAGSHIP CREDIT ACCEPTANCE		1-25-19 [91]
	VS.		

Final ruling:

This matter is resolved without oral argument. This is Flagship Credit Acceptance'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.

2. 18-23919-D-7 TIFFIANY MCINTYRE
18-2152 UST-1
U.S. TRUSTEE V. MCINTYRE

CONTINUED MOTION FOR ENTRY OF
DEFAULT JUDGMENT
12-18-18 [11]

3. 18-24030-D-7 THOMAS/JANICE JOHNSON
BSH-3

CONTINUED MOTION TO AVOID LIEN
OF ALTAONE FEDERAL CREDIT UNION
12-10-18 [29]

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 debtors are entitled. As a result, the court will grant the debtors' 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.

4. 17-20731-D-11 CS360 TOWERS, LLC
DB-36

CONTINUED OBJECTION TO CLAIM OF
NORMAN COONTZ, CLAIM NUMBER 6-1
12-7-18 [543]

5. 17-20731-D-11 CS360 TOWERS, LLC
DB-37

CONTINUED OBJECTION TO CLAIM OF
GEMACK ASSOCIATES, LLP, CLAIM
NUMBER 16-1
12-7-18 [548]

Tentative ruling:

This court will use this hearing as a status conference.

6. 18-27632-D-7 DONALD FLAVEL
NLL-1
MTGLQ INVESTORS, LP VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-22-19 [16]

Final ruling:

This matter is resolved without oral argument. This is MTGLQ Investors, LP's motion for relief from automatic stay. The court 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 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.

7. 18-27970-D-7 JOHN MUNOZ
JHW-1
FIRST INVESTORS FINANCIAL
SERVICES VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-21-19 [16]

Final ruling:

This matter is resolved without oral argument. This is First Investors Financial Services' 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.

8. 18-20774-D-11 S360 RENTALS, LLC
PP-1
TRI-POINT CAPITAL, LLC VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-21-18 [224]

9. 18-27979-D-7 CLIFFORD RUIZ

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER FEE
12-27-18 [2]

Final ruling:

Based on the debtor's Application for Individuals to Pay the Filing Fee in Installments (the "Application") and the court's order granting the Application, this motion is denied as moot by minute order. No appearance is necessary.

10. 18-27885-D-7 KAYLENE RICHARDS-EKEH MOTION FOR RELIEF FROM
TGM-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 1-17-19 [19]
COMPANY VS.
11. 19-20088-D-7 SUPPLY HARDWARE, INC. MOTION FOR EXAMINATION AND FOR
PRODUCTION OF DOCUMENTS
1-16-19 [9]
12. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION FOR COMPENSATION FOR
DNL-12 CAMPBELL TAYLOR & COMPANY,
ACCOUNTANT(S)
1-30-19 [528]
- 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.**
13. 18-27089-D-7 STACEY RASKIN ORDER TO SHOW CAUSE - FAILURE
19-2014 TO PAY FEES
FROMUTH V. RASKIN 1-30-19 [9]

14. 18-23090-D-7 BRET KANE
DNL-2

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CITIBANK, N.A.
1-24-19 [25]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

15. 18-23396-D-11 METRO PALISADES, LLC
RAH-9

MOTION BY RICHARD A. HALL TO
WITHDRAW AS ATTORNEY
1-25-19 [121]

Tentative ruling:

This is the motion of counsel for the debtor-in-possession ("Counsel") to withdraw as counsel. The motion was noticed pursuant to LBR 9014-1(f)(1) and no written opposition has been filed. Nevertheless, the court has the following concerns.

First, Counsel served the debtor's managing member but did not serve the debtor itself at its different address. Further, the address at which the managing member was served is different from her address as listed in the debtor's Statement of Financial Affairs, although no change of address has been filed for her. Counsel also failed to serve the debtor's other 50% member, at all. The court considers that for a motion of this significance, both members should be given notice.

Second, the local rule requires an attorney seeking to withdraw to state in his or her declaration the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Counsel's declaration does not reference either of these.

Third, and perhaps most important in this case, is Counsel's recitation of his reasons for seeking to withdraw. He refers to "difficulties and disagreements hav[ing] arisen between [him]self and Debtor as to the progress and administration of the bankruptcy case" (Counsel's Decl., DN 123, ¶ 4) and to multiple unsuccessful attempts to contact the debtor. He states that when he has been able to contact the debtor, he and the debtor "are no longer able to agree as to important issues on the prosecution and administration of the case." Id., ¶ 6. Then Counsel states as follows: "As of October 2, 2018, Debtor currently has past due attorney fees in the amount of \$26,798.24, plus an estimated additional \$10,000 accrued fees from October 2, 2018 to January of 2019. Despite several efforts to obtain payment or arrange a payment plan, Debtor has failed to make any payments to my firm for the representation of the bankruptcy estate." Id., ¶ 7. Based, apparently, on all of these factors, Counsel "[has] reached the determination that the professional relationship

between [him]self and Debtor has deteriorated irreparably." Id. ¶ 8.

According to Counsel's Rule 2016(b) statement, he "agreed to accept" \$5,000 for his legal services in the case, of which \$0 was paid pre-petition, leaving a balance due of \$5,000. Counsel has not supplemented his Rule 2016(b) statement to disclose any other agreement. ("A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed." Fed. R. Bankr. P. 2016(b).) Nor has Counsel filed an application for approval of compensation in this case, without which he is not presently entitled to any payment from the debtor toward attorney's fees incurred or to be incurred. § 330(a)(1); Fed. R. Bankr. P. 2016(a). For the reasons stated the court intends to deny the Motion. Alternatively, the court will consider continuing the hearing to allow Counsel to correct the service defects, clarify his fee arrangement with the debtor, and comply with Fed. R. Bankr. P. 2016(a).

The court will hear the matter.

16. 18-27898-D-7 ROBERT PINZON
JHW-1
DAIMLER TRUST VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-21-19 [18]

Final ruling:

This matter is resolved without oral argument. This is Daimler Trust'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.

17. 18-21899-D-7 TODD LUSH
DMW-3

MOTION FOR COMPENSATION FOR
DOUGLAS M. WATLEY, CHAPTER 7
TRUSTEE
12-27-18 [54]

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 §§ 326 and 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

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| 18. | 17-23436-D-7 | RENEE DRUSYLLA | MOTION FOR LEAVE TO FILE |
| | 17-2163 | PLC-1 | PRETRIAL STATEMENT |
| | TORRES V. DRUSYLLA | | 2-11-19 [84] |
| | | | |
| 19. | 18-25346-D-7 | SHIV SINGH | CONTINUED MOTION TO AVOID LIEN |
| | GMW-3 | | OF AXIS CAPITAL, INC. |
| | | | 1-23-19 [38] |
| | | | |
| 20. | 18-22453-D-7 | ECS REFINING, INC. | CONTINUED MOTION TO ABANDON |
| | HSM-2 | | 12-26-18 [912] |
| | | | |
| 21. | 19-20462-D-7 | LASHAY NEWMAN | MOTION FOR RELIEF FROM |
| | WAJ-1 | | AUTOMATIC STAY |
| | EQUITY TRUST COMPANY VS. | | 2-12-19 [24] |

22. 15-28774-D-7 OTASHE GOLDEN
SSA-9

MOTION FOR COMPENSATION FOR
STEWART TABAK, SPECIAL COUNSEL
2-6-19 [114]

Tentative ruling:

This is the trustee's motion for approval of compensation to special counsel. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court has two concerns about service.

First, the proof of service states the motion, notice of hearing, and supporting documents were served on the debtor, the attorney for the debtor's minor son, the attorneys involved in the underlying litigation, the mediator who mediated the dispute, and the United States Trustee. The proof of service does not indicate the debtor's attorney was served, as required by Fed. R. Bankr. P. 7004(g) and 9014(b). Second, the proof of service states the notice of hearing only was served on "all listed on the attached matrix." However, there is no matrix attached, and therefore, there is no evidence the notice of hearing was served on creditors, as required by Fed. R. Bankr. P. 2002(a)(6). If a corrected proof of service has been filed by the time of the hearing, the court will hear the matter. In the alternative, the court will continue the hearing to permit the moving party to cure this service defect.

23. 15-28774-D-7 OTASHE GOLDEN
SSA-7

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH OTASHE NYOKU
GOLDEN AND MINOR SON HEIR
CLAIMANT
2-1-19 [104]

Tentative ruling:

This is the trustee's motion to approve a compromise. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court has two concerns about service.

First, the proof of service states the motion, notice of hearing, and supporting documents were served on the debtor, the attorney for the debtor's minor son, the attorneys involved in the underlying litigation, the mediator who mediated the dispute, and the United States Trustee. The proof of service does not indicate the debtor's attorney was served, as required by Fed. R. Bankr. P. 7004(g) and 9014(b). Second, the proof of service states the notice of hearing only was served on "all listed on the attached matrix." However, there is no matrix attached, and therefore, there is no evidence the notice of hearing was served on creditors, as required by Fed. R. Bankr. P. 2002(a)(3). If a corrected proof of service has been filed by the time of the hearing, the court will hear the matter. In the alternative, the court will continue the hearing to permit the moving party to cure this service defect.

24. 15-28774-D-7 OTASHE GOLDEN
SSA-8

MOTION FOR ADMINISTRATIVE
EXPENSES
2-1-19 [110]

Tentative ruling:

This is the trustee's motion for approval of compensation to special counsel. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court has two concerns about service.

First, the proof of service states the motion, notice of hearing, and supporting documents were served on the debtor, the attorney for the debtor's minor son, the attorneys involved in the underlying litigation, the mediator who mediated the dispute, and the United States Trustee. The proof of service does not indicate the debtor's attorney was served, as required by Fed. R. Bankr. P. 7004(g) and 9014(b). Second, the proof of service states the notice of hearing only was served on "all listed on the attached matrix." However, there is no matrix attached, and therefore, there is no evidence the notice of hearing was served on creditors, as required by Fed. R. Bankr. P. 2002(a)(6). If a corrected proof of service has been filed by the time of the hearing, the court will hear the matter. In the alternative, the court will continue the hearing to permit the moving party to cure this service defect.