

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 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.	17-25421-D-7 PA-2	MICHAEL HAIGH	CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 11-30-17 [26]
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2.	17-21149-D-7 DNL-3	LESLEY REEVE	MOTION APPROVE SALE AGREEMENT 1-31-18 [44]
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Final ruling:

The hearing on this motion has been continued to April 25, 2018 at 10:00 a.m.
No appearance is necessary on February 28, 2018.

3. 10-42050-D-7 VINCENT/MALANIE SINGH ORDER TO SHOW CAUSE
10-2733 1-31-18 [11]
XIE ET AL V. SINGH
4. 10-42050-D-7 VINCENT/MALANIE SINGH ORDER TO SHOW CAUSE
10-2736 1-31-18 [9]
RAJ ET AL V. SINGH
5. 10-42050-D-7 VINCENT/MALANIE SINGH ORDER TO SHOW CAUSE
10-2785 1-31-18 [12]
PRASAD V. SINGH
6. 16-28455-D-7 TEX/HEATHER RICKARD MOTION FOR COMPENSATION BY THE
SCB-4 LAW OFFICE OF SCHNEWEIS-COE AND
BAKKEN, LLP FOR LORIS L.
BAKKEN, TRUSTEE'S ATTORNEY(S)
1-30-18 [35]

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 by minute order. No appearance is necessary.

7. 16-22556-D-7 MGBEOJULIKWE OFFIAH AND MOTION BY ANDREW B. REISINGER
16-2158 WINIFRED OKEEM TO WITHDRAW AS ATTORNEY
NAKATSUKA, BY AND THROUGH HIS 1-31-18 [23]
SUCCESSOR-IN-INTERES V. OFFIAH
8. 17-22056-D-11 JAMES MCCLERNON MOTION TO DISMISS CASE
WT-6 1-25-18 [158]
9. 17-27965-D-7 ANITA VERGARA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. 1-22-18 [19]
VS.
10. 15-25380-D-7 ELIZABETH MEZA MOTION FOR ADMINISTRATIVE
DMW-2 EXPENSES
2-1-18 [73]

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 for approval and payment of administrative expenses to the Internal Revenue Service and the Franchise Tax Board 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.

11. 17-25882-D-7 JENNIFER RIFFE
17-2230 PGM-1
RIFFE V. RIFFE

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JENNIFER DAWN
RIFFE
1-19-18 [11]

Tentative ruling:

This is the plaintiff's motion for approval of a settlement in this adversary proceeding. The defendant, who is also the debtor in the underlying chapter 7 case, has filed opposition and the plaintiff has filed a reply. For the following reasons, the motion will be denied.

The plaintiff and the defendant are separated and are parties to a marital dissolution proceeding in state court. The plaintiff's complaint in this adversary proceeding seeks primarily a determination of nondischargeability pursuant to § 523(a)(15) of the Bankruptcy Code. By this motion, the plaintiff seeks approval of a settlement agreement between himself and the defendant. The motion is brought pursuant to Fed. R. Bankr. P. 9019. The rule is not in play here as it permits only a bankruptcy trustee (and, by way of § 1107(a) of the Code, a chapter 11 debtor-in-possession) to bring a motion for approval of a compromise or settlement. Creditors (and chapter 7 debtors) have no standing to seek approval of a compromise or settlement under the rule. If the plaintiff and the defendant wish to settle their differences in the adversary proceeding, they are free to do so without this court's involvement, so long as the settlement does not purport to affect property of the estate, the rights of other creditors, or the rights or duties of the trustee.

Here, however, the settlement purports to affect property of the estate, and thus, the rights of other creditors and the trustee. The plaintiff and the defendant purport to agree that the state court "shall [have] full and final jurisdiction over any and all community property, debts, division thereof, and credits, if any." They also purport to give "res judicata" effect to the property values the defendant listed in her bankruptcy schedules. Both of these provisions would affect the rights of the trustee and the estate. The plaintiff emphasizes in his reply to the defendant's opposition that neither the trustee nor any other creditor has opposed the motion. That is beside the point. The point is that the settlement purports to affect community property, which is property of the estate, and the court would not approve such a settlement (even if approval were appropriate on some basis other than Rule 9019) based solely on the silence of the trustee and other creditors.

For the reasons stated, the motion will be denied. The court will hear the matter.

12. 17-26997-D-7 MANUEL/MARISOL LARA
LT-1

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
1-29-18 [14]

Final ruling:

This is the debtors' motion to value collateral of Citibank, N.A. (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail (1) at a post office box address with no attention line; (2) through the attorneys who obtained the Bank's abstract of judgment; and (3) to the attention of "Barbara J. Desoer, CEO Or attn: An Officer, a Managing or General Agent." The first method was insufficient because service on an FDIC-insured institution, such as the Bank, must be to the attention of an officer, whereas here, there was no attention line. The second method was insufficient because service must be to the attention of an officer unless the institution has appeared in the action by its attorney (Rule 7004(h), subd. (1)), whereas the Bank has not appeared in this bankruptcy case. The third method was insufficient because the rule requires service on an FDIC-insured institution, such as the Bank, to the attention of an officer and only an officer (Fed. R. Bankr. P. 7004(h)), and not, in the alternative, to the attention of an officer or managing or general agent.

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an "Officer, a Managing or General Agent" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

13. 18-20604-D-11 BOB COOK COMPANY LLC

PRELIMINARY STATUS CONFERENCE
RE: VOLUNTARY PETITION
2-2-18 [1]

Tentative ruling:

This is the initial status conference in this chapter 11 case. Pursuant to the court's February 5, 2018 Order to (1) File Status Report; and (2) Attend Status Conference (the "Scheduling Order"), the debtor was to serve the Scheduling Order and status report on specified parties, including parties to executory contracts and unexpired leases. The debtor listed two tenants on his Schedule G, but did not serve them and did not list them on his master address list, as required by Fed. R. Bankr. P. 1007(a)(1). It is sometimes believed that parties to month-to-month leases, as were these tenants, are not really creditors and need not be listed on the master address list. However, given the extremely broad interpretation of "claim" and "creditor," as revealed by the case law concerning § 101(5) and (10) of the Bankruptcy Code, such parties are creditors, are required to be listed on the master address list, and are required to be served with the Scheduling Order and status report. The debtor will need to remedy these defects.

The court will hear the matter.

14.	18-20604-D-11 GEL-2	BOB COOK COMPANY LLC	MOTION TO EXTEND AUTOMATIC STAY 2-6-18 [7]
15.	17-28224-D-11	LA CONTENTA INVESTORS, A CALIFORNIA LIMITED	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 12-20-17 [1]
16.	17-28224-D-11 DCJ-2	LA CONTENTA INVESTORS, A CALIFORNIA LIMITED	MOTION TO DISMISS CASE 2-7-18 [38]
17.	17-24444-D-11	RAMON LOPEZ	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 7-5-17 [1]

18. 17-24444-D-11 RAMON LOPEZ
MF-1

CONTINUED MOTION TO APPOINT
TRUSTEE
9-1-17 [54]

19. 17-22056-D-11 JAMES MCCLERNON
WT-6

COUNTER MOTION FOR APPOINTMENT
OF EXAMINER OR CHAPTER 11
TRUSTEE
2-15-18 [181]

20. 17-25259-D-7 FABIOLA GARZA-NUNO AND
JGL-2 VICTOR NUNO

MOTION TO REDEEM
2-9-18 [45]

Tentative ruling:

This is the debtors' motion to redeem a 2016 Ford Explorer from the lien of Ally Financial in exchange for a lump-sum payment of \$18,173 to be paid by Prizm Financial Co. LLC. Ally Bank ("Ally") has filed opposition. The motion will be denied because it is not accompanied by "evidence establishing its factual allegations and demonstrating that the movant[s] [are] entitled to the relief requested," as required by LBR 9014-1(d) (3) (D).

The motion is supported only by a copy of a "condition report" purportedly signed by one Dan Hatfield, of Collateral Valuation Services, LLC, for the purpose of establishing the amount to be loaned to the debtors by Prizm Financial. (A draft loan disclosure is attached to the motion showing that the entire amount of the "redemption value," \$18,173, is to be loaned to the debtors.) The condition report is hearsay and inadmissible, and there is no other evidence as to the value of the vehicle for the purpose of redemption. It is particularly difficult to accept that the full amount of the redemption value is proposed to be loaned to the debtors with no equity cushion for the lender, albeit at a very high interest rate, 24.668%. Redemption value is determined by reference to a vehicle's replacement value; that is, the value a retail merchant would charge for a vehicle of that kind, considering its age and condition. Labostrie v. L.A. Fin. Credit Union (In re Labostrie), 2012 Bankr. LEXIS 5786, * 7-8, 2012 WL 6554727 (9th Cir. BAP 2012). The court is also concerned that the debtors valued the vehicle at \$28,000, almost \$10,000 higher than the value now alleged, in their schedules filed just six and a half months ago.

As an aside, the debtors have provided no authority for the proposition, suggested by the title of their motion - Motion to Redeem Personal Property and Approval of Associated Financing Under 11 U.S.C. § 722, that the court has the jurisdiction and the power to approve their post-petition borrowing, and the court would not grant such relief in any event.

Ally requests the motion be denied or, in the alternative, that the redemption value of the vehicle be set at \$22,750 based on an NADA report. Having concluded the debtors have failed to meet their burden of proof, the court is prepared to deny the motion or fix the value at \$22,750, at Ally's preference. If the latter, the court will, as Ally requests, give the debtors 30 days to make the redemption payment (within 30 days of entry of the order fixing the value) and will grant relief from stay to Ally to exercise its state law remedies if the debtors have not made the payment within that time. Relief from stay at that time is appropriate in light of the time limit provided by § 521(a)(2)(B) and the relief from stay provision of § 362(h)(1)(B). (The first date set for the meeting of creditors in this case was January 11, 2018. The debtors filed this motion on February 9, 2018, the day before the expiration of the original 30-day period set by § 521(a)(2)(B).)

The court will hear the matter.

21.	17-28224-D-11	LA CONTENTA INVESTORS, A	CONTINUED STATUS CONFERENCE RE:
	17-2243	CALIFORNIA LIMITED	NOTICE OF REMOVAL
		LA CONTENTA INVESTORS, LTD. V.	12-20-17 [1]
		CALAVERAS COUNTY WATER	