

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable W. Richard Lee  
Hearing Date: Wednesday, March 5, 2014  
Place: U.S. Courthouse, 510 19<sup>th</sup> Street  
Bakersfield, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**
2. Submission of Orders:  
  
Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.
3. Matters Resolved Without Opposition:  
  
If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.
4. Matters Resolved by Stipulation:  
  
If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.
5. Resubmittal of Denied Matters:  
  
If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

1:30 P.M.

1. [10-61900](#)-B-13 EDWARD/DEBRA COPELAND MOTION TO MODIFY PLAN  
PK-8 1-14-14 [[197](#)]  
EDWARD COPELAND/MV  
PATRICK KAVANAGH/Atty. for dbt.

The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

2. [12-17800](#)-B-13 MANUEL/CARMEN GARCIA MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
FORD MOTOR CREDIT COMPANY/MV 1-17-14 [[92](#)]  
ROBERT WILLIAMS/Atty. for dbt.  
AUSTIN NAGEL/Atty. for mv.

3. [13-13902](#)-B-13 FABIOLA GARAY MOTION TO VALUE COLLATERAL OF  
TGF-1 SELF HELP ENTERPRISES  
FABIOLA GARAY/MV 2-12-14 [[38](#)]  
VINCENT GORSKI/Atty. for dbt.  
RESPONSIVE PLEADING

4. [12-12004](#)-B-13 GREGORY/PATRICIA CROWE RESCHEDULED HEARING RE: AMENDED  
KDG-3 OBJECTION TO CLAIM OF JPMORGAN  
GREGORY CROWE/MV CHASE BANK, N.A. OR  
MANUFACTURES AND TRADERS TRUST  
COMPANY, CLAIM NUMBER 8  
12-17-13 [[55](#)]  
  
JACOB EATON/Atty. for dbt.  
STIPULATION TO CONTINUE  
HEARING

**This matter will be dropped from calendar without disposition pursuant to the order signed February 24, 2014. No appearance is necessary.**

5. [12-19404](#)-B-13 ANNA CATALAN MOTION TO MODIFY PLAN  
PLG-2 1-7-14 [[38](#)]  
ANNA CATALAN/MV  
D. HARELIK/Atty. for dbt.  
RESPONSIVE PLEADING

**This matter will be continued to April 2, 2014, at 1:30 p.m. By that time the court will have ruled on the "applicable commitment period" issue currently under submission in *In re Pasley* (#11-10682). The parties shall file a joint statement of unresolved issues prior to the continued hearing. The court will prepare a minute order. No appearance is necessary.**

6. [11-60509](#)-B-13 JIMMY/WANDA JAMES  
RSW-4  
JIMMY JAMES/MV  
ROBERT WILLIAMS/Atty. for dbt. MOTION TO APPROVE LOAN  
MODIFICATION  
2-10-14 [[107](#)]
7. [09-62811](#)-B-13 WARREN/SHEILA DIFFEY  
PWG-5  
WARREN DIFFEY/MV  
PHILLIP GILLET/Atty. for dbt. CONTINUED MOTION TO MODIFY PLAN  
12-27-13 [[67](#)]
8. [12-16811](#)-B-13 D/ARNETTA PETERSON  
RSW-2  
D PETERSON/MV  
ROBERT WILLIAMS/Atty. for dbt. MOTION TO MODIFY PLAN  
2-10-14 [[62](#)]

**This matter will be dropped from calendar without disposition. It appears to be a duplicate of the motion at calendar number 9 below. No appearance is necessary.**

9. [12-16811](#)-B-13 D/ARNETTA PETERSON  
RSW-2  
D PETERSON/MV  
ROBERT WILLIAMS/Atty. for dbt. CONTINUED MOTION TO MODIFY PLAN  
12-13-13 [[54](#)]
10. [13-10113](#)-B-13 WAYNE/ROSITA HELM  
PWG-2  
WAYNE HELM/MV  
PHILLIP GILLET/Atty. for dbt. CONTINUED MOTION TO MODIFY PLAN  
11-12-13 [[45](#)]
11. [13-15726](#)-B-13 KEVIN/KATY CARSON  
JLM-1  
KEVIN CARSON/MV  
JANET MERTES/Atty. for dbt.  
RESPONSIVE PLEADING CONTINUED MOTION TO VALUE  
COLLATERAL OF PNC BANK, N.A.  
12-17-13 [[46](#)]
12. [13-13631](#)-B-13 NELSON/MARGARET DELGADO  
RSW-2  
NELSON DELGADO/MV  
ROBERT WILLIAMS/Atty. for dbt. CONTINUED MOTION TO CONFIRM  
PLAN  
1-6-14 [[45](#)]

**The motion will be denied without prejudice. The plan and motion have not been properly served in compliance with the court's ruling on February 5, 2014. No appearance is necessary.**

13. [13-18038](#)-B-13 MARK MOORE AND TAMILEE  
SAS-1 DERINGTON-MOORE  
FINANCE AND THRIFT COMPANY/MV  
OBJECTION TO CONFIRMATION OF  
PLAN BY FINANCE AND THRIFT  
COMPANY  
2-12-14 [[21](#)]  
  
ROBERT WILLIAMS/Atty. for dbt.  
STEVEN SILVER/Atty. for mv.

**This matter will be continued to April 2, 2014, at 2:00 p.m., and called with the Trustee's motion to dismiss. The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare a civil minute order. No appearance is necessary.**

14. [11-63051](#)-B-13 BRIAN/STEPHANIE JONES  
LKW-6  
BRIAN JONES/MV  
MOTION TO COMPEL ABANDONMENT  
1-29-14 [[93](#)]  
  
LEONARD WELSH/Atty. for dbt.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

15. [13-15657](#)-B-13 GARY SAMPLEY  
PK-3  
PATRICK KAVANAGH/MV  
MOTION FOR COMPENSATION FOR  
PATRICK KAVANAGH, DEBTOR'S  
ATTORNEY(S),  
2-7-14 [[57](#)]  
  
PATRICK KAVANAGH/Atty. for dbt.  
RESPONSIVE PLEADING

16. [11-10759](#)-B-13 SAMUEL SMITH AND SUSAN  
PK-4 BLACK-SMITH  
SAMUEL SMITH/MV  
MOTION TO INCUR DEBT AND/OR  
MOTION TO PURCHASE RESIDENCE ,  
MOTION TO WITHDRAW MONEY FROM  
RETIREMENT ACCOUNT  
2-12-14 [[56](#)]  
  
PATRICK KAVANAGH/Atty. for dbt.

17. [11-17873](#)-B-13 KEVIN/TONIA MAXWELL  
RSW-5  
KEVIN MAXWELL/MV  
MOTION TO MODIFY PLAN  
1-22-14 [[102](#)]  
  
ROBERT WILLIAMS/Atty. for dbt.  
RESPONSIVE PLEADING

18. [14-10381](#)-B-13 CAROLYN MINER  
ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-12-14 [[16](#)]

19. [12-18682](#)-B-13 EDGAR/DELIA ALCALA  
RSW-4  
EDGAR ALCALA/MV  
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO MODIFY PLAN  
2-10-14 [[83](#)]

**This matter will be dropped from calendar without disposition. It appears to be a duplicate of the motion at calendar number 20 below. No appearance is necessary.**

20. [12-18682](#)-B-13 EDGAR/DELIA ALCALA  
RSW-4  
EDGAR ALCALA/MV  
ROBERT WILLIAMS/Atty. for dbt.

CONTINUED MOTION TO MODIFY PLAN  
12-16-13 [[75](#)]

21. [10-11283](#)-B-13 DION/RONA JIANNINE  
DMG-2  
DION JIANNINE/MV  
D. GARDNER/Atty. for dbt.  
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN  
12-11-13 [[44](#)]

**The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.**

22. [13-17088](#)-B-13 JAMES/ALICE LOCKHART  
WIN-3  
JAMES LOCKHART/MV  
CRAIG STREED/Atty. for dbt.

MOTION TO CONFIRM PLAN  
1-17-14 [[30](#)]

**The motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.**

23. [10-63191](#)-B-13 ANDREW EVANS  
WDO-1  
ANDREW EVANS/MV

MOTION TO VALUE COLLATERAL OF  
EMC MORTGAGE CORPORATION/FIRST  
GUARANTY FINANCIAL CORPORATION  
2-4-14 [[34](#)]

WILLIAM OLCOTT/Atty. for dbt.

**The motion will be denied without prejudice. No appearance is necessary. The named respondent in the motion is EMC Mortgage Corporation/First Guaranty Financial Corporation. Based on the proof of claim, the holder of this mortgage lien appears to be Bank of America, National Association as successor by merger to Lasalle Bank National Association, as trustee for Certificateholders of Structured Asset Mortgage Investments II Inc., Mortgage Backed-Certificates, Series 2006-4. No appearance is necessary.**

24. [12-14191](#)-B-13 WILLIS/YVONNE STEWART  
WDO-4  
WILLIS STEWART/MV  
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA  
1-16-14 [[75](#)]

**The motion will be denied without prejudice. No appearance is necessary. The named respondent in the motion is Bank of America. Based on the proof of claim and the record, the original holder of this mortgage lien appears to have been Bank of New York Mellon. However that claim was transferred on August 14, 2013, to Nationstar Mortgage, LLC. No appearance is necessary.**

**2:00 P.M.**

1. [12-17800](#)-B-13 MANUEL/CARMEN GARCIA  
MHM-3  
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
2-18-14 [[98](#)]

ROBERT WILLIAMS/Atty. for dbt.

**This matter will be called on the 1:30 p.m. calendar with the motion for relief from stay. No appearance is necessary at 2:00 p.m.**

2. [13-13902](#)-B-13 FABIOLA GARAY  
MHM-1  
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-29-14 [[34](#)]

VINCENT GORSKI/Atty. for dbt.

**This matter will be called on the 1:30 p.m. calendar with the motion to value collateral. No appearance is necessary at 2:00 p.m.**

3. [13-15726](#)-B-13 KEVIN/KATY CARSON  
MHM-1  
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS ,  
MOTION TO DISMISS CASE  
1-29-14 [[55](#)]

JANET MERTES/Atty. for dbt.

**This matter will be called on the 1:30 p.m. calendar with the motion to value collateral. No appearance is necessary at 2:00 p.m.**

4. [13-16227](#)-B-13 DAVID/DIANA MITCHELL  
MHM-2  
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-30-14 [[33](#)]

ROBERT WILLIAMS/Atty. for dbt.

5. [13-15357](#)-B-13 CARL/DELAINEA BLACK  
MHM-2  
MICHAEL MEYER/MV
- MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-31-14 [[47](#)]

6. [13-16065](#)-B-13 WILLIAM/SHIRLEY EAST  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE  
1-27-14 [[24](#)]

ROBERT WILLIAMS/Atty. for dbt.

**The matter has been withdrawn. No appearance is necessary.**

7. [13-15478](#)-B-13 FRANCISCO/ROSA PEREZ  
MHM-1  
MICHAEL MEYER/MV

MOTION TO DISMISS CASE FOR  
UNREASONABLE DELAY THAT IS  
PREJUDICIAL TO CREDITORS AND/OR  
MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS ,  
MOTION TO DISMISS CASE  
1-29-14 [[36](#)]

ROBERT WILLIAMS/Atty. for dbt.



3:00 P.M.

1. [12-13101](#)-B-12 JORGE TIJERINA  
LKW-14  
JORGE TIJERINA/MV  
LEONARD WELSH/Atty. for dbt.  
NON-OPPOSITION

MOTION TO MODIFY CHAPTER 12  
PLAN  
1-13-14 [[133](#)]

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The chapter 12 plan shall be modified as prayed. The debtor must still file a motion for entry of the chapter 12 discharge after the Trustee's Final Report is approved. The moving party shall submit a proposed order. No appearance is necessary.**

2. [12-13101](#)-B-12 JORGE TIJERINA  
LKW-15  
LEONARD WELSH/MV  
  
LEONARD WELSH/Atty. for dbt.

MOTION FOR COMPENSATION FOR  
LEONARD K. WELSH, DEBTOR'S  
ATTORNEY(S),  
2-10-14 [[139](#)]

**This matter will be advanced and called at the conclusion of the 1:30 p.m. calendar. No appearance is necessary at 3:00 p.m. This is a preliminary hearing. If there is no opposition, the motion will be granted. If anyone appears to oppose the motion at the scheduled time, the matter will be set for a final hearing on April 2, 2014, at 3:00 p.m.**

3. [13-16845](#)-B-7 KEYSTONE MINE MANAGEMENT MOTION FOR SANCTIONS FOR  
PWG-3 II VIOLATION OF THE AUTOMATIC STAY  
KEYSTONE MINE MANAGEMENT II/MV 1-10-14 [[63](#)]  
PHILLIP GILLET/Atty. for dbt.  
RESPONSIVE PLEADING

The Chapter 7 debtor moves for an award of sanctions against John Hagestad, who is the plaintiff in a pre-petition non-bankruptcy proceeding filed against the Debtor and numerous other parties in the Orange County Superior Court (the "State Court Action"). For the reasons set forth below, the court intends to deny the motion and will enter a civil minute order. No appearance is necessary.

The motion does not state the statutory grounds for relief, and 11 U.S.C. §362(k) has no application in this case. See *Johnston Env'tl. Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 619 (9th Cir. 1993) (excluding corporation as an "individual injured by any willful violation of a stay"). The motion requests nominal damages (presumably for attorney fees incurred in the State Court Action), but the debtor's state court attorney has not been employed to work on this case and there is no evidence to show that the Debtor has incurred any damages as a result of the alleged "stay violations." See *Eskano & Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 8 & n.8 (9th Cir. BAP 2002) (stating that "actual damages" under § 362(h) (now found at § 362(k)) requires a finding of actual injury). Likewise, the evidence does not establish that the respondent has done anything in the State Court Action against the Debtor or property of the estate since commencement of the case. See generally § 362(a) (staying certain activities against only the debtor, the debtor's property, and the estate's property). To the extent that the automatic stay has been violated with regard to estate property, the chapter 7 trustee is now the only party with standing to pursue that claim. See § 541(a)(7) (including within property of the estate any property acquired by the estate after commencement of the case); § 323(a) (stating that the trustee is the representative of the estate).

The State Court Action includes numerous claims against the non-debtor defendants, and the debtor makes no showing that discovery cannot proceed with regard to those claims without violating the automatic stay or causing harm to the debtor. The state court can decide if it is appropriate to stay all or part of the State Court Action against the non-debtor defendants for any reason other than the automatic stay in this bankruptcy.

It appears that the Debtor is really requesting an order from this court that its principals and co-defendants can lodge in the State Court Action in an effort to extend the automatic stay beyond § 362(a)'s limited scope and stay all discovery and further proceedings for the benefit of the non-debtor defendants. However, to the extent the Debtor is attempting to seek an extension of the automatic stay as to non-debtor entities, the Debtor's motion is substantively and procedurally deficient.

The Ninth Circuit has "consistently held that the automatic stay does not apply to suits against non-debtors." *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.)*, 502 F.3d 1086, 1905 (9th Cir. 2007). As a result, a party seeking an extension of the stay is actually requesting a new injunction under the court's § 105(a) authority. "Section 105(a) gives the bankruptcy courts the power to stay actions that are not subject to the 11 U.S.C. § 362(a) automatic stay but threaten the integrity of a bankrupt's estate." *Id.* at 1093 (internal quotation marks omitted). To determine whether to "extend the automatic stay," the Ninth Circuit has held that the "usual preliminary injunction standard applies" because the "usual standard helps to ensure that stays would not be granted lightly." *Id.* at 1095-96. In the bankruptcy context, this requires the bankruptcy court to consider (1) "whether the debtor has a reasonable likelihood of a successful reorganization," (2) "the relative hardship of the parties," and (3) "any public interest concerns if relevant." *Id.* at 1096. In this case, however, the Debtor has not made any showing as to any of the three factors to justify injunctive relief. There is no reorganization in progress, the "Debtor" has no functioning operations, all assets of the estate are vested in the chapter 7 trustee and cannot be transferred or diminished in the State Court Action, and there is no "public interest" that needs to be protected through the injunctive powers of this court.

Further, the Debtor's request is procedurally improper. To the extent the Debtor is asking this court to enjoin non-bankruptcy proceedings against non-debtor parties, the Debtor cannot proceed by motion in the main bankruptcy case. Bankruptcy Rule 7001 requires an adversary proceeding for "a proceeding to obtain an injunction or other equitable relief." Fed. R. Bankr. P. 7001(7).

3:30 P.M.

1.	<u>13-16914</u> -B-7	GREGORY CARDOZA AND ANNA	MOTION TO DISMISS ADVERSARY
	<u>14-1010</u>	MENDOZA CRS-1	PROCEEDING/NOTICE OF REMOVAL
		TERRY V. MENDOZA	2-11-14 [7]
		CYNTHIA SCULLY/Atty. for mv.	

The defendant moves to dismiss this adversary proceeding under FRCP 12(b)(6) for failure to state a claim for relief. The court intends to grant the motion. The adversary proceeding will be dismissed with leave to amend. The amended complaint shall be filed and served not later than March 26, 2014. No responsive pleading is required unless and until the court orders one. The court intends to review the amended complaint at the status conference on April 3, 2014, and may *sua sponte* dismiss it again if the problems have not been adequately addressed. The court will prepare a civil minute order. No appearance is necessary.

The complaint attempts to plead one claim for relief based on "fraud" under 11 USC § 523(a)(2)(A). The circumstances underlying the fraud claim are not pled with particularity in compliance with FRCP 9(b). The allegations are conclusory and do not establish a plausible right to relief. The alleged "fraud" took place more than two years before the defendant stopped paying on the contract. The "statements" referred to in paragraph 14 need to be detailed with regard to time, place, and content. The pleading needs to show how statements concerning the defendant's "competence," made more than two years before the contract breach, are relevant to the fraud claim. Absolutely no facts are pled to support a finding that the defendant's statements were false at the time, or that she intended to deceive the plaintiff. Finally, the allegations in paragraph 17 have no apparent relevance to the fraud claim.