

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, March 6, 2014
Place: U.S. Courthouse, 510 19th 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.

9:00 A.M.

- | | | | |
|----|--------------------------------------|--|--|
| 1. | <u>12-10963</u> -B-7 | TEJWANT/KIRPAL BAL
VAG-1
TEJWANT BAL/MV | CONTINUED MOTION FOR SANCTIONS
FOR VIOLATION OF THE DISCHARGE
INJUNCTION
10-17-13 [<u>24</u>] |
| | | VINCENT GORSKI/Atty. for dbt.
RESPONSIVE PLEADING | |
| 2. | <u>12-10963</u> -B-7 | TEJWANT/KIRPAL BAL | CONTINUED STATUS CONFERENCE RE: |
| | <u>13-1129</u> | STAN BOYETT & SON, INC. V. BAL
ET AL | COMPLAINT, JURY DEMAND |
| | | BONNIE ANDERSON/Atty. for pl. | 11-19-13 [<u>1</u>] |
| 3. | <u>13-11271</u> -B-7 | SUKHJINDER SINGH | FINAL PRE-TRIAL HEARING RE: |
| | <u>13-1083</u> | TOOR V. SINGH | COMPLAINT |
| | | WILLIAM OLCOTT/Atty. for pl.
RESPONSIVE PLEADING | 7-23-13 [<u>1</u>] |

Neither party has filed a final pretrial statement in compliance with the court's scheduling order dated January 14, 2014. Accordingly, the court intends to dismiss the adversary proceeding. Any party who opposes dismissal shall appear at the status conference and show cause why the adversary proceeding should not be dismissed.

4. [12-17199](#)-B-7 GURSEV KAUR CONTINUED STATUS CONFERENCE RE:
[12-1188](#) AMENDED COMPLAINT
 VETTER V. KAUR 11-16-12 [[6](#)]
 RENE LASTRETO/Atty. for pl.
 RESPONSIVE PLEADING

This matter will be continued to April 3, 2014, at 9:00 a.m., to be called with the debtor's motion to dismiss the main case. If the main case is dismissed the court intends to also dismiss the adversary proceeding. The court will prepare a minute order. If the trustee has no opposition to dismissal of the adversary proceeding, the parties may submit a stipulation and order in lieu of a further hearing. No appearance is necessary.

5. [12-17199](#)-B-7 GURSEV KAUR
CRS-3
GURSEV KAUR/MV
CYNTHIA SCULLY/Atty. for dbt.

MOTION TO DISMISS CASE
2-12-14 [[101](#)]

This matter will be continued to April 3, 2014, at 9:00 a.m., for a final hearing. The evidence offered in support of the motion and the record do not show that claims numbers 3, 4, and 5, have been fully satisfied. The debtor's declaration appears to be both hearsay and conclusory and the subject claims have not been withdrawn. If the chapter 7 trustee opposes dismissal, he shall file and serve his opposition not later than March 20, 2014. Assuming the debtor can make a proper showing with regard to satisfaction of the claims, the trustee's opposition shall address the issue of whether it is appropriate to continue administering an estate that has no remaining prepetition claims and nothing but administrative expenses. If the trustee does not oppose dismissal, the parties may submit a stipulation and order in lieu of a further hearing. The court will prepare a minute order. No appearance is necessary.

10:00 A.M.

1. [12-18202](#)-B-7 DESIREE SERNA MOTION TO COMPROMISE
KDG-3 CONTROVERSY/APPROVE SETTLEMENT
JEFFREY VETTER/MV AGREEMENT WITH DESIREE A.
SERNA, EZ LUBE AND TENA
2-6-14 [[51](#)]

PATRICK KAVANAGH/Atty. for dbt.
LISA HOLDER/Atty. for mv.

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.

2. [14-10323](#)-B-7 RAYMOND JR. AND JEAN ORDER TO SHOW CAUSE - FAILURE
GIEGER TO PAY FEES
2-12-14 [[13](#)]

WILLIAM EDWARDS/Atty. for dbt.
\$306 FILING FEE PAID 2/13/14

The record shows that the required fee has been paid in full. The OSC will be dropped from calendar. No appearance is necessary.

3. [13-17438](#)-B-7 ALISA TODAHL OPPOSITION RE: TRUSTEE'S MOTION
VG-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
1-23-14 [[10](#)]

STEVEN STANLEY/Atty. for dbt.

4. [13-17347](#)-B-7 TRAVIS/ELIZABETH
FPS-1 BLATTENBERG
TRAVIS BLATTENBERG/MV

MOTION TO AVOID LIEN OF BRIAN
BICKFORD AND/OR MOTION TO AVOID
LIEN OF THE PEOPLE OF THE STATE
OF CALIFORNIA , MOTION TO AVOID
LIEN OF CAPITAL ONE BANK (USA),
N.A.
1-29-14 [[13](#)]

FRANK SAMPLES/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. As to Capital One Bank, U.S.A., the motion will be granted without oral argument for cause shown. The moving party may submit an appropriate order.

As to respondent Brian Bickford, the motion will be denied without prejudice. The record does not establish that the motion was served on the named respondent, Brian Bickford in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(1) (service on an individual).

As to the motion seeking to avoid an abstract of judgment held by "The People of the State of California," the motion will be denied without prejudice. Based on paragraph 3 of the abstract of judgment, the actual holder of this lien appears to be the Kern County District Attorney's Office.

The abstract of judgment was filed by Lisa S. Green, District Attorney of Kern County, in a civil small claims case captioned "The People of the State of California vs. Sunset Pools, a general partnership, et al." The judgment was entered in the amount of \$5,000 and appears to be a civil fine assessed by the Kern County District Attorney's Office. The debtors are named in the abstract as "additional judgment debtors" both as general partners and individually. The judgment creditor in the abstract is identified, in paragraph 3 of the abstract, as "Kern County District Attorney's Office." The motion must name the correct respondent and be served in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(6), or (8), service on a state or municipal corporation or other governmental organization that has not listed a service address in the Roster of Public Agencies. Thus, the Kern County District Attorney's Office must be both identified in the motion as a respondent, and properly served pursuant to FRBP 7004(6), "by mailing a copy of the motion to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer." If the debtors wish to also bind the State of California, it too must be served pursuant to the same provision of the Federal Rules of Bankruptcy Procedure.

No appearance is necessary.

5. [13-16556](#)-B-7 PHENG/PHEAP CHAN CONTINUED MOTION TO DISMISS
UST-1 CASE FOR ABUSE
TRACY DAVIS/MV 12-20-13 [[21](#)]
FRANK SAMPLES/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
6. [11-10565](#)-B-7 MATTHEW/CHARITY LOEFFLER OPPOSITION RE: TRUSTEE'S MOTION
VG-1 TO DISMISS FOR FAILURE TO
APPEAR AT THE SEC. 341(A)
MEETING OF CREDITORS
2-7-14 [[64](#)]

TYSON TAKEUCHI/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.
7. [13-17865](#)-B-7 LAKHBIR SINGH ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-10-14 [[19](#)]

FEE PAID \$30.00

The record shows that the required fee has been paid in full. The OSC will be dropped from calendar. No appearance is necessary.

8. [14-10291](#)-B-7 TRUNIECE ISIAH ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-7-14 [[13](#)]
9. [11-61392](#)-B-7 RAMONA/JOSE LOPEZ MOTION TO AVOID LIEN OF CAPITAL
ORS-1 ONE BANK (USA) N.A.
RAMONA LOPEZ/MV 1-29-14 [[20](#)]
OSCAR SWINTON/Atty. for dbt.

The motion will be denied without prejudice. No appearance is necessary. The debtor did not exempt the residence that is the subject of this motion and the court cannot find that the subject judicial lien impairs an exemption that was not claimed.

In addition, the record does not establish that the motion was served on the named respondent in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(1) (service on an individual), 7004(b)(3) (corporation, partnership or unincorporated association) or 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Information regarding service on a corporation may be obtained from the California Secretary of State's Internet Website, see <http://kepler.sos.ca.gov/>. For a directory of FDIC Insured Institutions, see <http://www3.fdic.gov/idasp/main.asp>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004.

10. [11-19294](#)-B-7 DEBRA TWISSELMAN
KDG-6
RANDELL PARKER/MV

CONTINUED MOTION TO SELL AND/OR
MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH THOMAS GLEN
TWISSELMAN
12-13-13 [[92](#)]

ROBERT BRUMFIELD/Atty. for dbt.
LISA HOLDER/Atty. for mv.

This matter will be dropped from calendar. The court has revised and signed the proposed order. No objection was filed and no further hearing or appearance is necessary.

10:30 A.M.

1. [13-17617](#)-B-7 DEONE BRAXTON
APN-1
BMW BANK OF NORTH AMERICA/MV
STEVEN STANLEY/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-21-14 [[28](#)]

This motion for relief from the automatic stay will be denied as moot. The debtor(s) is (are) an individual(s). The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by § 521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. § 362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

2. [14-10125](#)-B-7 RICHARD LEWIS
MET-1
BANK OF THE WEST/MV
D. GARDNER/Atty. for dbt.
MARY TANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-31-14 [[9](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

3. [14-10226](#)-B-7 FERNANDO HERNANDEZ
SRS-1
GREEN TREE SERVICING LLC/MV
SARA SMITH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-13-14 [[20](#)]

4. [13-12227](#)-B-7 DONNA ROGERS
BHT-1
U.S. BANK NATIONAL
ASSOCIATION/MV
PATRICK KAVANAGH/Atty. for dbt.
BRIAN TRAN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-3-14 [[49](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

5. [13-17729](#)-B-7 DONALD HEDGES
PD-1
APEX COMMERCIAL CAPITAL
CORPORATION/MV
R. BELL/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-17-14 [[10](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

6. [13-17449](#)-B-7 AMY DRUMMOND
DJD-1
SETERUS, INC./MV
NEIL SCHWARTZ/Atty. for dbt.
DARREN DEVLIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-24-14 [[10](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

7. [14-10567](#)-B-7 CHARLES/Alice SWEARENGIN
JLW-1
CHARLES SWEARENGIN/MV
JENNIFER WINSLOW/Atty. for dbt.
BAPCPA

MOTION TO EXTEND AUTOMATIC STAY
2-19-14 [[9](#)]

8. [13-17277](#)-B-7 VIKI RADDEN
PPR-1
CALIFORNIA HOUSING FINANCE
AGENCY/MV
R. BELL/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-23-14 [[14](#)]

9. [13-18079](#)-B-7 MICHELLE MYERS
MBW-1
SAFE 1 CREDIT UNION/MV
FRANK SAMPLES/Atty. for dbt.
HAYDEE GARBERO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-14-14 [[13](#)]

11:00 A.M.

1. [13-16709](#)-B-7 GERALD/BEATRICE KING REAFFIRMATION AGREEMENT WITH
CIG FINANCIAL
1-23-14 [[16](#)]

NEIL SCHWARTZ/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtors' attorney signed the reaffirmation agreement certifying that he has explained the agreement to the debtors, but he did not check the box to state his opinion that the reaffirmed debt will not create an undue hardship. The bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. The reaffirmation agreement does not explain why the monthly expenses listed in part D of the agreement are significantly lower than the expenses listed on Schedule J. No appearance is necessary.

2. [13-16681](#)-B-7 KENDRIAL TERRANCE PRO SE REAFFIRMATION AGREEMENT
WITH HYUNDAI MOTOR FINANCE
1-16-14 [[17](#)]

FRANK SAMPLES/Atty. for dbt.

The hearing will be dropped from calendar. The court is not approving or denying approval of the reaffirmation agreement. Debtor(s) was (were) represented by counsel when he/she/they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The Debtor(s) shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney. No appearance is necessary at this hearing.

3. [13-17981](#)-B-7 GABRIEL/CHRISTY MANCERA PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
1-30-14 [[12](#)]

11:30 A.M.

1. [14-10588](#)-B-11 J & D WILSON AND SONS FINAL HEARING RE: RE: MOTION TO
KDG-1 DAIRY USE CASH COLLATERAL AND/OR
MOTION FOR ADEQUATE PROTECTION
JACOB EATON/Atty. for dbt.