

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, March 9, 2016
Place: Department B – Courtroom #13
Fresno, 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.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 A.M.

1. [15-14900](#)-B-7 BETTRINA KOUSOL
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
2-2-16 [[15](#)]

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for March 14, 2016, at 9:30 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

2. [15-14801](#)-B-7 DAVID ESCALANTE
RHT-1
ROBERT HAWKINS/MV
MICHAEL ARNOLD/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
1-27-16 [[14](#)]

Based on the debtor's response this matter will be continued to April 13, 2016, at 9:30 a.m., to be heard with the debtor's motion to convert the case from chapter 7 to one under chapter 13. The court will enter a civil minute order. No appearance is necessary.

3. [16-10114](#)-B-7 DANIEL URIBE
MDE-1
TOYOTA MOTOR CREDIT
CORPORATION/MV
GEORGE ALONSO/Atty. for dbt.
MARK ESTLE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-9-16 [[9](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered and 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 California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 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.

4. [15-14715](#)-B-7 COETA BENNETT

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-17-16 [[26](#)]

FILING FEE PAID 2/18/16

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

5. [16-10027](#)-B-7 RICHARD/SANDRA SARTUCHE MOTION FOR RELIEF FROM
 KEH-1 AUTOMATIC STAY
 BALBOA THRIFT & LOAN/MV 2-5-16 [[13](#)]
 KEITH HERRON/Atty. for mv.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' defaults will be entered and 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 California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 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. [11-61329](#)-B-7 SHERREY DEAVER MOTION TO COMPROMISE
 JES-2 CONTROVERSY/APPROVE SETTLEMENT
 JAMES SALVEN/MV AGREEMENT WITH SHERREY ANN
 DEAVER
 2-3-16 [[119](#)]

 PETER BUNTING/Atty. for dbt.

7. [14-13430](#)-B-7 STEPHEN/JENNIFER FORD
WFM-1
CITIBANK, N.A./MV
MICHAEL ARNOLD/Atty. for dbt.
WILLIAM MCDONALD/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-28-16 [[56](#)]

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 debtors 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 California Civil Code 2923.5. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 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.

8. [15-14833](#)-B-7 FRED ALLEN
BHT-1
THE BANK OF NEW YORK MELLON/MV
JOEL WINTER/Atty. for dbt.
BRIAN TRAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-1-16 [[24](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered and 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 California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 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.

9. [15-13536](#)-B-7 DAVID MOUNTAIN
KDG-1

OPPOSITION/OBJECTION TO CHAPTER
7 TRUSTEE'S REPORT OF NO
DISTRIBUTION
2-8-16 [[20](#)]

ROBERT WILLIAMS/Atty. for dbt.
HAGOP BEDOYAN/Atty. for mv.

The objection to the chapter 7 trustee's report is overruled. The case shall be kept open for the filing, by April 1, 2016, of an agreement for the assumption by the debtor of his lease with the objecting party. If the agreement to assume this lease is not completed and filed by April 1, 2016, then the case may be closed in the ordinary manner. The court will enter a civil minute order. No appearance is necessary.

10. [16-10144](#)-B-7 DANIEL YOUNG
JCW-1
NATIONSTAR MORTGAGE LLC/MV
GABRIEL WADDELL/Atty. for dbt.
JENNIFER WONG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-5-16 [[10](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor(s) default will be entered and 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 California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 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.

11. [12-15547](#)-B-7 DONNA/EVERETT DAVIS
RH-7
JAMES SALVEN/MV
GARY HUSS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-9-16 [[149](#)]

12. [12-15547](#)-B-7 DONNA/EVERETT DAVIS
RH-7
JAMES SALVEN/MV
GARY HUSS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-9-16 [[152](#)]

13. [12-11768](#)-B-7 ANGEL PICENO
MAZ-2
ANGEL PICENO/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO AVOID LIEN OF JP
MORGAN CHASE BANK, N.A.
2-11-16 [[26](#)]

This motion will be denied without prejudice. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 28 days' notice. The language in the notice requires written response within 14 days of the hearing, therefore the motion was also not filed in compliance with LBR 9014-1(f)(2).

In addition, the evidence does not support the motion in that there is no evidence that the debtor possessed an interest in the subject property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991). The court will prepare a minute order. No appearance is necessary.

14. [15-14978](#)-B-7 ROSEANNA RAMIREZ
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
2-2-16 [[10](#)]

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for March 14, 2016, at 10:30 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

15. [13-13180](#)-B-7 MARK MURANE
DEB-3
MARK MURANE/MV
DONNY BRAND/Atty. for dbt.

RESCHEDULED HEARING RE: MOTION
TO AVOID LIEN OF DISCOVER BANK
2-2-16 [[30](#)]

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

16. [14-12690](#)-B-7 ROBERT/CAROL HEINZ
JTW-2
JANZEN, TAMBERI & WONG/MV

JEFF REICH/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S)
2-5-16 [[43](#)]

This application/motion will be dropped from calendar. Pursuant to Federal Rules of Bankruptcy Procedure 2002(a)(6), the court may consider the applicant's request for compensation that does not exceed \$1,000 without a noticed hearing. The court will issue a civil minute order approving the application. No appearance is necessary.

17. [15-14995](#)-B-7 HIPOLITO MARIANO
NLG-1
SETERUS, INC./MV
RILEY WALTER/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-2-16 [[16](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and the debtor filed a notice of non-opposition. Accordingly, 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 California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 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.

11:00 A.M.

1. [16-10207](#)-B-7 RHONDA TEETER PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
2-19-16 [[19](#)]

2. [15-14328](#)-B-7 MINERVA LOYOLA REAFFIRMATION AGREEMENT WITH
ALLY FINANCIAL
2-1-16 [[16](#)]
DAVID LANGE/Atty. for dbt.

This reaffirmation agreement will be dropped from calendar without a disposition. The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed November 5, 2015, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to §365 (p)(1), the leased property is no longer property of the estate. Debtors' counsel will inform debtors that no appearance is necessary.

3. [15-14354](#)-B-7 ESTEBAN MORALES AND MARIA REAFFIRMATION AGREEMENT WITH
RODRIGUEZ BANK OF THE WEST
2-1-16 [[14](#)]
THOMAS GILLIS/Atty. for dbt.

The hearing will be dropped from calendar. The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when 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 debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

In addition, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. No appearance is necessary.

4. [15-14357](#)-B-7 ROSA SALAZAR

REAFFIRMATION AGREEMENT WITH
BMW FINANCIAL SERVICES NA, LLC
2-4-16 [[17](#)]

JANINE ESQUIVEL/Atty. for dbt.

This matter will be dropped from calendar without disposition. The debtor's declaration states, and the record shows, that an amended reaffirmation agreement and amended schedules B, C, I, and J, have been filed. Accordingly, this reaffirmation agreement has been superseded by the amended agreement and will be deemed to be withdrawn. No appearance is necessary.

5. [15-14496](#)-B-7 MAYRA SALAS

REAFFIRMATION AGREEMENT WITH
STERLING JEWELERS, INC.
2-16-16 [[15](#)]

SCOTT LYONS/Atty. for dbt.

The reaffirmation agreement is disapproved without prejudice. The agreement is ambiguous as to its terms. The stated terms of the reaffirmation agreement are inconsistent with the debtor's agreement to make the payments required by the agreement. The amount the debtor agrees to pay under the agreement is one-half the amount of the payment stated in the agreement. No appearance is necessary.

1:30 P.M.

1. [15-14707](#)-B-7 KARA RENFROE MOTION FOR ENTRY OF DEFAULT
 [15-1150](#) UST-1 JUDGMENT
 U.S. TRUSTEE V. RENFROE 1-26-16 [[9](#)]
 ROBIN TUBESING/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. Judgment will be entered against the debtor and in favor of the U.S. Trustee. The U.S. Trustee shall submit a proposed order. No appearance is necessary.

2. [15-13932](#)-B-7 VICTOR PASNICK STATUS CONFERENCE RE:
COMPLAINT
[16-1005](#)
BERGMAN V. PASNICK 1-11-16 [[1](#)]
DAVID HAMILTON/Atty. for pl.

The status conference will be continued to April 27, 2016, at 1:30 p.m., to be heard with the motion to dismiss. The court will enter a civil minute order. No appearance is necessary.

3. [15-11935](#)-B-7 LEROY WEBER MOTION FOR PARTIAL SUMMARY
[15-1100](#) BMS-1 JUDGMENT
 GREAT AMERICAN INSURANCE 1-29-16 [[15](#)]
 COMPANY V. WEBER
 JAMES STANLEY/Atty. for mv.
 RESPONSIVE PLEADING

4. [15-14169](#)-B-13 MICHELLE AVILA STATUS CONFERENCE RE: COMPLAINT
[15-1157](#) 12-31-15 [[1](#)]
U.S. TRUSTEE V. AVILA
ROBIN TUBESING/Atty. for pl.

It appears the defendant's default has been entered and a motion for a default judgment has been filed. The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. No appearance is necessary. The clerk of the court may close the adversary proceeding without notice in 60 days unless the adversary proceeding has been concluded or set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will prepare and enter a civil minute order.

5. [15-14169](#)-B-13 MICHELLE AVILA
[15-1157](#) UST-1
U.S. TRUSTEE V. AVILA
ROBIN TUBESING/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
2-10-16 [[10](#)]

The motion for entry of default judgment will be continued to April 13, 2016, at 1:30 p.m. The evidence filed in support of the motion does not satisfy the U.S. Trustee's burden of proof. Additional evidence may be filed by April 6, 2016.

While the complaint contains a list of prior bankruptcy case filings, the motion only lists one that was filed by this defendant, and that case was dismissed on January 5, 2016, before this motion was filed. The record does not show that the court retained jurisdiction, after dismissal of the main case, in this Adversary Proceeding.

The motion did not include a request for judicial notice regarding the other cases to which the U.S. Trustee refers in support of its motion and no evidence was submitted to show that this debtor was a co-debtor in those cases.

The U.S. Trustee shall address in a further brief the affect of a two-year bar on the chapter 7 trustee's administration of assets in the defendant's pending chapter 7 bankruptcy case. Should a bar be implemented without naming the existing trustee as a party? Creditors may be bound by provisional relief requested in this motion since the trustee is administering assets.

No appearance is necessary.

6. [15-14088](#)-B-7 GILBERTO ALMENDAREZ AND
[16-1007](#) HORTENCIA ALMANDAREZ
FIRST NATIONAL BANK OF OMAHA
V. ALMENDAREZ
DONALD DUNNING/Atty. for pl.
RESPONSIVE PLEADING

STATUS CONFERENCE RE: COMPLAINT
1-11-16 [[1](#)]