

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, March 23, 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. [15-13600](#)-B-7 CHRISTOPHER MARSHALL CONTINUED MOTION TO COMPEL
JES-1 TURNOVER TAX REFUNDS
JAMES SALVEN/MV 11-20-15 [[17](#)]
VARDUHI PETROSYAN/Atty. for dbt.
RESPONSIVE PLEADING

2. [16-10120](#)-B-7 SCOT/LANA HARDIE MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY AND/OR MOTION
CITIBANK, N.A./MV FOR ADEQUATE PROTECTION
2-11-16 [[15](#)]

THOMAS HOGAN/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.
CITIBANK, N.A. VS.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' 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.

3. [15-14922](#)-B-7 STEVEN LUNA
AP-1
U.S. BANK NATIONAL
ASSOCIATION/MV
MARK ZIMMERMAN/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-19-16 [[17](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and the debtor filed a notice of non-opposition. The trustee'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. [16-10528](#)-B-7 VINCE/FERNANDA WILSON
MAZ-1
VINCE WILSON/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
3-1-16 [[16](#)]

5. [15-14629](#)-B-7 VERNON/ALTA RENFROW
AP-1
WELLS FARGO BANK, NA/MV
PHILLIP GILLET/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-16-16 [[21](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' 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.

6. [15-12034](#)-B-7 KIRSTEN CERVELLI
RHT-1
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KIMBERLY
DESCHENE
2-18-16 [[20](#)]

TRUDI MANFREDO/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
WITHDRAWN

The trustee has withdrawn the motion. No appearance is necessary.

7. [15-14535](#)-B-7 JUSTIN SHERBROOK
JCW-1
GUILD MORTGAGE COMPANY/MV
JENNIFER WONG/Atty. for mv.
WITHDRAWN

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-11-16 [[35](#)]

The motion has been withdrawn. No appearance is necessary.

8. [15-14835](#)-B-7 VERDE AGRIBUSINESS, LLC MOTION FOR RELIEF FROM
FW-1 AUTOMATIC STAY
STERLING PACIFIC LENDING, 2-24-16 [[34](#)]
INC./MV
JOEL WINTER/Atty. for dbt.
PETER FEAR/Atty. for mv.
STERLING PACIFIC LENDING,
INC. VS.
9. [15-14736](#)-B-7 AMERICA DIAZ OPPOSITION RE: TRUSTEE'S MOTION
PFT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
1-20-16 [[18](#)]

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for March 25, 2016, at 8:30 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.

10. [15-14052](#)-B-7 FELIX GARCIA AND ELOISA MOTION TO AVOID LIEN OF
TOG-3 REYES FIRESIDE BANK
FELIX GARCIA/MV 2-16-16 [[17](#)]
THOMAS GILLIS/Atty. for dbt.

The motion will be denied without prejudice. No appearance is necessary. 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.

In addition, the property is not listed as exempt in schedule C.

11. [16-10456](#)-B-7 GEORGE/HELENA BONNETT MOTION TO COMPEL ABANDONMENT
MAZ-1 2-24-16 [[12](#)]
GEORGE BONNETT/MV
MARK ZIMMERMAN/Atty. for dbt.

12. [16-10456](#)-B-7 GEORGE/HELENA BONNETT MOTION TO COMPEL ABANDONMENT
MAZ-2 2-24-16 [[16](#)]
GEORGE BONNETT/MV
MARK ZIMMERMAN/Atty. for dbt.
13. [16-10167](#)-B-7 LAWRENCE/THERESA MCMEEN OBJECTION TO DEBTOR'S CLAIM OF
RHT-1 EXEMPTIONS
ROBERT HAWKINS/MV 2-24-16 [[11](#)]
JEFF REICH/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' default will be entered and the objection will be sustained without oral argument for cause shown without prejudice to the amendment of exemptions by the debtors. The trustee shall submit a proposed order. No appearance is necessary.

14. [15-14470](#)-B-7 RAUL/RAQUEL REYES MOTION TO EXTEND DEADLINE TO
TGM-1 FILE A COMPLAINT OBJECTING TO
PETER FEAR/MV DISCHARGE OF THE DEBTOR
2-16-16 [[15](#)]

STEVE FOX/Atty. for dbt.
PETER FEAR/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' default will be entered and the motion will be granted without oral argument for cause shown. The time for the trustee or the U.S. Trustee to file a complaint objecting to discharge under 11 U.S.C. §707(b), is extended up through and including April 30, 2016. The trustee shall submit a proposed order. No appearance is necessary.

15. [10-17476](#)-B-7 MARIA MEJIA
PBB-3
MARIA MEJIA/MV
PETER BUNTING/Atty. for dbt.

MOTION TO AVOID LIEN OF VION
HOLDINGS LLC
2-15-16 [[36](#)]

Based on the debtor's original *pro se* schedules indicating that the debtor did not have an ownership interest in the Delhi Property at the time the case was filed, the motion will be continued to April 14, 2016, at 9:30 a.m. On or before April 13, 2016, the debtor shall file evidence to show 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 debtor is moving to avoid the attachment of a judicial lien against her real property, located at 16470 Pacific Lane, Delhi, CA 95315, exempted under Cal.Civ.C. §703.140(b)(5). It appears from the record that the case was originally filed *pro se* by the debtor on July 1, 2010, shortly after this abstract of judgment was recorded on June 29, 2010, and has been reopened by the debtor's attorney for the purpose of avoiding the lien.

Cal.Civ.C. §703.140(b)(1) permits the debtor to exempt an interest in the debtor's homestead, and §703.140(b)(5) provides an exemption of the debtor's interest in any property in excess of the amount used in §703.140(b)(1) for the homestead, up to a ceiling that does not appear relevant in this motion.

In order to avoid the fixing of a lien under Cal.Civ.C. §703.140(b), the debtor must have owned an interest in the property being protected at the time the lien was recorded. The Schedule A originally filed in the case listed two parcels of property: the property in Delhi, which is the subject of this motion, as well as 845 Main Street, Livingston (the "Livingston Property"), which was also the address listed on the abstract of judgment mailed to the debtor. The debtor filed, as an exhibit to the motion, a copy of the interspousal transfer deed for the Livingston Property showing her ownership of that property as of 2003, but did not file a copy of the deed for the Delhi Property, which is the subject of this motion. Moreover, the original Schedule D lists the Delhi Property as "Family Home, 16470 Pacific Lane, Delhi, CA 95315, Belongs to son, Hilario Mejia." In addition, on the original SOFA, question 14, this property is listed as being held by the debtor but owned by Hilario Mejia, at the Delhi address. It appears that both properties were over-encumbered at the time the petition was filed, and the debtor exempted both parcels using Cal.Civ.C. §703.140(b)(1).

In conjunction with this motion the debtor filed amended schedules A, B, C, and D. Both the Livingston Property and the Delhi Property are listed in A as owned by the debtor in fee simple, however only the Delhi Property is listed as exempt on schedule C using Cal.Civ.C. §703.140(b)(5). The court will prepare and enter a civil minute order. No appearance is necessary.

16. [16-10084](#)-B-7 STEVE YOUNG
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
2-12-16 [[12](#)]

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for March 25, 2016, at 9:15 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.

17. [14-14590](#)-B-7 BRIAN/CATHERINE PHILLIPS
TMT-3
TRUDI MANFREDO/MV
GEOFFREY ADALIAN/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

OBJECTION TO CLAIM OF MARY L.
PHILLIPS, CLAIM NUMBER 26
2-8-16 [[40](#)]

The objection will be sustained without oral argument. The record reflects that the objection is unopposed. The claim will be disallowed on the grounds stated in the objection. The objecting party shall prepare the proposed order. No appearance is necessary.

18. [15-13993](#)-B-7 KIMBERLEY HACKETT
KSH-1
KIMBERLEY HACKETT/MV
KYLE HACKETT/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO REDEEM
2-8-16 [[16](#)]

This motion to value collateral of the respondent will be denied. Although the motion was not served on the respondent pursuant to FRBP 7004, the respondent waived that defect when it filed its opposition. However, the debtor was required by §521(a)(2)(A) to indicate her intention to redeem the debt for this vehicle in her Statement of Intent; instead she listed her intention as "reaffirmation" (although no reaffirmation agreement was filed in the case). Also, the statement of intent was not served on the secured creditor as required by FRBP 1007(b)(2). In addition, this motion to redeem was not filed within 30 days of the date first set for the meeting of creditors as required by §521(a)(2)(B). The court will enter a civil minute order. No appearance is required.

19. [14-14998](#)-B-7 SILARDO/OLIVIA CHAVANA
RH-6

CONTINUED MOTION FOR
COMPENSATION FOR ROBERT
HAWKINS, TRUSTEES ATTORNEY(S)
1-27-16 [[106](#)]

MARK ZIMMERMAN/Atty. for dbt.

This matter was continued for submission of additional documentation. The motion 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 fees will be approved. The moving party shall submit a proposed order. No appearance is necessary.

20. [15-14499](#)-B-7 FRANCES RINCON
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
2-3-16 [[27](#)]

SCOTT LYONS/Atty. for dbt.

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for March 25, 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.

Debtor's counsel shall notify his client that no appearance is necessary at this hearing.

11:00 A.M.

1. [15-14656](#)-B-7 WILLA COATS-TAYLOR

PRO SE REAFFIRMATION AGREEMENT
WITH VALLEY FIRST CREDIT UNION
3-2-16 [[23](#)]

1:30 P.M.

1. [15-14225](#)-B-7 LETICIA CAMACHO
CARLOS GARCIA/MV
GLEN GATES/Atty. for dbt.
CYNTHIA ARROYO/Atty. for mv.
RESPONSIVE PLEADING
CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-23-15 [[15](#)]
2. [15-14225](#)-B-7 LETICIA CAMACHO
[16-1009](#)
CAMACHO V. GARCIA ET AL
GLEN GATES/Atty. for pl.
RESPONSIVE PLEADING
STATUS CONFERENCE RE: COMPLAINT
1-19-16 [[1](#)]
3. [15-14228](#)-B-13 OSCAR GUTIERREZ
CARLOS GARCIA/MV
GLEN GATES/Atty. for dbt.
CYNTHIA ARROYO/Atty. for mv.
RESPONSIVE PLEADING
CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-23-15 [[21](#)]
4. [15-14228](#)-B-13 OSCAR GUTIERREZ
[16-1010](#)
GUTIERREZ V. GARCIA ET AL
GLEN GATES/Atty. for pl.
STATUS CONFERENCE RE: COMPLAINT
1-19-16 [[1](#)]
5. [15-13337](#)-B-7 HAROUT GEZALYAN
[15-1131](#)
BANDA V. GEZALYAN
CONTINUED ORDER TO SHOW CAUSE
1-15-16 [[7](#)]

The OSC will be continued to April 27, 2016, at 1:30 p.m. Plaintiff shall obtain a second re-issued summons and timely serve defendant as required by FRBP 7004(b) (9) and 7004(g). Failure to properly serve the defendant will result in dismissal.

This matter was fully noticed in compliance with the Local Rules and there has been no response by the defendant. Accordingly, the defendant's default will be entered and the motion will be granted in part and denied in part, without oral argument, based on well-pled facts.

The court notes that the subject property is identified in the amended complaint and in this motion as two "1979 Furhuel trailers;" the only trailers identified in the debtor's schedules are two 1979 Fruehauf trailers. The trailers are not identified by brand in the defendant's proof of claim. In order to conform the pleadings to the evidence, justice requires that under FRCP 15, as incorporated by FRBP 7015(b), leave to amend be granted; accordingly the complaint and motion will be deemed amended to conform to proof. The subject property consists of two Fruehauf trailers. The amendment to the complaint will relate back under FRCP 15(c), as incorporated by FRBP 7015(c) to September 4, 2013, the date the complaint was filed.

The defendant's default in this adversary proceeding was entered January 26, 2016. The plaintiff has not proven damages nor pled a legal basis for attorneys fees. Accordingly, the only relief provided in the default judgment against defendant Roy Baca will be as follows:

- A. The balance due for two 1976 Fruehauf trailers is declared paid through the chapter 13 plan;
- B. Defendant Roy Baca shall surrender good title to the trailers to plaintiff Carlos Fernandez within 14 days of the notice of entry of judgment;
- C. Costs of suit as proven by the plaintiff in a subsequent motion.

The plaintiff shall submit a proposed judgment consistent with this ruling and deemed amendment of the complaint and motion and that identifies with specificity the subject property. No appearance is necessary.