

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Wednesday, March 26, 2014
Place: Department B – Courtroom #12
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.

9:00 A.M.

1.	<u>13-15134</u> -B-7	FERNANDO GARCIA	CONTINUED STATUS CONFERENCE RE:
	<u>13-1121</u>		COMPLAINT
	U.S. TRUSTEE V. POPOVICH		11-1-13 [<u>1</u>]
	ROBIN TUBESING/Atty. for pl.		
	ORDER RESOLVING 2/26/14,		
	CLOSED		

This matter will be dropped from calendar. The Adversary Proceeding has been settled and is already closed. No appearance is necessary.

10:00 A.M.

1. [13-11508](#)-B-7 CANDACE SPENCE
DRJ-2
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CAPE COD TOWN
HOMES ASSOCIATION, ET AL.
AND/OR MOTION TO EMPLOY H.
WAYNE GREEN AS SPECIAL COUNSEL
, MOTION FOR COMPENSATION FOR
H. WAYNE GREEN, SPECIAL
COUNSEL(S),
2-22-14 [[32](#)]

DAVID JENKINS/Atty. for mv.

The motion to compromise a controversy or approve a settlement agreement 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. It appears from the record that the proposed settlement is sufficient to pay all unsecured claims and administrative expenses in full. Therefore, the trustee will be authorized to consummate the settlement of the state court litigation on the terms that were negotiated between the debtor, her counsel, and the defendant. The settlement proceeds shall be delivered to debtor's counsel, Wayne Green, who shall promptly turn over to the trustee sufficient funds to pay all allowed claims in full, plus interest, and allowed administrative expenses. The remainder of the funds shall remain property of the estate until the case is re-closed, subject to all applicable liens enforceable under state law. The moving party shall submit a proposed order. No appearance is necessary.

The motion to retroactively employ special counsel will be denied. The court has already authorized the trustee to employ general counsel with regard to this matter. It appears from the record that the proposed special counsel, Wayne Green, has completed all of the work required to conclude the state court litigation and that no further representation is required by the trustee in that proceeding. In addition, the applicant, attorney Green, is no stranger to the bankruptcy court and bankruptcy procedures. The declaration filed by attorney Green fails to adequately explain when he first learned of this bankruptcy and why he did not seek immediate authorization for retroactive employment at that time. Once this bankruptcy is concluded, attorney Green may distribute the surplus proceeds and exercise whatever rights and remedies he may have with regard to said funds under applicable non-bankruptcy law. No appearance is necessary.

2. [12-18909](#)-B-7 HARJINDER/JASVIR GILL
KDG-6
PETER FEAR/MV
THOMAS GILLIS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

OBJECTION TO CLAIM OF JOSE
SANTOYO, CLAIM NUMBER 19
2-10-14 [[371](#)]

The objection will be sustained in part without oral argument. The record reflects that the objection is unopposed. The claim will be allowed as a general unsecured claim in the amount of \$19,500, on the grounds stated in the objection. The objecting party shall submit the proposed order. No appearance is necessary.

3. [13-17628](#)-B-7 ALAN SHAPAZIAN
NEA-1
ALAN SHAPAZIAN/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

MOTION TO AVOID LIEN OF
CREDITORS BUREAU USA
1-24-14 [[17](#)]

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.

4. [13-17628](#)-B-7 ALAN SHAPAZIAN
NEA-2
ALAN SHAPAZIAN/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

MOTION TO AVOID LIEN OF TWO'S
COMPANY, INC.
1-24-14 [[21](#)]

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.

5. [13-17628](#)-B-7 ALAN SHAPAZIAN
NEA-3
ALAN SHAPAZIAN/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

MOTION TO AVOID LIEN OF TARGET
NATIONAL BANK
1-24-14 [[25](#)]

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.

6. [13-17628](#)-B-7 ALAN SHAPAZIAN
NEA-4
ALAN SHAPAZIAN/MV

MOTION TO AVOID LIEN OF
HOUSEHOLD FINANCE CORPORATION
OF CALIFORNIA
1-24-14 [[29](#)]

NICHOLAS ANIOTZBEHERE/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.

7. [11-11034](#)-B-7 JOE/JANIS EVANGELHO
TGM-2
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PETER L. FEAR
2-24-14 [[46](#)]

DAVID JENKINS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

8. [09-60745](#)-B-7 ROBERT/TAWNYA PIERCE
RH-1
SHERYL STRAIN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROBERT ELVIS
PIERCE AND TAWNYA NICOLE PIERCE
2-26-14 [[39](#)]

DAVID MATHIAS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This motion will be denied without prejudice. The moving papers do not explain what the controversy is and do not address the *A&C Properties* factors. The notice that was served on creditors does not comply with LBR 9014(1)(d)(4).

It is also not clear from the moving papers whether this is really a motion to sell property of the estate. Finally, nothing in the record explains why this case is still open and why it has taken the trustee over four years to administer this asset. No appearance is necessary.

9. [13-16448](#)-B-7 MARK SKOMSVOLD
KDG-4
MARK SKOMSVOLD/MV
HAGOP BEDOYAN/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS CENTURION BANK
2-25-14 [[40](#)]

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.

10. [13-17756](#)-B-7 PAQUITA GRIMES
JES-1
JAMES SALVEN/MV
ERIK GRAEFF/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
CONTINUED MOTION TO DISMISS
CASE
1-27-14 [[15](#)]

The motion will be denied and the matter will be dropped from calendar. It appears that the §341 meeting has been concluded and the debtor's attorney has complied with the civil minute order dated March 3, 2014. No appearance is necessary.

11. [13-13759](#)-B-7 JOHNNY GOLI
TMT-3
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.
MOTION FOR AUTHORITY TO FILE
SCHEDULE F
2-25-14 [[40](#)]

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.

12. [13-17082](#)-B-7 RONALD RUSHING
PLF-4
TRUDI MANFREDO/MV
SCOTT LYONS/Atty. for dbt.
PETER FEAR/Atty. for mv.
STIPULATED WITHDRAWAL
MOTION TO EMPLOY GOULD AUCTION
& APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
2-26-14 [[81](#)]

The matter has been withdrawn. No appearance is necessary.

13. [13-17082](#)-B-7 RONALD RUSHING
TMT-1
TRUDI MANFREDO/MV
SCOTT LYONS/Atty. for dbt.
PETER FEAR/Atty. for mv.
RESPONSIVE PLEADING
CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
EXTEND TIME TO FILE OBJECTIONS
TO DISCHARGE AND MOTIONS TO
DISMISS
12-12-13 [[23](#)]

14. [13-17588](#)-B-7 PAULITO/DELIA RAMIREZ
TMT-1
TRUDI MANFREDO/MV
SCOTT LYONS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
MOTION TO SELL
3-3-14 [[20](#)]

15. [13-17492](#)-B-7 DOUGLAS CRENSHAW
[14-1001](#) UST-1
U.S. TRUSTEE V. CRENSHAW
ROBIN TUBESING/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
2-25-14 [[10](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Based on the evidence presented in support of the motion, and well-pled facts in the complaint, a default judgment will be entered on the 1st claim for relief. The remaining claims for relief will be dismissed as moot. The U.S. Trustee shall submit a proposed order granting the motion and a proposed judgment. No appearance is necessary.

16. [11-62196](#)-B-7 MANUEL/MARY MATOS
TGM-2
PETER FEAR/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JAMES E. SALVEN,
CHAPTER 7 TRUSTEE
2-24-14 [[50](#)]

RILEY WALTER/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

10:30 A.M.

1. [12-16724](#)-B-7 RAY/SHIRLEY CROUCH MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
GREEN TREE SERVICING LLC/MV 3-12-14 [[45](#)]
VINCENT GORSKI/Atty. for dbt.
CHRISTINA O/Atty. for mv.
DISCHARGED

2. [13-17734](#)-B-7 SHARON MARTINEZ MOTION FOR RELIEF FROM
JCW-1 AUTOMATIC STAY
BANK OF AMERICA, N.A./MV 2-14-14 [[24](#)]
PETER FEAR/Atty. for dbt.
JENNIFER WONG/Atty. for mv.
DISCHARGED

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.

3. [13-17734](#)-B-7 SHARON MARTINEZ MOTION FOR RELIEF FROM
RWR-2 AUTOMATIC STAY
PACIFIC SERVICE CREDIT 3-10-14 [[30](#)]
UNION/MV
PETER FEAR/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.
DISCHARGED

4. [14-10034](#)-B-7 OSCAR/LISA MONTEZ
MRG-1
CAPITAL ONE AUTO FINANCE/MV
MICHAEL GONZALES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-25-14 [[18](#)]

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.

5. [13-16171](#)-B-7 FRANCES PASS
APN-1
TOYOTA MOTOR CREDIT
CORPORATION/MV
GABRIEL WADDELL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-13-14 [[38](#)]

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.

6. [14-10676](#)-B-7 ROBERT/MARY CAMERON
CJO-1
HYUNDAI MOTOR FINANCE/MV
ERIC ESCAMILLA/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-28-14 [[16](#)]

11:00 A.M.

1. [13-17709](#)-B-7 ALICIA ALVARADO

REAFFIRMATION AGREEMENT WITH
NISSAN MOTOR ACCEPTANCE
CORPORATION
2-21-14 [[23](#)]

THOMAS GILLIS/Atty. for dbt.

The court intends to deny approval of the reaffirmation agreement and the hearing will be dropped from calendar. Debtor was represented by counsel when she 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). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. No appearance is necessary at this hearing.

2. [14-10228](#)-B-7 NORMA SCHAEFERS

REAFFIRMATION AGREEMENT WITH
AMERICREDIT FINANCIAL SERVICES,
INC.
2-27-14 [[11](#)]

PAUL JAMES/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. No appearance is necessary.

3. [13-17938](#)-B-7 JOEL/VERONICA CAMPBELL

REAFFIRMATION AGREEMENT WITH
CAPITAL ONE AUTO FINANCE
2-27-14 [[14](#)]

PETER FEAR/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. No appearance is necessary.

4. [13-17655](#)-B-7 MANUEL/SUSAN MERCADO

PRO SE REAFFIRMATION AGREEMENT
WITH JPMORGAN CHASE BANK, N.A.
3-4-14 [[24](#)]

5. [13-17655](#)-B-7 MANUEL/SUSAN MERCADO CONTINUED REAFFIRMATION
AGREEMENT
1-17-14 [\[13\]](#)
6. [13-17655](#)-B-7 MANUEL/SUSAN MERCADO PRO SE REAFFIRMATION AGREEMENT
WITH BANK OF THE WEST
3-4-14 [\[22\]](#)
7. [13-17068](#)-B-7 RICHARD/PATTI COLVARD PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
3-4-14 [\[20\]](#)
8. [14-10398](#)-B-7 LAURA GEIGER REAFFIRMATION AGREEMENT WITH
TOYOTA MOTOR CREDIT CORPORATION
2-24-14 [\[17\]](#)
- KARNEY MEKHITARIAN/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 did not check the box to state an 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.