

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 28, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	13-28404-D-7	JOSEPH/SARAH HILL	MOTION TO AVOID LIEN OF
	SLE-1		AMERICAN EXPRESS CENTURION BANK
			2-20-18 [20]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

2. 18-20906-D-7 VLADIMIR NIKITIN MOTION TO COMPEL ABANDONMENT
MS-1 2-21-18 [7]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtor's motion to compel the trustee to abandon property and the debtor has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

3. 18-20906-D-7 VLADIMIR NIKITIN MOTION TO AVOID LIEN OF BMO
MS-2 HARRIS BANK, N.A.
2-21-18 [12]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

4. 18-20906-D-7 VLADIMIR NIKITIN MOTION TO AVOID LIEN OF
MS-3 ANATOLIY TREPACHKO
2-21-18 [17]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

5. 11-31916-D-7 ELSIDDIG ELHINDI AND MOTION FOR COMPENSATION FOR
GMR-2 ROBIN JONES GABRIELSON & COMPANY,
ACCOUNTANT(S)
2-26-18 [65]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

6. 17-24417-D-12 JERRY WATKINS
CA-2
CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
10-2-17 [12]
7. 17-24417-D-12 JERRY WATKINS
CA-3
CONTINUED MOTION TO VALUE
COLLATERAL OF OCWEN LOAN
SERVICING, LLC
10-25-17 [24]
8. 17-21127-D-7 HAZEL 71, INC.
KJH-3
MOTION FOR COMPENSATION FOR
KIMBERLY HUSTED, CHAPTER 7
TRUSTEE
2-21-18 [91]
9. 15-24747-D-7 RAYMOND POQUETTE
BHS-5
MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR JEFF
WILSON, BROKER
2-28-18 [116]

10. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR COMPENSATION FOR
GJH-21 JOSEPH M. SULLIVAN CPA, INC.,
ACCOUNTANT(S)
2-28-18 [1033]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

11. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR COMPENSATION FOR
GJH-22 GONZALES & ASSOCIATES, INC.,
ACCOUNTANT(S)
2-28-18 [1043]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

12. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO SELL
GJH-23 2-28-18 [1038]

13. 11-40353-D-7 RODNEY/CRYSTAL JACKSON MOTION TO COMPROMISE
DMW-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RODNEY AND
CRYSTAL JACKSON
2-21-18 [51]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

14. 16-24067-D-7 BUTTACAVOLI INDUSTRIES, MOTION TO COMPROMISE
DNL-3 INC. CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MILGARD
MANUFACTURING, INC.
2-27-18 [34]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

15. 18-20867-D-7 RICHARD OVERHOLT MOTION FOR RELIEF FROM
MBW-1 AUTOMATIC STAY
SAFE CREDIT UNION VS. 3-2-18 [9]

16. 16-27672-D-11 DAVID LIND MOTION TO CONVERT CASE TO
DNL-11 CHAPTER 7
2-14-18 [335]

17. 16-27672-D-11 DAVID LIND MOTION TO SET CHAPTER 11
DNL-13 ADMINISTRATIVE EXPENSE CLAIMS
BAR DATE
2-28-18 [350]

18. 17-20689-D-11 MONUMENT SECURITY, INC. MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 2-27-18 [235]
CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

19. 17-20689-D-11 MONUMENT SECURITY, INC. MOTION FOR AUTHORITY TO ENTER
ET-18 INTO INSURANCE PREMIUM FINANCE
AGREEMENT WITH IPFS CORPORATION
OF CALIFORNIA
2-14-18 [225]

Final ruling:

This is the debtor's motion for authority to enter into an insurance premium financing agreement. The motion was filed on February 14, 2018 and set for hearing on this date, March 28, 2018. However, according to the debtor's application for an order shortening time, filed February 26, 2018, the debtor had intended to set the motion for hearing on February 28, 2018. The debtor therefore applied for an order shortening time, so as to have the motion heard on February 28, 2018. The application was denied and the debtor then filed a second motion - virtually identical to this one, but denominated DC No. ET-19. That motion was set for hearing and heard on March 14, 2018, and the court ruled on the motion. Because the court has ruled on the motion which is DC No. ET-19, this motion, DC No. ET-18, is moot. The motion will be denied as moot by minute order. No appearance is necessary.

20. 18-20891-D-7 JENEE SELSOR ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-2-18 [14]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

21. 17-26997-D-7 MANUEL/MARISOL LARA
LT-2

MOTION TO COMPEL ABANDONMENT
2-27-18 [31]

Final hearing:

This is the debtors' motion to compel the trustee to abandon two motor vehicles. The moving parties served the chapter 7 trustee, the United States Trustee, and the creditor holding a lien on the encumbered vehicle, but failed to serve the other creditors in this case. Thus, the moving parties failed to serve the motion in accordance with Fed. R. Bankr. P. 6007.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors" On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of Fed. R. Bankr. P. 6007. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

The hearing will be continued to April 11, 2018, at 10:00 a.m., the moving parties to file a notice of continued hearing (pursuant to LBR 9014-1(f)(2) - no written opposition required) and serve it on all creditors in this case no later than March 28, 2018. The hearing will be continued by minute order. No appearance is necessary on March 28, 2018.

22. 17-26997-D-7 MANUEL/MARISOL LARA
LT-3

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
2-27-18 [24]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

Tentative ruling:

This is the debtors' motion to convert this chapter 7 case to a case under chapter 13 of the Bankruptcy Code. Tapan Trivedi, Administrator of the Estate of Ortansa Ambrus-Cernat (the "Creditor") has filed opposition, the debtors have filed a reply, and the Creditor has filed a sur-reply.¹ The Creditor specifically does not consent to the resolution of disputed material factual issues on declarations, requests an evidentiary hearing, and has filed a separate statement of material disputed facts. In the circumstances of this case, the court intends to grant that request.

The debtors bring the motion on the ground that the joint debtor has found employment since the petition was filed. Specifically, whereas she scheduled unemployment benefits of \$1,950 per month as her sole source of income on the debtors' Schedule I, she has now become employed as Manager of the Office/Marketing/Recruiting with Your Choice Home Health Care, Inc. at a salary of \$8,700 per month. The debtors state they intend to propose a chapter 13 plan that would pay 100% to their general unsecured creditors, to include the Creditor only if the Creditor obtains a judgment against the debtors in pending Adv. No. 18-2014.² Although the debtors' monthly net income, with the joint debtor's new job, is \$4,405 (up from <\$144> at the commencement of the case), they propose to pay only \$1,000 per month into their plan, so as to pay 100% of general unsecured claims totaling \$23,434, and if the Creditor's claim is reduced to judgment, the debtors will increase their plan payment to \$4,405.³ The debtors state in their motion "[t]he Proposed Plan represents the best terms that the Debtor[s] can prudently offer to the Court." Debtors' Motion, DN 16, at 4:17-18. Of course, they might prudently offer significantly more than \$1,000 per month, presumably as much as \$4,405, and pay off the undisputed claims, a total of \$23,434, much more quickly.

The court has several other concerns. First, the debtors cite no authority for the proposition that they should be permitted to defer distributions on a claim they contend is contingent, unliquidated, and disputed until the Creditor obtains a judgment in the pending adversary proceeding, with no provision even for making and holding in an escrow fund monthly payments that would go toward that claim if the Creditor obtains a judgment.

Second, the debtors failed to appear at any of the three scheduled sessions of the meeting of creditors. As to the first two, the debtors claim debtor Gevorg Poladyan was experiencing "heart issues" and "felt ill" due to complications from open heart surgery in 2017. This raises the question why the debtors listed the amount of their medical and dental expenses at \$0 on their original Schedule J and the amended schedule they filed as an exhibit to this motion, and why they show no expense for health insurance premiums on Schedule J and no deduction for insurance premiums from the joint debtor's salary from her new job on Schedule I. This alone would seem to raise doubts about the feasibility of any plan. The third session of the meeting of creditors was scheduled for February 26, 2018, two days after the debtors filed this motion. They state in their reply they did not appear at that session on the advice of their attorney, due to this pending motion. They thereby, albeit relying on counsel, deprived creditors and the trustee of the opportunity to question them about their financial affairs.

Third, the debtors scheduled three secured claims - a first deed of trust in favor of Citimortgage in the amount of \$47,565 and second and third deeds of trust in favor of Outsource Legal Support, LLC in the amounts of \$100,000 and \$80,000, respectively. Yet only Citimortgage is provided for in the proposed plan (in Class 4).⁴ As the Creditor contends, the Outsource deeds of trust are cause for significant concern. The debtors' Schedule D indicates their debts owed to Outsource were incurred in October of 2012 and April of 2013, respectively. Their Schedule D does not indicate when Outsource's deeds of trust were signed and recorded.

The Creditor has filed as exhibits to the adversary complaint copies of two deeds of trust in favor of Outsource that were recorded on September 5, 2017, two months before the debtors filed their petition. The deeds of trust appear to bear the debtors' signatures; the notary jurats state the debtors appeared and signed the deeds of trust on August 22, 2017. The deeds of trust list the amounts secured by them as \$80,000 and \$100,000, respectively.⁵ The signing and recording of those deeds of trust represented the transfer and perfection of security interests in the debtors' property within the two-year period prior to their bankruptcy filing (indeed, less than 90 days prior) that was required to be disclosed on their statement of affairs.

Yet in answer to question 18, where required to list any sales, trades, or transfers of property within the prior two years other than in the ordinary course of their business or financial affairs, the debtors listed only two vehicles they sold through Craigslist in April and June of 2017. Although the question required them to include "both outright transfers and transfers made as security (such as the granting of a security interest or mortgage on [their] property)," they did not list any transfers to Outsource. The motion states that the Creditor's attorney has raised the possibility the Outsource deeds of trust might be avoidable as preferences. Yet the debtors have not amended their statement of affairs to disclose the transfers.

In their reply, the debtors contend the transfers of the deeds of trust and financing statement were not preferential because "Debtors were not insolvent when the transfer[s] [were] made, as the equity in their property exceeded \$100,000.00." Debtors' Response, DN 27, at 3:21-22. The debtors scheduled the value of their real property at \$290,000 with a lien against it for \$47,565 before they gave Outsource the deeds of trust. They listed the business assets of In N Out Honda at \$34,260 and their other personal property at \$12,705, bringing their total assets to \$289,400 in equity. After the transfers of the deeds of trust and financing statement to Outsource, this amount was reduced to \$109,400. However, prior to the transfers, the debtors owed \$180,000 to Outsource on an unsecured basis and \$233,434 to other unsecured creditors, for unsecured debts totaling \$413,434.

The analysis of "insolvent" for preference purposes looks not just at the equity in the property encumbered by the transfers but, generally, at the debtors' balance sheet as a whole. See In re Imagine Fulfillment Servs., LLC, 489 B.R. 136, 144-45 (Bankr. C.D. Cal. 2013), citing In re Koubourlis, 869 F.2d 1319, 1321 (9th Cir. 1989). The debtors' dispute of the Creditor's claim may have some effect on the solvency analysis; however, the court has no need to determine it here. The court's concerns for present purposes are that (1) the debtors gave security interests in their real property and business assets to a creditor, Outsource, several years after they incurred the debts to Outsource and within 90 days prior to their bankruptcy filing; and (2) they failed to disclose the transfers where required to do so on their statement of financial affairs. The court notes the

debtors have offered no explanation, in either the motion or their reply, as to why they made the transfers.

In Marrama v. Citizens Bank, 549 U.S. 365, 371 (2007), the Supreme Court held that a debtor does not have an absolute right to convert a chapter 7 case to chapter 13. The Court expressly did not "articulate with precision what conduct qualifies as 'bad faith'" sufficient to permit a judge to deny a motion to convert (549 U.S. at 375 n.11), but the Court did conclude that "the courts in this case correctly held that Marrama forfeited his right to proceed under Chapter 13." Id. at 371. In Marrama, the debtor made misleading or inaccurate statements in his schedules about the value of his house and about his transfer of the house into a trust, which he later attempted to explain as a "scrivener's error," and failed to disclose his right to an \$8,745 tax refund. The facts in this case are sufficiently similar to those in Marrama for this court to conclude that an evidentiary hearing would be appropriate.

The court will hear the matter.

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- 1 The filing of the sur-reply was not authorized by the local rules; however, it does not change the court's analysis.
 - 2 By the adversary complaint, the Creditor seeks a determination that the debtors' debt to the Creditor is nondischargeable under § 523(a)(2), (4), and (6). Filed as an exhibit to the complaint is a copy of the Creditor's state court complaint against the debtors for breach of contract and money lent. The Creditor states a default judgment was entered against the joint debtor. The debtors state no default was entered against either of them.
 - 3 The Creditor has filed a proof of claim for \$279,510.
 - 4 Although the debtors testify they "have no interest or hold or have ever held any interest or managing position in Outsource" (Debtors' Decl., DN 18, ¶ 9), they do not explain why they are, apparently, free to defer payments to Outsource while this case is pending.
 - 5 Outsource also filed a UCC-1 financing statement on November 1, 2017, just one week prior to the debtors' bankruptcy filing. The financing statement names as the debtor In N Out Honda, listed by the debtors on their statement of affairs as a trade name of debtor Gevorg Poladyan. The financing statement purports to encumber all machinery, equipment, furniture, tools, fixtures, inventory, and accounts receivable. The debtors scheduled the value of the assets of In N Out Honda at \$34,260.

24. 12-25010-D-7 MICHAEL HARRIS AND RONDA MOTION TO AVOID LIEN OF CAPITAL
PGM-1 HAYNES ONE BANK (USA), N.A.
3-8-18 [20]

25. 12-25010-D-7 MICHAEL HARRIS AND RONDA MOTION TO AVOID LIEN OF
PGM-2 HAYNES CITIBANK, N.A.
3-8-18 [26]

26. 18-21013-D-7 DAVID RYDER ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-9-18 [15]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

27. 18-20648-D-7 BARBARA SULLIVAN MOTION FOR RELIEF FROM
DVW-1 AUTOMATIC STAY
3-2-18 [11]

21ST MORTGAGE CORPORATION
VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates she intends to surrender the collateral and the trustee has filed a statement of non-opposition. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

28.	18-20954-D-7	MICHAEL GARCIA, AND	MOTION FOR RELIEF FROM
	BPC-1	MELISSA GARCIA	AUTOMATIC STAY
	THE GOLDEN 1 CREDIT UNION		3-9-18 [9]
	VS.		

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

29.	17-28363-D-7	CHESTER JIMERSON AND	MOTION TO EXTEND DEADLINE TO
	DNL-3	SUNITA RANI	FILE A COMPLAINT OBJECTING TO
			DISCHARGE OF THE DEBTOR
			3-14-18 [34]

30.	17-28363-D-7	CHESTER JIMERSON AND	MOTION TO CONVERT CASE TO
	SNM-1	SUNITA RANI	CHAPTER 13
			3-6-18 [29]

31.	17-22275-D-7	CALIFORNIA GOLF	MOTION TO PAY
	DNL-8	PROPERTIES, LLC DBA RIVER	3-8-18 [101]

32. 17-20689-D-11 MONUMENT SECURITY, INC. MOTION FOR COMPENSATION BY THE
ET-20 LAW OFFICE OF EASON &
TAMBORNINI, ALC FOR MATTHEW R.
EASON, DEBTOR'S ATTORNEY(S)
3-6-18 [247]
33. 18-20108-D-7 BRANDON PORTER TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
2-15-18 [21]