

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, April 27, 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. | 14-13200 -B-7 WAYNE/KAREN MARTIN
JES-4
JAMES SALVEN/MV
PETER BUNTING/Atty. for dbt.
PETER FEAR/Atty. for mv. | MOTION TO SELL
3-24-16 [43] |
| 2. | 16-10110 -B-7 KIO YOON
16-1023
YOON V. WEST RIDGE RENTALS,
LLC ET AL | CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-17-16 [1] |
| 3. | 16-10110 -B-7 KIO YOON
JES-1 | OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-25-16 [52] |
| 4. | 16-10110 -B-7 KIO YOON
SC-1
WEST RIDGE RENTALS, LLC/MV
SAM CHANDRA/Atty. for mv.
RESPONSIVE PLEADING | CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-9-16 [24] |
| 5. | 16-10112 -B-7 CHANG WOO
16-1024
WOO V. WEST RIDGE RENTALS, LLC
ET AL | CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-17-16 [1] |
| 6. | 16-10112 -B-7 CHANG WOO | OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-25-16 [52] |
| 7. | 16-10112 -B-7 CHANG WOO
SC-1
WEST RIDGE RENTALS, LLC/MV
SAM CHANDRA/Atty. for mv.
RESPONSIVE PLEADING | CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-4-16 [23] |

8. [16-10115](#)-B-7 KYOUNG HAN CONTINUED STATUS CONFERENCE RE:
[16-1022](#) COMPLAINT
HAN V. WEST RIDGE RENTALS, LLC 2-17-16 [[1](#)]
ET AL
9. [16-10115](#)-B-7 KYOUNG HAN OPPOSITION RE: TRUSTEE'S MOTION
JES-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-25-16 [[52](#)]
10. [16-10115](#)-B-7 KYOUNG HAN CONTINUED MOTION FOR RELIEF
SC-1 FROM AUTOMATIC STAY
WEST RIDGE RENTALS, LLC/MV 2-9-16 [[24](#)]
SAM CHANDRA/Atty. for mv.
RESPONSIVE PLEADING
11. [09-10723](#)-B-7 KAY/MIMI YANG MOTION TO AVOID LIEN OF CACH,
GH-2 LLC
KAY YANG/MV 3-24-16 [[29](#)]
GARY HUSS/Atty. for dbt.

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.

12. [15-12834](#)-B-7 JOHN HARRIS MOTION TO COMPEL ABANDONMENT
JRL-2 3-16-16 [[34](#)]
JOHN HARRIS/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

Although the debtor has withdrawn the motion to compel abandonment and agreed to turnover of the subject vehicle, the disposition of the proceeds from the sale are disputed. Accordingly, this matter has been transferred to Department A by an order dated April 25, 2016. No appearance is necessary.

13. [15-14539](#)-B-7 ROYALLEN/MARIA FRAUSTO MOTION TO SELL
TMT-1 3-22-16 [[19](#)]
TRUDI MANFREDO/MV
MARK ZIMMERMAN/Atty. for dbt.
TRUDI MANFREDO/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. The moving party shall submit a proposed order. No appearance is necessary.

14. [16-10439](#)-B-7 MARIA ANDRADE
GMA-1
MARIA ANDRADE/MV
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO AVOID LIEN OF DENNIS
M. WRIGHT
3-15-16 [[10](#)]

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.

15. [15-14949](#)-B-7 AUDREY IRELAND
EAT-1
NATIONSTAR MORTGAGE LLC/MV
ERIC ESCAMILLA/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-30-16 [[15](#)]

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 because her 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.

16. [16-11049](#)-B-7 CHRIS EASTRIDGE
CJO-1
NAVY FEDERAL CREDIT UNION/MV
SCOTT LYONS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-13-16 [[11](#)]

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.

17. [16-10565](#)-B-7 ALEX/NORMA VILLARREAL
APN-1
SANTANDER CONSUMER USA INC./MV
SCOTT LYONS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-21-16 [[10](#)]

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.

18. [12-11768](#)-B-7 ANGEL PICENO
MAZ-3
ANGEL PICENO/MV
MARK ZIMMERMAN/Atty. for dbt.

MOTION TO AVOID LIEN OF JP
MORGAN CHASE BANK, N.A.
3-10-16 [[34](#)]

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, JP Morgan Chase Bank, N.A., in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). See *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). 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.

The address of JPMorgan Chase Bank, N.A., is listed on the Secretary of State's website at 1111 Polaris Parkway in Columbus, Ohio. The documents submitted with the certificate of proof of service show that debtor served an officer of J.P. Morgan Chase & Co., in New York, NY, with the moving papers. Although the moving papers were mailed to respondent JP Morgan Chase Bank, N.A., in Ohio, they were not directed to the attention of an officer as required. The court will enter a civil minute order.

19. [16-10368](#)-B-7 MANUEL BENITEZ
TMT-1
TRUDI MANFREDO/MV
TRUDI MANFREDO/Atty. for mv.

MOTION TO RECONSIDER FEE WAIVER
ORDER
3-17-16 [[15](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Because of the debtor's miscalculation of his monthly income, the fee waiver was granted in error. Accordingly, the debtor's default will be entered and the court's order granting the application to proceed in *forma pauperis*, filed on February 18, 2016, will be vacated. The trustee's motion for reconsideration will be granted without oral argument for cause shown. The court will enter a civil minute order directing the clerk's office to enter an order for installment payments. No appearance is necessary.

20. [15-14597](#)-B-13 JAIME GONZALEZ
MJA-1
JAIME GONZALEZ/MV
MICHAEL ARNOLD/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
3-24-16 [[27](#)]

This matter will be dropped from calendar as moot. An order granting the debtor's request for a voluntary conversion to chapter 13 was issued on April 21, 2016. No appearance is necessary.

21. [16-10308](#)-B-7 GUADALUPE GUTIERREZ
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-15-16 [[22](#)]

DISMISSED

This case has already been dismissed by an order entered April 18, 2016. The opposition was not filed until April 20, 2016 and will be treated as a motion to vacate the dismissal pursuant to FRCP 60(b), incorporated into bankruptcy procedure by Bankruptcy Rule 9024. The deemed motion to vacate the dismissal will be denied without prejudice. While the debtor states that she traveled to Mexico for a family emergency, no evidence was submitted to show when the debtor learned of the emergency or of her attempts to contact the trustee. Accordingly, the motion to vacate will be denied. The court will enter a civil minute order.

22. [16-10284](#)-B-7 YOLANDA ARELLANO
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-25-16 [[10](#)]

OSCAR SWINTON/Atty. for dbt.

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for May 20, 2016, at 9:00 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 inform the debtor that no appearance is necessary.

The court will issue a civil minute order.

11:00 A.M.

1. [16-10328](#)-B-7 GILBERT REQUEJO

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
3-16-16 [[14](#)]

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 he 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 debtor' 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. 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 at this hearing.

1:30 P.M.

1. [15-14017](#)-B-11 CLUB ONE CASINO, INC.
WW-2
ELAINE LONG/MV

HAGOP BEDOYAN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.
ORDER #330

PRETRIAL CONFERENCE RE: MOTION
FOR ABSTENTION AND/OR MOTION TO
DISMISS CASE , MOTION TO
APPOINT TRUSTEE
11-21-15 [[178](#)]
2. [15-14021](#)-B-11 CLUB ONE ACQUISITION
WW-2 CORP.
ELAINE LONG/MV

T. BELDEN/Atty. for dbt.
HOLLY ESTES/Atty. for mv.

PRETRIAL CONFERENCE RE: MOTION
FOR ABSTENTION AND/OR MOTION TO
DISMISS CASE , MOTION TO
APPOINT TRUSTEE
11-21-15 [[52](#)]
3. [15-13932](#)-B-7 VICTOR PASNICK
[16-1005](#)
BERGMAN V. PASNICK
DAVID HAMILTON/Atty. for pl.

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

This matter will be continued to June 22, 2016, at 1:30 p.m. The court intends to grant the unopposed motion below. The court will enter a civil minute order. No appearance is necessary.

4. [15-13932](#)-B-7 VICTOR PASNICK
[16-1005](#) FW-1
BERGMAN V. PASNICK
GABRIEL WADDELL/Atty. for mv.

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
2-10-16 [[13](#)]

This motion to dismiss an adversary proceeding was fully noticed in compliance with the Local Rules and there is no opposition. Based on the motion and the court's review of the record, it appears that the complaint's allegations do not state a claim for relief under §523(a)(4). First, the facts alleged are insufficient to establish that the defendant is a fiduciary under §523(a)(4) as required by the Ninth Circuit, and second, the facts alleged do not establish the element of scienter as required by *Bullock v. BankChampaign, N.A.*, ---U.S. ---, 133 S.Ct. 1754, 1760, 185 L.Ed.2d 922 (2013). Accordingly, the respondent's default will be entered. The motion to dismiss the complaint will be granted, with leave to amend, without oral argument for cause shown.

The amended complaint shall be filed and served by May 18, 2016, and the responsive pleading is to be filed and served by June 8, 2016. The court will enter a civil minute order. No appearance is necessary.

5. [15-13337](#)-B-7 HAROUT GEZALYAN STATUS CONFERENCE RE: COMPLAINT
[15-1131](#) 10-27-15 [[1](#)]
BANDA V. GEZALYAN
MARIA BANDA/Atty. for pl.
6. [15-13337](#)-B-7 HAROUT GEZALYAN CONTINUED ORDER TO SHOW CAUSE
[15-1131](#) REGARDING DISMISSAL OF
BANDA V. GEZALYAN ADVERSARY PROCEEDING
1-15-16 [[7](#)]
7. [16-10064](#)-B-7 MATHEW/KEMBERLY BROWN STATUS CONFERENCE RE: COMPLAINT
[16-1025](#) 2-18-16 [[1](#)]
BROWN V. FORD MOTOR CREDIT
COMPANY
TIMOTHY SPRINGER/Atty. for pl.
NOTICE OF SETTLEMENT

This matter has been settled and an order dismissing the adversary proceeding was entered April 21, 2016. The status conference will be dropped from calendar and the clerk of the court may close the adversary proceeding without further notice. The court will prepare and enter a civil minute order.