

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

May 23, 2018 at 10:00 a.m.

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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.

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1.	17-21104-D-7	PHILIP RUSSO	MOTION TO COMPEL ABANDONMENT
	DCN-1		4-11-18 [18]

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.

2. 18-20604-D-11 BOB COOK COMPANY LLC CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-2-18 [1]

3. 18-21610-D-7 LORI EGGERS MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
SANTANDER CONSUMER USA, INC. 4-18-18 [11]  
VS.

**Final ruling:**

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'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 debtor is 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.

4. 14-25816-D-7 DEEPAL WANNAKUWATTE MOTION FOR COMPENSATION FOR  
DNL-68 HANK M. SPACONE, CHAPTER 11  
TRUSTEE  
4-25-18 [1257]

5. 17-20731-D-11 CS360 TOWERS, LLC MOTION FOR ENTRY OF DEFAULT  
17-2217 DB-1 JUDGMENT  
SHARP V. VAYSMAN 4-24-18 [18]

6. 17-20731-D-11 CS360 TOWERS, LLC  
DB-10

CONTINUED MOTION TO SELL FREE  
AND CLEAR OF LIENS  
12-18-17 [279]

7. 17-20731-D-11 CS360 TOWERS, LLC  
DB-9

CONTINUED MOTION TO USE CASH  
COLLATERAL  
12-6-17 [268]

8. 15-24747-D-7 RAYMOND POQUETTE  
GAR-2

MOTION TO COMPEL ABANDONMENT  
4-24-18 [147]

**Final ruling:**

This is the motion of interested party Paula Poquette to compel the trustee to abandon the estate's interest in certain real property. The moving party served the chapter 7 trustee, the trustee's attorney, the United States Trustee, the debtor, the debtor's former attorney, the chapter 7 trustee in the moving party's case, and a creditor requesting special notice, but failed to serve the several other creditors in this case. Thus, the moving party 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 June 6, 2018, at 10:00 a.m., the moving party to file a notice of continued hearing (pursuant to LBR 9014-1(f)(2) - no written opposition required) and serve it, together with the motion, on all creditors in this case no later than May 23, 2018. The hearing will be continued by minute order.<sup>1</sup> No appearance is necessary on May 23, 2018.

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1 The moving party should not file an "amended motion" - the rules do not provide for "amended" motions. The moving party will be required, however, to serve the original motion along with the notice of continued hearing.

9. 18-20954-D-7 MICHAEL GARCIA, AND  
JHW-1 MELISSA GARCIA  
ACAR LEASING LTD VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-17-18 [21]

**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.

10. 17-20261-D-7 PAULA POQUETTE  
GAR-1

MOTION TO COMPEL ABANDONMENT  
4-24-18 [90]

**Final ruling:**

This is the debtor's motion to compel the trustee to abandon the estate's interest in certain real property. The moving party served the chapter 7 trustee, the United States Trustee, the debtor's former spouse, the chapter 7 trustee in the former spouse's case and his attorney, the former spouse's former attorney, and a creditor requesting special notice, but failed to serve the several other creditors in this case. Thus, the moving party 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 June 6, 2018, at 10:00 a.m., the moving party to file a notice of continued hearing (pursuant to LBR 9014-1(f)(2) - no written opposition required) and serve it, together with the motion, on all creditors in this case no later than May 23, 2018. The hearing will be continued by minute order.<sup>1</sup> No appearance is necessary on May 23, 2018.

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1 The moving party should not file an "amended motion" - the rules do not provide for "amended" motions. The moving party will be required, however, to serve the original motion along with the notice of continued hearing.

11. 17-28363-C-13 CHESTER JIMERSON AND CONTINUED MOTION TO EXTEND  
DNL-3 SUNITA RANI DEADLINE TO FILE A COMPLAINT  
OBJECTING TO DISCHARGE OF THE  
DEBTOR  
3-14-18 [34]

**Final ruling:**

On April 26, 2018 this case was converted to a Chapter 13 and transferred to Department C. As such, the hearing on this motion is continued to June 5, 2018 at 2:00 p.m. to be heard by the , Hon. Christopher M. Klein. No appearance is necessary.

12. 17-28372-D-7 LAKESHA CRAIG MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 4-23-18 [16]

**Final ruling:**

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'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 debtor is 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.

13. 17-25974-D-7 FLORENJANE DOMINGO-TANGCO MOTION TO APPROVE LOAN  
LLH-1 MODIFICATION  
4-13-18 [15]

**Tentative ruling:**

This is the debtor's motion to modify the mortgage loan on her residence. The motion states that "[t]o finalize the transaction the lender is requiring the approval of this Court." Motion, DN 15 ("Mot."), at 2:4-5. It adds that the modification is necessary to allow the debtor to continue to own her residence and that the trustee has no objection to the modification. The court notes that the motion was not served on the trustee, so the court has no way of knowing the trustee's position, other than to take the debtor's word for it.

In any event, however, the debtor has cited no authority for the bankruptcy court to approve the modification of a chapter 7 debtor's mortgage loan (except, arguably, through reaffirmation 1) and the court is aware of no such authority. Further, the court has no jurisdiction to approve the proposed modification.

This court, by reference from the district court, has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b), 157(a). The debtor's claim to modify her mortgage loan does not "arise under" title 11 because it does not involve a claim created or determined by a statutory provision of title 11. See In re Harris, 590 F.3d 730,

737 (9th Cir. 2009). There is no authority under the Bankruptcy Code for a claim for authorization for a chapter 7 debtor to modify a mortgage loan. Further, the matter does not "arise in" a case under title 11. "[A]rising in" proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995). Obviously, a debtor's right to modify a mortgage loan is not a right that would not exist outside of the bankruptcy case.

Finally, this court does not have "related to" jurisdiction of the motion because the outcome could not conceivably have any effect on an estate being administered in bankruptcy. See In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). The debtor's schedules indicate there is no equity in the property over and above the amount due on the mortgage loan and the amount of the debtor's claim of exemption. The deadline for objecting to exemptions has passed and no one has objected. Further, although the trustee has filed a Notice to File Proof of Claim Due to Possible Recovery of Assets, if the debtor's motion is accurate, the trustee does not intend to administer the property that is the subject of the mortgage loan. Thus, the proposed modification would not have any effect on the bankruptcy estate.

To conclude, there is no authority for the court to approve the proposed modification and the court has no jurisdiction to do so. Accordingly, the motion will be denied. The debtor might consider filing a motion to compel the trustee to abandon the property, which, if granted, would remove the property from the bankruptcy estate and revest it in the debtor. If the debtor pursues such relief, she will need to serve the trustee, the United States Trustee, and all creditors, including those who have filed claims at the addresses on their proofs of claim, those who have filed requests for special notice at the addresses designated in the notices, and those who have filed neither at the addresses listed on the debtor's schedules.

For the reasons stated, the court intends to deny the motion.

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1 The motion states, "It is understood that the approval of this Motion will not be in the form of an approval of a Reaffirmation Agreement and, should the Debtor default under the terms of the loan modification, M & T Bank's sole remedy will be to exercise its rights against the collateral." Mot. at 2:24-26. Further, the debtor's discharge has been entered, and she would be ineligible to seek approval of a reaffirmation agreement.

14.	17-22275-D-7	CALIFORNIA GOLF	OBJECTION TO CLAIM OF THE
	DNL-10	PROPERTIES, LLC DBA RIVER	TRAVELERS INDEMNITY COMPANY,
			CLAIM NUMBER 15
			4-9-18 [120]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection to claim of the Travelers Indemnity Company, claim no. 15 is supported by the record. Accordingly, the court will sustaining the debtor's objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

15. 17-22275-D-7 CALIFORNIA GOLF OBJECTION TO CLAIM OF THE  
DNL-11 PROPERTIES, LLC DBA RIVER TRAVELERS INDEMNITY COMPANY,  
CLAIM NUMBER 16  
4-9-18 [125]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection to claim of the Travelers Indemnity Company, claim no. 16 is supported by the record. Accordingly, the court will sustaining the debtor's objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

16. 17-22275-D-7 CALIFORNIA GOLF OBJECTION TO CLAIM OF ALAN  
DNL-9 PROPERTIES, LLC DBA RIVER SCHEIBER, CLAIM NUMBER 21  
4-9-18 [115]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection to claim of Alan Scheiber, claim no. 21 is supported by the record. Accordingly, the court will sustaining the debtor's objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

17. 18-21597-D-7 GARY DELFINO AND JAQUILINE MOTION FOR RELIEF FROM  
JHW-1 NERUTSA AUTOMATIC STAY  
SANTANDER CONSUMER USA, INC. 4-25-18 [22]  
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.

18. 17-23436-D-7 RENEE DRUSYLLA CONTINUED MOTION BY GARY RAY  
17-2163 FF-2 FRALEY TO WITHDRAW AS ATTORNEY  
TORRES V. DRUSYLLA 4-18-18 [33]

19.	14-25148-D-11 GMW-20	HENRY TOSTA	MOTION FOR FINAL DECREE AND ORDER CLOSING CASE 5-1-18 [940]
20.	14-25148-D-11 RAL-2	HENRY TOSTA	MOTION TO APPROVE FINAL REPORT AND DISCHARGE PLAN ADMINISTRATOR 5-9-18 [944]
21.	18-22453-D-11 FWP-1	ECS REFINING, INC.	FINAL HEARING RE: MOTION TO USE CASH COLLATERAL 5-8-18 [100]
22.	18-22558-D-7 MOH-1	JOCK LEESEMAN	MOTION TO COMPEL ABANDONMENT 5-2-18 [11]



23.	18-22362-D-7	ADAM BROADNEX	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-4-18 [11]
24.	18-20967-D-7 JB-2	CHRISTINE RUSSAK	MOTION TO COMPEL ABANDONMENT 5-7-18 [36]
25.	16-27672-D-7 DNL-19	DAVID LIND	MOTION TO PAY 5-2-18 [434]
26.	18-22474-D-7 BPC-2 THE GOLDEN 1 CREDIT UNION VS.	MAXINE CROW	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-9-18 [11]

27.	10-24778-D-7 DEF-2	SASKIA DE VRIES	MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS 5-4-18 [46]
28.	17-27397-D-7 GEL-1	GEVORG POLADYAN AND ARMINE ASATRYAN	CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13 2-24-18 [16]
29.	18-22453-D-11 MBR-3	ECS REFINING, INC.	CONTINUED MOTION TO OBTAIN POST-PETITION FINANCING AND/OR MOTION TO USE CASH COLLATERAL 4-24-18 [12]
30.	18-22453-D-11 FWP-5	ECS REFINING, INC.	MOTION TO EMPLOY SIERRACONSTELLATION PARTNERS, LLC AS FINANCIAL ADVISER(S) O.S.T. 5-16-18 [135]

31. 18-22453-D-11 ECS REFINING, INC.  
FWP-4

MOTION TO USE CASH COLLATERAL  
AND/OR MOTION FOR SCHEDULING A  
FINAL HEARING  
5-17-18 [143]