

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Thursday, May 26, 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. 15-14685-B-11 B&L EQUIPMENT RENTALS,
LKW-1 INC.
B&L EQUIPMENT RENTALS, INC./MV

CONTINUED MOTION FOR ORDER
APPROVING STIPULATION RE:
DEBTOR'S USE OF CASH COLLATERAL
AND ADEQUATE PROTECTION
12-11-15 [16]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

This matter will go forward as scheduled. The court intends to authorize the continued use of cash collateral under the current stipulation and order through July 1, 2016, subject to the parties' agreement to a new stipulation for use of cash collateral through plan confirmation or conversion or dismissal of the case.

The continued hearing date, to review the status of the stipulation and for further scheduling, if needed, will be June 16, 2016, at 1:30 p.m.

The extent of the Bank's secured claim and the diminution, if any, of the Bank's interest are factual disputes that need resolution. Further, the unsecured creditors committee's (the "Committee") concern with the definition of "Property" encumbered as a result of cash collateral use was an issue raised by the court and the parties have stricken the reference in the stipulation.

The court will consider a date certain by which the Committee's document review will be completed and any disputes regarding the extent, validity, or priority, of the Bank's security interest are to be brought before the court.

The challenged §506(c) waiver is limited to the amount of time any order authorizing cash collateral use remains effective unless the parties otherwise agree or the court orders, if necessary. The existing stipulation and order do not expand the Bank's lien to include avoidance actions.

As to the committee's professional fees, based on this record, this court is constrained by *Hartford Underwriters Ins. Co. V. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) (administrative claimants have no general right to a secured creditor's collateral).

1:30 P.M.

1. [16-10302](#)-B-13 JASON/ASHLEY WILLIAMS MOTION TO CONFIRM PLAN
RR-1 4-24-16 [[21](#)]
JASON WILLIAMS/MV
RANDY RISNER/Atty. for dbt.
RESPONSIVE PLEADING

This motion will be denied without prejudice. No appearance is necessary. The court will prepare and enter a civil minute order.

The record shows that the plan and moving papers were filed fewer than 42 days before this hearing date, however the language in the notice required written opposition pursuant to LBR 9014-1(f)(1). However, nothing in the record shows that the moving papers were served on any one.

In addition, the trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. The court will prepare and enter a civil minute order.

2. [15-14827](#)-B-13 BRIAN HOVEN MOTION FOR RELIEF FROM
BHR-1 AUTOMATIC STAY
CALIFORNIA PHYSICIANS' 3-29-16 [[27](#)]
SERVICE/MV
LEONARD WELSH/Atty. for dbt.
BRETT RAMSAUR/Atty. for mv.

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary. The court will enter a civil minute order. The movant may submit a proposed amended order if one is needed.

The debtor did not list this executory contract in section 3 of his chapter 13 plan dated December 17, 2015. Pursuant to the terms of the plan this contract has been rejected and, upon confirmation on March 21, 2016, all bankruptcy stays were modified to allow the nondebtor party to take action permitted under nonbankruptcy law in the event of a default. No attorney's fees will be awarded in relation to this motion.

3. [15-14228](#)-B-13 OSCAR GUTIERREZ MOTION BY CYNTHIA A. ARROYO TO
CAA-2 WITHDRAW AS ATTORNEY
4-27-16 [[100](#)]
GLEN GATES/Atty. for dbt.

This motion will be denied as moot. No appearance is necessary. The court will enter a civil minute order.

The motion to withdraw as attorney has already been granted on May 26, 2016.

4. [15-14733](#)-B-13 JAVIER VELIZ
MHM-1
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
4-6-16 [[43](#)]

The chapter 13 trustee's motion to dismiss the case will be denied without prejudice. No appearance is necessary. The court will enter a civil minute order.

The motion was essentially based on the failure of the debtor to value undersecured collateral for a claim by Nellie O. Wade. A motion to value that collateral was granted by order of the court dated May 20, 2016. Accordingly, the motion to dismiss has no applicable basis.

5. [12-19942](#)-B-13 BRIAN YENNE
HDN-1
BRIAN YENNE/MV
HENRY NUNEZ/Atty. for dbt.

MOTION TO INCUR DEBT
5-12-16 [[44](#)]

This matter will be continued to June 16, 2016, at 1:30 p.m. The debtor shall serve a notice of the continued meeting with the moving papers on all creditors in compliance with LBR 3015-1(i). In lieu of appearing at the continued hearing the debtor may submit the written consent of the trustee pursuant to LBR 3015-1(i)(1)(B) and a proposed order.

6. [14-14343](#)-B-13 RICHARD KELLEY
FW-2

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
4-11-16 [[71](#)]

PETER FEAR/Atty. for dbt.

This matter will be called as scheduled. If no one appears in opposition at the hearing, the court intends to grant this motion.

7. [11-62347](#)-B-13 HOWARD/TANIA LEWIS
FW-4
HOWARD LEWIS/MV
PETER FEAR/Atty. for dbt.

MOTION TO INCUR DEBT
5-10-16 [[50](#)]

This matter will be called as scheduled. If no one appears in opposition at the hearing, the court intends to grant this motion provided the movant clarifies the supporting evidence. The evidence is unclear as to the amount of the "new debt" and the court will need clarification from the debtor as to whether the debtor intends to incur "new debt."

8. [11-10849](#)-B-13 CONRAD ZARATE
MHM-1
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
4-4-16 [[30](#)]

The trustee's motion to dismiss the case will be denied without prejudice. No appearance is necessary. The court will enter a civil minute order.

The motion was based on non payment of the March 2016 payment, which must have been resolved or cured since, pursuant to the notice filed April 25, 2016 as document # 36, the trustee has determined that all payments required by the plan are now complete.

9. [13-17261](#)-B-13 ALVIN/YOLANDA HEYNE
ALG-3
ALVIN HEYNE/MV
JANINE OJI/Atty. for dbt.

MOTION TO MODIFY PLAN
4-13-16 [[62](#)]

The motion will be granted. No appearance is necessary. The Movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules and there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10. [11-10383](#)-B-13 ARSIE/DELIA BANUT
MHM-1
MICHAEL MEYER/MV
GARY HUSS/Atty. for dbt.

MOTION TO DISMISS CASE
4-4-16 [[36](#)]

The trustee's motion to dismiss the case will be denied without prejudice. No appearance is necessary. The court will enter a civil minute order.

The motion was based on non payment of the March 2016 payment, which must have been resolved or cured since, pursuant to the notice filed May 11, 2016 as document # 41, the trustee has determined that all payments required by the plan are now complete.

11. [12-10696](#)-B-13 STEPHEN/VICTORIA BELIAEFF
SAH-5
STEPHEN BELIAEFF/MV
SUSAN HEMB/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
4-5-16 [[129](#)]

This matter will be called as scheduled. Based on the trustee's opposition it appears that the plan cannot be confirmed at this time, however the motion will be granted if the debtors and the trustee can agree on the language to be included in the confirmation order.