

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, June 5, 2014
Place: U.S. Courthouse, 510 19th Street
Bakersfield, 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. [13-14026](#)-B-7 R & S DENTAL STUDIO, STATUS CONFERENCE RE: COMPLAINT
[14-1035](#) INC. 3-19-14 [[1](#)]
PARKER V. KELLY
TRUDI MANFREDO/Atty. for pl.
DISMISSED

This matter will be dropped from calendar without a disposition. The adversary proceeding has already been dismissed. No appearance is necessary.

2. [12-10963](#)-B-7 TEJWANT/KIRPAL BAL CONTINUED MOTION FOR SANCTIONS
VAG-1 FOR VIOLATION OF THE DISCHARGE
TEJWANT BAL/MV INJUNCTION
10-17-13 [[24](#)]

VINCENT GORSKI/Atty. for dbt.
RESPONSIVE PLEADING
3. [12-10963](#)-B-7 TEJWANT/KIRPAL BAL CONTINUED STATUS CONFERENCE RE:
[13-1129](#) AMENDED COMPLAINT
STAN BOYETT & SON, INC. V. BAL 3-27-14 [[38](#)]
ET AL
BONNIE ANDERSON/Atty. for pl.
4. [12-10963](#)-B-7 TEJWANT/KIRPAL BAL MOTION TO DISMISS ADVERSARY
[13-1129](#) TGF-3 PROCEEDING/NOTICE OF REMOVAL
STAN BOYETT & SON, INC. V. BAL 4-17-14 [[46](#)]
ET AL
VINCENT GORSKI/Atty. for mv.

9:30 A.M.

1. [12-15446](#)-B-7 M. DEAN GARDNER CONTINUED FINAL PRE-TRIAL
[12-1167](#) CONFERENCE RE: AMENDED
AJSD BAKERSFIELD, LLC V. COMPLAINT
GARDNER 1-24-13 [[16](#)]
EDNA WENNING/Atty. for pl.

This matter has been continued to July 3, 2014, at 9:30 a.m., to be heard with the court's order to show cause re dismissal. No appearance is necessary.

2. [12-17199](#)-B-7 GURSEV KAUR RESCHEDULED PRE-TRIAL
[12-1188](#) CONFERENCE RE: AMENDED
VETTER V. KAUR COMPLAINT
11-16-12 [[6](#)]

RENE LASTRETO/Atty. for pl.
RESPONSIVE PLEADING

10:00 A.M.

1. [12-18202](#)-B-7 DESIREE SERNA
KDG-4

MOTION FOR COMPENSATION FOR
GIRARDI & KEESE, SPECIAL
COUNSEL(S)
5-8-14 [[62](#)]

PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

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.

2. [13-16728](#)-B-7 BERNARDO/MARIA GALLARDO
VG-1
VINCENT GORSKI/MV
THOMAS GILLIS/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO COMPEL
4-15-14 [[27](#)]

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.

3. [14-11536](#)-B-7 GORDON CRUSE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-25-14 [[25](#)]

The record shows that the required fee has been paid in full. The OSC will be dropped from calendar. No appearance is necessary.

4. [13-15845](#)-B-7 ELOY RODRIGUEZ AND ANGELA
PK-2 VASS-RODRIGUEZ
ELOY RODRIGUEZ/MV
PATRICK KAVANAGH/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF ALTAONE FEDERAL CREDIT UNION
4-3-14 [[30](#)]

This matter will be continued to July 3, 2014, at 10:00 a.m. Based on the supplemental evidence provided in response to the court's May 1, 2014, civil minute order, it appears that the debtors transferred the subject property to an LLC and that the debtors did not hold an interest in the property at the time the lien attached. Debtors are invited to submit briefing regarding the application of *In re Kuiken*, 484 BR 766, to the facts of this case. The court will prepare a minute order. No appearance is necessary.

5. [13-16845](#)-B-7 KEYSTONE MINE MANAGEMENT MOTION TO SELL FREE AND CLEAR
KDG-2 II OF LIENS
VINCENT GORSKI/MV 5-8-14 [[166](#)]
PHILLIP GILLET/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

Based on the court's review of the motion and the opposition, this matter will be a preliminary hearing for the purpose of issuing a scheduling order. No bids will be entertained at this hearing. The court is not persuaded that the trustee has made a reasonable and diligent effort to advertise and market the mining claims. In addition, the court is not yet prepared to find that the WBW lien is in bona fide dispute. The parties shall be prepared to discuss these issues and a time frame for bringing this matter to a final hearing.

6. [14-11547](#)-B-7 BESTIAME TRANSPORT, INC. ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-20-14 [[31](#)]
PATRICK KAVANAGH/Atty. for dbt.

The OSC will be dismissed and dropped from calendar. This appears to relate to a duplicate motion for relief from stay on the 10:30 a.m. calendar. The filing fee for the original motion has been paid. Both motions have been denied by predisposition. No appearance is necessary.

7. [06-10856](#)-B-7 WARNER/PATRICIA HITCH MOTION TO AVOID LIEN OF CALFIN
DMG-2 HOLDINGS, LLC
WARNER HITCH/MV 4-29-14 [[24](#)]
D. GARDNER/Atty. for dbt.

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.

8. [14-12172](#)-B-7 JAMES/ANNETTE SAWYER MOTION TO COMPEL ABANDONMENT
RLF-1 5-9-14 [[10](#)]
JAMES SAWYER/MV
JEFF REICH/Atty. for dbt.
RESPONSIVE PLEADING

9. [14-11274](#)-B-7 MANUEL DURAN
RSW-3
MANUEL DURAN/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
5-2-14 [[23](#)]

10. [13-13176](#)-B-7 TONY PADILLA
RP-1
RANDELL PARKER/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO SELL
5-1-14 [[65](#)]

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.

11. [13-13991](#)-B-7 KEITH HALL AND MELISSA
VG-1 JOHNSON
VINCENT GORSKI/MV
CURTIS FLOYD/Atty. for dbt.
VINCENT GORSKI/Atty. for mv.

MOTION TO SELL
4-28-14 [[18](#)]

12. [11-13995](#)-B-7 FELIPE/SILVIA GUERRA
FPS-1
FELIPE GUERRA/MV

FRANK SAMPLES/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF ATLANTIC CREDIT AND FINANCE
INC.
2-20-14 [[26](#)]

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.

10:30 A.M.

1. [14-10631](#)-B-7 JUAN VILLASENOR
ASW-1
BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/Atty. for dbt.
JOELY BUI/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-16-14 [[13](#)]

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.

2. [14-11536](#)-B-7 GORDON CRUSE
MDE-1
ONEWEST BANK N.A./MV
MARK ESTLE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-24-14 [[18](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. 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 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. [13-16845](#)-B-7 KEYSTONE MINE MANAGEMENT MOTION TO RECONSIDER
PWG-5 II 4-24-14 [[156](#)]
KEYSTONE MINE MANAGEMENT II/MV
PHILLIP GILLET/Atty. for dbt.
RESPONSIVE PLEADING

This matter will be advanced and called on the 10:00 a.m. calendar after the trustee's motion to sell. No appearance is necessary at 10:30 a.m.

4. [14-11547](#)-B-7 BESTIAME TRANSPORT, INC. MOTION FOR RELIEF FROM
AUTOMATIC STAY
ELIZABETH HERNANDEZ/MV 4-17-14 [[6](#)]
PATRICK KAVANAGH/Atty. for dbt.
JOHN SALAZAR/Atty. for mv.
NON-OPPOSITION

This motion for relief from stay will be denied without prejudice. The moving papers do not include an appropriate docket control number as required by Local Rule 9014-1(c).

In addition, the form and/or content of the notice do not comply with Local Rule 9014-1(d).

In addition, the form of the proof of service does not comply with LBR 9014-1(d) (1) (see Local Rules, Appendix II, EDC.002-901, Revised Guidelines for the Preparation of Documents (4) (e)).

In addition, the movant failed to file a separate relief from stay information sheet pursuant to Local Rule 4001-1(c). Alternatively, the relief from stay information sheet is incomplete and fails to comply with Local Rule 4001-1(c).

Finally, movant's counsel does not appear to be licensed to practice law in the State of California or to be admitted to appear in the Eastern District of California.

In lieu of a further hearing, the moving parties, represented by appropriate counsel, may submit a stipulation for relief that is signed by the chapter 7 trustee and debtors' counsel. No appearance is necessary.

5. [14-11547](#)-B-7 BESTIAME TRANSPORT, INC.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-28-14 [[13](#)]

LAURA HERNANDEZ/MV
PATRICK KAVANAGH/Atty. for dbt.
VICTOR BIEGANOWSKI/Atty. for mv.
RESPONSIVE PLEADING

This motion for relief from stay will be denied without prejudice. This appears to be another motion filed by a different attorney seeking the same relief as calendar docket number 4, above, and will be denied for the same reasons.

The moving papers do not include an appropriate docket control number as required by Local Rule 9014-1(c).

In addition, the form and/or content of the notice do not comply with Local Rule 9014-1(d).

In addition, the form of the proof of service does not comply with LBR 9014-1(d)(1) (see Local Rules, Appendix II, EDC.002-901, Revised Guidelines for the Preparation of Documents (4)(e)).

In addition, the movant failed to file a separate relief from stay information sheet pursuant to Local Rule 4001-1(c). Alternatively, the relief from stay information sheet is incomplete and fails to comply with Local Rule 4001-1(c).

Finally, movant's counsel does not appear to be licensed to practice law in the State of California or to be admitted to appear in the Eastern District of California.

In lieu of a further hearing, the moving parties, represented by appropriate counsel, may submit a stipulation for relief that is signed by the chapter 7 trustee and debtor's counsel. No appearance is necessary.

6. [14-11075](#)-B-7 BOB/BARBARA MCCLAIN
TJP-1
GATEWAY ONE LENDING &
FINANCE/MV
NEIL SCHWARTZ/Atty. for dbt.
THOMAS PRENOVOST/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-9-14 [[11](#)]

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.

7. [14-11385](#)-B-7 SCOTT HALE
AKA-1
PEOPLE'S UNITED EQUIPMENT
FINANCE CORP./MV
VINCENT GORSKI/Atty. for dbt.
ANDREW ALPER/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-23-14 [[14](#)]

The motion will be continued to July 3, at 10:30 a.m. The form of the proof of service does not comply with LBR 9014-1(d)(1) and needs to be amended (see Local Rules, Appendix II, EDC.002-901, Revised Guidelines for the Preparation of Documents (4)(e)).

In addition, the notice of motion does not comply with LBR 9014-1(d)(3). The moving party needs to file a notice of continued motion that complies with the Local Rules of Bankruptcy Procedure. The notice appears to be an uncompleted form and the information provided in it is ambiguous.

In lieu of a further hearing, the moving party may submit a stipulation for relief that is signed by the chapter 7 trustee and debtor's counsel. The court will prepare a minute order. No appearance is necessary.

8. [14-12190](#)-B-7 ARMANDO OLIVARES AND
SW-1 PRISCILLA
WELLS FARGO BANK, N.A./MV
TORIANA HOLMES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-20-14 [[10](#)]

11:00 A.M.

1. [14-10404](#)-B-7 FRANCISCO CARRILLO PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO DEALER
SERVICES
4-18-14 [[13](#)]

OSCAR SWINTON/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's 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.

2. [14-11472](#)-B-7 CARL KACKO PRO SE REAFFIRMATION AGREEMENT
WITH TOYOTA MOTOR CREDIT
CORPORATION
4-24-14 [[15](#)]
3. [14-10574](#)-B-7 BERNABE GARCIA HERRERA AND ARELY GARCIA PRO SE REAFFIRMATION AGREEMENT
WITH FINANCE AND THRIFT COMPANY
4-23-14 [[14](#)]
4. [14-10879](#)-B-7 FILIBERTO/ROSARIO COTA REAFFIRMATION AGREEMENT WITH TD
AUTO FINANCE LLC
3-18-14 [[11](#)]

D. GARDNER/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 the reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Specifically, schedule B states that this debt relates to an automobile owned by the debtors' son, schedule J does not include this car payment, and the debtors do not have sufficient disposable income to make the payment. No appearance is necessary.

1:00 P.M.

1. [13-15726](#)-B-13 KEVIN/KATY CARSON
JLM-1
KEVIN CARSON/MV

ROBERT WILLIAMS/Atty. for dbt.
1/2 DAY, RESPONSIVE PLEADING

EVIDENTIARY HEARING RE: MOTION
TO VALUE COLLATERAL OF PNC
BANK, N.A.
12-17-13 [[46](#)]