

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JUNE 7, 2017
CALENDAR: 10:30 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-14341](#)-A-7 CASEY COOPER STATUS CONFERENCE RE: COMPLAINT
[17-1038](#) 3-27-17 [[1](#)]
LOANME, INC. V. COOPER
DAVID BRODY/Atty. for pl.
RESPONSIVE PLEADING

No tentative ruling.

2. [17-10170](#)-A-7 MARTIN GRISHABER CONTINUED STATUS CONFERENCE RE:
[17-1018](#) COMPLAINT
PATRIOT BAIL INC. V. GRISHABER 2-27-17 [[1](#)]
PATRIOT BAIL INC./Atty. for pl.

No tentative ruling.

3. [16-12375](#)-A-7 ULISES/ALEJANDRA CAMACHO MOTION TO DISMISS ADVERSARY
[16-1102](#) DMG-3 PROCEEDING/NOTICE OF REMOVAL
VETTER V. CAMACHO ET AL 5-10-17 [[74](#)]
D. GARDNER/Atty. for mv.

Final Ruling

Motion: Dismiss Adversary Complaint Objecting to Discharge

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISMISSAL UNDER RULE 7041

"Rule 41 [of the Federal Rules of Civil Procedure] applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper." Fed. R. Bankr. P. 7041. "Most bankruptcy judges require a plaintiff seeking to dismiss a § 727 action to give notice to any trustee appointed in the case, the U.S. Trustee and all creditors, informing the noticed parties they have a right to substitute in as plaintiff in the action instead of having the action dismissed." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 20:264, at 20-37 (rev. 2014); *accord In re Speece*, 159 B.R. 314, 321 (Bankr. E.D. Cal. 1993) (citing Fed. R. Bankr. P. 7041) ("[T]he rules of procedure forbid voluntary dismissal without notice to the case trustee and to the United States trustee, either of whom

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

The court grants the motion in part as to the request for default judgment on the first and second claims for relief under § 547 and § 550. The court denies the motion in part as to the third claim for relief for disallowance of defendant's claim. The plaintiff admits that defendant has not filed a proof of claim. Therefore, the relief sought is not ripe.

Tentative Ruling

Order: Prepared by moving party

CLAIM UNDER § 502 (d)

CLAIMS UNDER §§ 547 AND 550

Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant with some modifications as to the amounts. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

The complaint and motion describe a variety of prepetition transfers that occurred within the 90-day preference period before the petition was filed by the debtor. These transfers are identified in detail on page 2 of the application for default judgment, and each transfer's check or ACH number is identified.

However, the first three transfers are outside the 90-day preference period. The 90-day preference period reaches back to December 20, 2014. The first three transfers are before that date. And the plaintiff's papers do not suggest that the 1-year preference period is applicable. See 11 U.S.C. § 547(b) (4) (B).

Combined, these first three transfers equal \$38,828.17. Reducing the aggregate prepetition transfers alleged by the amount of \$38,828.17, the total preference amount becomes \$73,866.63.

Because the total preference is only \$73,866.63, the amount of interest should also be reduced. The court has relied on the interest-calculation table in the application for default. This table shows interest running from the demand letter date until the default date. The court has assumed the applicability of all interest rates and numbers of days during each applicable interest rate period. But the court has modified the balance subject to each interest rate to be \$73,866.63 for the reasons discussed. The total interest shall be \$1208.19 from the date of the demand letter through the default date.

After the default date, the interest accrues at \$8.09 per day based on the assumptions provided in the application and the adjusted preference balance.

CONCLUSION

Judgment will be entered consistent with this ruling. The judgment shall reflect the avoidance of the preference under § 547, a preference judgment amount of \$73,866.63 under § 550, plus interest of \$1208.19 from the date of the demand through the default date, plus interest of \$8.09 per day from the default date through the date of the judgment.

6. [15-13991](#)-A-7 JERAD/ALICE SANDERS
[16-1016](#)
NUNEZ AG, INC. V. SANDERS ET
AL
TERRENCE EGLAND/Atty. for pl.
DISMISSED

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
4-15-16 [[15](#)]

Final Ruling

The case dismissed, the status conference is concluded.