

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 19, 2019 at 10:00 a.m.

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.

1.	10-53904-D-7	JOSE MEJIA	MOTION TO AVOID LIEN OF
	MSN-1		AMERICAN EXPRESS BANK, FSB
			4-15-19 [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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

2. 17-24617-D-7 PATRICIA PAYTON
DNL-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH, CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
5-16-19 [53]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

3. 14-25820-D-11 INTERNATIONAL
16-2090 MANUFACTURING GROUP, INC.
MCFARLAND ET AL V. CALIFORNIA BPC-3
BANK & TRUST ET AL

MOTION FOR LEAVE TO DEPOSE
DEEPA WANNAKUWATTE IN FEDERAL
PRISON
5-22-19 [322]

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 for leave to depose Deepa Wannakuwatte in federal prison is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

4. 16-22725-D-7 PETER/CATHLEEN VERBOOM
HSM-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR HOWARD S.
NEVINS, TRUSTEE'S ATTORNEY(S)
5-22-19 [262]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

5. 15-20037-D-7 JASON SCOGGINS
15-2073 TEH-11
CHAMP SYSTEMS, INC. V.
SCOGGINS

MOTION FOR ENTRY OF AN ORDER
APPROVING THE PARTIES'
CONFIDENTIAL SETTLEMENT
AGREEMENT AND RETAINING
JURISDICTION TO ENFORCE THE
SAME INCLUDING BY ENTRY OF A
NON-DISCHARGEABLE JUDGMENT, ETC.
4-28-19 [82]

6. 19-21440-D-7 KULJIT TOOR
CAS-1
EXETER FINANCE, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-14-19 [19]

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 debtor's Statement of Intentions indicates he 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.

7. 10-42050-D-7 VINCENT/MALANIE SINGH

STATUS CONFERENCE RE: MOTION
FOR PAYMENT OF UNCLAIMED FUNDS
IN THE AMOUNT OF \$ 3,300.00
5-10-19 [1074]

8. 10-42050-D-7 VINCENT/MALANIE SINGH

STATUS CONFERENCE RE: MOTION
FOR PAYMENT OF UNCLAIMED FUNDS
IN THE AMOUNT OF \$ 3,300.00
5-10-19 [1075]

9. 19-22552-D-7 AMBER CLARK
JHW-1
SANTANDER CONSUMER USA, INC.
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-21-19 [11]

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 debtor's Statement of Intentions indicates she 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. 19-22560-D-7 VERONICA RODRIGUEZ
JHW-1
FORD MOTOR CREDIT COMPANY,
LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-15-19 [13]

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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.

11. 19-22361-D-7 NEDRA SANDERS
MS-2

MOTION TO AVOID LIEN OF EQUITY
RESIDENTIAL MGMT.
5-20-19 [23]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

12. 19-21163-D-7 CYNTHIA PONCE
MKM-1

MOTION TO REDEEM, MOTION TO
BORROW AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF MICHAEL K. MOORE FOR MICHAEL
K. MOORE, DEBTOR'S ATTORNEY(S)
5-8-19 [13]

Tentative ruling:

This is the debtor's motion to redeem a vehicle from the lien of Flagship Credit Acceptance for a lump-sum payment of \$7,983. The debtor also seeks approval to finance the payment through Prizm Financial Co. LLC, at 25.732% APR, and to pay her attorney \$600 from her loan from Prizm for this motion. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, for the following reasons, the motion will be denied.

First, § 722 of the Bankruptcy Code permits a debtor to redeem certain personal property from a lien securing a dischargeable consumer debt if the property is exempted or has been abandoned. Here, neither is the case. The court has examined the debtor's Schedule C; no interest in the vehicle is claimed as exempt. And although the trustee has filed a report indicating his intention to abandon all assets of the estate, the vehicle has not in fact been abandoned. A trustee's notice of no distribution and an order of abandonment are two different things.¹

Second, the moving party has provided no authority for the proposition that the court has the jurisdiction and the power to approve her post-petition borrowing or to approve an award of additional fees to her attorney, and the court will not grant such relief.

Third, the moving party's evidence does not demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). She testifies, "After consultation with Prizm, as well as online valuation websites like Kelley Blue Book and NADA, I agree [with Prizm] that the reasonable fair market value of the vehicle is \$7,983.00." Debtor's Decl., filed May 8, 2019, at 2:11-12. She filed as an exhibit a copy of a "valuation report" signed by one Jeff Davis, of Collateral Valuations Services, LLC, in Cincinnati, where the debtor's proposed lender, 722 Redemption Funding, Inc., according to the loan disclosure, is also located. The valuation report states it was "prepared for the purpose of making a secured loan on [the vehicle]." Debtor's Ex. C. The report also states it is "Based on Edmunds," and gives the "Average Base Value" of the vehicle as \$8,233, with a \$250 deduction for "Interior Reconditioning," for an "Appraised Value" of \$7,983.

The valuation report is hearsay and, because it is based on "Edmunds," without copies of the information obtained from that source, is without foundation. The debtor's opinion, based on the valuation report, is based on hearsay and is similarly inadmissible. The valuation report is suspect for the additional reason that "Average Base Value" sounds a far cry from what a retail merchant would charge.

Redemption may be accomplished by paying the lienholder "the amount of the allowed secured claim of such holder." § 722. In turn, a secured claim is to be valued based on the replacement value of the collateral securing the claim, without deduction for costs of sale or marketing. § 506(a)(1) and (2). For property acquired for personal, family, or household purposes, which the debtor testifies the vehicle was, "replacement value" means the price a retail merchant would charge for property of the same kind considering the age and condition of the debtor's property. § 506(a)(2). The appropriate standard is not some nebulous "Average Base Value"; it is the amount a retail merchant would charge for the vehicle.

As a general rule, where a debtor submits some evidence of a vehicle's replacement value and the creditor does not oppose the motion, the court will accept the debtor's evidence as carrying some weight, sometimes sufficient to carry the day. Here, however, the debtor seeks to value the vehicle not at its replacement value but at its undefined Average Base Value. Finally, the debtor's valuation is suspect because according to her Schedule D, she incurred the debt to Flagship, secured by the vehicle, in December 2018, just six months ago, and owes \$14,282. Without credible admissible evidence, the court cannot determine that the value of the vehicle has declined by almost half in just six months.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

1 Although a trustee's notice of report of no distribution may evidence his or her intent to abandon assets, the report "in and of itself cannot result in abandonment unless the court closes the case." In re Reed, 940 F.2d 1317, 1321 (9th Cir. 1991); In re Pretscher-Johnson, 2017 Bankr. LEXIS 1463, *11 (9th Cir. BAP 2017).

13.	19-22263-D-7	AMANDA BARRERA	MOTION FOR RELIEF FROM
	JHW-1		AUTOMATIC STAY
	DAIMLER TRUST VS.		5-15-19 [10]

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 debtor's Statement of Intentions indicates she 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.

14.	19-20064-D-7	BARRY BINNING	MOTION FOR RELIEF FROM
	AP-1		AUTOMATIC STAY
	JPMORGAN CHASE BANK, N.A.		5-20-19 [65]
	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. The debtor received his discharge on April 22, 2019 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

15.	18-25265-D-7	ANGELICA CORTEZ-HUERTA	MOTION TO EXTEND TIME
	HSM-3		5-16-19 [31]

16.	15-28774-D-7	OTASHE GOLDEN	MOTION FOR ADMINISTRATIVE
	SSA-10		EXPENSES
			5-22-19 [134]

17. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO AVOID LIEN OF
MKJ-6 PORTFOLIO RECOVERY ASSOCIATES, LLC
5-21-19 [49]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

18. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO AVOID LIEN OF CACH,
MKJ-7 LLC
5-21-19 [54]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

19. 19-23086-D-12 JAG PARTNERSHIP LP STATUS CONFERENCE RE: VOLUNTARY
PETITION
5-14-19 [1]

20. 19-23087-D-12 ACAT, LLC STATUS CONFERENCE RE: VOLUNTARY
PETITION
5-14-19 [1]

21. 19-23087-D-12 ACAT, LLC
MHK-1

CONTINUED MOTION TO USE CASH
COLLATERAL
5-16-19 [11]

22. 19-23088-D-12 GEORGE/JANIEL AGUIAR

STATUS CONFERENCE RE: VOLUNTARY
PETITION
5-14-19 [1]

23. 17-20689-D-7 MONUMENT SECURITY, INC.
APN-7
TOYOTA MOTOR CREDIT
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-22-19 [699]

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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 debtors are 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.

24. 15-29890-D-7 GRAIL SEMICONDUCTOR
DMC-5

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DIAMOND MCCARTHY,
LLP FOR CHRISTOPHER D.
SULLIVAN, SPECIAL COUNSEL(S)
5-22-19 [1275]

Tentative ruling:

This is the final application of Diamond McCarthy LLP ("Counsel") for allowance of compensation in this case. Specifically, the Applicant seeks a contingency fee of \$399,058.56 based on the release by creditor Sedgwick FundingCo, LLC ("Sedgwick") of its secured claim in favor of an unsecured claim. Sedgwick has filed opposition and Counsel has filed a reply. Before considering the opposition and reply, however, the court finds that supplemental notice to creditors would be appropriate.

As part of its application, Counsel also seeks approval on a final basis of amounts previously approved on an interim basis, \$177,443.02 in fees and \$14,317.30 in costs, which have been paid, plus payment of the amount held back (15% of fees), \$31,313.48. The application concludes with the request for an order, "[i]n total, approving and allowing on a final basis compensation in the amount of \$607,815.06"1 The application also refers to a third application Counsel filed in August of 2018 for approval of costs of \$3,033.20 and a contingency fee of \$582,264.03 based on the \$2,250,000 cash payment made by Sedgwick to the estate. The third application was brought pursuant to § 328 of the Bankruptcy Code, under which, as Counsel notes in its present application, the court generally will not alter the amounts approved unless the terms of the employment prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms.

Perhaps for this reason, Counsel is not seeking any relief in the present application with respect to the \$582,264 contingency fee, and perhaps for that reason, Counsel has not mentioned that fee in the notice of hearing on the present application, which is the only document served on general creditors. If the present application is granted, Counsel will receive a total of \$1,207,429.59 for its services in this case, but the only total referred to in the notice of hearing, which is specifically referred to as a "total," is \$607,815.06. For the unsophisticated creditor at least, "total" should mean the actual "total." The dramatic difference between these two figures, and the mention in the notice of hearing of the smaller figure only, may be misleading, at least to creditors unsophisticated in the bankruptcy arena.2

For the reasons stated, the court intends to continue the hearing and require supplemental notice. The court will hear the matter.

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- 1 This figure is comprised of the \$177,443.02 in fees previously approved and paid, the \$31,313.48 in fees previously held back, and the \$399,058.56 contingency fee that is the specific focus of this application. In addition to final approval of the \$607,815.06 in fees, Counsel seeks final approval of costs previously approved on an interim basis and paid, \$14,317.30.
 - 2 It is arguable the \$582,264 contingency fee was not approved on a "final" basis in that the order approving it does not state it is approved on a final basis. On the other hand, the Applicant's employment application and the order approving it both referred to the employment being authorized "pursuant to 11 U.S.C. § 328," and the order approving the contingency fee stated that the underlying application, which itself was brought "pursuant to 11 U.S.C. § 328," was granted. In the court's view, however, regardless of whether approval of the contingency fee was final, the fee should at least have been mentioned in a notice of hearing served on general creditors describing Counsel's prior compensation in the case and referring to a "total."

25.	15-29890-D-7 DNL-57	GRAIL SEMICONDUCTOR	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MACDONALD FERNANDEZ, LLP 5-22-19 [1259]
26.	15-29890-D-7 DNL-58	GRAIL SEMICONDUCTOR	MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S) 5-22-19 [1280]
27.	15-29890-D-7 DNL-59	GRAIL SEMICONDUCTOR	MOTION FOR COMPENSATION FOR SHERI L. CARELLO, CHAPTER 7 TRUSTEE 5-22-19 [1270]
28.	15-29890-D-7 DNL-60	GRAIL SEMICONDUCTOR	MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO, LLP, ACCOUNTANT(S) 5-22-19 [1264]

29. 19-22592-D-7 ELSIE PIPPIN
BPC-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-16-19 [11]

THE GOLDEN 1 CREDIT UNION
VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates she intends to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and 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.

30. 18-27998-D-7 TAMARA FADEL
DSS-1

MOTION TO EXTEND TIME AND/OR
MOTION TO VACATE DISCHARGE OF
DEBTOR(S)
5-9-19 [22]

31. 18-24836-D-7 EDDIE/JENNIFER RAINWATER
TBG-1

MOTION TO AVOID LIEN OF JUSTIN
SHANE MACIEJEWSKI
6-5-19 [41]

32. 15-20037-D-7 JASON SCOGGINS
15-2073 TEH-10
CHAMP SYSTEMS, INC. V.
SCOGGINS

CONTINUED MOTION TO SEAL
4-28-19 [77]

33. 19-21083-D-7 TORY/SYLVIA BATTEN
RHM-1
MUKI UNG VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-31-19 [33]

34. 14-32193-D-7 RAUL CASTANEDA
RLC-1

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
5-20-19 [18]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

35. 18-25811-D-11 JLM ENERGY, INC.
FBD-2

CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 11 TO CHAPTER
7 AND/OR MOTION TO APPOINT
TRUSTEE
5-28-19 [76]