

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Wednesday, June 25, 2014
Place: Department B – Courtroom #12
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.

10:00 A.M.

1. [14-11804](#)-B-7 SHANNON WENTWORTH OPPOSITION RE: TRUSTEE'S MOTION
RHT-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341 (A) MEETING
OF CREDITORS
5-15-14 [[14](#)]

HENRIK MOSESI/Atty. for dbt.
2. [14-11106](#)-B-7 GEVORG ADAMYAN AND MOTION TO CONVERT CASE FROM
VARDUHI KRDOTYAN CHAPTER 7 TO CHAPTER 13
GEVORG ADAMYAN/MV 5-27-14 [[24](#)]
ARIS ARTOUNIANS/Atty. for dbt.
DISMISSED

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

3. [13-10809](#)-B-7 ELLAN MEADOWS MOTION FOR TURNOVER OF PROPERTY
JES-1 5-23-14 [[21](#)]
JAMES SALVEN/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING
4. [14-11309](#)-B-7 RICHARD TAMEZ OBJECTION TO DEBTOR'S CLAIM OF
JES-1 EXEMPTIONS
JAMES SALVEN/MV 5-20-14 [[19](#)]

This matter will be dropped from calendar without a disposition. The debtor has amended his schedules and the issue appears to be moot. No appearance is necessary.

5. [13-16222](#)-B-7 JOHNNY RAMIREZ AND MONICA CONTINUED OBJECTION TO DEBTOR'S
JES-1 DIAZ CLAIM OF EXEMPTIONS
JAMES SALVEN/MV 3-18-14 [[46](#)]
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

Based on the court's ruling in *In re Gutierrez*, no. 12-60444, filed on June 12, 2014, and its application to the issues raised here, this objection will be overruled. The court will enter a civil minute order. No appearance is necessary.

6. [13-18123](#)-B-7 KEVIN/CYNTHIA PINE MOTION TO AVOID LIEN OF
WW-2 DISCOVER BANK
KEVIN PINE/MV 5-14-14 [[35](#)]
RILEY WALTER/Atty. for dbt.

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.

7. [10-19825](#)-B-7 FRANCISCO/MARIA PARREIRA MOTION TO COMPEL ABANDONMENT
WW-14 6-5-14 [[300](#)]
FRANCISCO PARREIRA/MV
RILEY WALTER/Atty. for dbt.

8. [12-17425](#)-B-7 BETTINA VILLANUEVA MOTION TO AVOID LIEN OF
BV-7 NORTHSTAR CAPITAL ACQUISITION,
BETTINA VILLANUEVA/MV LLC
5-27-14 [[102](#)]
BETTINA VILLANUEVA/Atty. for mv.

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.

9. [12-17425](#)-B-7 BETTINA VILLANUEVA MOTION TO AVOID LIEN OF BRETT
BV-8 TAYLOR
BETTINA VILLANUEVA/MV 5-16-14 [[98](#)]
BETTINA VILLANUEVA/Atty. for mv.

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. [12-17425](#)-B-7 BETTINA VILLANUEVA MOTION TO AVOID LIEN OF
BV-9 NORTHSTAR CAPITAL ACQUISITION
BETTINA VILLANUEVA/MV 5-27-14 [[106](#)]
BETTINA VILLANUEVA/Atty. for mv.

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. [14-11928](#)-B-7 RICHARD KELLY
JES-1
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-28-14 [[16](#)]

This matter will be continued to July 23, 2014, at 10:00 a.m., to be heard with the debtor's motion to convert to chapter 13. The court will prepare a minute order. No appearance is necessary.

12. [14-10934](#)-B-7 JOHN COSSEY, JR.
THA-1
JOHN COSSEY, JR./MV
THOMAS ARMSTRONG/Atty. for dbt.

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
5-23-14 [[16](#)]

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.

13. [11-10248](#)-B-7 JULIO VILLANUEVA
JV-3
JULIO VILLANUEVA/MV
JULIO VILLANUEVA/Atty. for mv.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA) N.A.
5-16-14 [[47](#)]

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.

14. [14-11551](#)-B-7 FRED/TALONA THURMAN
JDR-1
FRED THURMAN/MV

JEFFREY ROWE/Atty. for dbt.

MOTION TO AVOID LIEN OF FIRST
RESOLUTION INVESTMENT
CORPORATION
5-27-14 [[13](#)]

The motion will be denied without prejudice. The evidence does not show that the judicial lien impairs the debtors' exemption which was only claimed in the amount of \$612. The property appears to have non-exempt equity in the approximate amount of \$20,903. No appearance is necessary.

15. [11-60461](#)-B-7 THE WARNER COMPANY, INC. MOTION FOR COMPENSATION FOR
RH-8 ROBERT HAWKINS, TRUSTEE'S
ATTORNEY(S).
5-28-14 [[307](#)]

HAGOP BEDOYAN/Atty. for dbt.

This motion is continued to July 23, 2014, at 10:00 a.m. The applicant was employed to serve as the chapter 7 trustee's general counsel. The trustee has not yet filed her final report. Based on the evidence presented in support of the motion, and without the trustee's final report, the court cannot tell if the applicant's services are concluded and cannot evaluate the necessity, reasonableness, and benefit of the applicant's services. The court will prepare a minute order. No appearance is necessary.

16. [11-61965](#)-B-7 G.R. ELLIOTT CONTINUED MOTION FOR
JTW-2 CONSTRUCTION, INC. COMPENSATION FOR JANZEN,
JANZEN, TAMBERI & WONG/MV TAMBERI & WONG, ACCOUNTANT(S).
5-14-14 [[78](#)]

JUSTIN HARRIS/Atty. for dbt.

This motion was continued for submission of supporting evidence. Based on the supplemental information provided in support of DC# PLF-3, below, the motion will be granted without oral argument for cause shown. The applicant's fees may be paid as a chapter 7 administrative expense after the trustee's final report has been approved. The moving party shall submit a proposed order. No appearance is necessary.

17. [11-61965](#)-B-7 G.R. ELLIOTT CONTINUED MOTION FOR
PLF-3 CONSTRUCTION, INC. COMPENSATION FOR PETER L. FEAR,
TRUSTEE'S ATTORNEY(S).
5-14-14 [[71](#)]

JUSTIN HARRIS/Atty. for dbt.

This motion was continued for submission of supporting evidence. Based on the supplemental information provided, the motion will be granted without oral argument for cause shown. The applicant's fees may be paid as a chapter 7 administrative expense after the trustee's final report has been approved. The moving party shall submit a proposed order. No appearance is necessary.

18. [13-17365](#)-B-7 CARLOS/ANNA VILLARREAL MOTION TO COMPEL
JES-1 5-27-14 [[39](#)]
JAMES SALVEN/MV
DAVID SPECKMAN/Atty. for dbt.
RESPONSIVE PLEADING

19. [13-17977](#)-B-7 ERIC KEESLAR
JES-1
JAMES SALVEN/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO SELL
5-20-14 [[14](#)]

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.

20. [14-11587](#)-B-7 KARINA JIMENEZ
JES-1
JAMES SALVEN/MV

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-14-14 [[12](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The objection will be sustained without oral argument for cause shown. Based on the evidence presented, it appears that the exemptions available under CCP § 703.140 are not available to the debtor unless a spousal waiver is filed. The debtor shall have 21 days to file and serve either an appropriate spousal waiver or an amended set of exemptions. The trustee shall submit and serve a proposed order. No appearance is necessary.

21. [11-62196](#)-B-7 MANUEL/MARY MATOS
WW-3
MANUEL MATOS/MV
RILEY WALTER/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
6-6-14 [[63](#)]

10:30 A.M.

1. [14-12110](#)-B-7 JOSHUA MARTIN AND DEANNA MOTION FOR RELIEF FROM
APN-1 LUNA-MARTIN AUTOMATIC STAY
SANTANDER CONSUMER USA INC./MV 5-21-14 [[13](#)]
ALBERT GARCIA/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

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.

2. [14-10439](#)-B-7 DONN GUEST MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 5-16-14 [[30](#)]
ALBERT GARCIA/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.
DISCHARGED

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.

3. [14-12562](#)-B-7 FELIX/ANGELINA GONZALEZ MOTION FOR RELIEF FROM
MET-1 AUTOMATIC STAY
BANK OF THE WEST/MV 6-11-14 [[14](#)]
GARY HUSS/Atty. for dbt.
MARY TANG/Atty. for mv.

4. [14-11064](#)-B-7 CARLEEN KEMMERLING MOTION FOR RELIEF FROM
EGS-1 AUTOMATIC STAY
BAYVIEW LOAN SERVICING, LLC/MV 5-27-14 [[14](#)]
PETER BUNTING/Atty. for dbt.
EDWARD SCHLOSS/Atty. for mv.

The motion for relief from the automatic stay and for *in rem* relief will be denied. It appears that the automatic stay under §362(a) has already terminated by operation of § 362(c)(3)(A). The court is not persuaded by the evidence presented that cause exists for relief under §362(d)(4). No appearance is necessary.

5. [14-12365](#)-B-7 RAUL ARREOLA MOTION FOR RELIEF FROM
TJP-1 AUTOMATIC STAY
CALIFORNIA REPUBLIC BANK/MV 5-28-14 [[11](#)]
THOMAS PRENOVOST/Atty. for mv.

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.

6. [14-12467](#)-B-7 BETTY MONTGOMERY MOTION FOR RELIEF FROM
DJD-1 AUTOMATIC STAY
SETERUS, INC./MV 6-3-14 [[11](#)]
ROBERT ANAYA/Atty. for dbt.
DARREN DEVLIN/Atty. for mv.

7. [12-17174](#)-B-7 DAVID/CARMO FERNANDEZ MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
U.S. BANK NATIONAL 5-23-14 [[48](#)]
ASSOCIATION/MV
MATTHEW SPIELBERG/Atty. for dbt.
JOSEPH GARIBYAN/Atty. for mv.
DISCHARGED
8. [14-11282](#)-B-7 OVIDIO ZAMORA AND BLANCA MOTION FOR RELIEF FROM
CJO-1 CAMPOS AUTOMATIC STAY
VOLT PARTICIPATION TRUST 6-6-14 [[20](#)]
2011-NPL2/MV
CHRISTOPHER FISHER/Atty. for dbt.
CHRISTINA O/Atty. for mv.
9. [14-12199](#)-B-7 ROSEMARIE MARTIN MOTION FOR RELIEF FROM
SMK-2 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 5-19-14 [[20](#)]
JERRY LOWE/Atty. for dbt.
SHERI KANESAKA/Atty. for mv.
WITHDRAWN

The matter has been withdrawn. No appearance is necessary.

11:00 A.M.

1. [14-10749](#)-B-7 ARTHUR HAUZER REAFFIRMATION AGREEMENT WITH
AMERICAN HONDA FINANCE
CORPORATION
5-23-14 [[15](#)]

GARY HUSS/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement, however, 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.

2. [14-11664](#)-B-7 RODRIGO VILLASENOR AND REAFFIRMATION AGREEMENT WITH
ALMA JIMENEZ FINANCE AND THRIFT COMPANY
5-22-14 [16]

THOMAS GILLIS/Atty. for dbt.

The court intends to deny approval of the reaffirmation agreement and the hearing will be dropped from calendar. Debtors were represented by counsel when they 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 debtors' 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.

3. [14-11677](#)-B-7 BRANDON/LAURA HOLLAND CONTINUED PRO SE REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE - 2012 CHEVROLET SONIC 5-14-14 [23]

4. [14-11677](#)-B-7 BRANDON/LAURA HOLLAND CONTINUED PRO SE REAFFIRMATION
AGREEMENT WITH FRESNO COUNTY
FEDERAL CREDIT UNION - 2012
CHEVROLET CRUZ
5-14-14 [[25](#)]

5. [14-11887](#)-B-7 EUGENE/JAMIE VAN ALLEN PRO SE REAFFIRMATION AGREEMENT
WITH CAPITAL ONE AUTO FINANCE
6-9-14 [16]