

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: JUNE 27, 2018

CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [09-62348](#)-A-7 **IN RE: DAVID/ROSALINA FERRER**
[18-1023](#)

STATUS CONFERENCE RE: COMPLAINT
5-2-2018 [[1](#)]

SALVEN V. PLAINTIFF FUNDING
HOLDING, INC. ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

2. [17-13859](#)-A-7 **IN RE: KYLE PENNINGTON**
[17-1091](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-16-2017 [[1](#)]

MARTINEZ V. PENNINGTON
KEVIN LITTLE/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

3. [17-14766](#)-A-7 **IN RE: JACQUELINE SILVA**
[18-1013](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-15-2018 [[1](#)]

CLOETERS V. SILVA
DINA CLOETERS/ATTY. FOR PL.
RESPONSIVE PLEADING, CON'D TO 7/11/18 PER ECF ORDER #25

Final Ruling

The status conference is continued to July 18, 2018, at 10:00 a.m.

4. [17-14766](#)-A-7 **IN RE: JACQUELINE SILVA**
[18-1013](#) [ALG-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-15-2018 [[13](#)]

CLOETERS V. SILVA
JANINE OJI/ATTY. FOR MV.
RESPONSIVE PLEADING, CON'D TO 7/11/18 PER ECF ORDER #25

Final Ruling

The motion to dismiss is continued to July 18, 2018, at 10:00 a.m.

5. [17-12272](#)-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
[17-1076](#)

PRETRIAL CONFERENCE RE: CROSS COMPLAINT - CROSSCLAIM
9-7-2017 [[7](#)]

HUTCHINSON ET AL V. SALVEN ET
AL
RUSSELL REYNOLDS/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

At the suggestion of the parties, the pretrial conference is continued to August 22, 2018, at 10:00 a.m. If a judgment or dismissal is not in the file, not later than August 8, 2018, the parties shall file a joint status report.

6. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[18-1017](#)

STATUS CONFERENCE RE: COMPLAINT
4-23-2018 [[1](#)]

SALVEN V. CALIFORNIA
DEPARTMENT OF FOOD &
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.

Final Ruling

The status conference is continued to July 18, 2018, at 10:00 a.m.

In the future, stipulations made pursuant to LBR 7012-1 shall be signed by all parties or counsel. See Stipulation for Extension of Time to File Responsive Pleading, May 18, 2018, ECF # 9 (signed only by counsel for the plaintiff).

7. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-17-2017 [[1](#)]

KODIAK MINING & MINERALS II
LLC ET AL V. DRO BARITE, LLC
VONN CHRISTENSON/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

The court intends to continue the status conference to July 18, 2018, at 10:00 a.m.

8. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#) [LAK-1](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF
REMOVAL AND/OR MOTION TO TRANSFER SECOND CLAIM FOR RELIEF
PURSUANT TO 28 U.S.C. § 1404(A)
2-28-2018 [[46](#)]

KODIAK MINING & MINERALS II
LLC ET AL V. DRO BARITE, LLC
LORI EROPKIN/ATTY. FOR MV.
RESPONSIVE PLEADING

Final Ruling

The court intends to continue the hearing on the motion to dismiss/transfer to July 18, 2018, at 10:00 a.m. The record is closed and no additional filings will be considered. The court will issue a civil minute order.

9. [18-11947](#)-A-7 **IN RE: JOHN KOCAK**

MOTION TO AVOID LIEN OF SCOTT KERNAN, CDCR
6-18-2018 [\[39\]](#)

JOHN KOCAK/MV

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied

Order: Civil minute order

PROCEDURAL DEFICIENCIES

The motion was filed on June 18, 2018. The hearing date is June 27, 2018. So the motion was filed only 9 days before the hearing. No order shortening time was issued. The notice period violates the court's local rules. LBR 9014-1(f).

The motion used the "notice of opportunity for hearing" rather than setting a hearing date. This also violates the court's local rules. LBR 9014-1(k).

The motion also violates Fed. R. Bankr. P. 9013 as it does not state with particularity the grounds for the relief sought. And it violates LBR 9014-1(d)(3) as it fails to support any of its assertions with evidence.

SUBSTANTIVE DEFICIENCIES

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined. See 11 U.S.C. § 522(f)(2).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien for several reasons. First, the motion does not identify the property to which the lien is attached. Second, the exemptions claimed by the debtor are all improper—all are claimed under 11 U.S.C. § 522(d).

Because no exemption has been properly claimed, no exemption can be impaired.

Additionally, the motion fails to offer any allegation or evidence that the lien is the type of lien that may be avoided under § 522(f). No evidence indicates that the lien to be avoided is a judicial lien or a nonpossessory, nonpurchase-money security interest.

Accordingly, a prima facie case has not been made for relief under § 522(f).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's motion to avoid a lien has been presented to the court. Given the procedural and substantive deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied.