

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable W. Richard Lee  
Hearing Date: Wednesday, July 9, 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.

9:00 A.M.

1. [09-17721](#)-B-7 JAMES/JUDITH SACCHERI APPLICATION FOR ORDER TO APPEAR  
[09-1273](#) FOR EXAMINATION AND ORDER TO  
ST. LAWRENCE VALLEY DAIRY V. APPEAR FOR EXAMINATION  
SACCHERI ET AL 6-16-14 [[268](#)]  
CLOSED

This matter will be dropped from calendar. The record does not show that the Order to Appear for Examination has been served on the defendant. No appearance is necessary.

10:00 A.M.

1. [12-18909](#)-B-7 HARJINDER/JASVIR GILL MOTION TO SELL  
KDG-10 6-11-14 [[424](#)]  
PETER FEAR/MV  
THOMAS GILLIS/Atty. for dbt.  
LISA HOLDER/Atty. for mv.
2. [13-17914](#)-B-7 WILLIAM/RANAE BUCKENDAHL MOTION TO SELL  
SAS-2 6-10-14 [[33](#)]  
SHERYL STRAIN/MV  
SUSAN HEMB/Atty. for dbt.  
SHERYL STRAIN/Atty. for mv.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

3. [13-15620](#)-B-7 FRANCES GARONE MOTION FOR COMPENSATION  
JES-4 ACCOUNTANT(S) .  
JAMES SALVEN/MV 5-27-14 [[29](#)]  
MARIO LANGONE/Atty. for dbt.

**This motion will be continued to August 6, 2014, at 10:00 a.m., for supplemental evidence. The applicant was employed to serve as the chapter 7 trustee's accountant. The trustee has not yet filed his final report. Based on the evidence presented in support of the motion, the court cannot tell if the applicant's services are concluded and cannot evaluate the necessity, reasonableness, and benefit of the applicant's services. No appearance is necessary.**

4. [13-12331](#)-B-7 LILIA GARCIA MOTION TO SELL  
JES-3 6-9-14 [[130](#)]  
JAMES SALVEN/MV  
THOMAS GILLIS/Atty. for dbt.  
JAMES SALVEN/Atty. for mv.

**This motion will be denied without prejudice. The trustee is proposing to sell real property to the debtor, without higher and better bids, and without any apparent marketing effort. However, the property was not disclosed on the debtor's schedules for reasons that have not been explained, and the debtor has not amended her schedules to correct the purported "error." There is no description of the property in the record and nothing to suggest how the trustee determined the property's fair market value. The trustee is proposing to sell the property for less than one half of its assessed value for land and improvements as stated in the title report. The motion offers no information regarding the liens reflected in the title report. The court is not persuaded that the sale of this property on these terms is appropriate. No appearance is necessary.**

5. [09-60745](#)-B-7 ROBERT/TAWNYA PIERCE MOTION TO SELL  
RH-2 5-29-14 [[45](#)]  
SHERYL STRAIN/MV  
DAVID MATHIAS/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

6. [14-10948](#)-B-7 LORA MCDONNELL MOTION TO AVOID LIEN OF CAPITAL  
HDN-2 ONE BANK (USA), N.A.  
LORA MCDONNELL/MV 5-30-14 [[22](#)]  
HENRY NUNEZ/Atty. for dbt.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

7. [12-60054](#)-B-7 DWIGHT/NELLIE LONG MOTION TO SELL FREE AND CLEAR  
RHT-12 OF LIENS AND/OR MOTION TO PAY  
ROBERT HAWKINS/MV 6-6-14 [[141](#)]  
LAYNE HAYDEN/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

8. [13-16155](#)-B-7 MICHAEL WEILERT AND MOTION TO SELL  
JES-2 GENEVIEVE DE MONTREMARE 6-3-14 [[141](#)]  
JAMES SALVEN/MV  
RILEY WALTER/Atty. for dbt.  
PETER FEAR/Atty. for mv.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

9. [14-10461](#)-B-7 JAVIER COLIN MOTION FOR SANCTIONS FOR  
EPE-1 VIOLATION OF THE AUTOMATIC STAY  
JAVIER COLIN/MV AND/OR MOTION TO IMPOSE  
AUTOMATIC STAY  
6-24-14 [[25](#)]  
ERIC ESCAMILLA/Atty. for dbt.

10. [14-10461](#)-B-7 JAVIER COLIN MOTION FOR COMPENSATION FOR  
EPE-2 ERIC P. ESCAMILLA, DEBTOR'S  
JAVIER COLIN/MV ATTORNEY(S).  
6-24-14 [[30](#)]  
ERIC ESCAMILLA/Atty. for dbt.

11. [13-13365](#)-B-7 JACOB MATHEW MOTION TO SELL  
TGM-2 6-6-14 [[21](#)]  
SHERYL STRAIN/MV  
PETER BUNTING/Atty. for dbt.  
TRUDI MANFREDO/Atty. for mv.
12. [11-63969](#)-B-7 ALVARO/CECILIA VALENZUELA MOTION TO COMPEL ABANDONMENT  
WW-1 6-16-14 [[40](#)]  
ALVARO VALENZUELA/MV  
RILEY WALTER/Atty. for dbt.
13. [10-60485](#)-B-7 JOSE/AUGUSTINA CANELO MOTION TO COMPROMISE  
RH-3 CONTROVERSY/APPROVE SETTLEMENT  
SHERYL STRAIN/MV AGREEMENT WITH JOSE CANELO AND  
AUGUSTINA CANELO  
6-10-14 [[48](#)]  
JANINE ESQUIVEL/Atty. for dbt.  
ROBERT HAWKINS/Atty. for mv.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

14. [14-11493](#)-B-7 SHANNON POWELL MOTION TO DISMISS CASE PURSUANT  
UST-1 TO 11 U.S.C. SECTION 707(B)  
TRACY DAVIS/MV 6-5-14 [[18](#)]  
JOHN BIANCO/Atty. for dbt.  
ROBIN TUBESING/Atty. for mv.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The case will be dismissed. The U.S. Trustee shall submit a proposed order. No appearance is necessary.**

15. [14-10799](#)-B-7 ANTONIO MERAZ MOTION TO AVOID LIEN OF WELLS  
RJI-1 FARGO BANK, N.A.  
ANTONIO MERAZ/MV 6-2-14 [[18](#)]  
RAYMOND ISLEIB/Atty. for dbt.

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.**

16. [14-10799](#)-B-7 ANTONIO MERAZ  
RJI-2  
ANTONIO MERAZ/MV  
RAYMOND ISLEIB/Atty. for dbt.

MOTION TO AVOID LIEN OF IRWIN  
J. ESKANOS  
6-2-14 [[24](#)]

**This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered and 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.    [14-10019](#)-B-7    ROY/LINDA SCOTT  
         CJO-1  
         CALIBER HOME LOANS, INC./MV  
         DAVID JENKINS/Atty. for dbt.  
         CHRISTINA O/Atty. for mv.  
         DISCHARGED  
  
         MOTION FOR RELIEF FROM  
         AUTOMATIC STAY  
         6-25-14 [[23](#)]
2.    [13-15130](#)-B-7    BONNY SPRUELL  
         PD-1  
         WELLS FARGO BANK, N.A./MV  
         WILLIAM COLLIER/Atty. for dbt.  
         JONATHAN CAHILL/Atty. for mv.  
         DISCHARGED  
  
         MOTION FOR RELIEF FROM  
         AUTOMATIC STAY  
         6-6-14 [[25](#)]

**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.    [12-12392](#)-B-7    RICHARD/MARY VIZZOLINI  
         HTP-1  
         UNITED SECURITY BANK/MV  
         ADRIAN WILLIAMS/Atty. for dbt.  
         HANNO POWELL/Atty. for mv.  
         DISCHARGED  
  
         MOTION FOR RELIEF FROM  
         AUTOMATIC STAY  
         6-25-14 [[52](#)]

11:00 A.M.

- |    |                                      |                     |   |
|----|--------------------------------------|---------------------|---|
| 1. | <a href="#"><u>14-11956</u></a> -B-7 | SALVADOR BALLEZ     | PRO SE REAFFIRMATION AGREEMENT<br>WITH ONEMAIN FINANCIAL<br>6-17-14 [ <a href="#"><u>19</u></a> ] |
| 2. | <a href="#"><u>14-11674</u></a> -B-7 | CHEWEETA RICHARDSON | REAFFIRMATION AGREEMENT WITH<br>CARMAX AUTO FINANCE<br>5-15-14 [ <a href="#"><u>12</u></a> ]      |

TIMOTHY SPRINGER/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor(s) attorney signed the reaffirmation agreement certifying that he or she has explained the agreement to the debtor(s), 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 reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. No appearance is necessary.

- |    |                               |                      |   |
|----|-------------------------------|----------------------|---|
| 3. | <a href="#">14-12380</a> -B-7 | PEDRO/IRMA CABRERA   | PRO SE REAFFIRMATION AGREEMENT<br>WITH WELLS FARGO BANK, N.A.<br>6-20-14 [ <a href="#">14</a> ] |
| 4. | <a href="#">14-11997</a> -B-7 | ARTURO/MARTHA TORRES | REAFFIRMATION AGREEMENT WITH<br>WELLS FARGO DEALER SERVICES<br>5-30-14 [ <a href="#">12</a> ]   |

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 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. 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. In addition, the agreement was not signed by the creditor. No appearance is necessary at this hearing.