

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 27, 2016 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.	16-20902-D-7	HOLLY PACE	MOTION FOR COMPENSATION BY THE
	SCB-3		LAW OFFICE OF SCHNEWEIS-COE &
			BAKKEN, LLP FOR LORIS L.
			BAKKEN, TRUSTEE'S ATTORNEY(S)
			6-28-16 [62]

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 by minute order. No appearance is necessary.

2. 15-25906-D-7 ESTHER BAEZ
BHS-4

MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEE'S
ATTORNEY
6-17-16 [78]

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. 16-22512-D-7 DOUGLAS BAUGHMAN

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
6-15-16 [13]

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. No appearance is necessary.

4. 14-25820-D-11 INTERNATIONAL
DMC-23 MANUFACTURING GROUP, INC.

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GENERAL ELECTRIC
CAPITAL CORPORATION AND/OR
MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DIAMOND MCCARTHY,
LLP SPECIAL COUNSEL
6-29-16 [884]

Final ruling:

This motion was resolved by an order entered on July 22, 2016. Matter removed from calendar. No appearance is necessary.

5. 16-21920-D-7 DAYNE/WHITNEY DELANO
DMW-1

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DAYNE ELLIOT
DELANO AND WHITNEY NICOLE
DELANO
6-23-16 [33]

Tentative ruling:

This is the trustee's motion to approve a compromise with the debtors as to their purchase of the non-exempt equity in certain real property. In reality, the transaction involves both a compromise of a dispute concerning the amount of the non-exempt equity and a sale of that equity. It is possible a creditor or third party might be willing and able to pay a price for the property as a whole that would generate more for the estate than the debtors propose to pay for the equity in it. Thus, the estate might be better served by allowing interested parties to overbid, and the transaction should have been presented as both a compromise and a sale. See In re Mickey Thompson Entm't Group, Inc., 292 B.R. 415, 421 (9th Cir. BAP 2003) ["section 363 and Rules 6004 and 9019(a) may overlap when property of the estate would be disposed of by way of a settlement."]. "When confronted with a motion to approve a settlement under Rule 9019(a), a bankruptcy court is obliged to consider, as part of the 'fair and equitable' analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale." Id. at 421-22.

The court intends to continue the hearing to permit the trustee to file and serve a notice of continued hearing that presents the transaction as a sale of property of the estate and describes procedures for overbidding. The court will continue the hearing either 14 days or 28 days, depending on the amount of notice the trustee wishes to provide.

The court will hear the matter.

6. 15-28427-D-7 MOHAMMED/AYESHA HUSSAIN
MDM-3

MOTION FOR COMPENSATION FOR
MICHAEL D. MCGRANAHAN, CHAPTER
7 TRUSTEE
6-15-16 [46]

Tentative ruling:

This is the trustee's motion for a first and final allowance of compensation. The notice of hearing purports to require the filing of written opposition and advises of the consequences of failing to do so. However, the notice does not give any indication of the deadline for filing opposition, either as a specific date or as 14 days prior to the hearing date. That is, there is nothing advising potential respondents of when the opposition was due. Thus, the court will entertain opposition, if any, at the hearing.

7. 11-43835-D-7 KIMBERLEY WORLEY
HAW-3

MOTION TO AVOID LIEN OF WILLIAM
V. PRIOR AND LYNIAIR A. PRIOR
6-30-16 [60]

8. 16-22935-D-7 JERRINE SMITH
EAT-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-23-16 [19]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court 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 the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

9. 16-21649-D-7 MICHAEL LUEVANO
FF-3

MOTION TO AVOID LIEN OF
SUMMERSET AT BRENTWOOD IV
ASSOCIATION
6-16-16 [40]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Summerset Brentwood IV Association (the "Association"). The motion will be denied because the moving party failed to serve the Association in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Association by certified mail whereas a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be served by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(b). This distinction is important. If service by certified mail on an entity that is not an FDIC-insured institution were appropriate, the distinction in the manner of service as between Rule 7004(b) and Rule 7004(h) would be superfluous.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

10. 14-29651-D-7 DISTRIBUTION PROPERTIES, MOTION FOR COMPENSATION FOR
JRR-1 LLC GENE GONZALES, ACCOUNTANT
6-29-16 [33]

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 by minute order. No appearance is necessary.

11. 13-25654-D-7 KENNETH/APRIL GOORE MOTION FOR COMPENSATION BY THE
HSM-5 LAW OFFICE OF HEFNER, STARK AND
MAROIS, LLP FOR HOWARD S.
NEVINS, TRUSTEE'S ATTORNEY(S)
6-29-16 [78]

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.

12. 15-28060-D-11 ACADEMY OF PERSONALIZED MOTION TO DISMISS CASE
RAL-7 LEARNING, INC. 6-29-16 [354]

13. 16-23569-D-7 ROBERT/BEVERLY OYLER MOTION FOR RELIEF FROM
ETL-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE, LLC VS. 6-28-16 [13]

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 debtors' Statement of Intentions indicates they 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. 14-30285-D-7 AUGUSTINA/MIGUEL SALGADO MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 6-27-16 [19]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'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 the debtors are 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.

15. 13-24087-D-7 LEO UNGUI AND VALARIE MOTION FOR COMPENSATION BY THE
SCB-7 HARPER-UNGUI LAW OFFICE OF SCHNEWEIS-COE &
BAKKEN FOR LORIS L. BAKKEN,
TRUSTEE'S ATTORNEY(S)
6-28-16 [91]

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 by minute order. No appearance is necessary.

16. 16-22194-D-11 DAVID FOYIL MOTION TO CONVERT CASE TO
UST-1 CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
6-28-16 [49]

Final ruling:

This case was dismissed on June 29, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

17. 16-21920-D-7 DAYNE/WHITNEY DELANO CONTINUED MOTION TO COMPEL
FF-1 ABANDONMENT
4-27-16 [11]

18. 15-28427-D-7 MOHAMMED/AYESHA HUSSAIN MOTION FOR COMPENSATION FOR
ADJ-3 ATHERTON AND ASSOCIATES, LLP,
ACCOUNTANT(S)
7-6-16 [54]
19. 15-28427-D-7 MOHAMMED/AYESHA HUSSAIN MOTION FOR COMPENSATION BY THE
ADJ-4 LAW OFFICE OF FORES MACKO, INC.
FOR ANTHONY D. JOHNSTON,
TRUSTEE'S ATTORNEY(S)
7-6-16 [61]
20. 15-24433-D-7 WILLIAM INDREBOE CONTINUED MOTION TO SELL
CDH-2 6-15-16 [21]
21. 16-22565-D-7 JOSE DOMINGUEZ MOTION TO AVOID LIEN OF
TOG-1 AMERICAN EXPRESS BANK, FSB
7-6-16 [15]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by American Express Bank, FSB (the "Bank"). The motion will be denied because it does not demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6).

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be

listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added) (internal quotation marks omitted). In this case, the debtor has not claimed as exempt any interest in the property as against which he seeks to avoid the lien. (The motion states that the property has been exempted on an amended Schedule C; however, there is no amended Schedule C on file and the original Schedule C does not include any claim of exemption in the property.) Thus, the debtor has not established that he is entitled to relief under § 522(f)(1)(A).

For the reason stated, the motion will be denied by minute order. No appearance is necessary.

22. 15-28774-D-7 OTASHE GOLDEN
SSA-2

CONTINUED MOTION TO EMPLOY
DAVID WALKER AS SPECIAL COUNSEL
6-23-16 [39]

Final ruling:

This application has been granted by order dated July 14, 2016. The matter is removed from calendar.

23. 16-22919-D-7 HANNAH PINEDA

TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
6-29-16 [12]