

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Tuesday, July 28, 2015
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.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

10:00 A.M.

1. [13-11300](#)-B-7 HARMESH/KASHMIR KUMAR
JTW-2
JANZEN TAMBERI AND WONG/MV

THOMAS ARMSTRONG/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 fees may not be paid out by the trustee until such time as the trustee determines that there will be enough funds to pay 100% of all administrative claims or until the date set for hearing of the Trustee's Final Report has expired. The moving party shall submit a proposed order. No appearance is necessary.
2. [15-11300](#)-B-7 KEN MONNIN
TMT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
6-10-15 [[14](#)]
3. [15-10006](#)-B-7 JUAN TREVINO
JES-1
JAMES SALVEN/MV

RICHARD STURDEVANT/Atty. for dbt.

MOTION TO EMPLOY BERKSHIRE
HATHAWAY HOME SERVICES
CALIFORNIA REALTY AS BROKER(S)
7-9-15 [[35](#)]
4. [13-17341](#)-B-7 HOWARD SAGASER
WFH-19
SHERYL STRAIN/MV

HAGOP BEDOYAN/Atty. for dbt.
DANIEL EGAN/Atty. for mv.

MOTION FOR AUTHORITY TO MAKE
INTERIM DISTRIBUTION TO
PRIORITY AND GENERAL UNSECURED
CREDITORS AND/OR MOTION TO
ABANDON
7-7-15 [[612](#)]

5. [10-19343](#)-B-7 CESAR CHENG AND CELESTE MOTION TO AVOID LIEN OF
TCS-3 OSUNA-CHENG RESIDENTIAL REAL ESTATE
CESAR CHENG/MV 7-14-15 [[29](#)]
TIMOTHY SPRINGER/Atty. for dbt.

The motion will be denied without prejudice. No appearance is necessary. The record does not establish that the motion was served on the named respondent, Yellowbook Sales & Distribution, in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(1) (service on an individual), 7004(b)(3) (corporation, partnership or unincorporated association) or 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Information regarding service on a corporation may be obtained from the California Secretary of State's Internet Website, see <http://kepler.sos.ca.gov/>. For a directory of FDIC Insured Institutions, see <http://www3.fdic.gov/idasp/main.asp>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004.

It appears, from the California Secretary of State's Internet Website, that the creditor, Yellow Book Sales & Distribution Company, Inc., is a corporation with a designated agent for service of process. The motion was only served on the attorney whose name is reflected in the abstract of judgment. The attorney is not the agent for service of process or an officer of the corporation.

6. [13-17257](#)-B-7 MARY MORENO MOTION FOR COMPENSATION FOR
TGM-3 TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
5-12-15 [[90](#)]

TIMOTHY SPRINGER/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. [15-11160](#)-B-7 DANIEL/JENNIFER TANAKA
JCW-1
WELLS FARGO BANK, NA/MV
PETER BUNTING/Atty. for dbt.
JENNIFER WONG/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-29-15 [[15](#)]

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.

8. [11-60495](#)-B-7 JOHN/LISA GOULART
RH-3
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF BARADAT AND PABOOJIAN FOR
WARREN R. PABOOJIAN, SPECIAL
COUNSEL(S)
6-26-15 [[64](#)]

HILTON RYDER/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.

9. [11-60495](#)-B-7 JOHN/LISA GOULART
RH-4
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT AND/OR MOTION TO SELL
6-26-15 [[69](#)]

HILTON RYDER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

The motion to approve a sale of the debtors' vehicles is denied. The three vehicles listed in Schedule B were abandoned to the debtors by operation of law upon closure of this case (11 U.S.C. §554(c)). They are no longer property of the estate subject to administration by the trustee.

The motion to approve a compromise with the debtors is denied without prejudice to being considered in conjunction with the trustee's final report and fee application. The motion does not describe the "controversy" that is being compromised and does not address the *A&C Properties* factors which the court must consider. Further, this compromise appears to be a "carve-out" solely for the benefit of the trustee and his professionals. The trustee's fee application must be set for hearing pursuant to LBR 2016-1(a). At that time the court can consider whether prosecution of the state court litigation and this subsequent "compromise" will result in any benefit for the unsecured creditors. No appearance is necessary.

11:00 A.M.

1. [15-11617](#)-B-7 JOSE CARRILLO AND IRMA VARGAS PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.
7-8-15 [[15](#)]

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 at this hearing.

2. [15-11832](#)-B-7 RYAN HORMEL REAFFIRMATION AGREEMENT WITH
WELLS FARGO BANK, N.A.
6-25-15 [18]

DAVID JENKINS/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement certifying that he has explained the agreement to the debtor, but did not check the box to state an opinion that the reaffirmed debt will not create an undue hardship. 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.

1:30 P.M.

1. [13-14915](#)-B-13 JOE RAMIREZ
GGL-1
JOE RAMIREZ/MV
GEORGE LOGAN/Atty. for dbt.

MOTION TO INCUR DEBT
6-30-15 [[31](#)]

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.

2. [15-10822](#)-B-13 STEVE VALDIVIESO
[15-1056](#)
WRIGHT, M.D. ET AL V.
VALDIVIESO ET AL
CRAIG FRY/Atty. for pl.
ORDER CONTINUING HEARING TO
8/27/15 AT 1:30 P.M.

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
4-26-15 [[1](#)]

This matter has been continued to August 27, 2015, by stipulation of the parties and an order of the court dated July 7, 2015. No appearance is necessary.

3. [15-10822](#)-B-13 STEVE VALDIVIESO
LRP-1
KENNETH WRIGHT/MV

DAVID JENKINS/Atty. for dbt.
CRAIG FRY/Atty. for mv.
ORDER CONTINUING HEARING TO
8/20/15 AT 1:30 P.M.

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY KENNETH
WRIGHT M.D. AND KAREN WRIGHT
4-21-15 [[29](#)]

This matter has been continued to August 20, 2015, by stipulation of the parties and an order of the court dated July 7, 2015. No appearance is necessary.

4. [10-60541](#)-B-13 SYLVIA PLASENCIA
PBB-6
SYLVIA PLASENCIA/MV
PETER BUNTING/Atty. for dbt.

MOTION TO MODIFY PLAN
6-22-15 [[106](#)]

The motion to confirm or modify a chapter 13 plan 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 debtor(s) shall submit a proposed confirmation order for approval to the chapter 13 trustee. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. No appearance is necessary.

5. [15-11453](#)-B-13 GARY ZIESMER
PBB-1
GARY ZIESMER/MV
PETER BUNTING/Atty. for dbt.

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE, N.A.
6-29-15 [[15](#)]

This motion to value respondent's collateral was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence presented, the respondent's secured claim will be fixed at \$200. The moving party shall submit a proposed order consistent with this ruling. *The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates.* The order will be effective upon confirmation of the chapter 13 plan. No appearance is necessary.

6. [15-11987](#)-B-13 JESUS/DIANEY MOSQUEDA
MDE-1
DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
THOMAS GILLIS/Atty. for dbt.
MARK ESTLE/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
6-23-15 [[18](#)]

The debtors have filed a non-opposition to the movant's objection to confirmation of their chapter 13 plan. Accordingly, this objection will be sustained. Confirmation of the plan will be denied. A modified plan that properly provides for the creditor's secured claim shall be filed, served and noticed for hearing within 14 days. The court will prepare and enter a civil minute order.

7. [12-15392](#)-B-13 GLEN/ELLEN SCHAFER
GEG-3
GLEN SCHAFER/MV
GLEN GATES/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO APPROVE LOAN
MODIFICATION
6-23-15 [[53](#)]

8. [15-10581](#)-B-13 ANGEL BELTRAN
SJS-3
ANGEL BELTRAN/MV

SUSAN SALEHI/Atty. for dbt.

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO BANK,
N.A.
5-19-15 [[40](#)]

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted for cause shown without oral argument. Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor(s) may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. *Unless the chapter 13 plan has been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.* The debtor(s) shall submit a proposed order consistent with this ruling. No appearance is necessary.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

9. [15-12826](#)-B-13 JOE/TINA MARIE GRANILLO
SJS-1
JOE GRANILLO/MV
SUSAN SALEHI/Atty. for dbt.

MOTION TO EXTEND AUTOMATIC STAY
7-20-15 [[8](#)]

10. 15-12680-B-13 DAVID BAER
TCS-1
DAVID BAER/MV
TIMOTHY SPRINGER/Atty. for dbt.
OST 7/23/15

MOTION TO EXTEND AUTOMATIC STAY
7-23-15 [21]

2:30 P.M.

1. 15-11079-B-11 WEST COAST GROWERS, INC.
KDG-5 A CALIFORNIA CORPORATION
WEST COAST GROWERS, INC. A
CALIFORNIA CORPORATION/MV

CONTINUED MOTION FOR ORDER
AUTHORIZING
DEBTOR-IN-POSSESSION TO MAKE
FIRST INTERIM DISTRIBUTION TO
2014 GROWERS
4-23-15 [117]

HAGOP BEDOYAN/Atty. for dbt.