

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 16, 2017 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.	17-23021-D-7	JOHN COLORADO AND	MOTION FOR RELIEF FROM
	JHW-1	CONSUELO COLORADO-JUAREZ	AUTOMATIC STAY
	FORD MOTOR CREDIT COMPANY,		7-6-17 [20]
	LLC VS.		

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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 debtor is 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.

2. 17-23923-D-7 LOGAN MERRYMAN AND DALLAS MOTION FOR RELIEF FROM
AP-1 FARIA-MERRYMAN AUTOMATIC STAY
U.S. BANK, N.A. VS. 7-7-17 [15]

Final ruling:

This matter is resolved without oral argument. This is U.S. 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.

3. 17-24227-D-7 ANDERSON/MELODY CLAYTON MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. 7-13-17 [12]
VS.

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'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 debtor is 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.

4. 17-23334-D-7 DOUGLAS STEVENS MOTION FOR RELIEF FROM
TGM-1 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 7-10-17 [13]
CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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. The lease on the vehicle has expired and, as such, the court will waive 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

5. 11-28141-D-12 VICTOR/LYUBOV
RAC-12 ANDREYCHENKO

MOTION FOR ENTRY OF DISCHARGE
6-26-17 [145]

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 for entry of discharge pursuant to 11 U.S.C. § 1228 is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

6. 17-24444-D-11 RAMON LOPEZ

STATUS CONFERENCE RE: VOLUNTARY
PETITION
7-5-17 [1]

Tentative ruling:

This is the initial chapter 11 status conference in this case. The court does not ordinarily issue tentative rulings for status conferences; however, in this case, the court has a significant concern. The court's Order to (1) File Status Report; and (2) Attend Status Conference (the "Order") required the debtor to serve the Order and his status report on certain categories of parties listed in the Order, including all parties to executory contracts and unexpired leases. Here, the debtor served neither the Order nor his status report on the five parties listed on his Schedule G as parties to lease agreements with the debtor. By now the debtor's counsel should be aware that the form of order requiring service of the order and the status report requires service on all parties on a debtor's Schedule G, and also aware of Fed. R. Bankr. P. 1007(a)(1), which requires a debtor to include on his master address list all parties included or to be included on his creditor schedules, including Schedule G. In this case, the debtor has failed to comply with that rule. As a result, the parties on Schedule G have not been notified of this case, which has been pending for a month, were not notified of the meeting of creditors which, by the time of this hearing, will already have been held, and were not notified of the various deadlines included in the Notice of Chapter 11 Bankruptcy Case.

The court will hear the matter but intends to continue the hearing and require the debtor to comply with the Order and with Rule 1007(a)(1). In particular, the debtor will be required to file a notice of continued status conference and serve it, together with the Order and his status report, on the parties on his Schedule G. He will also be required to amend his master address list to add those parties and to serve the Notice of Chapter 11 Bankruptcy Case on them.

7. 10-42050-D-7 VINCENT/MALANIE SINGH
GJH-20

MOTION FOR COMPENSATION FOR
GREGORY J. HUGHES, TRUSTEE'S
ATTORNEY
7-19-17 [999]

8. 17-22056-D-11 JAMES MCCLERNON
RLC-2

MOTION TO EMPLOY CUSHMAN &
WAKEFIELD U.S., INC. AS
BROKER(S)
7-17-17 [66]

Final ruling:

This is the debtor's motion to employ Cushman & Wakefield U.S., Inc. as the estate's real estate broker. The moving party served the notice of hearing only on creditors who have not requested special notice in this case, as permitted by LBR 9014-1(d)(5). However, the notice of hearing, although entitled Notice of Motion to Approve Employment of Broker, states the debtor "will move the Court for an order approving employment of attorney" No mention is made of employing a real estate broker and Cushman & Wakefield's name is not mentioned. Thus, the notice fails to set forth the essential facts necessary for a party to determine whether to oppose the motion, as required by the same rule.

In addition, the declaration of Ken Reiff supporting the motion is insufficient. It states, "I do not have an connection with" the relevant parties. However, Fed. R. Bankr. P. 2014(a) requires disclosure of the connections of the "person" to be employed; here, Cushman & Wakefield U.S., Inc. (A "person" may be an entity as well as an individual. § 101(41).)

As a result of the above notice defects the motion will be denied by minute order. No appearance is necessary.

9. 15-27561-D-7 SIMONAE BARRY
15-2244
GATEWAY ONE LENDING & FINANCE
V. BARRY
ADVERSARY PROCEEDING CLOSED:
12/02/2016

OPPOSITION OF CLAIM OF
EXEMPTION (WAGE GARNISHMENT)
7-19-17 [80]

Final ruling:

This is the opposition of judgment creditor Gateway One Lending & Finance LLC ("Gateway") to a claim of exemption apparently made by the judgment debtor (the "debtor"). The opposition will be overruled for the following reasons. First, the notice of hearing and notice of opposition, respectively, are on forms approved by and adopted for mandatory use by the Judicial Council of California, forms which are not in use in this court. (In fact, the name of the court in the upper left-hand corner of the notice of opposition is Superior Court of California, County of Sacramento, branch name: Eastern District of California.) The notice of hearing and notice of opposition are not in the format used in this court, as described in LBR 9014-1 and the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901, as required by LBR 9004-1(a). Second, the notices do not include a docket control number, as required by LBR 9014-1(c) and do not include the information required by LBR 9014-1(d)(4).

Third, the notice of hearing states that "The judgment creditor will not appear at the hearing and submits the issue on the papers filed with court." That procedure is not authorized in this court; instead, the relief sought by Gateway is of the sort that requires the use of a noticed motion at which the moving party is to appear. Further, the notice of opposition states that Gateway opposes various

expenses apparently claimed by the debtor in support of a claim of exemption. Gateway has not provided the court with a copy of the claim of exemption and does not cite the law applicable to its statement it will accept "\$ 25% allowable by law per pay period for payment on account of this debt." Thus, Gateway has failed to comply with LBR 9014-1(d)(6) and (7).

Finally, Gateway served the debtor at an address different from the one on the debtor's answer (since stricken from the record by court order), which is the only document she filed in this adversary proceeding, and the debtor has not filed a notice of address change in either this adversary proceeding or her parent case.

For the reasons stated, the opposition will be overruled by minute order. No appearance is necessary.

10.	15-26465-D-7	SCOTT POMEROY	CONTINUED MOTION FOR ENTRY OF
	16-2250	GJH-2	DEFAULT JUDGMENT
	ROBERTS V. SWEETLAND		4-5-17 [18]

Final ruling:

The hearing on this motion is continued to November 22, 2017 at 10:00 a.m. No appearance is necessary on August 16, 2017.

11.	15-26465-D-7	SCOTT POMEROY	MOTION TO SET ASIDE
	16-2250	LBG-202	7-19-17 [51]
	ROBERTS V. SWEETLAND		

Final ruling:

The hearing on this motion is continued to November 22, 2017 at 10:00 a.m. No appearance is necessary on August 16, 2017.

12.	17-22668-D-7	ROBERT/ALISHA SHIELDS	MOTION TO COMPROMISE
	DMW-1		CONTROVERSY/APPROVE SETTLEMENT
			AGREEMENT WITH ROBERT SHIELDS
			AND ALISHA SHIELDS
			7-14-17 [14]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

13. 17-22275-D-7 CALIFORNIA GOLF CONTINUED MOTION FOR RELIEF
ANF-1 PROPERTIES, LLC DBA RIVER FROM AUTOMATIC STAY
DIRECT CAPITAL, VS. 6-17-17 [46]

Final ruling:

The moving party failed to file a separate Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1. As a result the motion will be denied by minute order. No appearance is necessary.

14. 16-24776-D-7 JERRY/TRACEY PHEA MOTION FOR ENTRY OF DEFAULT
16-2231 JUDGMENT
COUNTY OF SOLANO, HEALTH & 6-14-17 [24]
SOCIAL SERVICES DEPARTM V.

Tentative ruling:

This is the plaintiff's motion for entry of a default judgment against the defendants. The court is not prepared to consider the motion because the proofs of service are defective. The proofs of service are entitled "Certification of Service of Motion for Default Judgement and Declaration in Support of County of Solano's Motion for Default Judgement" (DN 28) and "Certification of Service of Notice of Motion for Default Judgement" (DN 29), but the operative language in each refers only to the summons and complaint: "I, the undersigned, certify that . . . service of the attached Summons and Notice of Status Conference in an Adversary Proceeding and a copy of the complaint was made on 1/12/2017, by [mail addressed to:]." In other words, the proofs of service do not evidence service of the motion, notice, and declaration. If a corrected proof of service is filed sufficiently in advance of the hearing so the court can review it, and if it reflects proper service, the court will hear the matter. Otherwise, the hearing will be continued.

15. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR RELIEF FROM PARTIAL
16-2088 DNL-12 JUDGMENT
CARELLO V. STERN ET AL 7-18-17 [387]

16. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR ENTRY OF DEFAULT
17-2047 DNL-4 JUDGMENT
CARELLO V. DIGERATI LIMITED 7-18-17 [73]

17. 14-26105-D-7 CHERYL MEYERS MOTION TO EMPLOY GONZALES AND
DNL-3 ASSOCIATES, INC. AS
ACCOUNTANT(S) AND/OR MOTION FOR
COMPENSATION FOR GONZALES AND
ASSOCIATES, INC., ACCOUNTANT(S)
7-27-17 [37]
18. 16-28018-D-7 TERRENCE/NANCIE HOFMANN CONTINUED MOTION FOR RELIEF
CSR-3 FROM AUTOMATIC STAY
JSM ENTERPRISES, INC. VS. 5-19-17 [82]
19. 16-28018-D-7 TERRENCE/NANCIE HOFMANN CONTINUED MOTION FOR ENTRY OF
17-1001 CSR-4 DEFAULT JUDGMENT
JSM ENTERPRISES, INC. V. 6-22-17 [33]
HOFMANN ET AL

Tentative ruling:

This is the plaintiff's motion for entry of default judgment against defendants Nancie Ann Hofmann and Terrence Ray Hofmann, Jr., ("wife" and "husband," respectively), the debtors in the underlying case. No opposition has been filed. Based on the declarations in support of the motion, the court is prepared to grant the motion as against the wife. However, the record is simply too thin to support entry of a default judgment against the husband. Although the complaint states in the form of argument that "[i]t strains credulity to ask the Court to believe that the [husband] was unaware that his wife was depositing hundreds of thousands of dollars into a bank account," the complaint does not actually allege the wife deposited the funds into a bank account or, for purposes of the husband's liability, a joint bank account. In the memorandum of points and authorities supporting this motion, the above sentence has been changed to add the word "joint": "It strains credulity to ask the Court to believe that the [husband] was unaware that his wife was depositing \$9K to \$47K a month into their joint bank account(s)" Memo., DN 39, at 17:19-20. However, the factual allegations in the memorandum refer to the wife transferring funds to her personal bank account (Memo. at 12:14-15), and there is no reference in the supporting declarations as to what the wife did with the embezzled funds - no evidence she deposited them into a bank account, let alone a joint bank account. In these circumstances, the court is not prepared to determine that the funds embezzled by the wife were deposited into a joint bank account the husband was aware of. The court will hear the matter.

20. 17-24631-D-7 GERARDO ROSAS AND ROGER MOTION FOR RELIEF FROM
PCJ-1 ZAMORA AUTOMATIC STAY
QUINN CROSSING LLC VS. 7-29-17 [11]

21. 17-23134-D-7 KIRSTEN SEALANA AMENDED MOTION FOR RELIEF FROM
GANN PROPERTIES, LP VS. AUTOMATIC STAY
7-31-17 [40]

Final ruling:

The motion is denied for the following reasons: (1) moving party failed to include an appropriate docket control number as required by LBR 9014-1(c); (2) moving party failed to file a separate notice of hearing as required by LBR 9014-1(d)(3); (3) moving party failed to file a Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1; and (4) moving party failed to serve the debtor and the case trustee. As a result of these procedural and service defects, the court will deny the motion by minute order. No appearance is necessary.

22. 10-42050-D-7 VINCENT/MALANIE SINGH CONTINUED MOTION TO COMPROMISE
GJH-19 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CLASS J, K, AND
L CONTROVERSIES
6-30-17 [991]

Final ruling:

This motion was granted by an order entered on August 4, 2017. As such, this matter is removed from calendar. No appearance is necessary.

23. 17-22056-D-11 JAMES MCCLERNON MOTION TO WAIVE FILING FEE
17-2118 7-25-17 [10]
BLOSKY-MCCLERNON V. MCCLERNON

24. 14-27267-D-7 SARAD/USHA CHAND
HSM-24

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR RE/MAX
EXECUTIVE, BROKER(S)
7-26-17 [402]

25. 14-27267-D-7 SARAD/USHA CHAND
HSM-25

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR RE/MAX
EXECUTIVE, BROKER(S)
7-26-17 [407]

26. 12-40279-D-7 MARTIN/ANGELA WALTERS

MOTION TO AVOID LIEN OF
DISCOVER BANK
8-1-17 [44]

Tentative ruling:

This is the debtors' motion to avoid two judicial liens held by Discover Bank (the "Bank"). The motion will be denied without prejudice for the following reasons. First, there are procedural problems with the moving papers. The moving papers do not include a docket control number, as required by LBR 9014-1(c). The notice of hearing states that any opposition must be filed and served not less than 14 days preceding the hearing date and that, without good cause, no party will be heard in opposition to the motion if written opposition has not been timely filed. However, the moving parties gave only 15 days' notice of the hearing, rather than 28 days', as required by LBR 9014-1(f)(1) for a motion requiring the filing of written opposition in advance of the hearing date. The proof of service evidences service of the motion, declaration, and a proposed order, but not the notice of hearing. The proof of service also fails to state the manner of service.

In addition, the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) at a street address with no attention line; (2) through the law firm that obtained one of the two abstracts of judgment; and (3) through another law firm. The first method was insufficient because service on an FDIC-insured institution must be by certified mail to the attention of an officer, whereas here, there was no attention line and there is no evidence service was made by certified mail. The second and third methods were insufficient because an FDIC-insured institution must be served to the attention of an officer and not an attorney or law firm, unless the attorney or law firm has appeared in the action on behalf of the Bank (Rule 7004(h), subd. (1)), which has not occurred in this case.

Finally, the moving parties have not claimed any interest in the property as exempt. It is an essential element of avoiding a judicial lien as impairing an exemption that the debtor has claimed an interest in the property as exempt. See 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). The debtors will need to file an amended Schedule C, claiming an interest in the property as exempt, before they may seek to avoid these judicial liens.

For the reasons stated, the motion will be denied by minute order without prejudice. The court will hear the matter.

27. 12-41422-E-13 DAVID/ANNA MONTOYA
16-2057
MONTOYA, JR. ET AL V. OCWEN
LOAN SERVICING, LLC ET AL

STIPULATION TO CONTINUE DATES
AND DEADLINES
8-7-17 [43]