

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, September 4, 2014
Place: U.S. Courthouse, 510 19th Street
Bakersfield, 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. UNITED

9:00 A.M.

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|----|--------------------------------------|--|--|
| 1. | <u>14-10609</u> -B-7 | ARYA KHATIBI <u>14-1042</u> BABICH V. KHATIBI NONA BABICH/Atty. for pl. | STATUS CONFERENCE RE: SECOND AMENDED COMPLAINT 8-8-14 [<u>27</u>] |
| 2. | <u>13-17157</u> -B-7 | LUIZ SOARES <u>14-1017</u> TRANSPORT FUNDING, LLC V. SOARES JENNIFER CRASTZ/Atty. for pl. RESPONSIVE PLEADING | CONTINUED STATUS CONFERENCE RE: COMPLAINT 2-4-14 [<u>1</u>] |
| 3. | <u>12-10963</u> -B-7 | TEJWANT/KIRPAL BAL VAG-1 TEJWANT BAL/MV VINCENT GORSKI/Atty. for dbt. RESPONSIVE PLEADING | CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION 10-17-13 [<u>24</u>] |

Based on the plaintiff's status report and the parties' agreement to submit this dispute to BDRP, this matter will be continued to October 30, 2014, at 9:00 a.m. The parties shall submit a comprehensive status report regarding the progress and estimated completion of discovery if the matter has not been settled. The court will prepare a minute order. No appearance is necessary.

4. [12-10963](#)-B-7 TEJWANT/KIRPAL BAL CONTINUED STATUS CONFERENCE RE:
[13-1129](#) AMENDED COMPLAINT
 STAN BOYETT & SON, INC. V. BAL 3-27-14 [[38](#)]
 ET AL
 BONNIE ANDERSON/Atty. for pl.
 RESPONSIVE PLEADING

Based on the plaintiff's status report and the parties' agreement to submit this dispute to BDRP, this matter will be continued to October 30, 2014, at 9:00 a.m. The parties shall submit a comprehensive status report regarding the progress and estimated completion of discovery if the matter has not been settled. The court will prepare a minute order. No appearance is necessary.

10:00 A.M.

1. [14-13904](#)-B-7 LORI MEYERS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-18-14 [[14](#)]

The record shows that the required fee has been paid in full. The OSC will be dropped from calendar. No appearance is necessary.

2. [14-14042](#)-B-7 EDUARDO/GLORIA LOPEZ MOTION TO COMPEL ABANDONMENT
PK-1 8-14-14 [[6](#)]
EDUARDO LOPEZ/MV
PATRICK KAVANAGH/Atty. for dbt.

3. [14-11447](#)-B-7 JAMES/PAMELA WILLINGHAM CONTINUED MOTION TO DISMISS
UST-1 CASE PURSUANT TO 11 U.S.C.
TRACY DAVIS/MV SECTION 707(B)
6-26-14 [[18](#)]

CYNTHIA SCULLY/Atty. for dbt.
GREGORY POWELL/Atty. for mv.
RESPONSIVE PLEADING

This matter was continued from July 31, 2014, for the submission of additional briefing requested by the court. The debtors' supplemental brief has now been filed. This matter appears to be fully briefed and the court deems the matter to be suitable for submission without oral argument. Accordingly, the matter will stand submitted. No appearance is necessary.

4. [14-11547](#)-B-7 BESTIAME TRANSPORT, INC. MOTION FOR RELIEF FROM
RLF-1 AUTOMATIC STAY
JOSE HERNANDEZ/MV 8-2-14 [[42](#)]
PATRICK KAVANAGH/Atty. for dbt.
JEFF REICH/Atty. for mv.
INCORRECTLY NOTICED,
RESPONSIVE PLEADING

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as to the movant's prosecution of the state court litigation for the purposes of recovering against insurance proceeds only, if any. The stay shall continue to bar the enforcement of any judgment against the debtor or property of the estate. The proposed order shall specifically describe the action to which the order relates. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* No appearance is necessary.

5. [14-13175](#)-B-7 TERRI DITTY MOTION TO COMPEL ABANDONMENT
PK-1 8-11-14 [[19](#)]
TERRI DITTY/MV
PETER TRACY/Atty. for dbt.

6. [10-60686](#)-B-7 THOMAS AVENALL
KDG-2
RANDELL PARKER/MV

WILLIAM OLCOTT/Atty. for dbt.
LISA HOLDER/Atty. for mv.

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION
8-7-14 [[38](#)]

10:30 A.M.

1. [14-13230](#)-B-7 JAKE THOMAS
 ALS-1
 PENTAGON FEDERAL CREDIT
 UNION/MV
 PATRICK KAVANAGH/Atty. for dbt.
 A. SIMON/Atty. for mv.

 MOTION FOR RELIEF FROM
 AUTOMATIC STAY
 8-7-14 [[15](#)]

2. [14-13145](#)-B-7 KENNETH DIEBALL
 PD-1
 HSBC BANK USA, NATIONAL
 ASSOCIATION/MV
 ASHTON DUNN/Atty. for dbt.
 JONATHAN CAHILL/Atty. for mv.

 MOTION FOR RELIEF FROM
 AUTOMATIC STAY
 7-30-14 [[11](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. 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. [14-11463](#)-B-7 CODY/ROCHELLE DAVIS
JHW-1
TD AUTO FINANCE LLC/MV
STEVEN STANLEY/Atty. for dbt.
JENNIFER WANG/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-23-14 [[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.

4. [14-13867](#)-B-7 JOSE/SABINA ALANIS
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
ROBERT WILLIAMS/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-18-14 [[11](#)]

11:00 A.M.

1. [14-12108](#)-B-7 MARIA GARCIA - MARQUEZ

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.
8-14-14 [[14](#)]

OSCAR SWINTON/Atty. for dbt.

The court intends to deny approval of the reaffirmation agreement and the hearing will be dropped from calendar. Debtor was represented by counsel when she 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.

In addition, both the reaffirmation agreement and the bankruptcy schedules show that the 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. [14-12119](#)-B-7 MICHAEL/REBECCA MANNING

PRO SE REAFFIRMATION AGREEMENT
WITH SNAP-ON CREDIT LLC
8-13-14 [[15](#)]

DAVID LOZANO/Atty. for dbt.

The hearing will be dropped from calendar. The court is not approving or denying approval of the reaffirmation agreement. 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). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

The debtors are trying to reaffirm a debt to a creditor who was not listed on the schedules. The debt payment to this creditor is not included in the list of expenses on schedule J. After inclusion of this debt payment the 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.

3. [14-12172](#)-B-7 JAMES/ANNETTE SAWYER

REAFFIRMATION AGREEMENT WITH
ONEMAIN FINANCIAL
8-7-14 [[24](#)]

JEFF REICH/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtor's attorney signed the reaffirmation agreement, however, 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.

4. [14-12496](#)-B-7 KIMBERLYNN SMITH

PRO SE REAFFIRMATION AGREEMENT
WITH FORD MOTOR CREDIT COMPANY
7-16-14 [[17](#)]

1:00 P.M.

1. [12-17199](#)-B-7 GURSEV KAUR
[12-1188](#)
VETTER V. KAUR
RENE LASTRETO/Atty. for pl.
RESPONSIVE PLEADING,
DISMISSED

TRIAL RE: AMENDED COMPLAINT
11-16-12 [[6](#)]

This adversary proceeding has been dismissed and the trial has been vacated. No appearance is necessary.