

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, September 10, 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.

9:00 A.M.

1. [15-11311](#)-B-7 CHRISTOPHER/KERRI TYSON STATUS CONFERENCE RE: COMPLAINT
[15-1082](#)
 SMITH V. TYSON 7-1-15 [[1](#)]
 MELISSA SMITH/Atty. for pl.

This matter will be continued to September 24, 2015, at 9:00 a.m., to be heard with the defendant's motion to dismiss the complaint. The court will prepare a minute order. No appearance is necessary.

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|----|--------------------------------------|---|---|
| 2. | <u>15-11311</u> -B-7 | CHRISTOPHER/KERRI TYSON | STATUS CONFERENCE RE: AMENDED COMPLAINT |
| | <u>15-1087</u> | TYSON V. NATIONAL COLLEGIATE TRUST 2005-3 ET AL | 7-16-15 [<u>6</u>] |
| | | SCOTT LYONS/Atty. for pl. | |
| 3. | <u>15-11120</u> -B-7 | NANCY ANGWIN | STATUS CONFERENCE RE: COMPLAINT |
| | <u>15-1080</u> | UNITED STATES V. ANGWIN | 6-29-15 [<u>1</u>] |
| | | JEFFREY LODGE/Atty. for pl. | |
| | | RESPONSIVE PLEADING | |
| 4. | <u>15-10257</u> -B-7 | JUAN CALVILLO | STATUS CONFERENCE RE: COMPLAINT |
| | <u>15-1088</u> | U.S. TRUSTEE V. CALVILLO | 7-10-15 [<u>1</u>] |
| | | TERRI DIDION/Atty. for pl. | |

Based on the U.S. Trustee's status report, this matter appears to be settled. The status conference will be continued to October 22, 2015, at 9:00 a.m. to allow the parties time to complete the settlement. The U. S. Trustee shall file a status report if the settlement has not been noticed and set for hearing. No appearance is necessary.

5. [15-11079](#)-B-11 WEST COAST GROWERS, INC. STATUS CONFERENCE RE: COMPLAINT
[15-1081](#) A CALIFORNIA CORPORATION 7-1-15 [[1](#)]
 5T FARMS ET AL V. WEST COAST
 GROWERS, INC.
 RILEY WALTER/Atty. for pl.

10:00 A.M.

1. [14-16009](#)-B-7 CINDY MILLER CONTINUED MOTION TO AVOID LIEN
JRL-3 OF PALISADES COLLECTION, LLC
CINDY MILLER/MV 7-2-15 [[37](#)]
JERRY LOWE/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.

2. 15-11311-B-7 CHRISTOPHER/KERRI TYSON MOTION TO DISMISS ADVERSARY
15-1082 SL-1 PROCEEDING/NOTICE OF REMOVAL
SMITH V. TYSON 8-5-15 [9]
SCOTT LYONS/Atty. for mv.
AMENDED NOTICE OF HEARING
FOR 9/24/15 AT 9:00 A.M.

This matter has been rescheduled to September 24, 2015, at 9:00 a.m. No appearance is necessary on September 10, 2015.

3. [14-10019](#)-B-7 ROY/LINDA SCOTT MOTION TO AVOID LIEN OF CAPITAL
DRJ-1 ONE BANK (USA) N.A.
ROY SCOTT/MV 8-5-15 [[35](#)]
DAVID JENKINS/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.

4. [15-12019](#)-B-7 ANTONINA ALCANTARA
EAT-1
WELLS FARGO BANK N.A./MV
DARLENE VIGIL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-11-15 [[17](#)]

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.

5. [15-12820](#)-B-7 DIANA CORIA

DIANA CORIA/MV

DIANA CORIA/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
7-17-15 [[5](#)]

The debtor(s) application to waive the chapter 7 filing fee will be deemed withdrawn. The trustee's objection will be overruled as moot. In response to the trustee's objection, the debtor(s) has/have consented to pay the filing fee in installments. No appearance is necessary.

6. [15-11933](#)-B-7 STEVEN/ROBYN LOVELACE
NEA-1
STEVEN LOVELACE/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.

MOTION TO AVOID LIEN OF CACH,
LLC
8-4-15 [[16](#)]

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. [09-16539](#)-B-7 JULIE WEBER
RHT-3
ROBERT HAWKINS/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JULIE WEBER
8-12-15 [[65](#)]

KARNEY MEKHITARIAN/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 in part and denied in part without oral argument for cause shown. The trustee's motion to compromise a controversy regarding the objection to exemption is granted. The trustee shall submit a proposed order.

The motion will be denied as moot insofar as it seeks approval of the state court class action settlement, authorization to pay litigation costs in an unstated amount, and authorization to pay the state court attorney's contingency fee totaling \$87,814.51. It appears from the documents that the class action settlement was executed and funded approximately 9 months before this case was reopened and 18 months before this motion was filed. Accordingly, there is nothing for the bankruptcy court to approve at this time. Except for the \$30,000 "nonexempt" fund which will be paid to the trustee pursuant to the compromise above, the entire class action settlement is exempt. It is not property of the estate and not available for distribution by the trustee. The state court attorney who represented the Debtor in the state court was never employed to work for the bankruptcy estate pursuant to 11 U.S.C. § 327(e). The court cannot authorize payment to a professional that has not been employed pursuant to 11 U.S.C. §327 and §328. Presumably, the state court attorney has already paid the costs and contingency fee associated with the settlement. The attorney's fees and costs have been, or would be paid from funds which the Debtor claims as exempt, so those funds are not property of the estate and available for distribution by the trustee. No appearance is necessary.

8. [12-60054](#)-B-7 DWIGHT/NELLIE LONG
JTW-2
JANZEN, TAMBERI & WONG/MV

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S)
8-11-15 [[248](#)]

LAYNE HAYDEN/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.

9. [15-11463](#)-B-7 JAIME HERNANDEZ
JRL-2
JAIME HERNANDEZ/MV
JERRY LOWE/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO REDEEM
7-6-15 [[36](#)]

The matter has been resolved by stipulation of the parties and order of the court entered August 26, 2015. No appearance is necessary.

11:00 A.M.

1. [15-12100](#)-B-7 VICTOR/REINA CASTILLO

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.

8-12-15 [[17](#)]

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. Debtors' counsel shall inform his clients that no appearance is necessary at this hearing.

2. [15-12720](#)-B-7 MARIA CAMPOS

PRO SE REAFFIRMATION AGREEMENT
WITH SANTANDER CONSUMER USA
INC.

8-19-15 [[16](#)]

1:30 P.M.

1. [15-11610](#)-B-13 JORGE CANO AND LORENA CHAVEZ ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-21-15 [[34](#)]
THOMAS GILLIS/Atty. for dbt.

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

2. [09-62811](#)-B-13 WARREN/SHEILA DIFFEY PWG-6 MOTION FOR COMPENSATION FOR PHILLIP GILLET, JR., DEBTORS ATTORNEY(S)
8-9-15 [[92](#)]
PHILLIP GILLET/Atty. for dbt.
BAKERSFIELD CASE

3. [15-12220](#)-B-13 MYSTI MEDINA ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED
8-17-15 [[40](#)]
PERRY POPOVICH/Atty. for dbt.
DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

4. [15-12220](#)-B-13 MYSTI MEDINA APN-1 CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A./MV
7-21-15 [[28](#)]
PERRY POPOVICH/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

5. [15-12220](#)-B-13 MYSTI MEDINA KRK-5 OBJECTION TO CONFIRMATION OF PLAN BY CALIBER HOME LOANS, INC.
8-18-15 [[45](#)]
PERRY POPOVICH/Atty. for dbt.
KATELYN KNAPP/Atty. for mv.
DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

6. [15-12220](#)-B-13 MYSTI MEDINA AMENDED OBJECTION TO
PPR-1 CONFIRMATION OF PLAN BY BANK OF
BANK OF AMERICA, N.A./MV AMERICA, N.A.
8-24-15 [[64](#)]

PERRY POPOVICH/Atty. for dbt.
ASYA LANDA/Atty. for mv.
DISMISSED

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

7. [15-10631](#)-B-13 MANSOUR/PHEBE TOPALIAN MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
JPMORGAN CHASE BANK, N.A./MV 8-11-15 [[52](#)]
BENNY BARCO/Atty. for dbt.
TIMOTHY SILVERMAN/Atty. for mv.
RESPONSIVE PLEADING

This motion for relief from the automatic stay will be denied as moot. The secured claim relating to this collateral is provided for in Class 3 of the debtors' confirmed chapter 13 plan. Upon confirmation of the chapter 13 plan, the automatic stay was modified for this claim to permit enforcement of the creditor's remedies with regard to the collateral in the event of a default under applicable law. No attorney's fees will be awarded in relation to this motion. No appearance is necessary.

8. [15-11633](#)-B-13 RAFAEL BAEZ MOTION TO CONFIRM PLAN
JRL-1 7-28-15 [[22](#)]
RAFAEL BAEZ/MV
JERRY LOWE/Atty. for dbt.

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.

9. [15-11844](#)-B-13 JEANETTE MORGAN MOTION TO DISMISS CASE
MHM-1 7-30-15 [[20](#)]
MICHAEL MEYER/MV
ANDY WARSHAW/Atty. for dbt.

The chapter 13 trustee's motion to dismiss was served and fully noticed in compliance with the Local Rules and there is no response. Accordingly, the Debtor's default will be entered. It appears from the evidence that the Debtor has not made any postpetition payments to the chapter 13 Trustee. Accordingly, the motion will be granted without oral argument. The case will be dismissed for cause shown. The court will prepare a civil minute order. No appearance is necessary.

10. [13-17973](#)-B-13 MARIA VASQUEZ
GMA-4
MARIA VASQUEZ/MV
GEOFFREY ADALIAN/Atty. for dbt.

MOTION TO MODIFY PLAN
8-5-15 [[72](#)]

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.

11. [10-62083](#)-B-13 PAUL/TONI DICKEY
DMG-1
PAUL DICKEY/MV
D. GARDNER/Atty. for dbt.

MOTION TO INCUR DEBT
8-21-15 [[46](#)]

12. [15-11788](#)-B-13 MARK/AMY AVILA
MAT-1
MARK AVILA/MV
MARCUS TORIGIAN/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
7-29-15 [[51](#)]

The motion will be denied without prejudice. Based on the trustee's opposition, and the court's review of the creditor's proof of claim, the court is satisfied that his plan cannot be confirmed in its present form, and the issues relating to treatment of the claim secured by the Kia Sorento cannot be resolved with additional provisions in the confirmation order. The Debtors shall file and serve a confirmable plan with 14 days. No appearance is necessary.

13. [14-13293](#)-B-13 STEPHEN/REBECCA CORL
FLG-3
STEPHEN CORL/MV

MOTION TO EMPLOY CENTRAL VALLEY
AUCTION AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT
PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND
EXPENSES
8-13-15 [[39](#)]

PETER FEAR/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.

2:30 P.M.

1. [15-11079](#)-B-11 WEST COAST GROWERS, INC. MOTION FOR COMPENSATION BY THE
KDG-12 A CALIFORNIA CORPORATION LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB &
KIMBALL, LLP FOR HAGOP T.
BEDOYAN, DEBTORS ATTORNEY(S)
8-13-15 [[463](#)]

HAGOP BEDOYAN/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.

2. [15-11079](#)-B-11 WEST COAST GROWERS, INC. CONTINUED MOTION FOR ORDER
KDG-5 A CALIFORNIA CORPORATION AUTHORIZING
WEST COAST GROWERS, INC. A DEBTOR-IN-POSSESSION TO MAKE
CALIFORNIA CORPORATION/MV FIRST INTERIM DISTRIBUTION TO
2014 GROWERS
4-23-15 [[117](#)]

HAGOP BEDOYAN/Atty. for dbt.
RESPONSIVE PLEADING

3. 13-16155-B-7 MICHAEL WEILERT AND RESCHEDULED HEARING RE: MOTION
13-1134 GENEVIEVE DE MONTREMARE CAS-5 TO DISMISS DEFENDANT GENEVIEVE
BRIAN L. GWARTZ AND CHERYL A. DE MONTREMARE AND/OR MOTION
FOR
ENTRY OF JUDGMENT AGAINST
MICHAEL WEILERT
7-30-15 [103]

SKIGIN, CO-TRUSTEES V. WEILERT
CHERYL SKIGIN/Atty. for mv.

This matter was set for a final hearing. No opposition has been filed. Pursuant to the September 3, 2015, civil minute order, the motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

4. 13-16062-B-7 MICHAEL WEILERT, M.D., CONTINUED MOTION TO COMPROMISE
RHT-2 INC. CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH PATHOLOGY
ASSOCIATES
6-4-15 [95]

RILEY WALTER/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

5. 13-16062-B-7 MICHAEL WEILERT, M.D., RESCHEDULED STATUS CONFERENCE
15-1073 INC. RE: COMPLAINT
BRIAN L. GWARTZ AND CHERYL A. 6-3-15 [1]
SKIGIN, CO-TRUSTEES V. WILD,
CHERYL SKIGIN/Atty. for pl.

6. 13-16062-B-7 MICHAEL WEILERT, M.D.,
15-1073 INC.
BRIAN L. GWARTZ AND CHERYL A.
SKIGIN, CO-TRUSTEES V. WILD,
MANDY JEFFCOACH/Atty. for mv.
RESPONSIVE PLEADING

RESCHEDULED HEARING RE: MOTION
TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
7-6-15 [7]