

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 11, 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.	15-23511-D-7	SCOTT COURTNEY	MOTION FOR COMPENSATION BY THE
	SCB-18		LAW OFFICE OF SCHNEWEIS-COE &
			BAKKEN, LLP FOR LORIS L.
			BAKKEN, TRUSTEE'S ATTORNEY(S)
			9-8-17 [116]

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.

2. 17-25014-D-7 JAMES/STACY HOLT
RCO-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-30-17 [11]

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.

3. 17-21127-D-7 HAZEL 71, INC.
KJH-2

MOTION FOR COMPENSATION FOR
GABRIELSON & COMPANY,
ACCOUNTANT(S)
9-10-17 [72]

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.

4. 16-25331-D-7 CAROL BENEDETTI
DNL-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
9-13-17 [83]

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.

5. 17-20731-D-11 CS360 TOWERS, LLC
TBG-2

MOTION TO USE CASH COLLATERAL
2-15-17 [12]

Final ruling:

Per stipulated order the hearing on this motion is continued to November 8, 2017 at 10:00 a.m. No appearance is necessary on October 11, 2017.

6. 17-20038-D-11 LANE FAMILY LIMITED
MBG-4 PARTNERSHIP NO. ONE
FIRST COMMUNITY BANK VS.

MOTION TO DISMISS CASE AND/OR
MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-29-17 [130]

Tentative ruling:

This is the motion of First Community Bank (the "Bank") to dismiss this chapter 11 case, or in the alternative, for relief from stay. The debtor has filed opposition,¹ and the Bank has filed a reply. For the following reasons, the court intends, at a minimum, to set a short deadline for the debtor to file a plan and disclosure statement, together with deadlines for obtaining approval of a disclosure statement and confirmation of a plan. The court will also consider both dismissal and relief from stay at the hearing.

The debtor filed this case under chapter 12 of the Bankruptcy Code on January 4, 2017. On March 15, 2017, finding that the debtor was not a family farmer within the meaning of the Code, the court converted the case to chapter 11. In the seven months since then, the debtor has taken virtually no steps, so far as the record reveals, toward confirming a plan. Prior to the conversion, the debtor filed a single monthly operating report, for January 2017, and has filed none of the seven monthly operating reports that have come due since the conversion. The debtor has filed quarterly motions to allow the use of cash collateral, but has filed no motions to approve the sales of mitigation credits it anticipated in its status conference statement filed January 23 and no motion to employ a broker to pursue such sales, as the debtor suggested it might require.

The debtor claims in its opposition that its management has been "developing and laying the ground work for the strongest plan [they] could" (Wilber Decl., DN 147, at 4:7-8), and "actively seeking buyers" for its mitigation credits. Id. at 4:14-15. The debtor refers to only one specific potential buyer, who withdrew from negotiations, and to "preliminary discussions with a public utility" (id.), which have not yet reached the point of price discussions and which will require a formal bidding and purchasing process by the utility, not yet begun. The debtor states it has finally decided to retain a broker to assist with sales, although no employment application has yet been filed. Finally, the debtor refers to discussions with an agricultural lender for up to \$400,000 in exit financing.

The court recognizes that it often sees just the tip of the iceberg in terms of a debtor's reorganization efforts, and also acknowledges the health issues, some quite serious, of the three family members who are primarily in charge of the debtor. Nevertheless, a debtor-in-possession has a fiduciary duty to creditors that, together with applicable rules, requires the filing of timely monthly operating reports. The court disagrees with the debtor's claim that its management's health issues "excuse the delinquency." Debtor's Motion, DN 146, at 7:10. The debtor's response concerning its failure to pay property taxes on four real properties having a combined value of, according to the debtor, almost \$2.4 million, is also inadequate. The debtor offers no explanation of its failure to pay the taxes on time, by April 10, 2017, stating only that it "expects to cure the property tax delinquency" within 30 days. Id. at 7:18-19.

The court agrees with the concerns raised by the Bank and concludes the debtor has only minimally administered the estate. The debtor has failed to show that an effective reorganization is reasonably in prospect. In short, it is time to bring the case to a head and time for the debtor to deal in a meaningful way with the

Bank, which is by far the largest and most dominant creditor in the case. (The debtor claims to be concerned about other creditors when it worries the Bank will "swoop[] in and cannibaliz[e] the estate" (Motion at 6:15), but the fact of the matter is that the Bank holds 98.4% of the scheduled secured claims and 94.1% of the total scheduled claims.) The debtor has made no post-petition payments to the Bank, instead relying solely on an alleged equity cushion that the Bank questions. The debtor has almost no assets that are not the Bank's collateral - just \$7,000 in cash as of the petition date and vehicles the debtor valued at \$42,000 on that date. In the court's view, the Bank has been more than patient with the debtor's failure to file monthly operating reports, its failure to sell mitigation credits, and its failure to file a plan and disclosure statement.

For the reasons stated, the court will, at a minimum, require the debtor to file a plan and disclosure statement in the very near future and to set deadlines for the debtor to obtain approval of a disclosure statement and confirmation of a plan. The court will also, however, consider dismissal and relief from stay at the hearing. The court will hear the matter.

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- 1 The debtor contends the court should not consider the relief from stay aspect of the motion. The debtor cites a recent decision from another department of this court to the effect that a motion for reconsideration of an earlier order is not appropriately included in a party's opposition to another party's motion. In re Sinclair, 563 B.R. 554, 559 (Bankr. E.D. Cal. Feb. 14, 2017). The court finds, however, that the debtor had ample opportunity to address the relief from stay issues.

7. 16-25239-D-7 DIVINDER HUNDAL MOTION TO DISMISS CASE
17-2005 CDH-1 9-1-17 [15]
HUSTED V. HUNDAL

Tentative ruling:

This is the motion of the plaintiff in this adversary proceeding, who is also the trustee in the underlying chapter 7 case, to dismiss her adversary complaint with prejudice. The motion was ostensibly noticed pursuant to LBR 9014-1(f)(1); however, the notice of hearing did not inform potential respondents of the consequences of failing to file timely written opposition, as required by LBR 9014-1(d)(4). Accordingly, the court will entertain opposition, if any, at the hearing.

The court will hear the matter.

8. 17-24444-D-11 RAMON LOPEZ CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-5-17 [1]

9. 17-24444-D-11 RAMON LOPEZ MOTION TO APPOINT TRUSTEE
MF-1 9-1-17 [54]

10. 17-25154-D-7 ROGER CLARO MOTION FOR RELIEF FROM
ABG-1 AUTOMATIC STAY
KINECTA FEDERAL CREDIT UNION 9-8-17 [15]
VS.

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 debtor's Statement of Intentions indicates he 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.

11. 16-27672-D-11 DAVID LIND CONTINUED MOTION TO APPROVE LOT
DNL-5 LINE ADJUSTMENT AGREEMENT
8-16-17 [205]

12. 16-27672-D-11 DAVID LIND MOTION TO SELL AND/OR MOTION
DNL-6 FOR COMPENSATION FOR RE/MAX
GOLD, BROKER(S)
9-11-17 [219]

13. 17-25477-D-7 SHAUN RASMUSSEN AMENDED MOTION FOR WAIVER OF
THE CHAPTER 7 FILING FEE OR
OTHER FEE
8-31-17 [26]
14. 17-25477-D-7 SHAUN RASMUSSEN ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-17 [34]
15. 17-25279-D-7 JONATHAN VELASQUEZ MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
TOYOTA LEASE TRUST VS. 8-25-17 [11]
- Final ruling:**
- This matter is resolved without oral argument. This is Toyota Lease Trust'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 debtor is 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.**
16. 17-20984-D-7 DAVID/JENNIFER VON SAVOYE CONTINUED MOTION BY GARY RAY
FF-2 FRALEY TO WITHDRAW AS ATTORNEY
O.S.T.
8-28-17 [87]

17. 17-25785-D-7 DASHMESH CORPORATION
MWB-1

MOTION TO TRANSFER CASE FROM
YOLO COUNTY TO BUTTE COUNTY
9-7-17 [10]

Final ruling:

The relief requested by this motion was granted by way of an order on the debtor's ex parte application. Thus, this matter is removed from calendar.

18. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-31

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KHOSROW BENYAMIN
9-6-17 [862]

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.

19. 17-22410-D-7 SHELLY PINA
NUU-2

MOTION TO AVOID LIEN OF CACH,
LLC
9-27-17 [25]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by CACH, LLC ("CACH"). The motion will be denied because the moving party failed to serve CACH in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served CACH at a street address with no attention line, whereas CACH was required to be served to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). Further, the moving party served CACH only at the address of the law firm that obtained CACH's abstract of judgment, whereas there is no evidence the firm is authorized to receive service of process on behalf of CACH in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

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

20. 12-37314-D-7 MARK/ROXANNE WATSON
GEL-2

MOTION TO AVOID LIEN OF
AMERICAN GENERAL FINANCIAL
SERVICES, INC.
9-26-17 [32]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by American General Financial Services, Inc. ("American General"). The motion will be denied for the following reasons. First, the moving parties failed to serve American General in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served American General (1) at a street address with no attention line; and (2) through the attorney who obtained American General's abstract of judgment. The first method was insufficient because American General was required to be served to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). The second method was insufficient because there is no evidence the attorney is authorized to receive service of process on behalf of American General in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

Second, the notice of hearing states that opposition must be in writing and filed and served not less than 14 days preceding the hearing date and that without good cause, no party will be heard in opposition if written opposition has not been timely filed, whereas the moving parties gave only 15 days' notice of the hearing, rather than 28 days', as required for notices of this type. LBR 9014-1(f)(1).

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

21. 12-37314-D-7 MARK/ROXANNE WATSON
GEL-3

MOTION TO AVOID LIEN OF
BENEFICIAL CALIFORNIA INC.
9-26-17 [38]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Beneficial California, Inc. ("Beneficial"). The motion will be denied for the following reasons. First, the moving parties failed to serve Beneficial in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Beneficial (1) at a post office box address and a street address, both with no attention line; and (2) through the attorney who obtained Beneficial's abstract of judgment. The first method was insufficient because Beneficial was required to be served to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). The second method was insufficient because there is no evidence the attorney is authorized to receive service of process on behalf of Beneficial in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

Second, the notice of hearing states that opposition must be in writing and filed and served not less than 14 days preceding the hearing date and that without good cause, no party will be heard in opposition if written opposition has not been timely filed, whereas the moving parties gave only 15 days' notice of the hearing, rather than 28 days', as required for notices of this type. LBR 9014-1(f)(1).

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

22. 17-20038-D-11 LANE FAMILY LIMITED MOTION TO USE CASH COLLATERAL
MF-5 PARTNERSHIP NO. ONE 9-27-17 [141]

23. 16-27672-D-11 DAVID LIND MOTION BY PETER L. FEAR TO
FW-1 WITHDRAW AS ATTORNEY
9-27-17 [232]

24. 17-26087-D-7 CINDY AJAY MOTION TO ASSUME LEASE OR
MKJ-1 EXECUTORY CONTRACT
9-26-17 [12]

Tentative ruling:

This is the debtor's motion to assume an unexpired lease of commercial real property. The motion was brought pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The court intends to deny the motion because there is no provision in the Bankruptcy Code for a chapter 7 debtor to assume an unexpired lease of real property. The debtor cites § 1107(a), which, however, applies only to chapter 11 debtors-in-possession, not to chapter 7 debtors. She also contends the lease is of the type that may be assumed under § 365, but she does not cite an applicable subsection and there are none. The debtor notes she listed the lease in her Statement of Intention, which, however, provides for the listing of unexpired personal property leases only, under § 365(p)(2), not real property leases. (In fact, the form of the Statement of Intention states, "Do not list real estate leases.") "[I]n a chapter 7 bankruptcy case, it is the trustee who wields the power to assume or reject a lease, not the debtor, so Debtors' statement of their intention in their bankruptcy schedules is irrelevant." In re Hunt, 540 B.R. 438, 444 (Bankr. D. Idaho 2015); see also In re Tompkins, 95 B.R. 722, 724 (9th Cir. BAP 1989) [chapter 7 debtor does not have standing to assume or reject a lease of real property].

For the reasons stated, the court intends to deny the motion for lack of standing. The court will hear the matter.

25. 15-29890-D-7 GRAIL SEMICONDUCTOR
MPD-1
WILLIS E. HIGGINS, ET AL.
VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ORDER THE AUTOMATIC
STAY DOES NOT APPLY
3-1-17 [579]

26. 15-29890-D-7 GRAIL SEMICONDUCTOR
DB-1
RONALD W. HOFER VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
5-8-17 [681]