

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Thursday, October 30, 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.

9:00 A.M.

1. [14-10609](#)-B-7 ARYA KHATIBI STATUS CONFERENCE RE: THIRD
 [14-1042](#) AMENDED COMPLAINT
 BABICH V. KHATIBI 10-2-14 [[33](#)]
 NONA BABICH/Atty. for pl.

This matter will be continued to December 4, 2014, at 9:00 a.m., to be called with the hearing on the defendant's motion to dismiss. The court will prepare a minute order. No appearance is necessary.

2. [12-10963](#)-B-7 TEJWANT/KIRPAL BAL CONTINUED MOTION FOR SANCTIONS
VAG-1 FOR VIOLATION OF THE DISCHARGE
TEJWANT BAL/MV INJUNCTION
10-17-13 [[24](#)]

VINCENT GORSKI/Atty. for dbt.
RESPONSIVE PLEADING

Based on the status report filed in the Adversary Proceeding, this matter has been settled. This motion will be dropped from calendar and may be reset by any party on 10 days' notice. The court will enter a civil minute order. No appearance is necessary.

3. [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 status report, it appears this adversary proceeding has been settled. The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. No appearance is necessary. The clerk of the court may close the adversary proceeding without notice in 60 days unless the adversary proceeding has been concluded or set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue a civil minute order.

4. [14-10594](#)-B-7 LEOPOLDO/YESENIA VARGAS
[14-1074](#)
U.S. TRUSTEE V. VARGAS ET AL
GREGORY POWELL/Atty. for pl.

STATUS CONFERENCE CONTINUED RE:
COMPLAINT
7-23-14 [[1](#)]

It appears defaults have been entered against both defendants. The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. No appearance is necessary. The clerk of the court may close the adversary proceeding without notice in 90 days unless the adversary proceeding has been concluded or set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue a civil minute order.

10:00 A.M.

1. [14-13004](#)-B-7 ROY/CHRISTEL ENSTAD
RSW-1
ROY ENSTAD/MV
ROBERT WILLIAMS/Atty. for dbt. MOTION TO AVOID LIEN OF GRANT
LABARRE AND SANDRA LABARRE
9-15-14 [[15](#)]
2. [14-12106](#)-B-7 PHYLISHA GUZMAN
VVF-1
KING OF CREDIT FINANCIAL,
INC./MV
STEVEN ALPERT/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv. MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-2-14 [[21](#)]

This motion for relief from the automatic stay will be denied as moot. The debtor is an individual. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by § 521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. Therefore, pursuant to 11 U.S.C. § 362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No attorney fees will be awarded in relation to this motion. No appearance is necessary.

3. [14-10941](#)-B-7 ALVA/BEVERLY ARCHER

ROBERT WILLIAMS/Atty. for dbt. ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-3-14 [[63](#)]

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

4. [12-12945](#)-B-7 STEVEN AYLER
PWG-10
STEVEN AYLER/MV

PHILLIP GILLET/Atty. for dbt. MOTION TO MODIFY, RECONSIDER
AND/OR CLARIFY OR FOR OTHER
RELIEF FROM THE ORDER FOR
RELIEF FROM STAY
10-10-14 [[265](#)]

The debtor seeks to vacate an order that was entered on a fully noticed motion filed by the chapter 13 trustee. This matter should be heard on the chapter 13 calendar. Accordingly, the matter will be continued to the court's next chapter 13 calendar on November 6, 2014, at 1:30 p.m. in Fresno. The court will prepare a minute order. No appearance is necessary.

5. [13-16845](#)-B-7 KEYSTONE MINE MANAGEMENT MOTION FOR ORDER COMPELLING
MLA-2 II ATTORNEY MEIR WESTREICH TO
BUSH MANAGEMENT COMPANY/MV COMPLY WITH THE DISCLOSURE
REQUIREMENTS AND/OR MOTION TO
DISQUALIFY ATTORNEY MEIR
WESTREICH
9-25-14 [[321](#)]

PHILLIP GILLET/Atty. for dbt.
JESS BRESSI/Atty. for mv.
RESPONSIVE PLEADING

6. [12-19457](#)-B-7 LYDIA FLEMING MOTION TO AVOID LIEN OF UNIFUND
PWG-2 CCR PARTNERS
LYDIA FLEMING/MV 10-2-14 [[20](#)]
R. BELL/Atty. for dbt.

This motion will be denied without prejudice. The record does not show that the debtor claimed an exemption for the property on Sandpines Drive. See *In re Mohring*, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *aff'd* 153 B.R. 601 (9th BAP, 1993), *aff'd* 24 F.3d 247 (9th Cir., 1994).

7. [14-13272](#)-B-7 JON-WILLIAM/MEGAN JACKSON MOTION TO COMPEL ABANDONMENT
PK-1 9-16-14 [[21](#)]
JON-WILLIAM JACKSON/MV
PATRICK KAVANAGH/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.

8. [12-17199](#)-B-7 GURSEV KAUR MOTION TO DISMISS CASE AND/OR
LRP-3 MOTION TO DISBURSE PROCEEDS
JEFFREY VETTER/MV 10-8-14 [[134](#)]
CYNTHIA SCULLY/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

9. [14-13336](#)-B-7 ERIC VALDEZ OPPOSITION RE: TRUSTEE'S MOTION
RP- TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341 (A) MEETING
OF CREDITORS
9-29-14 [[9](#)]
STEVEN STANLEY/Atty. for dbt.

10:30 A.M.

1. [14-14103](#)-B-7 KORI PARKER
RCO-1
THE MORTGAGE HOUSE, INC/MV
NEIL SCHWARTZ/Atty. for dbt.
KRISTI WELLS/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-22-14 [[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.

2. [14-13522](#)-B-7 BENJAMIN/DEBBIE CAMACHO
PD-1
U.S. BANK NATIONAL
ASSOCIATION/MV
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-2-14 [[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 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. [14-14329](#)-B-7 ROSALINDA TAYLOR
APN-1
EXETER FINANCE CORP./MV
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-25-14 [[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 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.

4. [14-13856](#)-B-7 SOFIA REYES
JCW-1
THE BANK OF NEW YORK MELLON/MV
VINCENT GORSKI/Atty. for dbt.
JENNIFER WONG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-29-14 [[12](#)]

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.

The motion for relief under §362(d)(4) is also granted. It appears from the evidence submitted and from the record that the debtor's bankruptcy case was used as part of a scheme to delay, hinder, or defraud creditors that involved transfer of a portion of the subject real property and multiple bankruptcy filings affecting such real property. The proposed order must comply with §362(d)(4). No appearance is necessary.

5. [14-13664](#)-B-7 VALERIE AGUILAR
PPR-1
U.S. BANK NATIONAL
ASSOCIATION/MV
JAMES CANALEZ/Atty. for dbt.
MELISSA VERMILLION/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-8-14 [[13](#)]

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.

6. [14-11786](#)-B-7 LUAN STEINBERG-COLE
JLH-1
ALTAONE FEDERAL CREDIT
UNION/MV
PATRICK KAVANAGH/Atty. for dbt.
JOSEPH HORSWILL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-16-14 [[32](#)]

Based on the stipulation of the parties requesting a continuance of this matter, this hearing will be dropped from calendar and may be reset for further hearing, if necessary, with 14 days' notice on either the Bakersfield or Fresno calendars. The motion will be denied as moot as to the debtors because their discharge has already been entered. No appearance is necessary.

7. [14-14595](#)-B-7 JILLIAN BROWN
VVF-1
HONDA LEASE TRUST/MV
ALLAN WILLIAMS/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-16-14 [[10](#)]

8. [14-14296](#)-B-7 WILLIAM FRIEND
APN-1
WELLS FARGO BANK, N.A./MV
NEIL SCHWARTZ/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-24-14 [[10](#)]

11:00 A.M.

1. [14-12616](#)-B-7 SAMUEL/CORAZON REIGHARD REAFFIRMATION AGREEMENT WITH
COMMERCIAL LENDING RESOURCE,
INC.
9-10-14 [[21](#)]

PATRICK KAVANAGH/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. The debtors' 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.

2. [14-13140](#)-B-7 JERNEAL/MONICA JEFFERSON PRO SE REAFFIRMATION AGREEMENT
WITH NISSAN MOTOR ACCEPTANCE
CORPORATION
9-25-14 [[16](#)]

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 shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney. No appearance is necessary at this hearing.

3. [14-13958](#)-B-7 DONNA MILEHAM

PRO SE REAFFIRMATION AGREEMENT
WITH BALBOA THRIFT AND LOAN
10-3-14 [[10](#)]

BARRY BOROWITZ/Atty. for dbt.

The hearing will be dropped from calendar. The court is not approving or denying approval of the reaffirmation agreement. 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). 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.

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. The payment for the debt to be reaffirmed is not listed on Schedule J. No appearance is necessary.