

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday November 29 2017
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS 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.

9:30 AM

1. [17-13433](#)-B-7 **IN RE: DIANNA BENNETT**
[TMT-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-24-2017 [[18](#)]

TRUDI MANFREDO/MV
TRUDI MANFREDO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

ORDER: The court will submit an order.

This matter was fully noticed in compliance with the Local Rules of Practice. On November 14, debtor filed a "Spousal Waiver of Right to Claim of Exemptions Pursuant to CCP § 703.140(a)(2)." Doc. #23. This document renders the trustee's objection as moot. Therefore the objection will be overruled.

2. [17-13538](#)-B-7 **IN RE: SANDY SISAKDA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-2017 [[19](#)]

SANTANDER CONSUMER USA,
INC./MV
JAMES MILLER
AUSTIN NAGEL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. 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 record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is uninsured and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

3. [16-10841](#)-B-7 **IN RE: NOE AGUILAR AND LUCRECIA GUILLEN**
[MDE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-20-2017 [\[48\]](#)

TOYOTA LEASE TRUST/MV
CHARLES STONER
MARK ESTLE/ATTY. FOR MV.
DISCHARGED

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion relates to an executory contract or lease of personal property. The case was filed on March 17, 2017 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. §365(d)(1). Pursuant to § 365 (p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) 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 other relief is granted. Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the

moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

4. [17-12662](#)-B-7 **IN RE: JEFFERY LUNA**
[TMT-1](#)

CONTINUED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-27-2017 [[12](#)]

JANINE ESQUIVEL
TRUDI MANFREDO/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

The Trustee withdrew the motion. Therefore, it is dropped from
calendar.

Additionally, the deadline to object to debtor's discharge under 11
U.S.C. § 727 and to file motions for abuse, other than presumed
abuse, under 11 U.S.C. § 707 is extended to January 26, 2018.

5. [11-60165](#)-B-7 **IN RE: ANTONIO/CAROL MARCELINO**
[TPH-4](#)

CONTINUED MOTION TO AVOID LIEN OF A.L. GILBERT COMPANY
5-25-2017 [[67](#)]

ANTONIO MARCELINO/MV
THOMAS HOGAN
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: None.

ORDER: The court will issue an order.

This matter will proceed as a scheduling conference.

6. [16-10771](#)-B-7 **IN RE: CHRIS/KIMBERLY KATELEY**
[TGM-6](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
10-13-2017 [[103](#)]

MARK ZIMMERMAN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

7. [17-12281](#)-B-7 **IN RE: GERARDO/PENELOPE ORTIZ**
[TCS-1](#)

MOTION TO AVOID LIEN OF CALIFORNIA BUSINESS BUREAU, INC.
10-25-2017 [[25](#)]

GERARDO ORTIZ/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

A judgment was entered against the debtor in favor of California Business Bureau Inc. for the sum of \$27, 192.58 on December 7, 2015. The abstract of judgment was recorded with Fresno County on December 7, 2015. That lien attached to the debtor's interest in a residential real property in Fresno, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$263,753.00. The debtors have a two-thirds interest in the property, with the remaining one-third belong to Mr. Ortiz's mother. The debtor's interest in the value of the home is \$174,076.98 as of the petition date. Docket 1, [Schedule C]. The unavoidable liens totaled \$189,182.00 on that same date, consisting of a single mortgage in favor of M & T Bank. Docket 1, [Schedule D]. The debtors' interest in the equity is \$49,217.00. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$49,217.00 in Schedule C. Docket 1.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

8. [17-12691](#)-B-7 **IN RE: DARA PIROZZI**
[DLF-1](#)

MOTION TO DISMISS CASE
10-6-2017 [\[19\]](#)

DIAS LAW FIRM, INC./MV
MARK ZIMMERMAN
JONETTE MONTGOMERY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING: The hearing will proceed as scheduled

11 U.S.C. § 707(b)(6) and (b)(7) essentially state the same thing - that only the judge or United States Trustee may file a motion under section 707(b) (or 707(b)(2) in the case of 707(b)(7)) if the current monthly income of the debtor, as of the date of the order for relief, when multiplied by 12, is equal to or less than the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals. According to the schedules, debtor's household is 3 individuals. Docket #1, [Schedule J]. Movant did not dispute this fact in their motion. The debtor's monthly income, as disclosed on Schedule I, multiplied by 12 is \$63,687.40. At the time the case was filed, the median annual income in California in a three-person household was \$75,160.00.

[https://www.justice.gov/ust/eo/bapcpa/20090315/bci_data/median_income_table.htm].

Because the median income is below the California median annual income for a three-person household, only the judge or United States Trustee may bring a motion to dismiss under 11 U.S.C. §§707(b), (b)(2). The movant is neither a judge nor a United States Trustee.

Debtor raised this issue in her response to the motion. The reply, filed by movant's subsequent counsel, does not dispute the debtor's legal position but instead argues that the schedules of income and expenses as filed by the debtor were inaccurate in at least three respects. First, movant claims the schedules inaccurately reflected the status of a levy by the Kings County Sheriff's office which ceased upon the debtor's filing of the case. Second, the expenses reported by the debtor reflect payments made on behalf of the debtor's adult daughter for which the debtor is not legally liable. Third, the income does not reflect the debtor's son's income received from a part-time job.

Movant's reply for the first time addressed the standing issue on a factual basis. Responding to a standing challenge in the reply is too late to afford the debtor a chance to respond. Indeed most of the cases cited by movant supporting its' position that the case should be dismissed dealt with motions filed by the U.S. Trustee *i.e.*, *Baeza*, *Reed*, *Boyce*. Indeed, *Pak* (also cited by movant) mentions at page 241 the case could not be dismissed because of the express provisions of 11 U.S.C. § 707(b)(7).

The hearing will proceed as a scheduling conference. Deadlines will be set for discovery, etc. The threshold issue is the movant's standing which should be capable of objective determination after the parties are given the opportunity to discover the facts necessary to determine if on the date the petition was filed this debtor was above or below median income. If her income was above median, the movant has standing and the inquiry into "totality of the circumstances" and "bad faith" can be pursued. If her income was below median, the motion can be denied due to the movant's lack of standing.

This is without prejudice to any subsequent pleading that may be filed by the U.S. Trustee.

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

9. [17-14094](#)-B-7 **IN RE: JAYCE LEWIS**
[DRJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-3-2017 [[17](#)]

VILLA FARIA, LIMITED
PARTNERSHIP/MV
DAVID JENKINS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be denied without prejudice. The form and/or content of the notice and amended notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

10. [17-12147](#)-B-7 **IN RE: ROGELIO/MARGARITA SANDOVAL**
[RSW-3](#)

MOTION TO AVOID LIEN OF DISCOVER BANK, ISSUER OF THE
DISCOVER CARD
11-15-2017 [[37](#)]

ROGELIO SANDOVAL/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

A judgment was entered against the debtor in favor of Discover Bank for the sum of \$14,516.22 on September 7, 2011. The abstract of judgment was recorded with Inyo County on December 28, 2011. That lien attached to the debtor's interest in two pieces of residential real property in Inyo County, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The first piece of real property, located at 356 N. Main St., Big Pine,

CA 39513, had an approximate value of \$600,000.00 as of the petition date. Docket 1, [Schedule D]. The unavoidable liens totaled \$740,000.00 on that same date, consisting of a single mortgage in favor of Alta One FCU. Docket 1, [Schedule D]. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended/Schedule C. Docket 1.

The second piece of real property, located at 231 Willow St., Bishop, CA 39514, had an approximate value of \$239,000.00 as of the petition date. Docket 1, [Schedule D]. The unavoidable liens totaled \$213,964.34 on that same date, consisting of four California Franchise Tax Board state tax liens, one California State Board of Equalization state tax lien, one IRS federal tax lien, one second trust deed in favor of Real Time Resolutions, one deed of trust in favor of Union Bank Ca, and one judgment lien from a lawsuit. Docket 1, [Schedule D]. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$25,035.66 in Amended/Schedule C. Docket 1.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11. [17-12147](#)-B-7 **IN RE: ROGELIO/MARGARITA SANDOVAL**
[RSW-4](#)

MOTION TO AVOID LIEN OF GREAT BASIN UNIFIED AIR POLLUTION
CONTROL DIST.

11-15-2017 [\[42\]](#)

ROGELIO SANDOVAL/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order.

A judgment was entered against the debtor in favor of Great Basin Unified Air Pollution Control District for the sum of \$7,500.00 on July 27, 2011. The abstract of judgment was recorded with Inyo County on June 20, 2011. That lien attached to the debtor's interest in two pieces of residential real property in Inyo County, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The first piece of real property, located at 356 N. Main St., Big Pine,

CA 39513, had an approximate value of \$600,000.00 as of the petition date. Docket 1, [Schedule D]. The unavoidable liens totaled \$740,000.00 on that same date, consisting of a single mortgage in favor of Alta One FCU. Docket 1, [Schedule D]. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended/Schedule C. Docket 1.

The second piece of real property, located at 231 Willow St., Bishop, CA 39514, had an approximate value of \$239,000.00 as of the petition date. Docket 1, [Schedule D]. The unavoidable liens totaled \$213,964.34 on that same date, consisting of four California Franchise Tax Board state tax liens, one California State Board of Equalization state tax lien, one IRS federal tax lien, one second trust deed in favor of Real Time Resolutions, one deed of trust in favor of Union Bank Ca, and one judgment lien from a lawsuit. Docket 1, [Schedule D]. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$25,035.66 in Amended/Schedule C. Docket 1.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11:00 AM

1. [17-13126](#)-B-7 **IN RE: JUAN/ADRIANA MARTINEZ**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL
SERVICES, INC.
11-7-2017 [[43](#)]

NO RULING.

2. [17-13935](#)-B-7 **IN RE: JOHN/JANIS ARNOLD**

PRO SE REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
11-8-2017 [[13](#)]

NO RULING.

3. [17-14049](#)-B-7 **IN RE: ANISIA GUTIERREZ**

PRO SE REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
11-8-2017 [[20](#)]

NO RULING.

4. [17-13170](#)-B-7 **IN RE: CHRISTOPHER/BRITTANY HILL**

REAFFIRMATION AGREEMENT WITH ALLY BANK
10-30-2017 [[25](#)]

MARK ZIMMERMAN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtors' counsel shall notify the debtors that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

1:30 PM

1. [11-15871](#)-B-13 **IN RE: RANDY/PATRICIA BOYD**
[17-1082](#)

STATUS CONFERENCE RE: COMPLAINT
9-26-2017 [[1](#)]

BOYD ET AL V. VERIPRO
SOLUTIONS, INC. ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [17-11087](#)-B-7 **IN RE: JANETTA SCONIERS**
[17-1069](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-4-2017 [[1](#)]

SCONIERS V. TOP EQUITY
INVESTMENT, LLC
JANETTA SCONIERS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [15-12689](#)-B-7 **IN RE: MARK HANSEN**
[17-1042](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-12-2017 [[31](#)]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
MARK HANSEN/ATTY. FOR PL.

FINAL RULING: No appearance is necessary.

DISPOSITION: The status conference will be continued to December
20, 2017 at 1:30 PM to be heard with Defendants'
Motion to Dismiss (DCN-5).

ORDER: The court will issue an order.

4. [15-12689](#)-B-7 **IN RE: MARK HANSEN**
[17-1042](#) [DCN-2](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF
REMOVAL

7-31-2017 [[37](#)]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
PETER ISOLA/ATTY. FOR MV.
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

ORDER: No order is required. The motion has been withdrawn.