

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 6, 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.	17-26207-D-7	STEVEN BAKER	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	TOYOTA MOTOR CREDIT		10-31-17 [13]
	CORPORATION VS.		

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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.

2. 17-26311-D-7 BRITTANY DANIELS

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-22-17 [5]

3. 14-25820-D-11 INTERNATIONAL
15-2122 MANUFACTURING GROUP, INC.
MCFARLAND V. CARTER ET AL IWC-3

CONTINUED MOTION TO REOPEN
DISCOVERY
11-7-17 [103]

Tentative ruling:

This is the defendants' motion to reopen the discovery deadline in this adversary proceeding. The plaintiff has filed opposition and the defendants have filed a reply. For the following reasons, the court intends to grant the motion and reopen discovery for both sides for a reasonable period of time.

The court notes, first, that although the defendants did not neglect their duty to try to complete discovery by the deadline, September 29, 2017, they did fail to complete it, which was contrary to this court's scheduling order and is not to be condoned. However, in a vigorous opposition to the motion, the plaintiff relies principally on the defendants' awareness of the impending deadline and their failure to request an extension before the deadline expired, circumstances that are technical in a sense in that they fail to take into account what was actually going on between the parties' respective counsel.

As late as the second and third weeks of September, the parties were still discussing and exchanging extensive correspondence about the possibility of taking discovery after the cutoff date. On September 11, 2017, for example, the plaintiff's counsel sent the defendants' counsel a five-page single-spaced letter covering six different categories of provisions for a proposed stipulation to extend the bar date for 60 days. Among the categories were proposed schedules for 14 depositions to be taken by the plaintiff and 8 to be taken by the defendants, schedules that would have extended into November. The plaintiff had also subpoenaed what it believes were important documents from a third party witness, to be produced on October 2, 2017, after the discovery bar date.

The defendants' counsel responded to the plaintiff's counsel's various proposals and offered his own. Ultimately, the parties failed to reach complete agreement before the deadline; however, by that time, of course, the defendants would have had no time to conduct, let alone complete discovery before the deadline.¹ The extensive and detailed communications between the parties, together with the defendants' efforts to conduct discovery earlier, while hampered in part by the voluminous, poorly organized documents produced by the plaintiff over a long period of time, persuade the court that the defendants, although perhaps imprudently, relied on what they believed to be good faith discussions and a cooperative effort to reach an agreement to extend the discovery bar date. In a sense, these communications lulled the defendants into a false sense of security

which, in hindsight, was imprudent.

The court does not condone parties violating its scheduling orders. Nevertheless, under the circumstances of this case, and in light of the complexity of the case, the court concludes the defendants proceeded with due diligence but failed to complete their discovery before the deadline, and that they have demonstrated good cause for an extension. The plaintiff having considered a variety of conditions on which it might agree to an extension and not having completed its own discovery by the deadline, the court concludes the plaintiff will not be prejudiced by a reasonable extension. Accordingly, the court will extend the discovery bar date one time for both the plaintiff and the defendants so as to allow the facts in this adversary proceeding to be fully vetted before trial. The plaintiff notes that Ms. McFarland, whom the defendants wish to depose, for medical reasons will not be able to be deposed until at least the middle to latter part of January 2018. The court will solicit the parties' input as to an appropriate date for the extended discovery bar date.

The court will hear the matter.

1 The plaintiff itself acknowledges that "[t]he most critical communications occurred during one month leading up to the September 29, 2017 close of discovery" Plaintiff's Opp., DN 113, at 2:23-24. The plaintiff's summary of the communications in September alone takes up two and a half pages of its opposition. In short, the parties devoted extensive time and resources to debating the many particulars of their respective proposals, time and resources that could instead have been utilized actually taking discovery.

4. 17-25421-D-7 MICHAEL HAIGH
PA-1

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
10-20-17 [13]

Final ruling:

This is the objection of creditor Jamshid Saleh to the debtor's claims of exemptions. On October 31, 2017, the debtor filed an amended Schedule C. As a result of the filing of the amended Schedule C, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

5. 17-23626-D-7 PHYSICIANS SKIN AND
DMW-2 WEIGHT CENTERS, INC.

MOTION FOR COMPENSATION FOR
CENTURION SERVICE GROUP, LLC,
AUCTIONEER(S)
11-7-17 [19]

Tentative ruling:

This is the trustee's motion for approval of fees and costs to his auctioneer. The motion will be denied because there is no proof of service on file. As a result, the motion will be denied by minute order. Alternatively, if the motion was timely served, the hearing will be continued to allow the moving party to file a proof of service.

6. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED MOTION TO USE CASH
TBG-2 COLLATERAL
2-15-17 [12]
7. 17-26936-D-7 DELIA BRAVO MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON 11-8-17 [12]
VS.
8. 17-24444-D-11 RAMON LOPEZ CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-5-17 [1]
9. 17-24444-D-11 RAMON LOPEZ CONTINUED MOTION TO APPOINT
MF-1 TRUSTEE
9-1-17 [54]

10. 14-25148-D-11 HENRY TOSTA
GMW-5

OBJECTION TO CLAIM OF MIGUEL
NAVARRO JIMENEZ, CLAIM NUMBER 33
10-31-17 [743]

11. 17-22560-D-7 PAUL/WENDY JOHNSON
DBJ-1

MOTION TO COMPEL ABANDONMENT
11-7-17 [22]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

12. 15-26465-D-7 SCOTT POMEROY
16-2250 GJH-2
ROBERTS V. SWEETLAND

CONTINUED MOTION FOR ENTRY OF
DEFAULT JUDGMENT
4-5-17 [18]

Final ruling:

The hearing is continued to December 20, 2016 at 10:00 a.m., to be heard with the trustee's motion for approval of settlements. No appearance is necessary on December 6, 2017.

13. 15-26465-D-7 SCOTT POMEROY
16-2250 LBG-202
ROBERTS V. SWEETLAND

CONTINUED MOTION TO SET ASIDE
7-19-17 [51]

Final ruling:

The hearing is continued to December 20, 2016 at 10:00 a.m., to be heard with the trustee's motion for approval of settlements. No appearance is necessary on December 6, 2017.

14. 13-33966-D-7 HOWARD HOLZER
RCB-1

MOTION TO AVOID LIEN OF CAPITOL
ONE BANK N.A.
10-18-17 [79]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

15. 13-33966-D-7 HOWARD HOLZER
RCB-2

MOTION TO AVOID LIEN OF CAPITOL
ONE BANK N.A.
10-18-17 [84]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

16. 17-26568-D-7 KARISSA KNUROWSKI

AMENDED MOTION FOR WAIVER OF
THE CHAPTER 7 FILING FEE OR
OTHER FEE
10-26-17 [15]

17. 16-27672-D-11 DAVID LIND
DNL-5

CONTINUED MOTION TO APPROVE LOT
LINE ADJUSTMENT AGREEMENT
8-16-17 [205]

18. 17-26472-D-7 JOYCE HALBAKKEN
BB-1

MOTION TO COMPEL ABANDONMENT
11-9-17 [18]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtor's motion to compel the trustee to abandon property and the debtor has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

19. 17-26575-D-7 CARL LINDEMANN
APN-1
TOYOTA MOTOR CREDIT
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-31-17 [15]

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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.

20. 16-24776-D-7 JERRY/TRACEY PHEA
16-2231
COUNTY OF SOLANO, HEALTH &
SOCIAL SERVICES DEPARTM V.

MOTION TO SET ASIDE
10-24-17 [48]

Tentative ruling:

This is the plaintiff's motion to set aside the court's order filed October 21, 2017 dismissing this adversary proceeding for failure to prosecute. The motion purports to have been noticed pursuant to LBR 9014-1(f)(1); however, the moving party failed to include in the notice of hearing the cautionary language required by LBR 9014-1(d)(3)(B)(ii). Further, the defendants have not appeared in this action and may not have an attorney representing them. Therefore, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

Except for the conclusory allegation that "debtors willfully, maliciously, knowingly and with the intent to defraud, obtained money and property of the County of Solano to which they were not entitled" (Plaintiff's Complaint, DN 1, at 2:14-

16), the complaint contains no allegations against defendant Jerry Lynn Phea, Jr., only against defendant Tracey Rocshell Phea. The complaint alleges Tracey¹ was convicted of welfare fraud and was ordered to pay restitution and that "debtor" has paid \$5,323, leaving a balance of \$1,234 plus \$293 in costs. In a declaration attached to the complaint, the Accounting Supervisor for the Solano County Special Investigations Bureau stated she is familiar with the accounting as it pertains to Tracey. The declarant authenticates an attached Welfare Fraud Case Disposition Sheet "pertaining to the felony prosecution of Tracey Martin (now Tracey Rocshell Phea)" (Decl. attached to Complaint, at 2:8-9), and testifies that to date the County has received payments totaling \$5,323. The disposition sheet refers to People v. Tracey Martin and the County's accounts receivable detail report lists the "client name" as Tracey Phea. There is no mention anywhere of defendant Jerry Phea. These same factual allegations are attested to in the declaration in support of the plaintiff's motion for entry of default judgment.

Thus, there is simply no basis on which judgment should be entered against defendant Jerry Lynn Phea, Jr. The evidence does support entry of a default judgment against Tracey, and absent opposition at the hearing, the court will grant the motion and set aside the order dismissing the adversary proceeding to permit the plaintiff to submit a proposed default judgment against Tracey Phea. The plaintiff should be prepared to submit a proposed judgment at the hearing.

The court will hear the matter.

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- 1 The court uses the defendant's first names merely for the sake of simplicity; no disrespect is intended.

21. 17-26479-D-7 ALIMA SANNI

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
11-6-17 [27]

22. 14-30086-D-7 ERIC/ANGELA AUCLAIR
 HLG-1

CONTINUED MOTION TO AVOID LIEN
OF DEUTSCHE BANK NATIONAL TRUST
COMPANY
10-5-17 [42]

23. 14-30086-D-7 ERIC/ANGELA AUCLAIR
HLG-2

CONTINUED MOTION TO AVOID LIEN
OF GCFS, INC.
10-5-17 [47]

24. 17-21700-D-12 PAUL SCHMIDT
DBL-14

MOTION TO EMPLOY BRUCE C.
DWIGGINS AS ATTORNEY
11-14-17 [141]

Tentative ruling:

This is the debtor's motion for approval of employment of an attorney in this case, Bruce Dwiggins (the "Attorney"). The notice of hearing says nothing about how a party-in-interest may oppose the motion; that is, it does not indicate whether written opposition is required. Thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

This case was filed March 15, 2017, nearly eight months ago. Neither the motion nor the supporting declaration suggests the debtor or the Attorney is seeking approval of the employment retroactive to the petition date or to any other date, and the declaration does not suggest that exceptional circumstances exist that might warrant retroactive approval. See In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). Further, given the circumstances of the case, the court would be hard pressed to find that exceptional circumstances are present in this case. The debtor first filed an ex parte application for approval of employment of the Attorney on June 5, 2017, almost three months into the case, and when that application was not granted, filed a motion two days later and set it for hearing. The court issued an extensive tentative ruling concerning the inadequacy of the Attorney's supporting declaration and the motion was denied on July 5, 2017. The debtor then waited another four months and nine days before filing the present motion.

The court will hear the matter, but in any event, will not approve employment retroactive to any date earlier than the date this motion was filed.

25. 17-27101-D-7 JULIAN/PAYTON LEESHA

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-13-17 [12]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

26. 17-27311-D-7 REY EDPAO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-17-17 [12]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

27. 12-37314-D-7 MARK/ROXANNE WATSON
GEL-6

CONTINUED MOTION TO AVOID LIEN
OF ONEMAIN FINANCIAL GROUP, LLC
11-6-17 [69]

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 and the supplemental declaration filed November 27, 2017 is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

28. 15-25526-D-7 AR BUSINESS GROUP, INC.
DMB-3

CONTINUED MOTION TO AMEND
10-25-17 [65]

29. 15-25526-D-7 AR BUSINESS GROUP, INC.
DMB-4

CONTINUED MOTION TO AMEND
10-25-17 [69]

30. 11-33265-D-7 MARCIANO/CHARITO REBULTAN MOTION TO AVOID LIEN OF CB
JCK-3 MERCHANT SERVICES
11-21-17 [31]
31. 16-25239-D-7 DIVINDER HUNDAL MOTION FOR COMPENSATION BY THE
NOS-6 LAW OFFICE OF NOSSAMAN LLP FOR
CHRISTOPHER D. HUGHES,
TRUSTEE'S ATTORNEY
11-15-17 [181]
32. 11-33265-D-7 MARCIANO/CHARITO REBULTAN MOTION TO AVOID LIEN OF
JCK-4 DISCOVER BANK
11-21-17 [35]
- Tentative ruling:**
- This is the debtors' motion to avoid a judicial lien held by Discover Bank (the "Bank"). The court intends to deny the motion because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an officer, but failed to serve the Bank at any address of the Bank, but only at the address of its agent for service of process, whereas it is unlikely an officer of the Bank is to be found at the address of its agent for service.
- As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to permit the moving parties to cure this service defect. The court will hear the matter.
33. 17-26742-D-7 RYAN HATHAWAY MOTION FOR RELIEF FROM
BPC-1 AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION
VS. 11-20-17 [10]

34. 16-21659-D-7 TRONG NGUYEN MOTION FOR COMPENSATION BY THE
NOS-6 LAW OFFICE OF NOSSAMAN, LLP FOR
CHRISTOPHER D. HUGHES,
TRUSTEE'S ATTORNEY(S)
11-15-17 [141]

35. 17-27472-D-11 COMMUNITY ALLIANCE ORDER TO SHOW CAUSE RE
NEIGHBORHOOD DEVELOPMENT DISMISSAL
11-14-17 [4]

36. 11-33265-D-7 MARCIANO/CHARITO REBULTAN MOTION TO AVOID LIEN OF ARROW
JCK-2 FINANCIAL SERVICES, LLC
11-21-17 [27]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Arrow Financial Services LLC ("Arrow"). The court intends to deny the motion because the moving parties failed to serve Arrow in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Arrow to the attention of an officer, managing or general agent, but failed to serve Arrow at any address of Arrow, but only at the address of its former agent for service of process, whereas it is unlikely an officer or managing or general agent of Arrow is to be found at the address of its former agent for service. (According to the Secretary of State's website, Arrow cancelled its registration as an entity authorized to do business in California five years ago.)

As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to permit the moving parties to cure this service defect. The court will hear the matter.

37. 17-27481-D-7 CHAD FREEMAN MOTION FOR RELIEF FROM
RTD-1 AUTOMATIC STAY
SCHOOLS FINANCIAL CREDIT 11-15-17 [9]
UNION VS.

38.	17-27189-D-7	DILLON/LAURA WINEBARGER	MOTION FOR RELIEF FROM
	BPC-1		AUTOMATIC STAY
	THE GOLDEN 1 CREDIT UNION		11-21-17 [11]
	VS.		