

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

**December 20, 2017 at 10:00 a.m.**

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**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.**

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- |    |                                       |                           |  |
|----|---------------------------------------|---------------------------|--|
| 1. | <a href="#"><u>17-26411</u></a> -D-7  | SHELBY CRECELIUS          | MOTION FOR RELIEF FROM<br>AUTOMATIC STAY<br>11-20-17 [ <a href="#"><u>17</u></a> ] |
|    | <a href="#"><u>JEG</u></a> -2         |                           |  |
|    | ROBERT FUND VS.                       |                           |  |
|    |                                       |                           |  |
| 2. | <a href="#"><u>14-25820</u></a> -D-11 | INTERNATIONAL             | MOTION FOR SUMMARY ADJUDICATION  |
|    | <a href="#"><u>15-2122</u></a>        | MANUFACTURING GROUP, INC. | 11-22-17 [ <a href="#"><u>117</u></a> ]  |
|    | MCFARLAND V. CARTER ET AL             |                           |  |
|    | DMC-11                                |                           |  |

**Final ruling:**

This is the plaintiff's motion for summary adjudication of certain facts. The moving party provided 28 days' notice of the hearing, whereas pursuant to the

court's recently-revised local rules, which were in effect at the time the motion was filed and served, the moving party was required to give 42 days' notice. LBR 7056-1(a). (The rule applies to motions for orders specifying material facts as without substantial controversy, in addition to motions for summary judgment. Rule 7056-1(e). Thus, the rule applies to this motion.)

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

3. [17-23023](#)-D-7 JUANITA WILLIAMS MOTION FOR RELIEF FROM  
[EAT](#)-1 AUTOMATIC STAY  
U.S. BANK, N.A. VS. 11-15-17 [[19](#)]

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 debtor received her discharge on August 14, 2017 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

4. [17-25123](#)-D-7 JESSICA SMITH MOTION TO AVOID LIEN OF GCFS,  
[MOH](#)-1 INC.  
11-21-17 [[27](#)]

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.

5. [17-25628](#)-D-7 KENNETH BURGESSON MOTION FOR RELIEF FROM  
[AMM](#)-1 AUTOMATIC STAY  
U.S. BANK, N.A. VS. 10-31-17 [[14](#)]

Final ruling:

This matter is resolved without oral argument. This is U.S. 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.

6. [15-20037](#)-D-7 JASON SCOGGINS  
[15-2073](#) BUC-1  
CHAMP SYSTEMS, INC. V.  
SCOGGINS

MOTION BY ROBERT S. MCWHORTER  
TO WITHDRAW AS ATTORNEY  
11-22-17 [[53](#)]

**Tentative ruling:**

This is the motion of Robert McWhorter to withdraw as counsel for the defendant in this adversary proceeding. The motion was noticed pursuant to LBR 9014-1(f) (1) and no opposition has been filed. However, the moving party did not serve the defendant. The court is aware the defendant has signed a substitution of attorneys agreeing, subject to court approval, to substitute himself in pro se in place of Mr. McWhorter, but the court believes nonetheless that the moving papers should have been served on the defendant. The court will hear the matter, but if the defendant does not appear (himself, rather than through Mr. McWhorter), the court intends to continue the hearing and require that the moving papers, together with a notice of continued hearing, be served on the defendant. The court notes that the notice of hearing gives conflicting information as to the place where the hearing will be held - it gives Suite 3-200 in the caption, Courtroom 34 in the third paragraph, and Courtroom 33 later in the text. The moving party may wish to clarify this with the defendant in advance of the hearing.

7. [17-20038](#)-D-11 LANE FAMILY LIMITED  
[MF-6](#) PARTNERSHIP NO. ONE

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF MACDONALD  
FERNANDEZ, LLP FOR MATTHEW J.  
OLSON, DEBTOR'S ATTORNEY(S)  
11-16-17 [[169](#)]

**DEBTOR DISMISSED: 11/09/2017**

8. [16-25239](#)-D-7 DIVINDER HUNDAL  
[KJH-2](#)

MOTION FOR COMPENSATION FOR  
MICHAEL R. GABRIELSON,  
ACCOUNTANT  
11-13-17 [[175](#)]

**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.

9. [17-22056](#)-D-11 JAMES MCCLERNON  
[WT-4](#)

CONTINUED MOTION FOR CONTEMPT  
AND/OR MOTION FOR AN AWARD OF  
DAMAGES  
10-25-17 [[106](#)]

10. [17-22563](#)-D-7      GARY/FRANCES JOLLEY      MOTION FOR RELIEF FROM  
[APN](#)-1      AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS.      11-13-17 [[17](#)]

**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 debtors' Statement of Intentions indicates they 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. [15-26465](#)-D-7      SCOTT POMEROY      MOTION TO COMPROMISE  
[GJH](#)-4      CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH SCOTT CHARLES  
POMEROY  
11-22-17 [[101](#)]

**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 (9<sup>th</sup> 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.

12. [17-27465](#)-D-7      DEBORAH WILLIE      MOTION FOR RELIEF FROM  
[LHL](#)-1      AUTOMATIC STAY  
U.S. BANK, N.A. VS.      11-21-17 [[20](#)]

**Final ruling:**

This case was dismissed on December 13, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

13. [17-27472](#)-D-11      COMMUNITY ALLIANCE      STATUS CONFERENCE RE: VOLUNTARY  
NEIGHBORHOOD DEVELOPMENT      PETITION  
11-13-17 [[1](#)]

**Final ruling:**

This case was dismissed on December 7, 2017. As a result the status conference is removed from calendar as moot. No appearance is necessary.

14. [14-24578](#)-D-7 VICTOR CAMACHO  
[PA-7](#)

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF PINO & ASSOCIATES  
FOR ESTELA O. PINO, TRUSTEE'S  
ATTORNEY  
11-22-17 [[86](#)]

**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.

15. [17-25978](#)-D-7 LAILA OSMAN  
[MDE-2](#)  
TOYOTA MOTOR CREDIT  
CORPORATION VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-13-17 [[21](#)]

**Final ruling:**

Pursuant to movant's amended notice of hearing this motion is continued to January 17, 2018 at 10:00 a.m. No appearance is necessary.

16. [17-27579](#)-D-7 LORRAYNE GARNER

MOTION FOR TEMPORARY WAIVER OF  
THE CREDIT COUNSELING  
REQUIREMENT  
11-17-17 [[1](#)]

17. [17-27481](#)-D-7 CHAD FREEMAN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-27-17 [[22](#)]

**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.

18. [16-21582](#)-D-7 JOSSUE MEJIA CONTINUED MOTION TO VACATE  
[CLH](#)-1 DISCHARGE OF DEBTOR AND/OR  
MOTION TO DISMISS CASE  
10-13-17 [[21](#)]

19. [17-25985](#)-E-13 DANIEL MARTINEZ CONTINUED MOTION FOR RELIEF  
[RCO](#)-1 FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 10-17-17 [[12](#)]

**Final ruling:**

**This case was converted to a case under Chapter 13 and has been transferred to Dept. E, Hon. Ronald Sargis presiding. As such, the hearing on this motion is continued to January 9, 2018 at 1:30 p.m. No appearance is necessary on December 20, 2017.**

20. [17-24589](#)-D-7 EDWARD/VERENICE MCTHORN MOTION TO COMPEL ABANDONMENT  
[MG-1](#) 11-22-17 [[41](#)]

21. [17-21700](#)-D-12 PAUL SCHMIDT CONTINUED MOTION TO DISMISS  
[JPJ](#)-1 CASE  
10-24-17 [[119](#)]

22. [10-46942](#)-D-7      DAVID TAFT  
[JLK](#)-1

MOTION TO AVOID LIEN OF  
DISCOVER BANK  
12-6-17 [[31](#)]

**Tentative ruling:**

This is the debtor's motion to avoid a judicial lien held by Discover Bank (the "Bank"). The motion will be denied because the moving party 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 party 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. The moving party also served the Bank through the attorney who obtained its abstract of judgment, whereas there is no evidence the attorney is authorized to receive service of process on behalf of the Bank in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The motion will be denied for the additional independent reason that the moving party has not claimed any interest in the property as exempt. It is an essential element of avoiding a judicial lien as impairing an exemption that the debtor has claimed an interest in the property as exempt. See Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). The debtor will need to file an amended Schedule C, claiming an interest in the property as exempt, before he may seek to avoid this judicial lien.

For the reasons stated, the motion will be denied by minute order. Alternatively, the hearing will be continued to allow for the moving party to address/cure this service defect.

23. [11-33265](#)-D-7      MARCIANO/CHARITO REBULTAN  
[JCK](#)-2

CONTINUED MOTION TO AVOID LIEN  
OF ARROW FINANCIAL SERVICES,  
LLC  
11-21-17 [[27](#)]

24. [11-33265](#)-D-7      MARCIANO/CHARITO REBULTAN      CONTINUED MOTION TO AVOID LIEN  
[JCK](#)-4      OF DISCOVER BANK  
11-21-17 [[35](#)]
25. [15-26465](#)-D-7      SCOTT POMEROY      CONTINUED MOTION FOR ENTRY OF  
[16-2250](#)      GJH-2      DEFAULT JUDGMENT  
ROBERTS V. SWEETLAND      4-5-17 [[18](#)]
26. [15-26465](#)-D-7      SCOTT POMEROY      CONTINUED MOTION TO SET ASIDE  
[16-2250](#)      LBG-202      7-19-17 [[51](#)]  
ROBERTS V. SWEETLAND
27. [16-27672](#)-D-11      DAVID LIND      CONTINUED MOTION TO APPROVE LOT  
[DNL](#)-5      LINE ADJUSTMENT AGREEMENT  
8-16-17 [[205](#)]



28. [16-27672](#)-D-11 DAVID LIND  
[DNL](#)-8

MOTION TO SELL FREE AND CLEAR  
OF LIENS AND/OR MOTION FOR  
COMPENSATION FOR RE/MAX GOLD,  
BROKER(S)  
11-29-17 [[264](#)]

29. [17-25279](#)-D-7 JONATHAN VELASQUEZ  
[ADJ](#)-2

MOTION TO SELL  
11-28-17 [[30](#)]

**Tentative ruling:**

This is the trustee's motion to sell a vehicle to the debtor. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court notes that the moving papers do not mention the possibility of overbidding at the hearing. It is the general rule in this court that when assets are being sold, the court will entertain overbids, if any, at the hearing. For this reason, the court intends to continue the hearing to permit the trustee to file and serve a notice of continued hearing that informs parties-in-interest, including all creditors, that the court will entertain overbidding at the hearing.

The court will hear the matter.

30. [17-25279](#)-D-7 JONATHAN VELASQUEZ  
[ADJ](#)-3

MOTION TO SELL  
11-28-17 [[35](#)]

**Tentative ruling:**

This is the trustee's motion to sell a vehicle to the debtor. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court notes that the moving papers do not mention the possibility of overbidding at the hearing. It is the general rule in this court that when assets are being sold, the court will entertain overbids, if any, at the hearing. For this reason, the court intends to continue the hearing to permit the trustee to file and serve a notice of continued hearing that informs parties-in-interest, including all creditors, that the court will entertain overbidding at the hearing.

In addition, the trustee will need to file a corrected proof of service - the proof of service of the notice of hearing, DN 39, purports to evidence service of a Notice of Hearing on Trustee's Motion For Authority to Sell Property at Auction.

The court will hear the matter.

31. [17-27579](#)-D-7 LORRAYNE GARNER MOTION TO RECONSIDER DENIAL OF  
FILING FEE WAIVER  
11-27-17 [[24](#)]
32. [15-27697](#)-D-7 ROMEO/SONIA GAPASIN MOTION TO COMPROMISE  
[SSA](#)-2 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH SONIA'S CARE  
HOME, INC.  
11-29-17 [[38](#)]