

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: DECEMBER 21, 2020
CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: "**[Since posting its original rulings, the court has changed its intended ruling on this matter]**".

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [19-25117](#)-A-11 **IN RE: DONNA HEISCHOVER**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
8-14-2019 [[1](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.

Final Ruling

The status conference is continued to February 1, 2021, at 1:30 p.m., to coincide with the hearing on the disclosure statement. No additional status report is required prior to the February 1, 2021, continued status conference. A civil minute order will issue.

2. [19-25117](#)-A-11 **IN RE: DONNA HEISCHOVER**
[MRL-6](#)

APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR
10-1-2020 [[121](#)]

MIKALAH LIVIAKIS/ATTY. FOR DBT.
ORDER DENYING, ECF 137

Final Ruling

An Amended Order Vacating the Disclosure Statement hearing was filed December 8, 20, ECF No. 148, this matter is dropped as moot. A civil minute order will issue.

3. [20-23543](#)-A-11 **IN RE: 1420 HOWE BUSINESS CENTER**
REHABILITATION LP

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-20-2020 [[1](#)]

JAMES BRUNELLO/ATTY. FOR DBT.

No Ruling

4. [20-23543](#)-A-11 **IN RE: 1420 HOWE BUSINESS CENTER**
REHABILITATION LP
[JLB-3](#)

APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT
10-28-2020 [[52](#)]

JAMES BRUNELLO/ATTY. FOR DBT.

No Ruling

5. [20-23543](#)-A-11 **IN RE: 1420 HOWE BUSINESS CENTER**
REHABILITATION LP
[JLB-4](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
11-12-2020 [[60](#)]

JAMES BRUNELLO/ATTY. FOR DBT.

No Ruling

6. [20-24259](#)-A-11 **IN RE: NESTOR/MARIA QUILATES**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-4-2020 [[1](#)]

ARASTO FARSAD/ATTY. FOR DBT.

Final Ruling

The status conference is continued to February 1, 2021, at 1:30 p.m.
Not later than 14 days prior thereto the debtor shall file a status
report.

7. [20-24259](#)-A-11 **IN RE: NESTOR/MARIA QUILATES**
[AF-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF DEUTSCHE BANK
NATIONAL TRUST COMPANY
10-9-2020 [\[18\]](#)

ARASTO FARSAD/ATTY. FOR DBT.
STIPULATION 12/7/20, ECF 37

Final Ruling

Motion: Value Collateral [Real Property; Not Principal Residence]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Property: 2681 Cinnabar Hills Court, Brentwood, CA 94513

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

To value collateral, the moving party must proceed by noticed motion. Fed. R. Bankr. P. 3012. The motion must be served on the holder of the secured claim. Fed. R. Bankr. P. 3012, 9014(a); LBR 3015-1(j).

Under § 506 of the Bankruptcy Code, "a secured creditor's claim is to be divided into secured and unsecured portions, with the secured portion of the claim limited to the value of the collateral." *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961 (1997) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989)); *accord Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1168-69 (9th Cir. 2004) (citing 11 U.S.C. § 506). "To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' *i.e.*, the collateral." *Rash*, 520 U.S. at 961.

"Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1). In the lien stripping context, a replacement-value standard is proper when the debtor proposes to retain and use the collateral. *Rash*, 520 U.S. at 962-63.

The moving party must provide factual grounds for the proposed value of the collateral. "In the absence of contrary evidence, an owner's

opinion of property value may be conclusive." *Enewally*, 368 F.3d at 1173.

The motion requests that the court value real property collateral securing the respondent's claim. The real property is located at 2681 Cinnabar Hills Court, Brentwood, CA 94513 and is not the debtor's principal residence.

The court values the collateral at \$730,000.00. The responding creditor Deutsche Bank National Trust Company's claim is secured only to \$175,000.00 according to the court-approved stipulation filed by the creditor and the debtor, ECF No. 37.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value real property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The real property collateral located at 2681 Cinnabar Hills Court, Brentwood, CA 94513 has a value of \$730,000.00. The respondent has a secured claim according to the court-approved stipulation, ECF No. 37.

8. [09-29162](#)-A-11 **IN RE: SK FOODS, L.P.**
[NH-4](#)

MOTION FOR ORDER VOIDING DISTRIBUTION RIGHT TO THE CLAIMANTS
AND/OR MOTION TO APPROVE PROCEDURES AND TERMS FOR THE
DISTRIBUTION OF UNCLAIMED FUNDS AFTER THE FINAL DISTRIBUTION
, MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
11-20-2020 [[5821](#)]

RICHARD LAPPING/ATTY. FOR DBT.
GREGORY NUTI/ATTY. FOR MV.

No Ruling

9. [20-24783](#)-A-11 **IN RE: GREGORY G. SMITH, M.D., A**
PROFESSIONAL CORPORATION
[MHK-4](#)

OBJECTION TO CLAIM OF MEMORY REHABILITATION MEDICAL GROUP,
CLAIM NUMBER 1-1
11-6-2020 [[55](#)]

ANTHONY ASEBEDO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling

10. [20-24783](#)-A-11 **IN RE: GREGORY G. SMITH, M.D., A**
PROFESSIONAL CORPORATION
[MHK-5](#)

MOTION TO EMPLOY PHILIPP K. SAUD AS SPECIAL COUNSEL
11-19-2020 [[74](#)]

ANTHONY ASEBEDO/ATTY. FOR DBT.
RESPONSIVE PLEADING

No Ruling