

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Monday, January 28, 2019
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.

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. [18-14810](#)-B-7 IN RE: VANESSA SALAZAR
[EPE-1](#)

MOTION TO VACATE DISMISSAL OF CASE
12-21-2018 [[20](#)]

VANESSA SALAZAR/MV
ERIC ESCAMILLA
DEBTOR DISMISSED 12/18/2018

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

DISPOSITION: Granted.

ORDER: The court shall issue the order. The clerk shall set a new date for the creditors meeting and provide notice as required by law. Deadlines to be set consistent with the new meeting date.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

First, the court must note a procedural error. This motion is not in compliance with LBR 9004-2(c)(1), which requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declaration and exhibits were combined into one document and not filed separately.

This motion is GRANTED. Federal Rule of Civil Procedure 60(b) (made applicable by Federal Rule of Bankruptcy Procedure 9024) states that, "on motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceedings for the following reasons: mistake, inadvertence, surprise, or excusable neglect. . . any other reason that justifies relief."

Debtor asks that the court vacate the dismissal order entered on December 18, 2018 (doc. #17) due to the mistake and inadvertence of debtor's counsel. Debtor's counsel stated that he attempted to e-file debtor's remaining schedules on December 13, 2018, one day before the deadline to file the missing petition documents and schedules. Doc. #22. Counsel inadvertently e-filed the wrong documents into debtor's case, but the clerk's office caught counsel's error and did not file the e-filed documents. *Id.* Because movant did not comply with the court's "Notice of Incomplete Filing and Notice of Intent to Dismiss Case If Documents Are Not Timely Filed," the case was dismissed.

The court finds that counsel's mistake and inadvertence justifies the relief requested. The case had not progressed so far that any prejudice would occur to any party; the § 341 meeting had not yet occurred. This motion was filed three days after the case was dismissed.

2. [18-14812](#)-B-7 **IN RE: MARCO/CYNTHIA ELENES**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
12-28-2018 [\[17\]](#)

MARCO ELENES/MV
MARK ZIMMERMAN

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

First, the court must note a procedural error. This motion is not in compliance with LBR 9004-2(c)(1), which requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the notice and declaration both contained the exhibit. The exhibit must have been filed separately.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule.

Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship business known as "Cynthia's Day Care." The assets include tools of the trade, equipment, and business-related assets ("Business Assets").

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.

3. [18-14815](#)-B-7 **IN RE: TROY/STACY GOINS**
[NES-1](#)

MOTION TO COMPEL ABANDONMENT
12-21-2018 [\[12\]](#)

TROY GOINS/MV
NEIL SCHWARTZ

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtors ask this court to compel the chapter 7 trustee to abandon the estate's interest in debtors' sole proprietorship business known as "Love Inspired Studio." The assets include tools of the trade, equipment, and business-related assets ("Business Assets").

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.

4. [17-12535](#)-B-7 **IN RE: OVADA MORERO**
[TGM-6](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
12-28-2018 [[278](#)]

LEONARD WELSH

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

The motion will be GRANTED. Trustee's counsel, Trudi G. Manfredo, requests fees of \$11,934.50 and costs of \$777.34 for a total of \$12,711.84 for services rendered from March 15, 2018 through December 22, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1)

Analyzing and recovering estate assets for liquidation, (2) Selling the debtor's residence free and clear of liens; the residence which was encumbered by one deed of trust and an IRS tax lien, and (3) Preparing fee and employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$11,934.50 in fees and \$777.34 in costs.

5. [18-12337](#)-B-7 **IN RE: GENESIS POOLS, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
12-20-2018 [[69](#)]

JAMES SALVEN/MV
RILEY WALTER

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

The motion will be GRANTED. Trustee's accountant, James E. Salven, requests fees of \$2,125.00 and costs of \$266.67 for a total of \$2,391.67 for services rendered from August 20, 2018 through December 18, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Developing the balance sheet and income statement for 2018, (2) Preparing and finalizing the tax return, and (3) Preparing fee and

employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$2,125.00 in fees and \$266.67 in costs.

6. [18-12039](#)-B-7 **IN RE: MICHAEL/ETHEL BJORK**
[TMT-1](#)

MOTION TO SELL
12-28-2018 [[23](#)]

TRUDI MANFREDO/MV
MARK ZIMMERMAN
TRUDI MANFREDO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are. 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.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

The trustee asks this court for authorization to sell 2007 Chevrolet Silverado ("Vehicle") back to the debtors, subject to higher and better bids at the hearing, for \$6,000.00.

It appears that the sale of the Vehicle is a reasonable exercise of the trustee's business judgment.

Any party wishing to overbid must deposit with debtor's counsel certified monies in the amount of \$6,000.00 prior to or at the time of the hearing. The bidding will begin at \$6,100.00.

The provisions of Federal Rule of Bankruptcy Procedure 6004(h) are waived.

7. [18-10760](#)-B-7 **IN RE: SANFORD SEMCHAK & SPEIGHTS INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-20-2018 [74]

JAMES SALVEN/MV
PATRICK KAVANAGH

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

The motion will be GRANTED. Trustee's accountant, James E. Salven, requests fees of \$2,500.00 and costs of \$241.66 for a total of \$2,741.66 for services rendered from August 20, 2018 through December 18, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Developing the balance sheet and income statement for 2017 and 2018, (2) Preparing and finalizing the tax return, and (3) Preparing fee and employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$2,500.00 in fees and \$241.66 in costs.

8. [18-14865](#)-B-7 **IN RE: SOUTH LAKES DAIRY FARM**
[RAC-1](#)

MOTION TO DISMISS CASE
12-28-2018 [\[12\]](#)

SOUTH LAKES DAIRY FARM/MV
JACOB EATON

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

This motion is GRANTED. 11 U.S.C. § 303(j)(1) states "Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section on the motion of a petitioner. . ."

The court has discretion to grant or deny this motion. This involuntary case was filed on December 5, 2018. On December 11, 2018, the debtor filed a voluntary chapter 7 petition in this same district. See case no. 18-14920. The petitioning creditors ask this court to dismiss the case "for the sake of judicial economy and efficiency, and to preserve the limited resources of the Debtor and its estate." Doc. #12. Debtor and petitioning creditors agree to the relief requested.

Therefore this motion is granted and the case shall be dismissed.

9. [17-13574](#)-B-7 **IN RE: DAISY TORRES**
[JES-1](#)

MOTION TO SELL
12-21-2018 [[17](#)]

JAMES SALVEN/MV
KARNEY MEKHITARIAN

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are. 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.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

The trustee asks this court for authorization to sell a 1993 Chevrolet Blazer and a 2005 Ford Taurus ("Vehicles") back to the debtor, subject to higher and better bids at the hearing, for \$1,400.00.

It appears that the sale of the Vehicles is a reasonable exercise of the trustee's business judgment.

10. [17-13275](#)-B-7 **IN RE: PHOENIX COATINGS, INC.**
[RH-4](#)

MOTION FOR ADMINISTRATIVE EXPENSES
12-20-2018 [[63](#)]

JAMES SALVEN/MV
JOEL WINTER
ROBERT HAWKINS/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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

First, the court must note a procedural error. This motion is not in compliance with LBR 9004-2(c)(1), which requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the notice and declaration both contained the exhibit. The exhibit must have been filed separately.

This motion is GRANTED. The trustee is authorized to pay auctioneer Gould Auction & Appraisal Company the sum of \$7,221.43 for extraordinary expenses incurred in disposing of estate assets. The court finds that the expenses were reasonable and necessary. The trustee originally expected for the auction to proceed onsite to reduce moving expenses, but the landlord of the property where the assets were stored was unwilling to allow the auction there, so trustee had to move the assets to a secure location. Doc. #65. The trustee was also "unaware that there were hazardous wastes on the property as the existence of the product was not disclosed" in debtor's bankruptcy schedules. *Id.* Trustee deemed it necessary to properly dispose of the materials. *Id.* Other expenses included trucking expenses, freight, and cleaning. *Id.*

11. [17-14678](#)-B-7 **IN RE: SEAN MOONEY**
[TGM-3](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
12-28-2018 [[35](#)]

NICHOLAS WAJDA

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. 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.

The motion will be GRANTED. Trustee's counsel, Trudi G. Manfredo, requests fees of \$5,809.00 and costs of \$240.08 for a total of \$6,049.08 for services rendered from December 27, 2017 through December 26, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Analyzing and recovering estate assets for liquidation, (2) Recording lis pendens' in the two counties where the debtor and debtor's ex-spouse owned real property, (3) Filing and ultimately settling an adversary proceeding to recovery the allegedly fraudulently conveyed property, and (4) Preparing fee and employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$5,809.00 in fees and \$240.08 in costs.

12. [18-14881](#)-B-7 **IN RE: JESSICA CORTEZ**

AMENDED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
12-17-2018 [[19](#)]

JESSICA CORTEZ/MV

NO RULING.

The court notes that the trustee filed a "Report of No Distribution" on January 15, 2019.

13. [18-14184](#)-B-7 **IN RE: KIMBERLY RUIZ**
[JMP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-27-2018 [[18](#)]

JPMORGAN CHASE BANK, N.A./MV
MARK ZIMMERMAN
JOSEPH PLEASANT/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 collateral is a 2016 Ford F-150. Doc. #21. The collateral has a value of \$31,329.00 and debtor owes \$33,455.35. *Id.* The court notes that the Debtor did not list this vehicle in her voluntary petition.

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).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

14. [18-14391](#)-B-7 **IN RE: JOHN HAVERSTOCK AND DEBORAH VAN HOUTEN-HAVERSTOCK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-4-2019 [[25](#)]

MARK ZIMMERMAN
AMENDMENT FEE PAID \$31.00 1/10/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the amendment fee of \$31.00 has been paid on January 10, 2019.

15. [18-13095](#)-B-7 **IN RE: OSCAR GUTIERREZ AND LILLY LOREDO-GUTIERREZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
12-26-2018 [[27](#)]

OSCAR GUTIERREZ/MV

NO RULING.

The court notes that the application to have the chapter 7 filing fee waived states that the "family's average monthly net income" is \$3,000.00, while debtor's Schedule I shows a combined monthly net income of \$5,006.00. Debtor must come prepared to explain this discrepancy to the court.

16. [17-13081](#)-B-7 **IN RE: PEDRO/MARIA GUTIERREZ**
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-2019 [[33](#)]

U.S. BANK, NA/MV
THOMAS GILLIS
DIANE WEIFENBACH/ATTY. FOR MV.
DISCHARGED

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part as to the trustee's interest and denied as moot in part as to the debtor's interest unless opposed at the hearing.

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

This motion for relief from stay was noticed pursuant to LBR 9014-

1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtors' and the trustee's defaults and enter the following ruling granting in part, denying as moot in part the motion for relief from stay. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 8, 2018. Docket #23. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee. 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 order shall provide the motion is DENIED AS MOOT as to the debtors. The proposed order shall specifically describe the property or action to which the order relates. The collateral is a parcel of real property commonly known as 338 S. Crawford Ave., Dinuba, California. Doc. #35. The collateral has a value of \$184,840.00 and the amount owed is \$143,545.67. Doc. #36.

If an award of attorney fees has been requested, it will be denied without prejudice. 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. In addition, any future request for an award of attorney's fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C. §506(b).

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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).

17. [18-14459](#)-B-7 **IN RE: STEPHEN/JULIE KNIGHT**
[MAZ-1](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER
13
12-13-2018 [[19](#)]

MARK ZIMMERMAN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion on January 23,
2019. Doc. #29.

11:00 AM

1. [18-14103](#)-B-7 **IN RE: JACQUELINE MACHADO**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP,
LLC
1-8-2019 [[21](#)]

NO RULING.

2. [18-14132](#)-B-7 **IN RE: ERIC/MICHELLE EVANS**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.
1-2-2019 [[17](#)]

JEFFREY ROWE

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

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. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

3. [18-14475](#)-B-7 **IN RE: OLEN WHITSON**

REAFFIRMATION AGREEMENT WITH FREEDOMROAD FINANCIAL
12-21-2018 [[14](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtor was represented by counsel when he 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). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

4. [18-14497](#)-B-7 **IN RE: IRMA REYES**

REAFFIRMATION AGREEMENT WITH COMPASS BANK
12-27-2018 [[14](#)]

THOMAS GILLIS

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

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). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1:30 PM

1. [18-12834](#)-B-7 **IN RE: PHANECIA NEVAREZ**
[18-1072](#)

FURTHER STATUS CONFERENCE RE: COMPLAINT
10-10-2018 [[1](#)]

NEVAREZ V. JONES ET AL
PETER BUNTING/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1022](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-30-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. LAVERS ET AL
RILEY WALTER/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar. The status conference
is concluded.

NO ORDER REQUIRED: By prior order of the court (doc. #63), if the
plaintiff filed a motion for entry of default
and judgment or dismissal before this
continued the hearing, the status conference
will be dropped and the court will hear the
motion when scheduled. Defendant's defaults
were entered and judgment was entered on
January 17, 2019. Doc. #66.