

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 29, 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. [19-11211](#)-B-7 **IN RE: EARL CRITES**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-23-2019 [\[16\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
SCOTT LYONS
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 collateral is a 2017 Toyota Corolla. Doc. #20. The collateral has a value of \$13,875.00 and debtor owes \$21,446.66. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is uninsured and has been surrendered by the debtor.

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).

2. [18-13516](#)-B-7 **IN RE: PETERANGELO/DEMITRA VALLIS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-1-2019 [\[45\]](#)

HAGOP BEDOYAN
\$181.00 FILING FEE PAID 5/3/18

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 filing fee for the Motion for Relief from Automatic Stay has been paid. Therefore, the OSC will be vacated.

3. [19-10016](#)-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
[APN-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-23-2019 [\[71\]](#)

FORD MOTOR CREDIT COMPANY/MV
RILEY WALTER
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 collateral is a 2015 Ford F150. Doc. #75. The collateral has a value of \$22,573.00 and debtor owes \$24,304.69. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the possession of the movant.

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).

4. [19-10016](#)-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
[APN-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-23-2019 [65]

FORD MOTOR CREDIT COMPANY/MV
RILEY WALTER
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 collateral is a 2016 Ford F150. Doc. #69. The collateral has a value of \$18,202.00 and debtor owes \$19,256.62. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is in the possession of the movant.

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).

5. [19-11220](#)-B-7 **IN RE: MIGUEL/JENIFFER MARAVILLA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
5-2-2019 [14]

MIGUEL MARAVILLA/MV
SCOTT LYONS

NO RULING.

6. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[FW-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY
5-1-2019 [\[59\]](#)

JAMES SALVEN/MV
DAVID JENKINS
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: If the court is satisfied with the clarifications that need to be made by the trustee, this matter will proceed at the continued hearing for higher and better bids only.

DISPOSITION: Continued to June 12, 2019 at 9:30 a.m.
Supplemental briefs to be filed and served not later than June 5, 2019.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The preparation of the order shall be determined at the 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 entered. 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 will be continued. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if . . . such interest is in bona fide dispute"

The trustee wishes to sell real property located at 1638 W. Ellery Avenue in Fresno, CA for \$403,000.00 to Ricky B. and Nicole Osuna ("Buyer") free and clear of several federal and state tax liens and an abstract of judgment lien in favor of Aaron Michaelian. Doc. #59. The trustee has produced evidence that approximately \$87,000.00 will net to the bankruptcy estate. A large portion of the sale proceeds will pay the first deed of trust held by JPMorgan Chase bank in the amount of \$287,631.57. Costs of sale are estimated to be \$8,060.00; the estimated broker fee is \$20,150.00. Id. The trustee proposes that the disputed liens will attach to the proceeds. The remaining proceeds (\$87,000.00) are not enough to pay all claimed liens.

The trustee has included evidence that several tax liens, both state and federal, have been asserted by the California Franchise Tax Board and Internal Revenue Service, encumbering "some" interest in the property due to one "Natalie Corral's" tax debts. The trustee also contends Aaron Michaelian's judgment lien represents Natalie Corral's debt.

Natalie Corral, the trustee contends, "never held any equitable or beneficial interest in the Property; rather, for the time she was on title, she held only bare legal title." Id. The trustee asserts that to the extent any liens were recorded which name Natalie Corral as the debtor, those liens did not attach to any beneficial interest in the Property. Id. The trustee has filed an adversary proceeding against the interested parties to determine whether the disputed liens attach to any beneficial interest in the property. See case no. 19-01046. The adversary proceeding was recently served on the lien holders and no responsive pleadings are filed, yet.

Because "such interest(s) is(are) in bona fide dispute," the trustee wants to sell the property to Buyer for \$403,000.00 free and clear of the state and federal tax liens and the Michaelian lien. The liens are to be transferred to the proceeds. The court notes JPMorgan Chase Bank's non-opposition. Doc. #74. At the hearing, trustee shall comment on JPMorgan Chase Bank's proposed order language.

The trustee shall also discuss the administration of the liens which are indisputably encumbering this debtor's interests. Assuming the trustee's theories against the IRS, the FTB, and Michaelian prevail, the "net" to the estate does not satisfy those liens, based on the motion. So, the trustee's legal basis to sell free and clear of those liens must be determined. The motion raises questions about the extent of allowable penalties and interest without specificity. The court understands that vagueness is one basis for the adversary proceeding but that does not fully explain the resolution of the liens encumbering the debtor's interests.

If the sale is eventually approved, the court is only finding there is a bona fide dispute concerning a portion of some liens and the validity of others as specified in the motion. No finding is made on the validity of any liens if this court grants the motion. The trustee should brief the issues outlined here, in addition to the question of whether Natalie's interest can be severed from Debtor's interest. The trustee asserts no other basis to sell the property "free and clear" except the "bona fide dispute." Brief to be filed and served not later than June 5, 2019.

7. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[JCW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2018 [[11](#)]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION/MV
DAVID JENKINS
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 4/16/19, RESPONSIVE PLEADING

NO RULING.

8. [19-11824](#)-B-7 **IN RE: DAVID RUSSELL AND ANDREA MENDOZA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-7-2019 [[11](#)]

HONDA LEASE TRUST/MV
R. BELL
VINCENT FROUNJIAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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 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. Debtors filed non-opposition on May 16, 2019, Doc. #18. Unless the trustee presents opposition at the hearing, the court intends to enter the trustee's default and enter the following ruling granting 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.

This motion relates to an executory contract or lease of personal property. The time prescribed in 11 U.S.C. § 365(d)(1) for the lease to be assumed by the chapter 7 trustee has not yet run and, pursuant to § 365(p)(1), the leased property is still property of the estate and protected by the automatic stay under § 362(a). The trustee has not moved to assume the subject lease and the lease was not listed in the debtors' Statement of Intention.

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 2017 Honda Pilot. Doc. #15. The collateral has a value between \$25,875.00 and \$28,575.00 and debtor owes \$30,132.28. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and is in movant's possession.

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).

9. [19-11227](#)-B-7 **IN RE: SHAWN EVANS**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2019 [\[14\]](#)

SANTANDER CONSUMER USA INC./MV
MARIO LANGONE
JENNIFER WANG/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 2014 Infiniti QX60. Doc. #19. The collateral has a value of \$18,750.00 and debtor owes \$32,889.64. *Id.*

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

10. [19-10930](#)-B-7 **IN RE: MARTIN GUTIERREZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF CREDITORS
4-15-2019 [[13](#)]

THOMAS GILLIS

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for June 3, 2019 at 2:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

11. [18-10133](#)-B-7 **IN RE: JESSE/SHERRI SHIELDS**
[FW-3](#)

MOTION TO APPROVE STIPULATION RESOLVING OBJECTION TO EXEMPTIONS
4-26-2019 [[58](#)]

JAMES SALVEN/MV
SCOTT LYONS
PETER FEAR/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.

This motion is GRANTED. It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a stipulation between the estate and debtors regarding exemptions claimed on Schedule C.

Under the terms of the compromise, one-half of the net proceeds from a potential personal-injury claim shall be exempt, and the remaining one-half will be nonexempt. "Net proceeds" is defined as "the amount the claimant would ordinarily be entitled to receive after all liens, costs, fees, and other usual and ordinary deductions from a personal injury litigation claim are deducted." Doc. #58.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the amount of the claim is unknown and at the moment the trustee is unable to determine whether or not the estate has an interest in the claim; collection is neutral as the claims has yet

to be liquidated; the litigation is not complex but the litigation is fact specific and intensive, and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

12. [18-10133](#)-B-7 **IN RE: JESSE/SHERRI SHIELDS**
[FW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH SHERRI SHIELDS AND/OR MOTION FOR COMPENSATION FOR SCOTT
GOOD, SPECIAL COUNSEL(S)
4-29-2019 [64]

JAMES SALVEN/MV
SCOTT LYONS
PETER FEAR/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.

This motion is GRANTED. It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610,

620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and defendant Robert Shahan and his insurance carrier regarding a personal injury lawsuit. The settlement is for \$135,000.00 and a release of all claims. Doc. #64, 68.

Under the terms of the compromise, one-half of the net proceeds from a potential personal-injury claim shall be exempt, and the remaining one-half will be nonexempt. "Net proceeds" is defined as "the amount the claimant would ordinarily be entitled to receive after all liens, costs, fees, and other usual and ordinary deductions from a personal injury litigation claim are deducted." Doc. #58.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as personal injury lawsuits are very fact specific and intensive and the facts of this case do not guarantee a verdict for the plaintiff; collection is likely because the amount has been offered by a reputedly solvent insurance carrier; the litigation is not complex, but the litigation is fact specific and intensive, and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law

favours compromise and not litigation for its own sake. Id.
Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

13. [19-10243](#)-B-7 **IN RE: MARIA FAJARDO**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF CREDITORS
4-9-2019 [\[19\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for June 3, 2019 at 10:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

14. [19-10643](#)-B-7 **IN RE: JOSE PEREZ**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
4-25-2019 [\[15\]](#)

JAMES SALVEN/MV
NICHOLAS WAJDA
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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

This objection is **OVERRULED WITHOUT PREJUDICE**.

The chapter 7 trustee objects on the grounds that debtor is not entitled to the exemptions under California Code of Civil Procedure

§ 703.140(b) because he has failed to file the spousal waiver as described in § 703.140(a)(2). Doc. #15.

Debtor timely responded, stating that he filed the waiver on April 30, 2019. Doc. #22. Debtor asks that the court overrule the objection because debtor has not resolved the trustee's issue. Id.

This matter will be called to allow trustee to respond to debtor's opposition.

15. [18-14644](#)-B-7 **IN RE: DARREN PATTON**
[JES-1](#)

MOTION TO SELL
4-16-2019 [23]

JAMES SALVEN/MV
MARK ZIMMERMAN

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

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). 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. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the

context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell a 2009 BMW Series 128i ("Vehicle") back to debtor Darren Patton, subject to higher and better bids at the hearing, for \$5,000.00. Doc. #23. That entire amount will net to the estate. The estate has received the funds and is waiting for court approval. There is no objection.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. The motion is GRANTED.

16. [19-11147](#)-B-7 **IN RE: TRINI GONZALEZ**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2019 [\[27\]](#)

U.S BANK NATIONAL ASSOCIATION/MV
DARLENE VIGIL/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.

The movant, U.S. Bank National Association, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 15473 La Maida Street in Sherman Oaks, CA 94103.

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

On or about February 22, 2006 borrower Ani Kessedjian (not a party to this bankruptcy) executed a Note in the original sum of \$604,000.00 in favor of RESMAE MORTGAGE CORPORATION. Movant directly or through an agent has possession of the promissory note which has been duly endorsed. The Note is secured by a first priority Deed of Trust against said real property recorded on March 06, 2006 as Instrument No. 06 0478140 in the Office of the County Recorder of LOS ANGELES County, CA. The Deed of Trust was assigned to Movant. Doc. #27.

This is the third bankruptcy case involving this property since 2016. On July 4, 2016, Borrower Ani Kessedjian filed a voluntary Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Central District of California. On March 30, 2017, the case converted to Chapter 7. On July 21, 2017, the bankruptcy was dismissed. Doc. #29, 31.

On August 14, 2018, Borrower Ani Kessedjian filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Central District of California. On October 11, 2018, the Court entered an Order Granting Movant's Motion for Relief from the Automatic Stay. Doc. #29, 31.

On March 27, 2019, Movant became apprised by way of a ten page fax that on September 01, 2017, Borrower executed a Deed of Trust and Assignment of Rents encumbering the Property in the amount of \$100,000 in favor of Debtor Trini M. Gonzalez ("Debtor") which was recorded on March 20, 2019 as Document No. 20190248806 in the Official Records of Los Angeles County, California. At that time, Movant also became apprised that on March 25, 2019, Debtor commenced this chapter 7 bankruptcy case proceeding. Doc. #29, 31.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated concerning real property located at 15473 La Maida Street in Sherman Oaks Area, CA 94103; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that a sale date is scheduled in the next 14 days.

17. [19-10248](#)-B-7 **IN RE: REBEKAH ZACARIAS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2019 [\[16\]](#)

SYSTEMS & SERVICES TECHNOLOGIES, INC./MV
ERIC ESCAMILLA
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 5/8/19

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

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

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 motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on May 8, 2019. Docket #22. 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 proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2017 Coleman CTS274BHWE. Doc. #20. The collateral has a value of \$14,100.00 and debtor owes \$22,795.75. *Id.*

The order shall provide the motion is DENIED AS MOOT as to the debtors.

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

18. [18-14955](#)-B-7 **IN RE: ROBERT/LINDA BRENNER**
[PFT-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BERKSHIRE
HATHAWAY HOMESERVICES CALIFORNIA REALTY, BROKER(S)
4-18-2019 [\[26\]](#)

PETER FEAR/MV
SCOTT LYONS
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on April 18, 2019 and set for hearing on May 29, 2019. Doc. #27, 30. May 29, 2019 is more than 28 days after April 18, 2019, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that opposition was to be presented at the hearing. Doc. #27. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served at least 14 days before the hearing. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

19. [19-10865](#)-B-7 **IN RE: LEONARD/CHRISTINA DAVIS**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-15-2019 [\[11\]](#)

TIMOTHY SPRINGER

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for June 3, 2019 at 1:00 p.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

20. [19-11470](#)-B-7 **IN RE: KESHA CLASPILL**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE
PROTECTION
5-1-2019 [\[18\]](#)

BANK OF THE WEST/MV
SUSAN HEMB
MARY TANG/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 2018 Jayco 38FLWS Travel Trailer. Doc. #22. The collateral has a value of \$75,200.00 and debtor owes \$93,407.04. *Id.*

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

21. [18-14676](#)-B-7 **IN RE: EDUARDO NAVARRO**
[JES-1](#)

MOTION TO SELL
4-25-2019 [28]

JAMES SALVEN/MV
MARIO LANGONE

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

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). 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. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing

Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell a 1991 Ford truck ("Vehicle") back to debtor Eduardo Navarro, subject to higher and better bids at the hearing, for \$2,000.00. Doc. #28. That entire amount will net to the estate. The estate has received the funds and is waiting for court approval. There is no objection.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. The motion is GRANTED.

22. [19-11182](#)-B-7 **IN RE: FREDDY/NANCY MENDOZA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2019 [\[12\]](#)

SANTANDER CONSUMER USA, INC./MV
JAMES CANALEZ
JENNIFER WANG/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 debtors' 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 2014

Chevrolet Captiva. Doc. #17. The collateral has a value of \$10,000.00 and debtor owes \$19,344.91. *Id.*

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

23. [19-10287](#)-B-7 **IN RE: LIZETH RIOS**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-9-2019 [[16](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for June 3, 2019 at 11:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

24. [19-10090](#)-B-7 **IN RE: ANA ANGUIANO**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-15-2019 [[12](#)]

TODD TUROCI

NO RULING.

25. [17-14894](#)-B-7 **IN RE: ISABEL BETANCOURT**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-13-2019 [[49](#)]

THE GOLDEN 1 CREDIT UNION/MV
THOMAS GILLIS
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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 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 debtor's and the trustee's defaults and enter the following ruling granting 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 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 2015 Mitsubishi Outlander. Doc. #53. The collateral has a value of \$12,651.00 and debtor owes \$18,887.20. *Id.*

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

26. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-94](#)

MOTION FOR ORDER APPROVING SOLICITATION AND TABULATION
PROCEDURES AND MATERIALS AND/OR MOTION TO GRANT RELATED
RELIEF RELATING TO PLAN OF ADJUSTMENT CONFIRMATION
5-17-2019 [[1415](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER
OST 5/16/19

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 Moving Party
will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice
("LBR") 9014-1(f)(3) and an order shortening time (doc. #1404) and
will proceed as scheduled. Unless opposition is presented at the
hearing, the court intends to enter the respondents' defaults and
grant the motion. 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.

This motion is GRANTED.

11:00 AM

1. [19-11115](#)-B-7 **IN RE: ROMAN NORIEGA**

REAFFIRMATION AGREEMENT WITH AMERICAN CREDIT ACCEPTANCE, LLC.
4-25-2019 [\[15\]](#)

SUSAN HEMB

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor 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 debtor's 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.

In the reaffirmation agreement, the debtor explains that he'll be able to make the payments once the interest rate is lowered. Nowhere in the reaffirmation agreement does the creditor state that the interest rate will lower. In fact, the terms of repayment after the reaffirmation list the vehicle payment as \$635.58 for 62 months with a loan balance of \$21,191.42 and an interest rate of 28%.

2. [19-10057](#)-B-7 **IN RE: SUSAN THEVENOT**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
4-30-2019 [\[30\]](#)

NO RULING.

1:30 PM

1. [18-13516](#)-B-7 **IN RE: PETERANGELO/DEMITRA VALLIS**
[18-1073](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
10-22-2018 [7]

VALLIS ET AL V. RODRIGUEZ
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The court issued an order. Doc. #29.

2. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[19-1031](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
3-5-2019 [1]

ABDELAZIZ V. CRUZ
UNKNOWN TIME OF FILING/ATTY. FOR PL.

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

DISPOSITION: Continued to June 17, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to June 17, 2019 at 1:30 p.m. to be heard
in conjunction with Plaintiff's motion for remand. Doc. #33, NEA-2.

3. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[19-1034](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-11-2019 [1]

CRUZ V. ABDELAZIZ

NO RULING.

4. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[19-1034](#) [NEA-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
4-19-2019 [\[14\]](#)

CRUZ V. ABDELAZIZ
UNKNOWN TIME OF FILING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with leave to amend. Debtor must file and serve an amended complaint, if any, within 14 days of the entry of the order. If no amended complaint is filed, an order to show cause why the case should not be dismissed for failure to prosecute will be issued.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 court GRANTS this motion with leave to amend.

Debtor-plaintiff Frank Cruz ("Plaintiff") asks this court for a judgment to recover the sum of \$150,000.00 in improvements allegedly made on property located at 1708 N. Cedar Avenue in Fresno, CA, ("Property") for an order judicially foreclosing his alleged mechanic's lien securing the sum of \$150,000.00, and a judgment for pre- and post-judgment interest at the legal rate. Doc. #1. Plaintiff alleges that after an agreement to sell the Property with him was breached, the "seller" Defendant Mel Abdelaziz ("Defendant") filed an unlawful detainer action against Plaintiff in state court. Id. Plaintiff then sued Defendant in state court. Id. The state court entered Plaintiff's default in the unlawful detainer action, which Plaintiff argued was due to "fabricated service facts" and Plaintiff later sued Defendant to set aside the judgment as improper.

Essentially, Plaintiff alleges that he made certain improvements to the Property as part of the agreed upon price for the sale of the

property; Defendant reneged and sought to evict Plaintiff, breaching their sale contract; and Plaintiff recorded a mechanic's lien for his work on the Property.

Defendant's motion to dismiss argues that Plaintiff has not pled certain specific facts as required by the laws that could provide Plaintiff the relief requested. Doc. #16. Specifically, Plaintiff has not pled that he is a licensed contractor (and only licensed contractors can recover for works of improvement under Cal. Bus. Prof Code § 7031); he has not pled that he timely provided a preliminary notice to Defendant prior to recording and/or foreclosing upon a mechanic's lien under California Civil Code §§ 8200-8216; and that Plaintiff failed to plead that he was a "good faith improver" under California Civil Code § 871.1. Id.

Under Federal Rule of Civil Procedure 12(b)(6) (made applicable by Federal Rule of Bankruptcy Procedure 7012), a court must dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Fed. R. Civ. P. 12(b)(6) dismissal, a court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011). However, a court need not accept as true conclusory allegations or legal characterizations cast in the form of factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). While the court generally must not consider materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Twombly, 550 U.S. at 570 (A claim survives Civil Rule 12(b)(6) when it is "plausible."). It is self-evident that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 (9th Cir. 2008).

The court first notes that Plaintiff has not timely opposed this motion. The court is persuaded that as currently pled, the claims are not plausible because they have no legal basis. Plaintiff has not pled that he is a licensed contractor, and California Business and Professions Code § 7031 provides

no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract regardless

of the merits of the cause of action brought by the person.

There is no factual allegation in the complaint that Plaintiff is a licensed contractor or for some legal reason, is excused from the requirement.

Nor has Plaintiff pled that he provided the preliminary notice to Defendant under California Civil Code §§ 8200-8216. Plaintiff has not pled any facts and reasons he should be excused from the requirement for a legal reason.

Plaintiff has also failed to plead that he is a "good faith improver" as described above. California Code of Civil Procedure § 871.1 defines a "good faith improver" as "a person who makes an improvement to land in good faith and under the erroneous belief, because of a mistake of law or fact, that he is the owner of the land" or "a successor in interest of a person [described above]."

The complaint itself does not allege any salient facts why Plaintiff, in good faith, believed he was the owner of the property when he allegedly improved the property. In fact, Paragraphs 12 and 13 allege the defendant executed a land sale contract and that Plaintiff "in equity" owned the property. That is inconsistent. Plaintiff cannot sign a contract to purchase a property with the owner and then allege he "in good faith" believed Plaintiff owned the property. It makes no sense and is contrary to Cal. Code Civ. Proc. § 871.1.

Plaintiff shall file and serve an amended complaint, if any, within 14 days of the entry of this order. If no amended complaint is filed, an order to show cause why the case should not be dismissed for failure to prosecute will be issued.

5. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[19-1035](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-11-2019 [[1](#)]

CRUZ V. ABDELAZIZ

NO RULING.

6. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[19-1035](#) [NEA-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
4-19-2019 [\[17\]](#)

CRUZ V. ABDELAZIZ
UNKNOWN TIME OF FILING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with leave to amend. Debtor must file and serve an amended complaint, if any, within 14 days of the entry of the order. If no amended complaint is filed, an order to show cause why the case should not be dismissed for failure to prosecute will be issued.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 WITH LEAVE TO AMEND. Debtor-plaintiff Frank Cruz ("Plaintiff") asks this court to avoid a preferential payment allegedly made to creditor-defendant Mel Abdelaziz ("Defendant") pursuant to 11 U.S.C. §§ 547, 550, and 502. Doc. #1. Plaintiff alleges that he paid Defendant \$2,000.00 "not in the usual course of business" on October 10, 2018. Id. Plaintiff does not state what the payment was for. The court also notes that paragraph seven of the complaint states that the chapter 13 petition was filed on December 4, 2018. That is incorrect - this main case was filed on February 14, 2019.

Defendant asks the court to dismiss the case for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Doc. #19. Specifically, that the action belongs to the chapter 13 trustee and therefore Plaintiff does not have standing to bring it, that rent payments are exempt for avoidance under 11 U.S.C. § 547(c)(1)(A-B), and that the complaint does not allege that Defendant is an insider. Id.

Plaintiff did not oppose the motion to dismiss.

Under Federal Rule of Civil Procedure 12(b)(6) (made applicable by Federal Rule of Bankruptcy Procedure 7012), a court must dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Fed. R. Civ. P. 12(b)(6) dismissal, a court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011). However, a court need not accept as true conclusory allegations or legal characterizations cast in the form of factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). While the court generally must not consider materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Twombly, 550 U.S. at 570 (A claim survives Civil Rule 12(b)(6) when it is "plausible."). It is self-evident that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 (9th Cir. 2008).

The court finds that the motion should be GRANTED WITH LEAVE TO AMEND.

First, the time limit has expired. Section 547(b)(4) requires that the

transfer of an interest of the debtor in property . . .
made on or within 90 days before the date of the filing
of the petition; or between ninety days and one year
before the date of the filing of the petition, if such
creditor at the time of such transfer was an insider . . .

The complaint states that the payment was made on October 10, 2018. Ninety days after that date was January 8, 2019. The main bankruptcy case was filed on February 14, 2019, well after January 8, 2019. The only way Plaintiff could save this fact is if he pled that Defendant is an insider.

Second, the complaint does not state what the \$2,000.00 payment was for, other than it was made "not in the usual course of business." Doc. #1. Defendant contends that the payment was for rent thus exempt from for avoidance under 11 U.S.C. § 547(c)(1)(A-B). Doc. #19. Regular rent payments are an ordinary course payment. But because the complaint does not state what the payment is for, the court is unable to make that finding.

Third, Defendant states that because Plaintiff is not the chapter 13 trustee, Plaintiff does not have standing to make these claims. The court has not found any appellate court precedent in the Ninth Circuit that has decisively dealt with the issue. The Idaho Bankruptcy Court in In re Jardine, 120 B.R. 559 (Bankr. D. Idaho 1990) held that the chapter 13 debtor did not have authority to avoid preferences under 11 U.S.C. § 547. Though the court has seen courts in other circuits go both ways. See Miller v. Bhd. Credit Union (In re Miller), 251 B.R. 770 (Bankr. D. Mass. 2000) (finding that chapter 13 debtors do not have standing to bring preference avoidance actions); Pantazelos v. Benjamin (In re Pantazelos), 562 B.R. 723, 733-34 (Bankr. N.D. Ill. 2016) (finding that chapter 13 debtors do have standing to bring preference avoidance actions). The Ninth Circuit Bankruptcy Appellate Panel has held the power of the debtor to pursue an avoidance action is concurrent with the Chapter 13 Trustee. Houston v. Eiler (In re Cohen), 305 B.R. 886, 899 (9th Cir. BAP 2004). But, it is only concurrent if there is a benefit to the estate resulting from pursuit of the action. The complaint does not allege any benefit to the estate.

Now though, even if the court were to find that Plaintiff has standing to bring such an action, the complaint itself alleges the time limit has expired for non-insider alleged preference avoidance actions. Because at this time Plaintiff has not plausibly pled a § 547 claim, the claims under §§ 502 and 550, which rely on § 547, are also not plausibly pled.

Plaintiff shall file and serve an amended complaint, if any, within 14 days of the entry of this order. If no amended complaint is filed, an order to show cause why the case should not be dismissed for failure to prosecute will be issued.

7. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[19-1039](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
4-23-2019 [[12](#)]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
JAMES MICHEL/ATTY. FOR PL.
REISSUED SUMMONS FOR 7/3/19

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

DISPOSITION: Continued to June 17, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to June 17, 2019 at 1:30 p.m. to be heard in conjunction with Defendant's motion to dismiss. Doc. #26, DRJ-1.