UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 17, 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. 19-12006-B-7 **IN RE: JENNY LOMELI**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-7-2019 [15]

WELLS FARGO BANK, N.A./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 2011 Chevrolet Traverse. Doc. #19. The collateral has a value of $8,750.00 and debtor owes $9,774.14. *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).

2. 19-11613-B-7 **IN RE: MICHAEL/TONYA GILMORE**
ETL-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-18-2019 [15]

MEDALLION BANK/MV
NEIL SCHWARTZ
ERICA LOFTIS/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 2018 Forest River Cherokee (Travel Trailer). Doc. #20. The collateral has a value of $20,350.00 and debtor owes $24,698.55. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show there is no equity in the property and that the property is not necessary to an effective reorganization since this is a chapter 7 case. Also, the collateral is depreciating.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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).

3. 16-10521-B-7 **IN RE: ALAN ENGLE**
JES-2

MOTION FOR COMPENSATION FOR JAMES E SALVEN, ACCOUNTANT(S)
5-30-2019 [285]

JAMES SALVEN/MV
SUSAN HEMB

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. The chapter 7 trustee's accountant, James Salven, requests fees of $5,981.00 and costs of $762.19 for a total of $6,743.19 for services rendered from August 11, 2016 through May 20, 2019.

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) Reviewing and correcting the initial tax return, (2) Compiling data for return preparation, (3) Preparing the 9/30/18 return, and (4) Preparing and completing federal and state fiduciary income tax returns. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $5,981.00 in fees and $762.19 in costs.

4. 19-11324-B-7 **IN RE: ISAAC RODRIGUEZ**
DWE-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-7-2019 [16]

U.S. BANK NATIONAL ASSOCIATION/MV
R. BELL
DANE EXNOWSKI/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 Jeep Wrangler. Doc. #21. The collateral has a value of $25,250.00 and debtor owes $27,470.69. *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).

5. 16-14433-B-7 **IN RE: ISAIAS BRAVO**
JES-3

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
5-30-2019 [51]

JAMES SALVEN/MV
JERRY LOWE

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. The chapter 7 trustee's accountant, James Salven, requests fees of $1,175.00 and costs of $245.10 for a total of $1,420.10 for services rendered from April 29, 2019 through May 28, 2019.

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) Reviewing a settlement agreement for tax effect, (2) Inputting data and processing tax returns, (3) Finalizing returns and tax clearance letters, and (4) Preparing, finalizing, and filing the fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,175.00 in fees and $245.10 in costs.

6. 19-11545-B-7 **IN RE: MARIA MORALES**
JES-1

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-5-2019 [26]

JAMES SALVEN/MV

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

DISPOSITION: Sustained.

ORDER: The Court will issue the order sustaining the objection.

This objection 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 sustaining of the objection. 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 objection is SUSTAINED.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on May 23, 2019 and this objection was filed on June 5, 2019, which is within the 30 day timeframe.

The Eastern District of California Bankruptcy Court in In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee objects to debtor's claimed exemption under California Code of Civil Procedure § 703.140(b)(11) because the amount exempted is ambiguous. Doc. #26. The exemption lists "ARNFS" under the exemption amount on Schedule C. Doc. #1. California Code of Civil Procedure

§ 703.140(b)(11)(D) specifically limits the amount a debtor is able to exempt. "ARNFS" is not an amount that can be exempted.

The court finds that the trustee is correct and SUSTAINS the trustee's objection.

7. 19-11850-B-7 **IN RE: VIRGINIA SEMINARIO-BORQUEZ**
BPC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-6-2019 [11]

THE GOLDEN 1 CREDIT UNION/MV
MICRO HAAG/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The amended notice of hearing filed with the court on June 17, 2019 (doc. #17) was not properly served in compliance with LBR 9014-1(e).

8. 18-13758-B-7 **IN RE: DONNIE/KELLY BROOKS**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
6-10-2019 [71]

JAMES SALVEN/MV
STEPHEN LABIAK

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(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

In this case, no proof of service was filed. Therefore this motion is DENIED WITHOUT PREJUDICE.

9. 19-12169-B-7 **IN RE: RICHARD/NANCY MOREHEAD**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-18-2019 [12]

TOYOTA MOTOR CREDIT CORPORATION/MV
ROSALINA NUNEZ
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 the automatic stay will be granted without oral argument based upon well-pled facts.

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 proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2016 Toyota 4Runner. Doc. #16.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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 trustee has not moved to assume the subject lease and the lease was not listed in the debtors' Statement of Intention. See, 11 U.S.C. § 362(h).

10. 17-13275-B-7 **IN RE: PHOENIX COATINGS, INC.**
RH-5

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, TRUSTEES ATTORNEY(S)
6-3-2019 [71]

JOEL WINTER

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. The chapter 7 trustee's attorney, Robert Hawkins, requests fees of $5,760.00 and costs of $136.52 for a total of $136.52 for services rendered from March 20, 2018 through May 29, 2019.

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) Reviewing deposition testimony of Torick, (2) Preparing an application to employ an auctioneer, (3) Preparing a motion to sell personal property at a public auction, and (4) Preparing a motion to pay auctioneer expenses. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $5,760.00 in fees and $136.52 in costs.

11. 15-14881-B-7 **IN RE: GEORGE SNYDER**
LNH-1

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
6-13-2019 [29]

ROBERT WILLIAMS

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. The chapter 7 trustee's ("Trustee") attorneys, the law office of Klein DeNatale Goldner ("KDG"), and Lisa Holder, requests fees of $5,441.00 and $1,947.00, respectively, and costs of $00.00 and $42.15, respectively, for a total of $7,430.15 for services rendered from June 30, 2017 through April 21, 2019.

KDG was employed as general counsel for Trustee on June 30, 2017. Doc. #20. Lisa Holder was substituted as Trustee's counsel on June 25, 2018. Doc. #20 in case 18-01010.

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." Movants' services included, without limitation: (1) Analyzing estate assets and recovery methods, (2) Preparing and filing fee and employment applications, (3) Filed an adversary proceeding, and (4) Filed a motion for entry of default in the adversary proceeding. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

KDG shall be awarded $5,441.00 in fees and Lisa Holder shall be awarded $1,947.00 in fees and $42.15 in costs.

12. 19-11182-B-7 **IN RE: FREDDY/NANCY MENDOZA**
BPC-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-17-2019 [45]

FIRST TECH FEDERAL CREDIT UNION/MV
JAMES CANALEZ
MICRO HAAG/ATTY. FOR MV.

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 debtors' 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 debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on June 26, 2019. Docket #52. 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 Kia Optima. Doc. #48. The collateral has a value of $16,200.00 and debtor owes $17,844.99. *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).

13. 19-12284-B-7 **IN RE: MATTHEW GONZALEZ ALVARADO AND NEREYDA ALVARADO**
VVF-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
6-19-2019 [17]

AMERICAN HONDA FINANCE CORPORATION/MV
SCOTT LYONS
VINCENT FROUNJIAN/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 2016 Honda Odyssey. Doc. #21. The collateral has a value in between $20,525.00 and $24,200.00. *Id.* The debtor owes $29,014.52. *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.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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).

14. 18-13291-B-7 **IN RE: EDWARD/MURIEL JOSEPH**
TMT-2

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, CHAPTER 7 TRUSTEE(S)
1-17-2019 [36]

TRUDI MANFREDO/MV
DAVID JENKINS

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

DISPOSITION: Withdrawn by movant.

NO ORDER REQUIRED.

The matter was withdrawn by the movant on July 15, 2019 (Doc. #42).

15. 19-11093-B-7 **IN RE: ROXANNE PENA**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-31-2019 [27]

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #34.

16. 19-11995-B-7 **IN RE: CHRISTIANNA PERCELL**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-6-2019 [13]

TOYOTA MOTOR CREDIT CORPORATION/MV
JERRY LOWE
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on May 10, 2019 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365 (p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

17. 17-12535-B-7 **IN RE: OVADA MORERO**
LNH-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH KANDAS JOHNSON AND DOUGLAS JOHNSON
6-26-2019 [301]

RANDELL PARKER/MV
LEONARD WELSH
LISA HOLDER/ATTY. FOR MV.

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)(2) 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. 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 Kandas and Douglas Johnson ("Johnson").

Under the terms of the compromise, the trustee will pay the Johnsons $10,700 as a secured claim. The Johnsons will have a $121,100.00 unsecured claim, and adversary proceeding no. 18-01070 will be dismissed with prejudice.

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 high because the prepetition loans were perfected within the 'insider' preference period and trustee believes he could prove the other elements necessary to prevail; collection is not an issue because the adversary proceeding was only to determine that the Johnsons' lien does not encumber estate property, or now estate proceeds; the litigation is not complex; but the creditors will greatly benefit from the net to the estate and going to trial would decrease that benefit due to the expense and time required; 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 settlement agreement included as exhibit A is approved. 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.

18. 19-12032-B-7 **IN RE: ADAM/CHRISTINA RAMIREZ**
JRL-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-2019 [24]

DANIEL SCHOENBROD/MV
JERRY LOWE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The moving party shall prepare the order consistent with the ruling.

This motion was continued from July 3, 2019 because debtor Adam Ramirez appeared at that hearing and opposed this motion. This motion was originally filed as a motion under LBR 9014-1(f)(2). So, under the rule, this court set a briefing schedule and continued the hearing to July 17, 2019. The court announced the schedule at the hearing and issued an order requiring briefing and evidence by the debtor to be filed by July 10, 2019. Nothing has been filed since the last hearing.

The court interprets the debtor's failure to file any opposition as the debtor no longer opposing the relief requested by the motion.

The court issued a tentative ruling granting the motion and that ruling is restated here, in part.

The movant, Daniel Schoenbrod, seeks relief from the automatic stay under § 362(d)(1) and (d)(2) in order to continue the unlawful detainer process against debtors. Doc. #27.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

(1) whether the relief will result in a partial or complete resolution of the issues;
(2) the lack of any connection with or interference with the bankruptcy case;
(3) whether the foreign proceeding involves the debtor as a fiduciary;
(4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
(5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
(6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;

(7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
(8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
(9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
(10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
(11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
(12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the unlawful detainer action is unrelated to this bankruptcy. The interests of other creditors will not be prejudiced because movant is seeking to evict debtors. The state court action is an unlawful detainer action, and not a matter the bankruptcy court should hear. The "balance of hurt" rests on movant, who has apparently not received rent due since May.

The court notes movant's counsel's supplemental declaration listing other bankruptcies involving these debtors and the previously issued order barring another filing by these debtors for two years. Doc. #32.

The movant here asked for annulment of the automatic stay so the unlawful detainer proceeding which began after this bankruptcy case was filed did not need to be re-started. Apparently, movant received a judgment restoring possession even though movant was unaware of this case.

The court is aware that retroactive relief is rarely granted. In re Fjelsted, 293 BR 12, 25 (9th Cir. BAP, 2003). But application of the relevant "Fjelsted factors" militates in favor of granting retroactive relief in this case. The debtors have filed numerous bankruptcies within the last seven years and a bankruptcy court has already issued a "bar order" which barely expired when this case was filed. No evidence has been shown that movant here knew of the stay when the case was filed. The evidence suggests the opposite since the debtor's mailing matrix omitted the movant from the mailing list. The movant was notified of the case by the sheriff executing the "lock out." Restoring the status quo will not be difficult. With retroactive relief, the "lock out" process will need to begin anew. The relief allowed by the court is very limited. Also, the movant here seasonably moved for stay relief after learning of this bankruptcy case.

This motion will be granted. The automatic stay will be modified only for the limited purpose of continuing with the state court action to liquidate the claim and to seek possession of the premises only. No collection proceedings (except proceedings authorized by law to restore possession) or further relief will be authorized without further order of the court. The stay will be annulled, as to movant only, to this case's filing date: May 13, 2019.

11:00 AM

1. 19-12183-B-7 **IN RE: BRANDON VALDEZ**

PRO SE REAFFIRMATION AGREEMENT WITH PATELCO CREDIT UNION
6-19-2019 [11]

NO RULING.

2. 19-11293-B-7 **IN RE: JEFFREY/JAIME HULL**

REAFFIRMATION AGREEMENT WITH ROGUE CREDIT UNION
6-13-2019 [18]

TIMOTHY SPRINGER

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they 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). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. 19-11468-B-7 **IN RE: ANTONIO SALAZAR AND EVELYN QUIROZ**

PRO SE REAFFIRMATION AGREEMENT WITH FREEDOM MORTGAGE CORPORATION
6-25-2019 [19]

JAMES CANALEZ

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

4. 19-10529-B-7 **IN RE: BRENT/CHRISTINA KUTZBACH**

REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY
6-27-2019 [38]

PETER BUNTING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to deny approval of the reaffirmation agreement.

ORDER: The court will issue an order.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship. 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.

Debtors' attorney failed to mark the box Under Part IV, certification by debtor's attorney, that in his opinion the debtors are able to make the required payment based on the representation that the debtors will be receiving an exemption from the sale of their residence.

5. 19-11930-B-7 **IN RE: ROBERT/JOANNA FORD**

REAFFIRMATION AGREEMENT WITH FIRST INVESTORS SERVICES CORPORATION
6-20-2019 [10]

TIMOTHY SPRINGER

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.

1:30 PM

1. 18-13802-B-7 **IN RE: ELVIA OLIVA**
18-1080

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-19-2018 [1]

SORIANO V. OLIVA
GREGORIO SORIANO/ATTY. FOR PL.

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

DISPOSITION: The status conference is continued to August 14, 2019 at 1:30 p.m.

ORDER: The court will issue the order.

By prior order of the court, the Plaintiff was to "file and serve a motion for entry of default and judgment or dismissal" prior to the continued hearing. Doc. #26. On July 3, 2019 the plaintiff filed two amended Certificates of Service and a Request for Entry of Default. The plaintiff has still not technically complied with the court's previous order.

But, the court will continue the status conference. If a motion for entry of default judgment is properly filed and served by August 14, 2019, the court will continue the status conference to the hearing date for the motion for entry of default judgment. If not, the court will issue an OSC why the case should not be dismissed for failure to prosecute and failure to follow the court's orders.

2. 18-15027-B-7 **IN RE: MARI SULUKYAN**
19-1016

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR FAILURE TO PROSECUTE
5-16-2019 [13]

SULUKYAN V. TARGET NATIONAL BANK

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue the order.

The court entered an order dismissing the case with prejudice on July 12, 2019.

3. 18-11357-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
19-1039

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
4-23-2019 [12]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
JAMES MICHEL/ATTY. FOR PL.

NO RULING.

4. 18-11357-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
19-1039 DRJ-1

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-7-2019 [26]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
DAVID JENKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. Plaintiff's motion for leave to file second amended complaint, matter #6, JAM-1 below, is granted.

5. 18-11357-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
19-1039 DRJ-2

MOTION FOR SANCTIONS
6-18-2019 [58]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
DAVID JENKINS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to September 11, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Defendants Kutnerian Enterprises et al ("Defendants") ask the court to impose compensatory monetary sanctions against Plaintiffs Enrique and Guadalupe Reyes ("Plaintiffs") in the amount of $5,000.00 for the attorney's fees that Defendants have incurred in connection with this adversary proceeding; to impose monetary sanctions, payable to the court, against Plaintiffs' counsel, James Michel ("Counsel"), "in such additional amount as the court considers necessary to persuade Plaintiffs and Counsel to cease and desist from this course of action, and to impose additional sanctions and/or injunctions to persuade Plaintiffs and their counsel to cease and desist from frivolous litigation activities." Doc. #58.

Plaintiffs timely opposed the motion. Doc. #77. Plaintiffs oppose on several grounds, including procedural reasons; that the motion for sanctions is an objection to a first amended complaint ("FAC") and Plaintiffs have filed a motion for leave to file a second amended complaint ("SAC")

Defendants replied emphasizing Plaintiff's counsel's alleged misquotation of authority; this court's ruling affirmed by the 9th circuit bankruptcy appellate panel that this court lacks subject matter jurisdiction of the dispute raised by the pleadings; and disputing the significance of a fictitious business name statement allegedly filed by the defendants which transposed one letter in the spelling of defendants' surname – "Ktunerian Enterprises" not "Kutnerian Enterprises."

Federal Rule of Bankruptcy Procedure 9011(c)[1] states that if the court determines that subdivision (b) has been violated, the court may impose appropriate sanctions upon the attorneys, law firms, or parties that have violated the subdivision (b) or are responsible for the violation.

Rule 9011(c)(1) states that the motion for sanctions

> may not be filed with or presented to the court unless, within 21 days after service of the motion . . . the challenged paper, claim, defense, contention, allegation,

[1] Further references to the Federal Rules of Bankruptcy Procedure shall be denoted by "Rule."

> or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b).

Specifically, Defendants allege that Plaintiffs have violated subdivisions (b)(1), (b)(2), and (b)(3) of Rule 9011. Defendants allege (1) the claims are clearly being presented for the improper purpose of harassing Kutnerian and increasing the cost to Kutnerian of the litigation; (2) Reyes cannot in good faith reasonably believe their claims to be "warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law" since the claims have been rejected numerous times by other courts including courts with appellate jurisdiction;, and (3) Reyes having had opportunities in the prior litigation matters to present evidence in support of their claims and having been unable to do so cannot in good faith believe that their "allegations and other factual contentions have evidentiary support."

All aspects of an award of sanctions are reviewed for abuse of discretion. Orion v. Haffman (In re Kayne), 453 B.R. 372, 380 (9th Cir. BAP 2011). See also Simpson v. Lear Astronics Corp., 77 F.3d 1170, 1177 (9th Cir. 1996) [noting in Rule 11 cases: "we review findings of historical fact under the clearly erroneous standard, the determination that counsel violated the rule under the de novo standard, and the choice of sanction under an abuse of discretion standard"]. The same discretion is available to the bankruptcy court regarding a decision on the proper amount of legal fees to be awarded. Hale v. U.S. Trustee, 509 F.3d 1139, 1146 (9th Cir. 2007). The bankruptcy court has express power to impose sanctions pursuant to Rule 9011. In re Nguyen, 447 B.R. 268, 280-81 (9th Cir. BAP 2011). That includes suspending an attorney from practice for violations of Rule 9011. In re Brooks-Hamilton, 400 B.R. at 249.

Rule 9011(b) incorporates a reasonableness standard which focuses on whether a competent attorney admitted to practice before the involved court could believe in like circumstances that his actions were legally and factually justified. See Zaldivar v. City of Los Angeles, 780 F.2d 823, 830-31 (9th Cir. 1986). Once a court determines there is a Rule 9011 violation and sanctions are warranted, the court must decide what sanctions are appropriate. In doing so, the court must comply with the limitations set forth in Rule 9011. Crofford v. Conseco Fin. Servicing Corp. (In re Crofford) 301 B.R. 880, 887 (8th Cir. BAP 2003).

Case law interpreting Federal Rule of Civil Procedure 11[2] is applicable to Rule 9011. Marsch v. Marsch (In re Marsch), 36 F.3d 825, 829 (9th Cir. 1994). "A motion for sanctions may not be filed, however, unless there is strict compliance with Rule 11's safe harbor provision." Islamic Shura Council of S. Cal. v. FBI, 757 F.3d 870 (9th Cir. 2014) (citations omitted). The safe harbor provision provides that any sanctions motion must be served on the offending

[2] Further references to the Federal Rules of Civil Procedure shall be denoted by "Civil Rule."

party at least 21 days prior to the motion being filed with the court. Id. Further, the safe harbor provision provides that the sanctions motion may not be filed if the offending party timely withdraws or corrects the challenged contention during the safe harbor period. Id.

The Ninth Circuit affirmed a sanctions order where one complaint contained offending material, the plaintiff received safe harbor notice, and the plaintiff filed an amended complaint omitting the offending material. Mitchel v. City of Santa Rosa, 601 F. App'x 466, 468 (9th Cir. 2015) (unpublished) ("The text of the rule plainly states that the withdrawal requirement relates to the very pleading challenged by the motion for sanctions").

Defendant's certification of service shows that the motion was served on Counsel on May 27, 2019 (doc. #62) and the motion was filed on June 18, 2019, which is at least 21 days after the motion was served. Plaintiff's opposition on that grounds is overruled.

Plaintiff claims that a rule 11 motion "directed at an earlier complaint does *not* satisfy the 'safe harbor' requirement on a later motion directed at an amended complaint." The wording of this section of Plaintiff's opposition is difficult to follow, but if Plaintiff is stating that the Rule 11 motion is directed against the yet-court-allowed SAC, Plaintiff is mistaken. This motion was served on May 27, 2019. The motion for leave to file SAC was not filed with the court until June 17, 2019. Doc. #47. Therefore it is impossible for Defendant's motion to target the SAC. The court finds that the safe-harbor provision has not been violated.

In support of its contentions that Plaintiffs filed this adversary proceeding to harass Defendants, that the claims and legal contentions are not warranted by existing law, and that the allegations and contentions lack evidentiary support or are likely to lack support after discovery, Defendants point to Plaintiff's lengthy legal history on the matters. Doc. #58. Defendants believe Rule 9011 was violated because Plaintiffs "continue[s] to seek relief based on factual allegations and legal assertions that have been rejected by multiple courts including the Ninth Circuit Bankruptcy Appellate Panel, the Fifth District Court of Appeal for the State of California, three departments of the Fresno County Superior Court" and this Bankruptcy Court. Id. Therefore, Plaintiffs are harassing and causing undue legal expenses to Defendants by continually litigating matters that several other courts have already decided, and that there is no obvious evidentiary support, otherwise it would have already been provided.

Much of the FAC contains the same contentions and arguments – not facts presented in a "short plain statement" – raised by the Plaintiff's in their earlier objection to the Defendant's claim. This court and the appellate panel agreed that the bankruptcy court lacked subject matter jurisdiction to hear the Plaintiff's challenges to the previously entered state court judgments. The court notes however, that the FAC introduces allegations – which may or may not affect the jurisdiction problem – related to the correctness of a Fictitious Business Name Statement allegedly filed

by the defendants before the state court litigations ensued. The court is aware of Defendant's arguments that the transposed letter on the fictitious business name statement does not affect the validity of the state court's judgments for several reasons. The court simply does not currently have the record to make the requisite findings on a sanctions motion under Rule 9011. It is unlikely that on this record a monetary sanction could be awarded against the Reyes' personally. See, Rule 9011 (c)(2)(A).

There is also the proposed SAC to consider. In Sneller v. City of Baimbridge Island, 606 F. 3d 636, 640 (9th Cir. 2010), a divided panel held that filing an amended complaint omitting the challenged claims and even adding new claims provided a motion for leave was filed within the "safe harbor" period moots a pending Civil Rule 11 motion addressed to the previous complaint. Defendants attempt to distinguish Sneller by arguing that here the Rule 9011 motion is addressed to all claims in the FAC. True enough, but the Sneller majority reasoned that the proper Rule 11 attack should be addressed to the amended pleading.

The court is not persuaded that sanctions against Plaintiffs or counsel based on the FAC is appropriate at this time. The court is tentatively granting the motion for leave to file a second amended complaint. Therefore, this matter is continued to September 11, 2019 at 1:30 p.m. to allow Defendants an opportunity to respond to the SAC. Defendants may file another motion for sanctions targeting the SAC, if warranted, if the court finally grants Plaintiff's motion for leave to amend.

The hearing on this motion is continued to September 11, 2019 at 1:30 pm.

6. 18-11357-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
19-1039 JAM-1

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT
6-17-2019 [47]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
JAMES MICHEL/ATTY. FOR MV.

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 court will issue the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The defaults of the chapter 13 trustee and the United States Trustee are entered.

This motion is GRANTED. Plaintiffs Enrique and Guadalupe Reyes ("Plaintiffs" or "Reyes") ask this court for leave to file a second amended complaint("SAC"). Doc. #47.

Federal Rule of Civil Procedure 15(a)(2) (applicable to bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7015) states that a party may only amend its pleading outside the scope of Fed. R. Civ. P. 15(a)(1) if the party has the opposing party's consent or the court's leave, and that the court "should freely give leave when justice so requires."

This proposed SAC is Plaintiffs' third try. The first complaint was filed on March 25, 2019. Doc. #1. The second complaint (first amended complaint("FAC")) was filed on April 23, 2019. Doc. #12. The SAC was filed June 17, 2019 after Defendants filed a motion to dismiss the FAC.

Plaintiffs believe the amendment is warranted because the SAC "narrows the scope of the issues presented in this litigation and will prevent the Court's time from being wasted at trial." Doc. #52. Plaintiffs state that the *Foman* factors weigh in their favor to grant the motion and that Defendants will not be prejudiced because the facts "described in the Amended Complaint are well-known to Defendants." Id. Absent from Plaintiff's moving papers is, however, any reason as to why the information contained in the SAC was not available prior or why it was omitted from previous complaints. Reyes claim they did not "discover" the information included in the SAC until April 2019. The does not answer the inquiry.

Defendants oppose, arguing that Defendants would experience prejudice and, more importantly, that amending would be futile. Doc. #72. As to the prejudice argument, "[D]efendants submit that having to continue to respond, again and again, to pleadings filed by parties who refuse to accept the judicial rulings that have already been made in their case is prejudicial." Id. As to the futility argument, Defendants claim that the SAC's foundation is that the unlawful detainer judgment is void under state law, which foundation has been shattered by this bankruptcy court and by the Ninth Circuit Bankruptcy Appellate Panel. Id.

The Supreme Court in Foman v. Davis, 371 U.S. 178 (1962) listed the factors for a court to consider when ruling on a motion for leave to amend a pleading. The factors included "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.", leave should be freely given. Id. at 182.

As to the undue delay factor, the court finds that amending the complaint now will not cause any undue delay. The case was filed four months ago, and Defendants still have not filed an answer. No party has commenced discovery. No scheduling orders have been entered. The case is still relatively young and therefore no undue delay will occur at this stage and this factor weighs in favor of granting leave to amend.

As to the "bad faith or dilatory motive on the part of the movant" factor, the court finds that no such bad faith or dilatory motive is apparent, nor was raised by Defendants in opposing this motion. Plaintiffs, while vigorously litigating their claims, have narrowed their theory for the relief requested in the SAC. The court is mindful of the arguments made by Defendants supporting their Rule 9011 motion (DRJ-2) in which they raise that movants here started this adversary proceeding with improper motives to further delay and harass defendants after Plaintiffs experienced numerous instances in previous litigations where their requests for relief were denied and those judgments upheld on appeal. Whether or not Plaintiffs are entitled to any relief in this case, however, remains to be seen. That does not mean there is bad faith by plaintiffs demonstrated to this court, so far. The court finds that there is no bad faith or dilatory motive on the part of the movant preventing the amendment now and this factor weighs in favor of granting leave to amend.

As to the "repeated failure to cure deficiencies by amendments previously allowed" factor, this is the first time Plaintiffs have asked for permission to amend their complaint. The court has not found, nor have Defendants alleged, that there were deficiencies in the previous two complaints that needed to be cured. The court does not consider Defendant's pending motion to dismiss based on the substance of the first amended complaint a recognition of deficiencies in the first amended complaint. The court finds that this factor weighs in favor of granting leave to amend.

As to the undue prejudice factor, the court is unable to find that Defendants will be prejudiced such that the high burden for denying leave to amend is overcome. Defendants allege that they would be prejudiced because they would have "to continue to respond, again and again, to pleadings filed by parties who refuse to accept the judicial rulings that have already been made in their case . . . ." Doc. #72. "Prejudice" is not a clearly defined term. While it may be inconvenient or frustrating, the court does not believe that having to respond to a Plaintiff's complaint, even for the reasons stated by Defendant, arises to "prejudicial" levels.

If any prejudice was demonstrated, the court could condition the amendment on payment of Defendant's expenses arising from the filing of the amended complaint. See, Int'l Assoc. of Machinists and Aerospace Workers v. Republic Airlines,761 F. 2d 1386, 1391 (9th Cir. 1985) [court may impose "reasonable conditions" on a grant of leave to amend]; General Signal Corp. v. MCI Telecomm. Corp., 66 F. 3d 1500, 1514 (9th Cir. 1995) [only expenses arising from the filing of the amended complaint are warranted, if at all]. Defendants made no such request here. It is Defendants burden to show prejudice. DCD Programs, Ltd. v. Leighton,833 F. 2d 183, 186-7 (9th Cir. 1987). The court finds that no undue prejudice would occur to Defendants at this time and this factor weighs in favor of granting leave to amend.

As to the futility of amendment, like the undue prejudice factor, the court is unable to find that the futility overcomes the high burden for denying leave to amend. When a court "denies leave to amend because of futility of amendment, [an appellate court] will

uphold such denial if 'it is clear, upon *de novo* review, that the complaint would not be saved by any amendment." Carvalho v. Equifax Info. Servs., LLC, 629 F.3d 876, 893 (9th Cir. 2010) (citations omitted). In Carvalho, the Ninth Circuit upheld the District Court's denial of the plaintiff's motion for leave to amend her complaint because amending "would be futile. . . [plaintiff's] claims 'clearly are foreclosed by the inaccuracy requirement of § 1681i and § 1785.16." Id. at 892. The Ninth Circuit held that "[b]ecause . . . [plaintiff] cannot make a prima facie case of inaccurate reporting, we conclude that amendment to include other claims requiring inaccuracy would be futile." Id. at 893.

The court is not convinced that at this time amendment would be futile. The court is aware of its previous ruling, the Ninth Circuit Bankruptcy Appellate Panel's ruling, and the California Courts' rulings. The SAC alleges that the *Rooker-Feldman* doctrine is inapplicable (doc. #65, ¶8) and that "for *Rooker-Feldman* to apply, there must be a frontal, not collateral attack upon the state court judgment" (id. at ¶9). The court may not agree with those legal conclusions. But that is not the standard in allowing or disallowing an amendment.

For the above reasons, the court finds that the cumulative effect of the *Foman* factors do not rise above the high bar that is set to deny a motion for leave to amend. The court's exercise of discretion on this motion must be guided by the strong federal policy favoring the disposition of cases on the merits and permitting amendments with "extreme liberality." DCD Programs, 833 F. 2d at 186.

The motion is granted. Plaintiff shall file and serve the SAC on or before July 31, 2019 and Defendants shall respond on or before August 14, 2019.

7. 18-13678-B-11 **IN RE: VERSA MARKETING, INC.**
RAF-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-13-2019 [384]

WEST LIBERTY FOODS/MV
RILEY WALTER
ROBERT FRANKLIN/ATTY. FOR MV.

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)(1) and will proceed as scheduled.

Movant West Liberty Foods ("Movant" or "WLF") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) to allow Movant and defendant-debtor Versa Marketing, Inc. ("Defendant" or "Debtor" or "Versa") to arbitrate a dispute that just began before the petition was filed. The debtor – but no other party – opposes.

Versa and WLF signed a "Co-Manufacturing Agreement" ("Agreement") under which WLF agreed to manufacture certain food products according to Versa's specifications and Versa agreed to pay based on invoices. Significant disputes arose. Versa claims WLF never had appropriate facility capacity to fulfill the orders; never trained needed personnel; misrepresented their capacity to Versa; over charged; wasted raw materials; and breached an indemnity obligation among other things.

WLF claims Versa refused to pay under the Agreement and they are owed about $700,000.00. WLF filed a proof of claim in this bankruptcy case.

The Agreement (Section 13) (Doc. #386) states that the after certain informal dispute resolution methods are exhausted, "each of the parties shall be entitled to terminate such meetings and the dispute shall be submitted to binding arbitration." The American Arbitration Association ("AAA") provides the forum and rules for the arbitration under the Agreement. The arbitration provision applies to any "dispute arising out of or relating to this Agreement." The section goes on to say: "Unless the parties to such dispute agree otherwise in writing such arbitration shall be conducted in Des Moines, Iowa and the results final and binding on the parties and enforceable in any court of competent jurisdiction." The Agreement does not preclude the parties from seeking judicial assistance for provisional relief especially relating to the confidentiality provision of the Agreement. That is not at issue here.

About two months before this case was filed, WLF submitted an arbitration demand to the AAA. When this case was filed, Versa notified AAA and the arbitration is now stayed pending any relief from the automatic stay granted by this court.

Versa filed adversary proceeding 19-1032 against WLF alleging: breach of contract; breach of the covenant of good faith and fair dealing; fraud; negligent misrepresentation; and objection to WLF's claim stemming from WLF's alleged breaches of the Agreement. WLF has filed a motion to dismiss or alternatively to stay the adversary proceeding because of the now abated arbitration. Versa opposes that motion; the court considers that motion later this calendar.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). Versa asserts – WLF does not disagree – that twelve non-exclusive factors may be applied by bankruptcy courts in this circuit when a court is asked to decide whether the automatic stay should be modified to permit a litigation to proceed in a non-bankruptcy forum. See, Kronemyer v.

Am. Contractors Indem. Co., 405 BR 915, 921 (9th Cir. BAP 2009) [applying the factors listed in In re Curtis, 40 BR 795, 799-800 (Bankr. D. Utah 1984)]. Applying the relevant factors here militate in favor of modifying the stay.

Complete Resolution – The arbitration clause in the Agreement is sweeping. All the claims asserted by WLF and Versa (in the adversary proceeding) relate to pre-petition events. The claim objection "claim" does not change the analysis. True enough, filing the proof of claim subjects WLF to this court's jurisdiction but that does not mean this court necessarily must decide the objection. Versa's objection essentially raises all the pre-petition claims Versa has against WLF. This court routinely allows litigation to proceed outside this forum to liquidate claims. This court does not release its jurisdiction by doing so. Any order modifying the stay can limit the stay relief to liquidation of claims only.

Versa also argues the Agreement is internally inconsistent because paragraph 15 states the parties can look to the appropriate courts to enforce the agreement. The court does not find paragraph 15 inconsistent. First, paragraph 13, which includes the arbitration provision, specifically excluded provisional relief arising out of the confidentiality clause which is not at issue here. Second, Paragraph 13 provides the arbitration award can be enforced by courts of competent jurisdiction. Paragraph 15 implements that provision.

Interference with Bankruptcy Case – Versa's argument on this factor is not persuasive. Versa has stated to this court that its claim against WLF is really its only substantial asset. So, rather than interfering with this bankruptcy case, the arbitration **is** the bankruptcy case. Versa presents no evidence that an arbitration will take longer than a trial in this court or would be less efficient. "The party opposing arbitration has the burden of proving the claims at issue are unsuitable for arbitration." Green Tree Financial Corp. – Alabama v. Randolph, 531 U.S. 79, 81 (2000). All doubts are to be resolved in favor of arbitrability. Simula, Inc. v. Autoliv, Inc., 175 F. 3d 716, 721 (9th Cir. 1999).

Specialized Tribunal – Versa claims that since an arbitrator has not been appointed this factor is irrelevant or favors denying the motion. But, the issues may not require specialized knowledge which suggests an arbitrator may or may not need specialized knowledge of the food preparation industry. The AAA has panels of arbitrators and should specialization be necessary, those choices may benefit the parties. The selection of arbitrators may be within WLF and Versa's control based on the AAA Rules applicable to this dispute.

Prejudice to interested parties – Versa argues that the distance to Des Moines, Iowa will negatively affect the creditors in this case increasing administrative expense. Both parties have presented declarations stating in effect the witnesses and counsel are local and Versa contends the estate will be negatively impacted. Neither party quantifies anything by providing estimates or other evidence the court can weigh. Significantly, Versa provides no authority that a forum choice by itself or in connection with other factors

militates against permitting the arbitration to proceed. There is no dispute that the Agreement was signed. Versa does not raise any arguments opposing this motion that the arbitration provisions of the Agreement were either substantively or procedurally unconscionable or they were misled about the arbitration clause. In the absence of evidence, this factor does not favor denial of the motion. Also, no other party has weighed in against relief from stay.

Judicial Economy – Versa repeats their argument about this court's jurisdiction here. True, both the arbitration and the adversary proceeding are each in their infancy. That does not support either granting or denying the notion. This factor is neutral or favors arbitration given the policies involved.

Also, it is unclear at this time whether WLF would consent to this court entering final orders on the substantive claims even if the stay were not modified. This could lead to duplicative use of judicial resources. This militates in favor of granting stay relief.

Status of Proceeding – This factor is neutral for the reasons stated above.

Effect on Case Administration – Kronemyer emphasizes this factor. Here, as mentioned, the issue is not whether this litigation will interfere with the administration of the case. This claim is now the focus of the case and the potential reorganization of this debtor. A Chapter 11 Plan can be confirmed essentially providing for the litigation of the claim and if successful, Versa's creditors will receive distributions. If not successful, the creditors may not. Versa here does not like the choice of forum provided in the Agreement. This court does not find that rationale compelling here.

The motion is GRANTED. The automatic stay is modified to permit the arbitration to proceed to liquidate the claim. No further proceedings are authorized without further order of this court.

8. 18-13678-B-11 **IN RE: VERSA MARKETING, INC.**
19-1032

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-6-2019 [1]

VERSA MARKETING, INC. V. WEST LIBERTY FOODS, LLC
C. MEINE/ATTY. FOR PL.

NO RULING.

9. 18-13678-B-11 **IN RE: VERSA MARKETING, INC.**
19-1032

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL, MOTION TO STAY
5-13-2019 [19]

VERSA MARKETING, INC. V. WEST LIBERTY FOODS, LLC
ROBERT FRANKLIN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This Adversary Proceeding will be stayed pending the results of arbitration.

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

Rulings on Versa's Objections to Gerald Lessard's Declaration

1. Overruled. Mr. Lessard Stated he had personal knowledge and the declaration establishes the foundation. FRE 104 (a).
2. Overruled except as to the objection that Versa committed a material breach. That objection in sustained. See above.
3. Overruled on grounds set forth in 1 and 2 above.
4. Overruled except as to the testimony stating Versa was in breach. That objection is sustained. The "best evidence" objection is separately overruled as there is no evidence the invoices are unavailable to Versa.
5. Overruled as above in 1 and 2.

Counsel are advised that docket control numbers are required on all pleadings in adversary proceedings under the local rules. Future motions will be denied without prejudice for failing to comply with the local rules.

The court tentatively grants West Liberty Foods' motion for relief from stay to allow the parties to proceed to arbitration. Once arbitration is complete, the parties shall file joint or unilateral status reports with the court.

West Liberty Foods (WLF) asks the court to dismiss this adversary proceeding or alternatively stay the proceeding to permit a nascent pre-petition arbitration proceeding to conclude. The debtor ("Versa") opposes. The court references the facts of the dispute, the positions of the parties, the allegations of the complaint, and the court's analysis on the accompanying stay relief motion (RAF-1). That is incorporated here.

Neither party has contested that the arbitration provision is part of the Agreement between the parties, that the arbitration provision would - except for the resolution of WLF's proof of claim - include the claims raised by Versa in this adversary proceeding, nor raised any issue concerning the enforceability of the arbitration clause. Instead, both parties are asking the court to exercise its discretion to either permit or prevent the arbitration proceeding to conclude.

The Federal Arbitration Act (FAA) affects all contracts "evidencing a transaction involving interstate commerce." Chiron Corp. V. Ortho Diagnostic Sys. Inc., 207 F. 3d 1126, 1130 (9th Cir. 2000). The Agreement involved here certainly does involve interstate commerce, so the FAA applies. "The party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." Green Tree Fin. Corp. – Alabama v. Randolph, 531 U.S. 79, 81 (2000)

To meet that burden, Versa contends WLF's conduct in filing a proof of claim and being on the creditors committee evidences an intent to waive arbitration and the fact the arbitration was just beginning when the case was filed evidences a reason for this court to deny this motion. Versa also raises the need for discovery, the potential for piecemeal litigation and a perceived efficiency in completing the litigation in this bankruptcy case supports denial of the motion. Recognizing this court's discretion and the constraints on federal courts to permit arbitrations to occur, Versa contends the estate's value, centralization of disputes, expediency and oversight of distribution on claims are policies furthered by keeping this adversary proceeding in this court.

The court has already dealt with the proof of claim and early arbitration status issues in the stay relief motion. In reply WLF argues the filing of the claim results in a consent to jurisdiction but does not mandate this court ignore a valid arbitration clause. This court agrees.

The need for discovery is a "red herring." No evidence is before the court that discovery will not be permitted in the arbitration. Most arbitration rules permit limited discovery and arbitrators may be asked to permit discovery. The court has already dealt with the piecemeal litigation argument earlier. There is no evidence that WLF expressly waived arbitration. There is no implied waiver either as WLF was precluded from proceeding with the arbitration by the automatic stay.

In Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation), 671 F. 3d 1011, 1020 (9th Cir. 2012) the circuit held that the FAA's mandate may be overridden by a contrary congressional command. (quoting Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 227 (1987). There is no such intent evident in the Bankruptcy Code's text or legislative history. Id. "Court's look to whether there is an inherent conflict between arbitration and the underlying purposes of the Bankruptcy Code." Id. A threshold matter is whether the proceedings are core or non-core. Id. "In non-core proceedings, the bankruptcy court generally does not have discretion

to deny enforcement of a valid prepetition arbitration agreement." Id.at page 1021. This is because "non-core proceedings are unlikely to present a conflict sufficient to override by implication the presumption in favor of arbitration." Id. (citations omitted).

An examination of the complaint here establishes that except one claim – objecting to WLF's proof of claim - the claims alleged by Versa relate to pre-petition claims arising from WLF's alleged breach of the Agreement. The claims asserted largely would exist independent of any bankruptcy case and hence are non-core. Versa has not persuaded the court that the strong federal policy favoring arbitration is overcome here.

That leaves the "claim" which is an objection to WLF's proof of claim. Versa is correct that this dispute is "core." But the core/non-core distinction is not dispositive. ". . .even in a core proceeding. . . a bankruptcy court has discretion to decline to enforce an otherwise applicable arbitration provision only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." In re Eber, 687 F. 3d 1123 (9th Cir. 2012) quoting (Thorpe Insulation, 671 F. 3d at 1021).

Versa asserts several bankruptcy "purposes" conflicting with arbitration here. They are all related to centralization of disputes. It is beyond cavil that is a significant purpose of a bankruptcy case. The problem here is Versa asserts a position that would swallow the rule. In every case, litigation would be easier, and the bankruptcy court will control a case better if it denied all arbitration requests and decided all disputes. But even Thorpe Insulation and Eber which both upheld denial of arbitration noted the bankruptcy court usually cannot refuse to enforce a valid prepetition arbitration agreement. Thorpe Insulation p. 1021; Eber p. 1129-31.

Both Thorpe Insulation and Eber emphasized clear policies that would be in conflict: disputed claims to a § 524(g) trust in Thorpe, dischargeability in Eber. Nothing in this adversary proceeding raises either issue. This is primarily a dispute about each parties' performance of a pre-petition contract. The court is not persuaded the arbitration of the proof of claim dispute and the other claims conflicts with bankruptcy code policies in this case.

Versa's citations to out of circuit reorganization cases are not persuasive. New Knight, Inc. v. Nat'l Wire & Metal Techs., Inc. (In re New Knight, 291 BR 367 (Bankr. E.D. Penn. 2003) involved a bankruptcy court *granting* a motion to stay an adversary proceeding while arbitration occurred. In re Spectrum Info. Techs., 183 BR 360, 363-64 (E.D.N.Y. 1995) involved a stay relief motion and a completely different test than what is relevant here.

Versa does not carry its burden of proof that the estate's value would be diminished by arbitration of the dispute as opposed to litigating the case in this court. As noted before, this claim is the asset of the bankruptcy case. The ease of distribution "purpose" is not relevant since this case will hopefully involve a confirmed Plan that will deal with distribution issues.

The court holds the dispute is arbitrable including Versa's objection to claim.

Once the court determines an arbitration clause is enforceable, it has discretion to either stay the case pending arbitration or to dismiss the case if all the alleged claims are subject to arbitration. Lewis v. UBS Financial Services, Inc., 818 F. Supp. 2d 1161 (N.D. Cal. 2011) and Sparling v. Hoffman Construction Co., 864 F. 2d 635, 638 (9th Cir. 1988). Here the court sees no reason to dismiss the adversary proceeding. The stay has been modified to permit the arbitration to proceed and liquidate the claims. Staying this proceeding will promote judicial economy. Further proceedings shall be stayed pending the arbitration. The court will set a status conference, so it can be apprised of the arbitration's progress.

Motion GRANTED in part.

10. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
19-1052 WW-1

AMENDED MOTION FOR REMAND
6-17-2019 [17]

TULARE LOCAL HEALTH CARE DISTRICT V. GREENE ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.

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

DISPOSITION: Continued to July 31, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The matter will be continued to July 31, 2019 at 1:30 p.m. to be heard with the other scheduled matters in this case.