

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, November 28, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [18-14204](#)-B-7 **IN RE: JOHNNY/HEATHER HELTON**
[TPH-1](#)

MOTION TO COMPEL ABANDONMENT
11-9-2018 [9]

JOHNNY HELTON/MV
THOMAS HOGAN

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 in conformance with the ruling below.

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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not

mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship business "Rocky Mountain Construction." The assets include tools of the trade, equipment, accounts receivable (if any), and business-related assets ("Business Assets").

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

2. [18-13009](#)-B-7 **IN RE: FRANK WELLS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-9-2018 [\[46\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the fees due at the time of hearing are paid before the hearing, the order to show cause will be vacated and the case shall remain pending.

The court has received and reviewed the debtor's response. (Doc. #50). The fact that the court entered an order August 1, 2018 (Doc. #13) permitting a waiver of the petition filing fee is irrelevant. Since the debtor filed an amendment to the address list it generates the statutory requirement of a fee. A separate request for waiver was not filed by the debtor.

3. [18-13111](#)-B-7 **IN RE: FRANK/CARRI MOLTHEN**
[MAZ-2](#)

MOTION TO COMPEL ABANDONMENT
10-16-2018 [\[33\]](#)

FRANK MOLTHEN/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The court notes that the motion is not in compliance with LBR 9004-2(c)(1). LBR 9004-2(c)(1) requires that "declarations . . . other documentary evidence, exhibits . . . shall be filed as separate documents." Here, an "Exhibit A" was included with debtor's declaration and not filed separately.

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

Debtors ask this court to compel the chapter 7 trustee to abandon the estate's interest in their sole proprietorship business "Molthen Chiropractic & Wellness Center." The assets include various office equipment, furniture, and specialty equipment used in a chiropractic practice. The full list of the assets was included in debtors'

petition in "Exhibit A" (in between Schedules C and D) ("Business Assets").

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

4. [18-12913](#)-B-7 **IN RE: MARCUS JONES**
[SMO-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-2018 [\[24\]](#)

BANK OF THE WEST/MV
GREGORY SHANFELD
SHAWN OLSON/ATTY. FOR MV.
DISCHARGED 11/13/18

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 November 13, 2018. Docket #32. 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 order shall provide the motion is DENIED AS MOOT as to the debtor.

The collateral is a 2007 Damon 3070 Daybreak Recreational Vehicle. Doc. #30. The record shows that movant prevailed in a state court action against debtor in Los Angeles County Superior Court. Doc. #27. The court's default judgment ordered that debtor is to pay \$84,241.15 to movant. *Id.* The judgment was entered in 2013. *Id.* The debtor's statement of intention indicates he intends to surrender the RV to the creditor. To date, the creditor has been unable to obtain possession of the RV. Therefore, the waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted.

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. [18-13918](#)-B-7 **IN RE: ERIK OLSSON**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2018 [9]

SANTANDER CONSUMER USA INC./MV
DAVID JENKINS
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 2006 Forest River Sandpiper Fifth Wheel. Doc. #14. The collateral has a value of \$9,650.00 and debtor owes \$15,122.87. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The debtor's Statement of Intention indicates that he intends to surrender the vehicle and the vehicle 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).

6. [15-14225](#)-B-7 **IN RE: LETICIA CAMACHO**
[GEG-4](#)

MOTION TO COMPEL ABANDONMENT
11-13-2018 [\[145\]](#)

LETICIA CAMACHO/MV
GLEN GATES
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 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.

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

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's one-half interest in her residence located at 211 Center Street in Orange Grove, CA 93646 ("Residence").

The court finds that the Residence is of inconsequential value and benefit to the estate. The Residence was accurately scheduled and exempted in its entirety. The court notes that the chapter 7 trustee

filed non-opposition. (Doc. #150). Therefore, this motion is GRANTED.

7. [18-13632](#)-B-7 **IN RE: ISRAEL/JANETT ARECHIGA**
[DJD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-19-2018 [\[15\]](#)

VW CREDIT, INC./MV
MARK YOUNG
DARREN DEVLIN/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 2008 Audi A4. Doc. #19. The collateral has a value of \$5,150.00 and debtor owes \$5,763.78. *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).

8. [18-13240](#)-B-7 **IN RE: DAVID MOBLEY**
[LNH-3](#)

MOTION TO SELL AND/OR MOTION TO PAY
11-7-2018 [[37](#)]

TRUDI MANFREDO/MV
PETER BUNTING
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The chapter 7 trustee asks this court for authorization to sell a piece of real property located at 5284 N Greenwood Ave., also commonly known to be located at 12522 Cumorah Dr., in Clovis, CA 93619 ("Subject Property") to Wolfe Capital Investments, LLC, subject to higher and better bids at the hearing, for \$325,000.00.

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

Any party wishing to overbid must deposit with debtor's counsel certified monies in the amount of \$10,000.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Bidders must be prepared to bid in minimum \$1,000.00 increments and be prepared to enter into a purchase and sale agreement at least as favorable to the estate as the agreement between the chapter 7 trustee and Wolfe Capital Investments, LLC. Bidders must be prepared to close escrow on or before December 20, 2018. The successful bidder who does not perform will forfeit its deposit as reasonable liquidated damages. No warranties or representations are included with the property; it is sold "as-is."

Bidders or their authorized agents may appear at the hearing in person, or, of the bidder mailed their deposit to the chapter 7

trustee, may appear telephonically by making a Court Conference Call, or by contacting the chapter 7 trustee:

Trudi Manfredo, Trustee
Mobley Bankruptcy Bid
377 W. Fallbrook Ave., Ste. 102
Fresno, CA 93711
tgmanfredo@gmail.com

The chapter 7 trustee is authorized to pay \$19,500 in real estate broker commissions (based on the \$325,000.00 sale price) to Berkshire Hathaway Home Services California Realty ("Berkshire"), or, \$19,500.00 to be split between Berkshire and any cooperating broker, plus 6% commission on any amount over \$325,000.00.

The chapter 7 trustee is also authorized to execute the reasonable and necessary documents to effectuate the transfer of the Subject Property to Buyer or the successful bidder, to pay any necessary closing costs, and to pay Chase Home Mortgage out of escrow.

The court has reviewed Chase Home Mortgage's Statement of Position. The trustee has not stated this sale is free and clear of liens and the court makes no such finding.

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

9. [18-13642](#)-B-7 **IN RE: ANDRE COBBS**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-16-2018 [\[17\]](#)

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, whether in person or by phone, rescheduled for December 17, 2018 at 9:00 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.

10. [18-12556](#)-B-7 **IN RE: DANIEL SANCHEZ**
[TMT-1](#)

MOTION TO SELL
10-19-2018 [22]

TRUDI MANFREDO/MV
OSCAR SWINTON
TRUDI MANFREDO/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

The chapter 7 trustee ("Trustee") asks this court for authorization to sell a 2012 Chevrolet Silverado to Daniel Sanchez ("Debtor") subject to higher and better bids at the hearing, for \$17,000.00.

It appears that the sale of a 2012 Chevrolet Silverado is a reasonable exercise of Trustee's business judgment.

Any party wishing to overbid must deposit with debtor's counsel certified monies, made out to Trudi G. Manfredo, Chapter 7 trustee, in the amount of \$17,000.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof of the financial ability to cover the purchase amount. Overbidders must be

present at the hearing. No warranties or representations are included with the property; it is sold "as-is."

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

11. [18-13267](#)-B-7 **IN RE: RICHARD LYBARGER**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2018 [\[29\]](#)

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
SEAN FERRY/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 parcel of real property commonly known as 28632 Indian Reservation Road, Porterville, California 93258. Doc. #32. The collateral has a value of \$181,617.00 and the amount owed is \$184,157.51. Doc. #33.

The order shall provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

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

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

12. [18-10173](#)-B-7 **IN RE: MARIANNE SANCHEZ**
[TMT-1](#)

MOTION TO SELL
10-19-2018 [20]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

The chapter 7 trustee ("Trustee") asks this court for authorization to sell a 2008 Toyota Tacoma to Marianne Sanchez ("Debtor") subject to higher and better bids at the hearing, for \$4,333.00.

It appears that the sale of a 2008 Toyota Tacoma is a reasonable exercise of Trustee's business judgment.

Any party wishing to overbid must deposit with debtor's counsel certified monies, made out to Trudi G. Manfredo, Chapter 7 trustee, in the amount of \$4,333.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must be present at the hearing. No warranties or representations are included with the property; it is sold "as-is."

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

13. [18-10475](#)-B-7 **IN RE: GREGORY/DEBORAH SMITH**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-18-2018 [[29](#)]

TD AUTO FINANCE LLC/MV
PETER FEAR
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED 6/5/18

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 5, 2018. Docket #20. 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 order shall provide the motion is DENIED AS MOOT as to the debtors.

The collateral is a 2015 Land Rover Range Rover. Doc. #34. The collateral has a value of \$64,036.00 and debtors owe \$70,578.58. *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).

14. [17-14678](#)-B-7 **IN RE: SEAN MOONEY**
[TGM-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH HEATHER J. MOONEY
10-25-2018 [[25](#)]

PETER FEAR/MV
NICHOLAS WAJDA
TRUDI MANFREDO/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.

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 chapter 7 trustee's ("Trustee") business judgment. The order should be limited to the claims compromised as described in the motion.

Trustee requests approval of a settlement agreement between the estate and debtor's ex-spouse ("Ms. Mooney"). The claims arose from debtor's martial dissolution proceeding. Certain property transfers

made in connection with that proceeding and the judgment entered in the proceeding were allegedly fraudulent transfers. The trustee filed an adversary proceeding (A.P. No. 18-01037) seeking to, among other things, set them aside. (Doc. #25).

Under the terms of the compromise, within five days of execution of the Settlement Agreement, Ms. Mooney shall pay \$45,000.00 to Peter L. Fear, Chapter 7 Trustee of the bankruptcy estate of debtor Sean Mooney. Ms. Mooney's claim, claim no. 3, shall be subordinated to all other timely filed claims. Within five days of the final order of the bankruptcy court's approval of this compromise, adversary proceeding no. 18-01037 shall be dismissed with prejudice, and; Trustee will record a notice of withdrawal of lis pendens in Fresno and San Luis Obispo counties.

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 uncertain as the terms of the Judgment on Reserved Issues are complicated, and at times unclear; collection would be easy because the hard assets could be sold, but this would also extend case administration; the litigation would be very fact-intensive, requiring depositions and valuations; 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.

15. [18-10186](#)-B-7 **IN RE: MANUEL/JASMINE SALVATIERRA**
[TMT-1](#)

MOTION TO SELL
10-19-2018 [22]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

The chapter 7 trustee ("Trustee") asks this court for authorization to sell a .40mm Sig Sauer Pistol, .9mm Sig Sauer Pistol, AR 15 rifle, 308 Long Rifle, AK 47 rifle, and 308 Remington rifle ("Firearms") to debtors Manuel and Jasmine Salvatierra ("Debtors"), subject to higher and better bids at the hearing, for \$300.00, \$300.00, \$500.00, \$100.00, \$400.00, and \$500.00, respectively, for a total of \$2,100.00. Doc. #22.

It appears that the sale of the Firearms is a reasonable exercise of Trustee's business judgment.

Bidding shall begin at \$2,200.00. Any party wishing to overbid must deposit with debtor's counsel certified monies in the amount of \$2,100.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The

successful bidder's deposit will be applied toward the purchase price. Bidders must be prepared to bid on the Firearms collectively; individual firearms will not be sold. Bidders must be aware that their deposit will be forfeited if they fail to perform. No warranties or representations are included with the property; it is sold "as-is." If a third-party is the successful bidder, they must undergo a background check from a licensed gun dealer prior to the transfer of the firearms, at the bidder's cost. Estimated cost is \$65.00.

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

16. [18-13691](#)-B-7 **IN RE: NELS BLOOM**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-11-2018 [\[16\]](#)

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 debtor shall attend the meeting of creditors rescheduled for December 6, 2018 at 9:00 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.

11:00 AM

1. [18-13656](#)-B-7 **IN RE: RUBEN/SHANNON ALVAREZ**

PRO SE REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
11-1-2018 [[21](#)]

NO RULING.

2. [18-12470](#)-B-7 **IN RE: MARIA TORRES**

PRO SE REAFFIRMATION AGREEMENT WITH NUVISION FEDERAL CREDIT
UNION
11-1-2018 [[38](#)]

IRMA EDMONDS

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. Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). 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.

The court notes that the debtor filed this reaffirmation agreement originally on October 4, 2018 without her attorney's signature. The debtor's attorney filed a declaration in support of the reaffirmation agreement on October 4, 2018. (Doc. #31). The declaration attested to all requirements set forth in 11 U.S.C. § 524(c)(A) - (C). But, the declaration did not attest to the fact that counsel represented the debtor during the course of negotiating the agreement. The debtor's motion (doc. #29) states affirmatively that counsel did not represent the debtor in the course of negotiating the re-affirmation agreement. Counsel also did not sign the form certification accompanying the re-affirmation agreement.

The court heard that reaffirmation agreement on October 24, 2018, dropping the matter without approving or denying the reaffirmation

agreement and giving the debtor 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

On November 1, 2018, a second reaffirmation agreement was filed with the court, again without the attorney's signature. (Doc. #38). A declaration by the attorney was also filed again on November 1, 2018, appearing to be the same declaration as the one filed with the court on October 4, 2018. (Doc. #31).

The court cannot approve this reaffirmation agreement, therefore, the hearing will be dropped.

1:30 PM

1. [18-10973](#)-B-13 **IN RE: GLENN BEVER**
[18-1069](#) [LL-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
10-26-2018 [7]

BEVER ET AL V. CITIMORTGAGE,
INC. ET AL
REGINA MCCLENDON/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The adversary proceeding was voluntarily
dismissed on November 13, 2018 (Doc. #15).

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1014](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
4-10-2018 [1]

SPECIALTY LABORATORIES, INC.
VS.
CHAD WILSON/ATTY. FOR PL.
DISMISSED 10/25/18, CLOSED 11/13/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing this adversary proceeding
has already been entered. Doc. #70.