

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, January 24, 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

**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. [13-15102](#)-B-7      **IN RE: VICTOR MORALES AND MARIA BERUMEN**  
[TCS-4](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.  
1-10-2018 [[29](#)]

VICTOR MORALES/MV  
KENNETH JORGENSEN

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served pursuant to LRB 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.

A judgment was entered against the debtor in favor of Citibank N.A. for the sum of \$4,368.98 on January 26, 2011. The abstract of judgment was recorded with Fresno County on March 7, 2011. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$125,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$55,488.00 on that same date, consisting of a first mortgage in favor of Citibank N.A. Docket #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000.00 in Schedule C, Docket #1.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Counsel is reminded of Local Rules of Practice ("LBR") 9004-2(c)(1) and (d)(1). LBR 9004-2(c)(1) requires that the documents in any matter be filed separately. LBR 9004-2(d)(1) requires, inter alia, exhibits to be filed separately from the document(s) to which it relates and to identify the document to which it relates.

2. [13-15102](#)-B-7     **IN RE: VICTOR MORALES AND MARIA BERUMEN**  
[TCS-5](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB  
1-10-2018 [\[33\]](#)

VICTOR MORALES/MV  
KENNETH JORGENSEN

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served pursuant to LRB 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.

A judgment was entered against the debtor in favor of American Express Bank, FSB for the sum of \$13,241.61 on April 28, 2011. The abstract of judgment was recorded with Fresno County on July 15, 2011. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$125,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$55,488.00 on that same date, consisting of a first mortgage in favor of Citibank N.A. Docket #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000.00 in Schedule C, Docket #1.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Counsel is reminded of Local Rules of Practice ("LBR") 9004-2(c)(1) and (d)(1). LBR 9004-2(c)(1) requires that the documents in any matter be filed separately. LBR 9004-2(d)(1) requires, inter alia,

exhibits to be filed separately from the document(s) to which it relates and to identify the document to which it relates.

3. [17-14304](#)-B-7    **IN RE: XCOR AEROSPACE INC, A CALIFORNIA CORPORATION**  
[BAP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-21-2017 [\[33\]](#)

IPFS CORPORATION/MV  
RILEY WALTER  
BRIAN PAINO/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

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

This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court notes that the debtor failed to file written opposition, and has read the trustee's opposition.

The motion will be granted.

The movant, IPFS Corporation, seeks relief from the automatic stay with respect to three insurance premium financing agreements it has with the debtor. Premium financing is a common commercial transaction in which a premium finance company funds the premiums for an insurance policy and obtains a security interest in, among other things, the unearned premiums under the policy. A premium finance company's security interest in unearned insurance premiums is in the nature of a purchase money security interest.

As security for the transaction, the insured assigns the unearned premiums to the premium financier and grants the premium financier a limited power of attorney to cancel the policies in the event of the insured's default. Paragraphs 1 and 2 of the Finance Agreements here provide for the security interest and paragraph 6 appoints the movant as the Debtor's attorney in fact with limited authority to cancel the policies in the event of default. The Trustee does not dispute the security interest or the defaults. The movant has produced evidence that the total unearned premiums from the three insurance policies is \$22,038.98.

The trustee does not dispute and the court concludes that there is no equity in the policies and no evidence exists that the agreements are necessary to a reorganization - in fact, because this is a chapter 7, there is no possibility of reorganization. Neither is there evidence that the trustee can administer the three policies at issue for the benefit of the creditors.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the debtor has untimely tendered payments in the past and the unearned premiums under the policies depreciate on a daily basis.

4. [17-14304](#)-B-7 **IN RE: XCOR AEROSPACE INC, A CALIFORNIA CORPORATION**  
[CC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-18-2017 [[23](#)]

SPACE FLORIDA/MV  
RILEY WALTER  
CHRISTOPHER CELENTINO/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

Space Florida is a subdivision of the state of Florida. Space Florida lent to debtor \$3,000,000.00, and as collateral for the loan, debtor assigned to Space Florida all of its right, title and interest in nearly all of debtor's assets. Space Florida properly filed the appropriate financing statement with the Florida Secretary of State and obtained a first priority in the collateral. The loan matured on May 23, 2017, but debtor has failed to pay movant. As of October 24, 2017, the total unpaid amount, including interest, owed to movant was \$3,640,219.18.

In re Kronemeyer requires a bankruptcy court to consider the "Curtis factors" in making its decision. The relevant factors 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."

The factors that weigh in favor of granting this motion are: that granting this motion will result in partial or complete resolution of the issue; the foreign proceeding does not involve the debtor as a fiduciary; litigation in another forum would not prejudice the interest of other creditors because the movant has a first-in-priority security interest in substantially all of the debtor's assets; movant stated in its motion that it is willing to accept the foreclosure of the collateral in full satisfaction of its \$3,000,000.00 debt; and state court action already commenced and a receiver was appointed to take possession of debtor's assets and wind down the business.

Therefore this motion is GRANTED. The order shall provide that the state court receiver appointed in the pending action in Texas is not excused from all obligations of a custodian under the United States Bankruptcy Code (e.g. 11 U.S.C. § 543).

5. [17-14304](#)-B-7    **IN RE: XCOR AEROSPACE INC, A CALIFORNIA CORPORATION**  
[VC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-28-2017 [[47](#)]

BB&T COMMERICAL EQUIPMENT  
CAPITAL CORP./MV  
RILEY WALTER  
MICHAEL VANLOCHEM/ATTY. FOR MV.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

6. [17-13505](#)-B-7    **IN RE: DIANE ALLEN**  
[PBB-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
12-21-2017 [[20](#)]

DIANE ALLEN/MV  
PETER BUNTING

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Conditionally denied.

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

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent 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.

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. for the sum of \$10,535.36 on November 13, 2012. The abstract of judgment was recorded with Fresno County on November 29, 2012. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$350,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$243,070.62 on that same date, consisting of a first mortgage in favor of Citimortgage and a second mortgage in favor of Citibank, N.A. Docket #20. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a)(3) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, it unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. The court did not see any evidence submitted with this motion that supported the allowance of this exemption. Unless debtor can provide such evidence at the time of hearing, this motion will be denied.

If the debtor is able to provide such evidence, then the court will find as follows: the respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

7. [17-13505](#)-B-7     **IN RE: DIANE ALLEN**  
[PBB-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC  
12-21-2017 [\[25\]](#)

DIANE ALLEN/MV  
PETER BUNTING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Conditionally denied.

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

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file



written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent 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.

A judgment was entered against the debtor in favor of Portfolio Recovery Associates, LLC for the sum of \$4,536.65 on November 13, 2012. The abstract of judgment was recorded with Fresno County on November 29, 2012. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$350,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$243,070.62 on that same date, consisting of a first mortgage in favor of Citimortgage and a second mortgage in favor of Citibank, N.A. Docket #25. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a)(3) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, it unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. The court did not see any evidence submitted with this motion that supported the allowance of this exemption. Unless debtor can provide such evidence at the time of hearing, this motion will be denied.

If the debtor is able to provide such evidence, then the court will find as follows: the respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

8. [17-13505](#)-B-7      **IN RE: DIANE ALLEN**  
[PBB-3](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.  
12-21-2017 [[30](#)]

DIANE ALLEN/MV  
PETER BUNTING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Conditionally denied.

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

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent 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.

A judgment was entered against the debtor in favor of FIA Card Services, N.A. for the sum of \$30,661.06 on August 27, 2012. The abstract of judgment was recorded with Fresno County on June 4, 2013. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$350,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$243,070.62 on that same date, consisting of a first mortgage in favor of Citimortgage and a second mortgage in favor of Citibank, N.A. Docket #30. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a)(3) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, it unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. The court did not see any evidence submitted with this motion that supported the allowance of this exemption. Unless debtor can provide such evidence at the time of hearing, this motion will be denied.

If the debtor is able to provide such evidence, then the court will find as follows: the respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the

subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. [17-13505](#)-B-7     **IN RE: DIANE ALLEN**  
[PBB-4](#)

MOTION TO AVOID LIEN OF RAZOR CAPITAL, LLC  
12-21-2017 [\[35\]](#)

DIANE ALLEN/MV  
PETER BUNTING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Conditionally denied.

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

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent 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.

A judgment was entered against the debtor in favor of Razor Capital, LLC for the sum of \$6,955.39 on March 19, 2014. The abstract of judgment was recorded with Fresno County on March 13, 2014. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$350,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$243,070.62 on that same date, consisting of a first mortgage in favor of Citimortgage and a second mortgage in favor of Citibank, N.A. Docket #35. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a)(3) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, it unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. The court did not see any evidence submitted with this

motion that supported the allowance of this exemption. Unless debtor can provide such evidence at the time of hearing, this motion will be denied.

If the debtor is able to provide such evidence, then the court will find as follows: the respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

10. [12-10513](#)-B-7     **IN RE: JOSEPH HALLMARK**  
[TCS-5](#)

MOTION TO AVOID LIEN OF LVNV FUNDING, LLC  
1-10-2018 [[34](#)]

JOSEPH HALLMARK/MV  
TIMOTHY SPRINGER

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

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

This motion was filed and served pursuant to LRB 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.

A judgment was entered against the debtor in favor of LVNV Funding, LLC for the sum of \$3,520.58 on April 8, 2008. The abstract of judgment was recorded with Fresno County on May 13, 2008. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$80,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$83,100.00 on that same date, consisting of a first mortgage in favor of GMAC mortgage. Docket #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended Schedule C, Docket #20.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial

lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Counsel is reminded of Local Rules of Practice ("LBR") 9004-2(c)(1) and (d)(1). LBR 9004-2(c)(1) requires that the documents in any matter be filed separately. LBR 9004-2(d)(1) requires, inter alia, exhibits to be filed separately from the document(s) to which it relates and to identify the document to which it relates.

11. [12-10513](#)-B-7     **IN RE: JOSEPH HALLMARK**  
[TCS-6](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
1-10-2018 [[38](#)]

JOSEPH HALLMARK/MV  
TIMOTHY SPRINGER

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

DISPOSITION:     Denied.

ORDER:             No appearance is necessary. The court will issue the order.

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2), which usually requires a hearing in order for the opposing party to have an opportunity to oppose the motion, since 9014-1(f)(2) states that no written opposition is required. However, this motion is being denied because the court will not be able to grant the relief the movant has requested.

California Code of Civil Procedure § 697.310(b) states that "Unless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment." The date of entry of Discover Bank's judgment was October 5, 2006. Docket #40. The 10 year deadline has passed and the judgment has expired. Therefore, the lien cannot be avoided. No evidence is presented that the judgment was renewed. So, the property at issue is not currently encumbered with this abstract of judgment based on movant's evidence. This motion is DENIED.

12. [12-10513](#)-B-7     **IN RE: JOSEPH HALLMARK**  
[TCS-7](#)

MOTION TO AVOID LIEN OF CACH, LLC  
1-10-2018 [[42](#)]

JOSEPH HALLMARK/MV  
TIMOTHY SPRINGER

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served pursuant to LRB 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.

A judgment was entered against the debtor in favor of Cach, LLC for the sum of \$4,784.47 on August 26, 2008. The abstract of judgment was recorded with Fresno County on September 24, 2008. That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$80,000.00 as of the petition date. Docket #1, Schedule C. The unavoidable liens totaled \$83,100.00 on that same date, consisting of a first mortgage in favor of GMAC mortgage. Docket #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended Schedule C, Docket #20.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Counsel is reminded of Local Rules of Practice ("LBR") 9004-2(c)(1) and (d)(1). LBR 9004-2(c)(1) requires that the documents in any matter be filed separately. LBR 9004-2(d)(1) requires, inter alia, exhibits to be filed separately from the document(s) to which it relates and to identify the document to which it relates.

13. [17-14130](#)-B-7     **IN RE: MARCO GONZALEZ AND BEATRIZ DEL CAMPO**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-11-2017 [[37](#)]

FREEDOM MORTGAGE  
CORPORATION/MV  
GRISELDA TORRES  
JENNIFER WONG/ATTY. FOR MV.  
VACATED PER ECF ORDER NO. 47

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

This hearing has been vacated pursuant to the court's order (Docket #48] filed January 10, 2018.

14. [17-13833](#)-B-7     **IN RE: CHARLES/PRISCILLA HERNANDEZ**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-13-2017 [[43](#)]

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
PATRICK KAVANAGH  
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).

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.

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

15. [17-11435](#)-B-7     **IN RE: ANDREW/AMY LOFTIN**  
[TMT-1](#)

MOTION TO SELL  
12-26-2017 [[32](#)]

TRUDI MANFREDO/MV  
DAVID JENKINS  
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 will proceed as scheduled only for submission of higher and better bids, if any.

The motion was fully noticed in compliance with the Local Rules of Practice and no opposition was filed. 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.

It appears that the sale is a reasonable exercise of the trustee's business judgment. The estate will receive an estimated \$3,200.00 and the Trustee is holding the funds. The trustee shall submit a proposed order after the hearing.



16. [17-14635](#)-B-7     **IN RE: GEORGE HERNANDEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE  
12-5-2017 [[5](#)]

GEORGE HERNANDEZ/MV

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Denied.

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

Upon reviewing debtor's application, the court finds the application to be vague and ambiguous. On Official Form 106I, Schedule I: Your Income, debtor states that he is employed, yet he does not list any income. Plus, both the schedules and the waiver application do not describe any expenses. Debtor must appear and explain to the court how he is employed yet receives no income and has no expenses.

17. [15-10039](#)-B-12     **IN RE: ANGELA PIMENTEL**  
[GMW-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH LUIS OLIVEIRA SR. AND ANGELA OLIVEIRA  
12-27-2017 [[197](#)]

ANGELA PIMENTEL/MV  
G. WILLIAMS

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

DISPOSITION:                Granted.

ORDER:                        No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

It appears from the moving papers that the debtor 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 FRBP 9019 is a reasonable exercise of the debtor in possession's business judgment. The order should be limited to the claims compromised as described in the motion.

The debtor requests approval of a settlement agreement between the estate and Luis and Angela Oliveira. The claim precipitated from a judgment obtained by the Oliveira's against the debtor.

After the court continued the Oliveira's motion for relief from the automatic stay twice, the debtor and the Oliveira's met to resolve their dispute and ultimately entered into a stipulation resolving the controversy.

Under the terms of the compromise, the Oliveira's secured claim will be fixed at \$60,000.00 and be second priority behind the first deed of trust. The secured claim will have a 5% interest rate and be paid in quarterly installments of \$750 beginning January 1, 2018. The Oliveira's allowed, general unsecured claim will be \$95,168.92.

On a motion by the debtor in possession 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 likelihood of success on the merits in the stay relief motion was uncertain; collection will be more certain because of the secured claim and the uncertainty of the court's decision on the stay relief motion; litigation is always uncertain and expensive, and moving forward would decrease the net to the estate due to the legal fees; and even though the percentage paid to the unsecured creditors will decrease, granting stay relief to the Oliveira's may cost the debtor a major revenue generating asset and paying the unsecured creditors would be even more difficult; 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 debtor in possession, 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. [15-10039](#)-B-12     **IN RE: ANGELA PIMENTEL**  
[WW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-1-2017 [[146](#)]

LUIS OLIVEIRA/MV  
G. WILLIAMS  
RILEY WALTER/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied as moot.

ORDER:             No appearance is necessary. The court will issue an order.

The granting of Matter #17 on this calendar, GMW-1, makes the adjudication of this motion unnecessary. Therefore, this motion is DENIED AS MOOT.

19. [17-14543](#)-B-7     **IN RE: DOUGLAS WEANT**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-19-2017 [[15](#)]

FORD MOTOR CREDIT COMPANY/MV  
MARK ZIMMERMAN  
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 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 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).

20. [17-14646](#)-B-7      **IN RE: IRA/KESHIA HARTLEY**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE  
12-7-2017 [\[5\]](#)

IRA HARTLEY/MV  
IRA HARTLEY/ATTY. FOR MV.

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:      Denied.

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

Upon reviewing debtor's application, the court finds the application to be vague and ambiguous. On Official Form 106I, Schedule I: Your Income, debtors simultaneously state that Debtor 1 is employed, yet lists Debtor 1's occupation as "UNEMPLOYED." Additionally, line 12 on Schedule I and line 23a on Schedule J are not consistent. Debtors must appear and explain to the court these discrepancies.

21. [17-13356](#)-B-7     **IN RE: RICARDO PICENO**  
[BDA-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-26-2017 [[17](#)]

CAPITAL ONE AUTO FINANCE,  
N.A./MV  
MARK ZIMMERMAN  
BRET ALLEN/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue the order.

This motion is denied without prejudice for failure to comply with the Local Bankruptcy Rules ("LBR").

First, notice failed to comply with LBR 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

Second, LBR 9014-1(f)(2) language is incorrectly included in the notice. LBR 9014-1(f)(2) relates to motions set on 14 days' notice. Movant's notice here was 29 days before the hearing. LBR 9014-1(f)(1) requires motions noticed for hearing at least 28 days before hearing requires opposition to be filed 14 days before the hearing. The notice here improperly states written opposition was not required.

22. [17-14171](#)-B-7     **IN RE: ANTHONY SERRATO**  
[PFT-2](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
12-5-2017 [[14](#)]

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

DISPOSITION:        Conditionally denied.

ORDER:                No appearance is necessary. The court will issue the order.

The debtor shall attend the meeting of creditors rescheduled for February 5, 2018 at 11:00 am at Robert E Coyle United States Courthouse, 2500 Tulare Street, Room 1450, 1st Floor, Fresno, CA. 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 debtor(s) 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.

23. [17-11376](#)-B-7     **IN RE: HECTOR MERCADO MUNOZ AND MIRTA MERCADO CARDENAS**  
[RRD-8](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-18-2017 [[177](#)]

DAWN LINDSAY/MV  
JERRY LOWE  
RENNEE DEHESA/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue the order.

This motion is denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

The debtors were discharged on January 16, 2018 (Docket #197) and the Trustee filed a Notice of Abandonment of the property at issue in the motion on January 17, 2018 (Docket #198). The stay protecting the debtors' interest no longer applies. It is likely the estate's interest will soon be abandoned.

24. [17-14094](#)-B-7     **IN RE: JAYCE LEWIS**  
[DRJ-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-30-2017 [[31](#)]

VILLA FARIA, LIMITED  
PARTNERSHIP/MV  
DAVID JENKINS/ATTY. FOR MV.

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

DISPOSITION:     Dropped from calendar.

ORDER:             An order dismissing the case has already been  
entered. Docket #45. No order is necessary.

11:00 AM

1. [17-14333](#)-B-7      IN RE: JENNIFER WALTON

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL  
SERVICES, INC.

1-8-2018 [[14](#)]

NO RULING.



1:30 PM

1. [17-12245](#)-B-7     **IN RE: KRISTAL MCARTHUR**  
[17-1059](#) [UST-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
12-13-2017 [\[14\]](#)

U.S. TRUSTEE V. MCARTHUR  
GREGORY POWELL/ATTY. FOR MV.

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

DISPOSITION:     Granted.

ORDER:             No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

The defendant's default has already been entered. A default judgment will be entered based on the court's review of the record and well-pled facts. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters. 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. The plaintiff has done so here.

Since mid-August of 2016, the defendant has filed four bankruptcy cases, all of which have been dismissed for failure to timely file documents. Her pattern of unsuccessful filings is evidence of her willful failure to prosecute her cases in good faith and to adhere to the Bankruptcy Code and Rules. Her sole purpose in these successive filings seems to be to invoke the automatic stay to hinder and delay her creditors.

The current case will remain dismissed. Defendant is barred from filing any bankruptcy case for two years from the date of entry of the order, and the Bankruptcy Clerk may not accept any filing of any bankruptcy petition from the defendant during the two-year period without an order from the Chief Judge of this court on an application supported by competent evidence that an exigency beyond the debtor's control necessitates the filing. The United States Trustee shall notify the Clerk of the Court of this court's ruling.

2. [11-15871](#)-B-13     **IN RE: RANDY/PATRICIA BOYD**  
[17-1082](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
9-26-2017 [[1](#)]

BOYD ET AL V. VERIPRO  
SOLUTIONS, INC. ET AL  
GABRIEL WADDELL/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.