

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 14, 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. [17-13707](#)-B-7 **IN RE: NICOLE RUETZE**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
1-25-2018 [[20](#)]

NICOLE RUETZE/MV
NICOLE RUETZE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Deny.

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

The amounts for income and expenses on her schedules and in this motion are inconsistent with each other. The debtor must appear and explain to the court the discrepancy and which amount is accurate.

2. [12-16409](#)-B-7 **IN RE: AURELIO RODRIGUEZ**
[IER-2](#)

MOTION TO AVOID LIEN OF BANK OF STOCKTON
1-4-2018 [[32](#)]

AURELIO RODRIGUEZ/MV
ISMAEL RODRIGUEZ

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

DISPOSITION: Denied without prejudice.

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

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This Motion to Avoid Lien of Bank of Stockton is the third motion, yet it continues to use IER-2 as the DCN. Additionally, with this motion, the motion had a DCN of IER-2, the notice had a DCN of IER-1, the declaration had a DCN of IER-3, and the proof of service had a DCN of IER-4. This does not comply with the local rules regarding DCNs. Each separate matter filed with the court must have a different DCN. Using the same three letters is appropriate, but the number must increase by 1 each time another matter is filed.

LBR 9004-2(c)(1) requires that the exhibits, inter alia, filed in a motion "shall be filed as separate documents."

Here, the exhibits were included in the declaration and not filed separately.

Because this motion does not comply with the LBR, this motion is DENIED WITHOUT PREJUDICE.

3. [15-14912](#)-B-7 **IN RE: STEVEN/ALTA ROSS**
[JTW-2](#)

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG,
ACCOUNTANT(S)
1-10-2018 [[46](#)]

JANZEN, TAMBERI & WONG/MV
MARK ZIMMERMAN

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

DISPOSITION: Denied without prejudice.

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

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This Motion for Compensation is the second such motion, yet it continues to use JTW-2 as the DCN. This does not comply with the local rules regarding DCNs. Each separate matter filed with the court must have a different DCN. Therefore this motion is DENIED WITHOUT PREJUDICE.

4. [12-19625](#)-B-7 **IN RE: LUCAS RIAN TO**
[JDW-3](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
2-1-2018 [[42](#)]

LUCAS RIAN TO/MV
JAMES MILLER

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

DISPOSITION: Denied without prejudice.

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

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

LBR 9014-1(f) explains the noticing procedures for motions. Motions may either be set on 28 days' notice, at least 14 day's notice, or "in appropriate circumstances and for good cause shown," the court may order notice shortened to fewer than 14 days.

This notice in this motion was set on fewer than 28 days' notice, and without an order shortening time, at least 14 days' notice is required. This motion was filed on February 1, 2018 with a hearing date of February 14, 2018. That is less than 14 days' notice. For this reason, the motion is DENIED WITHOUT PREJUDICE.

5. [15-13932](#)-B-7 **IN RE: VICTOR PASNICK**
[RHT-17](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DUSTIN PASNICK
1-17-2018 [[304](#)]

ROBERT HAWKINS/MV
PETER FEAR
ROBERT HAWKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

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 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 FRBP 9019 is a reasonable exercise of the trustee's judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and Dustin Pasnick.

Under the terms of the compromise, the Mr. Pasnick will pay at least \$10,000.00 but not more than \$30,000.00 to purchase the Hulbert Avenue property. Mr. Pasnick will be allowed to retain the Sussex Way property as his residence, and claims 11, 12, 13, and 14 shall be deemed withdrawn. Mr. Pasnick will amend claim 15, striking provisions 15(1), 15(2), 15(3) and amending 15(4), decreasing his interest in the Alluvial properties from 23% to 5%. The trustee expects the estate to net the entire amount.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the defendants have vigorously disclaimed all liability for Debtor's damages; collection would not be difficult because the properties would be listed for sale if the estate prevailed; the litigation is factually complex and moving forward would decrease the net to the estate due to the legal fees; and the settlement would give the estate more than what the Sussex and Hulbert properties are worth and reduce his interest in the Alluvial

property, thereby avoiding further litigation to determine his interests in the property.

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.

The court noted the conditional opposition of Mario Flores and Catherine Toy, which objected on the grounds that the Heather Hart declaration tended to indicate that Mr. Pasnick lacked the capacity and authority to execute the settlement agreement on behalf of Platte River Partners, LLC. Docket #322. This opposition was withdrawn on February 6, 2018. Docket #327.

The court reminds counsel for both parties that Local Bankruptcy Rule 9004-2(c)(1) requires that the exhibits, inter alia, filed in a motion "shall be filed as separate documents."

Here, exhibits from both parties were included in Memorandum of Points and Authorities and a declaration, and therefore not filed separately.

6. [17-14233](#)-B-7 **IN RE: MAXWELL/MICHELLE ORENDORFF**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2018 [[14](#)]

SANTANDER CONSUMER USA,
INC./MV
HAGOP BEDOYAN
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted in part and denied as moot in part.

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 because their discharge has been entered. The motion will be granted 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 and limit relief as against debtor's interests only.

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

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

7. [09-19651](#)-B-7 **IN RE: JACLYN WATKINS**
[RHT-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
1-10-2018 [[40](#)]

ROBERT HAWKINS/MV
ROBERT HAWKINS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion 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.

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 FRBP 9019 is a reasonable exercise of the trustee's judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and defendant litigation. The claims were precipitated by a defect in a pelvic mesh product.

Under the terms of the compromise, the defendants will pay \$90,000.00 to the estate, in full satisfaction of the claims. The trustee expects the estate to net the entire amount.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the defendants have vigorously disclaimed all liability for Debtor's damages; collection will be very easy as the plaintiffs are large corporations which gross billions of dollars annually; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the settlement will pay 100% of claims filed in this case; 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.

8. [17-14151](#)-B-7 **IN RE: KATHRYN NEWSOME**
[SW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-22-2018 [[29](#)]

ALLY FINANCIAL INC./MV
MARK ZIMMERMAN
ADAM BARASCH/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
after hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Debtor filed non-opposition to the motion. The court intends to enter the trustee's default and enter the following ruling granting the motion for relief from stay. If the trustee presents opposition at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary. The debtor has filed a "non-opposition" to the motion.

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 has been surrendered and is in movant's possession.

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

9. [17-14153](#)-B-7 **IN RE: DARREN BENNETT**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-2018 [[17](#)]

WELLS FARGO BANK, N.A./MV
BRIAN FOLLAND
JENNIFER WONG/ATTY. FOR MV.
DISMISSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The case has already been dismissed.

10. [17-14155](#)-B-7 **IN RE: CYNTHIA MARTINEZ**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-5-2018 [[21](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION/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.

If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

If an award of attorney fees has been requested, it will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and

supporting documentation. In addition, any future request for an award of attorney's fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C. §506(b).

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

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

11. [17-14356](#)-B-7 **IN RE: GENEVIEVE CANTOR**
[JES-2](#)

MOTION TO RETAIN PROPERTY AND/OR MOTION TO EXTEND AUTOMATIC
STAY

1-11-2018 [\[22\]](#)

JAMES SALVEN/MV
GRISELDA TORRES
RESPONSIVE PLEADING

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. The debtor has filed a "non-opposition."

The court authorizes the trustee to retain the property in order for the trustee to sell it at auction and distribute the proceeds to creditors. The court also extends the automatic stay to accommodate the sale proposed by the trustee. The court has already approved the sale (docket #34). The auction should have occurred on February 8, 2018. *Id.*

12. [17-14071](#)-B-7 **IN RE: GWEN PERDUE**
[JDM-1](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC
12-30-2017 [\[14\]](#)

GWEN PERDUE/MV
JAMES MILLER

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Debtor claims an \$88,733.61 exemption on her home at 17930 Lane Dr. in Madera, California. On Schedule C, in the column that asks for the "Specific laws that allow exemption," debtor wrote in C.C.P. § 704.730. Debtor did not state which specific subsection of that statute is applicable to her.

First, if debtor has claimed § 704.730(a)(1) as her exemption, that homestead exemption is capped at \$75,000.00, which is less than what debtor has claimed on Schedule C.

Second, debtor cannot qualify for the § 704.730(a)(2) exemption because debtor is not married and has no dependents, and therefore not a member of a family unit. Schedule J, part 1; Official Form 107, part 1. Even if debtor is a member of a family unit, debtor has not provided evidence that there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with debtor.

Lastly, debtor has not provided evidence to show that she qualifies for the exemption under § 704.730(a)(3).

Because of the lack of evidence and specificity on the schedules, this motion is DENIED WITHOUT PREJUDICE.

13. [17-14071](#)-B-7 **IN RE: GWEN PERDUE**
[JDM-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
12-30-2017 [\[19\]](#)

GWEN PERDUE/MV
JAMES MILLER

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Debtor claims an \$88,733.61 exemption on her home at 17930 Lane Dr. in Madera, California. On Schedule C, in the column that asks for the "Specific laws that allow exemption," debtor wrote in C.C.P. § 704.730. Debtor did not state which specific subsection of that statute is applicable to her.

First, if debtor has claimed § 704.730(a)(1) as her exemption, that homestead exemption is capped at \$75,000.00, which is less than what debtor has claimed on Schedule C.

Second, debtor cannot qualify for the § 704.730(a)(2) exemption because debtor is not married and has no dependents, and therefore not a member of a family unit. Schedule J, part 1; Official Form 107, part 1. Even if debtor is a member of a family unit, debtor has not provided evidence that there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with debtor.

Lastly, debtor has not provided evidence to show that she qualifies for the exemption under § 704.730(a)(3).

Because of the lack of evidence and specificity on the schedules, this motion is DENIED WITHOUT PREJUDICE.

14. [10-60572](#)-B-7 **IN RE: BOYCE/LINDA WISDOM**
[RHT-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH BOYCE WISDOM AND LINDA WISDOM
1-10-2018 [\[47\]](#)

ROBERT HAWKINS/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.

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 FRBP 9019 is a reasonable exercise of the trustee's judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and various defendants on the other hand, in a mass trans-vaginal mesh litigation.

Under the terms of the compromise, the defendants will pay \$350,000.00 to the estate, in full satisfaction of the claims. The trustee expects the estate to net the entire amount.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of

fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the defendants have vigorously disclaimed all liability for Debtor's damages; collection will be very easy as the plaintiffs are large corporations which gross billions of dollars annually; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the settlement will pay 100% of claims filed in the case; 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. [17-14080](#)-B-7 **IN RE: ALEJANDRA BATES**
[BDA-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-2018 [[14](#)]

FINANCIAL SERVICES VEHICLE
TRUST/MV
ROBERT WILLIAMS
BRET ALLEN/ATTY. FOR MV.

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The motion has been withdrawn by the Moving Party.

16. [17-14783](#)-B-7 **IN RE: ESMERALDA LOPEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
12-15-2017 [\[5\]](#)

ESMERALDA LOPEZ/MV
ESMERALDA LOPEZ/ATTY. FOR MV.
\$167.50 FINAL INSTALLMENT PAYMENT 1/16/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The final installment for the filing fee has
been paid.

17. [17-12691](#)-B-7 **IN RE: DARA PIROZZI**
[DLF-1](#)

CONTINUED MOTION TO DISMISS CASE
10-6-2017 [\[19\]](#)

DIAS LAW FIRM, INC./MV
MARK ZIMMERMAN
JONETTE MONTGOMERY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

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

In order to allow movant more time to complete discovery, this
motion may be continued to April 10, 2018 at 9:30 a.m.

The court notes debtor's request for a ruling on two purely legal
questions, however a status report is not the appropriate mechanism
to request such action, and it does not give the movant an
opportunity to oppose, which violates due process.

On the "new motion" issue, both parties have given opportunity to
meet each other's proof and will be given additional opportunity.

On the "objection to discharge" issue, the court notes no adversary
proceeding was filed as required by Federal Rule of Bankruptcy
Procedure 7001(4). Also, courts should construe 11 U.S.C. § 727
liberally in favor of debtors and strictly against parties objection
to discharge. Retz v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th
Cir. 2010) quoting Bernard v. Sheaffer (In re Bernard), 96 F.3d
1279, 1281 (9th Cir. 1996).

The court restates here the comments posted before the hearing on
November 29, 2017.

18. [18-10097](#)-B-7 **IN RE: JAEGER PHOTO CORP.**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-2018 [\[6\]](#)

DAMF, INC./MV
HAGOP BEDOYAN
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The motion will be GRANTED.

The movant, DAMF, Inc., seeks relief from the automatic stay with respect to personal property arising out of debtor's photography business, which includes, inter alia, accounts receivable, cash, deposit accounts, inventory, and equipment. The movant has produced evidence that the collateral has a value of \$6,350.00 and the balance it owed movant is \$63,190.35. Docket #8.

The court concludes that there is no equity in the collateral and the collateral is not necessary to reorganization because debtor is in chapter 7. There is also no equity cushion protecting movant.

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.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

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

11:00 AM

1. [17-14356](#)-B-7 **IN RE: GENEVIEVE CANTOR**

PRO SE REAFFIRMATION AGREEMENT WITH DITECH FINANCIAL LLC
1-29-2018 [[27](#)]

GRISelda TORRES

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

DISPOSITION: Dropped.

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

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

2. [17-14257](#)-B-7 **IN RE: ALLAN MONROY AVILA**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
1-22-2018 [[12](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

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

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

original). In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [17-14583](#)-B-7 **IN RE: BRIAN/AUBREY SLOVER**

REAFFIRMATION AGREEMENT WITH LES SCHWAB TIRE CENTERS OF
CENTRAL CA, INC.
1-17-2018 [[16](#)]

SCOTT LYONS

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

Debtors' counsel shall notify the debtors that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

1:30 PM

1. [17-13527](#)-B-7 **IN RE: BEKAF WOLDEMESKEL**
[17-1089](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
2-1-2018 [[9](#)]

KEVORKIAN V. WOLDEMESKEL
J. ARMAS/ATTY. FOR PL.

NO RULING.

2. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-17-2015 [[1](#)]

BJORNEBOE V. BREWER
MISTY PERRY-ISAACSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 28, 2018 at 1:30 p.m.

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

At the request of plaintiff, and because debtor is enlisted in the military and unable to attend, this status conference is continued to March 28, 2018 at 1:30 p.m. Status reports from all parties shall be filed and served on or before March 21, 2018.

3. [16-14676](#)-B-7 **IN RE: JOHN/PATRICIA FARINELLI**
[17-1090](#)

STATUS CONFERENCE RE: COMPLAINT
12-8-2017 [[1](#)]

FEAR V. THE UNITED STATES OF
AMERICA DEPARTMENT OF TREASUR
TRUDI MANFREDO/ATTY. FOR PL.
DISMISSED

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1001](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL
1-4-2018 [[1](#)]

GRAHAM PREWETT, INC. V. TULARE
LOCAL HEALTHCARE DISTRICT

NO RULING.