UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 27, 2019
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 11-19905-B-7 **IN RE: RICHARD MCINTYRE**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG, ACCOUNTANT(S)
1-25-2019 [98]

RATZLAFF TAMBERI & WONG/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Trustee's accountants, Ratzlaff, Tamberi & Wong, requests fees of $1,291.50 and costs of $11.28 for a total of $1,302.78 for services rendered from December 10, 2018 through January 7, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1)

Reviewing the petition and trustee's current accounting for information relating to estate tax matters, (2) Preparing the federal and state fiduciary income tax returns including underlying workpapers for the period ended November 30, 2018, and (3) Preparing and filing the fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,291.50 in fees and $11.28 in costs.

2. 18-10509-B-7 **IN RE: GERALDINE LARSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-8-2019 [64]

MARK ZIMMERMAN
$181.00 FILING FEE PAID 2/11/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the fee was paid on February 8, 2019.

3. 18-10509-B-7 **IN RE: GERALDINE LARSON**
MAZ-1

MOTION TO COMPEL ABANDONMENT
1-25-2019 [56]

GERALDINE LARSON/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.

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 a 2014 Hyundai Sonata ("Vehicle").

The court finds that the Vehicle is of inconsequential value and benefit to the estate. The Vehicle was accurately scheduled and is subject to an over-secured lien. See doc. #44. Therefore, this motion is GRANTED.

The order shall include a specific description of the property abandoned.

4. 11-14820-B-7 **IN RE: JAMES/MARJORIE YOUNGBLOOD**
TMT-2

MOTION FOR COMPENSATION FOR EZRA N. GOLDMAN, OTHER PROFESSIONAL(S)
1-23-2019 [80]

EZRA GOLDMAN/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 motion will be GRANTED. Trustee's asset recovery specialist, Ezra Goldman, requests fees of $10,416.67 for services rendered from April 23, 2018 through January 17, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Searching and finding pre-petition assets, (2) Gathered documents, obtained signatures, and submitted a claim to the California State Controller's office, and (3) Preparing and filing the fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary. According to the motion, applicant agreed to a 33% contingency fee.

Movant shall be awarded $10,416.67 in fees.

5. 17-14329-B-7 **IN RE: CHARLES/GWENEVA SAWYER**
RWR-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S) 1-18-2019 [66]

DAVID JENKINS

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Trustee's attorneys, The Law Office of Coleman & HOrowitt, LLP for Russell W. Reynolds, requests fees of $5,087.00 and costs of $520.60 for services rendered from January 2, 2018 through January 18, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Drafting, filing, and successfully prosecuting a motion to employ a broker, sell estate property, and pay the broker, and (2) Preparing and filing the fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $5,087.00 in fees and $520.60 in costs.

6. 18-15031-B-7 **IN RE: CAROLYN LOPEZ**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-23-2019 [12]

MARIO LANGONE

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for March 4, 2019 at 12:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

7. 19-10031-B-7 **IN RE: SAUL AGUNDEZ**
DVW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2019 [21]

U.S. BANK NATIONAL ASSOCIATION/MV
DIANE WEIFENBACH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, U.S. Bank, N.A. seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) on real property located at 3129 E. Pine Avenue in Fresno, CA. The automatic stay expired in this case on February 8, 2019.

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

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

Debtor filed a previous bankruptcy case on October 2, 2018 (case no. 18-14028). That case was dismissed on December 6, 2018. This case was filed on January 8, 2019 Doc. #1. Debtor failed to disclose on his schedules the filing of the previous case.

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

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated with respect to the real property located at 3129 E. Pine Avenue in Fresno, CA; and

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has not complied in good faith with the bankruptcy code by failing to disclose the prior bankruptcy case.

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).

8. 16-14433-B-7 **IN RE: ISAIAS BRAVO**
ICE-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH O'NIELL BEVERAGE COMPANY AND/OR MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RONALD CASTILLO
1-18-2019 [32]

JAMES SALVEN/MV
JERRY LOWE
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

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

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

The trustee requests approval of a settlement agreement between the estate and O'Neill Beverage Company, LLC and Ronald Castillo. The claims were precipitated as a result of a motor vehicle accident.

Under the terms of the compromise, the defendants will pay $200,000.00 to the estate, in full satisfaction of the claims. After payment of certain fees associated with the litigation, the trustee expects the estate to net approximately $82,070.37.

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 not assured as the defendants have vigorously disclaimed all liability for Debtor's damages; collection will be easy as the plaintiff is a large business with funds enough to pay the settlement; the litigation is factually intensive and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

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

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

9. 16-14433-B-7 **IN RE: ISAIAS BRAVO**
ICE-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF EDMONDS LAW OFFICES FOR IRMA EDMONDS, TRUSTEES ATTORNEY(S)
1-18-2019 [37]

JERRY LOWE

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

DISPOSITION: Granted.

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

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

The court notes that though the motion is styled as a motion for compensation for Irma Edmonds, trustee's attorney, the applicant is actually Robert May, personal injury counsel representing the estate.

The motion will be GRANTED. The chapter 7 trustee, on behalf of special counsel Robert May, representing the estate's interest in a personal injury action, requests authorization to pay Robert May fees of $66,660.00 and costs of $1,247.33 for a total of $67,907.33 for services rendered per their fee agreement.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Settling the personal injury suit against O'Neill Beverage Company, LLC and Ronald Castillo. The court finds the services reasonable and necessary and the expenses requested actual and necessary. According to the motion, applicant agreed to a 33% contingency fee.

Special counsel Robert May shall be awarded $66,660.00 in fees and $1,247.33 in costs.

10. 18-14837-B-7 **IN RE: KENDELL ROGERS**
PK-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2019 [26]

SERENA VISTA APARTMENTS LLC/MV
PATRICK KAVANAGH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

(1) whether the relief will result in a partial or complete resolution of the issues;
(2) the lack of any connection with or interference with the bankruptcy case;
(3) whether the foreign proceeding involves the debtor as a fiduciary;
(4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
(5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
(6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
(7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
(8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
(9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
(10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
(11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and

(12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy; it is an unlawful detainer action to evict debtor from the apartment owned by movant. The state court action is not a matter the bankruptcy court can hear. The litigation in the state court would not prejudice the interests of other creditors.

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim and for entry of any judgment for possession. The 14 day stay will be waived.

11. 18-14838-B-7 **IN RE: JALISHIA SANDERS**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-15-2019 [15]

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 March 1, 201 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.

12. 18-10376-B-7 **IN RE: AMMANDO/MARIA MORALEZ**
TGM-5

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES ATTORNEY(S)
1-30-2019 [75]

LAYNE HAYDEN
JOINT DEBTOR DISMISSED: 05/23/2018

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Trustee's counsel, Trudi Manfredo, requests fees of $14,034.50 and costs of $957.21 for a total of $14,991.71 for services rendered from March 15, 2018 through January 18, 2019.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Analyzing and recovering estate assets, including the debtor's residence, (2) Selling the debtor's residence, which was encumbered by several liens, and (3) Preparing and filing the fee and employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $14,034.50 in fees and $957.21 in costs.

13. 18-14980-B-7 **IN RE: MARCELA NEWELL**
PK-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-2019 [40]

THOMAS PARK/MV
OSCAR SWINTON
PATRICK KAVANAGH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

(1) whether the relief will result in a partial or complete resolution of the issues;
(2) the lack of any connection with or interference with the bankruptcy case;
(3) whether the foreign proceeding involves the debtor as a fiduciary;
(4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
(5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
(6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
(7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
(8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
(9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
(10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;

(11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
(12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy; it is an unlawful detainer action to evict debtor from the apartment owned by movant. The state court action is not a matter the bankruptcy court can hear. The litigation in the state court would not prejudice the interests of other creditors.

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim and enter a judgment for possession of the premises specified in the motion. The 14 day stay will be waived.

14. 19-10080-B-7 **IN RE: ROGER VAN TASSEL**
BPC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-2019 [16]

THE GOLDEN 1 CREDIT UNION/MV
ERIC ESCAMILLA
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2017 Jeep Wrangler Unlimited. Doc. #18. The collateral has a value in between $24,850.00 and $31,232.00. *Id.* The debtor owes $40,601.95. *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).

15. 18-12685-B-7 **IN RE: SYLVIA AVILA**
MAZ-1

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-13-2018 [19]

MARK ZIMMERMAN
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #36.

16. 19-10187-B-7 **IN RE: FELIX CHAVEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-8-2019 [17]

RALPH AVILA

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.

17. 18-13891-B-7 **IN RE: ROBERT/CAROLYN WHITE**
PFT-1

MOTION TO SELL
1-16-2019 [37]

PETER FEAR/MV
HAGOP BEDOYAN
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell a 1990 Mazda Miata and a 2004 Chrysler Sebring ("Vehicles") back to debtor, subject to higher and better bids at the hearing, for $2,700.00.

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

Any party wishing to overbid must appear at the hearing at the date, time, and place stated in the moving papers. The sale is as-is, where-is, and the winning bidder is responsible to obtain possession of the asset and to change title to the assets, with no assistance from the trustee. Winning bidders must pay the trustee in certified funds to be received in the trustee's office no later than five business days following the conclusion of the auction. Back-up bids, if any, will be taken and once a back-up bidder is notified that the prior bidder has failed to perform, payment of the purchase price must be received by the trustee from the back-up bidder within five business days or the back-up bidder being notified that the back-up bid is now the winning bid.

The trustee is authorized to execute all documents reasonably necessary to effectuate the sale of the personal property.

The fourteen-day stay provision under Federal Rules of Bankruptcy Procedure 6004(g) is waived.

18. 18-14792-B-7 **IN RE: PATRICIA JOHNSON**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-2-2019 [12]

L. RODKEY

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for March 21, 2019 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. 18-14656-B-7 **IN RE: LUCIA CAMPOS**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
2-4-2019 [13]

NO RULING.

2. 18-14958-B-7 **IN RE: MELVIN/KAREN SCHREIN**

REAFFIRMATION AGREEMENT WITH CAB WEST LLC
1-22-2019 [14]

SCOTT LYONS

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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. 18-13516-B-7 **IN RE: PETERANGELO/DEMITRA VALLIS**
18-1073

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

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

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

DISPOSITION: Continued to May 29, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Pre the parties' stipulation (doc. #20), this status conference is continued to May 29, 2019 at 1:30 p.m.

2. 18-11357-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
JAM-6

MOTION FOR SUMMARY JUDGMENT
1-16-2019 [168]

ENRIQUE REYES/MV
JAMES MICHEL
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. The court makes no findings about the validity of the claim.

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

Scheduled to be heard at the same date and time are the Franchise Tax Board's and the Debtors' motions for summary judgment. For reasons that are clear below, this ruling applies to both motions. Any reference to the Federal Rules of Civil Procedure will be denoted with "Civil Rule,"; any reference to the Federal Rules of Bankruptcy Procedure will be denoted with "Rule", and; any reference to the Federal Rules of Evidence will be denoted with "Evidence Rule." Any Civil Rule mentioned is assumed to be incorporated into the Bankruptcy Rules by a Rule counterpart.

This motion and #3 below were filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The court must first make note of the Franchise Tax Board's procedural error.

The notice of hearing (doc. #161) was largely deficient of the language required under LBR 9014-1(d)(3)(B), inter alia. Those kinds of deficiencies usually warrant denying the motion without prejudice. But because Debtors timely responded to the motion, the court considered the motion on its merits.

Background Facts

Enrique and Guadalupe Reyes ("Reyes" or "Debtors") did not file a 1989 income tax return with the California Franchise Tax Board ("FTB"). Evidently, FTB did not assess Reyes for the 1989 tax year until 1999. Then, after receiving information from the Internal Revenue Service, FTB made a "proposed assessment" and, though disputed by Reyes, served Reyes with a Notice of Proposed Assessment ("NPA"). The NPA stated that Reyes may be assessed additional taxes of $17,616.00, interest of $26,674.91 and penalties of $4,372.50. Reyes never responded to the NPA.

Reyes filed this Chapter 13 case in 2018 and confirmed a Chapter 13 Plan. The FTB filed a proof of claim (claim 2-1) on May 21, 2018 for over $142,000. This claim asserted taxes were owed for tax years 1989, 1997, 2000, and 2001 and that Reyes failed to file returns for any of those years. As explained below, Reyes disputed the 1989 and 1997 assessments; 1997 is no longer disputed.

A month later, Reyes objected to the portion of the claim that included tax years 1989 and 1997. Relying on California Revenue & Taxation Code ("CRT") § 19255, Reyes contended that FTB could no longer enforce that portion of the claim because FTB's rights to enforce expired (abated) 20 years after the taxes were due. Doc. ## 38-50. Since the bankruptcy case was filed well over 20 years after the taxes were due, Reyes asserts, the largest portion of FTB's claim (1989 and 1997 assessments) should be disallowed.

FTB opposed the objection. Doc. ##45-50. FTB contended that Reyes was sent NPA's for both the 1989 and 1997 tax years and under the controlling statutes, CRT §§ 19081 and 19082, both NPA's "went final" and therefore the taxes became due and owing on May 14, 1999 and March 28, 1999, respectively. Since neither date is more than 20 years before this case was filed, FTB argues, it is not prevented from pursuing collection as authorized by law.

During discovery and document exchanges, Reyes discovered that the NPA for 1997 was directed to their son, Enrique, Jr. In reply to FTB's opposition, Reyes contended that they were "the wrong taxpayer" for the 1997 taxes. FTB filed an amended proof of claim (Claim 2-2) in October 2018 omitting the 1997 portion of the original claim. The 1997 portion of the claim is no longer at issue. The claim now is over $141,000 - $138,000 of which is the tax, interest and penalties for the 1989 tax year.

The court issued a Scheduling Order providing a period for the parties to engage in discovery and providing a date by which any

dispositive motions could be heard. Following the conclusion of discovery, FTB filed a motion for summary judgment (JB-1). Reyes filed their own Motion for Summary Judgment (JAM-6) about two weeks later.

FTB's Motion for Summary Judgment

FTB contends it is not time barred from collecting the 1989 taxes. It argues that since Reyes did not file a tax return for 1989, FTB can assess Reyes based on income and tax information received from the IRS. The income FTB used to assess for tax year 1989 was derived from IRS information (and perhaps other information though that is not clear) showing Reyes received debt relief, rental income and based on likely itemized deductions. Since Reyes did not oppose the NPA, FTB claims, the 20 year "abatement" did not commence to run until May 1999 which was less than 20 years before this bankruptcy case was filed. Thus, the ground for Reyes' objection - abatement of the tax because of passage of time - does not have merit and the claim should be allowed.

In opposition, Reyes raises many factual issues questioning the validity of the 1989 assessment but does not directly address the legal and factual basis for FTB's summary judgment motion. Reyes argues that the credibility of the 1989 assessment is in serious doubt based on: inconsistent account numbers, unknown addresses, incorrect or non-existent zip codes and FTB's allegedly incorrect claim that Reyes was responsible for Enrique Jr.'s taxes in 1997. Reyes contends they may never have received the 1989 NPA and challenges FTB to prove they have. Reyes' evidence includes a copy of an IRS transcript for Reyes' 1989 taxes that shows completely different numbers for income and tax than the 1989 NPA. It also shows, says Reyes, that FTB did not use IRS information to assess Reyes. Reyes also questions whether the copy of the NPA produced and submitted by FTB truly reflects the original NPA and asserts that FTB has not provided a transcript or other information from the IRS in response to discovery and should be precluded from asserting its assessment based on that information.

In reply, FTB re-states that the issue raised on Reyes objection was whether FTB was time barred from asserting any tax liability is due for the 1989 tax year. The other arguments Reyes offers in opposition, FTB contends, are not germane to the narrow issue of timeliness. FTB challenges Reyes lack of citation to authority supporting their other arguments in any event. FTB argues the NPA was regularly prepared and Reyes' challenges to the NPA's validity should not be considered since Reyes admits not having filed an income tax return with FTB for the 1989 tax year. Also, FTB contends that under California law which governs the collectability of the taxes at issue, FTB is entitled to a presumption (affecting the burden of proof) that FTB's official duties were regularly performed. California Evidence Code § 664. So, they contend, Reyes has not produced enough evidence to rebut that presumption.

Reyes' Motion for Summary Judgment

Reyes' Motion for Summary Judgment raises the exact same issues as Reyes raises in their opposition to FTB's Motion for Summary Judgment. FTB's opposition raises the same issues and arguments as in its reply to Reyes opposition to FTB's Motion for Summary Judgment. Neither will be repeated here.

In their reply (doc. # 215), Reyes repeats the same validity arguments discussed above but also contends that the invalidity of the claim and the assumptions for the claim are based on a faulty NPA, so no tax was "due and payable" within 20 years of the bankruptcy petition. This is essentially a restatement of the validity argument. Reyes repeats their evidentiary objections which are separately addressed in this ruling. Reyes points to discovery responses which, to Reyes, establish improper information in the FTB system casting doubt on the NPA's factual basis. They also claim the NPA was not part of the original proof of claim which establishes the claim is not prima facie valid. Finally, they urge that the claim and other evidence cannot be used by FTB because they did not comply with Rule 3001(c)(2)(D)(i), (ii).[1]

After consideration of the arguments and evidence submitted with both motions, FTB's motion is DENIED IN PART and GRANTED IN PART. For purposes of this claim objection, partial summary judgment will be granted that the portion of Claim 2-1 amended by Claim 2-2 filed by the Franchise Tax Board relating to the 1989 taxes is not time barred under CRT § 19255. Reyes' motion for summary judgment is DENIED because there are disputed material factual issues. The court is not currently ruling to allow or disallow the claim.

RULINGS ON EVIDENTIARY OBJECTIONS

Introduction

Both parties have made evidentiary objections. The court will rule on them here referencing the documents at issue. Neither parties' objections conform with what is required under both Civil Rule 56 and the LBR.

First, evidentiary objections to either parties' Statements of Undisputed or Disputed Facts is not a permissible response. Civil Rule 56(c)(2) permits objection that *the material cited* that

[1] The court does not find this argument persuasive for three reasons. First, Bankr. Rule 3001 (c) requires attachment of a writing upon which the claim is based - FTB did. The claim includes a reservation of the right to amend the claim. Discovery rules provided Reyes with more information. Second, the attached writing did outline the other charges besides the tax that FTB asserts is due and owing. The other requirements of Bankr. Rule 3001 (c) are irrelevant since the FTB is not asserting a claim secured by the debtor's principal residence. Third, even if Reyes has succeeded in overcoming the presumption of claim validity, the argument begs the question of the allowance of the claim which is the purpose of this contested matter.

supports a disputed or undisputed fact cannot be presented in a form that would be admissible in evidence (emphasis added). Evidentiary objections to Statements of Material Disputed or Undisputed Facts without specifying the material cited that is the subject of the objection are not permissible. Also, LBR 7056-1(b) states that responses to Statements of Undisputed Facts must either admit or deny them and support any denial with citations to the evidence. An evidentiary objection is not among the options.

Second, the evidentiary objections are incomplete. LBR 7056-1(f) requires that evidentiary objections only comply if they conform to four requirements: (i) they must be timely; (ii) they must precisely state where in the record the objectionable evidence appears; (iii) they must identify which of the opposing party's Undisputed Facts are supported by evidence to which the objection is made; and (iv) the basis for the objection. Virtually none of the objections filed by either of the parties here identify which undisputed or disputed fact is supported by objectionable evidence. For both reasons, all objections are overruled. Below are more specific rulings.

FTB Objections to Reyes Statement of Undisputed Facts (doc. #212)

1. Statement of Undisputed Fact (SUF) 1 – overruled.
2. SUF 2 – overruled
3. SUF 8 – overruled
4. SUF 9 – overruled. The court noted if FTB is unable to find any documentation or other evidence, the appropriate remedy is a motion to reopen discovery and providing good cause for such an order.
5. SUF 10 – overruled.
6. SUF 11 – overruled.

Reyes' Evidentiary Objections to FTB Opposition to Reyes' Motion for Summary Judgment and Supporting FTB's Motion for Summary Judgment (docs. ## 193 and 216).

1. Vaca declaration (doc. #164)
   A. Authentication – overruled. See Federal Rule of Evidence ("Evidence Rule") 901(b)(7). Challenges go to weight, not admissibility.
   B. Hearsay – overruled. Foundational facts for admission have been established. Weight of evidence may be in question since there are questions about the accuracy of the assessment.
   C. Best evidence – overruled. The debtor is contesting the accuracy of the figures in the declaration. That does not mean there is a question about the accuracy of the copies that are sought to be admitted. The weight of Ms. Vaca's statements may be an issue. If the copy offered is not precisely the NPA sent to the Reyes', that goes to weight of the evidence.

2. March 15, 1999 NPA (docs. ## 46, 164)
   A. Inaccurate duplicates – overruled. The issue relates to the underlying figures and assumptions not whether the copy of the NPA offered is an accurate copy. There may be issues about the amount of the assessment, but the objection does not challenge the accuracy of the copy offered.

B. Lack of authenticating witness – overruled. Interrogatory seven asked for those with knowledge of the facts not who can authenticate the affected records.

C. Inaccurate printouts – overruled. See above and Evidence Rule 901(b)(7).

D. Altered duplicate – overruled. Goes to weight of what is depicted in the document, not admissibility.

E. Hearsay – overruled. See above.

F. Evidence Rule 803(8)(A) – overruled. Not applicable.

G. Authentication – overruled. See above.

H. No comparison of documents – overruled. See above.

3. Responses to Request for Production – All remaining objections are overruled. The objection does not state precisely what fact claims to be disputed or undisputed by FTB is supported by this "evidence." Like the previous objections the challenge goes to weight, not admissibility.

FTB Reply to Statement of Undisputed Facts by Reyes in Opposition to FTB's Motion for Summary Judgment (doc. #205)

FTB's SUF

SUF 10 – overruled.

Reply to Reyes' SUF

SUF 1 – overruled.

SUF 2 – overruled.

SUF 7 – 13 - overruled.

Analysis

Standards Applicable

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and movant is entitled to judgment as a matter of law." Civil Rule 56(a). The bankruptcy court "views the evidence in the light most favorable to the non-moving party" and "draws all justifiable inferences in favor of the non-moving party." Fresno Motors LLC v. Mercedes Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014), citing Cty. of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1154 (9th Cir. 2001) and Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). "A fact is 'material' only if it might affect the outcome of the case, and a dispute is 'genuine' only if a reasonable trier of fact could resolve the issue in the non-movant's favor." Anderson, 477 U.S. at 248.

While the movant has the initial burden of identifying the portions of the record demonstrating the absence of a genuine issue of material fact, once the movant has come forward with uncontroverted facts entitling it to relief, the burden then shifts to the nonmovant to demonstrate that there are specific and genuine issues of material fact necessitating a trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). The nonmovant must go beyond the pleadings and introduce or point to specific evidence in the record supporting its position. Id. at 324. Standards and procedures for

partial summary judgment are the same as for summary judgment. Smith v. Simmons, 638 F. Supp. 2d 1180, 1185 (E.D. Cal. 2009). Civil Rule 56(g) authorizes the court to grant less than all the relief requested on a motion for summary judgment.

Nevertheless, courts should take great care in granting summary judgment and have the authority to "deny summary judgment in a case where there is reason to believe a better course would be to proceed to a full trial." Anderson, 477 U.S. at 255. See also Chiron Corp. v. Genentech, Inc., 268 F. Supp. 2d 1139, 1148, n.6 (E.D. Cal. 2002) [court has discretion not to specify certain facts undisputed as it will not speed trial and lead to confusion]. Cross motions for summary judgment do not change a trial court's responsibility to determine whether there are genuine issues of material fact for trial with respect to each motion. Fair Hous. Council v. Riverside Two, 249 F.3d 1132, 1136 (9th Cir., 2001); Rainsdon v. Davisco Foods Int'l, Inc. (In re Azevedo), 497 B.R. 590 (Bankr. D. Idaho 2013).

FTB's Motion for Summary Judgment is Denied in Part and Granted in Part

First, there is no material factual issue raised by Reyes about timeliness of the claim. FTB's motion addressed Reyes' ground for the claim objection: that the FTB was barred by a 20-year statute which abated the collection of the 1989 income taxes. Reyes admits no state returns were filed for 1989. Reyes does not dispute that a proposed assessment was made and when it was made. Reyes' disputes concern the validity of the assessment but that is not germane to the issue of the timeliness of the claim which is the subject of Reyes' objection.

CRT § 19221(a) states that "if any taxpayer or person fails to pay any liability . . . at the time that it becomes due and payable, the amount thereof, . . . shall thereupon be a perfected and enforceable state tax lien. . . ."

CRT § 19221(b)(4) states that "for the purpose of this section, amounts are 'due and payable' on the following dates: for all other amounts of liability, the date the assessment is final."

CRT § 19255(a) states that "except as otherwise provided in subdivisions (b) and (e), after 20 years have lapsed from the date the latest tax liability for a taxable year or the date any other liability that is not associated with a taxable year becomes 'due and payable' within the meaning of Section 19221, the Franchise Tax Board may not collect that amount and the taxpayer's liability to the state for that liability is abated by reason of lapse of time."

CRT § 19255(e)(1)(A) states that "the expiration of the period of limitation on collection under this section shall be suspended for the following periods: the period during which the Franchise Tax Board is prohibited by reason of a bankruptcy case from collecting, plus six months thereafter."

FTB asserts that because Reyes' 1989 tax year liability is not based on a return or a determination under CRT §§ 19081 and 19082, but on

an NPA, and that Reyes did not protest the NPA, the "assessment" went "final" on May 14, 1999. Reyes' opposition has not so much attacked the basis for *when* the tax became due and payable, just on the admissibility of the evidence. California and Federal Court case law is sparse; this court was unable to find any cases that further defined what "the date the assessment is final" means. However, the language is not so ambiguous that case law is necessary to divine the meaning of the statute. Reyes also never opposed FTB's reliance on the statutes. The court is persuaded by FTB that the "assessment" became "final" on May 14, 1999.

Second, Reyes' opposition raises issues beyond the original objection. Reyes' objection to the FTB claim is the alleged abatement of the 1989 tax under CRT § 19225. In opposition to FTB's motion (and in support of Reyes' own motion) numerous questions concerning the validity of the claim and indeed existence of the claim were argued. Nothing in the original objection either directly or inferentially put FTB on notice of the validity of the assessment at issue. Only the alleged abatement of the tax was raised. That said, the court is aware that both parties engaged in discovery and FTB may not be "surprised" by the arguments posed by Reyes now. But opposition to a motion for summary judgment (and indeed another summary judgment motion) based on completely different theories is not the time to shift the focus of the dispute.

"Simply put, summary judgment is not a procedural second chance to flesh out inadequate pleadings." Wasco Prods. v. Southwall Techs. Inc., 435 F.3d 989, 992 (9th Cir. 2006); see also, Navajo Nation v. United States Forest Serv., 535 F.3d 1058, 1080 (9th Cir. 2008). Yet, when summary judgment contentions, arguments, and facts go beyond the theories and facts plead, the court may consider the motion (or the opposition) a request to amend the controlling pleadings which under Civil Rule 15 are liberally viewed. See Desertrain v. City of L.A., 754 F.3d 1147, 1154 (9th Cir. 2014) and Edwards v. Occidental Chem. Corp., 892 F.2d 1442, 1445 n.2 (9th Cir. 1990). Here, Reyes raises numerous factual challenges to the basis of the NPA and the validity of the procedure used by FTB in connection with the NPA. Reyes casts doubt on the factual underpinnings of the 1989 tax assessment portion of the claim. These were not raised in the objection.

The hurdle for the court here is that Civil Rule 15 (amendments) is not among the rules automatically incorporated in procedures governing contested matters. Rule 9014(c). Other than impliedly incorporating Civil Rule 16 (pre-trial conferences and orders) to which no party objected, the court's Scheduling Order (doc. #89) does not incorporate any other adversary proceeding rules. So, the court is unable to consider Reyes' opposition (and their motion) as requests to amend pleadings. But, there is a pre-trial conference set in this matter and the parties can change the focus of this dispute by stating the issues to be tried which can differ from the original objection. Civil Rule 16(d).

Third, Reyes' evidentiary challenges do not change the result. Reyes has raised many questions about the evidence relied upon by FTB. The challenges span between alleged authentication deficits to best

evidence challenges and hearsay. The court has addressed the objections elsewhere in this ruling. But even if the challenges were not overruled and all were entertained, it does not change the fact that the disputes concerning admissibility affect the weight of FTB's evidence supporting the claim for the 1989 taxes. They do not address or affect whether under the law the claim is timely.

Reyes tries to argue around this problem by asserting in reply to FTB's opposition to Reyes' motion that no tax was "due and payable" because the NPA and the process used to derive the NPA does not support the assessment. That begs the question whether the claim is valid. The argument only makes sense if the FTB claim for 1989 taxes is completely invalid. As set forth here, there are far too many factual issues to permit summary judgment on that issue now.

Reyes' Motion for Summary Judgment is Denied

Reyes has not met the initial burden of demonstrating the absence of a material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Reyes has cited numerous portions of the record which in Reyes' view establish the NPA for 1989 taxes was invalid as a matter of law. The court is not convinced. Reyes' challenges fall into three categories: (a) Lack of consistency in the FTB's assessment since it does not comport with Reyes' IRS transcript; (b) The contents of the NPA are inaccurate and cannot be attested by an FTB witness with knowledge, and; (c) Lack of support of the various income sources for 1989 (i.e., forgiveness of debt, rental income, itemized deductions). These contentions are controverted by FTB. Since they are the basis for Reyes' motion they are material to the validity of the FTB claim.

FTB claims that their assessment need not be consistent with the IRS transcript that Reyes argues should control the 1989 assessment. Also, FTB claims Reyes does not challenge that some IRS information caused the assessment for the 1989 tax year. Reyes does not dispute the IRS gave information. Reyes asks: what information? That is a material issue of fact since FTB asserts in its opposition to the claim objection, and supporting its summary judgment motion, that the IRS information was the catalyst for the assessment. Yet Reyes' evidence consisting of the IRS transcript contains different numbers than the NPA. Reconciling these – if reconciling them is necessary - is beyond the scope of a summary judgment motion. The court is left with a factual issue to be resolved at trial.

Second, Reyes' other challenges to the 1989 NPA's accuracy are controverted. Reyes points to the alleged lack of FTB's response to written discovery - document and admission requests - where Reyes asserted the 1989 NPA contained data comingled with other taxpayer data, the lack of original NPA's or authenticated copies and computer errors in FTB's data base. FTB states that it objected to those requests largely because they were outside the scope of the original claim objection. Reyes essentially asks the court to infer the inaccuracy of the NPA as a matter of law from alleged FTB non-responsiveness.

But inferences, if any, must be in favor of the FTB on Reyes' summary judgment motion. Fresno Motors LLC v. Mercedes Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014). To that end, the numerous challenges which Reyes contends show inadequacy of the assessment requires the court to draw a negative inference that the 1989 tax assessment is fatally flawed. That is not possible on a summary judgment motion. The doubts cast by the previous 1997 assessment which may have been incorrectly asserted against Reyes also require the court to make negative inferences when that is not possible against FTB on the Reyes' motion. This is true even though FTB amended the original proof of claim to eliminate the 1997 assessment – a fact which removes it from the objection but still requires a negative inference to find the 1989 assessment is invalid.

Third, Reyes' challenge that the Vaca declaration is not properly before the court is not correct. Reyes bases the challenge on the fact Vaca was not identified in discovery. But there is no order in the record on a motion to strike the testimony or any discovery sanction precluding Vaca from being a declarant. Reyes would need to show much more than a "new declarant" to exclude testimony. Since Reyes is the movant on their motion, they do not have rights to request additional discovery under Civil Rule 56(e) unless Reyes can establish they need the opportunity to depose Vaca to address the issues. Reyes has not made the request.

Besides, the facts in the Vaca declaration have either already been conceded or restate facts Reyes has already controverted. The Vaca declaration states two admitted points: Reyes has not yet filed a 1989 tax return and FTB has not recorded any liens. The controverted point is simply a restatement that the 1989 assessment was "pursuant to" information from the IRS. Reyes has already contested that fact which must be examined at trial. In short, the court cannot presently find that support for Reyes' validity arguments are hampered by the declaration.

Fourth, Reyes' challenge to the elements of their "income" in 1989 is also controverted. FTB claims it need not exclusively use income data from the IRS as their source for the reassessment. Reyes does not dispute that but instead compares the IRS transcript to the alleged "elements" of the 1989 income assessment. This brings into question the process FTB used but does not as a matter of law render the reassessment invalid. That would require a negative inference that since the IRS transcript excludes the elements of Reyes' income asserted by FTB, the assessment is erroneous. That inference is not available on this motion.

Reyes cites Wertin v. Franchise Tax Bd., 68 Cal. App. 4th 961, 80 Cal. Rptr. 2d 644 (1998) to argue that the FTB must not make an assessment arbitrarily or capriciously. FTB contends Wertin is distinguishable because there, the taxpayer filed a return. Reyes admits they did not file a state return for 1989. The relevant facts in Wertin (the case also involved remedy issues) was FTB's basing an assessment against a taxpayer without reviewing returns filed by the taxpayer or seeking an extension of the relevant statute of limitations while the taxpayer located the older returns.

True enough that Reyes did not file the 1989 return. But the critical holding in Wertin - that when returns are available an assessment cannot be issued without consulting the returns - does not assist FTB or Reyes. The case does not hold that without a return the FTB can assess (or reassess) without a rational basis. In fact, the court stated ". . . to build the taxpayer's tax return into the definition of deficiency . . . prevent[s] the kind of haphazard resort to arbitrary outside sources and inaccurate deficiency computations, as in this case. . .." Id. at 974. Reyes has not supported their summary judgment motion with uncontroverted evidence concerning deficiency calculations as was presented *at trial* in Wertin.

Fifth, even if Reyes overcomes the state law "presumption," summary judgment disallowing the claim is not appropriate. FTB claims they have the benefit of a presumption under California law that Reyes has not overcome. Cal. Evid. Code § 664 provides, in part: "[i]t is presumed that official duty has been regularly performed. . .." (See Evidence Rules 301 and 302 for the applicability of the presumption here).

This presumption is rebuttable. Coffey v. Shiomoto, 60 Cal. 4th 1198, 1206 n. 8, 185 Cal. Rptr. 3d 538, 435 P.3d 896 (2015). It merely directs the order of proof. Galbraith v. Cty. of Santa Clara, 307 F.3d 1119, 1126 (9th Cir. 2002), quoting Smiddy v. Varney, 803 F.2d 1469, 1471 (9th Cir. 1986). Reyes has the burden to establish that FTB did not regularly perform its duties. Reyes has provided evidence of that. FTB controverts the evidence. Summary judgment is not supported.

FTB's motion for summary judgment is DENIED IN PART and GRANTED IN PART. For purposes of this claim objection, partial summary judgment will be granted that the portion of Claim 2-1 amended by Claim 2-2 filed by the Franchise Tax Board relating to the 1989 taxes is not time barred under Cal. Rev. & Tax Code § 19255. Reyes' motion for summary judgment is DENIED because there are disputed material factual issues. The court is not currently ruling to allow or disallow the claim.

3. 18-11357-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
JB-1

CONTINUED MOTION FOR SUMMARY JUDGMENT
1-2-2019 [160]

FRANCHISE TAX BOARD/MV
JAMES MICHEL
JILL BOWERS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part. The court makes no findings about the validity of the claim.

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

See pre-disposition for matter #2 above.

4. 18-12371-B-7 **IN RE: AMBER CASTRO**
18-1078

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-7-2018 [1]

CASTRO V. DENNING
JOEL WINTER/ATTY. FOR PL.
DISMISSED 2/8/19

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. Doc. #10.

5. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
17-1095

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
12-28-2017 [1]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR PL.
STIPULATION AND ORDER ECF #167 CONTINUING TO 4/10/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #175.

6. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
17-1095 OHS-1

CONTINUED MOTION FOR REMAND
1-24-2018 [17]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
STIPULATION AND ORDER ECF NO. 168 CONTINUING TO 4/10/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #175.

7. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
17-1095 OHS-2

CONTINUED MOTION TO DISMISS COUNTERCLAIM AND/OR MOTION TO STRIKE
1-29-2018 [21]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
STIPULATION AND ORDER ECF NO. 169 CONTINUING TO 4/10/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #175.

8. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
17-1095 OHS-3

CONTINUED MOTION TO STRIKE
1-29-2018 [26]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
STIPULATION AND ORDER ECF NO. 170 CONTINUING TO 4/10/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #175.

9. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WW-32

CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
5-30-2018 [539]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
STIPULATION AND ORDER ECF NO. 1031 CONTINUING TO 4/10/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties. Doc. #1148.

10. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
18-1005

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-8-2018 [27]

TULARE LOCAL HEALTHCARE
DISTRICT V. HEALTHCARE
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties (doc. #93) and order dismissing this adversary proceeding (doc. #96).

11. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
18-1005 WW-1

CONTINUED MOTION FOR SUMMARY JUDGMENT
7-2-2018 [45]

TULARE LOCAL HEALTHCARE
DISTRICT V. HEALTHCARE
RILEY WALTER/ATTY. FOR MV.
STIPULATION AND ORDER ECF NO. 89 CONTINUING TO 4/10/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Resolved by stipulation of the parties (doc. #93) and order dismissing this adversary proceeding (doc. #96).