

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, March 20, 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. [18-10509](#)-B-7 IN RE: GERALDINE LARSON
[RH-2](#)

MOTION TO SELL
2-14-2019 [\[66\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN
ROBERT HAWKINS/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 200 non-exempt shares of Illinois Tool Works Inc stock ("Stock") with a fair market value of \$135.72 per share to the debtor, Geraldine Larson for a total of \$28,000.00.

It appears that the sale of the Stock 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.

2. [17-14011](#)-B-7 **IN RE: JUAN/MARIA PEREZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-5-2019 [\[51\]](#)

THOMAS GILLIS

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 April 8, 2018 at 10:00 a.m. If the debtors fail 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.

3. [18-13218](#)-B-7 **IN RE: VAN LAI**
[VKL-1](#)

MOTION TO RECONSIDER AND/OR MOTION TO RECONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
2-14-2019 [\[179\]](#)

VAN LAI/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied with prejudice.

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

This motion is DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

This motion is DENIED with prejudice.

The court must first note the procedural deficiencies relating to the Local Rules of Practice ("LBR"). This is not the first time the court has informed movant of her failure to follow appropriate procedures and advising movant to become familiar with them or hire counsel.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, LBR 9004-2(c)(1) requires that motions, declarations, *inter alia*, to be filed as separate documents. Here, the motion and declaration were combined into one document and not filed separately.

Second, the notice of hearing did not contain necessary language. LBR 9014-1(f)(1) states that motions filed on 28 days' notice require the movant to notify the respondent or respondents that any party in interest must file and serve written opposition to the motion at least 14 days prior to the hearing, or that party's

default will be entered and the court may grant the motion without a hearing

This motion was filed and served on February 14, 2019 and set for hearing on March 20, 2019. Doc. #180, 182. March 20, 2019 is at least 28 days after February 14, 2019, and therefore this hearing was set on at least 28 days' notice under LBR 9014-1(f)(1). The notice did not state whether opposition was required, and if it was, whether it could be written, or when it needed to be filed and served, and what the consequences of failing to do so would be. Because this motion was filed, served, and noticed on at least 28 days' notice, the language of LBR 9014-1(f)(1) needed to have been included in the notice.

Third, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Even if those procedural deficiencies were not present, as this court has ruled previously, this motion cannot be granted. The differences between this motion and movant's previous motion (doc. #149) are newly mentioned allegations of fraud against the debtor committed by creditors T2m Investments, LLC, Dual Arch International, Inc., and Real Estate Brokerage Coldwell Banker, both ongoing and previously committed. Doc. #179.

The court is puzzled as to why they are being brought forth now; movant does not state how she discovered these alleged fraudulent acts. Movant was also not present at the hearings the court held on the trustee's motions to sell the property at issue, despite being served with the moving papers. See doc. #167 (RH-1), doc. #173 (RH-2). The address listed in the proofs of service is "1521 South 7th Avenue, Los Banos, CA 93635," the same as listed in debtor's petition (see doc. #1) and the same as shown on this motion (doc. #179).

Movant alleges and provides some evidence that she received an offer of \$85,000.00 for "the backyard of the property" from one Carl A. Beck Jr. Doc. #175, 179. If that was the case, then why didn't Mr. Beck Jr. appear at the hearing? The court has no declaration from Mr. Beck Jr. establishing his relationship, if any, to Movant, or his ability to make the payment. Either way, the property *is not the Movant's to sell*. It is property of the estate, and the chapter 7 trustee *only* has the authority to dispose of the property as he sees fit for the benefit of the unsecured creditors. When the motion to sell was filed, served, and noticed for hearing, Movant remained silent.

The court finds that Movant was properly served with the motions to sell, that Movant failed to appear and object to those sales, and that Movant's default was entered at the hearing. It is too late now for Movant to cry foul.

The facts remain the same. The court is unable to reconvert the case, for the same reasons it previously held on February 13, 2019, one day before this motion was filed.

11 U.S.C. § 706(a) states that "the debtor may convert a case under this chapter to a case under chapter . . . 13 . . . at any time, if the case has not been converted under section . . . 1307 of this title."

11 U.S.C. § 1307 states that "the debtor may convert a case under this chapter to a case under chapter 7 of this title at any time."

The court takes judicial notice of the fact that debtor voluntarily converted to chapter 7 under § 1307(a) on September 18, 2018. Doc. #94.

Because the case was converted to chapter 13 under § 1307, pursuant to § 706(a), debtor is no longer entitled to voluntary conversion to chapter 13. See § 706 (a). The debtor's "absolute right" to convert is unavailable here because the debtor voluntarily converted this case to Chapter 7. So, the conversion of the case is subject to this court's discretion.

The bankruptcy court has the discretion to deny a debtor's request to convert a case from Chapter 7 to 13 if the record supports a finding that the debtor acted in bad faith. See § 105 (a); Marrama v. Citizens Bank of Mass., 549 U.S. 365, 373-76 (2015); Miller v. Faith (In re Miller), 696 Fed. Appx. 297 (9th Cir, 2017) [denial of conversion to Chapter 11]; Rosson v. Fitzgerald (In re Rosson), 545 F. 3d 764 (9th Cir. 2008) [no absolute right to dismiss Chapter 13 if the debtor engaged in bad faith conduct]. The underpinning premise for denying a debtor's "absolute" right to convert to Chapter 13 is the that under § 1307 a debtor may not "qualify" to be a debtor under Chapter 13 because of the debtor's bad faith conduct.

The court is constrained to find here that the debtor's actions in this case preclude a conversion to Chapter 13.

First, the debtor originally filed this case to stop a foreclosure after agreeing in settling pre-bankruptcy state court litigation to refinance or sell certain real estate within a time frame. The time frame expired, and the debtor filed this case (after a previous case was dismissed) to stop foreclosure. The debtor filed an adversary proceeding in the Chapter 13 case and sought injunctive relief preventing a foreclosure which the court denied. Then the debtor converted to Chapter 7. After the trustee was appointed and began his duties to liquidate the estate including non-exempt real estate the debtor now seeks to "re-convert" to Chapter 13 after seeking the "shelter" of Chapter 7. The debtor cannot have it both ways.

Second, the earlier case (which was also a Chapter 13) was dismissed after the Chapter 13 Trustee filed a motion to dismiss when the Chapter 13 Trustee learned that the debtor failed to list real estate she owned or co-owned in Las Vegas, Nevada. When this

debtor's secrets are exposed, then there is a quick change in the debtor's focus. This cannot be countenanced.

Third, if in fact the Trustee has one or more valid buyers for the debtor's non-exempt interests, this debtor had every right to present a higher and better offer. As previously stated, debtor failed to appear at the hearings on the motions to sell and forfeited that right.

Fourth, the evidence accompanying this motion is bare. The declaration raises general allegations of fraud with only a "Vacant Land Purchase Agreement and Joint Escrow Instructions" ("Purchase Agreement") from Carl A. Beck Jr. Doc. #179. The date on the Purchase Agreement is December 4, 2018, and escrow was to close on December 19, 2018. As those dates were during this bankruptcy case after it was converted to chapter 7, the Debtor was not the one authorized to sell that property - the right to sell is owned by the chapter 7 trustee.

Fifth, the debtor has inconsistently asserted her claims against the lenders. She did not list any claim against them in her schedules. Doc. #66. The trustee has not abandoned any interest in the claims the debtor now asserts. She is not the proper party to assert such claims.

Therefore, this motion is DENIED WITH PREJUDICE.

The court notes creditor T2M Investments LLC's opposition (doc. #186) and debtor's declaration in support (doc. #204).

4. [18-12023](#)-B-7 **IN RE: CARLOS PADILLA**
[SL-1](#)

MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
2-13-2019 [\[59\]](#)

SCOTT LYONS

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.

A Motion to Extend the Automatic Stay was previously filed on May 25, 2018 (doc. #9) and the court granted the motion on June 14, 2018

(doc. #22). The DCN for that motion was SL-1. This motion also has a DCN of SL-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

5. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[JCW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2018 [\[11\]](#)

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
DAVID JENKINS
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

6. [18-15144](#)-B-7 **IN RE: LISA LOPEZ**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-1-2019 [\[17\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
WILLIAM EDWARDS
DANIEL FUJIMOTO/ATTY. FOR MV.
DISMISSED 2/10/19

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

An order dismissing the case was entered on February 10, 2019
(Docket No. 25). This motion will be dropped as moot.

7. [19-10152](#)-B-7 **IN RE: JASON CASTOR AND MAYRA VAZQUEZ CASTOR**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2019 [\[14\]](#)

SANTANDER CONSUMER USA INC./MV
SCOTT LYONS
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2016 Chrysler 200. Doc. #19. The collateral has a value of \$15,300.00 and debtor owes \$29,976.99. *Id.*

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

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

8. [18-14459](#)-B-7 **IN RE: STEPHEN/JULIE KNIGHT**
[UST-1](#)

MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER
SEC. 707(B) AND/OR MOTION TO EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
2-7-2019 [\[36\]](#)

TRACY DAVIS/MV
MARK ZIMMERMAN
ROBIN TUBESING/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #44.

9. [18-14761](#)-B-7 **IN RE: MYLENE RUCKER**
[GCL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-6-2019 [\[16\]](#)

UMPQUA BANK/MV
CRYSTLE LINDSEY
GEORGE LAZAR/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii). The court also notes that the moving papers were not properly served on the U.S. Trustee.

10. [18-13767](#)-B-7 **IN RE: TED/BILLIE JACOBSEN**
[JES-1](#)

MOTION TO SELL
2-7-2019 [\[23\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN
JAMES SALVEN/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 six firearms ("Firearms") to the Debtors, subject to higher and better bids at the hearing, for a total of \$1,500.00. The firearms are a Ruger .22 auto pistol, a Winchester 30/30, a Ruger .22 10/22, an 8045 Mini Cougar, a 22/45 Ruger pistol, and a Higgins 20 gauge pump shotgun. Doc. #23.

It appears that the sale of the Firearms 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.

11. [18-14970](#)-B-7 **IN RE: KENNETH CHAVEZ**
[EPE-1](#)

MOTION FOR RETURN OF EXEMPT LEVIED FUNDS AND/OR MOTION FOR
AVOIDANCE OF PREFERENTIAL TRANSFER OF EXEMPT PROPERTY IN THE
POSSESSION OF THE KINGS COUNTY SHERIFF'S OFFICE
2-20-2019 [\[15\]](#)

KENNETH CHAVEZ/MV
ERIC ESCAMILLA

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted. Continued to May 1,
2019 at 9:30 a.m.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. 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 CONDITIONALLY GRANTED. Debtor asks this court for an order requiring the Kings County Sheriff's Office to surrender the exempt Levied Funds in the amount of \$771.54. Doc. #15. There is no opposition.

The Kings County Sheriff's Office levied on debtor's bank account with the Kings County Federal Union in the amount of \$771.54 on December 5, 2018, nine days prior to filing bankruptcy.

Debtor is seeking to preserve his exemption in the levied funds by invoking 11 U.S.C. § 522(g) and/or by exercising the trustee's avoiding powers under 11 U.S.C. § 522(h). Debtor also has the private right of action to seek redress under 11 U.S.C. § 362(k)(1).

11 U.S.C. §§ 522(g) and (h) provide:

- (g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—
 - (1)
 - (A) such transfer was not a voluntary transfer of such property by the debtor; and
 - (B) the debtor did not conceal such property; or
 - (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.
- (h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—
 - (1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and
 - (2) the trustee does not attempt to avoid such transfer.

11 U.S.C. § 362(k) provides:

- (k)
 - (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
 - (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

The levied funds in question may be property of the estate. See Collect Access LLC v. Hernandez (In re Hernandez), 483 B.R. 713, 725 (9th Cir. BAP 2012). In Hernandez, which is factually similar to

this case, the court held that the bankruptcy court "had the authority to enter an order requiring [plaintiff] to surrender the funds to debtor under § 105(a)." Id. at 726. "Once the property came into the estate, it reverted in debtor when his exemption claim went unchallenged." Id.

The court is unable to find the \$771.54 is exempt and is able to revert to the debtor because debtor did not actually amend Schedules A/B and C on February 11, 2019 per the motion and declaration. Doc. #15, 17. The court reviewed the docket and could not find the amended schedules. The court does see a Certificate of Service (doc. #14), showing that the amended Schedules, *inter alia*, were sent to James Salven and the "United States Bankruptcy Trustee," which the court assumes is the United States Trustee's Office.

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

Debtor must refile the amended Schedules not later than March 27, 2019. If no party in interest objects within the 30 day timeframe, the court will then call the motion at the continued hearing.

12. [19-10529](#)-B-7 **IN RE: BRENT/CHRISTINA KUTZBACH**
[FW-2](#)

MOTION TO SELL AND/OR MOTION TO APPROVE STIPULATION
3-12-2019 [\[16\]](#)

JAMES SALVEN/MV
PETER BUNTING
PETER FEAR/ATTY. FOR MV.
OST 3/12/19

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)(3) and an order shortening time (doc. #22) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

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 bicycle shop known as Steven's Bicycle shop along with all equipment, supplies, and inventory ("Bicycle Shop") for that shop to debtors pursuant to a stipulation and subject to higher and better bids at the hearing, for \$20,000.00. Doc. #16. Some of the assets of the Bicycle Shop are encumbered by secured claims and debtors agreed to take the assets subject to the secured claims and understand that no part of the sale price will be used to reduce the secured claims. This is not a sale free and clear of liens under 11 U.S.C. § 363(f).

The debtors claimed a homestead exemption in the amount of \$100,000. The trustee is planning on selling debtor's residence located at 1883 N. Douglas Avenue in Clovis, CA 93619. Debtors and the trustee have entered into a "Stipulation to Use Exemption Proceeds From Sale Of Homestead To Pay For Purchase Of Business From Estate" ("Stipulation") whereby the purchase price for the Bicycle Shop shall come from the homestead exemption. Pursuant to the Stipulation, debtors will not be required to reinvest the remaining exemption proceeds as normally required under In re Jacobson, 676 F.3d 1193, 1200 (9th Cir. 2012).

It appears that the sale of the Bicycle Shop 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. The stipulation is approved.

Any party wishing to overbid must deposit with the trustee certified monies in the amount of \$10,000.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof of the financial ability to close the sale within 15 days of the delivery of a certified copy of the Court's order approving the sale and can execute a purchase agreement for the Bicycle Shop. Overbidders must be present at the hearing, make overbids in the

amount of \$2,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

The 14-day stay on the sale under Federal Rule of Bankruptcy Procedure 6004(h) is waived.

11:00 AM

1. [19-10315](#)-B-7 **IN RE: YOLANDA QUINTANA**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL
SERVICES, INC.
2-27-2019 [\[12\]](#)

NO RULING.

2. [18-14733](#)-B-7 **IN RE: ROGER PITTMAN**

REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC
2-14-2019 [\[18\]](#)

MARK ZIMMERMAN

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

3. [19-10055](#)-B-7 **IN RE: JUANA CORIA**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
2-26-2019 [\[16\]](#)

NO RULING.

4. [18-14881](#)-B-7 **IN RE: JESSICA CORTEZ**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE
CORP.

2-27-2019 [[32](#)]

NO RULING.

1:30 PM

1. [19-10001](#)-B-7 **IN RE: ALLAN CORONA**
[19-1014](#)

STATUS CONFERENCE RE: COMPLAINT
1-18-2019 [\[1\]](#)

CORONA V. CACH, LLC
TIMOTHY SPRINGER/ATTY. FOR PL.
DISMISSED 3/1/19

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. #8.

2. [18-13802](#)-B-7 **IN RE: ELVIA OLIVA**
[18-1080](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-19-2018 [\[1\]](#)

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

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

DISPOSITION: Continued to May 1, 2019 at 1:30 p.m. subject to
being re-set.

ORDER: The court will issue an order.

The court notes that a request for entry of default was made by
plaintiff's counsel on February 7, 2019. Doc. #10.

However, the default cannot be entered at this time because the
proof of service for the summons and complaint (doc. #6) only shows
that the plaintiff served the summons and complaint on defendant's
attorney, and not the defendant themselves. That is not in
compliance with Federal Rule of Bankruptcy Procedure 7004(a)(9).

Plaintiff must obtain a new summons and re-serve the summons and
complaint, within the time frame proscribed under Fed. R. Bankr. P.
7004(3), on both the defendant AND their attorney.

If the clerk sets a new date for the status conference, this status
conference will be continued to the new date.

3. [18-13218](#)-B-7 **IN RE: VAN LAI**
[18-1056](#)

CONTINUED ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING
11-15-2018 [\[21\]](#)

LAI V. T2M INVESTMENTS, LLC ET AL
RESPONSIVE PLEADING

NO RULING.

4. [18-13218](#)-B-7 **IN RE: VAN LAI**
[18-1056](#) [JES-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH DUAL ARCH INTERNATIONAL
2-8-2019 [\[32\]](#)

LAI V. T2M INVESTMENTS, LLC ET AL

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 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 claimant T2M investments, LLC ("T2M") and its foreclosure company Dual Arch International Inc. ("DAI") (collectively "Defendants").

Under the terms of the compromise, Defendants will pay \$2,500.00 to the estate in settlement of this adversary litigation and all past, present and future claims which could be advanced by the chapter 7 trustee James Salven on behalf of debtor Nicole aka Lai shall be deemed to be fully discharge, resolved, terminated such that neither Debtor nor the bankruptcy estate, nor any Trustee assigned to Debtor's case currently or in any further case in the future may initiate or prosecute any claim of action between Defendants, inter alia. The entire settlement agreement is contained in exhibit 1, doc. #36.

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 Debtor has vigorously litigated her claims in numerous other courts at different times; collection will be very easy as the amount is relatively small and Defendants are large corporations with revenues and funds with which to easily pay the amount; the litigation is complex because it revolves around disputed factual and legal issues 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.

The court notes debtor Van Kim Lai's late filed opposition. The opposition is struck pursuant to LBR 9014-1(1).

5. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[17-1044](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-3-2017 [\[17\]](#)

LANGSTON ET AL V. INTERNAL
REVENUE SERVICE
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 24, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to be heard concurrently with the continued motion for summary judgment.

6. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[17-1044](#) [FW-2](#)

CONTINUED MOTION FOR SUMMARY JUDGMENT
11-30-2018 [\[62\]](#)

LANGSTON ET AL V. INTERNAL
REVENUE SERVICE
GABRIEL WADDELL/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 24, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Before the court can rule on this motion, it must first rule on defendant's motion to dismiss on jurisdictional grounds. This matter is therefore continued to April 24, 2019 at 1:30 p.m. The court will issue the order.

7. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[17-1044](#) [US-1](#)

CONTINUED MOTION TO DISMISS PAUL LANGSTON'S AND KATHLEEN
LANGSTON'S CLAIM FOR ATTORNEY'S FEES
11-20-2018 [[55](#)]

LANGSTON ET AL V. INTERNAL
REVENUE SERVICE
JONATHAN HAUCK/ATTY. FOR MV.

NO RULING.

8. [18-14160](#)-B-7 **IN RE: BRYAN ROCHE**
[19-1013](#)

STATUS CONFERENCE RE: COMPLAINT
1-17-2019 [[1](#)]

VANDENBERGHE V. ROCHE
DAREN SCHLECTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.