

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 9, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

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

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

9:30 AM

1. [11-19905](#)-B-7 **IN RE: RICHARD MCINTYRE**
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH RICHARD ALLEN MCINTYRE
4-9-2018 [\[33\]](#)

JAMES SALVEN/MV
TIMOTHY SPRINGER
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 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.

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 stipulation setting the debtor's exemption in a wrongful death lawsuit to 20% of the net proceeds, if any.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the case law surrounding this type of issue is uncertain; collection will be very easy because the stipulation provides that the trustee will be paid the net proceeds, if any, from which the debtor may claim 20% as exempt; the litigation is not complex, but approval of the stipulation would erase the threat of an adverse determination against the estate; 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.

2. [15-13712](#)-B-7 **IN RE: LEO LOOZA**
[JDW-6](#)

MOTION TO AVOID LIEN OF CACH, LLC
4-25-2018 [[64](#)]

LEO LOOZA/MV
JOEL WINTER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion/objection.

3. [17-13414](#)-B-7 **IN RE: JOHN/ELVIRA LOPES**
[MW-1](#)

MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE
3-29-2018 [\[53\]](#)

AMTRUST NORTH AMERICA, INC./MV
RILEY WALTER
ERIC TSAI/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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.

LBR 9004-2(c)(1) and 9014-1(d) require that, with one exception not applicable here, motions, notices, *inter alia*, be filed as separate documents. Here, the motion and notice were combined into one document and not filed separately.

4. [18-10714](#)-B-7 **IN RE: JENNIFER KNIGHT**
[RSW-1](#)

MOTION TO AVOID LIEN OF LVNV FUNDING, LLC
3-27-2018 [\[10\]](#)

JENNIFER KNIGHT/MV
ROBERT WILLIAMS
RESCHEDULED FROM 6/7/18 WITHOUT AN ORDER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without 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 WITHOUT PREJUDICE. 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). The court notes that the creditor, Wells Fargo Bank, N.A. withdrew their opposition on April 25, 2018. Doc. #42.

A judgment was entered against the debtor in favor of LVNV Funding, LLC for the sum of \$51,856.31 on January 30, 2007. Doc. #13, ex. D. The abstract of judgment was recorded with Kern County on May 22, 2007. *Id.* It was timely renewed on January 25, 2017. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The subject real property had an approximate value of \$89,653.00 as of the petition date. Doc. #1, Schedule A/B.

The debtor claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a) requires one of three elements in order for the exemption to apply - the person must be 65 years of age or older; physically or mentally disabled, and as a result of that disability, is unable to engage in substantial gainful employment; and a person 55 years of age or older with a gross annual income of not more than \$25,000 if unmarried, of a joint gross annual income of not more than \$35,000. None of the evidence filed with the motion supported the allowance of this exemption. Debtors have that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If the debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

5. 11-14820-B-7 **IN RE: JAMES/MARJORIE YOUNGBLOOD**
TMT-1

MOTION TO EMPLOY EZRA N. GOLDMAN AS ASSET RECOVERY
SPECIALIST
4-11-2018 [69]

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

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

DISPOSITION: Granted.

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

This motion has been 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.

Trustee is authorized to employ Ezra N. Goldman as an asset recovery specialist. The trustee proposes to compensate Ezra N. Goldman on a percentage collected basis. The percentage is one third of the net recovery, which includes expenses. Doc. #72, p.2. 11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis." The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

The motion is GRANTED.

6. 15-13932-B-7 **IN RE: VICTOR PASNICK**
DSH-8

OBJECTION TO CLAIM OF CAROL BRECKENRIDGE, CLAIM NUMBER 7
3-27-2018 [337]

RAY BERGMAN/MV
PETER FEAR
DAVID HAMILTON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

This objection is OVERRULED WITHOUT PREJUDICE. 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).

The evidence included with this objection does not sufficiently rebut the presumption of validity of a proof of claim under Federal Rules of Bankruptcy Procedure 3001(f). Rule 3001(f) states "a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."

The evidence attached with the motion was a declaration from movant's attorney and two exhibits, which were just the claim itself. Doc. #339, 340. The declaration states that the counsel reviewed the claim and that the claim, *inter alia*, lacks sufficient documentation to show that there was an agreement with the Debtor, that any such payments were actually made on behalf of Debtor to any alleged creditor, and that portions of the amounts asserted by Claimant are unenforceable under the laws of the State of California. Doc. #339. "A bare statement that there is lack of documentation is insufficient as a matter of evidentiary burden to destroy the presumption." In re Cluff, 313 B.R. 323, 337 n. 47 (Bankr. D. Utah 2004).

The claim, which objector submits as an exhibit, lists the payments allegedly made by the claimant on behalf of the debtor. The grounds for objection include the alleged failure of the claimant to account for an alleged credit. Yet, no proof of payment accompanied the objection. The statute of limitations and statute of frauds defenses are not adequately raised or proved to rebut the presumption of claim validity.

Movant makes five objections (§§4-8), yet provides no authority on which those objections rest, and the court will not search for such authority sua sponte. These bare assertions are not sufficient to rebut the presumption of validity described in Fed. R. Bankr. P. 3001(f), and therefore this objection is OVERRULED WITHOUT PREJUDICE.

7. [10-10544](#)-B-7 **IN RE: JUAN OROZCO MACIEL**
[TPH-6](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY LLC
4-24-2018 [\[58\]](#)

JUAN OROZCO MACIEL/MV
THOMAS HOGAN

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without 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 WITHOUT PREJUDICE. 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). The court notes that the creditor, Wells

Fargo Bank, N.A. withdrew their opposition on April 25, 2018. Doc. #42.

A judgment was entered against the debtor in favor of Ford Motor Credit Company LLC for the sum of \$3,621.81 on December 23, 2008. Doc. #62, ex. 4. The abstract of judgment was recorded with Merced County on February 20, 2009. *Id.* That lien attached to the debtor's interest in a residential real property in Merced, CA. The subject real property had an approximate value of \$150,000.00 as of the petition date. Doc. #1, Schedule A/B.

The debtor claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 in amended Schedule C. Docket #28.

In order to be eligible for the exemption under Cal. Civ. Proc. Code § 703.140(b)(1), the real property must be used as a residence. None of the evidence filed with the motion supported the allowance of this exemption. Debtor's declaration simply states that the subject property located at 2939 Balsam Way, Merced, CA is "my real property." Doc. #60. The court notes that the street address listed in the petition is the same address debtor lists in his declaration. Doc. #1, #60. However, the court is not required to go through the previous filings, because a debtor has that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

8. [10-10544](#)-B-7 **IN RE: JUAN OROZCO MACIEL**
[TPH-7](#)

MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION
SERVICE, INC.
4-24-2018 [[64](#)]

JUAN OROZCO MACIEL/MV
THOMAS HOGAN

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without 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 WITHOUT PREJUDICE. 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). The court notes that the creditor, Wells Fargo Bank, N.A. withdrew their opposition on April 25, 2018. Doc. #42.

A judgment was entered against the debtor in favor of Northern California Collection Service, Inc. for the sum of \$21,052.53 on June 9, 2009. Doc. #68, ex. 4. The abstract of judgment was recorded with Merced County on June 29, 2009. *Id.* That lien attached to the debtor's interest in a residential real property in Merced, CA. The subject real property had an approximate value of \$150,000.00 as of the petition date. Doc. #1, Schedule A/B.

The debtor claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 in amended Schedule C. Docket #28.

In order to be eligible for the exemption under Cal. Civ. Proc. Code § 703.140(b)(1), the real property must be used as a residence. None of the evidence filed with the motion supported the allowance of this exemption. A debtor has that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Debtor's declaration simply states that the subject property located at 2939 Balsam Way, Merced, CA is "my real property." Doc. #66. Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

9. 18-10645-B-7 **IN RE: EVITA FROST**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-4-2018 [12]

JPMORGAN CHASE BANK, N.A./MV
NEIL SCHWARTZ
ALEXANDER LEE/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 request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

The proposed order shall specifically describe the property or action to which the order relates.

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).

10. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-10](#)

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
4-25-2018 [\[96\]](#)

FRANCES ALARCON/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE. 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).

The court notes that the declaration filed in support of the motion does not state clearly how the debtor is entitled to their claimed exemption in property located on Grove Avenue in Fresno, CA. Doc. #98. Debtor has that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* The declaration states that debtor owns the property; not that they reside there or resided there when the petition was filed. The court did review the

petition filed in 2011 (FRE 201) and notes the 5838 E Grove Avenue Street address was the address on the petition. However, the court is not required to marshal the facts for a moving party. The motion is DENIED WITHOUT PREJUDICE.

This is the third time this motion has been denied without prejudice and the second time, in two weeks' time no less, it has been denied for failure to show entitlement to the exemption. See TCS-7 (doc. #94). If the debtor prosecutes this motion again and it is denied for the same reason, the court will exercise its powers under 11 U.S.C. § 105, Federal Rule of Civil Procedure 41(b) (applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c)), and LBR 9014-1(l) and dismiss the motion with prejudice.

This motion is DENIED WITHOUT PREJUDICE.

11. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-11](#)

MOTION TO AVOID LIEN OF CAPITAL COLLECTIONS, LLC
4-25-2018 [[101](#)]

FRANCES ALARCON/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE. 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).

The court notes that the declaration filed in support of the motion does not state clearly how the debtor is entitled to their claimed exemption in property located on Grove Avenue in Fresno, CA. Doc. #103. Debtor has that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* The declaration states that debtor owns the property; not that they reside there or resided there when the petition was filed. The court did review the petition filed in 2011 (FRE 201) and notes the 5838 E Grove Avenue Street address was the address on the petition. However, the court is not required to marshal the facts for a moving party. The motion is DENIED WITHOUT PREJUDICE.

This is the third time this motion has been denied without prejudice and the second time, in two weeks' time no less, it has been denied for failure to show entitlement to the exemption. See TCS-8 (doc. #95). If the debtor prosecutes this motion again and it is denied for the same reason, the court will exercise its powers under 11 U.S.C. § 105, Federal Rule of Civil Procedure 41(b) (applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c)), and LBR 9014-1(1) and dismiss the motion with prejudice.

This motion is DENIED WITHOUT PREJUDICE.

12. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-9](#)

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
4-25-2018 [[106](#)]

FRANCES ALARCON/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

A judgment was entered against the debtor in favor of Commercial Trade, Inc. in the sum of \$3,700.70 on August 4, 2011. Doc. #109. The abstract of judgment was recorded with Fresno County on September 23, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$229,999.41 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$229,299.94 on that same date, consisting of a first deed of trust in favor of Indy Mac Mortgage Services (docket #1, Schedule D) and a second deed of trust in favor of Bank of America, N.A. Doc. #106. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.130(b)(5) in the amount of \$769.45. Docket #54.

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

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

13. [18-10964](#)-B-7 **IN RE: JEFFERY MANNING**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-19-2018 [\[5\]](#)

JEFFERY MANNING/MV
JEFFERY MANNING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without 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 WITHOUT PREJUDICE. 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).

Official Form 107, Statement of Financial Affairs for Individuals Filing for Bankruptcy, shows that debtor is married. Doc. #1, p. 44. However, the schedules show no information about this debtor's spouse's income, and therefore the court is unable to evaluate whether applicant qualifies for waiver of the chapter 7 filing fee. Even though the debtor's spouse did not join in this case, that spouse's income must be included in the schedules filed in bankruptcy cases.

Debtor must appear at this hearing and explain to the court if his non-filing spouse has an income, what that income is, and why this motion should be granted and the chapter 7 filing fee waived.

14. [18-10176](#)-B-7 **IN RE: EDWARD CHAVEZ**
[TMT-1](#)

MOTION TO SELL
4-11-2018 [[14](#)]

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

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

DISPOSITION: Granted.

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

The motion was fully noticed in compliance with the Local Rules of Practice and no opposition was filed. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. It appears that the sale is a reasonable exercise of the trustee's business judgment. If anyone other than debtor successfully bids on the firearms, the bidder must undergo and pass a background check from a licensed gun dealer prior to the transfer of the firearms at the bidder's cost. The trustee shall submit a proposed order after the hearing.

The 14-day stay under Federal Rule of Bankruptcy Procedure 6004(h) shall be waived.

15. [17-14881](#)-B-7 **IN RE: KARI/SARAH CONWAY**
[TCS-1](#)

MOTION TO DELAY DISCHARGE
3-31-2018 [\[16\]](#)

KARI CONWAY/MV
TIMOTHY SPRINGER

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

16. [14-14593](#)-B-7 **IN RE: WAYNE HEAD**
[WHL-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GILMORE MAGNESS
JANISSE SPECIAL COUNSEL(S)
3-29-2018 [\[225\]](#)

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 has been 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.

The law offices of Gilmore, Magness, and Janisse shall be awarded fees of \$5,837.00 and costs of \$1,006.75.

17. [17-13296](#)-B-7 **IN RE: LARRY CHAMPAGNE**
[DRJ-4](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
3-27-2018 [\[52\]](#)

LARRY CHAMPAGNE/MV
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 has been 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.

This motion is GRANTED. This motion was brought under Fed. R. Bankr. P. 4004(b) and 4007(c), which both require the court to find "cause" in order to extend the time to object to discharge (4004(b)) and to file a complaint under 11 U.S.C. § 523(c) to determine dischargeability (4007(c)). The four "cause" factors which a court should consider are: (1) whether the moving party had sufficient notice of the deadline and information to file an objection; (2) the complexity of the case; (3) whether the moving party has exercised diligence; and (4) whether the debtor has been uncooperative or acted in bad faith. In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011), citing In re Nowinski, 291 B.R. 302 (Bankr. S.D.N.Y. 2003).

Here, the moving party has had sufficient notice of the deadline and information to file an objection - movant "is fully prepared to commence an adversary proceeding against debtor." Docket #45, ¶3. The case is not complex, and debtor's counsel believes that he will be able to meet the clear and convincing standard to rebut the presumption that the property is community property and satisfy the chapter 7 trustee without having to go to trial. Doc. #52. The moving party has exercised diligence, and the debtor has been cooperative and not acted in bad faith. Movant and debtor participated in BDRP in good faith, have mutually agreed on a settlement agreement, and debtor is actively working to meet the terms of the agreement in order to avoid an adversary proceeding.

Movants have been diligent in their efforts as evidenced by their completion of BDRP; both parties are requesting this extension so there is no inconvenience to the opposing party nor the court; and while the movant may not suffer harm if the bankruptcy court denied this motion, it would not be in the best interests of the movants.

Therefore this motion is GRANTED and the deadline is extended to May 16, 2018.

11:00 AM

1. [18-10240](#)-B-7 **IN RE: ROBERT/ANNA BUCHANAN**

REAFFIRMATION AGREEMENT WITH HARLEY-DAVIDSON CREDIT CORP
4-11-2018 [[14](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' 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 debtors' 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.

2. [17-14565](#)-B-7 **IN RE: ROYAL/PATRICIA GOODMAN**

PRO SE REAFFIRMATION AGREEMENT WITH COLONIAL SAVINGS, F.A.
3-30-2018 [[42](#)]

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

1:30 PM

1. [11-15871](#)-B-13 **IN RE: RANDY/PATRICIA BOYD**
[17-1082](#)

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

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

NO RULING.

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

STATUS CONFERENCE RE: NOTICE OF REMOVAL
4-10-2018 [[1](#)]

SPECIALTY LABORATORIES, INC.
V. HCCA TULARE REGIONAL
UNKNOWN TIME OF FILING/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.