

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, June 6, 2019
Place: Department B – 510 19th Street
Bakersfield, 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.

Here, the chapter 13 trustee ("Trustee") has requested dismissal for unreasonable delay by the debtor that is prejudicial to creditors by failing to provide necessary and requested documents to the trustee's office. Doc. #24. Trustee states that debtors have not filed a complete and accurate Schedule A/B. Doc. #26. Specifically, "Debtors failed to list values of timeshares listed on Schedule A/B." Id.

Debtor timely opposed, stating that an amended Schedule A/B was filed on April 24, 2019. Doc. #37. The court takes judicial notice that that document was indeed filed on April 24, 2019. Doc. #28.

Unless this matter is withdrawn prior to the hearing, it will be called to allow Trustee to explain to debtors and the court why the amended schedule A/B is deficient. If the problem persists, the court may grant the motion.

3. [19-11024](#)-B-13 **IN RE: MARY HENDRIX**
[PK-2](#)

OBJECTION TO CLAIM OF PINNACLE CREDIT SERVICES, LP/RESURGENT
CAPITAL, LP, CLAIM NUMBER 1
4-10-2019 [\[25\]](#)

MARY HENDRIX/MV
PATRICK KAVANAGH
STIPULATION

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

DISPOSITION: Dropped from calendar.

ORDER: Movant will submit a proposed order.

Resolved by stipulation of the parties. Doc. #34.

4. [19-10826](#)-B-13 **IN RE: ERICK JOHNSON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-2-2019 [\[22\]](#)

PATRICK KAVANAGH

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

DISPOSITION: Continued to July 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than

June 18, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by June 25, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 25, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. [18-14036](#)-B-13 **IN RE: JEFFREY/ELIZABETH MILLER**
[LKW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR
LEONARD K. WELSH, DEBTORS ATTORNEY(S)
5-14-2019 [\[39\]](#)

LEONARD WELSH

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. Movant is awarded \$1,145.00 in fees and \$31.00 in costs.

6. [19-10244](#)-B-13 **IN RE: DEBORAH HIDALGO**
[MHM-3](#)

MOTION TO DISMISS CASE
5-3-2019 [\[28\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on May 24, 2019.
Doc. #37.

7. [19-10948](#)-B-13 **IN RE: AIMEE MOREHEAD**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHEAL H. MEYER
5-2-2019 [\[15\]](#)

ROBERT WILLIAMS

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

DISPOSITION: Continued to July 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee has filed a detailed objection to the debtor's chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or the trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than June 18, 2019. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The trustee shall file and serve a reply, if any, by June 25, 2019.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 25, 2019. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

8. [18-14560](#)-B-13 **IN RE: MATTHEW/ANGELA WANTA**
[MHM-3](#)

MOTION TO DISMISS CASE
5-9-2019 [\[76\]](#)

MICHAEL MEYER/MV
PATRICK KAVANAGH
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 2, 2019 at 9:00 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee contends that the case should be dismissed under 11 U.S.C. § 1307(c) for unreasonable delay by the debtor that is prejudicial to creditors because debtors have failed to confirm a chapter 13 plan. Doc. #76. The court notes that the case has been pending for almost seven months at this point with no plan confirmed.

Debtors timely responded, stating that a motion to confirm a chapter 13 plan is set for hearing on July 2, 2019. Therefore this motion is continued to that date to be heard in conjunction with the motion to confirm plan. If the motion to confirm plan is granted, this motion will be denied. If the motion to confirm plan is not granted, than this motion may be granted.

9. [19-10367](#)-B-13 **IN RE: GARY GOODMAN**
[MHM-2](#)

MOTION TO DISMISS CASE
5-7-2019 [\[39\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount

of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to provide the trustee with all of the required documentation. Accordingly, the case will be dismissed.

10. [14-14071](#)-B-13 **IN RE: THEODORE/DEBRA PORWOLL**
[LKW-6](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
5-14-2019 [\[79\]](#)

LEONARD WELSH

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. Movant is awarded \$1,230.00 in fees and \$1.80 in costs.

11. [19-10476](#)-B-13 **IN RE: BRIAN NELSON**
[MHM-2](#)

MOTION TO DISMISS CASE
4-12-2019 [\[18\]](#)

MICHAEL MEYER/MV
THOMAS MOORE

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to provide the trustee with all of the required documentation, failed to file tax returns for the year 2018, failed to file complete and accurate Schedule H, and failed to provide Credit Counseling Certificate. Accordingly, the case will be dismissed.

12. [18-15081](#)-B-13 **IN RE: OSCAR/MELISSA GARZA**
[MHM-3](#)

MOTION TO DISMISS CASE
4-18-2019 [\[68\]](#)

MICHAEL MEYER/MV
WILLIAM OLCOTT

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtors failed to confirm a Chapter 13 Plan. The court denied the debtors' motion to confirm plan at the hearing on May 30, 2019. 11 U.S.C. § 1307(c). Accordingly, the case will be dismissed.

13. [18-15081](#)-B-13 **IN RE: OSCAR/MELISSA GARZA**
[MHM-4](#)

MOTION TO DISMISS CASE
5-8-2019 [\[84\]](#)

MICHAEL MEYER/MV
WILLIAM OLCOTT
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case is dismissed on matter #12 above, MHM-3. Doc. #68.

14. [19-10982](#)-B-13 **IN RE: JERRY HILDRETH**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-6-2019 [\[14\]](#)

NIMA VOKSHORI

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor filed a modified plan. Doc. #22.

15. [19-10982](#)-B-13 **IN RE: JERRY HILDRETH**
[MHM-2](#)

MOTION TO DISMISS CASE
5-6-2019 [\[17\]](#)

MICHAEL MEYER/MV
NIMA VOKSHORI

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The debtor failed to file 521(a)(1)(B)(v) statement and failed to file tax returns for the year 2017 and 2018. Accordingly, the case will be dismissed.

16. [19-10790](#)-B-13 **IN RE: HORTENCIA SOLIS**
[MHM-2](#)

MOTION TO DISMISS CASE
5-3-2019 [\[18\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally denied.

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

The chapter 13 trustee's ("Trustee") motion to dismiss is
CONDITIONALLY DENIED.

Trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) because debtor failed to appear at the § 341 meeting scheduled for April 30, 2019 at 10:00 a.m. in Bakersfield, CA and because debtor has failed to file tax returns under 11 U.S.C. § 521(e)(2)(A)(B). Failure to provide tax returns seven days prior to the § 341 meeting requires the court to dismiss the case. See 11 U.S.C. §§ 1308(a); 1307(e).

Debtor timely opposed. The Debtor did not explain the absence from the § 341 meeting but promised to appear at the continued § 341 meeting on June 11, 2019. Debtor also stated that no tax returns were filed for the last four years "due to lack of income." Doc. #24. Debtor has remained unemployed in 2019. Id. Because Debtor did not attend the § 341 meeting, the trustee has yet to question Debtor on that matter.

Debtor shall attend the meeting of creditors rescheduled for June 11, 2018 at 10:00 a.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

10:00 AM

1. [19-11231](#)-B-7 **IN RE: TIFFANY MOSCATO**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-23-2019 [\[15\]](#)

FORD MOTOR CREDIT COMPANY/MV
R. BELL
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable non-bankruptcy 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 Ford Fusion. Doc. #19. The collateral has a value of \$16,088.00 and debtor owes \$21,381.94. *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).

2. [16-14447](#)-B-7 **IN RE: JEFFREY/ELIZABETH GIBSON**
[LNH-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH BOART LONGYEAR COMPANY, AND MOTION FOR
COMPENSATION BY THE LAW OFFICE OF PACIFIC ATTORNEY GROUP FOR
MIKE HOLLOMON, SPECIAL COUNSEL(S)
5-8-2019 [\[41\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ
LISA HOLDER/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 chapter 7 trustee ("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.

Trustee requests approval of a settlement agreement between the estate and Boart Longyear Company ("Boart"). The claim was precipitated when Boart negligently operated a crane equipped with a chain sling with lifting hooks, which struck debtor Jeffrey Gibson.

The settlement was reached pursuant to a mediation with Craig McCollum, a San Luis Obispo mediator.

Under the terms of the compromise, Boart will pay \$350,000.00 to Trustee in exchange for Trustee releasing the claim against Boart. After payment of certain fees associated with the litigation, estimated to be \$154,352.14, Trustee expects the estate to net approximately \$195,647.86

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 Boart has vigorously denied the extent of debtor's injuries; collection will likely be easy because Boart appears to have the resources to pay the settled amount and also appears to have insurance which should cover at least a portion of the amount; the litigation is factually intensive and complex 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. The 14-day stay under Federal Rule of Bankruptcy Procedure 7062 is waived.

Counsel having been appointed under 11 U.S.C. § 328(a) and the court having been provided no reason why counsel's proposed compensation is improvident due to recent developments, Trustee is authorized to pay Pacific Attorney Group \$140,000.00 in fees and \$14,352.14 in costs for a total of \$154,352.14.

3. 17-11647-B-7 **IN RE: WILLIAM/APRIL BLEVINS**
JSP-4

MOTION TO AVOID LIEN OF CITIBANK
5-9-2019 [43]

WILLIAM BLEVINS/MV
JOSEPH PEARL

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. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

Two judgments were entered against the debtor, both in favor of Citibank, N.A. The first was entered in the sum of \$2,751.08 on January 27, 2017, and the second was entered in the sum of \$6,680.66. Doc. #46. The abstracts of judgment were recorded with Kern County on February 14, 2017 and March 29, 2017, respectively. Id. That lien attached to the debtor's interest in a residential real property in Weldon, 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 \$25,000.00 as of the petition date. Doc. #1. There are no unavoidable liens against the property. The debtor

claimed an exemption pursuant to Cal. Civ. Proc. Code
§ 703.140(b)(1) in the amount of \$25,000.00. Doc. #1.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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).

4. [19-10255](#)-B-7 **IN RE: CAROLYN MELTON**
[RP-1](#)

MOTION TO SELL
5-6-2019 [\[13\]](#)

RANDELL PARKER/MV
ROBERT WILLIAMS

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 ("Trustee") asks this court for authorization to sell a 2010 Toyota Camry ("Vehicle") to debtor Carolyn Melton, subject to higher and better bids at the hearing, for \$6,675.00. Doc. #13. Trustee estimates that the estate will net \$2,623.75 after the debtor's exemption and sale costs are deducted.

It appears that the sale of the Vehicle 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 deposit with Trustee certified monies in the amount of \$1,000.00 prior to or at the time of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must be prepared to start the bidding in an amount greater than \$6,675.00 and bid in \$100.00 increments. Overbidders must be prepared to pay the balance of the bid in full within 15 days after the signed court order. If the winning bidder fails to perform, their deposit will be forfeited. Overbidders must be aware that the only document of sale that will be provided by the Trustee is the Order approving the sale, but the Trustee will execute such reasonable documents as requested by the buyer to facilitate the transfer.

5. [16-13657](#)-B-7 **IN RE: JOHNNIE/LINDA SIMS**
[RSB-2](#)

MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORP.
4-24-2019 [\[46\]](#)

JOHNNIE SIMS/MV
R. BELL

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

DISPOSITION: Dropped from calendar.

ORDER: The moving party shall submit an order conforming with the stipulation.

This matter has been resolved by stipulation of the parties. Doc. #53.

6. [19-11481](#)-B-7 **IN RE: ANGELICA RAMOS**
[PZZ-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-21-2019 [\[36\]](#)

ZHUOYUAN ZHANG/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, Zhuoyuan Zhang, seeks relief from the automatic stay under § 362(d)(1) and (d)(2) in order to resume an unlawful detainer action pending in Merced County Superior Court, case no. 19CV-01414.

The court must note movant's procedural error. 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 for Relief from the Automatic Stay was previously filed on May 9, 2019 (doc. #21) and the accompanying motion to shorten time was denied on May 14, 2019 (doc. #32) so the matter was never heard. The DCN for that motion was PZZ-1. This motion also has a DCN of PZZ-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Because movant is prosecuting this motion without an attorney, the court must treat pro se litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing Draper v. Coombs, 795 F.2d 915, 924 (9th Cir. 1986), inter alia). "Thus, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity amend effectively." Ferdik, 963 F.2d at 1261 (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)).

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. The unlawful detainer action is not connected to nor will interfere with the bankruptcy case. The unlawful detainer litigation would not prejudice the interests of other creditors or other interested parties. The impact of the stay on the parties and the balance of hurt weighs in favor of movant as movant claims to not have received rent since late February 2019.

This motion will be granted only for the limited purpose of continuing with the state unlawful detainer action.

7. [18-12689](#)-B-7 **IN RE: MARTIN GIUNTOLI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-15-2019 [\[33\]](#)

PHILLIP GILLET
\$31.00 AMENDMENT FEE PAID 5/17/19

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 filing fee now due for the amendment to the master address list was paid on May 17, 2019. Therefore, the OSC will be vacated.

8. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[PWG-5](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR WATSON REALTY SERVICES, INC., BROKER(S)
5-25-2019 [\[133\]](#)

JEFFREY VETTER/MV
HAGOP BEDOYAN
PHILLIP GILLET/ATTY. FOR MV.
OST 5/28/19

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. #140) 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/debtor-in-possession 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 ("Trustee") asks this court for authorization to sell the estate's interest in either 9135 Jenna Kathryn Drive in Bakersfield, CA 93312 ("Jenna Property") or 8701 Rollingbay Drive in Bakersfield, CA 93312 ("Rollingbay Property") to Reyes and Elva Ramirez ("Buyer"), subject to higher and better bids at the hearing, for \$245,000.00. The title to the Jenna Property is held by AMMG LLC, which debtor owns a 100% interest in. Doc. #1, Schedule A/B. The title to the Rollingbay Property is held by GLORY AMMG LLC, which debtor also owns a 100% interest in. Id.

The address of the property in the purchase agreement (doc. #136) and Trustee's declaration (doc. #135) is 8701 Rollingbay Drive, Bakersfield, CA 93312. However, the motion also references 9135 Jenna Kathryn Drive, Bakersfield, CA 93312. Doc. #133. Trustee must tell the court which property is actually going to be sold. Additionally, the trustee must explain to the court the benefit to the estate from the sale: what proceeds, if any, shall be distributed to unsecured creditors?

The court's ruling only authorizes the sale of the estate's interest in the property that is being sold. The legal owner is an LLC, and the LLC is not in bankruptcy.

It appears that the sale of the estate's interest in the property 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 6% commission agreed upon between the trustee and Watson Realty Services, Inc. ("Watson Realty") shall be split 50-50 between Watson Realty and Buyer's broker.

10:30 AM

1. [18-14901](#)-B-12 **IN RE: FRANK HORSTINK AND SIMONE VAN ROOIJ**
[KDG-9](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
4-29-2019 [[175](#)]

FRANK HORSTINK/MV
JACOB EATON
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #196.

2. [19-11344](#)-B-11 **IN RE: JUAN CASTELLANOS**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-2-2019 [[1](#)]

DISMISSED 4/15/19

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. #14.

3. [18-14663](#)-B-11 **IN RE: 3MB, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
11-19-2018 [[1](#)]

LEONARD WELSH

NO RULING.

4. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR
LEONARD K. WELSH, DEBTORS ATTORNEY(S)
5-8-2019 [\[132\]](#)

LEONARD WELSH

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. Debtor's bankruptcy counsel, Leonard K. Welsh, requests fees of \$12,055.00 and costs of \$78.10 for a total of \$12,133.10 for services rendered from March 1, 2019 through April 30, 2019. Doc. #132.

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) Advising debtor about the administration of its chapter 11 case and its duties as debtor-in-possession, (2) Preparing for and attending the Rule 2004 Examinations of Robert Bell and Mark Thomas conducted by US Bank, (3) Advising debtor's principals about the operation of its business and providing information about debtor's business to US Bank and its attorney, (4) Administering claims, and (5) Beginning the work on a plan of reorganization. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$12,055.00 in fees and \$78.10 in costs.

5. [18-14663](#)-B-11 **IN RE: 3MB, LLC**
[LKW-9](#)

MOTION TO EXTEND TIME
5-22-2019 [[148](#)]

3MB, LLC/MV
LEONARD WELSH

NO RULING.

11:00 AM

1. [18-11407](#)-B-7 **IN RE: JONATHAN AVALOS**
[18-1016](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-20-2018 [\[1\]](#)

A.G., A MINOR BY AND THROUGH HER GUARDIAN AD LITEM V. CHANTAL
TRUJILLO/ATTY. FOR PL.
RESPONSIVE PLEADING

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

Disposition: The Status Conference will be continued to August 8,
2019 at 11:00 am in Bakersfield.

Order: The court will prepare the order.

The court has read and considered the status conference statement
filed May 30, 2019. Doc. #144. It appears a dispositive motion
will be filed shortly. If the motion is filed but not scheduled for
hearing before the continued status conference date, the court will
likely continue the status conference to the hearing date on the
motion.

2. [18-14315](#)-B-7 **IN RE: BRANDON/SANDRA CAUDEL**
[19-1011](#)

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

HARDCASTLE SPECIALTIES, INC. V. CAUDEL
VIVIANO AGUILAR/ATTY. FOR PL.

NO RULING.

3. [18-14317](#)-B-7 **IN RE: SHANNON/CARRIE KING**
[19-1012](#)

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

HARDCASTLE SPECIALTIES, INC. V. KING
VIVIANO AGUILAR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [18-10441](#)-B-7 **IN RE: KATIE BASSEY**
[18-1019](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-25-2018 [\[1\]](#)

BASSEY V. EDUCATIONAL CREDIT MANAGEMENT CORPORATION
RESPONSIVE PLEADING

NO RULING.

5. [18-12689](#)-B-7 **IN RE: MARTIN GIUNTOLI**
[18-1067](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-5-2018 [\[1\]](#)

STATE COMPENSATION INSURANCE FUND V. GIUNTOLI
RHETT JOHNSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 8, 2019 at 11:00 a.m.

ORDER: The court will issue an order.

The Plaintiff's pre-trial statement says the parties have agreed to settle the matter. Doc. #16. Therefore this matter is continued to August 8, 2019 at 11:00 a.m. The court urges the parties to consult Federal Rule of Bankruptcy Procedure 7041 to ensure that the proper parties are given notice of any proposed settlement. The adversary complaint includes a claim objecting to the debtor's discharge under § 727.