

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, June 22, 2016
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [15-13503](#)-B-7 JANA RIPIPORTELLA
TGM-2
PETER FEAR/MV
EDWARD KERNS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
5-24-16 [[38](#)]

The objection will be sustained without oral argument based upon well-pled facts. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 trustee objects to the exemption, under CCP §704.115(a)(1) and (2), (b), of a non qualified annuity valued at \$83,174.09 as of September 9, 2015. The contract date of the annuity is November 4, 2002. The debtor is both the annuitant and the owner and receives a monthly payment of approximately \$400 from the annuity. The record shows that this is not a private retirement plan.

2. [16-11804](#)-B-7 EMMA POTTER
GHW-1
FEDERAL NATIONAL MORTGAGE
ASSOCIATION/MV
BRIAN FOLLAND/Atty. for dbt.
GLENN WECHSLER/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-7-16 [[19](#)]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtor's default and grant the motion for relief from stay.

The automatic stay will be 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 debtor has no ownership interest in the subject property, a trustee's deed upon sale having been recorded February 24, 2016 after the February 17, 2016, foreclosure. The Notice to Quit was issued and an Unlawful Detainer Complaint was filed in state court on March 9, 2016. This chapter 7 case was subsequently filed on May 20, 2016, and there is no reorganization in process.

The movant shall submit a proposed order after hearing that specifically describes the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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). No appearance is necessary.

3. [15-13816](#)-B-7 ISABEL/ANTONIO LOPEZ
TMT-2
TRUDI MANFREDO/MV
MARIO LANGONE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
5-23-16 [[33](#)]

The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 sale appears to be a reasonable exercise of the trustee's business judgment and the trustee has already received \$3,500 from the debtors which represents the non-exempt equity in the debtors' vehicle.

4. [16-11917](#)-B-7 STEPHEN HICKMAN
SL-1
STEPHEN HICKMAN/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
6-2-16 [[11](#)]

This matter will be called as scheduled. If there is no opposition, the court intends to grant the motion as specified below. If there is opposition the matter will be continued for further proceedings if necessary. Movant shall submit a proposed order that conforms with this disposition if the motion is granted.

The debtor requests an order compelling the Trustee to abandon specific assets: the estate's interest in an LLC known as "Taxi Steve," and the business assets used by that LLC including three vehicles, business checking accounts and some computer equipment. The debtor also requests an order compelling the Trustee to abandon two "Yorkia (sp) Dogs."

11 U.S.C. § 554(b) permits a party in interest to request the court to compel the trustee to abandon estate assets that are either burdensome or of inconsequential value to the estate. The debtor claims the LLC is of inconsequential value to the estate but presents no evidence other than the debtor's valuation of the assets in the business. The Trustee may have a different valuation of the interest. However, unless there is opposition, the court will find the debtor's interest in the LLC of inconsequential value to the estate.

The business assets are listed by the debtor as exempt in Schedule C. There has been no objection to the exemptions. The ownership of the business assets remains vague as it is fairly clear the debtor claims a 100% interest in the LLC but the debtor is less than clear on the ownership of the assets. Since the debtor has exempted the assets, the court is not, without more, compelled to inquire further into asset ownership. See, *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644 (1992).

The Meeting of Creditors is not scheduled until July 1, 2016, so the time for the Trustee or a party in interest to object to the debtor's claim of exemptions has not yet begun to run. Therefore, for purposes of this motion, unless the Trustee or a party in interest appears at the hearing in opposition, it will be assumed the exemption claims are proper. The court is not, however, making a finding that the claimed exemptions are proper for any other purposes other than this motion.

The Order shall specify that the LLC interest is abandoned and specifically list all other assets, as listed in the motion, that are to be abandoned.

5. [16-10521](#)-B-7 ALAN ENGLE
UST-1
TRACY DAVIS/MV
PETER BUNTING/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

MOTION TO APPROVE STIPULATION
WAIVING DISCHARGE
5-26-16 [[50](#)]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' default, grant the motion, and approve the stipulation by the parties waiving the debtor's discharge. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2).

Section 727(a) (10) permits the court to approve a written waiver by the debtor of the discharge after the petition has been filed and an order for relief entered. The debtor was represented by counsel who has also signed the stipulation. The U.S. Trustee shall submit a proposed order after the hearing.

6. [16-10521](#)-B-7 ALAN ENGLE
UST-2
TRACY DAVIS/MV

PETER BUNTING/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
5-26-16 [[46](#)]

This motion will be denied as moot if the motion above, UST-1, #5, is granted.

7. [16-10623](#)-B-7 MARY DEL CARBAJAL
AP-1
WELLS FARGO BANK, N.A./MV
LAYNE HAYDEN/Atty. for dbt.
JONATHAN CAHILL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-20-16 [[16](#)]

This matter will be called as scheduled. Unless opposition is presented at the hearing, the court intends to enter the trustee's default and grant the motion for relief from stay for cause shown. The motion will be denied as moot as to the debtor because her discharge has been entered.

The movant shall submit a proposed order after hearing that specifically describes the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

CARLOS GARCIA/MV
GLEN GATES/Atty. for dbt.
CYNTHIA ARROYO/Atty. for mv.
RESPONSIVE PLEADING

The court intends to deny the motion for relief, without prejudice, unless there is an appearance at the hearing in opposition to this disposition. The court will adopt the findings made in the January 27, 2016 civil minute order as follows:

- (a) Thus far uncontroverted evidence in opposition to the motion establishes a significant question as to the *bona fides* of debtor's signature on the note and deed of trust at issue;
- (b) Thus far uncontroverted evidence in opposition to the motion establishes significant dispute as to the payors under the promissory note at issue;
- (c) Movant's evidence of the promissory note includes ambiguous language as to the principal balance of the note;
- (d) Debtor's schedule D does not include the deed of trust at issue (Doc. # 1);
- (e) Debtor's schedules list movant as a creditor with a disputed and unliquidated unsecured claim of \$133,000;
- (f) Thus far, movant has presented no evidence of imminent danger to the real property at issue, i.e., waste, violations of the law, lack of insurance, impending tax sale, etc.; and
- (g) Debtor has instituted an adversary proceeding, 16-01009, which raises issues fundamental to the resolution of this motion. Judicial economy will be served by consolidating the claims of the parties and avoiding conflicting or staggered rulings.

CARLOS GARCIA/MV
GLEN GATES/Atty. for dbt.
CYNTHIA ARROYO/Atty. for mv.

The court intends to deny the motion for relief, without prejudice, unless there is an appearance at the hearing in opposition to this disposition. The court will adopt the findings made in the January 27, 2016 civil minute order as follows:

- (a) Thus far uncontroverted evidence in opposition to the motion establishes a significant question as to the *bona fides* of debtor's signature on the note and deed of trust at issue;
- (b) Thus far uncontroverted evidence in opposition to the motion establishes significant dispute as to the payors under the promissory note at issue;
- (c) Movant's evidence of the promissory note includes ambiguous language as to the principal balance of the note;
- (d) Debtor's schedule D does not include the deed of trust at issue (Doc. # 1);
- (e) Debtor's schedules list movant as a creditor with a disputed and unliquidated unsecured claim of \$133,000;
- (f) Thus far, movant has presented no evidence of imminent danger to the real property at issue, i.e., waste, violations of the law, lack of insurance, impending tax sale, etc.; and
- (g) Debtor has instituted an adversary proceeding, 16-01010, which raises issues fundamental to the resolution of this motion. Judicial economy will be served by consolidating the claims of the parties and avoiding conflicting or staggered rulings.

10. [16-11528](#)-B-7 RV PEDDLER, INC.
NGC-1
NEXTGEAR CAPITAL, INC./MV
LEONARD WELSH/Atty. for dbt.
MATTHEW QUALL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-20-16 [[25](#)]

The motion will be granted. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default 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 debtor appears to owe approximately \$274,817.62 on the collateral which has a fair market value of \$78,525. The vehicles are not necessary for a reorganization in this chapter 7 bankruptcy case.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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

11. [16-11629](#)-B-7 LEOPOLLO SOTO
WAR-1
JAMES FLEMING/MV
WILLIAM ROMAINE/Atty. for mv.
DISMISSED

CONTINUED MOTION TO DISMISS
CASE
5-11-16 [[14](#)]

The trustee's motion has been withdrawn. The case has already been dismissed. No appearance is necessary.

12. [11-60233](#)-B-7 MICHAEL NORMAN
JTW-2
JANZEN, TAMBERI AND WONG/MV

OVIDIO OVIEDO/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S)
5-26-16 [[41](#)]

This motion will be denied without prejudice. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service with 28 days' notice. The language in the notice requires written response within 14 days of the hearing, therefore the motion was also not filed in compliance with LBR 9014-1(f)(2). No appearance is necessary.

13. [15-13337](#)-B-7 HAROUT GEZALYAN

HAROUT GEZALYAN/MV
ADRIAN WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
5-23-16 [[45](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 the value of the unavoidable liens and the debtor's equity exceed the value of the property therefore there is no equity to which the lien might attach.

14. [13-13443](#)-B-7 CLANTON CONSTRUCTION,
TGF-5 INC.

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF THE GORSKI FIRM,
APC FOR VINCENT A. GORSKI,
TRUSTEES ATTORNEY(S)
3-11-15 [[54](#)]

JACOB EATON/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 Trustee's counsel requests compensation in the amount of \$2,904 for fees and \$222.20 in costs. Because this application is not lengthy, the court was able to review the services rendered without much difficulty. However, counsel is reminded that 11 U.S.C. § 330(a) permits compensation awards for "actual, necessary services. . ." Without dividing the tasks into project categories as set forth in "United States Trustee Guidelines For Reviewing Applications For Compensation And Reimbursement of Expenses Filed Under 11 U.S.C. § 330 Issued January 30, 1996" ("Guidelines"), such review is difficult and the weighing of factors mandated by § 330 (a) (3), impossible. The applicant has the burden of proof and risk of non-persuasion. *In re Scoggins*, 517 B.R. 206, 221 (B. Ct. E.D. Cal. 2014); *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989).

In this case applicant has barely persuaded the court that the fees are appropriate. There is *almost* insufficient proof. Future applications may well be denied for lack of proof unless the application includes *both* a chronological listing of the tasks, as was done in this case, and an exhibit listing the time entries divided into project categories. The Guidelines should be followed.

15. [16-11647](#)-B-7 AMBARTSUM RAFAYELIAN
TVM-1
CHUR, LLC/MV
GLEN GATES/Atty. for dbt.
THOMAS MILES/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-25-16 [[28](#)]

The motion will be granted. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default 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. It appears that a trustee's deed upon sale was recorded pre-petition after a foreclosure sale and the debtor no longer has an ownership interest in the property.

The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 Trustee's counsel requests compensation in the amount of \$4,000 for fees and nothing in costs. Because this application is not lengthy, the court was able to review the services rendered without much difficulty. However, counsel is reminded that 11 U.S.C. § 330(a) permits compensation awards for "actual, necessary services. . ." Without dividing the tasks into project categories as set forth in "United States Trustee Guidelines For Reviewing Applications For Compensation And Reimbursement of Expenses Filed Under 11 U.S.C. § 330 Issued January 30, 1996" ("Guidelines"), such review is difficult and the weighing of factors mandated by § 330 (a) (3), impossible. The applicant has the burden of proof and risk of non-persuasion. *In re Scoggins*, 517 B.R. 206, 221 (B. Ct. E.D. Cal. 2014); *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989).

In this case applicant has barely persuaded the court that the fees are appropriate. There is *almost* insufficient proof. Future applications may well be denied for lack of proof unless the application includes *both* a chronological listing of the tasks, as was done in this case, and an exhibit listing the time entries divided into project categories. The Guidelines should be followed.

17. [16-11064](#)-B-7 RAUL MONTES
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
5-10-16 [[15](#)]

No appearance is necessary. The debtor shall attend the meeting of creditors rescheduled for July 1, 2016, at 09:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor(s) discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

The court will issue a civil minute order.

18. [11-11465](#)-B-7 ROBERT SILVA
WWB-2
ROBERT SILVA/MV

CONTINUED MOTION TO AVOID LIEN
OF TEXTRON FINANCIAL
CORPORATION
5-4-16 [[52](#)]

RILEY WALTER/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there was no opposition filed. The matter was continued to permit the debtor to file evidence to show that the debtor possessed an interest in the subject property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991). The debtor has now done so.

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 FRBP 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.

19. [16-10766](#)-B-7 CHRIS/TERESA LANFORD
PFT-1
PETER FEAR/MV
MARK ZIMMERMAN/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO SELL
5-5-16 [[23](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order as specified below. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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.

It appears that the sale of the non-exempt equity in the listed firearms to the debtor, for which the trustee has already received \$3,000, is a reasonable exercise of the trustee's business judgment.

20. [15-11671](#)-B-7 MARY BRYANT
AFR-2
WELLS FARGO BANK, N.A./MV
ERICA LOFTIS/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-18-16 [[29](#)]

The motion will be granted in part and denied in part. Movant shall submit a proposed order as specified below. No appearance is necessary.

This case was reopened in order to permit the movant with the opportunity to file this motion for relief from stay. The motion was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered. The automatic stay is annulled pursuant to §362(d)(1) for cause shown 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 annul the automatic stay as to the May 7, 2015, foreclosure sale of the subject real property. The evidence submitted in support of the motion show that neither the foreclosure trustee nor movant had either actual or constructive notice of the filing of this case. No creditors were listed in the documents filed by the debtor in this case, which consisted solely of a handwritten petition, a credit counseling certificate, and a single handwritten page with the debtor's name and address. The case was dismissed, one day after the foreclosure sale took place, for failure to file documents. The movant has refrained from recording the trustee's deed after sale until it has a ruling in this matter.

In addition, the record shows that the equities favor granting annulment. *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003). It appears that this case, and the debtor's subsequent chapter 7 which has also been dismissed for failure to file documents, were filed in bad faith. In the debtor's subsequent case she listed the subject property as an asset with income from its rental although the loan secured by the subject property is several years in arrears. The debtor did not list the prior case nor did she list the state court litigation she filed against the movant in her second bankruptcy case.

The proposed order shall specifically describe the property or action to which the order relates. Because the motion involves a foreclosure of real property in California, the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. A waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3) is also granted.

The prayer for relief for an award of attorney fees will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

The motion for relief under 11 U.S.C. §362(d)(4) will also be denied. Section 362(d)(4) permits the court to grant *in rem* relief "with respect to a stay of an act under real property . . . by a creditor whose claim is secured by an interest in such real property" In light of the court's ruling granting retroactive relief from stay, above, and from the evidence submitted and from the record, the movant no longer holds a claim secured by the subject real property.

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).

21.	16-10771 -B-7	CHRIS/KIMBERLY KATELEY	MOTION FOR RELIEF FROM
	USA-1		AUTOMATIC STAY
	ARMY AND AIR FORCE EXCHANGE		5-17-16 [21]
	SERVICE/MV		
	MARK ZIMMERMAN/Atty. for dbt.		
	JEFFREY LODGE/Atty. for mv.		

The motion will be granted. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' default 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 annul the automatic stay, including the weight of the equities, *In re Fjeldsted*, 293 B.R. 12, 24-25 (9th BAP 2003), and the lack of opposition by the debtors.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for an award of attorney fees, those requests will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

22. [16-10380](#)-B-7 DONALD/CONNIE MUSSON
APN-1
SANTANDER CONSUMER USA INC./MV
SCOTT LYONS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-18-16 [[18](#)]

The motion will be granted. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtors' default 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 including default in payment and failure to maintain insurance.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

23. [16-11181](#)-B-7
PFT-1

DAVID VALENZUELA AND
MARGARITA HERRERA

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
5-10-16 [[9](#)]

TIMOTHY SPRINGER/Atty. for dbt.

No appearance is necessary. As they consented in their opposition, the debtors shall attend the meeting of creditors rescheduled for July 1, 2016, at 11:00 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 debtor(s) discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

The debtors' counsel shall advise them of this predisposition. The court will issue a civil minute order.

24. [15-14995](#)-B-7 HIPOLITO MARIANO
PSB-4
DORINA GILMORE/MV
RILEY WALTER/Atty. for dbt.
RENE SAMPLE/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-19-16 [[52](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the trustee's default and grant the motion for relief from stay, thus modifying the stay as it applies to the state court litigation.

The debtor has filed a limited non-opposition to the motion as it applies to insurance proceeds only and not to any personal judgment or collection from the debtor.

Movants' motion seeks to have the Court grant relief from automatic stay so that movants can pursue movants' rights with respect to a personal injury action filed in the Superior Court of the County of Fresno. The movant shall submit a proposed order after hearing that specifically limits the effect of relief from stay to recovery from the debtor's applicable insurance coverage.

If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted. If the prayer for relief includes a request for an award of attorney fees, those requests will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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). No appearance is necessary.

25. [16-10521](#)-B-7 ALAN ENGLE
FW-
PETER BUNTING/Atty. for dbt.

CONTINUED ORDER TO SHOW CAUSE
5-11-16 [[29](#)]

The OSC will be vacated. The record shows that a proposed turnover order signed by the parties has been submitted for approval by the court.

26. [16-11647](#)-B-7 AMBARTSUM RAFAYELYAN
GEG-1
AMBARTSUM RAFAYELYAN/MV

GLEN GATES/Atty. for dbt.

CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 7 TO CHAPTER
13
5-24-16 [[23](#)]

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to grant the debtor's motion to convert the case to one under chapter 13. It appears that the motion has been brought in good faith. The moving party shall submit a proposed order after the hearing.

11:00 A.M.

1. [16-11577](#)-B-7 CAITLIN WRIGHT

PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
6-1-16 [[12](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [16-10104](#)-B-7 YOLANDA MARTINEZ STATUS CONFERENCE RE: COMPLAINT
[16-1049](#) 4-22-16 [[1](#)]
 FIRST NATIONAL BANK OF OMAHA
 V. MARTINEZ
 CORY ROONEY/Atty. for pl.

This status conference will be dropped from calendar and may be reset by any party on 10 days' notice. No appearance is necessary.

It appears the plaintiff has requested entry of the defendant's default. Within 30 days of the entry of default the plaintiff must file and notice a prove-up hearing.

The clerk of the court may close the adversary proceeding without notice in 90 days unless the adversary proceeding has been set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will prepare and enter a civil minute order.

2. 15-10006-B-7 JUAN TREVINO MOTION FOR ENTRY OF DEFAULT
 16-1039 UST-1 JUDGMENT
 U.S. TRUSTEE V. TREVINO 5-20-16 [[10](#)]
 ROBIN TUBESING/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The U.S. Trustee shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules 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 FRBP 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 defendant's discharge was entered March 31, 2015. Subsequently the chapter 7 trustee's motion to compel turnover of the debtor's 2014 tax returns, which were not listed as exempt on the debtor's schedules, was granted and an order entered December 9, 2015. There is uncontroverted evidence that the debtor did receive tax returns and did not comply with the court's turnover order. Accordingly, the defendant's discharge will be revoked.

3. [15-13337](#)-B-7 HAROUT GEZALYAN
[15-1131](#)
BANDA V. GEZALYAN

ORDER TO SHOW CAUSE REGARDING
DISMISSAL OF ADVERSARY
PROCEEDING
5-24-16 [[26](#)]

This matter will proceed as scheduled. Because no amended complaint has been filed, and unless there is opposition presented at the hearing, the court intends to dismiss the adversary proceeding. The court will enter a civil minute order after the hearing.

4. [15-13337](#)-B-7 HAROUT GEZALYAN
[15-1131](#)
BANDA V. GEZALYAN
MARIA BANDA/Atty. for pl.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-27-15 [[1](#)]

If this adversary proceeding is dismissed pursuant to the court's order to show cause (see #3 above), this status conference will be dropped from calendar. If the adversary proceeding is not dismissed then it will proceed as scheduled.

5. [15-13337](#)-B-7 HAROUT GEZALYAN
[15-1131](#)
BANDA V. GEZALYAN

CONTINUED ORDER TO SHOW CAUSE
REGARDING DISMISSAL OF
ADVERSARY PROCEEDING
1-15-16 [[7](#)]

This OSC has been superseded by the OSC issued October 27, 2015, and will be vacated.

6. [16-10169](#)-B-13 FRANK/MARY ANNE DORES
FW-1
FRANK DORES/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION FOR CONTEMPT
1-28-16 [[7](#)]

This matter will proceed as scheduled.

7. [16-10169](#)-B-13 FRANK/MARY ANNE DORES
FW-1
BUNNETT & CO., INC./MV

CONTINUED AMENDED MOTION FOR
RELIEF FROM AUTOMATIC STAY ,
AND/OR AMENDED MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
3-15-16 [[73](#)]

PETER FEAR/Atty. for dbt.
ANDREW MINEAR/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

8. [14-14593](#)-B-7 WAYNE HEAD
[16-1040](#)
FEAR V. HEAD
TRUDI MANFREDO/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
4-7-16 [[1](#)]

This matter will be continued to July 28, 2016, at 1:30 p.m. No appearance is necessary at this status conference.

The trustee shall file a motion for default and default judgment by the time of the continued hearing date unless a stipulation signed by the parties and continuing the date for responsive pleading is approved by the court and entered prior to the date of the continued status conference.