

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, June 27, 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. [18-10502](#)-B-7 **IN RE: JOEL RENTERIA AND VIVIANA PITA**
[TMT-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
5-22-2018 [[12](#)]

TRUDI MANFREDO/MV
JOEL WINTER
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 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. Federal Rules of Bankruptcy Procedure 4004(b) and 4007(c) allow the court to extend the time to object to discharge for "cause." "The term 'cause' as it applies here is not defined in the Bankruptcy Code. The 'cause' determination is therefore left to the discretion of the bankruptcy court; it is fact-specific and must be made on a case-by-case basis." In re Bomarito, 448 B.R. 242, 247-48 (Bankr. E.D. Cal. 2011) (citing In re Molitor, 395 B.R. 197, 205 (Bankr. S.D. Ga. 2008) (citations omitted)).

The court finds that this motion was made within the time limits imposed under Fed. R. Bankr. P. 4004(b) and 4007(c) and cause exists to grant the extension. The trustee has declared that the debtor failed to disclose receiving \$50,000.00 from his employer in December 2017, but that debtor's counsel informed trustee at the first 341 meeting. Doc. #15. At the continued 341 meeting, the requested accounting of that money was still not provided, and as of the filing of this motion, the court does not know if the accounting has been provided. Such an omission and lack of accounting may jeopardize the debtor's discharge. The debtor and trustee have also signed a stipulation agreeing to the extension of time. The deadline to file a complaint objection to discharge of the debtor is extended to and including September 1, 2018.

2. [18-10509](#)-B-7 **IN RE: GERALDINE LARSON**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-22-2018 [[28](#)]

MARK ZIMMERMAN

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for July 5, 2018 at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

3. [18-11409](#)-B-7 **IN RE: MARK SINOR**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2018 [\[9\]](#)

SANTANDER CONSUMER USA INC./MV
GABRIEL WADDELL
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The 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 nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The collateral is a 2017 Dodge Charger. Doc. #14. The collateral has a value of \$40,925.00 and debtor owes \$60,396.57. *Id.*

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

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).

4. [18-11509](#)-B-7 **IN RE: VEANNA MANDELLA**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-22-2018 [\[13\]](#)

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 court will issue
the order.

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

Debtor filed a timely opposition to this motion, but did not provide a reason for the opposition nor explain why they failed to appear at their meeting of creditors.

The debtor shall appear at the court to explain why the court should not grant this motion and dismiss the case.

5. [18-11611](#)-B-7 **IN RE: JOSE NEVAREZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-22-2018 [[10](#)]

JOHN ROUNDS

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for July 16, 2018 at 12:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

6. [17-12614](#)-B-7 **IN RE: RKG DEPLOYMENTS, LLC**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
5-29-2018 [[24](#)]

JAMES SALVEN/MV
JEFFREY ROWE

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. Mr. James E. Salven shall be awarded fees and costs totaling \$1,150.00.

7. [18-12155](#)-B-7 **IN RE: JOSEFINA DIAZ GARCIA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-7-2018 [\[9\]](#)

AMERICAN HONDA FINANCE
CORPORATION/MV
GEORGE ALONSO
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

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

The collateral is a 2017 Honda CR-V. Doc. #13. The collateral has a value of \$21,575.00 and debtor owes \$35,363.40 *Id.*

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

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and is in movant's possession.

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

8. [18-10460](#)-B-7 **IN RE: DAVID/YOLANDA TREMBLAY**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER SEC. 707(B)
5-18-2018 [[24](#)]

TRACY DAVIS/MV
ROBIN TUBESING/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. Federal Rules of Bankruptcy Procedure 4004(b) and 4007(c) allow the court to extend the time to object to discharge for "cause." "The term 'cause' as it applies here is not defined in the Bankruptcy Code. The 'cause' determination is therefore left to the discretion of the bankruptcy court; it is fact-specific and must be made on a case-by-case basis." In re Bomarito, 448 B.R. 242, 247-48 (Bankr. E.D. Cal. 2011) (citing In re Molitor, 395 B.R. 197, 205 (Bankr. S.D. Ga. 2008) (citations omitted)).

Fed. R. Bankr. P. 1017(e)(1) states that a court, for cause, may extend the time for filing the motion to dismiss under 11 U.S.C. § 707(b)

The court finds that this motion was made within the time limits imposed under Fed. R. Bankr. P. 4004(b), 4007(c), and 1017(e) and cause exists to grant the extension. The trustee has not yet concluded the meeting of creditors and the investigation into the debtors' financial affairs has not been completed. Doc. #26.

The deadline to file a complaint objection to discharge of the debtor is extended to and including July 20, 2018.

9. [18-11363](#)-B-7 **IN RE: KRISTY GOSS**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-22-2018 [[14](#)]

MARK ZIMMERMAN

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for July 5, 2018 at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

10. [18-10964](#)-B-7 **IN RE: JEFFERY MANNING**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-15-2018 [[28](#)]

TRUSTEE'S MOTION TO DISMISS WITHDRAWN

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

DISPOSITION: Dropped from calendar.

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

11. [18-12364](#)-B-7 **IN RE: MARGARITA CINGOZ**
[GT-1](#)

MOTION TO COMPEL ABANDONMENT
6-12-2018 [\[6\]](#)

MARGARITA CINGOZ/MV
GRISELDA TORRES

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).

This motion is heard on shortened time under Local Rule of Practice ("LBR") 9014-1(f)(3). An order granting the application to shorten time stated that the "[n]otice of said hearing shall be adequate if mailed to all parties in interest by first-class mail on or before June 15, 2018." Doc. #13. The court did not see a proof of service filed with the court showing that the motion, notice, declaration, and amended notice were served on all interested parties under LBR 9014-1(e).

Counsel must appear at this hearing and explain to the court why it did not comply with the court's order. If the court finds counsel's explanation to justify the mistake, the court may continue the hearing to a date to allow noticed parties to oppose the motion. If the court does not find counsel's explanation persuasive, it may deny the motion without prejudice.

The court notes that 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.

If the court does allow a short continuance for this motion, the notice of the motion must contain the above language.

12. [18-10966](#)-B-7 **IN RE: ROSA VERA**
[TMT-1](#)

MOTION FOR TURNOVER OF PROPERTY
5-24-2018 [\[22\]](#)

TRUDI MANFREDO/MV
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 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. 11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "[T]he right to receive a tax refund constitutes an interest in property." Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

On the bankruptcy petition date, debtor had a right to 2017 Federal and State tax refunds. 11 U.S.C. § 542(a) requires debtor to turn over property of the estate that was in their possession, custody or control during the case or its value.

In the case of Newman v. Schwartz (In re Newman), 487 B.R. 193 (9th Cir. BAP 2013), the trustee filed a motion for an order compelling debtors to turn over tax refunds. The Newman Court considered whether the trustee could compel turnover of tax refunds from the debtor when the debtor had already spent these refunds. The court held,

§542(a) does not require the debtor to have current possession of the property which is subject to turnover. "If a debtor demonstrates that [he] is not in possession of the property of

the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." *Id.* at 202 citing Rynda v. Thompson (In re Rynda), 2012 Bankr. LEXIS 688 (9th Cir. BAP 2012)[an unpublished opinion].

In this case, Debtor possessed, or had custody or control over the tax refunds after she filed her petition for relief. See doc. #26. Debtor is ordered to turn over \$4,422.00, the value of the nonexempt portion of her 2017 federal and state tax returns within ten (10) days of this court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a) or other provisions of law.

13. [18-10966](#)-B-7 **IN RE: ROSA VERA**
[TMT-2](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
5-24-2018 [\[28\]](#)

TRUDI MANFREDO/MV
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 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. Federal Rules of Bankruptcy Procedure 4004(b) and 4007(c) allow the court to extend the time to object to discharge for "cause." "The term 'cause' as it applies here is not defined in the Bankruptcy Code. The 'cause' determination is therefore left to the discretion of the bankruptcy court; it is fact-specific and must be made on a case-by-case basis." In re

Bomarito, 448 B.R. 242, 247-48 (Bankr. E.D. Cal. 2011) (citing In re Molitor, 395 B.R. 197, 205 (Bankr. S.D. Ga. 2008) (citations omitted)).

The court finds that this motion was made within the time limits imposed under Fed. R. Bankr. P. 4004(b) and 4007(c) and cause exists to grant the extension. The trustee has provided evidence that the debtor concealed, knowingly or unknowingly, over \$6,000.00 received from federal and state tax returns from the trustee that debtor received post-petition. Doc. #30. Debtor has also failed to keep a record or any information of the accounting of those funds. *Id.* Trustee filed a motion for turnover of said property, which was granted (TMT-1, matter #12 above). Debtor's behavior regarding these funds has placed her discharge at risk. The deadline to file a complaint objecting to discharge of the debtor is extended to and including September 1, 2018.

14. [17-12872](#)-B-7 **IN RE: RAUL/LILIANA MARTINEZ**
[JES-1](#)

MOTION TO SELL
5-29-2018 [\[27\]](#)

JAMES SALVEN/MV
SCOTT LYONS

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.

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).

This motion is GRANTED. It appears that the sale of the 2004 Chevrolet Venture Van is a reasonable exercise of the trustee's business judgment. The trustee shall submit a proposed order after the hearing.

15. [17-11376](#)-B-7 **IN RE: HECTOR MERCADO MUNOZ AND MIRTA
MERCADO CARDENAS**
[17-1092](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-26-2017 [\[1\]](#)

BRAVO CAPITAL, LLC V. MERCADO
ANDREW ALPER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 1, 2018 at 1:30 p.m.

NO ORDER REQUIRED: The court already signed an order. Doc. #22.

16. [18-10376](#)-B-7 **IN RE: AMMANDO/MARIA MORALES**
[TGM-2](#)

MOTION TO APPROVE STIPULATION BETWEEN CHAPTER 7 TRUSTEE AND
DEBTORS
5-25-2018 [\[28\]](#)

PETER FEAR/MV
LAYNE HAYDEN
TRUDI MANFREDO/ATTY. FOR MV.
JOINT DEBTOR DISMISSED

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. The stipulation between the chapter 7

trustee and debtor Amando Morales is approved. The parties have agreed to sell the real property located at 31042 Heather Avenue in Madera, CA and if there is insufficient equity in the residence to cover the chapter 7 administrative costs and to provide at least \$10,000.00 for nonadministrative unsecured claims, debtors will provide a carve out from the homestead exemption to provide for the payment of these administrative costs and \$10,000.00 for nonadministrative unsecured claims. Under the stipulation, debtors shall also be entitled to retain the exempt funds without the necessity of reinvesting the funds in another real property as required by Calif. Code of Civ. Proc. § 704.720.

17. [17-13881](#)-B-7 **IN RE: MICHAEL/AMIRA MICHAEL**
[PWG-3](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR WATSON
REALTY SERVICES, INC., BROKER(S)
6-11-2018 [[112](#)]

JEFFREY VETTER/MV
HAGOP BEDOYAN
PHILLIP GILLET/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.

This motion was filed and served pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(2) and 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. It appears that the sale of the real property located at 8710 Winlock St. in Bakersfield, CA is a reasonable exercise of the trustee's business judgment. The trustee is authorized to pay a commission no greater than 6%, with one-half of the proceeds to be paid to Watson Realty Services, Inc. and the other half of the proceeds to be paid to the buyer's broker. The trustee shall submit a proposed order after the hearing.

The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived.

18. [17-14786](#)-B-7 **IN RE: TODD/PAMELA REINBOLD**
[JDR-1](#)

MOTION TO AVOID LIEN OF LIBERTY MUTUAL INSURANCE COMPANY
5-17-2018 [\[29\]](#)

TODD REINBOLD/MV
JEFFREY ROWE

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).

A judgment was entered against the debtor in favor of Liberty Mutual Insurance Company for the sum of \$27,020.82 on October 18, 2016. Doc. #32, ex. B. The abstract of judgment was recorded with Merced County on January 24, 2017. *Id.* It was timely renewed on January 25, 2017. *Id.* That lien attached to the debtor's interest in a residential real property in Los Banos, CA. The subject real property had an approximate value of \$239,000.00 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 amended Schedule C. Docket #15. Cal. Civ. Proc. Code § 704.730(a)(3) 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.

19. [18-12386](#)-B-7 **IN RE: ARAM ZARDARYAN**
[KDG-1](#)

MOTION TO COMPEL ABANDONMENT
6-15-2018 [\[5\]](#)

ARAM ZARDARYAN/MV
HAGOP BEDOYAN
OST 6/18/18

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 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. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset... Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

In this case, the two assets debtor requests the trustee to abandon, a 2008 Peterbilt 389 Tractor with over 1.25 million miles and 2014 Vanguard 53 foot reefer trailer, total only \$27,000.00, but are encumbered by liens in excess of \$60,000.00. The court finds that the property is of inconsequential value and benefit to the estate. This motion is GRANTED.

20. [18-11336](#)-B-7 **IN RE: ANDRES/ELIZABETH GUZMAN**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-8-2018 [[12](#)]

DISMISSED

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. #16.

11:00 AM

1. [18-10809](#)-B-7 **IN RE: DIANA BLANCO**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST INVESTORS
SERVICING CORPORATION
6-4-2018 [[17](#)]

NO RULING.

2. [18-10924](#)-B-7 **IN RE: RAQUEL PEREZ**

PRO SE REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK,
N.A.
6-7-2018 [[25](#)]

NO RULING.

3. [18-10947](#)-B-7 **IN RE: KENIA ALMERAZ**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.
5-30-2018 [[13](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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

4. [18-11077](#)-B-7 **IN RE: LINDA ALLEN**

PRO SE REAFFIRMATION AGREEMENT WITH TUCOEMAS FEDERAL CREDIT
UNION
5-31-2018 [[24](#)]

NO RULING.

5. [18-11278](#)-B-7 **IN RE: CORY KNOBLAUCH AND ASHLEY ROSS**

REAFFIRMATION AGREEMENT WITH CAB WEST, LLC
5-23-2018 [[19](#)]

JERRY LOWE

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed April 2, 2018, and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate.

6. [18-11994](#)-B-7 **IN RE: ANTONIO SOTO**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
6-4-2018 [[18](#)]

NO RULING.

1:30 PM

1. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#)

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

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m. Joint or unilateral status conference statements must be filed at least seven days prior to the hearing.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-1](#)

CONTINUED MOTION FOR REMAND
1-24-2018 [[17](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-2](#)

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

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
MARC LEVINSON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to
August 15, 2018 at 1:30 p.m.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-3](#)

CONTINUED MOTION TO STRIKE
1-29-2018 [[26](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to
August 15, 2018 at 1:30 p.m.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1005](#)

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

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

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m. Joint or unilateral status conference statements must be filed at least seven days prior to the hearing.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1014](#)

CONTINUED 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

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m. Joint or unilateral status conference statements must be filed at least seven days prior to the hearing.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1020](#)

STATUS CONFERENCE RE: COMPLAINT
4-30-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. JOHNSON ET AL
MATTHEW BUNTING/ATTY. FOR PL.

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m. Joint or unilateral status conference statements must be filed at least seven days prior to the hearing.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1020](#) [WW-1](#)

MOTION TO ALLOW SERVICE BY PUBLICATION
6-13-2018 [[6](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. JOHNSON ET AL
MATTHEW BUNTING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed 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. Because the defendants in this adversary proceeding are deceased and plaintiff has no means to determine who holds any potential rights derived from defendants, and plaintiff claims the defendants cannot be served pursuant to Federal Rule of Civil Procedure 4(e)-(j), made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 7004(c), plaintiff is authorized to complete service of process in the following manner:

- (1) The summons and complaint shall be mailed by first class mail, postage prepaid, to the defendants' last known address;
- (2) The notice of the adversary proceeding shall be placed in the Visalia Times-Delta and the Fresno Bee once a week and shall run for four weeks;
- (3) Service of the complaint and summons shall be deemed completed upon the beginning of the fifth week after publication begins; and
- (4) If plaintiff discovers a qualified recipient for the service of process on behalf of the defendants before the time has expired for the publication, plaintiff must mail a copy of the adversary proceeding complaint and summons to that individual.

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1021](#)

STATUS CONFERENCE RE: COMPLAINT
4-30-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. BRAVIN ET AL
MATTHEW BUNTING/ATTY. FOR PL.

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m. Joint or unilateral status conference statements must be filed at least seven days prior to the hearing.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1022](#)

STATUS CONFERENCE RE: COMPLAINT
4-30-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. LAVERS ET AL
MATTHEW BUNTING/ATTY. FOR PL.

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

DISPOSITION: Continued to August 15, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of debtor TRMC, this matter will be continued to August 15, 2018 at 1:30 p.m. Joint or unilateral status conference statements must be filed at least seven days prior to the hearing.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1022](#) [WW-1](#)

MOTION TO ALLOW SERVICE BY PUBLICATION
6-13-2018 [6](#)

TULARE LOCAL HEALTHCARE
DISTRICT V. LAVERS ET AL
MATTHEW BUNTING/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed 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. Because the defendants in this adversary proceeding are deceased and plaintiff has no means to determine who holds any potential rights derived from defendants, and plaintiff claims the defendants cannot be served pursuant to Federal Rule of Civil Procedure 4(e)-(j), made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 7004(c), plaintiff is authorized to complete service of process in the following manner:

- (1) The summons and complaint shall be mailed by first class mail, postage prepaid, to the defendants' last known address;
- (2) The notice of the adversary proceeding shall be placed in the Visalia Times-Delta and the Fresno Bee once a week and shall run for four weeks;
- (3) Service of the complaint and summons shall be deemed completed upon the beginning of the fifth week after publication begins; and
- (4) If plaintiff discovers a qualified recipient for the service of process on behalf of the defendants before the time has expired for the publication, plaintiff must mail a copy of the adversary proceeding complaint and summons to that individual.