

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 26, 2017
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 an 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. [17-11206](#)-B-7 DAVID COVARRUBIAS
AP-1
WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
PETER BUNTING/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.
DISCHARGED, NON OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-23-17 [[13](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtor's because his discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. Movant shall submit a proposed order in conformance with this ruling. No appearance 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 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.

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

If an award of attorney fees has been requested, it 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. In addition, any future request for an award of attorneys fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C.A. §506(b).

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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. [17-11514](#)-B-7 PAMELA WOODWARD
DRJ-1
PAMELA WOODWARD/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO AVOID LIEN OF GCFS,
INC.
6-22-17 [[14](#)]

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered. It appears from the evidence submitted and the record that the debtor is entitled to avoid this lien that impairs an exemption to which she would otherwise have been entitled.

3. [17-11116](#)-B-7 MICHAEL/KIMBERLY BOUDREAU
DRJ-1
MICHAEL BOUDREAU/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE (U.S.A.) N.A.
6-30-17 [[17](#)]

This motion was filed and served pursuant to LRB 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. It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

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.

4. [17-11118](#)-B-7 JOHN VASQUEZ
MGM-1
DENIS O'NEILL/MV
TIMOTHY SPRINGER/Atty. for dbt.
MICHAEL MARDEROSIAN/Atty. for mv.
DISCHARGED, NON OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-8-17 [[12](#)]

This matter has been resolved by a stipulation of the parties. The court will enter an order approving the stipulation when one is submitted. No appearance is necessary.

5. [16-10521](#)-B-7 ALAN ENGLE
DRJ-1
ROCKY PIPKIN/MV

DAVID JENKINS/Atty. for mv.
WITHDRAWN

CONTINUED MOTION FOR ORDER
ESTIMATING HIS CLAIM FOR
DISTRIBUTION PURPOSES ONLY
5-18-17 [[154](#)]

This motion has been withdrawn. No appearance is necessary.

6. [16-10521](#)-B-7 ALAN ENGLE
PBB-1
ALAN ENGLE/MV
PETER BUNTING/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED OBJECTION TO CLAIM OF
ROCKY J. PIPKIN, CLAIM NUMBER 3
2-15-17 [[118](#)]

This matter will proceed as scheduled.

7. [17-11224](#)-B-7 DAVID/LIDIA DE LA CRUZ
JDW-1
DAVID DE LA CRUZ/MV
JOEL WINTER/Atty. for dbt.

MOTION TO AVOID LIEN OF
FINANCIAL CREDIT NETWORK, INC.
7-6-17 [[17](#)]

This motion was filed and served pursuant to 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. It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

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.

8. [10-15127](#)-B-7 NORMA BAKER
WEE-10
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF
HFC/HSBC
7-3-17 [[138](#)]

This motion will be denied without prejudice. The court will enter an order. No appearance is necessary. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 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 order shortening or modifying notice was sought or obtained.

In addition, the notice and/or pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.A.

9. [10-15127](#)-B-7 NORMA BAKER
WEE-8
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE
7-3-17 [[136](#)]

This motion will be denied without prejudice. The court will enter a minute order. No appearance is necessary. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 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 order shortening or modifying notice was sought or obtained.

In addition, the record does not establish that the motion was served on the named respondent in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Serving the agent for service of process by certified mail does not comply with the Rule. For a directory of FDIC Insured Institutions, see <http://www3.fdic.gov/idasp/main.asp>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004.

Finally, the notice and/or pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.A.

10. [10-15127](#)-B-7 NORMA BAKER
WEE-9
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE
7-3-17 [[134](#)]

This motion will be denied without prejudice. The court will enter a minute order. No appearance is necessary. The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 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 order shortening or modifying notice was sought or obtained.

In addition, the record does not establish that the motion was served on the named respondent in compliance with Federal Rule of Bankruptcy Procedure 7004(h) (FDIC Insured Depository Institution). *In re Villar*, 317 B.R. 88 (9th Cir. BAP 2004). Serving the agent for service of process by certified mail does not comply with the Rule. For a directory of FDIC Insured Institutions, see <http://www3.fdic.gov/idasp/main.asp>. Litigants are encouraged to attach a copy of their information source (web page, etc.) to the proof of service to assist the court in evaluating compliance with Rule 7004.

Finally, the notice and/or pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.A.

11. [17-12427](#)-B-7 TIFFANY SAUBER
MET-1
BANK OF THE WEST/MV
TIMOTHY SPRINGER/Atty. for dbt.
MARY TANG/Atty. for mv.
NON-OPPOSITION

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-11-17 [[10](#)]

This matter will proceed as scheduled. This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2). Although written response was not required, the debtor filed a notice of non-opposition. Unless the trustee appears and presents opposition at the hearing, the court intends to enter the trustee's default 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 proposed order shall specifically describe the property or action to which the order relates.

The request for adequate protection is denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is scheduled to be surrendered and is a depreciating asset. In addition, the debtor filed a notice of non-opposition.

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).

12. [15-13932](#)-B-7 VICTOR PASNICK
RHT-15
ROBERT HAWKINS/MV
PETER FEAR/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO PAY
6-23-17 [[264](#)]

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

13. [17-11938](#)-B-7 JEFF CLARK
APN-1
SANTANDER CONSUMER USA INC./MV
MARK ZIMMERMAN/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-17 [[15](#)]

The motion will be granted without oral argument for cause shown. 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 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 proposed order shall specifically describe the property or action to which the order relates.

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

If an award of attorney fees has been requested, it 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. In addition, any future request for an award of attorneys fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C.A. §506(b).

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

14. [17-11739](#)-B-7 CARL SPENS
APN-1
SANTANDER CONSUMER USA INC./MV
SCOTT LYONS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-8-17 [[18](#)]

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

The debtor is an individual. The record does not show that the personal property collateral for this secured claim was redeemed or surrendered within the applicable time set by 11 U.S.C. §521(a)(2). Similarly, the record does not reflect that the loan was reaffirmed or that the movant denied a request to reaffirm the loan on the original contract terms. In fact, the court notes that the subject property is not listed at all in the debtor's schedules. Pursuant to 11 U.S.C. §362(h), the collateral is no longer property of the estate and the automatic stay has already terminated by operation of law. No attorney fees will be awarded in relation to this motion.

15. [12-19945](#)-B-7 COMAC BAR & GRILL, INC.
JTW-2
JANZEN, TAMBERI & WONG/MV

DAVID JENKINS/Atty. for dbt.
NON-OPPOSITION

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI & WONG,
ACCOUNTANT(S)
6-23-17 [[84](#)]

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

16. [12-19945](#)-B-7 COMAC BAR & GRILL, INC. MOTION TO PAY
RHT-5 6-23-17 [[79](#)]
ROBERT HAWKINS/MV
DAVID JENKINS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. 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. Accordingly, the respondents' defaults will be entered.

17. [12-15547](#)-B-7 DONNA/EVERETT DAVIS MOTION TO SELL AND/OR MOTION TO
RH-9 PAY
JAMES SALVEN/MV 7-5-17 [[288](#)]
GARY HUSS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This motion was filed and served pursuant to LRB 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.

18. [16-13658](#)-B-7 AUDELINA MOLINA
TMT-1
TRUDI MANFREDO/MV
SUSAN HEMB/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
6-26-17 [[33](#)]

The motion will proceed as scheduled for higher and better bids only. The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order after hearing as specified below.

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. It appears that the sale is a reasonable exercise of the trustee's business judgment.

19. [17-11963](#)-B-7 WILLIAM BRADY
JHW-1
CREDIT ACCEPTANCE CORP./MV
JENNIFER WANG/Atty. for mv.
WITHDRAWN

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-21-17 [[13](#)]

The motion has been withdrawn. No appearance is necessary.

20. [16-12964](#)-B-7 ANTHONY/VICTORIA LOPEZ
TMT-1
TRUDI MANFREDO/MV
PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
6-27-17 [[22](#)]

The motion will proceed as scheduled for higher and better bids only. The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order after hearing as specified below.

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. It appears that the sale is a reasonable exercise of the trustee's business judgment.

21. [17-11774](#)-B-7 MAYRA ALVARENGA
AP-1
WELLS FARGO BANK, N.A./MV
R. BELL/Atty. for dbt.
ALEXANDER LEE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-17 [[12](#)]

The motion will be granted without oral argument for cause shown. 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 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 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.

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

If an award of attorney fees has been requested, it 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. In addition, any future request for an award of attorneys fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C.A. §506(b).

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been scheduled to be surrendered.

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. [16-14676](#)-B-7 JOHN/PATRICIA FARINELLI STATUS CONFERENCE RE: MOTION TO
PBB-1 AVOID LIEN OF WELLS FARGO BANK
JOHN FARINELLI/MV NATIONAL ASSOCIATION
6-9-17 [[94](#)]

PETER BUNTING/Atty. for dbt.

In light of the court's ruling at calendar number 24 (DC# TGM-6), this status conference will be vacated as moot. No appearance is necessary.

23. [16-14676](#)-B-7 JOHN/PATRICIA FARINELLI MOTION TO SELL FREE AND CLEAR
TGM-5 OF LIENS
PETER FEAR/MV 6-28-17 [[106](#)]
PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

The motion will proceed as scheduled for higher and better bids only. The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order after hearing as specified below.

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. It appears that the sale is a reasonable exercise of the trustee's business judgment.

24. [16-14676](#)-B-7 JOHN/PATRICIA FARINELLI
TGM-6
PETER FEAR/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DEBTORS JOHN
URBANO FARINELLI AND PATRICIA
DAWN FARINELLI AND WELLS FARGO
NATIONAL ASSOCIATION
6-28-17 [[113](#)]

PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

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

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.

It appears from the moving papers that the trustee has considered the factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee or debtor-in-possession reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

Accordingly, it appears that the the compromise pursuant to FRBP 9019 is a reasonable exercise of the DIP's business judgment. The order should be limited to the claims compromised as described in the motion.

25. [17-11476](#)-B-7 HEATHER/SARAI VASQUEZ MOTION TO REDEEM
SAH-1 5-30-17 [[17](#)]
HEATHER VASQUEZ/MV
SUSAN HEMB/Atty. for dbt.

This motion will be denied. No appearance is necessary. The court will enter an order.

Neither the debtors' motion nor the record shows that they have complied with all the requirements necessary to redeem personal property.

The debtors filed this motion in an attempt to redeem, for a payment of \$500, their furniture specifically described as "a couch, loveseat, ottoman, coffee table, (2) end tables, (2) lamps, and buffet." Although the debtors' Statement of Intent was filed with their petition and schedules, it does not list the subject property nor do the debtors' schedules show any claim secured by this collateral and their schedules do not separately identify and value each item.

Also, the pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.

In addition, the motion was filed without admissible supporting evidence as required by LBR 9014-1(d) (7).

26. [16-12687](#)-B-7 LORAIN GOODWIN MILLER CONTINUED OBJECTION TO DEBTOR'S
TGM-2 CLAIM OF EXEMPTIONS
JAMES SALVEN/MV 3-29-17 [[55](#)]
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

27. [16-12687](#)-B-7 LORAIN GOODWIN MILLER MOTION TO COMPEL AND/OR MOTION
TGM-3 FOR SANCTIONS
JAMES SALVEN/MV 7-17-17 [[90](#)]
TRUDI MANFREDO/Atty. for mv.
OST 7/14/17

This matter will proceed as scheduled.

28. [17-11789](#)-B-7 WON HAN OPPOSITION RE: TRUSTEE'S MOTION
JES-1 TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341 (A) MEETING
OF CREDITORS
6-19-17 [[56](#)]

This matter will proceed as scheduled.

29. [16-14199](#)-B-7 HARLAN/VIRGINIA TYLER
FW-2
JAMES SALVEN/MV

MOTION TO APPROVE STIPULATION
AND/OR MOTION FOR DIRECT
PAYMENT TO DEBTOR
6-22-17 [[25](#)]

RILEY WALTER/Atty. for dbt.
PETER FEAR/Atty. for mv.

The motion to approve a stipulation for compromise, resolving the amount of exemption claimed by debtors in lawsuit proceeds and providing for direct payment of exempt proceeds to debtor, will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order with the stipulation attached. No appearance is necessary.

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.

It appears from the moving papers that the trustee has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987), and the factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee or debtor-in-possession reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

Accordingly, it appears that the stipulation to compromise pursuant to FRBP 9019 is a reasonable exercise of the DIP's business judgment. The order should be limited to the claims compromised as described in the motion.

30. [16-12687](#)-B-7 LORAIN GOODWIN MILLER
TGM-4
JAMES SALVEN/MV
TRUDI MANFREDO/Atty. for mv.
OST 7/19/17

MOTION TO COMPEL
7-19-17 [102]

This matter will proceed as scheduled.

11:00 A.M.

1. [17-11610](#)-B-7 JEFFREY/SOCORRO HUNTER PRO SE REAFFIRMATION AGREEMENT
WITH BENEFICIAL STATE BANK
6-30-17 [[20](#)]

This matter will proceed as scheduled.

2. [17-11121](#)-B-7 RUBEN/PAULINE MAGANA REAFFIRMATION AGREEMENT WITH
BALBOA THRIFT & LOAN
6-20-17 [[14](#)]

TIMOTHY SPRINGER/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that the agreement established a presumption of undue hardship and that in his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [17-11748](#)-B-7 ARTEMIO/OLGA CORTEZ REAFFIRMATION AGREEMENT WITH
AMERICREDIT FINANCIAL SERVICES,
INC.
6-29-17 [[14](#)]

TIMOTHY SPRINGER/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that the agreement established a presumption of undue hardship and that in his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

4. [17-10467](#)-B-7 MARGARITA GARCIA

REAFFIRMATION AGREEMENT WITH
HYUNDAI CAPITAL AMERICA DBA KIA
MOTORS FINANCE
6-27-17 [[20](#)]

JAMES MILLER/Atty. for dbt.

The hearing will be dropped from calendar. Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that in his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

5. [17-11285](#)-B-7 LAURIE MADERA

PRO SE REAFFIRMATION AGREEMENT
WITH ALLY BANK
6-22-17 [[15](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [16-11605](#)-B-7 CAROLYN CHARLTON
[16-1078](#) JRL-1
CHARLTON V. CHARLTON
JERRY LOWE/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO SET ASIDE
6-15-17 [[56](#)]

The motion will proceed as scheduled. The tentative ruling is below.

Tentative Ruling- The motion will be GRANTED. Carolyn Charlton is to file and serve an answer to the second amended complaint within 14 days of the entry of the order. A status conference on this adversary proceeding will be held September 13, 2017 at 1:30 pm. Status report(s) (either individual or joint) are to be filed and served by September 6, 2017. Carolyn Charlton is to pay \$1015.00 to plaintiff's counsel as a sanction. The court will issue the order.

Defendant Carolyn J. Charlton ("Defendant" or "Movant") requests that her default entered in this adversary proceeding on March 28, 2017 be set aside. The Plaintiff opposes the motion.

This adversary proceeding was filed July 25, 2016 (Doc. # 1). The summons was re-issued September 7, 2016 (Doc. #8) and served September 8, 2016 (Doc. #9). No request for entry of default was then filed and the first status conference was held November 9, 2016 and continued to January 25, 2017. At that status conference, the plaintiff was advised of some deficiencies in the complaint and that an amended complaint would need to be filed. (Doc. #20). A second amended complaint (the currently operative pleading) was filed February 16, 2107 (Doc. #25) and served February 23, 2017 (Doc. # 28). No response was filed by the defendant and a default was entered March 28, 2017 (Doc. # 33). On April 27, 2017 a motion to enter a default judgment was filed, NMB-1 (Doc. # 41). The hearing on this motion was continued to July 26, 2017 to be heard with this motion to set aside the default.

A party seeking to vacate the entry of default has the burden of proof. See, *TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir, 2001). FRCP 55(c) (applicable to bankruptcy adversary proceedings by FRBP 7055) permits a court in its discretion to set aside an entry of default for good cause. In the Ninth Circuit the court must consider three factors: (1) whether the party seeking to set aside the default engaged in culpable conduct that led to the default; (2) whether the party had no meritorious defense; or (3) whether re-opening the default would prejudice the other party. *U.S. v. Signed Check No. 730 of Yubran S. Mesle ("Mesle")*, 615 F.3d 1085, 1091 (9th Cir, 2010). These three factors are in the disjunctive, such that finding that any one of the factors is true is sufficient reason . . . to refuse to set aside the default. *Id.*

Culpable conduct- Defendant's conduct is culpable if "[s]he has received actual notice or constructive notice of the filing of the action and intentionally failed to answer." *TCI*, 244 F.3d at 695-96 *emphasis in original*. The test is more liberally applied in the Rule 55(c) context. *Id.* quoting *Cracco v. Vitran Exp. Inc.*, 559 F. 3d 508, 513 (7th Cir, 1986). Culpable means more than a conscious choice not to answer, rather to be culpable, the movant must have acted in bad faith such as "an intention to take advantage of the opposing party, interfere with judicial decision making or otherwise manipulate the legal process." *Mesle* 615 F.3d at 1092, quoting, *TCI* at 697.

The defendant here was undergoing rehabilitation from a surgical procedure until the beginning of April 2017. The defendant's default was entered on March 28, 2017. She saw the second amended complaint and summons on April 3, 2017. Before the status conference in May 2017, the defendant filed a "Request Contesting the Motion for Entry of Default Judgment" and has been attending status conferences and continued hearings. She was urged to hire counsel and respond. Plaintiff claims defendant's actions are culpable because she failed to respond to earlier versions of the complaint and never requested extensions of time. Much of plaintiff's argument misses the point that the operative pleading in the case, now the second amended complaint, was not filed and served until February 2017, when defendant was convalescing. The failure to respond here does not suggest that she was intending to take advantage of the plaintiff or interfere with or manipulate the process. To be sure, the defendant has been careless but without the presence of other equitable factors such as prejudice, there is a strong preference to set aside a default. *TCI* at 196-7 citing, *Lemoge v. United States*, 587 F.3d 1192 (9th Cir, 2009).

Meritorious Defense- To establish a meritorious defense, the defendant, on a motion to set aside a default, must present specific facts that would constitute a defense. But the burden is not extraordinarily heavy. *Mesle* at 1094 quoting *TCI* at 700. "The question whether the factual allegation is true is not to be determined by the court when it decides the motion to set aside the default." *Id.* "Rather, that question would be the subject of the later litigation." *Id.* See also, *Girlsongs & Warner Bros. v. Starkey*, 108 F.R.D. 275, 277 (N.D.CA, 1984) ["All that is necessary . . . is a presentation or proffer of evidence which, if believed, would permit (the trier of fact) to find for the defendant."]

The defendant raises the point in her declaration that she did not have the requisite scienter. The evidence is that she paid the plaintiff \$11,000.00 after an alleged promise to repay was made. Since *Bullock v. BankChampaign N.A.*, ___ U.S. ___, 133 S.Ct. 1754, 1759 (2013) more than defalcation by a trustee is necessary before a debt is non-dischargeable under 11 U.S.C. §523(a)(4). Some culpable conduct is needed. See, *In re Heers*, 529 BR 734, 742-43 (9th Cir. BAP 2015). The repayment suggests that defendant did not intentionally plan to permanently deprive the trust of funds. That

fact is disputed, to be sure. However, determining that dispute is not the court's duty at this stage.¹

The plaintiff admits there is an issue at least as to the amount allegedly owed. (Doc. # 67 at pg. 3). Plaintiff also raises an interesting issue as to the amount of discretion the controlling trust documents provide to the defendant. *Id.* However, a more specific inquiry into the structure of and intent behind the trust documents will be needed to decide this issue. On balance there are more than enough issues which, if decided in defendant's favor, would result in a defense judgment on the 523(a)(2) and (a)(4) claims. The court may very well eventually decide these issues against the defendant. However, for now, a meritorious defense has been established for purposes of this motion only.

Prejudice—"To be prejudicial, the setting aside of a default must result in a greater harm than simply delaying resolution of the case." *TCI* at 701. Being forced to litigate on the merits cannot be considered prejudicial because a plaintiff would have had to do so anyway had there been no default. *Id.* Therefore, the fact a party may be denied a quick victory is not sufficient to deny relief from entry of default. *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1225 (9th Cir, 2000). "Prejudice must be a tangible harm such as loss of evidence, increased difficulties of discovery or greater fraud and collusion for the setting aside of the default to be prejudicial to the plaintiff." *TCI* at 701.

Plaintiff here points to none of these "tangible harms." Rather the plaintiff isolates the attorney's fees incurred in preparing and prosecuting the motion for entry of default judgment. To be sure the plaintiff has had to expend fees to prosecute the matter and had the defendant been less careless and more diligent after the April 2017 motion some of these fees would not have been incurred. The second amended complaint has been "pending" for only five months. The defendant has been present at hearings where the court has on more than one occasion told the defendant that she needed counsel and that she needed to pursue the matter diligently. These acts and omissions, however, do not justify a sanction indemnifying the plaintiff for all of the fees incurred in prosecuting the motion for entry of default judgment.

Awarding attorney's fees and costs as a sanction for setting aside a default is within a trial court's discretion. *Nilsson, Robbins, Dalgam, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538, 1546-7 (9th Cir, 1988). *Pro se* litigants are not excused from complying with procedural rules. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) overruled on other grounds *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012).

¹ *Heers* requires undisputed evidence of egregious fiduciary violations to find a debtor reckless as to the impropriety of her actions as a trustee on a summary judgment motion. *Heers*, 529 BR at 734. Without deciding the issue here, this brings into question the propriety of the motion for default judgment without more evidence supporting the alleged defalcation.

Defendant here was advised by the court more than once what was likely to occur in the case. At the hearing May 31, 2017 where the court continued the hearing to allow for the filing of a motion to set aside the default, the court noted it would likely award sanctions if the default was set aside. The court did require personal appearances on May 31, 2017.

Plaintiff here asks for an award of \$3,813 which is the fees incurred in prosecuting the motion for entry of default judgment. The request presumes the work performed was only applicable to the entry of the default judgment when much, if not all, would have to be spent by the plaintiff in any case to proceed with either a trial or a dispositive motion. However, plaintiff's counsel was required to appear in Fresno on May 31, 2017 which was a hearing that was continued to accommodate (once again) the defendant. Plaintiff's counsel had to travel from her office in Oakhurst, CA, approximately one hour away, attend the hearing and return to Oakhurst. Some preparation for the hearing was needed as well. The court has reviewed counsel's rate and considering all the circumstances, finds it appropriate to award the plaintiff \$1015.00 representing 3.5 hours of counsel time (at \$290 per hour) for appearing at and preparing for the hearing on May 31, 2017. Said sum is payable by defendant, Carolyn Charlton.

The motion is GRANTED. Carolyn Charlton to pay counsel for the plaintiff \$1,015.00 as a sanction.

2. [16-11605](#)-B-7 CAROLYN CHARLTON
[16-1078](#) NMB-1
CHARLTON V. CHARLTON
NANETTE BEAUMONT/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR ENTRY OF
DEFAULT JUDGMENT
4-27-17 [[40](#)]

This matter will proceed as scheduled.

3. [17-10620](#)-B-7 REBEKAH CHERRY
[17-1054](#)
CHERRY V. NAVIENT (DEPT. OF
EDUCATION) ET AL
REBEKAH CHERRY/Atty. for pl.
REISSUED SUMMONS S/C TO BE
HELD 8/30/17

STATUS CONFERENCE RE: COMPLAINT
5-24-17 [[1](#)]

This status conference will be vacated. A new summons has been issued and a new status conference date has been set. No appearance is necessary.

4. [16-14647](#)-B-7 THOMAS ARLITZ
[17-1053](#)
U.S. TRUSTEE V. ARLITZ
ROBIN TUBESING/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
5-24-17 [[1](#)]

This status conference will be vacated. The record shows a default has been entered and a motion for default judgment has been filed and served. No appearance is necessary.

5. [15-12689](#)-B-7 MARK HANSEN
[17-1042](#)
HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
MARK HANSEN/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
7-12-17 [[31](#)]

This status conference will be continued to August 23 at 1:30 p.m. The plaintiff has filed and served an amended complaint and the time for an responsive pleading has not yet run. The court will enter an order. No appearance is necessary.