

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 5, 2020
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

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

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.

9:00 AM

1. [20-11905](#)-B-13 **IN RE: PARMINDER SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-6-2020 [\[16\]](#)

PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

2. [20-11914](#)-B-13 **IN RE: ROSA GODOY**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CHASE MORTGAGE
7-2-2020 [\[16\]](#)

ROSA GODOY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on July 2, 2020 and set for hearing on August 5, 2020. Doc. #20, 17. August 5, 2020 is more than 28 days after July 2, 2020, and therefore this hearing was set on more than 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition, if any, may be presented at the hearing. Doc. #17. That is incorrect. Because the hearing was set on more than 28 days' notice, the notice should have stated that if opposition, if any, must be written and filed and served at least 14 days prior to the hearing. Because this motion was filed, served, and noticed on more than 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

The court notes the supplemental certificate of service (doc. #22) was filed and served after July 8, 2020 (the last day for effective 9014-1(f)(1)(B) notice). That does not nullify the court's decision.

3. [20-10319](#)-B-13 **IN RE: OLGA AGUILAR**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
5-26-2020 [\[39\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 12, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

This motion is continued to August 12, 2020 at 9:30 a.m. The grounds are that debtor failed to confirm a chapter 13 plan. Doc. #39. Debtor's motion to confirm a plan is granted on this calendar. See matter #4 below, RSW-2. However, debtor's supplemental response states that debtor's expected income from an escrow closing will "probably not be available until approximately August 4, 2020." Doc. #67. Debtor has asked for a short continuance so that the funds may be sent to and received by the chapter 13 trustee's office. Therefore, the motion is continued to the date and time above.

4. [20-10319](#)-B-13 **IN RE: OLGA AGUILAR**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
6-3-2020 [\[43\]](#)

OLGA AGUILAR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 chapter 13 trustee withdrew his opposition on July 10, 2020. Doc. #63. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. [16-10433](#)-B-13 **IN RE: DEAN GALLOWAY**
[RSW-2](#)

MOTION TO MODIFY PLAN
6-19-2020 [\[44\]](#)

DEAN GALLOWAY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 chapter 13 trustee withdrew his opposition on July 16, 2020. Doc. #56. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

6. [19-13343](#)-B-13 **IN RE: CHRISTINA CORONEL**
[RSW-5](#)

MOTION TO MODIFY PLAN
6-16-2020 [\[74\]](#)

CHRISTINA CORONEL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 21, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtor's fully noticed motion to modify a chapter 13 plan. Doc. #82. Debtor replied, asking the court to continue the matter to a date in October, as a pending family law matter may resolve the issues in Trustee's objection. Doc. #84. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a status report not later than October 14, 2020. The status report shall inform the court and Trustee on the issue of the spousal waiver and if debtor still believes the plan as modified is confirmable.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing the status report, then a confirmable modified plan shall be filed, served, and set for hearing, not later than October 14, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

7. [15-14459](#)-B-13 **IN RE: KENNETH/JILL BURDICK**
[MHM-2](#)

OBJECTION TO NOTICE OF INTENT TO ENTER DISCHARGE BY MICHAEL H. MEYER
6-23-2020 [\[57\]](#)

WILLIAM OLCOTT/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection 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 objection is SUSTAINED. 11 U.S.C. § 1328(f)(1) states

Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge in a case filed under chapter 7, 11 or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter.

The evidence shows that debtors received a discharge on August 12, 2013. Case no. 13-13006. This case was filed on November 17, 2015, which is less than four years after August 12, 2013. There is no opposition to this motion. Debtors' discharge shall not be entered.

8. [20-11896](#)-B-13 **IN RE: MARTIN/EVANGELINA MENDOZA**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
6-29-2020 [\[19\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Continued to September 2, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The motion to value collateral, the determination of which will directly affect the outcome of this objection, is continued to September 2, 2020 at 9:30 a.m. Therefore this objection is continued to that same date and time to be heard in conjunction with the continued motion.

10:00 AM

1. [12-19709](#)-B-7 **IN RE: TIPAPORN BOERGER**
[PWG-2](#)

MOTION TO AVOID LIEN OF FOX CREEK PROPERTIES
6-12-2020 [\[40\]](#)

TIPAPORN BOERGER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

A judgment was entered against the debtor in favor of Foxcreek Properties, LLC in the sum of \$322,172.62 on February 8, 2012. Doc. #44. The abstract of judgment was recorded with Kern County on March 15, 2012. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$148,500.00 as of the petition

date. Doc. #37. The unavoidable liens totaled \$230,556.60 on that same date, consisting of a deed of trust in favor of The Mortgage House and a deed of trust in favor of Bank of America, N.A. fka Countrywide Home Loans. Doc. #39. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Doc. #38.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. [12-19709](#)-B-7 **IN RE: TIPAPORN BOERGER**
[PWG-3](#)

MOTION TO AVOID LIEN OF SOMPOB VISAJNAM
6-12-2020 [\[46\]](#)

TIPAPORN BOERGER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

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

quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992),
aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Labor Commissioner of the State of California in the sum of \$77,116.49 on August 18, 2011. Doc. #50. The abstract of judgment was recorded with Kern County on April 23, 2012. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$148,500.00 as of the petition date. Doc. #37. The unavoidable liens totaled \$230,556.60 on that same date, consisting of a deed of trust in favor of The Mortgage House and a deed of trust in favor of Bank of America, N.A. fka Countrywide Home Loans. Doc. #39. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Doc. #38.

The court notes that the motion and declaration state the lien is in favor of creditor Sompob Visajnam (doc. #46, 48) but the abstract of judgment lists, and only they were served, the Labor Commissioner of the State of California as the judgment creditor (doc. #50). The evidence is conflicting, and debtor must appear at the hearing and explain the conflict. If the court is satisfied with the explanation, then the court may grant the motion and find the following:

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. 12-19709-B-7 **IN RE: TIPAPORN BOERGER**
PWG-4

MOTION TO AVOID LIEN OF KHAMPHONE SIVONGSA
6-12-2020 [52]

TIPAPORN BOERGER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

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

A judgment was entered against the debtor in favor of Labor Commissioner of the State of California in the sum of \$59,140.84 on August 18, 2011. Doc. #56. The abstract of judgment was recorded with Kern County on April 23, 2012. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$148,500.00 as of the petition date. Doc. #37. The unavoidable liens totaled \$230,556.60 on that same date, consisting of a deed of trust in favor of The Mortgage House and a deed of trust in favor of Bank of America, N.A. fka Countrywide Home Loans. Doc. #39. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Doc. #38.

The court notes that the motion and declaration state the lien is in favor of creditor Khamphone Sivongsa (doc. #52, 54) but the abstract of judgment lists, and only they were served, the Labor Commissioner of the State of California as the judgment creditor (doc. #57). The evidence is conflicting, and debtor must appear at the hearing and explain the conflict. If the court is satisfied with the explanation, then the court may grant the motion and find the following:

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. [20-11621](#)-B-7 **IN RE: JANET FERNANDEZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2020 [\[13\]](#)

SANTANDER CONSUMER USA INC./MV
VINCENT QUIGG/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on May 7, 2020 and the lease was not assumed by the chapter 7 trustee within 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 and the automatic stay under § 362(a) has already terminated by operation of law.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted.

5. [17-10026](#)-B-7 **IN RE: FRYE CONSTRUCTION, INC.**
[PWG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH DYCO DEVELOPMENT, INC., DB BAKERSFIELD, LLC, WELLS FARGO
BANK AND NORTHWEST, N.A. AND/OR MOTION FOR COMPENSATION FOR
PHILLIP W. GILLET, JR., TRUSTEES ATTORNEY(S)
6-22-2020 [\[34\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
PHILLIP GILLET/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

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

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

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

The chapter 7 trustee ("Trustee") requests approval of a settlement agreement between the estate and all defendants including Dyco Development, Inc., DB Bakersfield, LLC and Wells Fargo Bank, Northwest, N.A. Doc. #34.

Under the terms of the compromise, the defendants will pay \$10,000.00 to the estate, in full satisfaction of the claims. Doc. #38. Attorney Phillip W. Gillet, Jr. is entitled to a 35% contingency fee.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the debtor's principal has moved out of state and the estate has little incentive to pay her expenses and prepare her for trial, and defendants have asserted various defects in the work

performed by the debtor; collection will be no less difficult than any judgment - Dyco and DB are still in operation, but their financial condition is unknown; the litigation is factually intense and the estate would have to hire an expert witness to prove its case; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

Trustee is also authorized to pay Phillip Gillet, Jr. the 35% contingency fee.

6. [20-10259](#)-B-7 **IN RE: JOSE URIBE RIZO AND LORENZA URIBE**

AMENDED MOTION TO CONVERT CASE TO CHAPTER 13
7-2-2020 [\[24\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). Doc. #25. 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.

Second, LBR 9004-2(c)(1) requires that notices, proofs of service, *inter alia*, to be filed as separate documents. Here, the notice and proof of service were combined into one document and not filed separately.

Third, debtor has not made the showing required under Marrama v. Citizens Bank, 549 U.S. 365, 371-72 (2007). There is no evidence supporting the motion.

Therefore the motion is denied without prejudice.

7. [19-10973](#)-B-7 **IN RE: CVC ENVIRONMENTAL, INC.**
[TGF-3](#)

MOTION FOR ADMINISTRATIVE EXPENSES
7-3-2020 [\[51\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
VINCENT GORSKI/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. The chapter 7 trustee ("Trustee") asks the court for an order authorizing the payment of \$3,553.47 to Art McAdams as owner of the real property that was leased by the debtor, as an administrative expense. Doc. #51. No party has opposed this motion. The trustee used property leased by the debtor to store items before the trustee administered them for the benefit of the estate.

Trustee is authorized to pay Art McAdams \$3,553.47 within 15 days of the entry of the order granting this motion.

8. [19-10973](#)-B-7 **IN RE: CVC ENVIRONMENTAL, INC.**
[TGF-4](#)

MOTION TO PAY
7-3-2020 [\[55\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
VINCENT GORSKI/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. The chapter 7 trustee ("Trustee") seeks to pay the Franchise Tax Board in the amount of \$829.00 for the annual minimum tax for the 2018 tax year, pay \$800.00 for the annual minimum tax for the 2019 tax year, pay up to \$2,500.00 for any unexpected future liabilities to the Franchise Tax Board, the Internal Revenue Service or any other taxing authority for which the trustee receives notice. Doc. #55. No party has opposed the motion.

9. [20-10683](#)-B-7 **IN RE: JOHNNIE SAUNDERS**
[JMV-2](#)

MOTION TO SELL
7-8-2020 [\[29\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). Doc. #30. 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.

10. [20-11497](#)-B-7 **IN RE: KEVIN RODRIGUEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
4-27-2020 [\[5\]](#)

KEVIN RODRIGUEZ/MV

NO RULING.

Debtor's schedule I states that he is unemployed yet lists income from wages. Debtor's income also exceeds the guidelines for a waiver. Debtor must appear at the hearing and explain this discrepancy.

11:00 AM

1. [19-14045](#)-B-7 **IN RE: DAVID MARTIN**
[20-1010](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-11-2020 [[1](#)]

EDMONDS V. FARRIS
ANTHONY JOHNSTON/ATTY. FOR PL.
DISMISSED 7/13/20

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. #60.

11:30 AM

1. [20-10579](#)-B-7 **IN RE: ANTHONIA BALDRIDGE**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
6-23-2020 [[21](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.

NO RULING.