UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, August 2, 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.

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. 17-11600-B-7 **IN RE: FOXWOOD ENTERPRISES, INC.**
RHT-2

MOTION FOR ADMINISTRATIVE EXPENSES
7-27-2018 [30]

ROBERT HAWKINS/MV
SUSAN HEMB
ROBERT HAWKINS/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-l(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- l(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 is authorized to pay the Franchise Tax Board $800.00.

2. 17-11600-B-7 IN RE: **FOXWOOD ENTERPRISES, INC.**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI AND WONG, ACCOUNTANT(S)
8-7-2018 [35]

JANZEN, TAMBERI AND WONG/MV
SUSAN HEMB

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-l(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- l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk {In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's accountants, Ratzlaff, Tamberi and Wong, requests fees of $4,431.00 for services rendered as from October 26, 2017 through July 20, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation:(1) Reviewed information from the trustee's final accounting and information received from the prior accountant; (2) Prepared fiscal year 2017 state and federal income tax returns; (3) Prepared fiscal year 2018 state and federal income tax returns; and (4) Prepared the fee application and declaration. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,431.00 in fees.

3. 16-13801-B-7 **IN RE: ARAFAT ALKOBADI**
MAZ-1

MOTION TO COMPEL ABANDONMENT
8-10-2018 [ ]

ARAFAT ALKOBADI/MV
MARK ZIMMERMAN

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-l(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- l(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. § 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.

Based on the trustee's final report, and in the absence of opposition, the court finds that the real property located at 557 Willow Street in Woodlake, CA 93286 is of inconsequential value and benefit to the estate and shall be abandoned so the debtor can list the property for sale.

4. 18-11504-B-7 **IN RE: JERONIMO/XOCHITL LOZANO**
SSW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-9-2018 [ ]

CITIZENS BANK, N.A./MV
TIMOTHY SPRINGER
SCOTT WELTMAN/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Granted in part as to the trustee’s interest and denied as moot in part as to the debtors' interest.

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 motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors'discharge was entered on July 26, 2018. Docket #16. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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. The order shall provide the motion is DENIED AS MOOT as to the debtors.

The collateral is a 2015 Dodge Charger. Doc. #23. The collateral has a value of $16,175.00 and debtor owes $20,043.75. *Id.*

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

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

The court notes that the movant incorrectly served the U.S. Trustee in Sacramento. The court also notes that the movant used an outdated Relief from Stay Information Sheet. The correct form is EDC 3-468 (Rev.11/10).

Finally, the movant filed this motion 14 days after the debtors received their discharge and 12 days after movant was served with the notice of entry of discharge. Movant did not file a dismissal of this motion as to the debtors under Federal Rule of Bankruptcy Procedure 7041 and 9014(c). 11 U.S.C. § 362(c}(2)(C) provides that the stay no longer protects debtors upon entry of their discharge. Counsel should consult Fed. R. Bankr. P. 901l(b) before filing similar motions in the future.

5. 15-14706-B-7 **IN RE : FELIBERTO LIMON AND NORMA URBANO**
TMT-7

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FELIBERTO LIMON AND NORMA URBANO AND/OR MOTION FOR COMPENSATION FOR MONRAE ENGLISH, SPECIAL COUNSEL (S)
8-14-2018 [72]

TRUDI MANFREDO/MV
JEFFREY ROWE
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-l(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- l(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.

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 trustee requests approval of a settlement agreement relating to labor law violations between the estate and Countrywide Building Materials, Inc. ("Defendant"). The claims were precipitated by the alleged failure of Defendant to provide meal periods and breaks.

Under the terms of the compromise, the estate will receive $2,500.00, the debtors will receive $2,500.00, and Special Counsel will receive $2,500.00 for fees and costs.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is likely, but the costs of litigation, however minimal, would greatly reduce any net amount to the estate; collection would be difficult as there is evidence of Defendant's insolvency; the litigation is very fact-intensive and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED. The settlement of the labor law claims for $7,500.00 is authorized and all other claims the parties may have against each other are released. Movant is authorized to pay $2,500.00 to the debtors and Special Counsel fees of $2,500.00 are authorized as well.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

6. 18-12006-B-7 **IN RE: SANDRA SANTOS**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-31-2018 [ ]

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
SCOTT LYONS
JENNIFER WONG/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 parcel of real property commonly known as 1383 s. Cardoza Street, Tulare, California 93274. Doc. #22. The collateral has a value of $170,873.00 based on the debtor's schedules (doc. #1) and the amount owed is $146,484.59. Doc. #21. The debtor claimed the little remaining equity after deducting costs of sale (6%) as exempt. Doc. #1. There is no benefit to the estate to administer the property.

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 denied. The movant has shown no exigency.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

Unless the court expressly orders otherwise, the 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).

7. 18-13020-B-7 **IN RE: MICHAEL LOOMIS**
EAT-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-9-2018 [11]

WELLS FARGO BANK, N.A./MV
SUSAN HEMB
DARLENE VIGIL/ATTY. FOR MV.
RESPONSIVE PLEADING

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. The order shall conform to this ruling.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-l(f)(1) and will proceed as scheduled. The court will issue an order if a further hearing is necessary.

This motion for relief from the automatic stay asks the court for retroactive relief because the borrower fraudulently transferred interest in the property to the Debtor just prior to Debtor's bankruptcy filing. Doc. #12.

Debtor filed a timely response to the motion, indicating that they do not know of, nor ever lived at the subject property, 5209 Gately Avenue in Richmond, CA 94804; that they have no knowledge of the promissory note, loan modification agreement, Jan L. Williams, and that the transfer was done without his consent. The court finds that movant has made its prima facie case for relief from the automatic stay as to the property at issue and so, GRANTS this motion.

11 U.S.C. § 362(d)(1) allows the court to grant relief from stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court concludes that "cause" exists to lift the stay because movant has been denied its rights on several occasions due to the fraudulent nature of the borrower in transferring interests in the property to persons unaware and unrelated to borrower. Doc. #12.

The court also notes that the trustee filed a report of no distribution on August 21, 2018.

The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." In re Aheong, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations omitted). In In re Fjeldsted, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003), the court outlined factors for a court to consider when deciding a motion to annul the automatic stay: the number of bankruptcy filings by the debtor; whether, in a repeat filing case, the circumstances indicate an intent to delay and hinder creditors; the extent of

any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; the relative ease of restoring the parties to the *status quo* ante; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the sale; whether creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; whether annulment of the stay will cause irreparable injury to the debtor; and whether stay relief will promote judicial economy or other efficiencies. One factor alone may be dispositive. *Id.* at 25.

The court finds that the *Fjeldsted* factors weigh in favor of the creditor. This is the third bankruptcy case and in every single case, there was a clear intent to delay and hinder creditors. See doc. #15. There would be prejudice to a bona fide purchaser because the creditor actually sold the property to a third party purchaser on July 25, 2018, one day after this case was filed. As shown by the intent and delay to hinder creditors, the debtor has not filed in good faith. Doc. #40. It would not be easy to restore the parties to the *status quo ante* because creditor has already sold the property to a third party. *Id.* The creditors did not take further steps to violate the stay, annulment will not cause irreparable injury to the debtor, and stay relief will promote judicial economy. Also, the debtor is not opposed to this relief. Doc. #21.

Therefore, the court finds that "cause" exists to retroactively annul the automatic stay under 11 U.S.C. § 362(d)(1). The court does not make any finding that this debtor was complicit in any scheme to delay, hinder or defraud the movant. This motion is GRANTED.

8. 17-14329-B-7 **IN RE: CHARLES/GWENEVA SAWYER**
RWR-4

MOTION TO SELL AND/OR MOTION TO PAY
8-7-2018 [ ]

JAMES SALVEN/MV
DAVID JENKINS
RUSSELL REYNOLDS/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 set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-l(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- l(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. 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 that the sale of the real property located at 2031 E. Hammond Ave. in Fresno, CA 93730 is a reasonable exercise of the trustee's business judgment. Trustee is also authorized to pay the real estate broker commission of 10% to CMT properties and any cooperating broker based on the sale price.

This sale requires a $5,000.00 deposit and bids will be in increments of $3,000.00. The sale is "as is, where is" with no warranties or representations of any kind.

Any party desiring to bid at the hearing must:

1. Present to the Trustee at or before the hearing $8,000.00 in certified funds. This amount represents the $5,000.00 deposit and the first $3,000.00 overbid;
2. Be prepared to bid in $3,000.00 increments;
3. Be prepared to enter into a purchase and sale agreement at least as favorable to the estate as the agreement between the Trustee and buyer;
4. Be prepared to close escrow within 15 days after the hearing;
5. The winning bidder (including Buyer) who fails to perform will forfeit their deposit as reasonable liquidated damages for failing to perform; and
6. Non-winning bidders' deposits will be returned at the hearing.

The 14 day stay of Federal Rule of Bankruptcy Procedure 6004(h) is waived.

The trustee shall submit a proposed order after the hearing.

9. 18-12930-B-7 **IN RE: STELLA SILVA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
7-19-2018 [ ]

STELLA SILVA/MV
STELLA SILVA/ATTY. FOR MV.

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).

Debtor's Schedule I states that they are employed, yet does not list the occupation or wages from the employment. Doc. #1. Debtor's Schedule J states that debtor has no monthly expenses. *Id.* Lastly, Part 3 of the Application to Have the Chapter 7 Filing Fee Waived is incomplete. The court does not have enough information to grant the requested relief; the court does not believe that debtor has no monthly expenses.

Debtor must appear at the hearing and explain the aforementioned discrepancies.

10. 18-13430-B-7 **IN RE: CYNTHIA BALCAZAR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-27-2018 [l.§_]

SCOTT LYONS

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 debtor requested to pay the filing fee in installments. Doc. #17. An order granting the motion was filed on August 28, 2018. Doc. #18. Therefore, the OSC will be vacated.

11. 18-11837-B-7 **IN RE: CRISTIAN MINJARES**
RLM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-13-2018 [ll]

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY/MV
TIMOTHY SPRINGER
RICHARD MAHFOUZ/ATTY. FOR MV.
DISCHARGED

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-l(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-l(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.

When a motion for relief from the automatic stay involves allowing the creditor to proceed with or initiate non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

(1) whether the relief will result in a partial or complete resolution of the issues;
(2) the lack of any connection with or interference with the bankruptcy case;
(3) whether the foreign proceeding involves the debtor as a fiduciary;
(4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
(5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;

(6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
(7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
(8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
(9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
(10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
(11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
(12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. Additionally, the movant has stated that they will only be looking to insurance proceeds and NOT property of the debtor, so the interests of other creditors will not be prejudiced. Additionally, the state court action is a subrogation claim, and not a matter the bankruptcy court can hear. And in the absence of opposition, the court finds that cause exists to grant this motion.

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim and to seek relief against the insurance policy, only.

12. 17-10838-B-7 **IN RE: CHARLES/KAREN WILKINS**
RHT-6

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, CHAPTER 7 TRUSTEE(S)
7-27-2018 [85]

ROBERT HAWKINS/MV
JAMES MILLER
ROBERT HAWKINS/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-l(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-l(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. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

The court finds here that the requested fees of $51,733.94 and expenses of $501.71 are reasonable and incurred for actual and necessary services to the estate, and the expenses are actual and necessary.

During the course of the bankruptcy, the trustee listed for sale three separate real pieces of property, all vacant and in various states of disrepair, with one commercial piece of property involved in a complicated chain of title. Doc. #87. The work the trustee performed in order to settle the estate was reasonable in light of the complicated matters in this case.

13. 18-12640-B-7 **IN RE: CORY/AMANDA PRUETT**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-13-2018 [_]

WELLS FARGO BANK, N.A./MV
ROBERT WILLIAMS
WENDY LOCKE/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 debtors' 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 parcel of real property commonly known as 3511 Positano Place, Bakersfield, California 93314. Doc. #17. The

collateral has a value of $394,600.00 and the amount owed is $414,818.02. Doc. #19.

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

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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. 18-13043-B-7 **IN RE: PAUL COONCE**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-3-2018 [__]

GATEWAY MORTGAGE GROUP, LLC/MV
JEFFREY ROWE
JENNIFER WONG/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 parcel of real property commonly known as 2625 NW 183rd Street, Edmond, Oklahoma 73012. Doc. #14. The collateral has a value of $162,172.00 and the amount owed is $178,484.98. Doc. #13.

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 denied. The movant has shown no exigency.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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).

15. 17-12745-B-7 **IN RE: CATALINA CARDENAS**
JES-1

MOTION TO COMPEL
8-15-2018 [17]

JAMES SALVEN/MV
THOMAS GILLIS

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-l(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-l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages}. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The debtor can be compelled to turn over to the trustee estate property under 11 U.S.C. § 542(a). The order for turnover of property by the debtor can be obtained by motion. Federal Rule of Bankruptcy Procedure 7001(1). Tax refunds are property of the estate. In re Newman, 487 B.R. 193, 198 (9th Cir. BAP 2013).

This motion is GRANTED. Debtor shall turn over any 2017 federal and state tax refunds, or the information necessary to complete said tax

returns if the taxes have not been filed, on or before September 26, 2018. Failure to do so without excusable neglect will result in sanctions.

16. 12-15547-B-7 **IN RE: DONNA/EVERETT DAVIS**

TRUSTEE'S FINAL REPORT
7-11-2018 (308]

GARY HUSS
RESPONSIVE PLEADING

#16. Gambrell's Objection to Trustees Final Report (KLL-1)

Tentative Ruling: The matter will proceed as scheduled.

Disposition: Overruled.

Order: The court will issue an order.

Creditor Glenis Gambrell ("Gambrell") filed objections to James Salven Chapter 7 Trustee's ("Trustee") Final Report. Gambrell's objections question the delays in liquidating certain estate property, the net sales proceeds received, and specified disbursements made or proposed: (i) bank carrying charges; (ii) the amount of a price credit given to a purchaser of estate property; (iii) cost reimbursement of Trustee's counsel, and; (iv) the Trustee's commission.

This is a contentious and convoluted six year old case. Both debtors filed separate petitions in 2012 which were substantively consolidated. Before the filings, Gambrell had sued one of the debtors twice and both of them once. First, she obtained a judgment on a claim against debtor Donna Davis for over $200,000.00. Second, Gambrell sued the debtors and others in the Superior Court of Fresno County for a judgment invalidating fraudulent conveyances of several real estate parcels into three irrevocable trusts established by the debtors. After trial, the Superior Court issued a tentative ruling and proposed statement of decision in favor of Gambrell but before the matter was concluded by a judgment, these cases were filed. Gambrell sought stay relief in this case which the bankruptcy court eventually denied after Gambrell and the trustee could not agree. Also, the tentative ruling by the Superior Court included the appointment of a receiver which the bankruptcy court found an impediment to stay relief.

Among the scheduled assets were 2 lots located in Madera County, California ("Madera lots"); a small lot in Fresno County ("Fresno lot") and one of the debtor's residences ("Dayton property"). All of the debtors' assets were subject to available exemptions which the court allowed when the cases were consolidated. The Trustee hired counsel and after failed negotiations, the Trustee started litigation in May 2014 to set aside the fraudulent conveyances to the irrevocable trusts. Seven months later, the court approved a compromise which brought the transferred assets into the estate. But, the assets were subject to abstracts of judgment from Gambrell's first state court lawsuit and a

“Notice of Pending Action” which Gambrell recorded in connection with the second. The debtors also disputed whether their ability to amend exemptions was hampered by the compromise. This resulted in the partial failure of the approved compromise. Debtor Donna Davis unfortunately passed away in 2016 while this consolidated case was pending.

The court approved the sale of the Madera lots in June 2014. The sales did not close until nearly three years later. Gambrell held abstracts of judgment encumbering the lots and there was a “Notice of Pending Action” affecting title and preventing the transfer. The Trustee’s fraudulent transfer litigation was also pending.

The debtor and Dina White (Donna Davis’ successor) filed motions to set aside the judgment liens as impairing exemptions. Gambrell opposed those motions arguing among other things that the debtors were not entitled to claim exemptions. The court set a final pre-trial conference. In August, 2016 Gambrell, the Trustee, debtor, and White mediated the remaining disputes. The mediation was successful. Two months later, the court approved a compromise (“2016 Compromise”) which resolved the debtors’ exemption claims and provided the Trustee was to abandon certain assets (Doc. 316). The Trustee has done so. Id. The 2016 Compromise contained releases of all parties “from any claims arising out of, related to, or otherwise connected with the . . . claims contained in the Recitals. . . .” The Recitals referenced the Trustee and the Davis bankruptcy estates. Id.

The thrust of this dispute deals with other provisions of the 2016 Compromise. The parties agreed that the trustee would sell the Madera lots, the Fresno lot and the Dayton property. The “net proceeds” from the sales were to be distributed 1/3 to the debtors, 1/3 to Gambrell and 1/3 to the Trustee. The Trustee’s “portion” was to be used as follows: (i) Trustee’s commission (which the parties estimated at that time to be $6250); (ii) $10,000 to Trustee’s counsel “for legal services and cost reimbursement for legal services provided to the Trustee”; (iii) $6,000 to be paid to the IRS in satisfaction of a “priority tax lien;”(iv) 5.4% to remaining secured and unsecured creditors excluding Gambrell or the Penzer trust (Gambrell and the Penzer trust had a separate agreement concerning distributions from the bankruptcy estate which is not at issue here); (v) the balance to Gambrell. Doc. 316.

The parties agreed that Dina White, could purchase the Dayton property for $125,000. The purchase was to be partially funded by the 1/3 distribution to the debtors from the sales of the properties other than Dayton property under the 2016 Compromise. Dina White did purchase the Dayton property from the estate.

The Trustee’s Returns of Sale for the various properties were filed with the court on these dates: (i) Madera lots - March 9, 2017; (ii) Dayton Property – May 8, 2017; (iii) Fresno lot – July 5, 2017.

On April 27, 2018 the court, without objection, approved the fee application of trustee’s counsel: $10,000 in fees and $1,167.04 in expenses (doc. 305). On July 11, 2018 the Trustee filed a final report (doc. 308) and a Supplemental Narrative (doc. 311) as required by 28 CFR 58.7(a). The proposed commission to the Trustee is $11,258.63 and the Trustee requests $913.92 in expenses. The priority claim of the IRS

will be paid in full. Gambrell is proposed to be paid $37,000 as the only general unsecured claimant.

This timely objection followed. Under 28 CFR 58.7(b) the United States Trustee ("UST") approved the report and did not object. The Trustee has responded to the objections. Neither party reserved the right to have the court consider live testimony since they did not specify material disputed factual issues under Local Rule of Practice 9014-1(f). Thus the parties are deemed to have elected to have the court determine the disputed factual issues pursuant to Federal Rule of Civil Procedure 43(c). The trustee provided a verified response. Gambrell relied on documents filed in the case and included those as exhibits. The court will take judicial notice of the existence of the documents submitted by Gambrell. Federal Rule of Evidence 201. The Trustee did not object to their admission.

The court's consideration of objections to a Trustee's Final Report is within the court's discretion. Cieciorka v. Parker (In re Leonis), 2017 Bankr. LEXIS 1542 (*8) (EC-16-1254-JuTaB June 8, 2017) (9th Cir BAP 2017). Federal Rule of Bankruptcy Procedure 5009(a) (future references to these rules will be to "Rule") establishes a presumption that the case is fully administered if the UST or party in interest does not object to the report within 30 days. The rule impliedly leaves it to the discretion of the court to determine what kind of showing the party in interest has to make to "burst the bubble of presumption." In re Schoenewerk, 304 B.R. 59, 64 (Bankr. E.D.N.Y. 2003). The proper scope of the court's inquiry upon an objection to the final report must be limited to the question of whether the Chapter 7 estate has been "fully administered." In re Law Firm of Frank Bayger P.C., 2014 Bankr. LEXIS 3047 (*2) (02-11538 July 16, 2014 (Bankr. W.D.N.Y. 2014). Questions that are appropriate include: has the Trustee overlooked an asset needing administration; has the Trustee failed to disburse all funds; does an adversary proceeding or a motion impacting distribution to creditors remain pending? *Id.*

The trustee's duties are provided by statute. 11 U.S.C. § 704(a) (future references to the Bankruptcy Code will be by section) requires the trustee to: "(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest; (2) be accountable for all property received. . . (7). . . furnish such information concerning the estate and estate's administration as is requested by a party in interest. . . ." The prism through which a court evaluates the Trustee's performance is "the business judgment rule." As long as a trustee's decision is not made arbitrarily, made on a reasonable basis, and in good faith it is appropriate for the court to accept a decision as benefitting the estate. Frostbaum v. Ochs, 277 B.R. 470, 475-76 (E.D.N.Y. 2002), citing In re Curlew Valley Assoc., 14 B.R. 506 (Bankr. D. Utah 1981). Under the business judgment rule "a bankruptcy or reorganization trustee has a duty to exercise that measure of care and diligence that an ordinary prudent person would exercise under similar circumstances." In re Rigden, 795 F. 2d 727, 730 (9th Cir. 1986).

While performing duties, a trustee has to consider the divergent interests of all the constituent parties in the bankruptcy case. SunTrust Bank v. Matson (In re CHN Constr. LLC), 531 B.R. 126, 130

(Bankr. E.D. Va. 2015). A trustee is not liable for judgments made in the trustee's discretion but a trustee is subject to personal liability for intentional and negligent violations of duties imposed upon the trustee by law. Hall v. Perry (In re Cochise College Park Inc.) 703 F.2d 1339, 1357 (9th Cir. 1983). The trustee has wide latitude though as long as the trustee exercises reasoned judgment. In re Adilace Holdings, Inc., 548 B.R. 458, 463 (Bankr. W.D. Tex. 2016). "Bankruptcy courts must, of course, adjudicate all necessary legal determinations within their jurisdiction, but defer to the legally valid, discretionary administrative decisions of chapter 7 trustee as authorized under 11 U.S.C. § 704." Stein v. Stubbs (In re Stubbs), 565 B.R. 115, 128 (6th Cir. BAP 2017).

Applying the limited issues reviewed on objections to final reports and the discretion given to Trustee's business judgment, the court will review the objections.

Madera Lots

Gambrell objects to the low net proceeds obtained from the sale of the Madera lots when the trustee allegedly represented there would be almost $12,000 net per lot received from the sales. But, Gambrell argues, the delay in closing the sale resulted in higher property taxes that were paid out of escrow. She contends that the $2,300 "carve out" for administrative expenses that was included in the sale orders and the property taxes resulted in an unexplained $8,000 reduction in net proceeds. She later argues the delay in bringing the fraudulent transfer action caused the property taxes to increase.

The Trustee argues the closing of the sales were delayed by the "Notice of Pending Action" and the exemption litigation which increased the costs reducing the proceeds. Also, the Trustee notes that he cannot guarantee the result of any sale and the only funds received by the estate were those provided in the order with the rest of the proceeds turned over as required.

The lots were "sold" in 2014. There were problems in closing the sales. First, the early compromise largely failed because of exemption litigation. Then Gambrell, who held abstracts and had recorded the "Notice," did not agree to a resolution until the mediation in late 2016. It is not uncommon for the net received in a bankruptcy sale to be less than expected. It is somewhat remarkable in this case that the same buyer "hung in there" to complete the sale. Gambrell does not point to any evidence showing that the Trustee intentionally or negligently delayed the sale. The length of time to resolve the numerous claims between the parties relating to exemptions, rights to sell the Dayton property and so forth was not entirely outside of Gambrell's or the Trustee's control. The fact is the delay occurred. The issues about the net proceeds received from the Madera lots do not suggest the estate is not "fully administered."

Credit to Buyer for Dayton Property Sale

Gambrell claims the debtor was given too much of a credit toward the sale price of the Dayton property by the estate. She alleges the buyer (here Donna Davis' successor, Dina White) should only have been given a $46,000 credit based on Gambrell's calculation of the net proceeds. She

claims the Trustee should "claw" the difference back or be surcharged for it.

The Trustee counters that the sales proceeds were divided as provided in the 2016 Compromise. No one objected to the division of the proceeds at the time it was made. The sale of Dayton required court approval. The sale was approved without Gambrell or anyone else objecting.

The court agrees. Gambrell did not object to the sale. Further, Gambrell received notice that Dina White did not complete the sale within the time contemplated by the 2016 Compromise. Docs. #253, 254. Also, the Return of Sale was served on counsel for Gambrell on or about May 8, 2017. Docs. #276, 277. The Return of Sale provided for a "55% compromise" in the sale price. There has been no objection from Gambrell for over one year. Even if a "55% compromise" does not comport with Gambrell's expectation, no adversary proceeding has been filed for breach of the 2016 Compromise. No evidence has been presented that Gambrell questioned the allocation until now. Thus, even if the credit was wrong (and the court is not finding that it was), nothing suggests the asset has not been "fully administered." Also, Gambrell has provided no evidence of another party willing to pay $125,000 for the Dayton property or for any other price for that matter.

Even if there was a basis (which the court is not finding) this is not the appropriate procedural forum to seek a surcharge or a "claw back." In In re Rollins, 175 B.R. 69, 73 (Bankr. E.D. Cal. 1994), a case cited by Gambrell, the UST filed a surcharge motion because the trustee in that case failed to follow up on an inheritance received by the debtor which the debtor misrepresented. The court there noted that adversary proceedings are the appropriate vehicles to recover money. *Id.*; Rule 7001(1). In accord, In re Haugen, 2008 Bankr. LEXIS 1518 (Bankr. D. Haw. May 6, 2008). In Rollins, the trustee abandoned the issue of the proper procedure so the bankruptcy court decided the matter on a motion. The court is not going to preclude the Trustee or a party from using the procedural vehicles or more contemplative process of an adversary proceeding if anyone wants to pursue the matter.

Fresno Lot

The Trustee, argues Gambrell, should account for the significant difference in the projected and received sale proceeds for the lot. Also she claims that the trustee made "no efforts" to sell the lot until five (5) years after the bankruptcy cases were filed.

In response, the Trustee describes the sale of the Fresno lot as "a disaster." He also contends that a trustee cannot guarantee the outcome of the sale and the Trustee agrees the sale took a very long time. Apparently, Fresno County "sold" the lot for unpaid property taxes in violation of the automatic stay. This unforeseen event caused delay while the Trustee convinced the County to rescind the sale.

First, Gambrell's point about the lapse of time for the sale of this lot and the other properties is largely irrelevant. Gambrell and other parties released each other in the 2016 Compromise which was signed in August 2016. Thus the only relevant time period is after the approval of the 2016 Compromise in October 2016. The "closing" of the sale approximately nine months later is not unreasonable. A delay is easily explained given the unforeseen events involving the County.

Second, in hindsight, it is likely the Trustee would have preferred to abandon this asset. But, the Trustee agreed to sell the asset under the 2016 Compromise and performed that condition. Also, the Trustee contributed over $2,400 of his own funds to close the escrow "[t]o ensure all, who had worked on recovery and sale of the asset, were properly compensated. . . ." Doc. #311.

Third, Gambrell's dissatisfaction with the manner of the sale and the result of the sale are issues within the Trustee's discretion as a Trustee administers estate assets. The Trustee did what he agreed but the result was not what was hoped. Gambrell points to no specific intentional failure or negligence of the Trustee in selling the property other than questioning how long it took to close the transaction. That does not raise any issue concerning whether the estate has been fully administered.

Fourth, the Trustee's duties under § 704(a)(1) are twofold: reduce to money property of the estate *and* to close the estate as expeditiously as possible "as is compatible with the best interests of the parties in interest." The Trustee has to "juggle" both of those directives. The 2016 Compromise provided for the sale of the Fresno Lot so Gambrell must have considered its' sale "compatible" with her best interest. The Trustee made the sale happen. Gambrell presents no evidence of a qualified alternative buyer or other specifics as to how a higher price could have been achieved.

"Overpayment" of Trustee's Counsel

Gambrell is correct in noting the 2016 Compromise set a "cap" of $10,000 for fees and costs for the Trustee's attorney. She is also correct in noting the Trustee has paid his counsel the $10,000 in fees plus $1,167 in costs which facially appears to be in breach of the 2016 Compromise. True enough, but these are not reasons to deny approval of the final report.

The Trustee argues first, there was "no agreement" as to fees and costs in the 2016 Compromise. There is contrary evidence refuting that assertion: the terms of the agreement itself. Fortunately, the court does not need to weigh that evidence to conclude whether to sustain or overrule the objection.

The Trustee correctly notes, second, the fees and costs were awarded by the court on April 27, 2018 after a fully noticed hearing. There was no objection and there has been no appeal from that ruling. Nor has there been a motion to vacate the ruling under Federal Rule of Civil Procedure 60 (incorporated into these proceedings by Rule 9014(c)). That ruling is now final. The Trustee's compliance with the ruling is not a breach of his duties nor suggests an asset has not been administered.

That said, should the Trustee's counsel not asked for the cost award? Should the Trustee have discouraged the fee application including the costs? Perhaps. But as mentioned above, the 2016 Compromise is a contract. There are defenses to performance or breach of a contract. There can be disputes as to the parties' intent or performance under a contract. On this record, the court will not speculate as to those issues. It was incumbent upon Gambrell to watch the proceedings since she (it turns out) is the only general unsecured creditor receiving a

dividend. A timely objection to the fee application would have been entertained by the court. The court may not agree with what counsel did in requesting costs in excess of the 2016 Compromise "cap." But that does mean the final report is not accurate, is incomplete, or that the Trustee failed to perform his duties.

Bank service fees

Bank service fees of $100 per month, Gambrell claims, are unreasonable. She urges the Trustee to explain and account for the expense.

The Trustee did. The Trustee has no control over the service fees. The fees are incurred under an agreement between the Trustee's software providers, the banks and the UST.

Trustee's commission

Gambrell contests the Trustee's commission calculation. She claims the Trustee improperly included $125,000 – the "full" sale price for the Dayton property – without deducting the $55,000 credit agreed upon under the 2016 Compromise. She also argues the fees are generally unreasonable and should be reduced given her perceived problems with the estate's administration. Gambrell provides no specifics supporting the latter challenge other than reference to the above discussion which the court will incorporate here.

The Trustee counters by arguing the amount of the commission is limited by statute under § 326; he has no discretion to modify the commission. He also adds the commissions were calculated based on the distributions which all parties agreed upon in the 2016 Compromise.

First, 28 U.S.C. § 586(a)(3)(A)(i) provides the UST is to supervise case administration including applications for compensation under § 330. The UST has reviewed the Trustee's administration of the case and his application for compensation based on the commission "schedule" under § 326 and has not filed an objection. The court is permitted to rely on that fact and that the UST regularly performs her duties. The UST's lack of objection is persuasive (though not controlling) evidence that the commission requested is appropriate.

Second, ". . . absent extraordinary circumstances, Chapter 7 . . . trustee fees should be presumed reasonable if they are requested at the statutory rate. . . . absent extraordinary circumstances, bankruptcy courts should approve chapter 7 . . . trustee fees without any significant additional review." Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (9th Cir. BAP 2012). The courts have not specifically defined what "extraordinary circumstances" entail. Here, Gambrell presumably asserts her "objections" to the final report establish "extraordinary circumstances."

The court disagrees. The amount of commission sought by the Trustee, $11,258.63, while exceeding what was "anticipated" under the 2016 Compromise by 80%, is not unreasonable. The court has reviewed all of Gambrell's objections and discussed them above. So, nothing in the Trustee's administration is extraordinary justifying to close examination of the fees requested.

Also, the Trustee here, in addition to putting in his own funds to close the Fresno lot escrow, stated in his narrative that he did not

ask for compensation on the Fresno lot transaction since it resulted in neither a gain nor a loss for the estate. So, the Trustee did more than statutorily required to finalize this contentious case.

Third, Gambrell has not presented sufficient facts that would make this case "extraordinary." True, the case took a very long time to complete. Yet, the case was litigious when it started and remained that way until late 2016. After that, the sales were quickly finalized, assets abandoned and the case presented for closure. Gambrell did not object to the sales or the fees requested by the Trustee's counsel. It is undisputed that Gambrell had a lot of interest in this case and may have facilitated a more expedient conclusion but Gambrell was exercising her rights, which she had the perfect right to do. The result was delay. The delays were unfortunate but a risk Gambrell (and for that matter the Trustee) assumed.

Fourth, the cases Gambrell cites which she argues supports either "claw backs" by or surcharges against the Trustee are not persuasive. Rollins, 175 B.R. at 69 (discussed above) and In re Moon, 258 B.R. 828 (Bankr. N.D. Fla. 2001) involved nonfeasance by trustees (failure to follow up on a debtor's inheritance – Rollins; failure to promptly pay taxes – Moon). No similar issues arose here in this case. The Trustee did administer the assets consistent with the interests of the various constituents. The delay was not due to his nonfeasance.

Gambrell cites Yadkin Valley Bank & Tr. Co. v. McGee (In re Hutchinson), 819 F.2d 74 (4th Cir. 1987) to support her argument that the Trustee must preserve estate assets. The proposition that a trustee must preserve estate assets is beyond cavil. But Gambrell misses the point. First, that case has never been cited in a reported decision in the ninth circuit based on the court's review though a subsequent appeal has. Second, in Yadkin, the trustee knew about an offer to purchase the estate's interest in a dairy farm and did not respond for almost two and a half months. In the interim, equipment that was subject to the offer was removed by secured lenders and the buyer twice reduced the offer. The final offer was not enough to satisfy the liens encumbering the farm and the trustee abandoned the asset. The bank and the debtor sued the trustee and the bankruptcy court and the district court held the trustee had absolute immunity from suit. The fourth circuit reversed, holding there was no absolute immunity and remanded for further findings.

There is no evidence in this case that a higher price could have been obtained for any asset at issue. Gambrell's arguments are limited factually to the time it took to administer the estate assets. That is a different issue and for reasons stated, do not persuade the court here that the estate was not properly administered.

Gambrell failed to mention in her briefs that in subsequent litigation and appeals in Yadkin, the fourth circuit affirmed the bankruptcy court's findings that the Trustee's delay in seeking approval of the sale was reasonable given the parties' delay in providing consents to the sale and other issues were not clearly erroneous. The subsequent remand was only on the issue of whether the trustee in Yadkin should have done more to prevent the removal of equipment. Yadkin Valley Bank & Tr. Co. v. McGee (In re Hutchinson) ("Yadkin III"), 5 F.3d 750, 755-58 (4th Cir. 1993).

Gambrell's other case, Shumate v. Patterson, 943 F.2d 362 (4th Cir. 1991) is mis-cited and the issue there was whether ERISA benefits should be included in property of the estate, not surcharging a trustee.

In sum, the court finds the estate is fully administered and the Trustee in this case did properly administer the assets. The court understands Gambrell's frustration with the length of the process; the longevity of this bankruptcy case is unusual. But the litigious nature of the case, the difficulty of the positions taken by all of the parties in exercising their rights and unforeseen circumstances explain the delays.

The objections are OVERRULED.

17. 18-12349-B-7 **IN RE: TROY NIZNAK**

MOTION TO VACATE DISMISSAL OF CASE
8-24-2018

TROY NIZNAK/MV
DEBTOR DISMISSED 08/09/2018

TENTATIVE RULING:	This matter will proceed as scheduled.
DISPOSITION:	Granted.
ORDER:	To be determined at the hearing.

This motion was set for hearing by prior court order. Doc. #26. Pursuant to the order, no party was required to file any documents before the hearing, but may have done so if they wished. The debtor is required to appear to thoroughly explain the reasons why the dismissal order should be vacated, and the court and other parties may examine the debtor.

Federal Rule of Civil Procedure 60(b), made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024, gives six reasons a court may relief a party from a final judgment, order, or proceeding. While the debtor is pro se, this request was timely made - only two weeks after the dismissal.

In this case, Fed. R. Civ. P. 60(b)(1) and (6) give reason to grant this motion. Debtor stated that he missed the § 341 meeting of creditors due to the care and eventual passing of his mother. Doc. #25. The court finds that that reason constitutes excusable neglect and justifies the relief requested. The dismissal shall be vacated.

18. 18-11250-B-7 **IN RE: NICHOLAS VELASCO**
TMT-1

MOTION TO SELL
8-6-2018

TRUDI MANFREDO/MV
TIMOTHY SPRINGER
TRUDI MANFREDO/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 set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-l(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-l(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 that the sale of a 2006 Chevrolet Silverado is a reasonable exercise of the trustee's business judgment.

Any prospective bidders must bring certified funds to the hearing in the amount of $8,155.00. Bidding will begin at $8,255.00. The certified check must be made out to "Trudi G. Manfredo, Chapter 7 Trustee,n and is non-refundable if that bidder is the successful bidder and fails to perform. Prospective bidders must also bring documentary evidence of the ability to pay the amount of their bid.

The 14 day stay of Federal Rule of Bankruptcy Procedure 6004(h) is waived.

The trustee shall submit a proposed order after the hearing.

19. 18-12258-B-7 **IN RE: TERRY STEPHENSON**
TLS-1

MOTION TO
RECONSIDER

8-14-2018 [30]

TERRY STEPHENSON/MV

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied with prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITH 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 denied for both procedural and substantive reasons.

First, debtor did not include specific language in the notice, required under Local Rule of Practice ("LBR") 9014-1 (d)(3)(B)(iii).

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

Federal Rule of Civil Procedure 60(b), made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024, gives six reasons a court may relieve a party from a final judgment, order, or proceeding.

In this case, none of the reasons listed support granting movant's motion. In this motion to reconsider, Movant provides no evidence that there was a mistake, inadvertence, surprise, or excusable neglect; any fraud, misrepresentation, or misconduct by an opposing party; that the judgment is void, that the judgment has been

satisfied, released, or discharged, or is based on an earlier judgment that has been reversed or vacated, or applying it prospectively is no longer equitable; or any other reason that justifies relief.

Debtor's arguments simply lack merit. Debtor claims that a fraudulent contract exists or existed between himself and the "People of the State of California," and because the "People of the State of California" does not appear on a search of registered businesses on the California Secretary of State[1] s website, the contract is fraudulent.

Debtor is mistaken.

First, Debtor's exhibit B is not a contract. It is an abstract of judgment showing what crimes Debtor was convicted of and what his sentence is.

Second, even if it were a contract (and it is not) 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).

Debtor has not done so. Debtor has not shown the existence of a lien. The lien debtor describes is not a lien on property. Debtor attempts to exempt his "Person" on Schedule C in the amount of $75,000.00, citing Hale v. Henkel, 201 U.S. 43 (1905) as the basis for the exemption. One's "Person" is not an exemption to which the debtor would be entitled under 11 U.S.C. § 522(b). Henkel does not support debtor's arguments. Henkel states nothing of bankruptcy exemptions or the act of incarceration as creating a contract, fraudulent or otherwise.

For the above reasons, this motion is DENIED WITH PREJUDICE.

20. 18-12676-B-7 **IN RE: SHERYL NICKEL**
AMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-27-2018 [.1.il

U.S. BANK NATIONAL
ASSOCIATION/MV
JERRY LOWE
ANGIE MARTH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The form and/or content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at http://www.caeb.circ9.dcn/Loca1Rules.aspx.

21. 17-13081-B-7 **IN RE: PEDRO/MARIA GUTIERREZ**
JES-1

MOTION TO
COMPEL 8-8-2018
]

JAMES SALVEN/MV
THOMAS GILLIS

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-l(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-l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages}. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The debtor can be compelled to turn over to the trustee estate property under 11 U.S.C. § 542(a}. The order for turnover of property by the debtor can be obtained by motion. Federal Rule of Bankruptcy Procedure 7001(1). Tax refunds are property of the estate. In re Newman, 487 B.R. 193, 198 (9th Cir. BAP 2013).

This motion is GRANTED. Debtor shall turn over any 2017 federal and state tax refunds, or the information necessary to complete said tax returns if the taxes have not been filed, on or before September 26, 2018. Failure to do so without excusable neglect will result in sanctions.

22. 17-14781-B-7 **IN RE: JORGE/SELMA GONZALEZ**

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG, ACCOUNTANT(S}
RTW-2

8-10-2018 [ ]

RATZLAFF, TAMBERI & WONG/MV
PETER FEAR

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-l(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-l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages}. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's accountants, Ratzlaff, Tamberi & Wong, requests fees of $1,084.04 for services rendered from July 2, 2018 through July 11, 2018.

11 U.S.C. § 330(a)(1)(A} & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a]professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of federal and state fiduciary income tax returns for debtors, and (2) Reviewing petition information relating to tax matters of the estate. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,084.04 in fees.

23. 14-14593-B-7
PFC-1 **IN RE: WAYNE HEAD**

MOTION FOR COMPENSATION FOR PETER L. FEAR, CHAPTER 7 TRUSTEE (S)
7-24-2018 [241]

PETER FEAR/MV
DAVID JENKINS
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-l(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-l(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. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

The court finds here that the requested fees of $29,022.80 and expenses of $3,072.35 are reasonable and incurred for actual and necessary services to the estate, and the expenses are actual and necessary.

During the course of the bankruptcy, the trustee listed for sale three separate real pieces of property, all vacant and in various states of disrepair, with debtor's brother having a 50% interest in one piece of property. Doc. #241. The work the trustee performed in order to settle the estate was reasonable in light of the complicated matters in this case.

24. 15-14995-B-7 WW-4 **IN RE: HIPOLITO MARIANO**

MOTION TO AVOID LIEN OF COAST NATIONAL BANK
8-2-2018 [99]

HIPOLITO MARIANO/MV
RILEY WALTER

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-l(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-l(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.
ntitled to the relief sought, which the movant has done here.

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)(l)(B). § 522(f)(l); 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 writ of attachment was issued against the debtor in favor of Coast National Bank in the sum of $117,949.83 on February 5, 2015. Doc.

#102. The writ of attachment was recorded with Fresno County on March 12, 2015. *Id.* That lien attached to the debtor's interest in a residential real property in Clovis, 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 $410,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled $337,859.00 on that same date, consisting of a first deed of trust in favor of Bank of America (doc. #1, Schedule D). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $75,000.00. Doc. #95.

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).

25. 17-13296-B-7 **IN RE: LARRY CHAMPAGNE**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
8-8-2018 [ ]

JAMES SALVEN/MV
DAVID JENKINS

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-l(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-l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages}. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's accountant, James E. Salven, requests fees of $1,575.00 and costs of $243.22 for a total of $1,818.22 for services rendered from July 23, 2018 through August 3, 2018. 11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of tax returns, (2) Preparing and processing prompt determination letters, and (3) Preparing this fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,575.00 in fees and $243.22 in costs.

26. 16-14199-B-7
FW-6 **IN RE: HARLAN/VIRGINIA TYLER**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
8-15-2018 [77]

RILEY WALTER

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-l(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-l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages}. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's counsel, The Law Office of Fear Waddell, P.C., requests fees of $20,848.50 and costs of $446.03 for a total of $21,294.53 for services rendered as trustee's counsel from May 17, 2017 through August 14, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Resolving a dispute with the Debtor regarding their tort claim and the Debtor's possible exemption and securing the estate's interest in the tort claim, (2) Preparing fee and employment applications, and (3) Administering claims and responding to objections. The court finds the services reasonable and necessary and the expenses requested actual and necessary. Movant shall be awarded $20,848.50 in fees and $446.03 in costs.

27. 16-14199-B-7 IN RE: **HARLAN/VIRGINIA TYLER**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
8-7-2018 [70]

JAMES SALVEN/MV
RILEY WALTER

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-l(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-l(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages}. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's accountant, James E. Salven, requests fees of $1,950.00 and costs of $390.40 for a total of $2,340.40 for services rendered from June 7, 2018 through August 3, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of tax returns, (2) Preparing and processing prompt determination letters, and (3) Preparing this fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

11:00 AM

1. 18-12620-B-7 **IN RE: VICENTE/ELENA PLASCENCIA**

REAFFIRMATION AGREEMENT WITH DON ROBERTO JEWELERS INC
8-9-2018 [ ]

MARK ZIMMERMAN

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 reaffirmation agreement is incomplete. Debtors' income is not listed on 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 debtors' 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.

2. 18-12528-B-7 **IN RE: MIRNA PENA**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA, INC .
8-15-2018 [ ]

THOMAS GILLIS

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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.

3. 18-12470-B-7 **IN RE: MARIA TORRES**

PRO SE REAFFIRMATION AGREEMENT WITH NUVISION FEDERAL CREDIT UNION
8-27-2018 [ ]

IRMA EDMONDS

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. 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). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

4. 18-12272-B-7 **IN RE: TERESA AVILA**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
8-27-2018 [ ]

NO RULING.

5. 18-12474-B-7 **IN RE: AURELIA ROCHA**

PRO SE REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK, N.A.
8-27-2018 [ ]

NO RULING.

6. 18-11175-B-7 **IN RE: EMILY MILLAN**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
8-8 -2018 [19]

MARK ZIMMERMAN

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.

7. 18-11584-B-7 **IN RE: ELIAS CASTELLANOS**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
8-7-2018 [_]

JERRY LOWE

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.

8. 18-12587-B-7 **IN RE: LYSING PRATIUIMMAVONG**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
8-27-2018 [19]

NO RULING.

1:30 PM

1. 18-10460- **IN RE: DAVID/YOLANDA TREMBLAY**
B-7
18-1042

STATUS CONFERENCE RE: COMPLAINT
7-6-2018

U.S. TRUSTEE V. SILBERMAN
ROBIN TUBESING/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. 12-15064-B-13 **IN RE: RAYMOND/DENISE NIBLETT**
18-1041

STATUS CONFERENCE RE: COMPLAINT
7-4-2018

NIBLETT V. WELLS FARGO BANK,
N.A.
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION: Continued to October 10, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

By October 3, 2018, plaintiff must have entered default and set a hearing for default judgment. If a hearing is set, the status conference will be dropped. If a hearing is not set, the status conference will be held and the court may issue an order to show cause why the case should not be dismissed for lack of prosecution.

If no default hearing is set, the plaintiff shall file a status conference statement by October 3, 2018.

3. 18-11580-B-7 **IN RE: FEDERICO HUERTA-LOPEZ**
18-1033

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 6-7-2018 [ ]

HUERTA-LOPEZ V. OPORTUN, INC.
TIMOTHY SPRINGER/ATTY. FOR PL.
DISMISSED 8/29/18

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. #13.