

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, September 26, 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. [11-19905](#)-B-7 **IN RE: RICHARD MCINTYRE**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KORY EVANS AND KRIS EVANS
8-28-2018 [[41](#)]

JAMES SALVEN/MV
TIMOTHY SPRINGER
PETER FEAR/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).

The trustee requests approval of a settlement agreement between the estate the debtor's step-sons. The claim was precipitated by An alleged settlement debtor received in a wrongful death case debtor filed with regards to the death of his spouse. Doc. #41.

Under the terms of the compromise, debtor's two step-sons shall be owners of two-thirds of the net proceeds from the claim, each being the beneficial owner of \$72,684.78. *Id.* That amount is not property of the estate. The remainder, \$72,684.78, shall be paid to creditors in accordance with the Order Granting Motion to Approve Stipulation Resolving Amount of Exemption Claimed in Lawsuit Proceeds. Doc. #40. And the bankruptcy estate shall be the undisputed owner of 100% of the legal interest in the claim. Doc. #41.

However, the court denies this motion without prejudice for failure of proof.

Approval of a settlement is within the bankruptcy court's discretion. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1380 (9th Cir. 1986); Goodwin v. Mickey Thompson Entertainment Group, Inc. (In re Mickey Thompson Entertainment Group, Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003). Compromises are favored in bankruptcy because they avoid the expenses and burdens associated with litigation. In re A & C Props., 784 F.2d at 1381. Therefore, the bankruptcy court has "great latitude" in approving compromises and settlements. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Nevertheless, the court may only approve a compromise if it is satisfied that its terms are "fair, reasonable and equitable." In re A & C Props., 784 F.2d at 1381.

To determine whether a settlement is fair, reasonable, and equitable, the bankruptcy court must consider:

- 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.

In this case, the Trustee, as the party proposing the settlement, has the burden of demonstrating it was fair, reasonable and equitable. *Id.* The burden has not been met here.

The settlement agreement trustee asks this court to approve is based on another settlement agreement which is subject to another motion to approve (matter #3 below, FW-5). That motion is being tentatively denied because the trustee has not met his burden of proof. Without knowing more particulars as set forth in #3 below, the court is unable to verify the claims of the trustee. There is simply a lack of proof. Because the court is unable to grant FW-5, which this motion relies on, this motion is also DENIED WITHOUT PREJUDICE.

2. [11-19905](#)-B-7 **IN RE: RICHARD MCINTYRE**
[FW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PHILIP HENRY
9-5-2018 [[49](#)]

JAMES SALVEN/MV
TIMOTHY SPRINGER
PETER FEAR/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).

The trustee requests approval of a settlement agreement between the estate the attorney debtor retained to litigate a wrongful death claim. Doc. #49.

Under the terms of the compromise, Mr. Philip Henry ("Attorney") agrees that any transfer of an interest in the claim proceeds by debtor to Attorney shall be avoided, and the transfer so avoided is preserved for the benefit of the bankruptcy estate. Attorney is entitled to assert a general unsecured claim of \$129,342.33, which is 40% of the settlement minus 10% (10% to pay the 10% common benefit fee assessed by order of the court before the litigation was resolved). Upon approval of this agreement by the bankruptcy court, Attorney's claim shall be deemed to have been timely filed. The parties further agree to a mutual release of all claims by and between each other, including a waiver of the provisions of California Code of Civil Procedure § 1542. *Id.*

However, the court denies this motion without prejudice for failure of proof.

Approval of a settlement is within the bankruptcy court's discretion. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1380 (9th Cir. 1986); Goodwin v. Mickey Thompson Entertainment Group, Inc. (In re Mickey Thompson Entertainment Group, Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003). Compromises are favored in bankruptcy because they avoid the expenses and burdens associated with litigation. In re A & C Props., 784 F.2d at 1381. Therefore, the bankruptcy court has "great latitude" in approving compromises and settlements. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Nevertheless, the court may only approve a compromise if it is satisfied that its terms are "fair, reasonable and equitable." In re A & C Props., 784 F.2d at 1381.

To determine whether a settlement is fair, reasonable, and equitable, the bankruptcy court must consider:

- 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.

In this case, the Trustee, as the party proposing the settlement, has the burden of demonstrating it was fair, reasonable and equitable. *Id.* The burden has not been met here.

The settlement agreement trustee asks this court to approve is based on another settlement agreement which is subject to another motion to approve (matter #3 below, FW-5). That motion is being tentatively denied because the trustee has not met his burden of proof in that motion. Without an approve settlement between the estate and the alleged pharmaceutical manufacturer, the court is unable to evaluate the settlement. Because the court is unable to grant FW-5, which this motion relies on, this motion is also DENIED WITHOUT PREJUDICE.

3. [11-19905](#)-B-7 **IN RE: RICHARD MCINTYRE**
[FW-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
9-5-2018 [\[56\]](#)

JAMES SALVEN/MV
TIMOTHY SPRINGER
PETER FEAR/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).

The court denies the motion without prejudice for failure of proof.

Approval of a settlement is within the bankruptcy court's discretion. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1380 (9th Cir. 1986); Goodwin v. Mickey Thompson Entertainment Group, Inc. (In re Mickey Thompson Entertainment Group, Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003). Compromises are favored in bankruptcy because they avoid the expenses and burdens associated with litigation. In re A & C Props., 784 F.2d at 1381. Therefore, the bankruptcy court has "great latitude" in approving compromises and settlements. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Nevertheless, the court may only approve a compromise if it is satisfied that its terms are "fair, reasonable and equitable." In re A & C Props., 784 F.2d at 1381.

To determine whether a settlement is fair, reasonable, and equitable, the bankruptcy court must consider:

- 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.

In this case, the Trustee, as the party proposing the settlement, has the burden of demonstrating it was fair, reasonable and equitable. *Id.* The burden has not been met here.

The Trustee prays that the court approve a settlement which is not part of the record. Also, the Trustee requests authorization to accept the settlement offered by the manufacturer of the allegedly defective product but there is no declaration from the attorney who litigated the underlying case or negotiated the settlement. The motion further requests the Trustee be authorized to enter into, execute and deliver any releases and other documents required to "effectuate" the settlement. Without knowing what the settlement is, the court cannot determine what authority the Trustee needs.

Trustee's bankruptcy counsel, Mr. Sauer, states in his declaration that he has reviewed the pleadings and summarizes what the litigation is about, but there is nothing about the terms of the settlement. The settlement monies are held in litigation counsel's trust account and Mr. Sauer believes, based on the litigation counsel's experience and that counsel is represented by their own bankruptcy counsel, the funds are being safely held pending the outcome of this and the other related motions on this calendar. But, the only motion to employ in this case has been the motion to employ the Trustee's own counsel. So, there is litigation counsel holding estate funds (the court understands ownership may be debatable) and litigation counsel has not been retained by the estate.

Mr. Salven, the Trustee, has submitted a declaration in which he states that the approval of the compromise will result in enough cash for the estate to pay administrative expenses and general unsecured claims in full. He opines the settlement is fair and equitable and in the best interests of the creditors of the estate. True enough, but what is the settlement? There are no documents nor an explanation of how the amount of the settlement was reached. If the settlement is "confidential" there is no declaration on personal knowledge saying so. Even if confidential, there are processes for filing settlement documents "under seal" in this court. See Local Rule of Practice 9018-1.

There is no declaration or other evidence as to the amount of allowed claims and how the funds will be allocated. The court is aware from the related motions on this that two thirds of the net proceeds are putatively "deemed" not to be property of the estate and to be paid to non-debtors. The court is also aware that litigation counsel is going to file a late claim which the Trustee has provisionally proposed be allowed.

The court has no doubt the efforts by the Trustee and his counsel in these motions are in good faith. But, the court must consider the "A

& C factors" with all of the puzzle pieces in place. Right now, the puzzle is unfinished and there may be pieces missing.

The motion is DENIED WITHOUT PREJUDICE.

4. [18-13111](#)-B-7 **IN RE: FRANK/CARRI MOLTHEN**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
8-17-2018 [[19](#)]

FRANK MOLTHEN/MV
MARK ZIMMERMAN

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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

This motion was served and filed on August 17, 2018 and set for hearing on September 26, 2018. Doc. #20, 22. September 26, 2018 is 40 days after August 17, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and opposition, if any, must be made at the hearing. Doc. #20. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

5. [18-12313](#)-B-7 **IN RE: ANTHONY/JANIE KOVRIG**
[TCS-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK, N.A.
9-12-2018 [\[14\]](#)

ANTHONY KOVRIG/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$4,082.18 on February 22, 2018. Doc. #17. The abstract of judgment was recorded with Fresno County on Mary 1, 2018. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, 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 \$291,514.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$207,163.00 on that same date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage. *Id.* The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$84,351.00. *Id.*

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).

6. [13-12414](#)-B-7 **IN RE: CLYDE/RACHEL ABLES**
[TGM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-15-2018 [[65](#)]

THE BANK OF NEW YORK MELLON/MV
SCOTT LYONS
TYNEIA MERRITT/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 24, 2018 at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
October 24, 2018 at 9:30 a.m.

7. [18-13420](#)-B-7 **IN RE: ERIKA PAUWELLS DE LOPEZ**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2018 [[15](#)]

THE GOLDEN 1 CREDIT UNION/MV
SCOTT LYONS
JARRETT OSBORNE-REVIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

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

The collateral is a 2015 Chevrolet Traverse. Doc. #18. The collateral has a value in between \$13,416.00 and \$14,391.00. Doc.

#17. The debtor owes \$25,744.45. Doc. #18. The proposed order shall specifically describe the property or action to which the order relates.

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

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

8. [18-13322](#)-B-7 **IN RE: MICHEL LAMBERT**
[PBB-1](#)

MOTION TO COMPEL ABANDONMENT
8-30-2018 [\[10\]](#)

MICHEL LAMBERT/MV
PETER BUNTING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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).

This motion is GRANTED. The business property listed in Schedule A that debtor wants abandoned is fully exempt and therefore of inconsequential value and benefit to the estate.

9. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-29-2018 [[11](#)]

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION/MV
DAVID JENKINS
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice. The chapter 7 trustee filed a timely opposition. Trustee believes the property is worth more than what the schedule lists, and will be seeking to market and sell the property.

The record shows that cause exists to terminate the automatic stay because there is no equity in the property.

The collateral is a parcel of real property commonly known as 1638 West Ellery Way, Fresno, California 93711. Doc. #13. The collateral has a value of \$396,000.00 and the amount owed is \$464,118.50. Doc. #15. The proposed order shall specifically describe the property or action to which the order relates.

If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

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

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available

in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

10. [18-12930](#)-B-7 **IN RE: STELLA SILVA**
[UST-1](#)

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
8-28-2018 [\[15\]](#)

TRACY DAVIS/MV
ROBIN TUBESING/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. § 727(a)(8) states that a debtor shall be granted a discharge unless "the debtor has been granted a discharge under this section . . . in a case commenced within 8 years before the date of the filing of the petition."

Debtor previously filed for chapter 7 relief on April 7, 2014 (doc. #18) and received a discharge on July 21, 2014 (doc. #18). April 7, 2014 is within eight years of the date this petition was filed (July 19, 2018). Therefore, the debtor cannot receive a discharge in this case and the United State's Trustee's motion is granted.

11. [18-12036](#)-B-7 **IN RE: GUADALUPE/MARIA CERON**
[TMT-2](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
8-29-2018 [[28](#)]

TRUDI MANFREDO/MV
MARK ZIMMERMAN
TRUDI MANFREDO/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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

This motion was served and filed on August 29, 2018 and set for
hearing on September 26, 2018. Doc. #29, 32. September 26, 2018 is
28 days after August 29, 2018, and therefore this hearing was set on
28 days' notice under LBR 9014-1(f)(1). The notice stated that
written opposition was not required and opposition, if any, must be
made at the hearing. Doc. #29. That is incorrect. Because the
hearing was set on 28 days' notice, the notice should have stated
that written opposition was required. Because this motion was filed,
served, and noticed on 28 days' notice, the language of LBR 9014-
1(f)(1)(B) needed to have been included in the notice.

Also, the body of the notice states the hearing will be August 15,
2018. That is incorrect. Elsewhere the notice contains this hearing
date (September 26, 2018). Doc. #29. The notice is therefore
ambiguous.

12. [18-12538](#)-B-7 **IN RE: HECTOR MARTINEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-16-2018 [[15](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
THOMAS GILLIS
AUSTIN NAGEL/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 2018 Toyota Tacoma. Doc. #19. The collateral has a value of \$29,750.00 and debtor owes \$38,129.97. *Id.*

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

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).

13. [18-11539](#)-B-7 **IN RE: HANUEL LEE**
[PFR-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-15-2018 [[28](#)]

ROBERT VILLEGAS/MV
PAUL READY/ATTY. FOR MV.
DISCHARGED 7/25/18

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. When a motion for relief from the automatic stay involves allowing the creditor to proceed 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 movants have 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 tort action, and not a matter the bankruptcy court can hear.

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, if any, only. No other relief is granted as to the debtor or the estate.

14. [18-13240](#)-B-7 **IN RE: DAVID MOBLEY**
[LNH-2](#)

MOTION TO EMPLOY BERKSHIRE HATHAWAY HOMESERVICES CALIFORNIA
REALTY AS BROKER(S)
9-12-2018 [\[13\]](#)

TRUDI MANFREDO/MV
PETER BUNTING
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. Trustee is authorized to employ Berkshire Hathaway Homeservices California Realty ("Broker") as a broker in order to sell estate real property. The trustee proposes to compensate Broker 6% of the ultimate selling price of the real property. Doc. #15. 11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions." The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

It appears there is equity for the estate based on the schedules and the debtor has formally agreed to limit his exemption to that claimed in his schedules.

15. [18-13043](#)-B-7 **IN RE: PAUL COONCE**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
9-12-2018 [\[22\]](#)

BANK OF THE WEST/MV
JEFFREY ROWE
MARY TANG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

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

The collateral is a 2011 Toyota Highlander. Doc. #26. The collateral has a value of \$14,425.00 and debtor owes \$18,593.38. *Id.* The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and is in movant's possession. Doc. #24.

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

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).

16. [18-12753](#)-B-7 **IN RE: DONALD/PEARL MORGAN**

NOTICE OF INTENT TO CLOSE CASE WITHOUT ENTRY OF DISCHARGE
8-29-2018 [\[24\]](#)

RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Case will close without entry of discharge

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This case will close without entry of discharge. Debtors ask this court to grant them a discharge despite this current case being filed within eight years of debtors' previous discharge. Doc. #28.

11 U.S.C. § 727(a)(8) states that debtors will be granted a discharge unless the debtors have received a discharge within the last 8 years. The statute does not provide any discretion to the court to change that time for exceptional circumstances.

The court takes judicial notice of the fact that debtors last received a chapter 7 discharge on January 24, 2011. The debtors' last case was filed October 13, 2010. See case no. 10-61793, doc. #15. This case was filed July 5, 2018, within 8 years of October 12, 2010.

The court is unable to use its equitable powers under 11 U.S.C. § 105(a) to waive the time limit because the bankruptcy code is explicit. See Law v. Siegel, 571 U.S. 415, 421 (2014).

17. [18-13153](#)-B-13 **IN RE: LUIS BRAVO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-13-2018 [\[28\]](#)

SANTANDER CONSUMER USA INC./MV
ERIC ESCAMILLA
JENNIFER WANG/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Movant withdrew the motion on September 11, 2018. Doc. #60.

18. [16-12266](#)-B-7 **IN RE: AVTAR SINGH**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI, AND WONG,
ACCOUNTANT(S)
8-24-2018 [[119](#)]

RATZLAFF, TAMBERI & WONG/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 has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be GRANTED. Trustee's accountants, Ratzlaff, Tamberi, and Wong, requests fees of \$1,558.00 and costs of \$16.92 for a total of \$1,574.92 for services rendered from April 16, 2018 through August 6, 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 Fiscal year 2016 federal and state fiduciary income tax returns, (2) Preparation of Fiscal year 2017 federal and state fiduciary income tax returns, and (3) Preparation of Fiscal year 2018 federal and state fiduciary income tax returns. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$1,558.00 in fees and \$16.92 in costs.

19. [18-13070](#)-B-7 **IN RE: ELDA SALDATE**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-21-2018 [[11](#)]

PETER BUNTING

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for
October 15, 2018 at 11:00 a.m. If the debtor fails to do so, the
chapter 7 trustee may file a declaration with a proposed order and
the case may be dismissed without a further hearing.

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

20. [18-10376](#)-B-7 **IN RE: AMMANDO/MARIA MORALEZ**
[TGM-3](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
9-5-2018 [[45](#)]

PETER FEAR/MV
LAYNE HAYDEN
TRUDI MANFREDO/ATTY. FOR MV.
JOINT DEBTOR DISMISSED 05/23/2018

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the
creditors, the debtor, the U.S. Trustee, or any other party in
interest to file written opposition at least 14 days prior to the
hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver
of any opposition to the granting of the motion. Cf. Ghazali v.
Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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. Under 11 U.S.C. § 363(f), the trustee may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property."

The trustee wishes to sell real property located at 31042 Heather Ave. in Madera, CA for \$190,000.00 to Carlos Estrada ("Buyer"). Doc. #49. Buyer has paid a \$3,000.00 deposit, nonrefundable if Buyer fails to perform. The property is being sold "as is, where is" with no warranties made by the trustee. The trustee has produced evidence that a total of \$32,969.42 in state tax liens and \$37,211.50 (for a grand total of \$70,180.92) in federal tax liens are attached to the property. *Id.*

Because "the price at which such property is to be sold is greater than the aggregate value of all liens on such property," the trustee may sell the property located at 31042 Heather Avenue in Madera, CA to Buyer for \$190,000.00 and free and clear of the state and federal tax liens. The liens are transferred to the proceeds. Trustee's entire prayer for relief, which is too lengthy to reproduce here, is GRANTED.

21. [18-12982](#)-B-7 **IN RE: MATTHEW/MAYRA OLIVARES**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-21-2018 [[10](#)]

F. GIST

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtors shall attend the meeting of creditors rescheduled for October 15, 2018 at 10:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

22. [18-10585](#)-B-7 **IN RE: DAVID SUTHERLAND**
[JES-1](#)

MOTION TO SELL
8-23-2018 [[18](#)]

JAMES SALVEN/MV
HEATHER PIETROFORTE

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 a .22 LR rifle and a 9mm pistol is a reasonable exercise of the trustee's business judgment. The trustee shall submit a proposed order after the hearing.

23. [18-12386](#)-B-7 **IN RE: ARAM ZARDARYAN**
[KDG-2](#)

MOTION TO AVOID LIEN OF BMO HARRIS BANK, N.A.
8-28-2018 [\[28\]](#)

ARAM ZARDARYAN/MV
HAGOP BEDOYAN

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

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of BMO Harris Bank, N.A. in the sum of \$284,160.81 on October 12, 2017. Doc. #32. The abstract of judgment was recorded with Fresno County on November 20, 2017. *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 \$330,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$263,499.20 on that same date, consisting of a first deed of trust in favor of Freedom Mortgage Corporation. Doc. #1. The debtor claimed an exemption pursuant to

Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000.00.
Doc. #48, Schedule C.

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).

24. [17-13297](#)-B-7 **IN RE: ROBERT BENDER AND DEBORAH HALLE**
[DMG-3](#)

MOTION TO SELL
8-24-2018 [\[29\]](#)

ROBERT BENDER/MV
STEVEN STANLEY

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion is DENIED. 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).

First, the movant, debtors in this case, are not authorized under 11 U.S.C. § 363 to sell estate property; only the trustee is.

Second, the real property at issue is estate property, and has neither been abandoned nor has the case closed.

Third, in order to get the relief requested, debtors must compel the trustee to abandon the property on a properly noticed motion. Also, it is likely that the automatic stay is no longer in effect as to the debtor's interests because the debtors have received their discharge. See 11 U.S.C. § 362(c).

11:00 AM

1. [18-13221](#)-B-7 **IN RE: LACY ZAMUDIO**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
8-30-2018 [[10](#)]

NO RULING.

2. [18-12470](#)-B-7 **IN RE: MARIA TORRES**

PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.
8-21-2018 [[12](#)]

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.

3. [18-12174](#)-B-7 **IN RE: JESSICA TIDWELL**

PRO SE REAFFIRMATION AGREEMENT WITH NISSAN MOTOR ACCEPTANCE
CORPORATION
9-6-2018 [[15](#)]

NO RULING.

1:30 PM

1. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-17-2015 [[1](#)]

BJORNEBOE V. BREWER
MISTY PERRY-ISAACSON/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 8, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is continued to November 8, 2018 at 11:00 a.m. in
Bakersfield. Joint or unilateral status reports due by November 1,
2018.

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

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

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

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #147.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-1](#)

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

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING
ECF ORDER NO. 141 CONTINUING TO 12/19/18

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #141.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-2](#)

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

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
ECF ORDER NO. 142 CONTINUING TO 12/19/18

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #142.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-3](#)

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

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.
ECF ORDER NO. 143 CONTINUING TO 12/19/18

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #143.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WW-32](#)

CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF
DOCUMENTS
5-30-2018 [[539](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER
ECF ORDER NO. 763 CONTINUING TO 12/19/18

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #763.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1005](#)

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

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

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #73.

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1005](#) [WW-1](#)

CONTINUED HEARING RE: MOTION FOR SUMMARY JUDGMENT
7-2-2018 [[45](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. HEALTHCARE
RILEY WALTER/ATTY. FOR MV.
ECF ORDER NO. 75 CONTINUING TO 12/19/18

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

DISPOSITION: Continued to December 19, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation, this matter is continued to
December 19, 2018 at 1:30 p.m. Doc. #75.

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1008](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-8-2018 [[9](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. MB FINANCIAL BANK,
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Defendant consented to this court entering a
final order. Doc. #24

Pursuant to the court's Scheduling Order (doc. #21), because
defendant consented to this court entering a final judgment in this
matter, this continued status conference is dropped.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1014](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
4-10-2018 [[1](#)]

SPECIALTY LABORATORIES, INC.
V. HCCA TULARE REGIONAL
UNKNOWN TIME OF FILING/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.