

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, December 4, 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. [18-14607](#)-B-7     **IN RE: GUADALUPE/MARTHA CUEVAS**  
[GT-1](#)

MOTION TO COMPEL ABANDONMENT  
11-19-2018    [\[14\]](#)

GUADALUPE CUEVAS/MV  
GRISelda TORRES

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 shall 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).

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship painting business. The assets include tools of the trade, equipment, accounts receivable (if any), and goodwill ("Business Assets").

The court finds that the Business Assets, though not exempted on Schedule C, are of inconsequential value and benefit to the estate. The value of the Business Assets is listed as \$420.00, though the trustee would not be likely to sell them for that much at auction or in a private sale. Therefore, this motion is GRANTED

The court also notes that the motion was not in compliance with LBR 9004-2(c)(1), which requires that motions, exhibits, *inter alia*, be filed as separate documents. Here, the motion and exhibits were combined into one document and not filed separately.

2. [18-13238](#)-B-7      **IN RE: DENISE DAWSON**  
[JDR-2](#)

MOTION TO DELAY DISCHARGE  
11-20-2018    [\[23\]](#)

DENISE DAWSON/MV  
JEFFREY ROWE

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

3. [18-13240](#)-B-7     **IN RE: DAVID MOBLEY**  
[MEL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-30-2018    [\[30\]](#)

BANK OF AMERICA, N.A./MV  
PETER BUNTING  
MEGAN LEES/ATTY. FOR MV.  
DISCHARGED 11/26/18, RESPONSIVE PLEADING

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 debtor's 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. Debtor filed non-opposition on November 14, 2018. Doc. #43. The motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on November 26, 2018. Doc. #51. 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 debtor.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a N2008 WEEKEND WARR FWL 3200 (Doc. #32). The collateral has a value of \$10,750.00 and debtor owes \$12,859.94. *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).

4. [18-14261](#)-B-7     **IN RE: OLGA ESPINOSA**  
[UST-1](#)

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C.  
SECTION 727(A)  
11-6-2018    [\[9\]](#)

TRACY DAVIS/MV  
LAYNE HAYDEN  
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 Olga Espinosa previously filed for chapter 7 relief on December 24, 2010 and received a discharge on April 18, 2011. Doc. #12. December 24, 2010 is within eight years of the date this petition was filed (October 20, 2018). Therefore, debtor Olga Espinosa cannot receive a discharge in this case and the United State's Trustee's motion is granted.

5. [18-13399](#)-B-7      **IN RE: ROBERTO SOSA URTIZ AND YANET DE SOSA**  
[DCF-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-2-2018    [\[37\]](#)

BMO HARRIS BANK N.A./MV  
REBECCA TOMILOWITZ  
DANIEL FLEMING/ATTY. FOR MV.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the court's prior order.

The court's prior order stated that a certificate of service showing that the amended notice of hearing was properly served must be filed on or before November 13, 2018, or the motion will be denied without prejudice. Doc. #48, 49.

No such proof of service was filed on or before November 13, 2018. Therefore, this motion is DENIED WITHOUT PREJUDICE.

6. [18-13399](#)-B-7      **IN RE: ROBERTO SOSA URTIZ AND YANET DE SOSA**  
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-25-2018    [\[29\]](#)

HITACHI CAPITAL AMERICA  
CORP./MV  
REBECCA TOMILOWITZ  
RICHARD SOLOMON/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 Docket Control Number does not comply with LBR 9014-1(c)(4).

Movant filed for relief from the automatic stay on September 17, 2018, using DCN [RAS-1]. Doc. #18. The court denied the motion on October 25, 2018 for failing to comply with the noticing requirements of LBR 9014-1(d)(3)(B)(iii). Doc. #27. On October 25, 2018, Movant filed a second motion for relief from the automatic stay using the same DCN [RAS-1]. Doc. #29. LBR 9014-1(c)(4) requires a new motion to have a new Docket Control Number. Therefore, the motion will be DENIED WITHOUT PREJUDICE.

7. [18-13877](#)-B-7     **IN RE: RANDALL WALKER**  
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
11-6-2018    [\[14\]](#)

DISMISSED 11/28/2018

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. #21.

11:00 AM

1. [18-13476](#)-B-7      **IN RE: MARIA DELGADO**

REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE  
10-18-2018    [[12](#)]

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 his opinion the debtor is 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.

2. [18-13476](#)-B-7      **IN RE: MARIA DELGADO**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.  
10-24-2018    [[13](#)]

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 his opinion the debtor is 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. [18-13281](#)-B-7     **IN RE: TRACINAL CARR**

REAFFIRMATION AGREEMENT WITH ALLY FINANCIAL  
10-31-2018    [\[20\]](#)

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. The debtor indicates in the reaffirmation agreement that she has started a new job, but the debtor has not filed amended Schedules I and J to support her ability to make the payments required in this reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

4. [18-13690](#)-B-7     **IN RE: JO JOHNSON**

REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY  
10-25-2018    [\[13\]](#)

TIMOTHY SPRINGER

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

DISPOSITION:     Denied.

ORDER:             The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that

he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

1:30 PM

1. [18-10973](#)-B-13     **IN RE: GLENN BEVER**  
[18-1069](#)

STATUS CONFERENCE RE: COMPLAINT  
10-9-2018    [[1](#)]

BEVER ET AL V. CITIMORTGAGE,  
INC. ET AL  
JOHN MITCHELL/ATTY. FOR PL.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            The case was voluntarily dismissed. Doc. #15.