UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, December 18, 2019
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. 16-14433-B-7 **IN RE: ISAIAS BRAVO**
JES-4

MOTION FOR COMPENSATION FOR JAMES SALVEN, CHAPTER 7 TRUSTEE(S)
11-13-2019 [68]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
IRMA EDMONDS/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. §§ 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.

Chapter 7 Trustee James Salven ("Trustee") requests fees of $10,500.15 and costs of $166.73 for a total of $10,666.88 as statutory compensation and actual and necessary expenses pursuant to the statutory allowance.

The motion is GRANTED and Trustee is awarded $10,500.15 in fees and $166.73 in costs.

2. 19-13940-B-7 **IN RE: KARINA SANCHEZ**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-14-2019 [21]

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 January 6, 2020 at 10:00 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.

3. 19-13744-B-7 **IN RE: JESSIE FARROW**
JCW-1

MOTION TO APPROVE LOAN MODIFICATION
11-20-2019 [17]

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION/MV
JERRY LOWE/ATTY. FOR DBT.
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 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. Debtor is authorized, but not required, to enter into the loan modification agreement with JPMorgan Chase Bank, National Association.

4. 14-15354-B-7 **IN RE: CLARENCE HARRIS, JR. AND SARA HEDGPETH-HARRIS**
FW-4

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CLARENCE HAL HARRIS, JR. AND SARA HEDGPETH-HARRIS
11-1-2019 [47]

PETER FEAR/MV
THOMAS ARMSTRONG/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. It appears from the moving papers that the chapter 7 trustee ("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.

Trustee requests approval of a settlement agreement between the estate and debtor with regards to a dispute over pre-petition fees debtor's law firm received. Doc. #47.

Under the terms of the compromise, debtor will pay $91,979.27 to the bankruptcy estate to resolve any amounts owing for the law corporation and pre-petition fees. Id.

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 may be likely, but debtor may have been able to exempt a percentage of those funds and further litigation would have raised administrative costs; collection will be very easy as Trustee is already in possession of the funds – without settlement, liquidating the law corporation would be difficult and expensive; the litigation is incredibly complex 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 will be granted.

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

5. 19-12754-B-7 **IN RE: SUPER TRUCK LINES INC.**
JRD-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-14-2019 [247]

BB&T COMMERCIAL EQUIPMENT CAPITAL CORP./MV
THOMAS HOGAN/ATTY. FOR DBT.
JONATHAN DOOLITTLE/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 moving papers were not properly served on the Debtor's attorney pursuant to F.R.B.P 7004(g) and the U.S. Trustee.

The court notes that this is the Movant's third Motion for Relief from the Automatic Stay. The first motion was filed on September 11, 2019 [DCN JRD-1] (Doc. #137) and denied without prejudice for failure to properly serve the moving papers. The second motion was filed on October 10, 2019 [DCN JRD-1] (Doc. #211) and denied without prejudice for using a prior Docket Control Number. If the movant fails to file and serve proper moving papers on their next request, the court may deny the motion with prejudice.

6. 18-15055-B-7 **IN RE: DIXIE ESPINOSA**
RWR-3

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR COMPENSATION FOR LONDON PROPERTIES, LTD., BROKER(S)
11-20-2019 [45]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of

discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether the subject property is part of a "resulting trust."

The legal issues appear to include: whether the subject property is a part of the bankruptcy estate.

The court notes the trustee's reply. Doc. #61.

7. 19-13258-B-7 **IN RE: MAXIMILIANO BARRERA AND MARIA ANDRADE**
AYN-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-20-2019 [17]

JORGE CARDENAS/MV
D. GARDNER/ATTY. FOR DBT.
HESAMEDIN AYNECHI/ATTY. FOR MV.
DISCHARGED 11/12/19

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

DISPOSITION: Granted in part and denied in part.

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.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on November 12, 2019. Docket #15. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

Movants Jorge Luis Mendez Cardenas and Rita J. Mendez ("Movants") seek relief from the automatic stay under 11 U.S.C. § 362 so that

they may consummate settling a state court law suit against debtor. Doc. #17. Movants sued debtor Maximillian Barrera in Kern County Superior Court for the wrongful death of Movants' daughter. Id.

When a movant prays for relief from the automatic stay to initiate or continue 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. 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. The state court action is a wrongful death action and not a matter the bankruptcy court can hear. No party has opposed 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.

8. 19-12965-B-7 **IN RE: ROBERT CARL**
JES-1

MOTION TO SELL
10-30-2019 [26]

JAMES SALVEN/MV
STEVEN ALPERT/ATTY. FOR DBT.
JAMES SALVEN/ATTY. FOR MV.

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

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). 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. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell a 2012 Chevy Silverado ("Vehicle") back to debtor, subject to higher and better bids at the hearing, for $7,000.00. Doc. #26. There has been no opposition to this motion.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

9. 19-14170-B-7 **IN RE: JOHNNY GONZALES**
PBB-2

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
11-6-2019 [22]

PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #33.

The court notes debtor's status report. Doc. #36.

10. 18-14474-B-7 **IN RE: GLEYRA CASTRO**
RWR-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP FOR RUSSELL W REYNOLDS, TRUSTEES ATTORNEY(S)
11-18-2019 [23]

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED. Trustee's counsel, The law office of Coleman & Horowitt, LLP for Russell W. Reynolds, requests fees of $3,419.25 and costs of $85.45 for a total of $3,504.70 for services rendered from March 7, 2019 through November 14, 2019.

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) Conducting legal research regarding resulting trusts in bankruptcy estates, (2) Preparing an adversary complaint, and (3) Advising the chapter 7 trustee of the effects of filing the adversary complaint. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $3,419.25 in fees and $85.45 in costs.

11. 09-61798-B-7 **IN RE: JEFFREY FAIRBAIRN**
FW-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JEFFREY JAMES FAIRBAIRN
11-27-2019 [82]

JAMES SALVEN/MV
PETER FEAR/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. It appears from the moving papers that the chapter 7 trustee ("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 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 between the estate and various defendants on the other hand, in a multi-district pharmaceutical litigation. The claims were precipitated by the ingestion of a medication by the debtor Mr. Tyler, from which he developed medical issues. Doc. #82.

Under the terms of the compromise, the defendants will pay $330,581.18 to the estate, in full satisfaction of the claims. After payment of certain fees associated with the litigation, the trustee expects the estate to net approximately $184,295.21. Doc. #82.

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 far from assured as the defendants have several affirmative defenses available to them which would completely negate any recovery; collection will be very easy as the defendant is a large corporation, reporting gross sales of $81.6 billion dollars for 2018 (see doc. #84); the litigation is incredibly factually complex 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 will be granted.

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

12. 19-14183-B-7 **IN RE: SOUA THAO**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-4-2019 [11]

DISMISSED 12/06/2019.

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. #15

11:00 AM

1. 19-14303-B-7 **IN RE: NECIA MORENO**

PRO SE REAFFIRMATION AGREEMENT WITH NISSAN MOTOR ACCEPTANCE CORP.
11-27-2019 [13]

NO RULING.

2. 19-13960-B-7 **IN RE: DAVID/PAMELA SHANK**

PRO SE REAFFIRMATION AGREEMENT WITH TD RETAIL CARD SERVICES - FURNITURE $1104.41.
12-2-2019 [23]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

3. 19-13960-B-7 **IN RE: DAVID/PAMELA SHANK**

PRO SE REAFFIRMATION AGREEMENT WITH TD RETAIL CARD SERVICES
- - FURNITURE $4239.94
11-25-2019 [20]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

4. 19-14185-B-7 **IN RE: MATTHEW/AMANDA WESTON**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
11-26-2019 [12]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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.

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 this case, the debtors' 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. 11-63503-B-7 **IN RE: FRANK/ALICIA ITALIANE**
12-1053

CONTINUE STATUS CONFERENCE RE: AMENDED COMPLAINT
10-18-2012 [21]

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE
HAMID RAFATJOO/ATTY. FOR PL.

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

DISPOSITION: Continued to January 23, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' joint status report (doc. #87), this matter is continued to January 23, 2020 at 11:00 a.m. so the state court judgment can be entered. Joint or unilateral status reports shall be filed and served not later than January 16, 2020.

2. 18-14315-B-7 **IN RE: BRANDON/SANDRA CAUDEL**
19-1011 BBR-1

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT
11-20-2019 [52]

HARDCASTLE SPECIALTIES, INC. V. CAUDEL
VIVIANO AGUILAR/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.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion is GRANTED. Plaintiff Hardcastle Specialties, Inc. ("Plaintiff") asks for leave to file a first amended complaint ("FAC") to include another claim for relief under 11 U.S.C. § 523(a)(2). Doc. #52. Plaintiff states that the "amendment is only to add an overlapping and arguably emerging legal theory where HIS asserts Defendants are not honest but unfortunate creditors because they used their employment with HIS to divert upcoming projects to a company Defendants secretly formed before their abrupt departures." Id.

Defendants Brandon Caudel and Shannon King ("Defendants") timely opposed the motion, stating that the proposed amended claim for relief under § 523(a)(2) is insufficient and/or time barred. Doc. #57. Defendants also argue that leave to amend should not be granted because it would lead to undue delay, it is in bad faith, and the amendment would be futile. Id.

Federal Rule of Civil Procedure 15(a)(2) states that the "court should freely give leave [to amend its pleading] when justice so requires."

"In general, a court should liberally allow a party to amend its pleading." Sonoma Cty. Ass'n of Retired Emples. v. Sonoma Cty., 708 F.3d 1109, 1117 (9th Cir. 2013); see Fed. R. Civ. P. 15(a); see also Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001). Courts may decline to grant leave to amend only if there is strong evidence of "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc." Sonoma, 708 F.3d at 1117 (citing Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)). "[T]he consideration of prejudice to the opposing party carries the greatest weight." Sonoma, 708 F.3d at 1117 (citing Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)).

Amendments seeking to add claims are to be granted more freely than amendments adding parties. Union P. R. Co. v. Nev. Power Co., 950 F.2d 1429, 1432 (9th Cir. 1991) (citing Martell v. Trilogy, Ltd., 872 F.2d 322, 324 (9th Cir. 1989)).

> When a suit is filed in a federal court under the [Federal Rules of Civil Procedure], the defendant knows that the whole transaction described in it will be fully sifted, by amendment if need be, and that the form of the action or the relief prayed or the law relied on will not be confined to their first statement.

Union P. R. Co., 950 F.2d at 1432 (citing Martell, 872 F.2d at 326 (quoting Barthel v. Stamm, 145 F.2d 487, 491 (9th Cir. 1944), cert. denied, 324 U.S. 878, 89 L. Ed. 1430, 65 S. Ct. 1026 (1945)).

In Heay v. Phillips, 201 F.2d 220 (9th Cir. 1952), the Ninth Circuit affirmed the District Court for the Territory of Alaska's decision to permit the plaintiff to file a second amended complaint as trial began. The court found that because "each of the causes alleged is related to the same set of circumstances, and relevant and competent facts are peculiarly within the objector's knowledge," there "was no error in the court's ruling." Id. at 222.

After review of the complaints filed in the separate adversary proceedings and the proposed SAC, the court is not persuaded by Defendants' argument leave to amend would not be appropriate because the proposed additional claim for relief does not relate back to the

transactions described in the original complaint. See doc. #57, p.2, ¶¶25-26. The SAC does not substantially amend any of the facts contained in the complaint. The court finds that the proposed additional first claim for relief under 11 U.S.C. § 523(a)(2) does relate back to the transactions described in the original complaint.

Defendants' argument that the first claim for relief is insufficient and/or time barred is also not persuasive. The court is not determining whether the proposed claim is viable or not – that may be determined on an appropriately served, noticed, and filed 12(b)(6) motion or more likely if there is a failure of proof at trial. Non-disclosure can be the basis of a claim under § 523(a)(2). Tallant v. Kaufman (In re Tallant), 218 B.R. 58, 65 (B.A.P. 9th Cir. 1998); Apte v. Japra (In Re Apte), 96 F.3d 1319, 1324 (9th Cir. 1996).

Defendants' further objections are overruled. As seen in Heay, amendments as late as the day of trial may be permitted if "each of the causes alleged is related to the same set of circumstances, and relevant and competent facts are peculiarly within the objector's knowledge." Heay, 201 F.2d at 222. Amending a scheduling order is not enough to deny leave to amend without proof of dilatory tactics or prejudice.

Further, there is no "strong evidence" of bad faith, dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc. In fact, Defendants offered no evidence with their opposition. The evidence proffered by Plaintiff, which was unopposed by Defendants, state that Defendants learned of this proposed claim nearly three months ago. Doc. #54. Defendants also do not specify how they are prejudiced by the amendment (i.e., more discovery needed, additional witnesses, additional costs, etc.).

Moreover, since there are no new facts or parties added, the proposed amendment could have been and may be part of a final pretrial order setting forth the issues to be tried. See Fed. R. Civ. Pro. 16(c)(2)(B), (d) (Applicable to adversary proceedings by Fed. R. Bankr. P. 7016).

The court is required to grant leave to amend liberally in the interests of justice in accordance with Fed. R. Civ. P. 15 and relevant Ninth Circuit case law. No trial date has been set, no parties are proposed to be added, only one claim is proposed to be added, and it is based on facts already known to Defendants. The motion is GRANTED. The SAC shall be filed and served within seven days of the entry of the order. Movant shall prepare the order.

Any request to modify the scheduling order shall be by separate motion supported by good cause.

3. 18-14160-B-7 **IN RE: BRYAN ROCHE**
19-1013

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
1-17-2019 [1]

VANDENBERGHE V. ROCHE
DAREN SCHLECTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 26, 2019 at 11:00 a.m.

ORDER: The court will issue an amended order.

Pursuant to the parties' joint stipulation (doc. #50), the pre-trial conference is continued to February 26, 2020 at 11:00 a.m. The previous order (doc. #53) will be amended to change the hearing to 11:00 a.m.