UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 13, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	17-28302-D-13 RDG-1	DANIEL LOPEZ	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 2-12-18 [29]

2.	17-24412-D-13 PGM-2	JEANINE DAVIS	MOTION TO CONFIRM PLAN 1-26-18 [87]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party failed to serve (1) Honest Auto Sales, listed on her Schedule D; (2) Comcast, listed on Schedule E/F; and (3) John

Sharper, listed on Schedule H as the debtor's co-debtor on her mortgage loan. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties who are co-debtors on debts of the debtor. In addition, the debtor has failed to comply with Fed. R. Bankr. P. 1007(a)(1), which requires debtors to include on their master address the names and addresses of all parties included or to be included on their schedules, including Schedule H.

As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

3. 18-20213-D-13 ASHLY RUIZ — MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL
RWF-1 — 2-5-18 [8]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

4. 16-20614-D-13 ALFONSO PULIDO — MOTION TO MODIFY PLAN
HLG-2 — 2-5-18 [75]

5. 17-26014-D-13 PHILLIP HAMMONS — MOTION TO CONFIRM PLAN
DCJ-1 — 1-29-18 [64]

Final ruling:

This case was dismissed on January 31, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

6. 17-28215-D-13 KAREN/DANIEL VIDA — OBJECTION TO U.S. BANK, N.A.
TGM-1 — 2-13-18 [22]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

7. 18-20619-D-13 RICARDO/LAURA NUNEZ — AMENDED MOTION TO AVOID LIEN OF TARGET NATIONAL BANK
JCK-1 — 2-14-18 [25]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

8. 18-20619-D-13 RICARDO/LAURA NUNEZ — AMENDED MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC.
JCK-2 — 2-14-18 [21]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

9. 17-28126-D-13 JAIME CAMPA — OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER
RDG-2 — 2-12-18 [25]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

10. 17-26232-D-13 MJD-3 — ANTON/VERANIKA LOVE — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 16 1-26-18 [29]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the debtors' objection to claim has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim no. 16 (SPV I, LLC) . No appearance is necessary.

11. 17-26232-D-13 MJD-4 — ANTON/VERANIKA LOVE — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 17 1-26-18 [33]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the debtors' objection to claim has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim no. 17 (SPV I, LLC) . No appearance is necessary.

12. 17-26232-D-13 MJD-5 — ANTON/VERANIKA LOVE — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 18 1-26-18 [37]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the debtors' objection to claim has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim no. 18 (SPV I, LLC). No appearance is necessary.

13. 17-26232-D-13 MJD-6 — ANTON/VERANIKA LOVE — OBJECTION TO CLAIM OF LVNV FUNDING, LLC, CLAIM NUMBER 19 1-26-18 [41]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the debtors' objection to claim has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtors' objection to claim no. 19 (SPV I, LLC). No appearance is necessary.

14. 17-26637-D-13 RDG-3 — JESSE/CHRISTINA M. LOPEZ — MOTION TO CONFIRM PLAN 1-10-18 [48]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties used an improper docket control number, failed to serve all creditors, and failed to serve the correct plan. First, the moving papers include a docket control number, RDG-3, that has already been used in this case and that is appropriate for use by the trustee, as it includes his initials, but is not appropriate for use by the debtors' counsel, as it does not include his initials. See LBR 9014-1(c)(3). Second, the debtors did not schedule the Employment Development Department as a creditor, and thus, they failed to serve the EDD, whereas the EDD has filed claims totaling $14,289. Third, the plan filed with this motion is a second amended plan and the proof of service refers to a motion, notice of hearing, and declaration, all concerning a second amended plan, whereas the proof of service evidences service of the debtors' first amended plan. The first and second amended plans are quite different in that the first proposed a step-up in the amount of the plan payment but the second does not.

As a result of these service and notice defects, the motion will be denied and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

15. 17-28337-D-13 — BUNTHOEUN HANG — OBJECTION TO CONFIRMATION OF PLAN BY LOANDEPOT.COM, LLC 1-25-18 [25]

Final ruling:

This case was dismissed on January 31, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

16. 17-28138-D-13 RDG-2 — ESTELLE YANCEY — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 1-30-18 [75]

Final ruling:

This case was dismissed on January 31, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

17. 12-36847-D-13 JWS-1 — CORDELL PENNIX AND HORTENSIA WATTS-PENNIX — CONTINUED MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1 12-18-17 [92]

18. 17-25256-D-13 GSJ-2 — DANIEL HERNANDEZ AND LUZ DE LA HOYA-HERNANDEZ — MOTION TO CONFIRM PLAN 1-26-18 [56]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

19. 17-26861-D-13 17-2222 RAMIREZ V. CALIBER HOME LOANS ET AL — RUBEN RAMIREZ PER-1 — MOTION TO DISMISS ADVERSARY PROCEEDING 2-2-18 [10]

Tentative ruling:

This is the defendants' motion to dismiss this adversary proceeding pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The plaintiff has filed opposition and the defendants have filed a reply. For the following reasons, the motion will be denied.

In ruling on a Rule 12(b)(6) motion, a court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

In his complaint, the plaintiff claims the defendants violated the automatic stay when they foreclosed, the day after he filed his chapter 13 petition, on a home in which he had an interest as an heir/beneficiary and that he suffered emotional distress as a result. In their motion, the defendants contend that at the time of his bankruptcy filing, the plaintiff had no interest in the property that was subject to the protection of the automatic stay. The defendants rely on Rentas v. González (In re Garcia), 507 B.R. 32 (1st Cir. BAP 2014), in which the First Circuit Bankruptcy Appellate Panel held that property owned at the time of the debtor's bankruptcy filing by the probate estate of his father, which had not been distributed by the probate estate, did not become property of the debtor's bankruptcy estate. 507 B.R. at 43.

The problem, for the defendants, is that the Garcia holding was based on Puerto Rican inheritance law. In Garcia, the bankruptcy appellate panel cited the bankruptcy court's earlier determination that the debtors' alleged interest in the property of the probate estate did not become property of the bankruptcy estate. The panel held that the bankruptcy court had "correctly determined . . . [that], because the assets of the probate or 'hereditary' estate . . . have never been

distributed and have remained at all times in the possession of the [probate court], they have never ceased to be part of the probate estate." 507 B.R. at 43. The bankruptcy court's decision had been based solely on Puerto Rican statutory and case law. See 507 B.R. at 37.

The Ninth Circuit Bankruptcy Appellate Panel has determined that the opposite is true under California law.[1] In Chappel v. Proctor (In re Chappel), 189 B.R. 489 (9th Cir. BAP 1995), the debtor's mother died four days before the debtor filed his bankruptcy petition. A petition for probate of the will was not filed until six weeks after the bankruptcy filing. The panel cited Cal. Prob. Code § 7000, which provides that "[s]ubject to Section 7001,[2] title to a decedent's property passes on the decedent's death to the person to whom it is devised in the decedent's last will or, in the absence of such a devise, to the decedent's heirs as prescribed in the laws governing intestate succession." The panel held, "[t]he statute is clear that title to a decedent's property passes to the beneficiary at time of death" (189 B.R. at 492), and thus, that on the date the debtor filed his bankruptcy petition, "the debtor's interests, including his interest in the probate estate that he acquired four (4) days earlier, transferred to the bankruptcy estate. We conclude the debtor's right to a distribution from the probate estate of a testatrix who died prepetition is property of the estate, even if the bequest had not been distributed at the time the debtor filed for bankruptcy." Id.[3]

Twelve years after Chappel was decided, the Ninth Circuit Bankruptcy Appellate Panel had occasion to revisit the issue when it construed a provision of Israeli inheritance law similar to Cal. Prob. Code § 7000; namely a provision that, "upon a person's death, the decedent's estate passes to his heirs." Dardashti v. Golden (In re Dardashti), 2007 Bankr. LEXIS 4941, *21, 2007 WL 7535054 (9th Cir. BAP 2007) (citations omitted).[4] The debtor's father died 122 days after the debtor filed his bankruptcy petition. The panel, citing Chappel, held that under Israeli law, the debtor acquired rights in his interest in his father's probate estate on the date of his father's death, and therefore, those rights became property of his bankruptcy estate on that date, pursuant to § 541(a)(5)(A) of the Bankruptcy Code, as a matter of law. Id. at *22. In so holding, the panel rejected the argument that the debtor did not acquire his interest in the probate estate until the probate court entered an order of distribution, which occurred more than 180 days after the bankruptcy filing. See id. at *7, 22-23.

In Dardashti, the positions of the parties were reversed from those of the parties in this case: the debtor argued that his interest in the probate estate did not become property of his bankruptcy estate because the probate court did not enter a distribution order until more than 180 days after the debtor's bankruptcy filing. The defendants make the same argument here. They cite the sections of the California Probate Code governing the progress of a probate case – those pertaining to the issuance of letters of administration, the personal representative's petition for a preliminary or final distribution of the probate estate, the interested parties' right to oppose the petition, the probate court's order distributing the estate upon a determination that the requirements have been met, and the binding effect of such an order. Based on those provisions, the defendants argue that "to state a claim for relief [the debtor] would have to show that the probate court in [his father's] probate case issued an order pursuant to Cal. Prob. Code sections 11603 and 11065 distributing an interest in the subject property to [the debtor]." Defendants' Opp., DN 19, at 5:18-21. The court disagrees. Those sections merely govern the procedure of a probate case; they do not alter the substantive effect of § 7000, which provides that title to a decedent's property passes to his or her heirs on the decedent's death.

Next, the defendants cite the dates of the plaintiff's father's death, in 1998, and the plaintiff's filing of his bankruptcy case, in 2017, and complain that the plaintiff "could have acted sooner to secure any interest in the property he believes he will inherit." Defendants' Motion, DN 19, at 4:22-23. The defendants add, "[e]ven then, his only act was to file an incomplete bankruptcy petition that was dismissed within two weeks of its filing." Id. at 4:24-25. They conclude, "[the plaintiff's] veiled attempt to cast responsibility on [the defendants] for his inaction should not be rewarded." Id. at 4:25-27. Both arguments – that the plaintiff delayed in asserting his rights and that he did not complete his bankruptcy paperwork – are irrelevant to the question whether the defendants violated the automatic stay.

The plaintiff alleges the defendants violated the automatic stay when they conducted a trustee's sale of property the plaintiff had an interest in by virtue of his interest in his father's probate estate. The law in the Ninth Circuit is clear: violations of the automatic stay are void, regardless of what delays transpired before the debtor filed for bankruptcy or whether the debtor saw the bankruptcy case through. In Schwartz v. United States (In re Schwartz), 954 F.2d 569 (9th Cir. 1992), the Ninth Circuit held that actions taken in violation of the stay are void, not voidable. 954 F.2d at 571. It was of no moment that the debtors took no action while their bankruptcy case was pending to address the violation or that they stipulated to the dismissal of their case.

In light of Cal. Prob. Code § 7000 and Chappel, the court concludes that under California law, the plaintiff's interest in his father's probate estate became property of his bankruptcy estate when he filed his petition, and therefore, he has stated a claim to relief that is plausible on its face for damages for emotional distress caused by the post-petition foreclosure sale. The court cautions the plaintiff that the additional relief he purports to pray for in his opposition to this motion – a reconveyance of the foreclosed deed of trust and the vacating of "[a]ll judgments and Unlawfull Detainer judgments by George W. Harris dba RTH Visailia LLC[,] as well as all Law Suits filed because of said actions" (Opp. at 5:10-13) – was not sought in his complaint, and accordingly, is not in play in this action. If he wishes to expand the relief sought in his complaint, he will need to follow the proper procedure for amending the complaint, including, if necessary under applicable rules, moving for leave to amend.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

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1 The defendants state, point blank, "[they] could not find an opinion by the Ninth Circuit Bankruptcy Appellate Panel on the issue of when assets in probate become part of a debtor's bankruptcy estate." Defendants' Reply, DN 19, at 5:2-4. The court questions that statement, however, as the court found the cases discussed below through a simple key word search for "probate" and "property of the estate."

The defendants do acknowledge that in determining property interests in bankruptcy cases, the court is to look to state law. Eden Place, LLC v. Perl (In re Perl), 811 F.3d 1120, 1127 (9th Cir. BAP 2016).

2 "The decedent's property is subject to administration under [the Probate Code], except as otherwise provided by law, and is subject to the rights of beneficiaries, creditors, and other persons as provided by law." Cal. Prob.

Code § 7001.

3 There are many old, but apparently still viable, California cases interpreting predecessors of § 7000 the same way. For example, in In re Estate of Yorba, 176 Cal. 166 (1917) , the California Supreme Court stated, "[u]nder our system of law, the property of a decedent passes, upon his death, to his heirs or devisees. They take at once by inheritance, or by the terms of the will. Their title does not originate in the decree of distribution . . . ." 176 Cal. at 169 (emphasis added); see also Estate of Platt, 21 Cal.2d 343, 347 (1942); Estate of Stagnaro, 107 Cal. App. 2d 98, 101 (1951); Estate of Giordano, 85 Cal. App. 2d 588, 593 (1948); Mears v. Jeffry, 80 Cal. App. 2d 610, 617 (1947); MacQuiddy v. Rice, 47 Cal. App. 2d 755, 757 (1941); Lichtenberg v. Burdell, 101 Cal. App. 20, 36 (1929); In re Estate of Clark, 94 Cal. App. 453, 461 (1928).

4 The panel applied Israeli law because the will in question was probated in Israel. Id. at *19.

20. 17-21362-D-13 AZIZ/DEBERA KHALID MOTION TO MODIFY PLAN
MC-1 2-2-18 [29]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

21. 17-24065-D-13 MARY CRUZ MOTION TO CONFIRM PLAN
TOG-3 1-30-18 [91]

22. 17-27770-D-13 LYNN SALERNO MOTION TO CONFIRM PLAN
JCK-2 1-22-18 [28]

23.	15-27776-D-13 JAD-2	INGEMAR/JENNIFER TOLENADA	MOTION TO APPROVE LOAN MODIFICATION 1-31-18 [112]
24.	15-27776-D-13 JAD-3	INGEMAR/JENNIFER TOLENADA	MOTION TO MODIFY PLAN 1-31-18 [117]
25.	17-23581-D-13 TBK-4	EDGARDO HIRAM MORALES	MOTION TO MODIFY PLAN 2-5-18 [58]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

26.	17-23785-D-13 MJH-5	JASWINDER SINGH	OBJECTION TO CLAIM OF BMO HARRIS BANK N.A., CLAIM NUMBER 1-3 1-17-18 [80]

Tentative ruling:

This is the debtor's objection to the claim of BMO Harris Bank N.A. (the "Bank"), Claim No. 1-3 on the court's claims register. The Bank has filed opposition and the debtor has filed a reply. For the following reasons, the objection will be overruled.

Pursuant to Fed. R. Bankr. P. 3001(f), there is an evidentiary presumption that the claim is valid. In re Garvida, 347 B.R. 697, 706 (9th Cir. BAP 2006). That

presumption puts on the debtor the burden of going forward; that is, the burden of producing evidence to counter the validity of the claim. Id. at 706-07. The court finds the debtor has not satisfied this burden so as to shift the burden to the Bank to produce further evidence supporting the claim.

In July of 2015, the debtor either purchased or leased two 2012 Freightliner trucks.[1] Either way, it is undisputed that the financing was provided by GE Capital and that the Bank is the successsor-in-interest to GE Capital. The debtor asserts one of the trucks was damaged in an accident just two months later, in September of 2015, and insurance proceeds of $32,678.86 were paid to the Bank. He asserts the other truck had an engine failure in November of 2015 and needed $8,000 to $10,000 in repairs, which GE Capital refused to provide despite his repeated requests. He says he told GE Capital, "'you just received over $30,000.00 why can't you use some to repair my truck so I can make payments to you?' The only response was 'pay more money'." Debtor's Decl., DN 82, at 2:24-25. The debtor cites an alleged warranty he claims covered the repairs and he faults GE Capital for failing to honor it.

The Bank has amended its proof of claim in this case twice, from $144,996 to $145,537 and then to $103,717. The debtor objected to the original claim; the Bank amended its claim; and the court construed the debtor's objection as an objection to the amended claim – the $145,537 claim. The court overruled the objection without prejudice. The Bank thereafter filed its second amended claim – the one for $103,717. The reduced claim amount accounts for the application to the debtor's account of the $32,678.86 in insurance proceeds, along with adjustments to the interest charges and repossession fees.

Based on that amendment, the debtor contends the claim should be disallowed in its entirety because the Bank made misrepresentations to the court when it filed its first two proofs of claim and when it opposed the debtor's objection to the original proof of claim. In other words, in the debtor's view, the Bank must have made misrepresentations when it defended that claim; otherwise, it would have had no need to file the second amended claim, reducing the claim amount by $41,820. In the debtor's view, "[t]he Bank, through its attorneys and employees have made false representations in four fundamental areas as to its claim. It is impossible to determine whether any of the remaining claim is valid." Debtor's Obj., DN 80, at 3:13-15. The court disagrees.

The debtor claims the Bank made four misrepresentations[2] when it asserted, in its opposition to the debtor's first claim objection, that (1) the insurance proceeds were used by the debtor to repair the truck damaged in the accident; (2) the debtor received the $32,678.86 in insurance proceeds; (3) the Bank received a total of $40,575 for its collateral; and (4) no warranty existed. As to the first and second of these, the Bank's exhibits to its opposition to the original objection included the front side of a $32,678.86 check from Lexington Insurance Company payable to the debtor and GE Capital and giving as the "Reason for Payment": "Repair 12 Frei [VIN number]," which apparently suggested to the Bank the debtor intended to repair the vehicle. The email chains filed by the Bank in opposition to this objection indicate the Bank did not initially credit those funds and had trouble finding the paper trial and applying the funds, although it finally did so, resulting in its filing of the second amended claim.

The debtor's reply is vehement in its attack on the Bank. The debtor cites the email chains filed with the Bank's opposition, in which Elizabeth Steel, a litigation specialist with the Bank, asked another employee what had become of the $32,678.86 check. The language the debtor emphasizes is this: "According to the

notes on the account[,] we received the repair check but I see no notes as to what we did with it." Bank's Ex. 7. Although the email was not sent until two weeks after the court overruled the debtor's first claim objection, the debtor concludes Ms. Steel must have misrepresented the facts about the check in her original declaration. "According to that exhibit and subsequent ones in BMO's Exhibit 7, Elizabeth Steel knew the notes on the account show BMO received the insurance check before she contacted anyone in any of her departments. This is further misrepresentation." Debtor's Reply, DN 94, at 4:5-7. The debtor lists this in his reply as a fifth fundamental false representation by the Bank.

The court does not believe that was the case. The email exchange began the day after the hearing at which the court overruled the debtor's first claim objection; it shows Ms. Steel writing to three different individuals trying to find out how the check was applied and whether it was credited to the debtor's account. She began with this inquiry: "From what I can see on the account this was a repair claim and the collateral was recovered. I cannot find an invoice from the repair shop nor where we cut a check to them for the balance of the insurance check. Will you please look into this and send me any backup available as to the bill from the repair shop, copy of the check we gave them and any other information you may have on this?" Bank's Ex. 7. Ms. Steel concludes that "[o]n or about December 1, 2017, our cash department advised me that the payment was in fact received, however, it was applied pursuant to an unfamiliar fee code which resulted in its initial inadvertent omission from DEBTOR's account record." Steel Decl., DN 91, ¶ 36. The court is not persuaded Ms. Steel was aware before she signed her declaration opposing the debtor's first claim objection that the notes on the account showed the Bank receiving the check or that she intentionally misrepresented anything about the check to the court, either affirmatively or by omission. In fact, she submitted a copy of the check with her first declaration and referred in her declaration to the "Repair 12 Frei [VIN number]" language on the check for her conclusion that "DEBTOR apparently had [the truck] repaired." Steel Decl., DN 46, ¶¶ 16, 17.

The facts surrounding the insurance payment are confusing. In his first claim objection, the debtor himself testified he towed the totaled truck back to California and his insurer paid $31,437.20 to GE Capital "and the insurer retained the truck as salvage." Debtor's Decl., DN 36, ¶ 4.[3] He used that statement as the basis for his conclusion, in the first objection, that the Bank was misrepresenting that it had recovered and sold both trucks when it could have sold only the one remaining after the accident.[4] The court observed in its ruling on the first claim objection that the debtor's testimony about the insurer retaining the truck as salvage was hearsay and contradicted by the Bank's exhibit showing the truck, identified by its VIN number, being sold for net proceeds of $6,375. The debtor has dropped that alleged "falsity" – that the Bank falsely claimed to have sold both trucks when it could in fact have sold only one – in his present claim objection. In other words, the debtor would apparently acknowledge he was wrong about the insurer retaining the totaled truck as salvage. The debtor has made a second mistake – he states in his reply that "the check on its face showed the check was mailed to BMO Harris Bank N.A." Debtor's Reply, DN 94, at 4:8. Not so. The check itself has no address and the check voucher shows it was mailed to GE Capital, not the Bank.[5]

The point here is not to assign blame to the debtor for originally "misrepresenting" that the insurer retained the totaled truck as salvage or for stating that the check shows on its face it was mailed to the Bank. The point is that the court has no reason to conclude that either party has made deliberate misrepresentations in this matter. In fact, the court would have had to spend far

less time on the alleged misrepresentations in this ruling were it not for the fact that the debtor relies on them in his effort to defeat the claim in its entirety. In his reply, he says, as to the Bank's apparently having had in its records the whole time that it had received the $32,678.87 check: "this was no accounting glitch. At worst it was an intentional act of greed and intentional misrepresentation and at best it was making sworn false declarations with no reasonable grounds for believing it to be true, and was made with an intent to induce Debtor to alter his position." Reply at 4:11-13. As seen above, the debtor himself made a mistake in his earlier declaration as to the insurer retaining the truck as salvage and in his current reply as to the check showing on its face it was mailed to the Bank. The court has no more reason to conclude the Bank made intentional misrepresentations than that the debtor did.

The third alleged misrepresentation listed by the debtor is that Ms. Steel's sworn statement in her declaration opposing the debtor's first claim objection that the Bank received a total of $40,575 was false. This is merely another way of framing the second alleged misrepresentation – that the debtor got the $32,678.86 in insurance proceeds. Not counting the insurance proceeds, the Bank did receive only $40,575 for its collateral – $6,375 for the one truck and $34,200 for the other. The court has already determined Ms. Steel was not aware the Bank had received the $32,678.86 when she made her original declaration; thus, similarly, she did not intentionally misrepresent that the Bank had received only $40,575.

Finally, the debtor asserts the Bank misrepresented that there was no warranty. The debtor relies on a Sales Order/Proposal dated July 2, 2015 signed by himself and an officer of Blackmun Equipment Leasing, which refers, by description and VIN number, to the two 2012 Freightliner trucks that are the subject of the Bank's claim. The debtor cites this language under "REMARKS" in the Sales Order: "Service, 1 year/100,000 warranty on major motor components" as creating in his favor a warranty that covered the repairs he needed to make to the second truck – the one not totaled in the accident. There are at least three problems with the argument. First, the Sales Order refers to GE Capital as providing the financing but it is not signed by anyone at or on behalf of GE Capital. That is, GE Capital, the Bank's predecessor-in-interest, was not a party to the Sales Order, yet it was GE Capital the debtor tried to get to honor the alleged warranty.[6]

Second, the Sales Order included this contradictory language in bold print at the bottom:

> **AS-IS PURCHASE- NO WARRANTIES EXPRESS OR IMPLIED**
>
> **Seller makes no warranties, express or implied, as to any matter whatsoever, including, but not limited to, the condition, prior usage, operability, merchantability, fitness for any particular purpose, use, accuracy of engine operation meters and/or odometers, design, capacity, suitability for intended use, performance, operation, workmanship, installation of standard or non-standard equipment and/or accessories, prior servicing and maintenance, the presence or absence of defects whether latent or patent, compliance with any law, rule or ordinance, contract specifications or other qualities or characteristics of the commercial equipment being purchased by Buyer. THIS SALE IS MADE ON AN "AS-IS" BASIS WITH ALL FAULTS, AND WITHOUT RECOURSE TO SELLER AS TO ANY DEFECTS NOW OR HEREAFTER EXISTING. BY INITIALING THIS PROVISION, BUYER ACKNOWLEDGES THAT THIS IS AN AS-IS SALE MADE WITHOUT WARRANTIES EXPRESS OR IMPLIED, AND BUYER HEREBY WAIVES RECOURSE AGAINST SELLER FOR ANY AND**

ALL DEFECTS, AND FURTHER EXPLICITLY WAIVES ALL EXPRESS AND IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE:

BUYERS INITIALS_____.

The debtor initialed the provision and signed his full name directly below it. In this objection, he repeatedly cites the one line in the "REMARKS" column as supporting his warranty claim, but he has offered no authority or analysis as to the legal effect of this lengthy contradictory provision. Although he testifies he would not have leased the trucks without the warranty, he does not say why he initialed this provision or whether he tried to get Blackmun Equipment Leasing to strike it from the Sales Order. He simply doesn't mention it.

Third, there was a separate agreement between the debtor and GE Capital – a Loan and Security Agreement dated July 10, 2015, signed by the debtor and a representative of GE Capital, which absent authority to the contrary, appears to govern the parties' relationship. The Bank submitted a copy in opposition to both the debtor's first claim objection and this one. The debtor does not dispute that he signed this agreement or that it governs; as with the "no warranty" language in the Sales Order, he simply ignores it. The Loan and Security Agreement states:

> Disclaimer. LENDER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE QUALITY, WORKMANSHIP, DESIGN, MERCHANTABILITY, SUITABILITY, OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. Debtor's obligations hereunder are absolute and unconditional notwithstanding the existence, location or condition of any item of Equipment or its suitability for use in Debtor's business.

Bank's Ex. 1, ¶ 1.1. In addition, the debtor warranted and agreed "the Equipment will be maintained in good operating condition, repair and appearance . . . ." ¶ 1.2. There is no contradictory warranty language in the agreement. For all of these reasons, the court rejects the debtor's position that the Bank misrepresented that it had no warranty obligation and that the Bank's or GE Capital's failure to honor the alleged warranty released the debtor from his obligations.

For the reasons stated, the debtor has failed to meet his burden of producing evidence to counter the presumptive validity of the Bank's second amended claim. The court does not agree with the debtor that the claim with attachments "fails to demonstrate any right to payment establishing a debt due it by the debtor" or that the claim "fails to meet the minimum requirements to establish a prima facie proof of claim" or that the claim was false and filed in bad faith. Accordingly, the objection will be overruled. The court will hear the matter.

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1 The debtor cites as the governing document a "Sales Order/Proposal" signed by him and Blackmun Equipment Leasing. He apparently relies on the word "Leasing" in the Blackmun company's name as the sole source for his conclusion that he leased the trucks. However, the document refers to a seller and buyer and to the equipment as being "Sold To" the debtor, and the debtor signed on a line above the words "Purchaser Signature." Debtor's Ex. A. The Bank cites as the governing document a "Loan and Security Agreement" signed by the debtor and GE Capital, by which the debtor gave GE Capital a security interest in the trucks, which he would have been unable to do if he were only leasing them. Bank's Ex.

1.

The debtor believes the difference is important to this objection: "Debtor did not purchase the trucks, he leased them, which is far different." Debtor's Reply, DN 94, at 5:2. He offers no explanation, and based on the above, the court inclines toward the view that the transaction was a purchase and sale, but in any event, the court finds it unnecessary to decide the issue on this objection.

2 In his reply, the debtor has added a fifth – discussed below.

3 The debtor derived the $31,437.20 figure from a loss run report from Scout Insurance Group filed with his first claim objection. The figure was revised to $32,678.86 after the Bank submitted a copy of the actual insurance proceeds check with its opposition to the first claim objection.

4 "[The Bank's exhibit] states that the two trucks were disposed of by GE on or after December 17, 2015. This statement is false as one of the trucks was totaled three months earlier and the insurer earlier had paid GE $31,437.20 and the insurer retained the truck as salvage. . . . GE did not even have two trucks to dispose of on or after December 17, 2015." Debtor's Obj., DN 34, at 1:26-2:1.

5 According to the Bank's exhibits, GE Capital assigned the claim to Transportation Truck and Trailer Solutions, LLC on October 1, 2015 and Transportation Truck and Trailer Solutions, LLC assigned it to the Bank on December 1, 2015. It is reasonable to assume these transfers and the resulting transfers of the account records played a role in Ms. Steel's confusion about the insurance check.

6 The debtor testifies he "called GE over a dozen times asking that the repairs be provided, but GE refused." Debtor's Decl., DN 82, ¶ 12.

27.	17-27485-D-13 RDG-2	GERALDINE OSEI	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 12-29-17 [12]
28.	16-26988-D-13 ALF-1	ROMEO/NOELETTE GONZALES	MOTION TO MODIFY PLAN 1-30-18 [26]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

29. 17-25995-D-13 JWS-3 — JEANETTE JONES — MOTION TO CONFIRM PLAN 1-12-18 [51]

30. 17-28302-D-13 MC-3 — DANIEL LOPEZ — MOTION TO VALUE COLLATERAL OF PATELCO CREDIT UNION 2-27-18 [42]

31. 18-90109-D-13 — SHARON JONES — MOTION FOR TEMPORARY WAIVER OF THE CREDIT COUNSELING REQUIREMENT 2-21-18 [9]

Final ruling:

By amended order filed March 1, 2018, this matter has been set for hearing on March 20, 2018, in the Modesto courthouse. No appearance is necessary on March 13, 2018.

32. 16-21825-D-13 CLH-8 — JUAN/NADINE MORGA — CONTINUED MOTION BY CHARLES L. HASTINGS TO WITHDRAW AS ATTORNEY 2-1-18 [155]

Final ruling:

This case was dismissed on February 27, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

33. 17-23837-D-13 FRANCISCO/MARIA PADILLA
PGM-3

CONTINUED MOTION TO EMPLOY ROBERT HUSMAN REAL ESTATE AS REALTOR(S)
2-12-18 [98]

34. 18-20259-D-13 VESTER ROBINSON
MC-1

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES, INC.
2-22-18 [14]

35. 17-27770-D-13 LYNN SALERNO
RDG-2

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-12-18 [22]

36. 18-20472-D-13 MARCO PALMA

ORDER TO SHOW CAUSE
2-27-18 [25]

DEBTOR DISMISSED: 02/23/2018

37.	13-20199-D-13 PGM-5	MICHAEL/MARY ROMAN	CONTINUED OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 8 AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY 1-11-18 [149]

Final ruling:

This objection has been resolved by stipulated order entered March 2, 2018. Matter removed from calendar.