

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, March 28, 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

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. [18-10102](#)-B-7 IN RE: ADELA AGTARAP
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
2-28-2018 [[18](#)]

WELLS FARGO BANK, N.A./MV
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Deemed as a request for an order confirming that the
automatic stay has been terminated under § 362(j).

ORDER: The court will issue the order.

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

Debtor filed a previous bankruptcy case in the Eastern District of California on April 5, 2017 (Case No. 17-11302) which was dismissed on July 1, 2017. Debtor filed this bankruptcy case on January 16, 2018.

In cases where an individual debtor has already filed a chapter 13 case, and within one year after dismissal files for chapter 7 relief, the automatic stay expires after 30 days. 11 U.S.C. § 362(c)(3)(A). Under 11 U.S.C. § 362(c)(3)(B) however, the court may extend the automatic stay if notice and a hearing are completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. The debtor did not request such a hearing and therefore the stay was lifted 30 days after the petition was filed.

This motion will be DEEMED AS A REQUEST UNDER § 362(j) FOR AN ORDER CONFIRMING THAT THE AUTOMATIC STAY HAS BEEN TERMINATED UNDER § 362(c)(3)(A).

2. [18-10006](#)-B-7 **IN RE: BALBIR/PARMINDER DEOL**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-6-2018 [[15](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for April 9, 2018 at 10:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

3. [18-10007](#)-B-7 **IN RE: MALVINDER DEOL**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-7-2018 [[14](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for April 9, 2018 at 10:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

is extended to 60 days after the conclusion of the meeting of creditors.

4. [17-14909](#)-B-7 **IN RE: EDDIE MOLINA**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-6-2018 [[20](#)]

SCOTT LYONS

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for April 9, 2018 at 10:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

5. [15-14912](#)-B-7 **IN RE: STEVEN/ALTA ROSS**
[JTW-3](#)

MOTION FOR COMPENSATION FOR JANZEN, TAMBERI & WONG, ACCOUNTANT(S)
2-13-2018 [[60](#)]

JANZEN, TAMBERI & WONG/MV
MARK ZIMMERMAN

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

Movant is awarded \$1,220.00 in fees.

6. [18-10414](#)-B-7 **IN RE: JACQUELINE COLEY**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-2018 [[10](#)]

SANTANDER CONSUMER USA INC./MV
TIMOTHY SPRINGER
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

7. [17-14416](#)-B-7 **IN RE: JIMMY/LESLIE HINDS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-16-2018 [[16](#)]

WELLS FARGO BANK, N.A./MV
JEFFREY ROWE
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Granted in part as to the trustee's interest and
denied as moot in part as to the 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 and there was no opposition. The motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on February 27, 2018. Docket #22. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. The order shall provide the motion is DENIED AS MOOT as to the debtors.

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

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

8. [18-10317](#)-B-7 **IN RE: CARLOS/MISTY TRUJILLO**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-2018 [[15](#)]

BANK OF THE WEST/MV
MARK ZIMMERMAN
MARY TANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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

9. [17-14920](#)-B-7 **IN RE: VARDGES GASPARYAN**
[KDG-1](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB AND
AMERICAN EXPRESS CENTURION BANK
2-15-2018 [[18](#)]

VARDGES GASPARYAN/MV
JACOB EATON

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-

mentioned parties in interest are entered and the matter will be resolved without oral argument.

A judgment was entered against the debtor in favor of American Express Bank, FSB and American Express Centurion Bank for the sum of \$20,621.50 on July 10, 2017. Docket #22. The abstract of judgment was recorded with Kern County on October 20, 2017. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$256,000.00 as of the petition date. Docket #1, Schedule B. The unavoidable liens totaled \$655,244.13 on that same date, consisting of a first deed of trust in favor of LoanCare Servicing Center (docket #1, Schedule D) and a Writ of Attachment in favor of Twinwood, Inc. Docket #22). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$94,381.38. Docket #1, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B). This holding in no way should be construed to affect the writ of attachment in favor of Twinwood, Inc. since the motion did not ask for relief as to the attachment lien.

10. [18-10023](#)-B-7 **IN RE: EVELYN FREEMAN**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-27-2018 [[12](#)]

NATIONSTAR MORTGAGE LLC./MV
MICHAEL FLETCHER
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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

<http://www.caeb.circ9.dcn/LocalRules.aspx>.

11. [18-10224](#)-B-7 **IN RE: BRENDA KERR**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-6-2018 [[10](#)]

TD AUTO FINANCE LLC/MV
STEVEN ALPERT
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

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

12. [18-10329](#)-B-7 **IN RE: THOMAS BAILEY**
[TGM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-2018 [[11](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
TIMOTHY SPRINGER
TYNEIA MERRITT/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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

13. [15-13932](#)-B-7 **IN RE: VICTOR PASNICK**
[DSH-7](#)

OBJECTION TO CLAIM OF CAROL BRECKENRIDGE, CLAIM NUMBER 7
2-20-2018 [[330](#)]

RAY BERGMAN/MV
PETER FEAR
DAVID HAMILTON/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

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

Local Rule of Practice ("LBR") 3007-1 is the rule pertaining to Objections to Proofs of Claim. Because this objection was set on at least 30 days' notice, the notice needed to comply with LBR 3007-1(b)(2), which states that "no party in interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the Court may continue

the hearing to permit the filing of evidence and briefs." Such language was absent from the notice.

Additionally, the notice did not comply with LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B) requires the notice to "advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

For the above reasons, this objection is OVERRULED WITHOUT PREJUDICE.

14. [18-10032](#)-B-7 **IN RE: ROBERT ANDERSON**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-2018 [[18](#)]

MTGLQ INVESTORS, LP/MV
JAMIE HANAWALT/ATTY. FOR MV.
DISMISSED

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

DISPOSITION: Deemed as a request for an order confirming that the automatic stay has been terminated under § 362(c)(2)(B).

ORDER: The court will issue the order.

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

Under 11 U.S.C. § 362(c)(2)(B), the stay continues until the earliest of the time the case is closed, the time the case is dismissed, or the time a discharge is granted or denied.

This case was dismissed on March 1, 2018 (docket #25) and therefore the stay is no longer in effect.

There are additional grounds on which the automatic stay is no longer in effect.

In cases where an individual debtor has already filed a chapter 7 case, and within one year after dismissal files again for chapter 7 relief, the automatic stay expires after 30 days. 11 U.S.C. § 362(c)(3)(A). Under 11 U.S.C. § 362(c)(3)(B) however, the court may extend the automatic stay if notice and a hearing are completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. The debtor did not request such a hearing and therefore the stay was lifted 30 days after the petition was filed.

Debtor filed a previous bankruptcy case in the Eastern District of California on November 29, 2017 (Case No. 17-14547) which was dismissed on December 18, 2017 (docket #13). Debtor filed this bankruptcy case on January 5, 2018. The 30-day period expired on February 4, 2018. During that 30-day period, no hearing was set and noticed for an extension of the automatic stay, and therefore the stay is no longer in effect.

This motion will be DEEMED AS A REQUEST UNDER § 362(j) FOR AN ORDER CONFIRMING THAT THE AUTOMATIC STAY HAS BEEN TERMINATED UNDER 11 U.S.C. §§ 362(c)(2)(B) and (c)(3)(A).

15. [18-10342](#)-B-7 **IN RE: KEVIN GREEN AND LARRISSA WARNELL**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-21-2018 [[12](#)]

SANTANDER CONSUMER USA INC./MV
VINCENT GORSKI
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

16. [10-10544](#)-B-7 **IN RE: JUAN OROZCO MACIEL**
[TPH-2](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY LLC
3-2-2018 [[30](#)]

JUAN OROZCO MACIEL/MV
THOMAS HOGAN

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 after 4:00 p.m. the day before the hearing.

17. [10-10544](#)-B-7 **IN RE: JUAN OROZCO MACIEL**
[TPH-3](#)

MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION
SERVICE, INC.
3-2-2018 [[36](#)]

JUAN OROZCO MACIEL/MV
THOMAS HOGAN

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 after 4:00 p.m. the day before the hearing.

18. [16-11855](#)-B-7 **IN RE: HARJOT SINGH AND INDERJIT SANDHU**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-2018 [[60](#)]

BAYVIEW LOAN SERVICING,
LLC./MV
JAMIE HANAWALT/ATTY. FOR MV.

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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

If an award of attorney fees has been requested, it will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. In addition, any future request for an award of attorney's fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C. §506(b).

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay

relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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

19. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-2](#)

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
3-8-2018 [[62](#)]

FRANCES ALARCON/MV
TIMOTHY SPRINGER

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion to Avoid Lien of Bank of Commercial Trade, Inc. was previously filed on February 13, 2018 (docket #44) and denied without prejudice on March 1, 2018. Docket # 58. The DCN for that motion was TCS-2. This motion also has a DCN of TCS-2 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN. Using the same three letters is appropriate, but the number must increase by 1 each time another matter is filed.

20. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-5](#)

MOTION TO AVOID LIEN OF CAPITAL COLLECTIONS, LLC
3-8-2018 [[67](#)]

FRANCES ALARCON/MV
TIMOTHY SPRINGER

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

DISPOSITION: Granted.

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

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

A judgment was entered against the debtor in favor of Capital Collections, LLC c/o Steven R. Hrdlicka & Assoc for the sum of \$1,965.35 on October 1, 2010. Docket #70. The abstract of judgment was recorded with Fresno County on October 21, 2010. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$229,999.41 as of the petition date. Docket #1, Schedule B. The unavoidable liens totaled \$229,229.96 on that same date, consisting of a first mortgage in favor of Indy Mac Mortgage Services in the amount of \$129,230.55 and a second mortgage in favor of Bank of America, N.A. in the amount of \$99,999.41. Docket #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$769.45. Docket #70, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

21. [17-12464](#)-B-7 **IN RE: SEILING IMAGING, INC.**
[RHT-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
2-27-2018 [[34](#)]

ROBERT HAWKINS/MV
HAGOP BEDOYAN
ROBERT HAWKINS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The trustee is authorized to pay taxes due to the Franchise Tax Board totaling \$829.00.

22. [17-12464](#)-B-7 **IN RE: SEILING IMAGING, INC.**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG,
ACCOUNTANT(S)
2-27-2018 [[27](#)]

JANZEN, TAMBERI AND WONG/MV
HAGOP BEDOYAN

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver

of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

Movant shall be awarded \$1,680.00 in fees.

23. [17-14171](#)-B-7 **IN RE: ANTHONY SERRATO**

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
1-31-2018 [[25](#)]

ANTHONY SERRATO/MV
ANTHONY SERRATO/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Court will issue the order.

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

11 U.S.C. § 727(a)(11) requires debtors to complete "an instructional course concerning personal financial management" in order to receive their discharge. An exception is made, however for "a debtor who is a person described in section 109(h)(4)."

11 U.S.C. § 109(h)(4) permits a court to waive that requirement after "notice and a hearing." That section defines a "person...of incapacity, [or] disability ...For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1)."

After reviewing the motion and supporting evidence, the court waives the requirement that the debtor attend the financial management course. The debtor's doctor submitted a note stating that his patient (the debtor) would be unable to attend the financial management class "due to illiteracy, mental delay with low comprehension and retention of information." Docket #30. The description the doctor gives sufficiently meets the statutory definition of "incapacity." Illiteracy, mental delay with low comprehension and retention of information may certainly make someone incapable of realizing and making rational decisions with respect to his financial responsibilities.

There is also no opposition to the requested relief. Finally, the debtor's "motion" was written by his niece, Veronica Serrato, and signed by Tony Serrato, further evidencing the debtor's limitations.

This motion is GRANTED.

24. [18-10073](#)-B-7 **IN RE: MARIA BRAVO**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-16-2018 [[16](#)]

WELLS FARGO BANK, N.A./MV
BENNY BARCO
DARLENE VIGIL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

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

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

25. [18-10474](#)-B-7 **IN RE: MYRA RIVERA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
2-14-2018 [5]

MYRA RIVERA/MV
MYRA RIVERA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion is DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The application for waiver is inconsistent with the schedules filed. The application says the debtor has two dependents, and debtor's Schedule J states the debtor has one dependent. Unless the debtor can show the court the correct number of dependents, the court intends to DENY the request for waiver of the filing fee on the grounds the schedules and the application are inconsistent and the debtor has not proven qualification for a waiver.

26. [18-10375](#)-B-7 **IN RE: GARY VILLANUEVA AND RACQUEL JOHNSON**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-2018 [[15](#)]

SANTANDER CONSUMER USA INC./MV
ERIC ESCAMILLA
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

27. [16-14676](#)-B-7 **IN RE: JOHN/PATRICIA FARINELLI**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-20-2018 [[154](#)]

JAMES SALVEN/MV
PETER BUNTING

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

DISPOSITION: Granted.

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

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

Mr. Salven shall be awarded \$3,275.00 in fees and \$365.05 in costs.

28. [16-11579](#)-B-7 **IN RE: LETICIA BAEZA**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-15-2018 [[47](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for April 20, 2018 at 9:00 a.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's 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.

29. [18-10379](#)-B-7 **IN RE: DUSTI COOK-SCANTLIN**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-2018 [[9](#)]

SANTANDER CONSUMER USA INC./MV
TIMOTHY SPRINGER
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

30. [14-13880](#)-B-7 **IN RE: JUAN GONZALES**
[DRJ-3](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, TRUSTEES
ATTORNEY(S)
2-16-2018 [[44](#)]

GREG BLEVINS

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

DISPOSITION: Granted.

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

This motion has been set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

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

Mr. Jenkins shall be awarded fees of \$5,556.00 and costs of \$17.44.

31. [18-10184](#)-B-7 **IN RE: TEMEIKA MIXON**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-15-2018 [[14](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for April 20, 2018 at 9:00 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 debtor's 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.

32. [18-10588](#)-B-7 **IN RE: FLORBELA ALVES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-9-2018 [[14](#)]

SCOTT SAGARIA

NO RULING.

This chapter 7 petition was filed without payment of the filing fee and other fees prescribed by 28 U.S.C. § 1930(a) and (b) or an application for permission to pay fees in installments pursuant to Federal Rule of Bankruptcy Procedure 1006(b). Debtor and debtor's counsel must appear and explain to the court why the fee has not

been paid and why the court should not dismiss this case. If debtor and debtor's counsel do not appear, the court may dismiss the case.

33. [14-14593](#)-B-7 **IN RE: WAYNE HEAD**
[TGM-15](#)

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
2-23-2018 [[207](#)]

DAVID JENKINS

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

DISPOSITION: Granted.

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

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

11 U.S.C. § 330(a)(1)(A) states that a court may award a professional person employed under 327 "reasonable compensation for actual, necessary services rendered by the...professional person and by any paraprofessional person employed by any such person..."

Ms. Manfredo acted as attorney for the trustee, Peter L. Fear, and an order granting the trustee authorizing him to employ Ms. Manfredo was entered on April 18, 2018. Docket #72. Ms. Manfredo spent nearly 90 hours working on asset analysis and recovery on three parcels of real property, each with its own complex issues. Docket #211. For instance, one of the properties was used as a growing operation for marijuana, and the Sheriff seized 200 marijuana plants. *Id.* After a successful sale of the property, the buyer attempted to back out when squatters had moved onto the property but Trustee brought further eviction actions to remove the squatters. *Id.* With another property, the trustee had to file an adversary proceeding and draft rule 26 disclosures and written discovery. *Id.* The adversary proceeding was eventually settled. *Id.*

The court finds that the fees Ms. Manfredo requests is reasonable for the amount and qualify of work performed on behalf of the trustee. Ms. Manfredo shall be awarded fees of \$31,813.00 and costs of \$830.88.

34. [14-14593](#)-B-7 **IN RE: WAYNE HEAD**
[WHL-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GILMORE MAGNESS
JANISSE FOR WILLIAM H. LEIFER, SPECIAL COUNSEL(S)
3-2-2018 [[216](#)]

DAVID JENKINS

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").

LBR 9014-1(f)(1) states that "the moving party shall FILE AND SERVE the motion at least twenty-eight (28) days prior to the hearing date" (emphasis added).

This motion was filed on March 2, 2018, but the certificate of service states that the moving papers were served on February 28, 2018, which is at least 28 days prior to the hearing. Docket #221. The notice also stated that written opposition, if any, was to be filed and served at least 14 days prior to the hearing date. Docket #219. This is not in compliance with the local rules. Because the motion was filed on March 2, 2018, it was filed on less than 28 days' notice, which required movant to comply with LBR 9014-1(f)(2). This rule states that written opposition is not required. Because the notice did not comply with the correct rule, this motion is DENIED WITHOUT PREJUDICE.

35. [18-10097](#)-B-7 **IN RE: JAEGER PHOTO CORP.**
[DJP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-14-2018 [[25](#)]

EISCHEN ENTERPRISES, INC./MV
HAGOP BEDOYAN
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

ORDER: Preparation of the order will be determined at the 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 respondent's 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 relates to an executory contract or lease of nonresidential real property. The case was filed on January 12, 2018 and pursuant to 11 U.S.C. § 365(d)(4)(A), an unexpired lease of nonresidential real property shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the date that is 120 days after the date of the order for relief.

120 days after the date this petition was filed (January 12, 2018) is May 12, 2018. The court has not seen a statement from the trustee rejecting the aforementioned lease, and therefore the trustee has until May 12, 2018 to assume or reject said lease. The trustee was served with the motion and may request additional time to determine whether to assume or reject the lease at the hearing if so, this motion will be continued to May 16, 2018 at 9:30 a.m., at which point if the trustee has not rejected or assumed this lease, the court may find that the lease has been rejected pursuant to 11 U.S.C. § 362(d)(4)(A).

The declaration supporting the motion sets forth that the debtor has not made payments under the nonresidential real property lease. The trustee has not made the payments either. The court finds that "cause" exists to modify the stay under 11 U.S.C. §362(d)(1).

36. 17-14607-B-7 **IN RE: BETTY GANT-COLE**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-6-2018 [14]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtors shall attend the meeting of creditors rescheduled for April 9, 2018 at 2:00 p.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

11:30 AM

1. [18-10039](#)-B-7 **IN RE: CHRISTINA BLAJOS**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST INVESTORS
SERVICING CORPORATION
2-27-2018 [[13](#)]

NO RULING.

2. [17-14565](#)-B-7 **IN RE: ROYAL/PATRICIA GOODMAN**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
3-12-2018 [[29](#)]

NO RULING.

1:30 PM

1. [17-14026](#)-B-7 **IN RE: EVE FORREST**
[18-1004](#)

STATUS CONFERENCE RE: COMPLAINT
1-19-2018 [[1](#)]

AMERICAN EXPRESS CENTURION
BANK V. FORREST
ROBERT LAMPL/ATTY. FOR PL.
DISMISSED

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.

2. [17-13527](#)-B-7 **IN RE: BEKAF WOLDEMESKEL**
[17-1089](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING FOR FAILURE TO PROSECUTE
2-15-2018 [[13](#)]

KEVORKIAN V. WOLDEMESKEL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The OSC will be vacated and a status conference will be set at hearing.

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

3. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

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

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

NO RULING.

4. [16-12687](#)-B-7 **IN RE: LORAIN GOODWIN MILLER**
[17-1039](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-29-2017 [[1](#)]

SALVEN V. GOODWIN MILLER ET AL
TRUDI MANFREDO/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [15-12689](#)-B-7 **IN RE: MARK HANSEN**
[17-1042](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-24-2018 [[96](#)]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
MARK HANSEN/ATTY. FOR PL.

NO RULING.

6. [15-12689](#)-B-7 **IN RE: MARK HANSEN**
[17-1042](#) [DCN-5](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
2-12-2018 [[99](#)]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
PETER ISOLA/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)(1) and will proceed as scheduled. The court notes the opposition of plaintiff.

Under Federal Rule of Civil Procedure 12(b)(6) (made applicable by Federal Rule of Bankruptcy Procedure 7012), a court must dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) dismissal motion, a court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011). However, a court need not accept as true conclusory allegations or legal

characterizations cast in the form of factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). While the court generally must not consider materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987). Additionally, "in determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to dismiss." Broom v. Bogan, 320 F.3d 1023, 1026, FN2 (9th Cir. 2003).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must allege in his complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Twombly, 550 U.S. at 570 (a claim survives Civil Rule 12(b)(6) when it is "plausible."). It is self-evident that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121 (9th Cir. 2008).

Additionally, allegations of false representations are subject to the heightened standard of Federal Rule of Civil Procedure 9(b). This rule states that "a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." The plaintiff must state the "who, what, when, where and how" of the false representation. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1120 (9th Cir. 2003).

By prior order of the court (docket #88), the plaintiff was authorized to file a second amended complaint asserting the forgery claim ONLY (emphasis added).

Plaintiff timely filed the second amended complaint ("SAC") (docket #96) which does not comply with the court order. While plaintiff does touch on the forgery claim, plaintiff asserted other claims and made additional allegations, including denying receiving a loan from MortgageIT, Inc. (¶¶ 13 and 14) and Ocwen's alleged failure to provide an "Original Note and Deed of Trust" (see ¶¶ 17-24). Only two paragraphs of the SAC actually allege forgery (¶¶ 26 and 30). Because the prior order specifically only allowed assertion of the forgery claim, any and all other claims plaintiff made in the SAC the court will be disregarded. The court has previously ruled on the alternate theories the plaintiff alleges. See docket #88.

The court notes that plaintiff, in the first amended complaint ("FAC") essentially admitted to signing the alleged forged documents himself. FAC ¶ 14 states "Plaintiff endorsed a credit facilitation agreement with MortgageIT, INC., represented by same as a mortgage loan transaction, with a Note purporting to loan/lend a certain sum of money to refinance an alleged debt on the property described

above." Amending a pleading does not make it any less an admission of a party. Andrews v. Metro North Commuter RR Co., 882 F.3d 705, 707 (2nd Cir. 1989); Robinson v. Salazar, 885 F.Supp.2d 1002, 1024 (fn 12)(E.D. Cal. 2012).

First, the claim is barred by the three-year statute of limitations. California Code of Civil Procedure § 338(d) gives a three-year period as the time to commence an "action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

California Civil Code § 1213 states that "every conveyance of real property...recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgages." The deed of trust was recorded on May 27, 2004, nearly 14 years ago. Such recordation gave constructive notice to plaintiff. A notice of default under the deed of trust was recorded on June 13, 2012 as well, nearly six years ago. Docket #101. Plaintiff was also sent a copy of the deed of trust, and therefore had actual notice of any purported forgery on the deed of trust, in October of 2012, over five years ago. Plaintiff has admitted to receiving "varying copies of the alleged Note and Deed of Trust." SAC ¶ 24.

Second, under California law a plaintiff must allege "(1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages" to state a claim for fraud. Lazar v. Superior Ct., 12 Cal.4th 631, 638 (1996). If at least one of the defendants is a business entity, the plaintiff must additionally plead (1) the names of the persons who allegedly made the fraudulent representation, (2) their authority to speak for the corporation, (3) to whom they spoke, (4) what they said or wrote, and (5) when it was said or written. Tarmann v. State Farm Mut. Auto Ins. Co., 2 Cal.App.4th 153, 157 (1991).

Plaintiff does not identify the person who allegedly forged his signature, nor their authority to act on behalf of Ocwen, Western Progressive, or BYNM. Plaintiff also does not allege the previously named defendants have any involvement in the origination of the loan, as the loan was originated by MortgageIT. See SAC, ¶¶ 12-14. Plaintiff does not allege justifiable reliance on the representation, nor any damages resulting from such reliance. Plaintiff must have suffered "actual monetary loss to recover on a fraud claim." Alliance Mortgage Co. v. Rothwell, 10 Cal.4th 1226, 1239-40 (1995). Plaintiff has not alleged any monetary damages, just that his "rights have been violated and [he] has been damaged." SAC, ¶ 55. Such a statement does not meet the requirements mentioned previously.

Third, plaintiff is judicially estopped from asserting the forgery claim. In the bankruptcy context, "a party is judicially estopped

from asserting a cause of action not...mentioned in the debtor's schedules or disclosure statements." Talosig v. US Bank, N.A., 2016 U.S. Dist. LEXIS 19279 **6-9 (E.D. Cal. Feb. 17, 2016) (citations omitted). "Because the plaintiff-debtor represents in the bankruptcy case that no claim existed, the plaintiff is estopped from representing in the lawsuit that a claim does exist. Not all facts need be known before a debtor is required to notify the bankruptcy court of the potential asset." *Id.* at 6.

The Supreme Court has outlined three factors courts must evaluate when applying judicial estoppel: whether the party's later position is clearly inconsistent with its earlier position, whether the party succeeded in persuading a court to accept that party's earlier position, and whether the party seeking to assert an inconsistent position would impose an unfair detriment on the opposing party if not estopped. New Hampshire v. Maine, 532 U.S. 742, 750 (2001).

Nowhere in the summary of schedules filed by plaintiff on July 20, 2015 in his bankruptcy case does he mention a cause of action for forgery, despite a list of other purported claims for various forms of fraud. Case no. 15-12689, docket #11. Plaintiff obtained a discharge based on these schedules, therefore succeeding in persuading a court to accept his position. He is now seeking to assert an inconsistent position that would impose an unfair detriment on the opposing party if not estopped. The defendants relied upon the signed promissory note and deed of trust in the underlying bankruptcy proceedings. Also, there is no dispute that plaintiff made payments, received the loan proceeds and was notified of the foreclosure. Therefore, plaintiff is judicially estopped from making the forgery claim.

Even if this claim is found to have been listed, the claim was abandoned to him by operation of law when the case closed. 11 U.S.C. § 554(c) states that "unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." Plaintiff's bankruptcy case was closed on February 5, 2016. Case no. 15-12689, docket #79. Thus, he is asserting the claim on his own behalf, not on behalf of creditors. So there is no impediment to finding that he is estopped. See Ah Quin v. County of Kauai DOT, 733 F.3d 267 (9th Cir. 2013).

Plaintiff, in his opposition, cites Frazier v. Cummings Leasing, Inc. 2007 U.S. Dist. LEXIS 58720 (2007) in support of his argument that no heightened pleading requirement exists. Docket #110. Not only is the Frazier case not binding precedent (it is a Florida Middle District case), but plaintiff failed to quote the entirety of the court's statement, which was that "there is no heightened pleading requirement when alleging overtime wage claims under the FLSA." *Id.* at 6. This is not a wage claims case under the FLSA, but an adversary proceeding in a bankruptcy court. Plaintiff's argument is unpersuasive.

The plaintiff again cites a case in support of his opposition that is not on point and is misleading in his summary of the case. Plaintiff cites Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007) to support his argument regarding the correct pleading standard. Tellabs is a case that, among other things, mentioned the heightened pleading standard of Federal Rule of Civil Procedure 9(b) (p. 319-21). But the Tellabs case dealt with a separate statutory requirement under the Private Securities Litigation Reform Act of 1995 ("PSLRA"). This adversary proceeding does not involve the PSLRA, and the arguments supported by this case are inapplicable.

The forgery claim lacks a cognizable legal theory and is therefore not plausible. Because it is not plausible, it is dismissed without leave to amend.

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

STATUS CONFERENCE RE: COMPLAINT
1-23-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. HEALTHCARE
RILEY WALTER/ATTY. FOR PL.
CONTINUED TO 4/10/18 PER ECF ORDER NO. 8

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

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

ORDER: The court will issue an order.

Pursuant to a stipulation entered into by the parties, this status conference is continued to April 10, 2018 at 1:30 p.m.

8. [16-11473](#)-B-13 **IN RE: SHELBY/CAROL KING**
[17-1023](#) [RJB-2](#)

STATUS CONFERENCE RE: COMPLAINT
3-8-2017 [[1](#)]

INTERNATIONAL FIDELITY
INSURANCE COMPANY V. KING ET
ROBERT BERENS/ATTY. FOR PL.
NO OST

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

DISPOSITION: Continued to April 5, 2018 at 11:00 a.m.

ORDER: The court will issue an order.

This matter is continued to April 5, 2018 at 11:00 a.m. to be heard
in conjunction with the motion to compromise.