

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, May 15, 2019  
Place: Department B – Courtroom #13  
Fresno, California

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

**9:30 AM**

1. [18-13516](#)-B-7     **IN RE: PETERANGELO/DEMITRA VALLIS**  
[SRC-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF  
FROM CO-DEBTOR STAY  
4-17-2019    [\[33\]](#)

RAFAEL RODRIGUEZ/RICHGROVE  
PRODUCE/MV  
HAGOP BEDOYAN  
SHARLENE ROBERTS-CAUDLE/ATTY. FOR MV.  
CONTINUED TO 6/12/19 PER ECF ORDER #44

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

DISPOSITION:     Continued to June 12, 2019 at 9:30 a.m.

NO ORDER REQUIRED.

The matter has been continued by stipulation and order filed on  
April 30, 2019 to June 12, 2019 at 9:30 a.m. Doc. #44

2. [19-10422](#)-B-7     **IN RE: ANGELA RENFROE**  
[EGS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
4-9-2019    [\[17\]](#)

BAYVIEW LOAN SERVICING, LLC/MV  
EDWARD SCHLOSS/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on 28 days' notice as required by  
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the  
creditors, the debtor, the U.S. Trustee, or any other party in

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

The movant, Bayview Loan Servicing, LLC, servicing agent for The Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWALT, Inc., Alternative Loan Trust 2004-04 Mortgage Pass Through Certificates, Series 2004-04, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 462 E Caruthers Avenue in Caruthers, CA 93609 ("Property").

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

The original borrowers/trustors under the subject Note and Deed of Trust are Daniel Renfroe and Pamela Renfroe, not debtor Angela Jean Renfroe. Doc. #20. Debtor is the purported daughter of Daniel and Pamela Renfroe. Debtor says they are both deceased. Debtor also claims to be the sole living heir of the purportedly deceased borrowers, but Movant is not aware of any evidence supporting such claims. There is no record before the court confirming those facts. Doc. #20. Movant is the current holder of the note, and the original beneficiary under the Deed of Trust (Countrywide Home Loans, Inc.) transferred its beneficial interest to Movant. Doc. #23.

There have been at least eight bankruptcy cases affecting the Property within the last four years, six of which have been filed by Debtor, three of those having been filed within the past year. All of the bankruptcy cases filed by Debtor were dismissed for failure to appear at the § 341 meeting of creditors. Id. Debtor was also

apparently forbidden to file any bankruptcy cases for a one-year period in this district in 2016.

Here, debtor did not schedule the Property but lists it as her primary residence. Doc. #1.

The court finds that the automatic stay is no longer in effect pursuant to 11 U.S.C. § 362(c)(4). Debtor had 2 or more bankruptcy proceedings pending in the previous year which were dismissed under § 707(b) and Debtor did not get a court order imposing the automatic stay within 30 days of the filing of the petition.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) did not arise affecting the real property located at 462 E Caruthers Avenue in Caruthers, CA 93609; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that Debtor is over 10 years delinquent in making payments to Creditor.

3. [18-13224](#)-B-7     **IN RE: ANTHONY CORRAL**  
[JCW-1](#)

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

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION/MV  
DAVID JENKINS  
JENNIFER WONG/ATTY. FOR MV.  
DISCHARGED 4/16/19, RESPONSIVE PLEADING

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

DISPOSITION:     Continued to May 29, 2019 at 9:30 a.m.

ORDER:     The court will issue an order.

The parties have agreed to continue the hearing to the above date and time. Doc. #75.

4. [19-11427](#)-B-7      **IN RE: BOBBIE BURKS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-23-2019    [\[11\]](#)

CATARINA BENITEZ  
\$335.00 FILING FEE PAID 4/23/19

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the filing fee now due was paid in full on April 23, 2019. Therefore, the OSC will be vacated.

5. [19-11038](#)-B-7      **IN RE: MARCUS OLVERA**  
[EGS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-9-2019    [\[17\]](#)

BAYVIEW LOAN SERVICING, LLC/MV  
JAMES CANALEZ  
EDWARD SCHLOSS/ATTY. FOR MV.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

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

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

This motion was filed and served on April 9, 2019 and set for hearing on May 15, 2019. Doc. #18, 22. May 15, 2019 is more than 28 days after April 9, 2019, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required, opposition, if any, must be presented at the hearing. Doc. #18. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served at least 14 days before the hearing date. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

6. [18-12341](#)-B-7     **IN RE: DANNY/ROBIN MARSHALL**  
[CJO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-30-2019    [\[55\]](#)

PLATINUM HOME MORTGAGE  
CORPORATION/MV  
NEIL SCHWARTZ  
CHRISTINA O/ATTY. FOR MV.  
DISCHARGED 10/15/18

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part as to the trustee's interest  
and denied as moot in part as to the debtors'  
interest.

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

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

The motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on October 15, 2018. Docket #32. 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 order shall provide the motion is DENIED AS MOOT as to the debtors. The proposed order shall specifically describe the property or action to which the order relates. The collateral is a parcel of real property commonly known as 11004 Bellfounder Drive, Bakersfield, CA 93312. Doc. #59. The collateral has a value of \$311,509.00 and the amount owed is \$278,631.32. Doc. #57.

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).

7. [19-11060](#)-B-7     **IN RE: SARAHI CAMARENA GONZALEZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-11-2019    [\[12\]](#)

TD AUTO FINANCE LLC/MV  
MARK ZIMMERMAN  
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 collateral is a 2017 Ford Mustang. Doc. #17. The collateral has a value of \$14,566.00 and debtor owes \$30,718.05. *Id.*

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

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. [19-11176](#)-B-7      **IN RE: BRUNO/BRITTANY FERREIRA**  
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT  
4-4-2019    [\[15\]](#)

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).



Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship business "Western Dairy Farm Supply." The assets include 1 Rabo Bank Checking account and business-related assets, including a computer, printer, and other office supplies and furniture ("Business Assets").

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.

9. [19-11093](#)-B-7      **IN RE: ROXANNE PENA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
3-21-2019    [\[5\]](#)

ROXANNE PENA/MV  
ROXANNE PENA/ATTY. FOR MV.

NO RULING.

Debtor must appear at court and explain to the court the discrepancies the Clerk's office noted on the "Order on Debtor(s)' Application for Waiver of the Chapter 7 Filing Fee." Doc. #11.

10. [19-10895](#)-B-7      **IN RE: JORGE MOLINA-SANCHEZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-5-2019    [\[16\]](#)

AMERICREDIT FINANCIAL  
SERVICES, INC./MV  
MARK ZIMMERMAN  
JENNIFER WANG/ATTY. FOR MV.  
RESPONSIVE PLEADING

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. The debtor filed non-opposition on April 22, 2019, Doc. #26. The Debtor also intends to surrender the vehicle. Id. The trustee's default 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 collateral is a 2017 Chevrolet Impala. Doc. #21. The collateral has a value of \$17,841.00 and debtor owes \$29,473.11. *Id.*

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

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

11:00 AM

1. [19-11125](#)-B-7      **IN RE: ISRAEL ESTRADA AND CARMEN YEPEZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
4-23-2019    [[12](#)]

TIMOTHY SPRINGER

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [19-10840](#)-B-7      **IN RE: RONELLE ROACH**

PRO SE REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA  
4-26-2019    [[15](#)]

NO RULING.

3. [19-10664](#)-B-7      **IN RE: JEFFERY CASADY**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION  
4-17-2019    [\[18\]](#)

MARK ZIMMERMAN

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

1:30 PM

1. [18-13802](#)-B-7     **IN RE: ELVIA OLIVA**  
[18-1080](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
11-19-2018    [[1](#)]

SORIANO V. OLIVA  
GREGORIO SORIANO/ATTY. FOR PL.

NO RULING.

2. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[19-1031](#)     [NEA-1](#)

MOTION FOR REMAND  
4-30-2019    [[26](#)]

ABDELAZIZ V. CRUZ  
UNKNOWN TIME OF FILING/ATTY. FOR MV.

FINAL RULING:     This matter will proceed as scheduled.

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue the order.

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

LBR 9014-1(f)(2)(A) states that motions set on less than 28 days' notice "shall not be used for a motion filed in connection with an adversary proceeding."

This motion was filed and served on April 30, 2019. Doc. #29. The matter was set for hearing on May 15, 2019. Doc. #27. May 15, 2019 is less than 28 days after April 30, 2019. Therefore this motion is not in compliance with LBR 9014-1(f)(2)(A) and will be DENIED WITHOUT PREJUDICE.

3. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[19-1034](#)

STATUS CONFERENCE RE: COMPLAINT  
3-11-2019    [\[1\]](#)

CRUZ V. ABDELAZIZ

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

DISPOSITION:     Continued to May 29, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

This status conference is continued to May 29, 2019 at 1:30 p.m. to be heard in conjunction with defendant's motion to dismiss (doc. #14, NEA-2).

4. [19-10516](#)-B-13     **IN RE: FRANK CRUZ**  
[19-1035](#)

STATUS CONFERENCE RE: COMPLAINT  
3-11-2019    [\[1\]](#)

CRUZ V. ABDELAZIZ

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

DISPOSITION:     Continued to May 29, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

This status conference is continued to May 29, 2019 at 1:30 p.m. to be heard in conjunction with defendant's motion to dismiss (doc. #17, NEA-2).

5. [18-15027](#)-B-7     **IN RE: MARI SULUKYAN**  
[19-1016](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
1-26-2019    [\[1\]](#)

SULUKYAN V. TARGET NATIONAL  
BANK  
TIMOTHY SPRINGER/ATTY. FOR PL.

NO RULING.

6. [18-14243](#)-B-7     **IN RE: SALEH MOHAMED**  
[19-1015](#)     [RWS-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
4-4-2019     [\[19\]](#)

MERCHANTS ACQUISITION GROUP,  
LLC V. MOHAMED  
RICHARD SNYDER/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

This motion is GRANTED. The court entered defendant Saleh N. Mohamed's ("Defendant") default on March 5, 2019. Doc. #9. Plaintiff Merchant's Acquisition Group LLC ("Plaintiff") asks for an order determining that a debt owed by Defendant to Plaintiff is nondischargeable under 11 U.S.C. § 523(a)(2)(B), for damages in the amount of \$5,861.95 plus post filing interest at the contract rate from the time of filing until the date of entry of judgment in the sum of \$320.42, plus Plaintiff's costs which are \$350.00.

On April 11, 2016, Defendant completed a "Daniel's & Synchrony Bank Credit Application." Doc. #19, 21. On the application, Defendant stated that he earned approximately \$3,000.00 per month from working at the Rainbow Drive In, where he had been employed for 10 years. Doc. #21. Defendant's Transunion's credit report reflected that Defendant had no late accounts at that time. Id. Based on that information, Plaintiff granted Defendant an extension of credit. Within 60 days of obtaining the credit, Defendant purchased over \$3,000.00 worth of jewelry, made one payment, and then defaulted. Id. As of December 31, 2016, the balance of the account was \$3,082.37, the same amount as the last billed balance after Defendant's October 26, 2016 account statement. Id.

As of January 25, 2019, the date the petition for relief was filed, the account balance had increased to nearly \$6,000.00. Id. As of April 3, 2019, \$6,182.37 was due. Id.

After reviewing the record the court finds that Plaintiff has proven by the preponderance of evidence the elements of non-dischargeability under 11 U.S.C. § 523(a)(2)(B). The Ninth Circuit has listed seven elements that must be considered under In re Candland, 90 F.3d 1466, 1469 (9th Cir. 1996) in order to find a debt non-dischargeable under § 523(a)(2)(B). Those seven elements are (1) a written representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, and (7) that the damage proximately resulted from the representation.

First, on the application contract Defendant represented that he was employed and made \$3,000.00. But on question 4 of his statement of financial affairs, Defendant testified that he had \$0.00 in income from employment in 2016.

Second, the representation was material. Income is an important factor in determining a borrower's ability to perform their obligations and therefore greatly impacts the lender's decisions.

Third, The debtor knew at the time that the material representation of fact was false. Debtor could not have mistaken that he was making \$3,000.00 per month when in reality he had no income.

Fourth, the debtor made the representation with the intention of deceiving the creditor. Defendant lied to Plaintiff about his income in order to obtain a line of credit, which he then used to purchase over \$3,000.00 worth of luxury jewelry and never paid Plaintiff.

Fifth, The creditor relied on the representation. Based on the information Defendant gave to Plaintiff, Plaintiff offered Defendant a line of credit.

Sixth, Plaintiff's reliance was reasonable. "The reasonableness of a creditor's reliance under section 523(a)(2)(B) is judged by an objective standard, i.e., that degree of care which would be exercised by a reasonably cautious person in the same business transaction under similar circumstances." Ins. Co. of N. Am. v. Cohn (In re Cohn), 54 F.3d 1108 (3d Cir. 1995). It was reasonable for Plaintiff to extend such a small amount of credit to Defendant based upon the representations made: that his income was \$3,000.00 per month and he lived with his family and paid no rent.

Seventh, the damage proximately resulted from that representation. But for Defendant's false, material representations, Plaintiff would not have extended any amount of credit to Plaintiff.

The court finds that all seven elements have been shown, and Plaintiff is entitled to the requested damages - \$5,861.95 plus post



filing interest at the contract rate from the time of filing until the date of entry of judgment in the sum of \$320.42, plus Plaintiff's incurred costs of \$350.00.

7. [18-11357](#)-B-13     **IN RE: ENRIQUE/GUADALUPE REYES**  
[JAM-3](#)

CONTINUED PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF STATE OF CALIFORNIA FRANCHISE TAX BOARD, CLAIM NUMBER 2  
6-4-2018    [[38](#)]

ENRIQUE REYES/MV  
JAMES MICHEL  
RESPONSIVE PLEADING

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

DISPOSITION:        Dropped from calendar.

ORDER:                The court will issue an order.

The parties have settled the matter. See doc. ## 236, 240.  
Therefore, the pre-trial conference shall be dropped from calendar.

8. [19-10467](#)-B-7     **IN RE: REBECCA STAFFORD**  
[19-1036](#)

STATUS CONFERENCE RE: COMPLAINT  
3-19-2019    [[1](#)]

STAFFORD V. U.S. DEPARTMENT OF  
EDUCATION  
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION:        Dropped from calendar.

ORDER:                The court will issue an order.

The parties have reached a settlement and Plaintiff has requested that the proceeding be dismissed pursuant to Federal Rule of Civil Procedure 41 and Federal Rule of Bankruptcy Procedure 7041 with prejudice. Doc. #8, 9.

9. [11-10171](#)-B-13     **IN RE: DWAYNE/RENEE KENNEDY**  
[19-1020](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
2-4-2019    [\[1\]](#)

KENNEDY ET AL V. HSBC BANK  
NEVADA, N.A. ET AL  
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.

10. [11-10171](#)-B-13     **IN RE: DWAYNE/RENEE KENNEDY**  
[19-1020](#)     [KME-1](#)

MOTION TO DISMISS CAPITAL ONE, N.A.  
4-5-2019    [\[9\]](#)

KENNEDY ET AL V. HSBC BANK  
NEVADA, N.A. ET AL  
KEVIN ECKHARDT/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted with leave to amend.

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

Plaintiff's Dwayne and Renee Kennedy ("Plaintiff" or "Plaintiffs") bring this action against four separate defendants: HSBC Bank Nevada, N.A., HSBC Bank USA, N.A., Capital One, N.A., and eCAST Settlement Corporation (referred to collectively as "Defendant" in complaint).

Plaintiffs allege "Defendant" has violated the chapter 13 plan, bankruptcy law, and California state law by failing to release a lien on a 2009 Kawasaki 750 FI 4x4 LE ("Collateral"), despite having completed the chapter 13 plan and receiving a discharge. The complaint states that at the time of the filing of the bankruptcy, Plaintiffs owed a debt to HSBC Bank Nevada, N.A., which was secured on the collateral. Doc. #1. HSBC Bank Nevada, N.A. eventually transferred their claim on the Collateral to Capital One, N.A. Claim #8. The claim was again transferred, from Capital One, N.A. to eCAST Settlement Corporation in April 2013. Claim #9.

Debtor was issued a "Notice of Completed Plan Payments" on February 11, 2016, informing plaintiffs that their chapter 13 plan was complete. Doc. #85. The chapter 13 trustee filed his final report showing that Defendant's claim was paid in full on October 3, 2016. Doc. #93. The bankruptcy court entered Plaintiff's discharge on November 28, 2016. Doc. #103. Plaintiff's counsel sent Defendant a demand letter notifying Defendant that Plaintiffs had paid the claim

and Defendant was therefore required to return title of the Collateral to Plaintiffs. Plaintiff's allege that "Defendant" has not responded to the letter and continues to maintain a lien on the Collateral, though Plaintiffs do not specify which Defendant has the lien in the complaint.

Capital One, N.A. ("Capital One") filed this motion to dismiss on Federal Rule of Civil Procedure 12(b)(6) grounds because it "transferred both the debt and the lien at issue in April 2013, it cannot release the lien as Plaintiffs request, it is not a proper party to the litigation, and therefore the Complaint should be dismissed for failure to state a claim." Doc. #9.

Plaintiffs timely opposed, arguing that the complaint musters enough substance to pass pleading standards and that the additional factual allegations asserted by Capital One must be ignored when determining pleading standards in a motion to dismiss. Doc. #26.

Capital One timely responded, arguing that excluding documents that Plaintiffs specifically rely on in the complaint from the court's review in this motion is prohibited, and again that lumping the four Defendants into one "Defendant" does not meet pleading standards. Doc. #30.

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 Fed. R. Civ. P. 12(b)(6) dismissal, 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).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the 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).

The court intends to GRANT the motion with leave to amend. The court is not persuaded that Plaintiffs have pled "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Most notably, that the complaint alleges that the claim for the Collateral was transferred at least two times, but that each of the four Defendants either holds the lien on

the collateral (doc. #1, ¶31), was paid for their claim (doc. #1, ¶¶27, 29), was sent a demand letter (doc. #1, ¶29), and failed to respond to said letter (doc. #1, ¶30).

When reviewing a 12(b)(6) motion, a court must construe the complaint in the light most favorable to the plaintiff and must accept all well-pleaded factual allegations as true. See Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). But the court "need not accept as true, however, allegations that contradict facts that may be judicially noticed by the court (citation removed), and may consider documents that are referred to in the complaint whose authenticity no party questions (citations removed)." Schwarz v. United States, 234 F.3d 428, 435 (9th Cir. 2000). The court may consider matters of public record and any other matters properly subject to judicial notice without converting a motion to dismiss to a motion for summary judgment. Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007).

The court is able to take judicial notice of its docket in the main bankruptcy case. The chapter 13 standing trustee's final report and account shows that of the named Defendants, only one was paid anything - eCAST Settlement Corporation. Doc. #92. Claims 8 and 9 show that the claim on the Collateral was transferred from Capital One to eCAST Settlement Corporation. The complaint also refers to these documents and no party has questioned the documents' authenticity.

All four claims for relief prayed for in the complaint refer to Defendant collectively, when the documents referred to in the complaint contradict at least a portion of the allegations in the complaint. Therefore, this motion is GRANTED. Plaintiff is authorized to amend the complaint, and shall file and serve an amended complaint, if any, within 30 days of the entry of this order.

11. [18-13678](#)-B-11     **IN RE: VERSA MARKETING, INC.**  
[19-1032](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
3-6-2019    [\[1\]](#)

VERSA MARKETING, INC. V. WEST  
LIBERTY FOODS, LLC  
C. MEINE/ATTY. FOR PL.

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

DISPOSITION:     Continued to July 17, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

This status conference is continued to July 17, 2019 at 1:30 p.m. to be heard in conjunction with defendant's motion to dismiss.