

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Monday, June 17, 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. [19-10016](#)-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-17-2019 [\[78\]](#)

FORD MOTOR CREDIT COMPANY/MV
RILEY WALTER
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 collateral is a 2015 Ford F150. Doc. #82. The collateral has a value of \$19,588.00 and debtor owes \$25,366.91. *Id.*

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

2. [19-11038](#)-B-7 **IN RE: MARCUS OLVERA**
[EGS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-20-2019 [[28](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless debtor is current on pre-petition and post-petition payments to debtor.

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 set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered, except for debtor. 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, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 513 Lolita Street Mendota, CA 93640.

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.

This bankruptcy case is at least the eighth case to affect the subject property within a three year period. The day prior to movant's sale date, movant received a fax containing the voluntary petition of the bankruptcy case no. 16-14066-A-13 on November 9, 2016. That case was dismissed on November 28, 2016 for failure to timely file documents.

Another bankruptcy was again filed on March 21, 2017, case no. 17-11000-A-7. That case was dismissed on April 10, 2017 due to the debtor's failure to timely file the required documents.

Movant received a fax on June 20, 2017 containing a grant deed and a notice of bankruptcy case filing for case no. 17-12368-B-7. The grant deed was purportedly recorded on June 20, 2017 and transferred partial interest to himself and Aurelio Olvera Jr. as joint tenants. The third bankruptcy case was filed on that same day, and dismissed on July 10, 2017 for failure to timely file required documents. The court will not repeat the details of the other cases as outlined in the memorandum of points and authorities (doc. #31), but the record is clear that there has been an abuse of the bankruptcy process perpetuated by debtor, the original borrower Aurelio Olvera, and others in transferring interests in the subject property on the eve of bankruptcy and filing bankruptcy on the eve of bona fide sales.

Debtor timely opposed, arguing that movant lacks the standing to bring this motion because movant is not the "real party in interest" because movant was not assigned the promissory note, just the deed of trust. Doc. #37. Debtor's declaration states that he "will able [sic] to cure all prepetition and post petition arrearages by the hearing date on this motion." Doc. #36.

Debtor cites to three cases in support of its argument that assigning the security interest without the obligation renders it null. Doc. #37. As explained further below, the law those cases rely on is no longer in effect and have been superseded by more current statutory law. See California Civil Code §§ 2924 to 2924k.

The most recent authority on California state law regarding nonjudicial foreclosure proceedings, Debrunner v. Deutsche Bank Nat'l Trust Co., 204 Cal.App.4th 433, 440, 138 Cal. Rptr. 3d 830 (2012), supersedes them. And the Bankruptcy Appellate Panel for the Ninth Circuit disagrees. "California does not require a foreclosing party to have possession of the note or even a beneficial interest in it." In re Aguilar, Nos. CC-14-1071-PaTaKu, CC-14-1073-PaTaKu, 2014 Bankr. LEXIS 4982, 17-18 (B.A.P. 9th Cir. Dec. 10, 2014) (citing Debrunner v. Deutsche Bank Nat'l Trust Co., 204 Cal.App.4th 433, 440, 138 Cal. Rptr. 3d 830 (2012); Lane v. Vitek Real Estate Indus. Grp., 713 F.Supp.2d 1092, 1099 (E.D. Cal. 2010) ("There is no stated requirement in California's non-judicial foreclosure scheme that requires a beneficial interest in the **Note** to foreclose." Though not precedential (In re Aguilar, n. 1), the court is persuaded by the 9th Circuit BAP's analysis and reliance on Debrunner and Vitek.

Exhibit B shows that Aurelio Olvera, as borrower, is the trustor under the deed of trust which was filed with the Fresno County Recorder on or around April 26, 2007. Doc. #33.

Exhibit C shows that Bankers Express Mortgage, Inc. assigned the deed of trust to Countrywide Home Loans, Inc. on or around December 18, 2007. Id.

Exhibit D (doc. #33) shows that Countrywide Home Loans, Inc. assigned the deed of trust to Movant on or around December 18, 2007. Id.

Exhibit E is a "Corrective Assignment of Deed of Trust" which was filed to correct the Assignee's name (Movant) on the Assignment of Deed of Trust recorded on December 18, 2007. Id.

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) is vacated concerning real property located at 513 Lolita Street Mendota, CA 93640and

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 mortgage payments have not been made for 75 months.

The court notes Movant's reply. Doc. #39.

3. [19-11339](#)-B-7 **IN RE: JESSE ALVAREZ AND LEAH ROBLES**
[NFS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-3-2019 [\[19\]](#)

BAYVIEW LOAN SERVICING, LLC/MV
JEFFREY MEISNER
NATHAN SMITH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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 debtors' and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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 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.

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.

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 1241 Peach Court, Madera, CA 93638. Doc. #22. The collateral has a value of \$245,000.00 and the amount owed is \$204,942.91. Doc. #24.

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).

4. [19-11147](#)-B-7 **IN RE: TRINI GONZALEZ**
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-19-2019 [[19](#)]

CALIBER HOME LOANS, INC./MV
MEHRDAUD JAFARNIA/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, Caliber Home Loans, Inc. ("Creditor"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 15821 Kingsbury Street in Granada Hills, CA 91344-7142.

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.

On or about March 1, 2017, original borrower Walter Corrales ("Corrales") executed a promissory note secured by a mortgage or deed of trust in favor of Caliber Home Loans, Inc. Doc. #23, exh. #3. Debtor was apparently made trustee and a beneficiary under a deed of trust and assignment of rents executed between Corrales and debtor on or around September 1, 2017. Doc. #23, exh. #5. A Notice of trustee's sale was allegedly sent to Corrales with a date of sale of April 11, 2019. Id. Debtor filed bankruptcy approximately two weeks prior to the sale date, on March 25, 2019. Doc. #1.

Corrales owes nearly \$600,000.00 under the note, and has not made at least 18 payments since November 2017. Doc. #22.

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) is vacated concerning real property located at 15821 Kingsbury Street in Granada Hills, CA 91344-7142; 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. 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 Corrales has not made payments in at least 18 months.

5. [19-11757](#)-B-7 **IN RE: FRANCISCA GONZALEZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2019 [\[14\]](#)

FIRST INVESTORS FINANCIAL SERVICES/MV
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 2012 Dodge Journey. Doc. #19. The collateral has a value of \$7,850.00 and debtor owes \$14,152.80. *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).

6. [18-14970](#)-B-7 **IN RE: KENNETH CHAVEZ**
[EPE-3](#)

MOTION FOR RETURN OF EXEMPT LEVIED FUNDS AND/OR MOTION FOR AVOIDANCE OF PREFERENTIAL TRANSFER OF EXEMPT PROPERTY IN THE POSSESSION OF THE KINGS COUNTY SHERIFF'S OFFICE
5-14-2019 [\[37\]](#)

KENNETH CHAVEZ/MV
ERIC ESCAMILLA

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor asks this court for an order requiring the Kings County Sheriff's Office to surrender the exempt Levied Funds in the amount of \$771.54. Doc. #37. There is no opposition.

The Kings County Sheriff's Office levied on debtor's bank account with the Kings County Federal Union in the amount of \$771.54 on December 5, 2018, nine days prior to filing bankruptcy.

Debtor is seeking to preserve his exemption in the levied funds by invoking 11 U.S.C. § 522(g) and/or by exercising the trustee's avoiding powers under 11 U.S.C. § 522(h). Debtor also has the private right of action to seek redress under 11 U.S.C. § 362(k)(1).

11 U.S.C. §§ 522(g) and (h) provide:

- (g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—
 - (1)
 - (A) such transfer was not a voluntary transfer of such property by the debtor; and
 - (B) the debtor did not conceal such property; or
 - (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

- (h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—
 - (1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and
 - (2) the trustee does not attempt to avoid such transfer.

11 U.S.C. § 362(k) provides:

- (k)
 - (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
 - (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1)

of this subsection against such entity shall be limited to actual damages.

The levied funds in question may be property of the estate. See Collect Access LLC v. Hernandez (In re Hernandez), 483 B.R. 713, 725 (9th Cir. BAP 2012). In Hernandez, which is factually similar to this case, the court held that the bankruptcy court "had the authority to enter an order requiring [plaintiff] to surrender the funds to debtor under § 105(a)." Id. at 726. "Once the property came into the estate, it revested in debtor when his exemption claim went unchallenged." Id.

The court finds that the \$771.54 is exempt. Debtor filed amended schedules A/B and C on March 20, 2019. Doc. #23. No party filed an objection to the exemption claimed within the required time.

Therefore the \$771.54 is exempt property of the bankruptcy estate and the Kings County Sheriff's Office is ordered to surrender those levied funds back to Debtor within 14 days of being served with this order. If Kings County Sheriff's Office fails to do so, an order to show cause shall be issued on why sanctions should not be issued if the debtor files a declaration stating that the funds have not been returned.

7. [19-10973](#)-B-7 **IN RE: CVC ENVIRONMENTAL, INC.**
[TGF-2](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY, LLC AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES, MOTION TO PAY, MOTION TO SELL FREE AND CLEAR OF LIENS
5-25-2019 [[16](#)]

JEFFREY VETTER/MV
LEONARD WELSH
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted in part and granted in part.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is CONDITIONALLY GRANTED IN PART and GRANTED IN PART.

The chapter 7 trustee ("Trustee") asks the court for authorization to employ an auctioneer, to sell estate property at an auction free and clear of liens and interest of Zions Credit Corporation ("Zions"), to pay auctioneer fees and expenses, and to pay administrative rents. Doc. #16. Zions filed limited opposition, stating that it does not consent to the sale free and clear of its lien pursuant to 11 U.S.C. § 363(f)(2) "but agrees that the personal property to be sold appears to have values greater than the aggregate value of all liens on the property," and therefore can be sold free and clear of Zions lien under § 363(f)(3). Doc. #21. Zions requests that any order approving the proposed auction sale include authority to pay Zions claim.

Under 11 U.S.C. § 363(f), the trustee may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if . . . such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property."

Trustee wishes to sell personal property ("Property"), consisting of a used 2012 Freightliner, model TN; a used 2011 Kenworth, model T370; a used 2011 International Transtar Truck, and; a used 1997 LTT Tank Vacuum Trailer (doc. #20) at a public auction set for July 13, 2019 at 9:00 a.m. at Gould Auction & Appriasal Company, LLC's business location, 6200 Price Way in Bakersfield, CA 93308.

The request to sell is CONDITIONALLY GRANTED. Zions will need to approve the order. The court will find the proposed purchase price exceeds the aggregate liens under § 363(f)(3) provided Zions stipulates to the finding. Otherwise, the sale is approved subject to all valid liens.

Pursuant to 11 U.S.C. § 327(a), the trustee may employ, with the court's approval and for a specified special purpose, an auctioneer if they do not hold or represent an interest adverse to the estate, that are disinterested persons, to assist the Trustee in carrying out the trustee's duties.

Trustee wishes to employ Gould Auction and Appraisal ("Auctioneer") to auction the property at the time and place mentioned above.

After review of the evidence, and unless any opposition is given at the hearing, the court finds that trustee's proposed auctioneer does hold or represent an interest adverse to the estate, that Auctioneer is a disinterested person, and Auctioneer is being employed to assist the Trustee in carrying out the trustee's duties.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

It is proposed that Auctioneer shall receive (1) a 12.5% commission on the gross proceeds of the sale of the Property; (2) \$12,000.00 as an expense reimbursement for inventorying, picking up and transporting, set-up, clean up and final delivery of the Property; (3) an additional reimbursment up to \$3,500 for any extraordinary expenses, like repairs and other work deemed necessary by Trustee for the benefit of the estate, and (4) \$1,000.00 to reimburse Steve McGowan, the owner of the adjacent lot to Auctioneer. Mr. McGowan's lot is necessary to use due to the size of the Property.

The court finds Auctioneer's proposed compensation are reasonable and the work to be engaged in and which already has been completed is for and was for necessary services to the estate.

Trustee lastly asks for authorization to pay \$3,900.00 to lessor Art McAdams as administrative rents from March 15, 2019 to April 30, 2019. Due to the amount of the property involved in this case, from the date the petition was filed to April 30, 2019 was required to inventory and relocate the Property from debtor's place of business to the location of the public auction.

The requests to employ, pay Auctioneer, and pay administrative costs are GRANTED. At the hearing, Trustee shall respond to Zions limited opposition.

8. [19-11182](#)-B-7 **IN RE: FREDDY/NANCY MENDOZA**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2019 [\[27\]](#)

JPMORGAN CHASE BANK, N.A./MV
JAMES CANALEZ
WENDY LOCKE/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 Kia Optima. Doc. #31. The collateral has a value of \$18,160.00 and debtor owes \$29,384.08. *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.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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).

9. [19-11182](#)-B-7 **IN RE: FREDDY/NANCY MENDOZA**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2019 [[22](#)]

FIRST TECH FEDERAL CREDIT UNION/MV
JAMES CANALEZ
MICRO HAAG/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 May 16, 2019 and set for hearing on June 17, 2019. Doc. #23, 34. June 17, 2019 is more than 28 days after May 16, 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 and may be presented at the hearing. Doc. #23. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and failure to file and serve written opposition at least

14 days prior to the hearing may result in the motion being granted without oral argument. 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.

10. [17-14583](#)-B-7 **IN RE: BRIAN/AUBREY SLOVER**
[SL-2](#)

MOTION TO AVOID LIEN OF FINANCIAL CREDIT NETWORK, INC.
5-24-2019 [\[34\]](#)

BRIAN SLOVER/MV
SCOTT LYONS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f) (2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f) (2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f) (1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f) (1) (B). § 522(f) (1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Financial Credit Network, Inc. in the sum of \$3,000.56 on October 2, 2017. Doc. #37. The abstract of judgment was recorded with Tulare County on October 6, 2017. Id. That lien attached to the debtor's interest in a residential real property in Visalia, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f) (1) (A). The subject real property had an approximate value of \$259,343.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$250,011.00 on that same date, consisting of a first deed of trust in favor of Freedom Mortgage Corp. Doc. #31. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$9,332.00. Doc. #1, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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).

11. [17-14583](#)-B-7 **IN RE: BRIAN/AUBREY SLOVER**
[SL-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
5-24-2019 [\[41\]](#)

BRIAN SLOVER/MV
SCOTT LYONS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$3,077.67 on August 28, 2017. Doc. #45. The abstract of judgment was recorded with Tulare County on September 14, 2017. Id. That lien attached to the debtor's interest in a residential real property in Visalia, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$259,343.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$250,011.00 on that same date, consisting of a first deed of trust in favor of Freedom Mortgage Corp. Doc. #31. The debtor claimed an exemption pursuant to

Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$9,332.00.
Doc. #1, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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).

1:30 PM

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

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
3-5-2019 [1]

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The status conference is vacated. The motion for remand is granted. See matter #2 below, NEA-2.

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

MOTION FOR REMAND
5-17-2019 [33]

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

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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.

Defendant Mel Abdelaziz ("Defendant") asks the court to remand this matter back to Fresno County Superior Court, case no, 17CECL08762. Doc. #33. Defendant sued plaintiff Frank Cruz ("Plaintiff") in 2017. Id. The state court action was reduced to a judgment on December 4, 2017. On March 5, 2019, Plaintiff filed a Notice of Removal of the state court action, removing it from Fresno County Superior Court to this bankruptcy court.

28 U.S.C. § 1452(a) states

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(b) states "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground."

28 U.S.C. § 1334(c) (2) states

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Equitable grounds exist to remand this action back to Fresno County Superior Court. First, no third party would be prejudiced by remand. The Superior Court entered judgment. Any review of the judgment is left to the state court. Second, judicial economy would be preserved and used efficiently since judgment was already entered a year and a half ago in Fresno County Superior Court. Third, the action relates solely to California state law and not bankruptcy law. Plaintiff's notice of removal (doc. #1) is bare and does not state on what grounds or bankruptcy law justifies removal from the state court. The notice simply states that removal is justified because "the removed case . . . is related to [the bankruptcy case]." Doc. #1. The Superior Court adjudication is final. The matter is not related to this bankruptcy. The state court adjudicated the issues before this case was filed.

Plaintiff did not oppose the motion. Therefore the motion is GRANTED, the case, no. 17CECL08762 is remanded back to Fresno County Superior Court, and this adversary proceeding shall be dismissed without prejudice and closed.

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

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

CRUZ V. ABDELAZIZ
FRANK CRUZ/ATTY. FOR PL.
DISMISSED WITH LEAVE TO AMEND BY 6/14/19

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

DISPOSITION: Continued to July 31, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to July 31, 2019 at 1:30 p.m. to provide defendant an opportunity to respond to any pleading filed by plaintiff or move to dismiss under Federal Rule of Civil Procedure 41(b) (made applicable to bankruptcy adversary proceedings under Federal Rule of Bankruptcy Procedure 7041).

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

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

CRUZ V. ABDELAZIZ
FRANK CRUZ/ATTY. FOR PL.
DISMISSED WITH LEAVE TO AMEND BY 6/14/19

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

DISPOSITION: Continued to July 31, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

This matter is continued to July 31, 2019 at 1:30 p.m. to provide defendant an opportunity to respond to any pleading filed by plaintiff or move to dismiss under Federal Rule of Civil Procedure 41(b) (made applicable to bankruptcy adversary proceedings under Federal Rule of Bankruptcy Procedure 7041).

5. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[19-1039](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
4-23-2019 [[12](#)]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
JAMES MICHEL/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.

Plaintiff's status conference statement asked that the status conference be continued to July 3, 2019 or later, and that no joint statement of the parties is due prior to the June 17 status conference and the July 3 status conference because defendants have not filed an answer. Doc. #38.

Defendant's status conference statement states that defendant's counsel will be out of town on July 3, 2019, and asks the court to continue all matters (the status conference and motion to dismiss/notice of removal, DRJ-1) to July 17, 2019 at 1:30 p.m.

Therefore, this matter is continued to July 17, 2019 at 1:30 p.m. No joint statement of the parties is due prior to the July 17 status conference.

6. [18-11357](#)-B-13 **IN RE: ENRIQUE/GUADALUPE REYES**
[19-1039](#) [DRJ-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-7-2019 [[26](#)]

REYES ET AL V. KUTNERIAN ENTERPRISES ET AL
DAVID JENKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

Plaintiff's status conference statement asked that the status conference be continued to July 3, 2019 or later, and that no joint statement of the parties is due prior to the June 17 status conference and the July 3 status conference because defendants have not filed an answer. Doc. #38.

Defendant's status conference statement states that defendant's counsel will be out of town on July 3, 2019, and asks the court to

continue all matters (the status conference and motion to dismiss/notice of removal, DRJ-1) to July 17, 2019 at 1:30 p.m.

Plaintiff filed an opposition to Defendant's request for continuance of hearing date on motion to dismiss on June 12, 2019. Doc. #42. The opposition and supporting documents ask the court to deny that request because the request does not comply with Local Rule of Practice 9014-1(j), and Defendants do not state "just cause, or any reason at all, to continue the hearing date on the motion to dismiss." Id.

First, Plaintiff's status conference statement requested that the status conference be continued "to July 3, 2019 or later." Doc. #38. July 17, 2019 is a later date. Second, continuing a status conference to a different date from the hearing date for a motion to dismiss is inefficient and a waste of judicial resources and counsel's time. Third, Plaintiff has not stated how Plaintiff would be prejudiced by continuing the motion to dismiss to July 17, 2019.

The court independently finds cause to continue the status conference and motion to dismiss to July 17, 2019 because hearing a motion to dismiss before a status conference, or having a status conference while a motion to dismiss is pending, is not an efficient use of the court's and counsel's time. Hearing both matters together makes the most sense.

Therefore, this matter is continued to July 17, 2019 at 1:30 p.m. to be heard in conjunction with the continued status conference.

7. [11-10171](#)-B-13 **IN RE: DWAYNE/RENEE KENNEDY**
[19-1020](#) [DCW-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-13-2019 [[33](#)]

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. By prior order of the court, Plaintiff had leave to file an amended complaint not later than June 17, 2019. Doc. #39.

In reply to plaintiff's opposition to this motion, movant asks the court to continue this hearing pending filing of the amended complaint. Doc. #44. However, the amended complaint may completely remove movant from the lawsuit, have substantially changed facts, or contain any number of changes that may also render this motion as moot. Therefore the motion will not be continued.

This motion is directed to a soon to be superseded pleading. If no amended complaint is timely filed, movant is invited to file a motion to dismiss under Federal Rule of Civil Procedure 41(b) (made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7041).