

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, August 28, 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. [19-12807](#)-B-7     **IN RE: MATIAS/JANELY VERDUZCO**  
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-23-2019    [\[10\]](#)

THE GOLDEN 1 CREDIT UNION/MV  
NEIL SCHWARTZ  
MICRO HAAG/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied without prejudice unless the moving party appears and orally requests a continuance to September 11, 2019 at 9:30 a.m.

ORDER:                        The court will issue an order.

The movant's notice of hearing on the motion for relief from the automatic stay was filed on July 23, 2019 (Doc. #11), in compliance with LBR 9014-1(f)(1), setting the matter for hearing on August 28, 2019 at 9:30 a.m. On August 1, 2019, the movant filed an amended motion (Doc. #16) and notice of hearing (Doc. #17), continuing the matter to September 11, 2019 at 9:30 a.m.

As required by LBR 9014-1(j), continuances of hearings must be approved by the Court. Upon review of the docket prior to the hearing, the court made note that no written application to continue the matter had been filed. A request for continuance may be made orally at the hearing. If the movant fails to appear at the scheduled hearing on August 28, 2019 at 9:30 a.m., the motion will be DENIED WITHOUT PREJUDICE.

2. [19-11708](#)-B-7      **IN RE: HEATHER HOLDING**  
[DRJ-1](#)

RESCHEDULED HEARING RE: MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-2-2019    [\[17\]](#)

MARYERIE BERRIOS/MV  
JERRY LOWE  
DAVID JENKINS/ATTY. FOR MV.  
DISCHARGED 8/8/19

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 movants, Maryerie Zavala Berrios, William Jesus Jimenez, Amaris Jimenez and Jasmine Jimenez ("Movants"), seek relief from the automatic stay under § 362(d)(1) to permit Movants to prosecute to conclusion a state court action against Debtor.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;

- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. The bankruptcy case is a no-asset case so no harm to the estate would occur, Movants do not intend to object to the dischargeability of their claim, and will only be looking to insurance proceeds. The state court action is a wrongful death action, and not a matter the bankruptcy court can hear.

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim and to seek relief against the insurance policy, only.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to allow Movants to continue the state court action as soon as possible.

3. [19-12609](#)-B-7     **IN RE: JUAN RAMIREZ**  
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR  
AT SEC. 341(A) MEETING OF CREDITORS  
7-29-2019    [\[25\]](#)

JAMES CANALEZ

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for September 12, 2019 at 10:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

4. [19-12517](#)-B-7     **IN RE: ALEXA JOY**  
[JEB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR MOTION FOR RELIEF  
FROM CO-DEBTOR STAY  
8-9-2019    [\[26\]](#)

HUGO RODARTE/MV  
JOHN BOUZANE/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").

First, the language in the notice of hearing was ambiguous. The notice does not explicitly state that opposition, if any, must be presented at the hearing. The notice states that written opposition is not required, but if the debtor does file written opposition, the debtor "may . . . present it at the time of the hearing on the motion." But the notice does not state that written opposition is not required to be filed and served, and any opposition must be presented at the hearing.

Second, LBR 9004-2(c)(1) requires that motions, notices, declarations, *inter alia*, be filed as separate documents. Here, the motion, notice, and the declaration of Hugo Rodarte were combined into one document and not filed separately. Doc. #26.

Third, LBR 9004-2(d) requires filed exhibits to include an index and for the pages to be numbered. Neither was included. Doc. #28.

Therefore the motion is DENIED WITHOUT PREJUDICE.

5. [19-12720](#)-B-7     **IN RE: MATHEW MURILLO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-12-2019     [\[19\]](#)

\$31.00 FILING FEE PAID 8/16/19

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 amendment fee was paid on August 16, 2019. Therefore, the OSC will be vacated.

6. [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

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED:     Movant withdrew the motion. Doc. #95.

7. [19-10526](#)-B-7     **IN RE: GORDON/LESLIE SMITH**  
[GSS-1](#)

MOTION TO AVOID LIEN OF EDD STATE OF CALIFORNIA  
7-11-2019    [\[56\]](#)

GORDON SMITH/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 Federal Rules of Bankruptcy Procedure ("LBR").

First, Fed. R. Bankr. P. 7004(a)(1) states that personal service "may be made by any person at least 18 years of age who is not a party . . . ."

The court notes that the proof of service was signed by Gordon Smith, one of the debtors in this case. Doc. #59. This motion was filed, served, and set for hearing by the debtors, and they are therefore a party to this action.

Second, Fed. R. Bankr. P. 7004(b)(6) states that service made upon a "state or municipal corporation or other governmental organization" must be addressed "to the person or office upon whom process is prescribed to be served by the law of the state in which service is made . . . or in the absence of the designation or any such person or office by state law, then to the chief executive officer thereof."

The proof of service does not name a person, an officer, or the chief executive officer for "EDD State of California," which appears to be a governmental organization. Debtor must re-serve the entity, addressing it to the appropriate office or person.

8. [19-10526](#)-B-7     **IN RE: GORDON/LESLIE SMITH**  
[GSS-2](#)

MOTION TO AVOID LIEN OF FORD MOTOR COMPANY  
7-11-2019    [\[60\]](#)

GORDON SMITH/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 Federal Rules of Bankruptcy Procedure ("LBR").

First, Fed. R. Bankr. P. 7004(a)(1) states that personal service "may be made by any person at least 18 years of age who is not a party . . . ."

The court notes that the proof of service was signed by Gordon Smith, one of the debtors in this case. Doc. #59. This motion was filed, served, and set for hearing by the debtors, and they are therefore a party to this action.

Second, Fed. R. Bankr. P. 7004(b)(3) states that service made upon a "domestic . . . corporation" must be addressed "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . ."

The proof of service does not name an officer or other agent of Ford Motor Company. Debtor must re-serve the entity, addressing it to the appropriate person.

9. [19-10526](#)-B-7     **IN RE: GORDON/LESLIE SMITH**  
[GSS-3](#)

MOTION TO AVOID LIEN OF TCM FUNDING  
7-11-2019    [\[64\]](#)

GORDON SMITH/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 Federal Rules of Bankruptcy Procedure ("LBR").

First, Fed. R. Bankr. P. 7004(a)(1) states that personal service "may be made by any person at least 18 years of age who is not a party . . . ."

The court notes that the proof of service was signed by Gordon Smith, one of the debtors in this case. Doc. #59. This motion was filed, served, and set for hearing by the debtors, and they are therefore a party to this action.

Second, TCM Funding was not served with the motion. Fed. R. Bankr. P. 7004(b)(3). Though the debtor served the creditor's attorney, unless the attorney agreed to accept service, and there is no evidence of such an agreement, the service is insufficient. See, e.g., Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (9th Cir. B.A.P. 2004).

Third, the certificate of service is not compliant with Rule 7004 (b)(3) because the service must be addressed to an officer, a



managing or general agent, or another agent authorized by law to accept service.

10. [19-13041](#)-B-7     **IN RE: AURORA MADRIGAL**  
[AT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-12-2019    [\[20\]](#)

LEGACY AT SUNNYVALE OWNERS ASSOCIATION/MV  
BRADLEY EPSTEIN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

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

The movant, Legacy at Sunnyvale Owners Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 1150 Polk Avenue in Sunnyvale, CA 94086.

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.

Movant is a homeowner's association. After the owners and residents of the subject property, located within the association, fell delinquent in obligations owed to Movant, Movant cause a their collector, to cause a "Notice of Delinquent Assessment Lien" to be recorded against the property. Doc. #20. The collector then referred the lien to Platinum Resolution Service, Inc. ("PRS") to commence a

foreclosure action. A foreclosure sale date was set for May 9, 2019, but was postponed to May 31, 2019.

Each time a foreclosure sale date was set, the day of the sale Movant received notice of a bankruptcy filing affecting the property. The foreclosure sale date has been postponed at least five times due to these bankruptcy cases. Each case was involuntarily dismissed due to failure to file schedules. This case however, the debtor has filed the schedules. The § 341 meeting is scheduled prior to this hearing date. In each of these cases, a purported 10% interest in the subject property was conveyed via grant deed to the person filing bankruptcy.

No less than five bankruptcy cases have been filed by at least three different debtors that involve this property. The specific dates and names are given in the motion and the court will not repeat them here. Based on the evidence included with the motion, and unless opposition is presented at the hearing, the court finds that the filing of this petition was party of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the subject property without the consent of the secured creditor or court approval, and that there were multiple bankruptcy filings affecting the subject property.

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 1150 Polk Avenue in Sunnyvale, CA 94086; 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. No other relief is granted.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that a sale date is likely to be scheduled in the next 14 days.

11. [19-12246](#)-B-7     **IN RE: ALEJANDRO/JUANITA CRUZ**  
[EPE-1](#)

MOTION TO EXTEND TIME AND/OR MOTION TO DELAY DISCHARGE  
7-31-2019     [\[18\]](#)

ALEJANDRO CRUZ/MV  
ERIC ESCAMILLA

TENTATIVE RULING:             The matter will proceed as scheduled.

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 is GRANTED IN PART AND DENIED IN PART. Federal Rule of Bankruptcy Procedure 4008 requires reaffirmation agreements to be filed not later than 60 days after the first § 341 meeting of creditors. The rule also "at any time and in [the court's discretion]" allows the court to enlarge the time to file a reaffirmation agreement.

The § 341 meeting was held on June 20, 2019, and no reaffirmation agreement was filed with the court within the 60 day deadline, which ended on August 19, 2019.

Debtors' motion states that debtors, through counsel, are negotiating a reaffirmation agreement with "New Rez," concerning their residence. Debtors have been advised by Shell Point Mortgage Servicing ("SPMS") that it is awaiting collateral documents from New Rez in order to finalize and complete the reaffirmation agreements concerning the Debtors' residence. Doc. #18. SPMS states it will need 60 additional days to obtain the documents and finalize the reaffirmation agreements. Id. Debtors ask the court to extend the deadline to file a reaffirmation agreement up to and including October 18, 2019.

The court, in its discretion, GRANTS the motion to extend the deadline to file the reaffirmation agreement. Unless opposition is presented at the hearing, the court finds that no prejudice shall occur to any party in the granting of this motion. The order does not approve the reaffirmation agreement. That must be the subject of a separate hearing.

The court DENIES the request to delay the discharge to October 18, 2019. Fed. R. Bankr. P. 4004(c)(2) authorizes the court to defer the entry of discharge for 30 days and, on motion made within that time, to a date certain. This is the debtors' first request and the court cannot defer the discharge more than 30 days.

12. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[BN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-14-2019    [\[91\]](#)

SIEMENS FINANCIAL SERVICES, INC./MV  
THOMAS HOGAN  
VALERIE PEO/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 debtor's 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.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is: 1) a Volvo, Model VNL-Series (VNL64T/670 SLPR 173"BBC CONV CAB SBA Tractor 6X4); and 2) a Volvo, Model VNL-Series (VNL64T/670 SLPR 173"BBC CONV CAB SBA Tractor 6X4) Doc. #94. The collateral has a value of \$70,300.00 and debtor owes \$76,218.62. *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).

13. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-7-2019    [\[79\]](#)

TRANSPORTATION ALLIANCE BANK, INC./MV  
THOMAS HOGAN  
RAFFI KHATCHADOURIAN/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. Debtor filed non-opposition on August 8, 2019. Doc. #86. Unless the trustee presents opposition at the hearing, the court intends to enter the trustee's default 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.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2015 Volvo VNL64T780 Tractor Truck and two 2015 Utility Reefer Trailers. Doc. #82. The collateral has a value of \$76,000.00 and debtor owes \$45,185.66. The moving papers show that after recovery, sale costs and commissions, there is no equity in the collateral. *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 there is no current insurance on the vehicle. Movant has obtained a judgment pre-petition for money and possession.

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).

14. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[RAP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-30-2019    [\[35\]](#)

SUMITOMO MITSUI FINANCE AND LEASING COMPANY LIMITED/MV  
THOMAS HOGAN  
RAYMOND POLICAR/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:               Denied without prejudice.

ORDER:                      The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The record does not show that this motion was served on the Chapter 7 Trustee, James Edward Salven.

The record reflects that Chapter 7 Trustee, Peter L. Fear, resigned as the appointed Trustee in this case. (Doc. #40). A successor trustee, James Edward Salven, was appointed on July 31, 2019. (Doc. #41). A Notice of Amendment to 341 Notice was served on August 2, 2019 to all parties. (Doc. #58). The court notes that this motion was filed on July 30, 2019, three days prior to the date of service of the Notice of Amendment to 341 Notice. As of the date the court reviewed this matter, no proof of service has been filed to indicate proper service on the successor Trustee.

The debtor filed non-opposition to the motion on August 6, 2019. (Doc. #73).

In lieu of denial, the creditor may file a stipulation to relief from the automatic stay signed off by the Chapter 7 Trustee, James Edward Salven.

15. [18-13758](#)-B-7     **IN RE: DONNIE/KELLY BROOKS**  
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
7-24-2019    [\[85\]](#)

JAMES SALVEN/MV  
STEPHEN LABIAK

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](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

16. [18-14473](#)-B-7     **IN RE: JOANNA PORTER JOHNSON**  
[JBA-1](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF  
THE DISCHARGE INJUNCTION  
7-3-2019    [\[21\]](#)

JOANNA PORTER JOHNSON/MV  
JOSEPH ANGELO  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to September 25, 2019 at 9:30 a.m.

ORDER:                The court is waiting for an order from the parties.

17. [18-14473](#)-B-7     **IN RE: JOANNA PORTER JOHNSON**  
[JBA-2](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF  
THE DISCHARGE INJUNCTION  
7-9-2019    [\[26\]](#)

JOANNA PORTER JOHNSON/MV  
JOSEPH ANGELO

TENTATIVE RULING:        The matter will proceed as scheduled.

DISPOSITION:        Granted in part and denied in part.

ORDER:                Order will be determined at the 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). 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 IN PART and DENIED IN PART. Debtor Joanna Porter-Johnson ("Debtor") asks this court for an order holding Verizon Wireless ("Verizon") and I.C. System, Inc. ("IC", collectively "Respondents") in contempt of the discharge injunction pursuant to 11 U.S.C. §§ 105 and 524.

Debtor filed bankruptcy on October 31, 2018 and received a discharge on February 13, 2019. Debtor's case was determined to be a no-asset case. After she received her discharge, Respondents apparently continued to demand payment on a discharged community debt. Verizon enlisted IC to assist in obtaining the payment as well. Debtor's counsel informed Verizon of the problematic collection activity, but Verizon ignored counsel's letter. Doc. #29.

A chapter 7 discharge operates as an injunction against the commencement or continuation of an action or any act to collect or recover on community debts or a personal liability of the debtor. See 11 U.S.C. § 524(a)(1)-(3); Heilman v. Heilman (In re Heilman), 430 B.R. 213, 218 (9th Cir. BAP 2010).

A nondebtor spouse in a community property state typically benefits from the discharge of the debtor spouse. According to Section 524(a)(3), after-acquired community property is protected by injunctions against collection efforts by those creditors who held allowable community claims at the time of filing. This is so even if the creditor claim is against only the nonbankruptcy spouse; the after-acquired community property is immune.

Roos v. Kimmel (In re Kimmel), 378 B.R. 630, 636 (9th Cir. BAP 2007).

To prove a willful violation of the discharge injunction, Debtor must show that (1) Respondents "knew the discharge injunction was applicable and (2) intended the actions which violated the injunction." ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006).

Whether or not a creditor actually intended to violate 11 U.S.C. § 524 is not determinative so long as it had prior notice of the discharge order. See Associated Credit Servs. v. Campion (In re Campion), 294 B.R. 313, 316 (9th Cir. BAP 2003). "We perceive no difference as a practical matter between a computer program that does not perform tasks accurately and a clerical employee who does not perform tasks accurately. In either event, the employer bears the risk of the consequences." Id. at 317.

The Supreme Court recently held that an objective standard for determining contempt applies to all actions brought under the Bankruptcy Code. Taggart v. Lorenzen, 139 S. Ct. 1795 (2019). In Taggart the Supreme Court explained that a bankruptcy "court may



hold a creditor in civil contempt for violating a discharge order if there is no *fair ground of doubt* as to whether the order barred the creditor's conduct." Id. at 1799.

11 U.S.C. §105 empowers bankruptcy courts to award debtor compensatory civil contempt remedies for violations of the discharge injunction. These remedies include compensatory damages, attorney's fees, and the offending creditor's compliance with the injunction. See, e.g., Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1193 (9th Cir. 2003); Walls v. Wells Fargo Bank, 276 F.3d 502, 507 (9th Cir. 2002).

The Ninth Circuit has allowed emotional distress damages for automatic stay violations when the debtor "(1) suffer[s] significant harm, (2) clearly establish[es] the significant harm, and (3) demonstrate[s] a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process)." Snowden v. Check into Cash of Wash., Inc. (In re Snowden), 769 F.3d 651, 657 (9th Cir. 2014). See also Dawson v. Wash. Mut. Bank (In re Dawson), 390 F.3d 1139, 1148 (9th Cir. 2004). The same rule should apply to violations of the discharge injunction. In re Nordlund, 494 B.R. 507, 523 (Bankr. E.D. Cal. 2011).

"By limiting the availability of actual damages under § 362(h) to individuals, Congress signaled its special interest in redressing harms that are unique to human beings. One such harm is emotional distress, which can be suffered by individuals but not by organizations." Dawson, 390 F.3d at 1146. Another purpose is to create "a breathing spell," a phrase suggesting a human side to the bankruptcy process. Id. at 1147 (citing United States v. Dos Cabezas Corp., 995 F.2d 1486, 1491 (9th Cir. 1993)).

Understanding the human side of filing bankruptcy, and citing to the House Committee notes the Court reasoned it was "convinced that Congress was concerned not only with financial loss, but also . . . with the emotional and psychological toll that a violation of a stay can exact from an individual." Id. at 1148.

The only evidence offered by Debtor is Debtor's declaration. Respondents did not file any opposition to this motion. The court finds the declaration persuasive and Debtor has met their burden. The court finds that Verizon was sent notice of the discharge (doc. #14) and that Verizon willfully intended the actions which violated the injunction. The court makes that finding through Debtor's declaration, which states that after the discharge was entered, and after Debtor's counsel sent Verizon a notice informing them of the impropriety of Verizon's actions, Verizon continued to contact Debtor with regards to the discharged debt. Doc. #29.

However, the court cannot find that IC willfully violated the discharge injunction because there is no evidence before the court that IC received notice of the discharge and therefore may not have known "the discharge injunction was applicable." Ms. Johnson assumes IC was a collecting agent or successor to Verizon, but the record is not clear enough for the court to make a finding that IC willfully

violated the discharge injunction or that they received the necessary notice. Debtor has not met her burden with regards to IC in this manner.

In accordance with circuit precedent, and at the request of the Debtor, the court will set an evidentiary hearing to prove the amount of damages. The court already finds that Verizon violated the discharge injunction. IC did not receive notice of the discharge, and no evidence is before the court that IC is aware of the discharge through Verizon.

This matter will be continued in tandem with the previous matter (JBA-1). The movant will need to prove damages. Further scheduling will be determined at the hearing.

18. [18-14473](#)-B-7     **IN RE: JOANNA PORTER JOHNSON**  
[JBA-3](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF  
THE DISCHARGE INJUNCTION  
7-9-2019    [\[31\]](#)

JOANNA PORTER JOHNSON/MV  
JOSEPH ANGELO

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

DISPOSITION:     Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure.

Fed. R. Bankr. P. 7004(h) states that "Service on an insured depository institution . . . in a contested matter . . . shall be made by certified mail addressed to an officer of the institution . . . ."

Synchrony Bank is an insured depository institution (FDIC #27314). The proof of service shows that Synchrony Bank was served at two separate PO Boxes in Orlando, Fl, one location in Draper, UT, and Synchrony Bank's agent for service was served in Los Angeles, CA. The Utah location appears to be the correct location, but the moving papers were not addressed to an officer of the institution. The rule is explicit that service must be "addressed to an officer." Therefore the motion is DENIED WITHOUT PREJUDICE.

19. [19-12284](#)-B-7     **IN RE: MATTHEW GONZALEZ ALVARADO AND NEREYDA ALVARADO**  
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
7-30-2019    [\[26\]](#)

SCOTT LYONS

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

DISPOSITION:        Granted.

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

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

This motion is GRANTED. 11 U.S.C. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter."

However, the Supreme Court in Marrama v. Citizens Bank, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert to chapter 13 under § 706(a), but also must be eligible to a debtor under chapter 13. The Supreme Court held that "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c).

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c). Therefore, this case shall be converted to chapter 13.

20. [18-12685](#)-B-7     **IN RE: SYLVIA AVILA**  
[PFT-1](#)

MOTION TO SELL  
7-30-2019    [\[39\]](#)

PETER FEAR/MV  
MARK ZIMMERMAN  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:                    Granted in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

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

The chapter 7 trustee asks this court for authorization to sell the real property located at 6668 Latonia Street in Laton, CA 93242 to Debtor, subject to higher and better bids at the hearing, for \$25,000.00. This amount is net of the debtor's exemption. Any overbid will need to be in accordance with the requirements set out in the motion.

It appears that the sale of the real property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. The Trustee believes that the funds from this sale will be enough to pay creditors in full and will result in a greater net to the estate than to sell it through a realtor.

Any party wishing to overbid must deposit with debtor's counsel certified monies in the amount of \$136,000.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof of the financial ability to cover the purchase amount and that they can close the sale within 15 days of the delivery of a certified copy of the court's order approving this motion and can execute a purchase agreement for the property. Overbidders must be aware that in the event the successful overbidder fails to close the sale within those 15 days, for any reason, \$5,000.00 of the deposit becomes non-refundable.

Overbidders must be present at the hearing and make overbids in the amount of \$1,000.00. Lastly, because of the additional complexity and cost of selling the Property to someone other than Debtor, any such overbids shall not be considered an equivalent bid unless the bid is \$10,000 more than the bid by Debtor, plus the amount necessary to pay the exemption on the Property and any liens and closing costs (which amount shall be determined by obtaining payoffs from the respective lenders and the closing costs amount from Stewart Title), thus the opening bid of a competing bidder would be \$126,000 (equivalent to \$26,000 from Debtor) plus an amount sufficient to pay all liens and closing costs.

There is no evidence supporting a waiver of Fed. R. Bankr. Proc. 6004(h) and that request is DENIED.

21. [19-12397](#)-B-7     **IN RE: JEFFERY CASH**  
[PLG-2](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.  
7-31-2019    [\[28\]](#)

JEFFERY CASH/MV  
RABIN POURNAZARIAN

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](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

11:00 AM

1. [19-11910](#)-B-7     **IN RE: FRANCISCO ROBELO**

REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION  
7-26-2019    [\[16\]](#)

THOMAS GILLIS

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

DISPOSITION:     Denied.

ORDER:             The court will issue an order.

Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. [19-12217](#)-B-7     **IN RE: JASON BLANKENSHIP**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.  
7-26-2019    [\[19\]](#)

TIMOTHY SPRINGER

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

DISPOSITION:     Denied.

ORDER:             The court will issue an order.

Counsel shall inform his client that no appearance is necessary at this hearing.

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 debtor's 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.

3. [19-12453](#)-B-7     **IN RE: GINA TREVINO**

REAFFIRMATION AGREEMENT WITH ALLY BANK  
7-29-2019    [[19](#)]

MARK ZIMMERMAN

NO RULING.

4. [19-12453](#)-B-7     **IN RE: GINA TREVINO**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
8-2-2019    [[20](#)]

MARK ZIMMERMAN

NO RULING.

5. [19-12064](#)-B-7     **IN RE: VIRGINIA SANCHEZ**

PRO SE REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE,  
N.A.  
8-2-2019    [[18](#)]

NO RULING.



1:30 PM

1. [11-63503](#)-B-7     **IN RE: FRANK/ALICIA ITALIANE**  
[12-1053](#)     [DAC-1](#)

MOTION TO REOPEN ADVERSARY PROCEEDING  
7-23-2019     [\[36\]](#)

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE  
DOUGLAS CROWDER/ATTY. FOR MV.  
CLOSED 06/27/2017, RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

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

The court must first note movant's procedural error. No notice of  
hearing was filed with the motion. This is in violation of the  
Federal Rules of Bankruptcy Procedure and the LBR. Because the  
Plaintiffs responded, the court will not deny the motion without  
prejudice. Failure to comply with the rules in the future however  
may result in the denial of the motion without prejudice.

The court must also note respondent's procedural error. LBR 9004-  
2(c)(1) requires that oppositions, exhibits, *inter alia*, to be filed  
as separate documents. Here, the opposition and exhibits were  
combined into one document and not filed separately. Additionally,  
LBR 9004-2(d) requires filed exhibits to include an index, which was  
not included. Doc. #46.

This motion is GRANTED.

Debtor and Defendant Frank Lane Italiane, Jr. asks this court to  
reopen this adversary proceeding. Defendant in a separate motion  
asks the court to dismiss the adversary proceeding for Plaintiffs'  
alleged failure to prosecute. Doc. # 36. Plaintiffs join in the  
request to reopen the adversary proceeding but on different grounds.  
Doc. #46

The "dischargeability" question survives closing of a bankruptcy  
case. Menk v. Lapaglia (In re Menk), 241 B.R. 896, 905-06 (9th Cir.  
BAP 1999). Judge Lee's order in 2012 contemplated administrative  
closure of this adversary proceeding and reopening as appropriate.  
All parties support reopening this adversary proceeding.

The court finds that cause exists to reopen this adversary  
proceeding and accordingly, this motion is GRANTED.

2. [11-63503](#)-B-7     **IN RE: FRANK/ALICIA ITALIANE**  
[12-1053](#)     [DAC-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
7-23-2019     [\[38\]](#)

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE  
DOUGLAS CROWDER/ATTY. FOR MV.  
CLOSED 06/27/2017; RESPONSIVE PLEADING

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.

The court must first note that the motion is neither dated, nor apparently signed. This is in violation of Local Rule of Practice 9004-1(c)(1)(A), which requires "an '/s/' and the registered user's name shall be typed in the space where the signature would otherwise appear."

The court must also note respondent's procedural error. LBR 9004-2(c)(1) requires that exhibits, declarations, *inter alia*, be filed as separate documents. Here, the declarations and exhibits were combined into one document and not filed separately. See doc. #62, 63. Additionally, LBR 9004-2(d) requires filed exhibits to include an index, which was not included. Id.

Defendant-Debtor asks the court to dismiss this adversary proceeding with prejudice for Plaintiffs' failure to prosecute. Doc. #38. Plaintiffs timely opposed. The facts surrounding this motion are virtually identical to the facts recited in Plaintiffs' "Motion for Order Confirming Automatic Stay Does Not Prevent Entry of State Court Judgment," HRR-3, matter number 3 below, and therefore will not be listed in their entirety here.

Succinctly, Defendant claims Plaintiffs have "been free to enter a stipulated judgment since July 30, 2018" but "have taken no steps to do so, and they have not made any efforts to advance their claim in this adversary proceeding." Doc. #40. Plaintiffs timely opposed, stating that they have taken efforts to prosecute the adversary proceeding but have not been able to due to Defendant's appeals and that Judge Kwan of the Los Angeles Superior Court would not enter the stipulated judgment agreed to by the parties until further order from this court. Doc. #61.

Reasonable steps have been taken by Plaintiffs to prosecute the case. Defendant's appeal from the Superior Court's order denying debtor's motion to vacate the settlement agreement to the California Court of Appeal was not decided until May 30, 2018.

Plaintiffs' new bankruptcy counsel contacted Superior Court Judge Kwan's chambers in April and May 2019 asking the status of the stipulated judgment. Judge Kwan did not enter the order. Apparently Judge Kwan wants a further order from this court.

The court also notes Plaintiffs' motion to reopen adversary proceeding, attached as an exhibit (doc. #46) in their response to Defendant's motion to reopen adversary proceeding. No date is attached to the motion itself, but the declaration of Brent M. Finch (exhibit C, doc. #46) is dated July 16, 2019, approximately one week before Defendant's motion was filed, which further convinces the court that Plaintiffs were attempting to prosecute this action to conclusion by filing their own motion. It was only through the happenstance of timing that defendant's motion to reopen was set first.

Dismissal is not warranted in this case, and Defendant has not asked for other relief. Therefore, the motion is DENIED.

3. [11-63503](#)-B-7     **IN RE: FRANK/ALICIA ITALIANE**  
[12-1053](#)     [HRR-3](#)

MOTION FOR ORDER CONFIRMING AUTOMATIC STAY DOES NOT PREVENT  
ENTRY OF STATE COURT JUDGMENT  
8-2-2019     [\[48\]](#)

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE  
HAMID RAFATJOO/ATTY. FOR MV.  
CLOSED 06/27/2017, OST 8/5/19, RESPONSIVE PLEADING

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted in part and denied 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)(3) and an order shortening time (doc. #58) and will proceed as scheduled.

Movant-Plaintiffs ("Plaintiffs") ask the court for an order confirming the automatic stay does not prevent the California Superior Court for Los Angeles County ("State Court" or "LASC") from entering a stipulated judgment. Doc. #48. Debtor-Defendant ("Defendant"), though not disputing that the Lift Stay Order entered in in 2012 allows entry of judgment by LASC, opposes on the grounds that the adversary proceeding should be dismissed with prejudice for Plaintiffs' failure to prosecute. Doc. #66. That issue is the subject of another motion, doc. #38, DAC-2, that is being decided concurrently with this motion. The court tentatively denies that motion.

Before this bankruptcy case was filed, Plaintiffs filed an action in LASC. After Defendant filed this bankruptcy case, Plaintiffs filed this adversary proceeding. On November 8, 2012, Judge Richard Lee modified the stay to allow Plaintiffs to prosecute the State Court Action. Doc. #23("lift-stay order").

The State Court Action was settled on October 16, 2015, the terms of which were reflected in the mutually agreed upon written Stipulated Judgment. Part of the stipulated judgment was that it would remain confidential for one year, and that the only condition precedent to entering the Stipulated Judgment was the passing of the one year period. Before that period expired, Defendant filed a motion to vacate the settlement agreement and stipulated judgment. LASC denied that motion. Defendant appealed that order. The California Court of Appeal affirmed.

At a status conference here, held in November 2016, this court stated that "[if] Judge Kwan (the LASC Judge) . . . still has an issue . . . [Plaintiffs] can bring it back in front of [Your Honor] . . . ." Doc. #34. Plaintiffs' state court counsel, Mr. Finch, spoke with Judge Kwan's clerk in April 2019 to inquire about the status of the Stipulated Order's entry. Per Judge Kwan's clerk's instructions, Mr. Finch resubmitted the order. Approximately one month later, after noticing that the judgment had still not been entered by Judge Kwan, Mr. Finch again asked Judge Kwan's clerk, who stated that Judge Kwan would not sign the judgment because of Defendant's bankruptcy case and Judge Kwan needed further instructions from this court.

Defendant has no opposition to this court entering "an order confirming the automatic stay does not bar entry of a judgment in the State Court." Doc. #66. Defendant opposes that portion of Plaintiffs' motion asking this court for an order " . . . authorizing the entry [of the Stipulated Judgment] . . . ." (doc. #48) because the judgment "contains language that is beyond the subject matter of California state courts" due to language that is allegedly in violation of federal law. The controversial language is that the LASC judgment is "not dischargeable in USBC Case no. 11-63503-B-7 and Adversary Proceeding No. 12-1053, and under 11 U.S.C. 523 and the collateral estoppel doctrine."

11 U.S.C. § 105(a) authorizes the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Middle District of Florida Bankruptcy Court found that § 105(a) encompasses a court's ability to issue so-called "comfort orders." See In re Hill, 364 B.R. 826, 828 (Bankr. M.D. Fla. 2007); but see In re Rosenblum, No. 18-17155-MKN, 2019 Bankr. LEXIS 2277, \*6 (Bankr. D. Nev. July 17, 2019). This court does not generally issue "comfort orders." Most often there is no "case or controversy" justifying the exercise of this court's jurisdiction when "comfort orders" are requested. The same is true here.

This motion asks the court to issue an order confirming the automatic stay will not prevent entry of a state court order. As noted in Rosenblum, § 362 (j) permits the court to issue an order

confirming the stay is not in effect under § 362 (c). That relief is not being requested in this motion. Section 362(c) has nothing to do with the scope of the automatic stay under §§ 362(a) or (b) which is what this motion is about.

But even a larger problem prevents the relief prayed for here. Defendant's discharge was entered over seven years ago. So, there is no "automatic stay" in effect. That was replaced by the discharge injunction. The discharge entered in this case does not include the claim asserted by Plaintiff here because Plaintiff filed a timely complaint contesting whether the claim was dischargeable. When the discharge was entered, LASC had not made any rulings about Defendant's culpability even though the lift-stay order modified the automatic stay to allow the lawsuit to proceed to conclusion. The discharge question was reserved for this court.

This court has the power to interpret and enforce its own orders. Travelers Indem. Co. v. Bailey, 557 U.S. 137, 151 (2009) (holding a bankruptcy court has "ancillary" jurisdiction to interpret the scope of an injunction that was part of a chapter 11 plan confirmation order). At the November 16, 2016 status conference when Defendant and Plaintiff's counsel were present, this court stated "[i]f Judge Kwan in the L.A. County Superior Court still has an issue, I suppose you can bring it back in front of me, but I don't see anything that says you require any further relief from this court to get a final judgment entered." Doc. #34.

If the entry of the judgment by LASC resolves the matter, the lift-stay order contemplates that. Defendant's arguments about the scope of the proposed LASC order approving the settlement and whether, if entered, the judgment is "non-dischargeable," need not be decided now. It will be plaintiff's burden to convince this court in the appropriate forum that the LASC judgment (if entered) has issue preclusive effect. The ninth circuit has defined when issue preclusion applies and who has the burden to convince the bankruptcy court it should apply. Defendant's arguments on this issue are either premature or consistent with this ruling. Whether the debt represented by the LASC judgment (if entered) is dischargeable will be before this court at the appropriate time. Also, the LASC is the best court to determine the extent of its subject matter jurisdiction for purposes of entering a judgment.

The court also notes that plaintiff's reply seems to acknowledge the legal requisites of issue preclusion and offers to submit a stipulated order to this court resolving this motion, if possible.

This motion is GRANTED IN PART and DENIED IN PART. The lift-stay order permits the LASC to enter a judgment (stipulated or otherwise). That includes the Stipulated Judgment that has been the subject of further litigation, including an unsuccessful appeal to the California Court of Appeal, which has been included in this record as Exhibit C, doc. #51. See doc. #48, ¶¶8-10. Any other relief needs to come before this court.

The portion of the motion requesting the advisory order regarding the effect of the automatic stay is DENIED.

4. [11-63503](#)-B-7     **IN RE: FRANK/ALICIA ITALIANE**  
[12-1053](#)     [HRR-4](#)

FURTHER STATUS CONFERENCE RE: AMENDED COMPLAINT  
10-18-2012     [[21](#)]

JEFFREY CATANZARITE FAMILY LIMITED PARTNERSHIP ET V. LANE  
BRENT FINCH/ATTY. FOR PL.  
CLOSED 06/27/2017

NO RULING.

5. [19-12236](#)-B-13     **IN RE: GABRIEL/SANDRA AYALA**  
[19-1076](#)

STATUS CONFERENCE RE: COMPLAINT  
6-21-2019     [[1](#)]

AYALA, SR. ET AL V. 3RD GENERATION, INC.  
PETER BUNTING/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING

6. [19-10297](#)-B-7     **IN RE: RICHARD/ANGELA MARINO**  
[19-1054](#)

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

STRATEGIC FUNDING SOURCE, INC. V. MARINO  
JARRETT OSBORNE-REVIS/ATTY. FOR PL.  
COTINUED TO 10/22/19 PER ECF ORDER #21

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

DISPOSITION:                     Continued to October 22, 2019 at 1:30 p.m.

NO ORDER REQUIRED:             The court already issued an order. Doc. #21.