

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, October 10, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [18-12507](#)-B-7 IN RE: NEFTALI PEREZ
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-28-2018 [[18](#)]

LAKEVIEW LOAN SERVICING LLC/MV
R. BELL
CAREN CASTLE/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 collateral is a parcel of real property commonly known as 1700 Sungarden Court, Arvin, California 93203 Doc. #21. The collateral has a value of \$183,000.00 and the amount owed is \$212,175.19. Doc. #20. The proposed order shall specifically describe the property or action to which the order relates.

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

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

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The Debtor's Statement of Intention indicates that the

property will be surrendered. The court notes that it appears by the petition that the Debtor no longer lives in the residence.

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. [18-13207](#)-B-7 **IN RE: JOE/MONIQUE GARCIA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-6-2018 [\[15\]](#)

TD AUTO FINANCE LLC/MV
JERRY LOWE
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 debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The collateral is a 2015 GMC Canyon. Doc. #20. The collateral has a value of \$15,000.00 and debtor owes \$17,642.74. *Id.* The proposed order shall specifically describe the property or action to which the order relates.

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

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

3. [18-13009](#)-B-7 **IN RE: FRANK WELLS**
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-30-2018 [[28](#)]

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, either in person or via court call, the meeting of creditors rescheduled for October 29, 2018 at 9:30 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. [18-12913](#)-B-7 **IN RE: MARCUS JONES**
[SMO-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2018 [[11](#)]

BANK OF THE WEST/MV
GREGORY SHANFELD
SHAWN OLSON/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").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

5. [18-13327](#)-B-7 **IN RE: EMMANUEL REGO**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-24-2018 [[18](#)]

EMMANUEL REGO/MV

NO RULING.

6. [18-13130](#)-B-7 **IN RE: MAJER SINGH**
[BTM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2018 [[10](#)]

VOLVO FINANCIAL SERVICES/MV
PETER FEAR
BENJAMIN MORTON/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 27,
2018. Doc. #21.

7. [18-13242](#)-B-7 **IN RE: SALLY WILLIAMS**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-8-2018 [[5](#)]

SALLY WILLIAMS/MV
PETER BUNTING

NO RULING.

8. [18-12645](#)-B-7 **IN RE: JEFFREY/SHERRIE LEBEAU**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-20-2018 [[24](#)]

MARK ZIMMERMAN

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 September 26, 2018. Therefore, the OSC will be vacated.

9. [18-13745](#)-B-7 **IN RE: ADAM/HEATHER SARGEANT**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2018 [9]

MECHANICS BANK/MV
NEIL SCHWARTZ
VINCENT FROUNJIAN/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.

The collateral is a 2012 Chevrolet Traverse. Doc. #13. The collateral has a value of \$12,375.00 and debtor owes \$13,313.59. *Id.* The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and is in movant's 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).

10. [18-13347](#)-B-7 **IN RE: ROGELIO/PATRICIA NUNEZ**
[SSW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-5-2018 [[18](#)]

CITIZENS BANK, N.A./MV
SCOTT LYONS
SCOTT WELTMAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The collateral is a 2017 Chevrolet Silverado 1500. Doc. #22. The collateral has a value of \$30,975.00 and debtors owe \$39,934.18. *Id.* The proposed order shall specifically describe the property or action to which the order relates.

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

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

11. [18-13649](#)-B-7 **IN RE: NATHANIEL BERNAL AND DIANA GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-19-2018 [[12](#)]

LAYNE HAYDEN
\$335.00 FILING FEE PAID ON 9/24/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee due in the amount of \$335.00 was paid in full on September 24, 2018. Therefore, the OSC will be vacated.

12. [18-12550](#)-B-7 **IN RE: STEVEN/CONA CUTLER**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2018 [[18](#)]

WELLS FARGO BANK, N.A./MV
JERRY LOWE
AUSTIN NAGEL/ATTY. FOR MV.

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

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

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on October 2, 2018. Docket #24. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

The collateral is a 2015 Chevrolet Cruze. Doc. #18. The collateral has a value of \$13,125.00 and the amount owed is \$16,639.74. Doc. #20. The trustee filed a report of no distribution after the § 341 meeting, evidencing that the trustee sees no value in the vehicle.

The 14-day stay under Federal Rule of Bankruptcy Rule 4001(a)(3) will be waived because movant is in possession of the vehicle.

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. [18-13650](#)-B-7 **IN RE: BRUCE TOM**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-19-2018 [[13](#)]

LAYNE HAYDEN
\$335.00 FILING FEE PAID ON 9/24/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee due in the amount of \$335.00 was paid in full on September 24, 2018. Therefore, the OSC will be vacated.

14. [18-13651](#)-B-7 **IN RE: LILA DARNELL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-19-2018 [[11](#)]

LAYNE HAYDEN
\$335.00 FILING FEE PAID ON 9/24/18

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee due in the amount of \$335.00 was paid in full on September 24, 2018. Therefore, the OSC will be vacated.

15. [13-16155](#)-B-7 **IN RE: MICHAEL WEILERT AND GENEVIEVE DE
MONTREMARE
[JES-3](#)**

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
8-2-2018 [[664](#)]

JAMES SALVEN/MV
PETER FEAR/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 motion will be GRANTED. The chapter 7 trustee, James Salven, requests fees of \$110,301.88 and costs of \$2,059.52 for a total of \$112,361.40 for services rendered from September 16, 2013 through August 2, 2018.

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."

The court finds that the requested fees are in accordance with 11 U.S.C. § 326. This case has been pending for over five years. Four adversary proceedings have been filed, two of which are closed and the other two are still apparently open. Several of this court's rulings were appealed, and debtor's counsel eventually withdrew and debtors have been pro se for over two years. Movant's services included, without limitation: (1) Reviewing and tracing numerous accounts and funds of the debtors, (2) Reviewing three pieces of real estate, determining their marketability, employing brokers to sell, and finally selling two of the three pieces, (3) Investigating

and recovery of several deposits, (4) and general administrative tasks like monthly bank reconciliations, file maintenance, claims review, etc. The court finds the services reasonable and necessary and the expenses requested actual and necessary. The unsecured creditors are being paid in full. Doc. #666.

Movant shall be awarded \$110,301.88 in fees and \$2,059.52 in costs.

16. [18-12756](#)-B-7 **IN RE: WILLIAM SPRINGMAN**
[MSK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2018 [[19](#)]

KERN FEDERAL CREDIT UNION/MV
SUSAN SALEHI
MARK KRAUSE/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").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

17. [18-11863](#)-B-7 **IN RE: YVETTE RODRIGUEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2018 [[21](#)]

WILMINGTON SAVINGS FUND
SOCIETY, FSB/MV
MARIO LANGONE
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 9/10/18

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

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

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on September 10, 2018. Docket #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

The collateral is a parcel of real property commonly known as 2101 7th Street, Sanger, California 93657. Doc. #24. The collateral has a value of \$240,000.00 and the amount owed is \$181,010.79. Doc. #26.

The debtor amended her claim of exemptions on June 26, 2018 claiming a \$100,000.00 exemption in any remaining equity under Cal. Civ. Proc. Code § 704.730. No party has objected to the exemption. So, there is no equity for the benefit of the estate in the real estate that is the subject of this motion.

An award of attorney's fees will be denied without prejudice. A motion for attorney's fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

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).

18. [18-11968](#)-B-7 **IN RE: WILLIAM BARBOSA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2018 [[40](#)]

WELLS FARGO BANK, N.A./MV
AUSTIN NAGEL/ATTY. FOR MV.
DISCHARGED 9/4/18

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

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

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on September 4, 2018. Docket #38. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

The collateral is a 2005 Lexus RX330. Doc. #44. The collateral has a value of \$9,200.00 and debtor owes \$12,091.18. *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).

19. [18-13379](#)-B-7 **IN RE: TISHKA HANSEN**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-20-2018 [[6](#)]

TISHKA HANSEN/MV
DISMISSED 9/19/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #30.

20. [18-13285](#)-B-7 **IN RE: LISA BOCCHINI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-18-2018 [[28](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

21. [18-13390](#)-B-7 **IN RE: INPREET SINGH**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-21-2018 [[6](#)]

INPREET SINGH/MV
DISMISSED 9/10/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #19.

22. [18-13691](#)-B-7 **IN RE: NELS BLOOM**
[TCS-1](#)

MOTION TO COMPEL ABANDONMENT
9-25-2018 [9]

NELS BLOOM/MV
TIMOTHY SPRINGER

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.

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

The debtors ask this court to compel the trustee to abandon the estate's interest in debtor's wife's "hotdog cart and inventory." Doc. #9. Debtor and wife apparently own the sole proprietorship, "Beau Peeps Hotdogs," but only debtor's wife operates the business. Doc. #11. Schedule A/B lists the hotdog cart as having a value of \$2,000.00 and the inventory \$900.00. Doc. #1. Debtor states in the motion that "[d]ebtor has exempted the entirety of the assets of the

business. Those assets therefore have no value to the bankruptcy estate." Doc. #9. Contrary to the allegations in the motion, however, Schedule C exempts only \$2,000.00 of the \$2,900.00. Doc. #1.

The court finds there is no value in the hot dog cart for the benefit of the estate since the debtor has exempted the asset. No one has objected to the exemption claimed.

The court finds the inventory is both burdensome and of inconsequential value to the estate. The value of the inventory is indisputably \$900.00. While technically that value is available to the estate, the costs and expense to administer the inventory will likely outweigh any benefit to administer the assets. It is also burdensome since the inventory is largely perishable.

The motion is GRANTED.

11:00 AM

1. [18-12839](#)-B-7 **IN RE: NATHAN/AMANDA VERDUGO**

PRO SE REAFFIRMATION AGREEMENT WITH AQUA FINANCE, INC.
9-12-2018 [[16](#)]

NO RULING.

2. [18-12250](#)-B-7 **IN RE: BONNIE SAXTON**

PRO SE REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
9-13-2018 [[17](#)]

NO RULING.

3. [18-12863](#)-B-7 **IN RE: JAVIER/LORENA RAMIREZ**

REAFFIRMATION AGREEMENT WITH CAB WEST LLC
9-13-2018 [[12](#)]

BENNY BARCO

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

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

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed July 16, 2018, and the lease was not assumed by the chapter 7 trustee within 60 days, the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to 365(p)(1), the leased property is no longer property of the estate.

4. [18-13371](#)-B-7 **IN RE: NISHELL JOHNSON**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
9-21-2018 [[11](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when they 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). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [17-10236](#)-B-13 **IN RE: PAUL/KATHLEEN LANGSTON**
[17-1044](#)

FURTHER STATUS CONFERENCE RE: AMENDED COMPLAINT
7-3-2017 [[17](#)]

LANGSTON ET AL V. INTERNAL
REVENUE SERVICE
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [12-15064](#)-B-13 **IN RE: RAYMOND/DENISE NIBLETT**
[18-1041](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-4-2018 [[1](#)]

NIBLETT V. WELLS FARGO BANK,
N.A.
TIMOTHY SPRINGER/ATTY. FOR PL.
DISMISSED 9/21/18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #10.

3. [18-10973](#)-B-13 **IN RE: GLENN BEVER**
[18-1034](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
8-28-2018 [[42](#)]

BEVER ET AL V. CITIMORTGAGE,
INC.
JOHN MITCHELL/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The case is dismissed. See matter #4, LL-2,
below.

4. [18-10973](#)-B-13 **IN RE: GLENN BEVER**
[18-1034](#) [LL-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-6-2018 [[44](#)]

BEVER ET AL V. CITIMORTGAGE,
INC.
REGINA MCCLENDON/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.

First, the court notes that movant did not comply with LBR 9004-2(c)(1), which requires that motions, notices, *inter alia*, to be filed as separate documents. Here, the motion and notice were combined into one document and not filed separately. Doc. #44.

Under Federal Rule of Civil Procedure 12(b)(6) (made applicable to adversary proceedings by Fed. R. Bankr. P. 7012), a court must dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Rule 12(b)(6) dismissal, a court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011). However, a court need not accept as true conclusory allegations or legal characterizations cast in the form of factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). While the court generally must not consider materials outside the complaint, the court may consider exhibits submitted with the complaint. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

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

This motion is GRANTED.

Glenn Bever's ("Plaintiff") first complaint was dismissed in part on August 15, 2018. Doc. #33, see generally LL-1. The court's ruling dismissed Plaintiff's claims first and second claims for relief without leave to amend, and dismissed the third and fourth claims for relief with leave to amend.

The court's ruling as to the third claim was that "[a]s pled, this claim has no legal basis and is not plausible. That said, Plaintiffs claim there are recurring violations though there is no factual basis alleged in the complaint in support." Doc. #33. The court notes, however, that the amended claim is nearly identical to the dismissed claim, with the exception of a specific date. Doc. #42.

The court dismissed the Plaintiff's fourth claim, a request for declaratory relief, because it is "not an independent cause of action . . . and need not be reviewed to determine if it has been pled sufficiently" and "[b]ecause [it] has no legal basis independent of the other claims," it was not plausible as pled. Doc. #33. The court notes that paragraphs 30, 31, and 32 of the fourth claim are identical to paragraphs 13, 14, and 14 of Plaintiff's amended complaint.

In their amended complaint, makes just two claims. The first claim in the amended complaint is nearly identical to the third claim in the original complaint. The second claim in the amended complaint is identical to the fourth claim in the original complaint.

Plaintiff first alleges that defendant Citimortgage, Inc. ("Defendant") violated 15 U.S.C. § 1692f(6) (the Fair Debt Collection Practices Act, "FDCPA") "for threatening to take any non-judicial action to effect dispossession or disablement of property with no right to claim the property as collateral through an enforceable security interest since the note and deed of trust are void by operation of law," and therefore the underlying debt is unenforceable, and "non-judicial foreclosure proceedings cannot be advanced, threatened or conducted in any manner." Doc. #42. Plaintiff alleges that Defendant violated § 1692f(6) when it filed a notice of trustee's sale against Plaintiff's residence on February 9, 2018, even though Plaintiff claims that they rescinded the loan transaction in May 2004. Plaintiff requests damages of \$1,000 plus reasonable fees and costs.

Plaintiff then asks for declaratory relief, "as is necessary to carry out the purposes and intents of the relief requested in this Complaint."

Defendant moves this court to dismiss the amended complaint on the grounds of *res judicata* and expiration of the applicable statute of limitations.

Fed. R. Civ. P. 8(c)(1) (made applicable to adversary proceedings in bankruptcy by Fed. R. Bank. P. 7008) states that one affirmative defense is *res judicata*. "Res judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or *could* have been raised in the prior action." W. Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997) (emphasis added). Res judicata applies whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *Id.* at 1192.

Defendant states that the amended complaint "is based on the same assertion that the Subject Loan is void and unenforceable because of Plaintiff's supposed rescission on May 6, 2004. Both claims are precluded by the judgments against Plaintiff in the First and Second Lawsuits that were affirmed on appeal." Doc. #45.

Prior to this lawsuit against Defendant, Plaintiff sued Defendant twice.

Plaintiff first sued Defendant on September 20, 2011, one week prior to the first scheduled foreclosure sale ("First Lawsuit"). Plaintiff sued Defendant in the District Court for the Eastern District of California. After four years of litigation, judgment was entered in favor of Defendant and MERS (doc. #10) and affirmed by the Ninth Circuit Court of Appeals (*id.*).

Plaintiff again sued Defendant on January 19, 2016 ("Second Lawsuit"). *Id.* That complaint asserted three causes of action: violation of the FDCPA, 15 U.S.C. § 1629(e)(5) (against Quality Loan Service Corporation only), violation of the Rosenthal Fair Debt Collection Practices Act (against Defendant only), and declaratory relief (against Defendant only). The complaint, like this one, was reliant upon the allegation that Defendant sent a notice of rescission to the original lender on May 6, 2004. *Id.* The court granted Defendant's motion to dismiss, concluding that the Defendants' claims were precluded by *res judicata*, stating that

[P]laintiffs could have raised this claim in the prior action. The prior action dealt with the same loan and addressed the lender's authority to foreclose on the Tenaya Property. Whether the loan had been rescinded prior to [Defendant's] attempted foreclosure upon the property would naturally have fallen within the scope of that action. *Id.*

Plaintiff appealed, and the Ninth Circuit again affirmed.

The court finds that the first claim in the amended complaint is barred by res judicata. Plaintiff asserts the same theory that the previous courts rejected, and his claim was or could have been raised in the prior actions. Plaintiff and Defendant were also parties in both prior actions.

Additionally, "any action to enforce the rescission or seek damages for failure to accept rescission must be filed within one year of the creditor's refusal to accept rescission." Gilbert v. Residential Funding LLC, 678 F.3d 271, 279-79 (4th Cir. 2012). If the creditor fails to respond, the one-year statute of limitations period begins to run 20 days after the request for rescission, when the response from the creditor was due. 15 U.S.C. § 1635(f); Gilbert, 678 F.3d at 278-79.

Plaintiff states that he rescinded the note on May 6, 2004. Therefore, the statute of limitations expired in late May 2005. It is too late for Plaintiff to prosecute a TILA claim in 2018. Because this claim also has no legal basis, it cannot be plausible, and also by way of res judicata, the second claim is DISMISSED WITHOUT LEAVE TO AMEND.

The court also finds that debtor did not amend the previously dismissed fourth claim for declaratory relief sufficiently. As noted, the amended claim is identical to the dismissed claim from the previous motion to dismiss. Plaintiff's request for declaratory relief is not an independent cause of action, and therefore need not be reviewed to determine if it has been pled sufficiently in accordance with the Fed. R. Civ. P. See Del Monte Int'l GmbH v. Del Monte Corp., 995 F.Supp.2d 1107, 1124 (C.D. Cal. 2014). Because this claim has no legal basis independent of the other claims, it is not plausible as pled. Therefore, the second claim will be DISMISSED WITHOUT LEAVE TO AMEND.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1020](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-30-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. JOHNSON ET AL
MATTHEW BUNTING/ATTY. FOR PL.

NO RULING.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1022](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-30-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. LAVERS ET AL
MATTHEW BUNTING/ATTY. FOR PL.
REISSUED SUMMONS FOR 11/14/18

NO RULING.