UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, October 30, 2025
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at https://www.caeb.uscourts.gov/Calendar/CourtAppearances. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the CourtCall Appearance Information.

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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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, and all parties will need to appear at the hearing unless otherwise ordered. 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 <u>no hearing on these matters.</u> 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.

<u>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.</u>

1. 25-12803-A-13 **IN RE: VINCENT PICOU**
   LGT-2

   MOTION TO DISMISS CASE
   9-25-2025 [28]
   DISMISSED 10/16/25

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on October 16, 2025. Doc. #37. Therefore, this motion will be DENIED AS MOOT.

2. 25-11909-A-13 **IN RE: RONALD OSBURN**

   ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
   10-14-2025 [120]

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

DISPOSITION: Continued to November 13, 2025 at 9:30 a.m.

ORDER: The court will issue an order.

The order to show cause is for $1.00 owed by the debtor on his installment balance. Doc. #120. A motion to dismiss this bankruptcy case is scheduled for November 13, 2025 at 9:30 a.m. Doc. ##99-102. Due to the small amount remaining to be paid on the debtor's filing fee and because there is a motion to dismiss set for hearing on November 13, 2025, this order to show cause for failure to pay filing fees will be continued to allow the debtor additional time to pay the remaining $1.00 owed on his installment balance.

3. 25-11310-A-13 **IN RE: FRANCISCO SALCEDO**
   LGT-1

   CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
   5-29-2025 [13]

   LILIAN TSANG/MV
   PETER BUNTING/ATTY. FOR DBT.
   DISMISSED 10/9/25

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on October 9, 2025. Doc. #44. Therefore, this motion will be OVERRULED AS MOOT.

4. 25-11310-A-13 **IN RE: FRANCISCO SALCEDO**
LGT-2

MOTION TO DISMISS CASE
9-18-2025 [35]

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
DISMISSED 10/9/25

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on October 9, 2025. Doc. #44. Therefore, this motion will be DENIED AS MOOT.

5. 25-12712-A-13 **IN RE: JULIO BARBARAN**
LGT-1

MOTION TO DISMISS CASE
9-25-2025 [39]

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #39. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) file a complete plan (Sections 3.14 is blank); (3) set a hearing to confirm the plan as required by the Order Extending Time to File Missing Documents; (4) provide Trustee with required documents; (5) file accurate schedules and/or statements; and (6) commence making payments due under the plan. As of September 25, 2025, monthly plan payments are delinquent in the amount of $200.00. While this motion is pending, further plan payments will come due. In addition to the delinquency amount, the debtor must also make the monthly plan payment of $100.00 for September 25, 2025, and another $100.00 for October 25, 2025. Finally, the debtor is ineligible to be a debtor in a chapter 13 pursuant to 11 U.S.C. § 109(e) because the debtor has no regular income. Doc. #39. The debtor did not oppose.

To be a debtor under chapter 13, 11 U.S.C. § 109(e) requires, among other things, that the debtor be an individual with regular income. The Bankruptcy Code defines "individual with regular income" to mean an "individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or commodity broker." 11 U.S.C. § 101(30). Schedule I filed by the debtor on September 2, 2025 shows that the debtor has no monthly income. Doc. #36. Accordingly, the debtor does not qualify to be a debtor under chapter 13 of the Bankruptcy Code.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case because the debtor has failed to make all payments due under the plan.

Because the debtor has no regular monthly income and failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

6. 25-11213-A-13 **IN RE: PABLO CHAVEZ**
LGT-2

CONTINUED MOTION TO DISMISS CASE
9-12-2025 [31]

JOSHUA STERNBERG/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to November 25, 2025 at 2:00 p.m.

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

The trustee's motion to dismiss will be continued to November 25, 2025 at 2:00 p.m. to be heard with the continued hearing on the debtor's motion to confirm plan (SLG-1), matter #7 below. Doc. ##31-37.

7. 25-11213-A-13 **IN RE: PABLO CHAVEZ**
SLG-1

MOTION TO CONFIRM PLAN
9-15-2025 [38]

PABLO CHAVEZ/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 25, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice prior to the hearing date as required by Local Rule of Practice 3015-1(d)(1). WE Alliance Secured Income Fund ("Creditor") and the chapter 13 trustee ("Trustee") each filed an objection to the debtor's motion to confirm the chapter 13 plan. Opp'n, Doc. #45; Tr.'s Opp'n, Doc. #47. Unless this case is voluntarily converted to chapter 7, dismissed, or Creditor and/or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response to each objection no later than November 10, 2025. The response shall specifically address each issue raised in the respective objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Creditor and/or Trustee shall file and serve a reply, if any, by November 18, 2025.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 18, 2025. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Creditor and/or Trustee's opposition without a further hearing.

8. 25-12618-A-13 **IN RE: DAGOBERTO RODRIGUEZ**
WLG-1

MOTION TO CONFIRM PLAN
9-23-2025 [16]

DAGOBERTO RODRIGUEZ/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

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 at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion, and it shall reference the plan by the date it was filed.

9. 25-11119-A-13 **IN RE: GENEVA FARR**
JRL-2

MOTION TO CONFIRM PLAN
8-20-2025 [73]

GENEVA FARR/MV
JERRY LOWE/ATTY. FOR DBT.
DISMISSED 9/18/25

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on September 18, 2025. Doc. #93. Therefore, this motion will be DENIED AS MOOT.

10. 25-10922-A-13 **IN RE: MANUEL MENDOZA**
LGT-2

CONTINUED MOTION TO DISMISS CASE
7-8-2025 [38]

LILIAN TSANG/MV
YASHA RAHIMZADEH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11. 25-12625-A-13 **IN RE: CARLOS GARZA**
JRL-1

MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES
9-8-2025 [12]

CARLOS GARZA/MV
JERRY LOWE/ATTY. FOR DBT.

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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Carlos Garza ("Debtor"), the debtor in this chapter 13 case, filed his chapter 13 bankruptcy case on July 31, 2025. Doc. #1. Debtor moves the court for an order valuing Debtor's 2004 Toyota Sequoia ("Vehicle"), which is the collateral of Lendmark Financial Services ("Creditor"), at $3,500.00. Doc. #12.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan is not a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. Here, the current loan is based on a refinance made in May 2024, so Creditor does not hold a purchase money security interest in the Vehicle, and the loan debt was incurred more than one year before this bankruptcy case was filed. Decl. of Carlos Garza, Doc. #14. Thus, the hanging paragraph of 11 U.S.C. § 1325 does not preclude Debtor from bifurcating Creditor's claim.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Vehicle is worth $3,500.00 and asks the court for an order valuing the Vehicle at $3,500.00 based on the year, make, model, mileage and condition of the vehicle when compared with the value of similar vehicles. Garza Decl., Doc. #14. Creditor filed a proof of claim on August 6, 2025, which asserted a value for the Vehicle at $5,975.00. Claim 1. However, Creditor did not oppose this motion, and Debtor is competent to testify as to the value of the Vehicle. Thus, the court finds the value of the Vehicle to be $3,500.00.

The motion is GRANTED. Creditor's secured claim will be fixed at $3,500.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

12. 25-12625-A-13 **IN RE: CARLOS GARZA**
LGT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-12-2025 [24]

LILIAN TSANG/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Carlos Garza ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on July 31, 2025. Doc. ##1, 3. On September 12, 2025, the chapter 13 trustee ("Trustee") objected to confirmation of the Plan because: (1) the Plan was not mathematically feasible as the payments proposed would take 60.65 months to fund and payments would need to be increased to at least $2,802.16 for a 60-month plan; (2) a motion to value collateral of Lendmark Financial ("Creditor") listed in Class 2(B) needs to be filed for Trustee to determine if the Plan is feasible; (3) a retirement loan will mature during the duration of the Plan resulting in Trustee needing Debtor's Plan payments to increase; and (4) Debtor has incorrectly listed the direct monthly mortgage payment for Carrington Mortgage Services as $16,000.00 and will need to file an amended plan to correct the amount. Doc. #24.

On September 18, 2025, Debtor filed a response asserting: (1) amended Schedules I and J were filed on September 10, 2025 (Doc. #17), which reflect sufficient funds to fund the Plan; (2) Debtor filed a motion to value collateral that is set for hearing on October 30, 2025; (3) Debtor does not agree with Trustee's calculation and believes that the Plan only needs to increase by $18.65 per month, and (4) Debtor states that the amount listed for Carrington Mortgage Services is a clear error that should be able to be fixed in an order confirming plan instead of having a new plan filed. Doc. #27. Debtor's Motion to Value Collateral of Creditor was filed and set for hearing on October 30, 2025. Doc. ##12-16.

At the court hearing held on October 2, 2025 with respect to Trustee's objection to confirmation, Trustee stated on the record that Trustee would withdraw her objection to confirmation provided the motion to value Creditor's collateral was resolved. Court Audio, Doc. #33. The court has granted that motion by final ruling, matter #11 above. It appears that all outstanding issues raised in Trustee's objection to confirmation have been resolved.

Accordingly, unless withdrawn prior to the hearing, this objection to confirmation will be OVERRULED.

13. 24-11626-A-13 **IN RE: MANDIP GREWAL**
RSW-4

CONTINUED MOTION TO SELL AND/OR MOTION TO INCUR DEBT
8-28-2025 [126]

MANDIP GREWAL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

14. 25-12629-A-13 **IN RE: THOMAS/MADELINE MEJIA**
LGT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-12-2025 [16]

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Thomas Vincent Mejia and Madeline Angelina Mejia (together, "Debtors") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on August 1, 2025. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because Trustee cannot determine whether the Plan is feasible until a motion to value the collateral of creditor State of California, Employment Development Department ("Creditor") is decided. Doc. #16.

Debtors filed a response to Trustee's objection stating that Debtors filed a motion to avoid the judicial lien of Creditor and set a hearing on that motion for October 30, 2025 at 9:30 a.m. Doc. #24; see motion to avoid lien (PBB-1), Doc. ##19-23.

Debtor's motion to avoid lien of Creditor was filed and set for hearing on October 30, 2025. Doc. ##19-23. The court has granted that motion by final ruling, matter #15 below. It appears that all outstanding issues raised in Trustee's objection to confirmation have been resolved.

Accordingly, unless withdrawn prior to the hearing, this objection to confirmation will be OVERRULED.

15. 25-12629-A-13 **IN RE: THOMAS/MADELINE MEJIA**
PBB-1

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EMPLOYMENT DEVELOPMENT DEPARTMENT
9-22-2025 [19]

MADELINE MEJIA/MV
PETER BUNTING/ATTY. FOR DBT.

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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Thomas Vincent Mejia and Madeline Angelina Mejia (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of State of California, Employment Development Department ("Creditor") on residential real property commonly referred to as 3865 Jesse Lane, Clovis, California 93619 (the "Property"). Doc. #19; Schedule C, Doc. #1; Schedule D, Doc. #1.

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

Debtors filed the bankruptcy petition on August 1, 2025. Doc. #1. A judgment was entered against Mr. Mejia in the amount of $739.99 in favor of Creditor on August 29, 2024. Ex. D, Doc. #22. The abstract of judgment was recorded pre-petition in Fresno County on September 9, 2024, as document number 2024-0081810. Id. The lien attached to Debtors' interest in the Property located in

Fresno County. Doc. #19. The Property also is encumbered by a lien in favor of LoanCare LLC in the amount $360,326.00. Schedule D, Doc. #1. Debtors claimed an exemption of $348,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $600,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$739.99
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$360,326.00
Amount of Debtors' claim of exemption in the Property	+	$348,000.00
		$709,065.99
Value of Debtors' interest in the Property absent liens	-	$600,000.00
Amount Creditor's lien impairs Debtors' exemption		$109,065.99

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

16. 25-12240-A-13 **IN RE: RUBY BALDERAMA**
JCW-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
8-18-2025 [27]

ALLY BANK/MV
JERRY LOWE/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

17. 25-12240-A-13 **IN RE: RUBY BALDERAMA**
JRL-1

CONTINUED MOTION TO VALUE COLLATERAL OF ALLY BANK
8-14-2025 [22]

RUBY BALDERAMA/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

18. 25-12240-A-13 **IN RE: RUBY BALDERAMA**
LGT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
8-13-2025 [18]

LILIAN TSANG/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

19. 25-12241-A-13 **IN RE: JOSEPH/SHAWNA BERNARDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-7-2025 [49]

SCOTT LYONS/ATTY. FOR DBT.
JOINT DEBTOR DISMISSED: 09/25/2025

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

20. 25-12241-A-13 **IN RE: JOSEPH/SHAWNA BERNARDO**
SL-1

MOTION TO CONFIRM PLAN
9-19-2025 [27]

SHAWNA BERNARDO/MV
SCOTT LYONS/ATTY. FOR DBT.
JOINT DEBTOR DISMISSED: 09/25/2025

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 at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion, and it shall reference the plan by the date it was filed.

21. 22-11252-A-13 **IN RE: RENEE REED**
CDP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-22-2025 [31]

TOYOTA MOTOR CREDIT CORPORATION/MV
BENNY BARCO/ATTY. FOR DBT.
CHANDRA PRYOR/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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Toyota RAV4, VIN: JTMRWRFV8MD126120 ("Vehicle"). Doc. #31.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete post-petition payments. Under the debtor's confirmed chapter 13 plan ("Plan"), Movant is to be paid directly pursuant to the terms of the prevailing contractual agreement. Plan, Doc. #12; Order, Doc. #19. However, the debtor is past due for the June 29, 2025 payment in the amount of $221.24, and $1,357.68 for the monthly payments due on July 29, 2025 and August 29, 2025. Decl. of Debra Knight, Doc. #34. Movant has produced evidence that the debtor is delinquent by at least $1,578.92, with additional payments coming due the subsequent months. Knight Decl., Doc. #34. According to section 3.11 of the Plan, the automatic stay was modified to allow Movant to exercise its rights against the Vehicle in the event of a default under applicable law or contract. Plan, Doc. #12; Order, Doc. #19. Movant also is unable to verify the debtor's insurance coverage of the Vehicle, and Movant is not currently in possession of the Vehicle. Knight Decl., Doc. #34.

Accordingly, to the extent that the automatic stay has not already been lifted pursuant to section 3.11 of the Plan, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

22. 20-11859-A-13 **IN RE: JOSE HERNANDEZ AND ROSA GUDINO**
SL-1

MOTION TO VACATE DISMISSAL OF CASE
10-16-2025 [36]

ROSA GUDINO/MV
SCOTT LYONS/ATTY. FOR DBT.
CASE DISMISSED 09/18/2025

TENTATIVE RULING:	This matter will proceed as scheduled.
DISPOSITION:	Granted if the debtors confirm they have sufficient funds to complete their plan.
ORDER:	The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the chapter 13 trustee ("Trustee") filed a written response to the motion. Doc. #40. Unless further opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties and grant the motion if the debtors confirm they have sufficient funds to complete their plan. If further opposition is presented at the hearing, the court will consider the further opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This chapter 13 bankruptcy was filed on May 29, 2020 by chapter 13 debtors, Jose Luis Hernandez and Rosa Marta Gudino (together, "Debtors"). Doc. #1.

On August 8, 2025, the chapter 13 trustee ("Trustee") filed a motion to dismiss this case for a material default by Debtors with respect to the terms of their confirmed plan ("Motion to Dismiss"). Doc. #28. Specifically, Trustee moved to dismiss Debtors' bankruptcy case because Debtors failed to make all payments required to complete their confirmed chapter 13 plan. Id.

On September 18, 2025, a hearing was held on the Motion to Dismiss. Debtors did not file a written opposition to the Motion to Dismiss as required by this court's Local Rules of Practice, and Trustee did not withdraw the Motion to Dismiss. Therefore, an order dismissing Debtors' bankruptcy case was entered on September 18, 2025. Doc. #33.

On October 16, 2025, Debtors filed a motion to vacate the dismissal of their bankruptcy case ("Motion to Vacate"). Doc. #36. In the Motion to Vacate, Debtors state the failure to make their plan payments in full was due to inadvertent neglect. Doc. #36; Decl. of Rosa Marta Gudino, Doc. #38. During the duration of their Plan, Debtors paid a total of $110,812.11 to Trustee. Id. However, despite notice of Trustee's Motion to Dismiss, Debtors did not realize they were behind a total of $120.50. Id.

The legal basis for the relief sought in the Motion to Vacate is Rule 60(b), which permits the court to grant relief from a final order for, *inter alia*, mistake, inadvertence, surprise, excusable neglect, or any other reason that justifies relief. Rule 60(b)(1), (6). A motion to reconsider an order is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. v. Estate of Bishop, 299 F.3d 877, 890 (9th Cir. 2000); see also Berman v. Freedom Fin. Network, LLC, 30 F.4th 849 (9th Cir. 2022) (applying the standard to Rule 60(b)).

This determination is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993). The factors to consider include: (1) danger of prejudice to the debtor; (2) length of delay and potential impact on judicial proceedings; (3) reason for the delay, including whether it was in the movant's control; and (4) whether the party acted in good faith. Id.

With respect to the first Pioneer factor, the court finds that there will be prejudice to Debtors if the court does not vacate the dismissal of Debtors' bankruptcy case because Debtors would have to start the bankruptcy process over again. Debtors were in the last month of their chapter 13 plan when the case was dismissed. Not vacating the dismissal of Debtors' bankruptcy case will prolong Debtors receiving a discharge. This factor favors vacating the dismissal order.

With respect to the second Pioneer factor, the court finds that the delay between dismissal and the Motion to Vacate is minimal. The order dismissing Debtors' case was entered on September 18, 2025, and Debtors' Motion to Vacate was filed on October 16, 2025. This factor favors vacating the dismissal order.

With respect to the third and fourth Pioneer factors, Debtors contend that they received notice of the Motion to Dismiss but did not realize the basis for that motion was because they needed to pay an additional $120.50 to complete their plan. Gudino Decl., Doc. #38. Debtors filed their chapter 13 petition in good faith and take full responsibility for their failure to make their plan payments in full. Id. Should the court grant the Motion to Vacate, Debtors have the necessary funds on hand to ensure the remaining balance required to be paid to complete their chapter 13 plan. Id. These factors also favor vacating the dismissal order.

In her reply to the Motion to Vacate, Trustee does not oppose the court granting this motion. Doc. #40. However, Trustee notes that at the time Debtors case was dismissed, Trustee had $1,672.73 on hand that has already been refunded to Debtors. Id. In order for Debtors to bring the case current and pay off all claims, Trustee requires Debtors to remit a payment in the sum of $1,793.23, which represents the refunded amount of $1,672.73 plus the additional $120.50 required to complete Debtor's confirmed plan. Id. Debtors' payment will need to be made by cashier's check or money order, payable to Lilian G. Tsang, Chapter 13 Trustee, and mailed to Lilian G. Tsang, Chapter 13 Trustee, P.O. Box 3051, Modesto, CA 95353-3051. Id.

Accordingly, pending further opposition being raised at the hearing and conditioned upon Debtors confirming at the hearing that Debtors have the $1,793.23 needed to complete their chapter 13 plan, the court is inclined to find that the Motion to Vacate satisfies the Pioneer factors and will GRANT the Motion to Vacate. The order vacating the dismissal of Debtors' chapter 13 bankruptcy case will be without prejudice to those parties in interest who acted in good faith relying on the dismissal.

23. 25-12265-A-13 **IN RE: MANUEL/RISSY MONTOYA**
LGT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
8-12-2025 [14]

LILIAN TSANG/MV
DONALD IWUCHUKWU/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

Manual A. Montoya and Rissy Y. Montoya (collectively, "Debtors") filed a voluntary petition under chapter 13 as well as a chapter 13 plan ("Plan") on July 4, 2025. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objected to confirmation of the Plan. Doc. #14. The court continued this matter to October 30, 2025 and ordered Debtors to file and serve a written response to Trustee's objection by October 16, 2025; or if Debtors elected to withdraw this Plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by October 23, 2025. Order, Doc. #22.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Trustee's objection to the Plan is SUSTAINED on the grounds set forth in Trustee's objection.

24. 25-12977-A-13   **IN RE: CHRISTOPHER/LYNNE ACOSTA**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G TSANG
10-7-2025 [14]

LILIAN TSANG/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 25, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

Christopher Michael Acosta and Lynne Marie Acosta (together, "Debtors") filed a voluntary petition under chapter 13 and a chapter 13 plan ("Plan") on August 31, 2025. Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) Debtors' Schedules I and J do not reflect deductions for 401k accounts; (2) an amended Schedule A/B needs to be filed to reflect retirement accounts; (3) Debtors' proposed monthly payments do not fund the Plan and the Plan is therefore not feasible; (4) Debtors needs to provide requested pay advices to Trustee; (5) Debtors need to provide documentation and verification of Debtors' retirement loans; and (6) the disclosure of compensation of attorney is incorrect and needs to be amended. Doc. #14

This objection will be continued to November 25, 2025 at 2:00 p.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than November 10, 2025. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtors' position. Trustee shall file and serve a reply, if any, by November 18, 2025.

If Debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 18, 2025. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

25. 25-12178-A-13   **IN RE: MERELYN ESTILLORE**
LGT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
8-13-2025 [12]

LILIAN TSANG/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

Merelyn Subala Estillore ("Debtor") filed a voluntary petition under chapter 13 as well as a chapter 13 plan ("Plan") on June 30, 2025. Doc. ##1, 3. The chapter 13 trustee ("Trustee") filed an objection to confirmation of the Plan because the meeting of creditors had not yet concluded. Doc. #12. Debtor filed a response to Trustee's objection stating that Debtor is current in all of her Plan payments and has filed all amendments requested by Trustee. Doc. #21.

On September 8, 2025, Trustee filed a reply to Debtor's response ("Supplemental Objection") stating that (1) the meeting of creditors still has not yet concluded, (2) Debtor's monthly income should be paid into the Plan for the benefit of the general unsecured claims, (3) the Plan does not meet the requirements of 11 U.S.C. § 1325(a)(4) in that it appears creditors would receive more in a chapter 7 liquidation, and (4) Trustee needs evidence to support undisclosed expenses not included in Debtor's amended schedules. Doc. #24. The court continued this matter to October 30, 2025 and ordered Debtor to file and serve a written response to Trustee's Supplemental Objection by October 16, 2025; or if Debtor elected to withdraw this Plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by October 23, 2025. Order, Doc. #27.

Having reviewed the docket in this case, the court finds Debtor has not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's Supplemental Objection has not been withdrawn. Further, Debtor has not filed and served any written response to Trustee's Supplemental Objection. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Trustee's Supplemental Objection to the Plan is SUSTAINED on the grounds set forth in Trustee's Supplemental Objection.

1. 24-12400-A-7 **IN RE: WILLIAM SETTY**
   25-1016 CAE-1

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   4-11-2025 [1]

   U.S. TRUSTEE V. SETTY
   MICHAEL FLETCHER/ATTY. FOR PL.

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

DISPOSITION: Continued December 11, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

On October 28, 2025, the plaintiff filed a motion to dismiss this adversary proceeding with a hearing on that motion set for December 11, 2025 at 11:00 a.m. Doc. ##46-48.

2. 24-12400-A-7 **IN RE: WILLIAM SETTY**
   25-1016 UST-1

   CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
   6-18-2025 [16]

   U.S. TRUSTEE V. SETTY
   MICHAEL FLETCHER/ATTY. FOR MV.

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

DISPOSITION: Continued December 11, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

On October 28, 2025, the plaintiff filed a motion to dismiss this adversary proceeding with a hearing on that motion set for December 11, 2025 at 11:00 a.m. Doc. ##46-48.

3. 25-11909-A-13 **IN RE: RONALD OSBURN**
   25-1042

   MOTION FOR DISCOVERY
   9-8-2025 [8]

   OSBURN V. VISALIA POLICE DEPARTMENT ET AL
   RONALD OSBURN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The plaintiff has not complied with Local Rule of Practice ("LBR") 9014-1(e)(3), which requires that proof of service of a pleading be filed with the court not more than three (3) days after the pleading has been filed with the court. Here, the motion was filed on September 8, 2025, and the notice of hearing was filed on September 18, 2025. Doc. ##8, 27. There is an unsigned certificate of service attached to both the motion and notice of hearing. Doc. ##8, 27. The debtor has not filed a signed certificate of service showing when the motion and related pleadings were served. Because a signed certificate of service was not filed, this court cannot confirm that notice of the motion was proper. Therefore, this motion is denied without prejudice.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the motion does not include a Docket Control Number.

As a further procedural matter, the motion, declaration and exhibit filed by the plaintiff do not comply with LBR 9004-2(c)(1) and (d)(1), which require motions, declarations and exhibits to be filed as separate documents. Here, the motion, declaration filed in support of the motion and supporting exhibit were filed as a single document. E.g., Doc. #8. In the future, the motion, declaration and exhibits should be filed as separate documents. In addition, in the future the exhibit document should be consecutively numbered in the manner set forth in LBR 9004-2(d)(3) and should have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and states the page number at which the exhibit is found within the exhibit document as required by LBR 9004-2(d)(2).

The court previously informed the plaintiff of these requirements of this court's Local Rules of Practice when denying without prejudice a motion the plaintiff filed in his main bankruptcy case. See Case No. 25-11909, Doc. #90. The court encourages the plaintiff to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRulesAndGeneralOrders.

4. 25-11909-A-13 **IN RE: RONALD OSBURN**
25-1042 AP-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-11-2025 [11]

OSBURN V. VISALIA POLICE DEPARTMENT ET AL
JILLIAN BENBOW/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted without leave to amend as to the first claim for relief; continued as to the remaining claims for relief.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice 9014-1(f)(1). The failure of the plaintiff 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. This matter will proceed as scheduled.

I. INTRODUCTION

Ronald Lou Osburn ("Plaintiff") is a chapter 13 debtor proceeding in pro se and the plaintiff in this adversary proceeding. On August 12, 2025, Plaintiff initiated this adversary proceeding against Visalia Police Department, Tulare County Sheriff's Office, William Robert Jarrell and Stephanie Sharee Smallwood of Aldridge Pite LLP, DOES 1-10, and Adam Neil Barasch of the Law Firm of Severson & Werson ("Complaint"). Doc. #1.

By the caption of the Complaint, Plaintiff asserts claims for declaratory relief, injunctive relief and damages for: (1) violations of the automatic stay ("First Claim"); (2) violations of the California Rules of Professional Conduct; (3) violations of the California Penal Code; (4) violations of AB 2424; (5) violations of 42 U.S.C. § 1983; and (6) false arrest (all claims except the First Claim are referred to collectively as the "Remaining Claims"). Doc. #1. The allegations stem from an eviction of Plaintiff from real property located at 4523 W. Evergreen Court, Visalia, California 93277 (the "Property").

On September 11, 2025, defendant William Robert Jarrell and Stephanie Sharee Smallwood (together, "Defendants") moved to dismiss the First Claim and the Remaining Claims under Federal Rule of Civil Procedure ("Rule") 12(b)(6) and 12(e), made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012. Doc. #11.

Having considered the motion, Complaint (Doc. #1) and supporting exhibits (Doc. #13), the court grants Defendant's motion to dismiss without leave to amend as to the First Claim on the basis that, under applicable Ninth Circuit authority, no automatic stay was in place with respect to the Property at the time Plaintiff filed his bankruptcy case. With respect to the Remaining Claims, the court continues the hearing to permit the parties to address whether this court should permissively abstain from hearing those claims for relief and dismiss the Remaining Claims without prejudice to being raised by Plaintiff in an applicable non-bankruptcy forum.

II. JUDICIAL NOTICE

As an initial matter, Defendants asks this court to take judicial notice of certain public records and filings submitted by Defendants as a request for judicial notice to support Defendants' position and assertions in the motion to dismiss. Doc. #13. "Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citations omitted). When matters outside the complaint are presented to and not excluded by the court, a Rule 12(b)(6) motion is to be treated as one for summary judgment. Id.; Rule 12(d).

However, "a document is not 'outside' the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." Id. (quoting Townsend v. Columbia Operations, 667 F.2d 844, 848-49 (9th Cir. 1982)). "[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion into a motion for summary judgment. Branch, 14 F.3d at 454.

Here, Defendants request the following documents which the Complaint specifically refers to and are not in dispute:

(1) Deed of Trust recorded March 27, 2006, in the Official Records of Tulare County as Document No. 2006-0031946 (Ex. A, Doc. #13);

(2) Corporate Assignment of Deed of Trust recorded January 18, 2017, in the Official Records of Tulare County as Document No. 2017-0002685 (Ex. B, Doc. #13);

(3) Notice of Default recorded March 20, 2017, in the Official Records of Tulare County as Document No. 2017-0015219 (Ex. C, Doc. #13);

(4) Notice of Trustee's Sale recorded on September 14, 2018, in the Official Records of Tulare County as Document No. 2018-0050698 (Ex. D, Doc. #13);

(5) Notice of Trustee's Sale recorded on November 15, 2021, in the Official Records of Tulare County as Document No. 2021-0083608 (Ex. E, Doc. #13);

(6) Trustee's Deed Upon Sale recorded on February 25, 2022, in the Official Records of Tulare County as Document No. 2022-0012895 (Ex. F, Doc. #13);

(7) Verified Complaint for Unlawful Detainer filed August 25, 2022 in the Superior Court for the County of Tulare, Case No. VCL203611 (Ex. G, Doc. #13);

(8) Judgment-Unlawful Detainer entered October 21, 2022 in the Superior Court for the County of Tulare, Case No. VCL203611 (Ex. H, Doc. #13);

(9) Writ of Possession issued November 1, 2022 in the Superior Court for the County of Tulare, Case No. VCL203611 (Ex. I, Doc. #13);

(10) Complaint for Forcible Detainer and Money Damages filed March 10, 2025 in the Superior Court for the County of Tulare, Case No. VCL318959 (Ex. J, Doc. #13);

(11) Judgment-Unlawful Detainer entered May 2, 2025, 2025 in the Superior Court for the County of Tulare, Case No. VCL318959 (Ex. K, Doc. #13);

(12) Writ of Possession issued May 9, 2025 in the Superior Court for the County of Tulare, Case No. VCL318959 (Ex. L, Doc. #13);

(13) The Docket for Superior Court for the County of Tulare, Case No. VCL318959 (Ex. M, Doc. #13);

(14) The Docket for Superior Court for the County of Tulare, Case No. VCU322206 (Ex. N, Doc. #13);

(15) The Docket for Superior Court for the County of Tulare, Case No. VCL203611 (Ex. O, Doc. #13); and

(16) Verified Complaint for Injunctive Relief, Wrongful Eviction, Deprivation of Due Process filed June 9, 2025, Superior Court for the County of Tulare, Case No. VCL203611 (Ex. P, Doc. #13).

Doc. #13.

It is not necessary for the court to take judicial notice of Defendants' Exhibits A-J and M-P, or to draw any inferences from those documents in order to dispose of Defendants' motion to dismiss. Therefore, as to those and any other documents, Defendants' request for judicial notice will be denied.

Exhibits K and L are copies of an unlawful detainer judgment and writ of possession filed and issued, respectively, in a state court proceeding against Plaintiff with respect to the Property. Therefore, this court may consider these documents in the ruling on the motion to dismiss under Rule 12(b)(6). Fed. R. Evid. 201(b).

This court also may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of documents filed in Plaintiff's chapter 13 bankruptcy case in its entirety. Bankr. Case No. 25-11909.

Lastly, Plaintiff confirmed on the record before this court at an emergency hearing held on July 1, 2025 in his bankruptcy case was filed after an unlawful detainer judgment and writ of possession had been issued by the state court with respect to the Property. Bankr. Case No. 25-11909, Court Audio, Doc. #36.

III. RELEVANT FACTS

On May 2, 2025, an unlawful detainer judgment was entered against Plaintiff with respect to the Property. Ex. K, Doc. #13. On May 9, 2025, a writ of possession was issued with respect to Plaintiff permitting the enforcement of the unlawful detainer judgment with respect to the Property. Ex. L, Doc. #13. Plaintiff filed this chapter 13 bankruptcy case on June 9, 2025. Bankr. Case No. 25-11909, Doc. #1.

IV. LEGAL AUTHORITY FOR MOTION TO DISMISS

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain 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 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on Rule 12(b)(6) motions] enunciated by the Supreme Court, a federal court must construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers." Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

V. LEGAL ANALYSIS

A. First Claim: Violation of the Automatic Stay

In the Complaint, Plaintiff first asserts that Defendants "willfully violated the automatic stay by coordinating and executing the June 25, 2025 eviction and false arrest without relief from the stay, despite Plaintiff's chapter 7 discharge and the April 2025 chapter 13 case." Compl. at p. 7, Doc. #1. Whether there was an automatic stay in place that was violated by Defendants is a question of law such that, if no automatic stay exists, there is no violation of the stay and no plausible claim for relief. Defendants argue that Plaintiff fails to allege facts sufficient to establish Defendants violated the automatic stay. MPA, Doc. #12.

a. Automatic Stay

The filing of a bankruptcy petition creates an automatic stay. See generally, § 362. Unless an exception applies, the automatic stay bars all entities from engaging in a variety of acts against the debtor, the debtor's property, and property of the estate. See § 362(a)(1)–(8) (outlining acts prohibited by automatic stay); § 362(b)(1)–(29) (outlining exceptions). Relevant to this case, the automatic stay prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." § 362(a)(3).

"A party seeking damages for violation of the automatic stay must prove by a preponderance of the evidence that: (1) a bankruptcy petition was filed; (2) the debtor is an individual; (3) the creditor received notice of the petition; (4) the creditor's actions were in willful violation of the stay; and (5) the debtor suffered damages." In re Jha, 461 B.R. 611, 616 (Bankr. N.D. Cal. 2011).

To decide whether a particular act against the Property violates the automatic stay, the court must first consider whether the Property belongs to the estate. Property of the estate is broadly defined to encompass "all legal or equitable interests of the debtor in property as of the commencement of the case," wherever located and by whomever held. § 541(a)(1). What interests a debtor has at the beginning of a case are determined according to state law. See Butner v. United States, 440 U.S. 48, 55 (1979).

b. State Court Proceeding

This court, "like all courts of this circuit, must adhere to the holdings in published opinions of the Court of appeals unless those opinions are overturned by the Supreme Court." Deitz v. Ford (In re Deitz), 469 B.R. 11, 22 (B.A.P. 9th Cir. 2012) (citing United States v. Martinez-Rodriguez, 472 F.3d 1087, 1093 (9th Cir. 2007)). The Ninth Circuit held in Perl "that under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue." Eden Place, LLC v. Perl (In re Perl), 811 F.3d 1120, 1127-28 (9th Cir. 2016).

In Perl, the bankruptcy court held that an entity that purchased real property at pre-petition a foreclosure sale and obtained the entry of an unlawful detainer judgment and a writ of possession pre-petition following unlawful detainer proceedings violated the automatic stay where the entity permitted a lockout post-petition even when the debtor retained actual possession of the real property. Perl, 811 F.3d at 1123-24. The creditor appealed the bankruptcy court's ruling to the Ninth Circuit Bankruptcy Appellate Panel. The Ninth Circuit Bankruptcy Appellate Panel affirmed the bankruptcy court. Eden Place LLC v. Perl (In re Perl), 513 B.R. 566 (B.A.P. 9th Cir. 2014).

The creditor then appealed that ruling to the Ninth Circuit, and the Ninth Circuit reversed the bankruptcy court and the Ninth Circuit Bankruptcy Appellate Panel and held that whether the debtor "had actual possession of the property when he filed for bankruptcy has no bearing on whether he had a cognizable possessory interest in the property." Perl, 811 F.3d at 1128. Rather, under California law, the debtor "had no remaining interest in the property, legal or equitable, when the bankruptcy petition was filed[.]" Id. at 1130. Thus, the sheriff did not violate the automatic stay when executing the writ of possession post-petition because the debtor "had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay" at the time that the bankruptcy case was filed. Id.

Similar to the facts in Perl, here, an unlawful detainer judgment was entered on May 2, 2025 in state court unlawful detainer proceedings against Plaintiff with respect to the Property. Ex. K, Doc. #13. A writ of possession with respect to the Property was issued on May 9, 2025. Ex. L, Doc. #13. Under Perl, any interest of Plaintiff in the Property was extinguished as of May 9, 2025, whether or not Plaintiff had actual possession of the Property when he filed for bankruptcy.

In the Complaint, Plaintiff claims that he filed his chapter 13 bankruptcy case on April 15, 2025. Compl. at 5:24-26, Doc. #1. However, according to the court's records, Plaintiff actually filed his chapter 13 bankruptcy on June 9, 2025. Bankr. Case No. 25-11909, Doc. #1. Because Plaintiff filed his bankruptcy petition only after an unlawful detainer judgment was entered and a writ of possession issued against Plaintiff with respect to the Property, Debtor had no legal, equitable, possessory or any other interest in the Property to which the automatic stay applied when Debtor filed his bankruptcy petition under the controlling Ninth Circuit authority of Perl. Thus, any action taken post-petition with respect to the Property did not violate the automatic stay, and Plaintiff cannot assert a claim for relief for violation of the automatic stay.

Even if leave to amend were granted, the facts do not support a claim for relief for violation of the automatic stay. The court finds that permitting additional pleading of this claim for relief would be futile.

Accordingly, the motion to dismiss the First Claim is granted, and that claim is DISMISSED WITHOUT LEAVE TO AMEND.

B. REMAINING CLAIMS

In Plaintiff's Remaining Claims, Plaintiff seeks declaratory relief, injunctive relief and damages for violations of California Rules of Professional Conduct, California Penal Code, AB 2424, 42 U.S.C. § 1983, and for a false arrest. Compl., Doc. #1. Defendants argue that Plaintiff's Remaining Claims fail to state a claim in which relief can be granted. MPA, Doc. #12. The court, however, is inclined to permissively abstain from determining the Remaining Claims.

This court may abstain sua sponte from hearing a proceeding arising under title 11, or arising in or related to a case under title 11, if doing so is in the interests of justice, comity with state courts, or respect for state law so long as the parties have an opportunity to be heard on the issue. 28 U.S.C. § 1334(c)(1); Gober v. Terra + Corp. (In re Gober), 100 F.3d 1195, 1207 n.10 (5th Cir. 1996); Underwood v. United Student Aid Funds, Inc. (In re Underwood), 299 B.R. 471, 476 (Bankr. S.D. Ohio 2003). The court will continue the hearing with respect to the Remaining Claims to permit the parties to submit supplemental briefing as to why the court should not permissively abstain from hearing the Remaining Claims.

To assist the parties, the Ninth Circuit in Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990), set forth the following factors for a bankruptcy court to consider when deciding whether to permissively abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;

(2) the extent to which state law issues predominate over bankruptcy issues;

(3) the difficulty or unsettled nature of the applicable law;

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

(7) the substance rather than form of an asserted "core" proceeding;

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;

(9) the burden of [the bankruptcy court's] docket;

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

(11) the existence of a right to a jury trial; and

(12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

In the supplemental briefing, the parties should address each of these factors and explain whether or not these factors support permissive abstention. The court proposes the following schedule to be discussed at the hearing:

(a) Initial briefs addressing the Tuscon Estates factors to be filed and served by both Plaintiff and Defendants on or before November 20, 2025.

(b) Reply to initial briefs to be filed and served by both Plaintiff and Defendants on or before December 1, 2025.

(c) Continued hearing regarding permissive abstention of Remaining Claims to be held on December 11, 2025 at 11:00 a.m.

C. RULE 12(e)

As an alternative grounds for dismissal pursuant to Rule 12(b)(6), Defendants requests dismissal of the Complaint pursuant Rule 12(e). Rule 12(e) states "a party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague and ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order." Fed. R. Civ. Pro. 12(e).

Rule 12(e) by its own terms does not authorize the court to outright dismiss a complaint for vagueness or ambiguity. Rather, Rule 12(e) allows the defendant to move for a more definite statement, and if the court grants that motion, it sets a deadline to amend the complaint and cure the ambiguity. While the court agrees with Defendants that the Complaint is unclear, in the court's view, directing Plaintiff to file a more definite statement as a prerequisite to dismissal is unnecessary in light of the court dismissing the First Claim and potentially permissively abstaining as to the Remaining Claims. Therefore, this argument is moot as to the First Claim and is continued as to the Remaining Claims.

VI. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND as to the First Claim. The court continues the hearing with respect to the Remaining Claims.

5. 25-11909-A-13 **IN RE: RONALD OSBURN**
   25-1042 CAE-1

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   8-12-2025 [1]

   OSBURN V. VISALIA POLICE DEPARTMENT ET AL
   RONALD OSBURN/ATTY. FOR PL.

NO RULING.

6. 25-11909-A-13 **IN RE: RONALD OSBURN**
   25-1042 LCH-1

   MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
   9-12-2025 [15]

   OSBURN V. VISALIA POLICE DEPARTMENT ET AL
   FERNANDO GARCIA/ATTY. FOR MV.

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

On September 12, 2025, defendant Visalia Police Department filed a motion to dismiss the adversary proceeding (LCH-1), notice of hearing, memorandum of points and authorities, request for judicial notice, declaration, exhibits and certificate of service. Doc. ##15-20. On September 12, 2025, defendant Visalia Police Department filed a duplicate motion to dismiss the adversary proceeding and the same support documents. Doc. ##21-26. The court has deemed Doc. ##15-20 to be duplicates of Doc. ##21-26. Therefore, the duplicate motion and support documents (Doc. ##15-20) will be DROPPED AS MOOT.

7. 25-11909-A-13 **IN RE: RONALD OSBURN**
25-1042 LCH-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-12-2025 [21]

OSBURN V. VISALIA POLICE DEPARTMENT ET AL
FERNANDO GARCIA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted without leave to amend as to the first claim for relief; continued as to the remaining claims for relief.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice 9014-1(f)(1). The plaintiff timely filed written opposition on October 1, 2025. Doc. #28. The moving party timely filed a reply on October 21, 2025. Doc. #34. This matter will proceed as scheduled.

I. INTRODUCTION

Ronald Lou Osburn ("Plaintiff") is a chapter 13 debtor proceeding in pro se and the plaintiff in this adversary proceeding. On August 12, 2025, Plaintiff initiated this adversary proceeding against Visalia Police Department, Tulare County Sheriff's Office, William Robert Jarrell and Stephanie Sharee Smallwood of Aldridge Pite LLP, DOES 1-10, and Adam Neil Barasch of the Law Firm of Severson & Werson ("Complaint"). Doc. #1.

By the caption of the Complaint, Plaintiff asserts claims for declaratory relief, injunctive relief and damages for: (1) violations of the automatic stay ("First Claim"); (2) violations of the California Rules of Professional Conduct ("Second Claim"); (3) violations of the California Penal Code; (4) violations of AB 2424; (5) violations of 42 U.S.C. § 1983; and (6) false arrest (all claims except the First Claim and the Second Claim are referred to collectively as the "Remaining Claims"). Doc. #1. The allegations stem from an eviction of Plaintiff from real property located at 4523 W. Evergreen Court, Visalia, California 93277 (the "Property").

On September 12, 2025, Visalia Police Department ("Defendant") moved to dismiss the First Claim and the Remaining Claims under Federal Rule of Civil Procedure ("Rule") 12(b)(6). Doc. #21. Because Defendant is not named as a party against whom relief is sought by the Second Claim, Defendant has not included that claim in its motion to dismiss. Rule 12(b) is made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012. On October 1, 2025, Plaintiff filed timely written opposition addressing Defendant's request for dismissal under Rule 12(b)(6). Doc. #28.

Having considered the motion, opposition, Complaint (Doc. #1) and supporting exhibits (Doc. #25), the court grants Defendant's motion to dismiss without leave to amend as to the First Claim on the basis that, under applicable Ninth Circuit authority, no automatic stay was in place with respect to the Property at the time Plaintiff filed his bankruptcy case. With respect to the Remaining Claims, the court continues the hearing to permit the parties to address whether this court should permissively abstain from hearing those claims for relief and dismiss the Remaining Claims without prejudice to being raised by Plaintiff in an applicable non-bankruptcy forum.

II. JUDICIAL NOTICE

As an initial matter, Defendant asks this court to take judicial notice of certain public records and filings submitted by Defendant as a request for judicial notice to support Defendant's position and assertions in the motion to dismiss. Doc. #25. Plaintiff opposes Defendant's request for judicial notice to the extent it introduces disputed facts. Doc. #28. "Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citations omitted). When matters outside the complaint are presented to and not excluded by the court, a Rule 12(b)(6) motion is to be treated as one for summary judgment. Id.; Rule 12(d).

However, "a document is not 'outside' the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." Id. (quoting Townsend v. Columbia Operations, 667 F.2d 844, 848-49 (9th Cir. 1982)). "[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion into a motion for summary judgment. Branch, 14 F.3d at 454. Here, Defendant requests the following documents which the Complaint specifically refers to and are not in dispute:

(1) Summons-Eviction issued on March 10, 2025 in the Superior Court of California, County of Tulare in Deutsche Bank National Trust Company v. Ronald Osburn and Sadie Bell Osburn, Case No. VCL 318959 ("Tulare Case") (Ex. A, Doc. #25);

(2) Request for Entry of Default entered on April 16, 2025 in the Tulare Case (Ex. B, Doc. #25);

(3) Judgment-Unlawful Detainer entered on May 2, 2025 in the Tulare Case (Ex. C, Doc. #25);

(4) Writ of Possession of Real Property, issued on May 9, 2025 from the Tulare Case (Ex. D, Doc. #25);

(5) Writ of Possession of Real Property, issued on June 11, 2025 with Tulare County Sheriff's Civil Unit's Return of Writ of Possession—Real Property from the Tulare Case (Ex. E, Doc. #25);

(6) Voluntary Petition for Individuals Filing for Bankruptcy, file stamped on June 9, 2025, issued in the United States Bankruptcy Court for the Eastern District of California, Case No. 25-11909 (Ex. F, Doc. #25);

(7) Complaint for Damages file stamped on August 12, 2025, issued in the United States Bankruptcy Court for the Eastern District of California, Case No. 25-01042 (Ex. G, Doc. #25);

(8) California Code Sections 2923.5 (Ex. H, Doc. #25);

(9) California Code Sections 2923.55 (Ex. I, Doc. #25);

(10) California Code Sections 2924 (Ex. J, Doc. #25);

(11) California Code Sections 2932.2 (Ex. K, Doc. #25);

(12) California Code Sections 789.3 (Ex. L, Doc. #25);

(13) California Code Sections 1940.2 (Ex. M, Doc. #25).

Doc. #25.

It is not necessary for the court to take judicial notice of Defendant's exhibits A, B, E, and H-M, or to draw any inferences from those documents in order to dispose of Defendant's motion to dismiss. Therefore, as to those and any other documents, Defendant's request for judicial notice will be denied.

Exhibits C and D are copies of an unlawful detainer judgment and writ of possession filed and issued, respectively, in a state court proceeding against Plaintiff with respect to the Property. Therefore, this court may consider these documents in the ruling on the motion to dismiss under Rule 12(b)(6). Fed. R. Evid. 201(b).

This court also may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of documents filed in Plaintiff's chapter 13 bankruptcy case in its entirety. Bankr. Case No. 25-11909.

Lastly, Plaintiff confirmed on the record before this court at an emergency hearing held on July 1, 2025 in his bankruptcy case was filed after an unlawful detainer judgment and writ of possession had been issued by the state court with respect to the Property. Bankr. Case No. 25-11909, Court Audio, Doc. #36.

Because Exhibits C and D do not introduce disputed facts, Plaintiff's objection to this court taking judicial notice of those documents is overruled.

III. RELEVANT FACTS

On May 2, 2025, an unlawful detainer judgment was entered against Plaintiff with respect to the Property. Ex. C, Doc. #25. On May 9, 2025, a writ of possession was issued with respect to Plaintiff permitting the enforcement of the unlawful detainer judgment with respect to the Property. Ex. D, Doc. #25. Plaintiff filed this chapter 13 bankruptcy case on June 9, 2025. Bankr. Case No. 25-11909, Doc. #1.

IV. PLAINTIFF'S INCORRECTLY CITED AND INAPPLICABLE AUTHORITY

Most, if not all, of the legal authority cited by Plaintiff in the Complaint and his opposition to this motion is either inapplicable, reversed, abrogated or absent.

For example, on page 4 of Plaintiff's opposition, while In re Cuffee, 232 B.R. 53, 56, (E.D.N.Y. 1999), is a real case, the court could not find anywhere in the case where the court discusses the violation of an automatic stay or a debtor's possessory interest. Further, the citation for Eden Place LLC v. Perl (In re Perl), 513 B.R. 566 (Bankr. S.D. III. 2014), aff'd, 811 F.3d 1120 (9th Cir. 2016), also found on page 4 of Plaintiff's opposition, is not correct. Instead, the correct citation for that case is: Eden Place LLC v. Perl (In re Perl), 513 B.R. 566 (**B.A.P. 9th Cir**. 2014), **rev'd,** 811 F.3d 1120 (9th Cir. 2016). (Emphasis added). The correct citation indicates that the initial decision of the Bankruptcy Appellate Panel, the reasoning upon which Plaintiff relies, was reversed by the Ninth Circuit Court of Appeals and is therefore no longer reasoning upon which Plaintiff can rely. Lastly, the correct citation to the case cited by Plaintiff as In re Williams, 323 B.R. 691 (Bankr. N.D. Cal. 2005), also on page 4 of Plaintiff's opposition, is **Williams v. Levi (**In re Williams**)**, 323 B.R. 691 (**B.A.P. 9th Cir**. 2005). (Emphasis added). The Ninth Circuit in Perl stated that the Ninth Circuit Bankruptcy Appellate Panel in Williams did engage in the proper analysis, and the analysis of Williams was abrogated by the Ninth Circuit in Perl.

Thus, the legal authority on which Plaintiff relies for his opposition has been overturned by the Ninth Circuit authority in Perl, which this court is bound to follow.

V. LEGAL AUTHORITY FOR MOTION TO DISMISS

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain 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 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on Rule 12(b)(6) motions] enunciated by the Supreme Court, a federal court must construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers." Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

VI. LEGAL ANALYSIS

B. First Claim: Violation of the Automatic Stay

In the Complaint, Plaintiff first asserts that Defendant "willfully violated the automatic stay by coordinating and executing the June 25, 2025 eviction and false arrest without relief from the stay, despite Plaintiff's chapter 7 discharge and the April 2025 chapter 13 case." Compl. at p. 7, Doc. #1. Whether there was an automatic stay in place that was violated by Defendant is a question of law such that, if no automatic stay exists, there is no violation of the stay and no plausible claim for relief. Defendant argues that Plaintiff fails to allege facts sufficient to establish Defendant violated the automatic stay. Doc. #21.

a. Automatic Stay

The filing of a bankruptcy petition creates an automatic stay. See generally, § 362. Unless an exception applies, the automatic stay bars all entities from engaging in a variety of acts against the debtor, the debtor's property, and property of the estate. See § 362(a)(1)-(8) (outlining acts prohibited by automatic stay); § 362(b)(1)-(29) (outlining exceptions). Relevant to this case, the automatic stay prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." § 362(a)(3).

"A party seeking damages for violation of the automatic stay must prove by a preponderance of the evidence that: (1) a bankruptcy petition was filed; (2) the debtor is an individual; (3) the creditor received notice of the petition; (4) the creditor's actions were in willful violation of the stay; and (5) the debtor suffered damages." In re Jha, 461 B.R. 611, 616 (Bankr. N.D. Cal. 2011).

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The creditor then appealed that ruling to the Ninth Circuit, and the Ninth Circuit reversed the bankruptcy court and the Ninth Circuit Bankruptcy Appellate Panel and held that whether the debtor "had actual possession of the property when he filed for bankruptcy has no bearing on whether he had a cognizable possessory interest in the property." Perl, 811 F.3d at 1128. Rather, under California law, the debtor "had no remaining interest in the property, legal or equitable, when the bankruptcy petition was filed[.]" Id. at 1130. Thus, the sheriff did not violate the automatic stay when executing the writ of possession post-petition because the debtor "had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay" at the time that the bankruptcy case was filed. Id.

Similar to the facts in Perl, here, an unlawful detainer judgment was entered on May 2, 2025 in state court unlawful detainer proceedings against Plaintiff with respect to the Property. Ex. C, Doc. #25. A writ of possession with respect to the Property was issued on May 9, 2025. Ex. D, Doc. #25. Under Perl, any interest of Plaintiff in the Property was extinguished as of May 9, 2025, whether or not Plaintiff had actual possession of the Property when he filed for bankruptcy.

In the Complaint, Plaintiff claims that he filed his chapter 13 bankruptcy case on April 15, 2025. Compl. at 5:24-26, Doc. #1. However, according to the court's records, Plaintiff actually filed his chapter 13 bankruptcy on June 9, 2025. Bankr. Case No. 25-11909, Doc. #1. Because Plaintiff filed his bankruptcy petition only after an unlawful detainer judgment was entered and a writ of possession issued against Plaintiff with respect to the Property, Debtor had no legal, equitable, possessory or any other interest in the Property to which the automatic stay applied when Debtor filed his bankruptcy petition under the controlling Ninth Circuit authority of Perl. Thus, any action taken post-petition with respect to the Property did not violate the automatic stay, and Plaintiff cannot assert a claim for relief for violation of the automatic stay.

Even if leave to amend were granted, the facts do not support a claim for relief for violation of the automatic stay. The court finds that permitting additional pleading of this claim for relief would be futile.

Accordingly, the motion to dismiss the First Claim is granted, and that claim is DISMISSED WITHOUT LEAVE TO AMEND.

B. REMAINING CLAIMS

In Plaintiff's Remaining Claims, Plaintiff seeks declaratory relief, injunctive relief and damages for violations of California Penal Code, AB 2424, 42 U.S.C. § 1983, and for a false arrest. Compl., Doc. #1. Defendant argues that Plaintiff's Remaining Claims fail to state a claim in which relief can be granted. MPA, Doc. #22. The court, however, is inclined to permissively abstain from determining the Remaining Claims.

This court may abstain sua sponte from hearing a proceeding arising under title 11, or arising in or related to a case under title 11, if doing so is in the interests of justice, comity with state courts, or respect for state law so long as the parties have an opportunity to be heard on the issue. 28 U.S.C. § 1334(c)(1); Gober v. Terra + Corp. (In re Gober), 100 F.3d 1195, 1207 n.10 (5th Cir. 1996); Underwood v. United Student Aid Funds, Inc. (In re Underwood), 299 B.R. 471, 476 (Bankr. S.D. Ohio 2003). The court will continue the hearing with respect to the Remaining Claims to permit the parties to submit supplemental briefing as to why the court should not permissively abstain from hearing the Remaining Claims.

To assist the parties, the Ninth Circuit in Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990), set forth the following factors for a bankruptcy court to consider when deciding whether to permissively abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;

(2) the extent to which state law issues predominate over bankruptcy issues;

(3) the difficulty or unsettled nature of the applicable law;

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

(7) the substance rather than form of an asserted "core" proceeding;

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;

(9) the burden of [the bankruptcy court's] docket;

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

(11) the existence of a right to a jury trial; and

(12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

In the supplemental briefing, the parties should address each of these factors and explain whether or not these factors support permissive abstention. The court proposes the following schedule to be discussed at the hearing:

(a) Initial briefs addressing the Tuscon Estates factors to be filed and served by both Plaintiff and Defendant on or before November 20, 2025.

(b) Reply to initial briefs to be filed and served by both Plaintiff and Defendant on or before December 1, 2025.

(c) Continued hearing regarding permissive abstention of Remaining Claims to be held on December 11, 2025 at 11:00 a.m.

VII. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND as to the First Claim. The court continues the hearing with respect to the Remaining Claims.

8. 24-12115-A-7 **IN RE: MICHAEL/TATUM SCOTT**
24-1042

PRE-TRIAL CONFERENCE RE: COMPLAINT
10-22-2024 [1]

NOLEN V. SCOTT
PAUL NOLEN/ATTY. FOR PL.

NO RULING.

9. 20-13822-A-7 **IN RE: FAUSTO CAMPOS AND VERONICA NAVARRO**
21-1006 CAE-1

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-6-2021 [18]

RAMIREZ V. CAMPOS
PAMELA THAKUR/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

10. 19-11628-A-12 **IN RE: MIKAL JONES**
19-1081 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [1]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued December 18, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on October 2, 2025 (Doc. #216), the status conference will be continued to December 18, 2025 at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than December 11, 2025.

11. 19-15081-A-13 **IN RE: CHRISTOPHER/KERRI TYSON**
25-1023 CAE-1

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
6-2-2025 [6]

TYSON ET AL V. AMERICAN EDUCATION SERVICES
SCOTT LYONS/ATTY. FOR PL.

NO RULING.

12. 19-15081-A-13 **IN RE: CHRISTOPHER/KERRI TYSON**
25-1023 SL-1

MOTION TO SET ASIDE AND/OR MOTION TO PERMIT PLANTIFFS TO FILE AND SERVE AMENDED ADVERSAY PROCEEDING COMPLAINT AND SUMMONS ON REAL PARTY IN INTEREST
10-9-2025 [17]

TYSON ET AL V. AMERICAN EDUCATION SERVICES
SCOTT LYONS/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion and related pleadings were mailed on October 9, 2025, with a hearing date set for October 30, 2025, which is less than 28 days from the date of mailing. Doc. ##18, 20. Pursuant to Local Rule of Practice 9014-

1(f)(2)(A), motions in an adversary proceeding may not be set for hearing on less than 28 days' notice prior to the hearing date.