

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, February 11, 2020
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. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-73](#)

CONTINUED OBJECTION TO CLAIM OF VALMONT NORTHWEST, INC., CLAIM
NUMBER 28
10-7-2019 [\[2799\]](#)

RANDY SUGARMAN/MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.
CONTINUED TO 2/25/20 PER ECF ORDER #3099

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

DISPOSITION: Continued to February 25, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #3099.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[RAC-11](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP FOR
RONALD A. CLIFFORD, CREDITOR COMM. ATY(S)
1-9-2020 [\[3015\]](#)

MICHAEL COLLINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The hearing on this motion will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of

discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

The United States Trustee objects to movant's fee application because the motion includes "approximately \$980.00 for insufficiently described communications regarding 'the matter'" and movant "has not demonstrated that its requested hourly rates are commensurate with what comparably skilled practitioners charge in non-bankruptcy matters." Doc. #3095.

The court has reviewed the committee's reply. The reply augments the descriptions of the questioned time entries and relies on the numerous earlier applications to provide the record for the "prevailing hourly rate" issue. First, the UST reserved the right to contest the final application in previous applications. Second, the statements in the committee's reply are not verified and are merely representations of counsel - not evidence. Third, even if these issues were resolved, the record does not include the committee's acquiescence with the fee request or a reason it could not be obtained.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**

RESCHEDULED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY
PETITION
9-7-2018 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT**
[GMJ-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
12-12-2019 [[481](#)]

FRESNO COUNTY PRIVATE SECURITY/MV
RILEY WALTER/ATTY. FOR DBT.
CHRISTOPHER SEYMOUR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 14, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The parties have stipulated to continue the hearing. Any reply to the opposition or supplemental responses shall be filed and served not later than April 7, 2020. See Doc. #508.

11:00 AM

1. [19-14507](#)-B-7 **IN RE: KEITH/JESSICA DUNN**

PRO SE REAFFIRMATION AGREEMENT WITH KINECTA FEDERAL CREDIT UNION
1-14-2020 [\[13\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Debtors were 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). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. [19-14213](#)-B-7 **IN RE: GUILLERMINA DE REYES**

PRO SE REAFFIRMATION AGREEMENT WITH BANK OF AMERICA, N.A.
1-13-2020 [\[15\]](#)

THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in

original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

3. [19-14355](#)-B-7 **IN RE: HENRY/ERIN GLASS**

REAFFIRMATION AGREEMENT WITH MECHANICS BANK
1-6-2020 [\[16\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Debtors were 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). Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtors would be able to make the payments.

4. [19-14676](#)-B-7 **IN RE: VERONICA LARSON**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
12-30-2019 [\[11\]](#)

SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can

afford to make the payment. The debtor claims fewer expenses but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Toyota Motor Credit Corporation will be DENIED.

5. [19-15193](#)-B-7 **IN RE: KELLY ENGLISH**

PRO SE REAFFIRMATION AGREEMENT WITH PACIFIC SERVICE CREDIT UNION
1-14-2020 [[11](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

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

1:30 PM

1. [19-15409](#)-B-7 **IN RE: TRAM TRAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2020 [\[14\]](#)

CATARINA BENITEZ/ATTY. FOR DBT.
\$335.00 FILING FEE PAID 1/14/20

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 installment fee was paid in full on
January 14, 2020.

2. [19-15410](#)-B-7 **IN RE: DONALEE DAVIE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2020 [\[12\]](#)

CATARINA BENITEZ/ATTY. FOR DBT.
\$335.00 FILING FEE PAID 1/14/20

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 installment fee was paid in full on
January 14, 2020.

3. [19-15413](#)-B-7 **IN RE: WILLIAM/REBECCA TILLERY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-14-2020 [\[12\]](#)

CATARINA BENITEZ/ATTY. FOR DBT.
\$335.00 FILING FEE PAID 1/14/20

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 installment fee was paid in full on January 14, 2020.

4. [19-14315](#)-B-7 **IN RE: BLANCA ACOSTA**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT
ENTRY OF DISCHARGE
12-26-2019 [\[24\]](#)

TRACY DAVIS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
TREVOR FEHR/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 court is not required to dismiss a case upon the presentation of a motion. 11 U.S.C. § 707 (a) is permissive even upon a showing of "cause." The debtor here and the UST signed a stipulation which recites, in part, the UST was going to file a motion to dismiss the case for "abuse" or "totality of the circumstances." The debtor decided not to proceed with this case, there is no evidence of bad faith or other reason to keep the case pending. No timely opposition has been filed.

The motion is GRANTED.

5. [20-10116](#)-B-7 **IN RE: MICHELE DODD**
[EPE-1](#)

MOTION TO EXTEND AUTOMATIC STAY
1-27-2020 [\[13\]](#)

MICHELE DODD/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice ("LBR") 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 19-15019. That case was filed on October 18, 2019 and was dismissed on December 30, 2019 for failure

to file schedules. This case was filed on January 14, 2020 and the automatic stay will expire on February 13, 2020.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to file documents as required by the bankruptcy code and the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor's previous bankruptcy filing, a chapter 13 case which was then converted to chapter 7, was dismissed due to debtor's failure to file the necessary bankruptcy schedules. Doc. #15. Debtor states that it was an emergency filing. *Id.* The court notes that debtor has filed all the necessary schedules and documents with the court at this time. The § 341 meeting of creditors is scheduled for February 20, 2020.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court or by operation of law. 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.

6. [19-14034](#)-B-7 **IN RE: ANNA-MARIE/DONALD FESTER**
[EPE-1](#)

MOTION TO EXTEND TIME AND/OR MOTION TO DELAY DISCHARGE
12-26-2019 [\[16\]](#)

ANNA-MARIE FESTER/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted in part and denied in part.

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

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

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

The § 341 meeting was held on October 31, 2019, and the 60-day deadline to file a reaffirmation agreement expired December 30, 2019.

Debtors' motion states that debtors are "unable to file a signed reaffirmation agreement with the court" by the deadline and request up to and include February 28, 2019 to file a reaffirmation agreement. Doc. #16. Debtors are attempting to reaffirm their mortgage debt. Id.

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

The court DENIES the request to delay the discharge to February 28, 2020. No discharge is entered if a motion to extend the time to file a reaffirmation agreement is pending. Fed. R. Bankr. P. 4004 (c) (1) (J). Fed. R. Bankr. P. 4004(c) (2) authorizes the court to defer the entry of discharge for 30 days and, on motion made within that time, to a date certain. This is the debtors' first request. The court will defer entry of the discharge for 30 days from the date of entry of the order on this motion. No further relief is granted at this time.

7. [19-15246](#)-B-7 **IN RE: ANDREA CASTILLO**
[BDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2020 [\[9\]](#)

MARK SEMPER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
BRIAN WHELAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(d) (3) (B) (i) states that the notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

LBR 9014-1(f) (2) (C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed on January 16, 2020 and set for hearing on February 11, 2020. Doc. #9, 10. February 11, 2020 is 26 days after January 16, 2020, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f) (2). Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f) (2) (C) needed to have been included in the notice.

Additionally, 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.

The court notes movant's reply. Doc. #23. But the court's ruling does not change. The court routinely denies motions without prejudice for failure to comply with the local rules of practice.

8. [19-14353](#)-B-7 **IN RE: ALFREDO/ROSA GUERRA**
[GT-2](#)

MOTION TO AVOID LIEN OF PATELCO CREDIT UNION
1-8-2020 [\[22\]](#)

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

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

A judgment was entered against the debtor in favor of Patelco Credit Union in the sum of \$11,164.76 on May 21, 2019. Doc. #24. The abstract of judgment was recorded with Fresno County on July 17, 2019. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$144,694.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$105,713.73 on that same date, consisting of a first deed of trust in favor of Ultra Escrow. Debtor's portion of the remaining equity is \$19,490.14. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$19,490.14. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. [19-14858](#)-B-7 **IN RE: CAREY SHOFNER AND CHRISTINA MILLER**

MOTION FOR RELIEF FROM AUTOMATIC STAY MOTION FOR ADEQUATE
PROTECTION
1-7-2020 [\[15\]](#)

KINECTA FEDERAL CREDIT UNION/MV
R. BELL/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the order.

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This motion does not have a DCN and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

10. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[KAS-3](#)

MOTION FOR TURNOVER OF PROPERTY
1-17-2020 [\[46\]](#)

PETER FEAR/MV
PETER BUNTING/ATTY. FOR DBT.
KELSEY SEIB/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and 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. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." Section 542(a) requires the "entity . . . in possession, custody, or control . . . of property that the trustee may use, sell, or lease . . . shall delivery to the trustee"

The chapter 7 trustee ("Trustee") asks the court for an order requiring the debtor to cooperate with Trustee and his broker so that Trustee may show and sell two parcels of real property in which the debtor has an interest: 4755 and 4767 E. Braly Avenue in Fresno, CA. The debtor now apparently claims he resides at 4755 E. Braly Ave. Though there is evidence the debtor stated under oath he resided at 757 S. Burgan Ave., Fresno just before the petition was filed.

Based on the evidence included with the motion, the court finds that Trustee has made good faith attempts to work with Debtor, to no avail. Trustee has a good faith belief that debtor did not actually reside in either of the properties when the petition was filed, and based upon an outside appraisal of the properties, believes that there is equity in both properties to pay the secured creditor and unsecured creditors of the estate. Doc. #48, 49. In order to liquidate the properties, Trustee needs access.

Unless this motion is opposed at the hearing, debtor is ordered to cooperate with Trustee in accordance with the motion's prayer for relief except as otherwise set forth here. Failure to do so within 14 days of the date of service of the order granting this motion may subject the debtor to an order to show cause why sanctions should

not be imposed. The debtor has a statutory duty to cooperate with the chapter 7 Trustee. 11 U.S.C. § 521(a)(3), (4). The court has authority to compel turnover and for the debtor to comply with his duties under 11 U.S.C. § 105.

The court declines to order the debtor's removal from either 4755 or 4767 E. Braly Ave. now. Even if appropriate in this case – and the court is not finding that now – such relief would be equitable requiring an adversary proceeding. Fed. R. Bankr. P. 7001(7).

The court notes debtor's "Notice of Motion by Trustee to Remove Debtor From His Home be Denied." Doc. #61. Debtor must appear and explain the issues to the court. The debtor's "opposition" raises issues about the validity of the deeds of trust against these properties. First, those issues are not germane to the debtor's duties to cooperate with the trustee in administering the case. Second, if the debtor has affirmative claims against the lender, those claims arose before the case was filed and can be prosecuted by the trustee unless the trustee abandons the claims or otherwise arranges for prosecution of the claims. Third, the debtor's pleading does not contain specifics supporting the claimed fraud. The lender has a right to be heard before any relief the debtor requests could be considered.

The court also notes Trustee's reply. Doc. #62.

11. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[PBB-3](#)

MOTION BY PETER B. BUNTING TO WITHDRAW AS ATTORNEY
1-27-2020 [\[57\]](#)

PETER BUNTING/ATTY. FOR DBT.

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.

Pursuant to LBR 2017-1(e), and based upon movant's declaration, and unless opposition is presented at the hearing, the court GRANTS this motion and Peter Bunting ("Attorney") may withdraw as the attorney for debtor Johnny Gonzalez ("Debtor") in this bankruptcy case.

Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California, and Attorney shall conform to the requirements of those rules. The authority and duty of Attorney as attorney for Debtor in the bankruptcy case shall continue until the court enters the order. The order submitted shall state the debtor's last known address.

12. [19-14872](#)-B-7 **IN RE: OCTAVIO/CARMEN ABARCA**
[GT-1](#)

MOTION TO AVOID LIEN OF PACIFIC SERVICE CREDIT UNION
1-8-2020 [\[15\]](#)

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

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

A judgment was entered against the debtor in favor of Pacific Service Credit Union in the sum of \$26,115.38 on June 27, 2008 and

renewed on February 28, 2017. Doc. #18. The abstract of judgment was recorded with Fresno County on July 15, 2008. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$252,857.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$244,778.08 on that same date, consisting of a first deed of trust in favor of Lakeview Loan Servicing, LLC. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$8,078.92. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

13. [18-14473](#)-B-7 **IN RE: JOANNA PORTER JOHNSON**
[JBA-4](#)

RESCHEDULED HEARING RE: MOTION FOR CONTEMPT AND/OR MOTION FOR
SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
10-11-2019 [[62](#)]

JOANNA PORTER JOHNSON/MV
JOSEPH ANGELO/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue the order.

The parties have stipulated to dismissing the motion. Doc. #87. The court will issue the order.

14. [20-10075](#)-B-7 **IN RE: DANIEL DEDITIUS**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-2020 [\[11\]](#)

EDUCATIONAL EMPLOYEES CREDIT UNION/MV
JERRY LOWE/ATTY. FOR DBT.
DON POOL/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
will submit a proposed order after hearing.

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

The movant, Educational Employees Credit Union, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1). 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).

The collateral is a 2016 Mazda Mazda6 i Sport Sedan 4D. Doc. #16. Movant estimates that the collateral has a value of \$13,630.00. Id. The amount owed is \$8,209.21 and movant estimates that debtor has an equity interest in the amount of \$5,420.79. Id.

Debtor is delinquent in the amount of \$814.11. Id. Due to failure to provide proof of insurance and pursuant to the note, movant purchased Collateral Protection Insurance ("CPI") in the amount of \$175.00 per month. Doc. #13. Another payment of \$226.04 plus \$175.00 CPI will come due on February 14, 2020. Id.

Debtor's Statement of Intention lists the property and indicates intent to surrender possession of the property to movant. Doc. #1. However, debtor also states that the collateral is in possession of his "estranged girlfriend," whose whereabouts are unknown. Id.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least two payments, debtor has not maintained proof of insurance, debtor has not surrendered possession of the property to movant, and debtor has relinquished possession of the property to a third party, whose

whereabouts are unknown. Doc. #1, 11, 16. The movant has produced evidence that debtor is delinquent at least \$814.11. Doc #13, 14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least two payments, debtor has not maintained proof of insurance, debtor has not surrendered possession of the property to movant, and debtor has relinquished possession of the property to a third party, whose whereabouts are unknown.

15. [20-10183](#)-B-7 **IN RE: HARBANS VERMA AND GURPREET KAUR**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-23-2020 [\[9\]](#)

TRANSPORT FUNDING, LLC/MV
MARIO LANGONE/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Transport Funding, LLC, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2).

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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

The collateral is a 2014 Utility Trailer. Doc. #14. Movant states that debtors erroneously listed the trailer as a 2018 model in their schedules. See doc. #1, 9. Movant estimates that the collateral has a value of \$19,900.00, and debtor estimates the value at \$36,500.00. Doc. #1, 9. The amount owed is \$45,162.99. Doc. #14. Debtor's Statement of Intention lists the property and indicates intent to surrender possession to movant. Doc. #1.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least three payments. Id. The movant has produced evidence that debtor is delinquent at least \$3,614.58. Id. Additionally, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Doc. #1, 14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least three payments.

16. [19-15288](#)-B-7 **IN RE: VIDAL SIERRA SANCHEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
12-20-2019 [\[5\]](#)

VIDAL SIERRA SANCHEZ/MV

NO RULING.

Debtor's application for waiver of the chapter 7 filing fee states that debtor has two dependents. However, debtor's schedules do not list any dependents. Also, the schedules show that debtor has a gross income of over \$3,000.00 per month.

Debtor must appear at the hearing and explain these discrepancies to the court.

17. [19-14197](#)-B-7 **IN RE: MIGUEL ANDRADE**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-27-2019 [\[26\]](#)

TD AUTO FINANCE LLC/MV
THOMAS GILLIS/ATTY. FOR DBT.
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 was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be

resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(d)(1) allows the court to grant relief from 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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from stay if the debtor does not have equity in the property and the property is not necessary to an effective reorganization.

The collateral is a 2017 Dodge Charger. Doc. #28. The collateral has a value in the amount of \$25,275.00 and the amount owed is \$35,266.50. Id. Debtor's Statement of Intention lists the property and indicates intent to surrender possession to movant. Doc. #1.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has missed at least five payments and is delinquent in the amount of at least \$2,964.76. Doc. #28.

Adequate protection is unnecessary in light of the relief granted herein.

18. [19-14771](#)-B-7 **IN RE: CHRISTINE LE**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF CREDITORS
12-30-2019 [\[16\]](#)

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. #21.

The court notes the debtor did file opposition claiming a new job in Long Beach, CA precluded the debtor from attending the meeting of creditors. Doc. #19. But the document was filed after the deadline to file opposition as noted on the clerk's notice. No excuse has been provided for the late filing of the opposition.

19. [13-16538](#)-B-7 **IN RE: SABA ELTAREB**
[JRL-5](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
2-7-2020 [\[45\]](#)

SABA ELTAREB/MV
JERRY LOWE/ATTY. FOR DBT.
OST 2/10/20

NO RULING.