



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, February 13, 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.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of 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, 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 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.

1. [24-11712](#)-A-13 **IN RE: MARK FLORENTINO**
[SLL-2](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
1-13-2025 [[87](#)]

STEPHEN LABIAK/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.

Stephen L. Labiak ("Movant"), counsel for Mark Tan Florentino ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$17,880.00 and reimbursement for expenses in the amount of \$341.72 for services rendered from July 22, 2023 through January 7, 2025. Doc. #87. Debtor's confirmed plan provides, in addition to \$1,929.00 paid prior to filing the case, for \$16,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #56, 83. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #87.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) preparing petition, schedules, and related forms as well as amendments thereto; (3) attending meeting of creditors; (4) preparing and confirming Debtor's plan and modified plan, including addressing objections thereto; (5) preparing the fee application; and (6) general case administration. Exs. B, C & D, Doc. #90. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court approves the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$17,880.00 and reimbursement for expenses in the amount of \$341.72 to be paid in a manner consistent with the terms of the confirmed plan.

2. [24-13317](#)-A-13 **IN RE: TODOR/LILIYA TABAKOV**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
12-18-2024 [\[14\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN 2/12/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 12, 2025. Doc. #28.

3. [24-13317](#)-A-13 **IN RE: TODOR/LILIYA TABAKOV**
[PBB-1](#)

MOTION TO AVOID LIEN OF MICHAEL B. BASSI
1-8-2025 [\[17\]](#)

LILIYA TABAKOV/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 movant has done here.

Todor Iliev Tabakov and Liliya Tabakov (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 Michael B. Bassi, Assignee of Georgijs Gornostajevs ("Creditor"), on the residential real property commonly referred to as 11277 Monterra Lane, Chowchilla, California 93610 (the "Property"). Schedule D, Doc. #1; Am. Schedule C, Doc. #12; Doc. #17.

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 November 14, 2024. Doc. #1. A judgment was entered against Todor Tabakov in the amount of \$308,917.50 in favor of Creditor on December 19, 2011. Ex. D, Doc. #21. The abstract of judgment was recorded pre-petition in Madera County on May 15, 2019, as document number 2019010139. Ex. D, Doc. #21. The lien attached to Debtors' interest in the Property located in Madera County. Doc. #17. The Property also is encumbered by a first deed of trust in favor of The Money Source Inc. in the amount \$224,915.00. Schedule D, Doc. #1. Debtors claimed a combined exemption of \$346,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #12. Debtors assert a market value for the Property as of the petition date at \$447,000.00. Am. Schedule A/B, Doc. #12.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$308,917.50
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$224,915.00
Amount of Debtors' claim of exemption in the Property	+	\$346,000.00
		\$879,832.50
Value of Debtors' interest in the Property absent liens	-	\$447,000.00
Amount Creditor's lien impairs Debtor's exemption		\$432,832.50

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.

4. [24-13426](#)-A-13 **IN RE: MICHAEL RUIZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-21-2025 [\[17\]](#)

LILIAN TSANG/MV
RHONDA WALKER/ATTY. FOR DBT.

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

DISPOSITION: Continued to March 19, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #19. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of an objection to confirmation of plan be made pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

Michael Shane Ruiz ("Debtor") filed a voluntary petition under chapter 13 on November 26, 2024 and a chapter 13 plan ("Plan") on December 10, 2024. Doc. ##1, 11. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) Debtor has not provided Trustee with his 2023 federal and state income tax returns; (2) Debtor has not filed his amended schedules to reflect new employment and income change; (3) an amended disclosure of compensation of Debtor's attorney needs to be filed; and (4) the 341 meeting of creditors has not been concluded. Doc. #17. The 341 meeting was concluded on February 4, 2025. See court docket entry entered on February 4, 2025.

This objection will be continued to March 19, 2025 at 2:00 p.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than March 5, 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 Debtor's position. Trustee shall file and serve a reply, if any, by March 12, 2025.

If 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 March 12, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

5. [24-13526](#)-A-13 **IN RE: JENNEL MARINE**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-21-2025 [\[25\]](#)

LILIAN TSANG/MV

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

DISPOSITION: Continued to March 19, 2025 at 2:00 p.m.

ORDER: The court will issue an order.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #27. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of an objection to confirmation of plan be made pursuant to Rule 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

Jennell Lynn Marine ("Debtor") filed a voluntary petition under chapter 13 and a chapter 13 plan ("Plan") on December 6, 2024. Doc. #1, 8. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) Debtor has not provided Trustee with her 2023 federal and state income tax returns or 60 days proof of income; (2) Debtor has not filed a complete Plan; (3) Debtor's plan payment is contingent upon obtaining employment and may not be feasible; and (4) the 341 meeting of creditors has not been concluded. Doc. #25. The 341 meeting was continued to February 18, 2025 at 10:00 a.m. See court docket entry entered on January 14, 2025.

This objection will be continued to March 19, 2025 at 2:00 p.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than March 5, 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 Debtor's position. Trustee shall file and serve a reply, if any, by March 12, 2025.

If 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 March 12, 2025. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be denied on the grounds stated in Trustee's opposition without a further hearing.

6. [24-13336](#)-A-13 **IN RE: WILLIAM BOBENRIETH**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
12-18-2024 [[12](#)]

LILIAN TSANG/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on January 27, 2025 (SLL-1, Doc. #26), with a motion to confirm the modified plan set for hearing on March 19, 2025 at 2:00 p.m. Doc. ##22-27.

7. [24-13444](#)-A-13 **IN RE: RAYMOND/ELIZABETH GARCIA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-15-2025 [[20](#)]

BENNY BARCO/ATTY. FOR DBT.
WITHDRAWN 2/5/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 5, 2025. Doc. #23.

8. [24-13554](#)-A-13 **IN RE: ANN MARQUEZ**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-17-2025 [[18](#)]

PETER BUNTING/ATTY. FOR DBT.

NO RULING.

MOTION TO VALUE COLLATERAL OF LENDMARK FINANCIAL SERVICES, LLC
1-3-2025 [\[13\]](#)

ANN MARQUEZ/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Ann Elizabeth Marquez ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing Debtor's 2015 Lincoln MKZ Hybrid (the "Vehicle"), which is the collateral Lendmark Financial Services, LLC ("Creditor"). Doc. #13; Claim 1-2.

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 was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 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." Section 506(a)(2) of the Bankruptcy Code 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).

Pursuant to the attachments to Creditor's amended proof of claim filed on January 14, 2025, the loan secured by the Vehicle was a purchase money security interest, and the Vehicle was purchased on October 27, 2023, which is less than 910 days before this bankruptcy case was filed on December 10, 2024. Doc. #1; Attachment 1 to Claim 1-2. Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim."

Debtor's moving papers provide no evidence to support a finding that the Vehicle does not secure a loan that was not a purchase money security interest or that the Vehicle was purchased more than 910 days before this bankruptcy case was filed. The only evidence in the court's record is the amended proof of claim, which constitutes *prima facie* evidence for showing the date on which the Vehicle was purchased, and that Creditor has a purchase money secured interest in the Vehicle. Because Debtor has not rebutted Creditor's *prima facie* showing in its proof of claim that Creditor's collateral is not subject to valuation pursuant to 11 U.S.C. § 1325(a)(*), this motion is DENIED.

10. [24-12359](#)-A-13 **IN RE: JUAN GONZALEZ**
[SLG-1](#)

CONTINUED MOTION TO CONFIRM PLAN
12-4-2024 [\[41\]](#)

JUAN GONZALEZ/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Juan F. Gonzalez ("Debtor") filed and served this motion to confirm the first modified chapter 13 plan pursuant to Local Rule of Practice 3015-1(d)(1) and set that motion for hearing on January 16, 2025. Doc. ##41-46. The chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #52. The court continued this matter to February 13, 2025 and ordered Debtor to file and serve a written response to Trustee's opposition by January 30, 2025; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by February 6, 2025. Doc. #55.

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 opposition has not been withdrawn. Further, Debtor has not filed and served any written response to Trustee's objection. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtor's motion to confirm his first modified chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

11. [24-13560](#)-A-13 **IN RE: DEBI JONES**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-17-2025 [\[12\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.
WITHDRAWN 2/10/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 10, 2025. Doc. #22.

12. [24-13565](#)-A-13 **IN RE: JORGE SALDANA ANDRADE AND AIDE DUENAS DE SALDANA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-15-2025 [\[18\]](#)

BENNY BARCO/ATTY. FOR DBT.
\$6.00 INSTALLMENT PAYMENT 1/17/25

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.

13. [24-13565](#)-A-13 **IN RE: JORGE SALDANA ANDRADE AND AIDE DUENAS DE SALDANA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-25-2025 [\[22\]](#)

LILIAN TSANG/MV
BENNY BARCO/ATTY. FOR DBT.
WITHDRAWN 2/10/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 10, 2025. Doc. #27.

14. [24-13566](#)-A-13 **IN RE: ALICIA DE PULIDO**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-21-2025 [\[15\]](#)

LILIAN TSANG/MV
T. O'TOOLE/ATTY. FOR DBT.
WITHDRAWN 2/3/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 3, 2025. Doc. #22.

15. [24-13671](#)-A-13 **IN RE: DOROTHY MCKINLEY**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
1-27-2025 [\[16\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
WITHDRAWN 2/5/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 5, 2025. Doc. #21.

16. [21-12775](#)-A-13 **IN RE: CODY/REBECCA GOFORTH**
[MAZ-2](#)

MOTION TO MODIFY PLAN
12-26-2024 [\[46\]](#)

REBECCA GOFORTH/MV
MARK ZIMMERMAN/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)(2). 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 shall reference the plan by the date it was filed.

17. [24-13675](#)-A-13 **IN RE: CHARRY SEE AND SOMCHITH XAIVONG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-24-2025 [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

If the installment fees due at the time of hearing are paid before the hearing, 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.

18. [24-13675](#)-A-13 **IN RE: CHARRY SEE AND SOMCHITH XAIVONG**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
1-24-2025 [\[15\]](#)

LILIAN TSANG/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

19. [24-13576](#)-A-13 **IN RE: MICHAEL/TARA BALTIS**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G TSANG
1-21-2025 [[12](#)]

LILIAN TSANG/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN 2/3/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on February 3, 2025. Doc. #20.

20. [24-13081](#)-A-13 **IN RE: RACHEL CALDERON**
[CRG-2](#)

MOTION TO CONFIRM PLAN
12-19-2024 [[25](#)]

RACHEL CALDERON/MV
CARL GUSTAFSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 19, 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). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #36. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than March 5, 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 the debtor's position. Trustee shall file and serve a reply, if any, by March 12, 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 March 5, 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 Trustee's opposition without a further hearing.

21. [24-13287](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[SDN-1](#)

CONTINUED RE: MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2024 [\[12\]](#)

FAMILIES AND SCHOOLS TOGETHER CREDIT UNION/MV
STEPHEN LABIAK/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

22. [24-13287](#)-A-13 **IN RE: JOHN/NANCY ALVA**
[SLL-1](#)

MOTION TO CONFIRM PLAN
1-6-2025 [\[25\]](#)

NANCY ALVA/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN 2/6/25

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 6, 2025. Doc. #49.

23. [24-13492](#)-A-13 **IN RE: ROGELIO/MYRA RIOS**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-10-2025 [\[13\]](#)

GLOBAL LENDING SERVICES LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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 debtors, 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Honda Accord, VIN: 1HGCV1F59KA084373 (the "Vehicle"). Doc. #13.

Rogelio Frausto Rios and Myra Rios (together, "Debtors") are the joint debtors in this chapter 13 bankruptcy. Doc. #1. On December 24, 2021, Mr. Rios executed a retail installment sale contract for the purchase of Vehicle. Doc. #13; Ex. A, Doc. #15. The contract was duly assigned to Movant, and Movant perfected its security interest in the Vehicle by recording its lien. Ex. B, Doc. #15. The terms of the contract state that Mr. Rios is obligated to pay Movant monthly payments on or before the 7th day of each month. Id.; Doc. #13; Decl. of Katrina Foster, Doc. #16. Debtors filed chapter 13 bankruptcy on December 1, 2024. Doc. #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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least two complete post-petition payments. Debtors are currently past due for the months of December 2024 and January 2025 and are delinquent by at least \$1,439.86. Ex. C, Doc. #15; Foster Decl., Doc. #16. As of November 6, 2024, Movant is in possession of the Vehicle. Foster Decl., Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed to repossess its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

1. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
12-6-2024 [[90](#)]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
ZAC FANCHER/ATTY. FOR PL.

NO RULING.

2. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CH-3](#)

CONTINUED RE: MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
12-23-2024 [[97](#)]

FANCHER V. TULARE COUNTY RESOURCE MANAGEMENT AGENCY
DARRYL HOROWITT/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted without leave to amend as to the first, second, fourth, fifth and sixth claims for relief; abstaining as to the third claim for relief.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed 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 January 14, 2025. Doc. #102. On January 23, 2025, the defendant timely filed its reply to the plaintiff's opposition. Doc. #105. This matter will proceed as scheduled.

I. INTRODUCTION

Zac Fancher ("Plaintiff") is a chapter 7 debtor proceeding in pro se and the plaintiff in this adversary proceeding. On May 23, 2024, Plaintiff initiated this adversary proceeding against defendant Tulare County Resource Management Agency ("Defendant"). Doc. #1.

On July 8, 2024, Defendant moved to dismiss each claim for relief under Federal Rule of Civil Procedure ("Rule") 12(b)(6).¹ Doc. #20. Rule 12(b) is made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7012. On September 12, 2024, this court granted Defendant's motion to dismiss with leave to amend. Order, Doc. #55.

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¹ While Plaintiff calls each ground for relief a "cause of action," the proper term under Rule 8(a) is "claim for relief."

On October 3, 2024, Plaintiff filed a first amended verified adversary complaint against Defendant. Doc. #61. On October 17, 2024, Defendant moved to dismiss each claim for relief under Rule 12(b)(6). Doc. #73. On November 14, 2024, this court granted Defendant's motion to dismiss Plaintiff's first amended verified adversary complaint with leave to amend. Order, Doc. #88.

On December 6, 2024, Plaintiff filed a second amended verified adversary complaint against Defendant ("Complaint"). Doc. #90. By the Complaint, Plaintiff asserts six claims for relief against Defendant for (1) failure to comply with regulatory deadlines ("First Claim"), (2) declaratory relief ("Second Claim"), (3) determination of tax liability ("Third Claim"), (4) disallowance of claim ("Fourth Claim"), (5) lack of statutory jurisdiction ("Fifth Claim"), and (6) lack of personal jurisdiction ("Sixth Claim"). The allegations stem from an abatement at Plaintiff's real property located at 19301 Campbell Creek Drive, Springville, California 93265 (the "Property") and a subsequent special assessment and abatement lien issued with respect to the costs of that abatement.

On December 23, 2024, Defendant moved to dismiss each claim for relief under Rule 12(b)(6). Doc. #97. On January 14, 2025, Plaintiff filed timely written opposition addressing Defendant's request for dismissal under Rule 12(b)(6). Doc. #102. On January 23, 2025, Defendant filed its timely reply. Doc. #105.

This is Plaintiff's third opportunity to state claims against Defendant by which relief can be granted to Plaintiff. Having considered the motion, opposition, reply, Complaint (Doc. #90) and supporting exhibits (Doc. #93), the court grants Defendant's motion to dismiss without leave to amend as to the First, Second, Fourth, Fifth and Sixth Claims on the basis that permitting additional pleadings of these claims for relief would be futile. With respect to the Third Claim, the court permissively abstains from hearing that claim for relief and dismisses the Third Claim without prejudice to being raised by Plaintiff in a court of competent jurisdiction.

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. ##98, 99. "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) California Code Regulation Title 25, Article 1, Section 1 (Compl. at ¶¶ 29, 33, Doc. #90);
- (2) California Code Regulation Title 25, Article 6, Section 52 (Compl. at ¶ 31, Doc. #90);

- (3) California Code Regulation Title 25, Article 6, Section 70 (Compl. at ¶¶ 32-33, Doc. #90);
- (4) California Code Regulation Title 25, Article 8, Section 84 (Compl. at ¶ 31, Doc. #90);
- (5) Notice of Decision of Administrative Hearing Officer, Official Records of Tulare County as Document No. 2017-0042332 (Compl. at ¶¶ 32-33, Doc. #90); and
- (6) Tulare County Board of Supervisors, Resolution No. 2020-0082 (Compl. at ¶ 36, Doc. #90).

Doc. ##98, 99. Therefore, the court may consider these documents in the ruling on the motion to dismiss under Rule 12(b)(6).

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 7 bankruptcy case in its entirety. Bankr. Case No. 24-10440.

III. RELEVANT FACTS

Cathy Fancher and William Fancher (together, "Previous Owners") are the previous owners of the Property. Ex. 10, Doc. #93. Plaintiff has been the owner of the Property since February 22, 2021. Compl. at ¶ 5, Doc. #90.

On March 16, 2017, an inspection warrant was issued regarding the Property alleging that conditions on the Property constituted an immediate threat to the public ("Inspection Warrant"). Compl. at ¶ 9, Doc. #90. Plaintiff contends that the Inspection Warrant did not identify the so-called threat that immediately had to be removed. Id.

On June 28, 2017, an administrative hearing was held at which Kings County RMA Code Enforcement Officer Kevin Tromborg ("Inspector Tromborg") presided. Compl. at ¶¶ 10, 57, Doc. #90. Ex. 8, Doc. #93. The same day, June 28, 2017, Inspector Tromborg issued a Notice of Decision of Administrative Hearing Officer ("Decision") deeming the Property's conditions to constitute a public nuisance. Ex. 8, Doc. #93. The Decision was recorded with the Tulare County Recorder's Office as document number 2017-0042332. Id.

After the administrative hearing, the Decision was appealed to the Tulare County Board of Supervisors on September 26, 2017. Compl. at ¶ 12, Doc. #90. The Board of Supervisors affirmed the Decision, and a Petition for Administrative Writ of Mandamus was subsequently filed on June 6, 2018. Id. On December 24, 2018, the court entered a judgment in favor of the County of Tulare with respect to the Decision. Id. On February 22, 2019, an appeal of the court's judgment was filed. Id. All of these proceedings were decided in favor of the County of Tulare. Id. at ¶ 13.

On January 22, 2019, the Previous Owners and Plaintiff were served with a Notice of Intent to Abate by Demolition and Removal and Final Notice to Correct ("Notice of Intent") placed on the Property gate. Compl. at ¶¶ 14, 61, Doc. #90; Ex. 9, Doc. #93. On February 22, 2019, an abatement warrant was issued on the Property ("Abatement Warrant") by the Tulare County Superior Court. Compl. at ¶ 63, Doc. #90; Ex. 10, Doc. #93. The Abatement Warrant was signed on February 21, 2019 and filed on February 22, 2019. Ex. 10, Doc. #93.

On February 26, 2019, Plaintiff was personally served with the Abatement Warrant by an RMA Enforcement Officer. Compl. at ¶ 16, Doc. #90. After the

Abatement Warrant was served, the primary dwelling on the Property was abated. Exs. 7 & 10, Doc. #93. On March 6, 2019, the RMA filed a Return Abatement Warrant regarding the abatement of the Property, including the abatement of six vehicles from the Property. Compl. at ¶ 25, Doc. #90; Ex. 7, Doc. #93.

On September 23, 2019, Plaintiff was served with a notice titled "Demand is Hereby Made", which demanded payment in the amount of \$86,722.95 for the cost of the abatement executed on the Property on February 26-28, 2019. Compl. at ¶ 17, Doc. #90. On or about February 27, 2020, a notice of hearing of the cost of abatement was personally served on Plaintiff for a hearing set for March 17, 2020 (the "Hearing") before the Tulare County Board of Supervisors and the Board of Chambers located in the City of Visalia. Id. at ¶ 18.

The Hearing occurred on March 17, 2020. Compl. at ¶ 19, Doc. #90. At the Hearing, the board affirmed the cost of abatement in the amount of \$86,722.95, a special assessment was approved, and recordation of an abatement lien was authorized ("Resolution"). Id.; Ex. 2, Doc. #93. No special assessment was ever recorded. Compl. at ¶ 37, Doc. #90.

On December 2, 2021, Plaintiff contacted the Tulare County Assessor's Office by email to pay all taxes owed to the county. Compl. at ¶ 44, Doc. #90. Ex. 3, Doc. #93. On December 16, 2021, the County Assessor's Office responded to Plaintiff's email giving amounts of the current tax bill and giving Plaintiff the option of starting a payment plan. Compl. at ¶ 44, Doc. #90; Ex. 4, Doc. #93. The County Assessor's Office stated that the minimum to start a payment plan in December would be \$22,220.54. Id. This amount included the first installment of the current tax bill, 20% of the back taxes, and a \$50.00 start up fee. Id.

On February 15, 2022, Plaintiff was served with a Notice of Proposed Abatement Lien. Compl. at ¶ 20, Doc. #90. On February 17, 2022, a Notice of Abatement Lien was recorded with the Tulare County Recorder's Office as Doc. No. 2022-0010961. Id.; Ex. 1, Doc. #93. Plaintiff acknowledges that Plaintiff owes a debt to the County of Tulare in relation to the Property, but not in the amount of \$147,929.89. Compl. at ¶ 26, Doc. #90. Plaintiff believes Defendant exceeded the statute of limitations in recording the Notice of Abatement Lien or special assessment and the abatement lien is unenforceable.

Plaintiff filed his chapter 7 petition on February 27, 2024. Compl. at ¶ 7, Doc. #90. The County of Tulare and Defendant were the only creditors listed on Plaintiff's bankruptcy schedules. Bankr. Case No. 24-10440, Doc. #1. Plaintiff filed this adversary proceeding on May 23, 2024. Doc. #1. In Plaintiff's bankruptcy case, Plaintiff disclosed that he is a party to a state court action, Fancher, Zac vs. Tulare County Resource Management Agency, Case No. PCU302263 ("State Court Action"), pending in Tulare County Superior Court. Bankr. Case No. 24-10440, Doc. #1.

In Plaintiff's bankruptcy case, a notice of possible assets was sent to creditors and a deadline for filing proofs of claims was set for June 27, 2024. Bankr. Case No. 24-10440, Doc. #10. Only the Tulare County Tax Collector filed a proof of claim in Plaintiff's bankruptcy case. Bankr. Case No. 24-10440, Claim 1. On April 2, 2024, the chapter 7 trustee filed a report of no distribution in Plaintiff's bankruptcy case stating that there are no funds available from Plaintiff's bankruptcy estate for distribution to creditors. Bankr. Case No. 24-10440, Doc. #12. On June 4, 2024, Plaintiff received his chapter 7 discharge. Bankr. Case No. 24-10440, Doc. #34.

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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

In Plaintiff's First Claim, Plaintiff asserts that "Defendant is barred from enforcing its abatement lien pursuant to Title 25, Article 6, Section 70 and which requires that a nuisance abatement lien be recorded within 60 days of the board of supervisors resolution on cost of accounting." Compl. at ¶¶ 29, 68, Doc. #90. Whether a statute of limitations exists to govern the time by which Defendant needed to record its abatement lien is a question of law such that, if no statute of limitations exists, there is no plausible claim for relief.

Defendant first argues that Plaintiff's First Claim raises the same allegations included in a previous complaint that this court rejected, so Plaintiff is precluded from asserting the same claim for relief. Mtn. MPA at p. 3, Doc. #100. However, because the court granted Defendant's prior motion to dismiss with leave to amend and Plaintiff filed an amended complaint, the court's rulings on prior motions to dismiss do not preclude Plaintiff from asserting the same claim for relief in the Complaint.

In support of Plaintiff's contention that Defendant's Notice of Abatement Lien needed to be recorded within 60 days of when the Resolution was issued pursuant to Title 25, Article 6, Section 70, Plaintiff cites to Tulare County Ordinance ("TCO") § 7-15-3500, which provides that the Tulare County Board of Supervisors determined the provisions of Article 35 of the Tulare County Ordinance to be "equivalent to the procedures provided in Article 6 (Actions and Proceedings, commencing with section 48) of Subchapter 1 (State Housing Law Regulations) of Chapter 1 (State Housing Law Regulations and Earthquake Protection Law Regulations) of Division 1 (Housing and Community Developments) of Title 25 (Housing and Community Development) of the California Code of Regulations." TCO § 7-15-3500(b). Plaintiff appears to believe TCO § 7-15-3500 required the County of Tulare to adopt the entirety of Article 6 of the California Code of Regulations. Compl. at ¶¶ 30-33, Doc. #90. However, that is not the case.

Section 52 of Article 6 of the California Code of Regulations permits the County of Tulare to adopt its own procedures that the County of Tulare determined to be "equivalent" for the intended purpose, which the County of Tulare did in Article 35 of the Tulare County Ordinance as set forth in the express language of TCO § 7-15-3500(b). Thus, it is Article 35 of the Tulare County Ordinance that governs how and when Defendant needs to record an

abatement lien, not Title 70 of Article 6 of the California Code of Regulations. The court has reviewed Article 35 of the Tulare County Ordinance. Nothing in the procedures set forth in Article 35 of the Tulare County Ordinance requires that an abatement lien be recorded at all or within any specific time. Thus, there is no statutory deadline by which Defendant had to record the Notice of Abatement Lien, and the First Claim fails to state a claim upon which relief can be granted to Plaintiff.

Even if leave to amend were granted, the facts do not support a claim for relief to void Defendant's abatement lien for failing to record the Notice of Abatement Lien by a certain deadline. 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 the First Claim is DISMISSED WITHOUT LEAVE TO AMEND.

B. SECOND CLAIM

Plaintiff's Second Claim seeks declaratory relief under 28 U.S.C. § 2201(a) and Bankruptcy Rule 7001(b) and (i),² confirming that Defendant has not complied with "Article 35 Tulare County Ordinance § 7-15-3800 [sic]" such that Defendant's special assessment does not encumber the Property. Defendant asserts the Second Claim fails to state a claim on which relief may be granted because: (1) 28 U.S.C. § 2201(a) expressly precludes Plaintiff's action for declaratory relief; and (2) none of the statutes cited by Plaintiff support the requested relief.

First, by its express language, 28 U.S.C. § 2201(a) does not apply to "a proceeding under section 505 or 1146 of title 11[.]" 28 U.S.C. § 2201(a). Because Plaintiff seeks declaratory relief pursuant to 11 U.S.C § 505(a) and cites to 28 U.S.C § 2201(a) to support his argument, Plaintiff's argument based on 28 U.S.C § 2201(a) fails to state a claim in which relief can be sought. Compl. at ¶ 75, Doc. #90.

Second, Plaintiff alleges Defendant has not complied with TCO § 7-15-3800, so Defendant's special assessment does not encumber the Property. Compl. at ¶ 70, Doc. #90. Plaintiff further states that any personal obligation arising from Defendant's special assessment has been discharged in Plaintiff's Chapter 7 bankruptcy case. Compl. at ¶ 40, Doc. #90. However, Plaintiff's Second Claim rests on his misunderstanding of the Tulare County Ordinance.

TCO § 7-15-3770 governs the liability for cost of abatement, special assessment and lien in Tulare County. TCO § 7-15-3770(a) provides that the owner of the real property is liable for all costs of the abatement of a public nuisance that the County of Tulare is required to perform pursuant to Article 35 of the Tulare County Ordinance.

If the costs related to abatement of the public nuisance exceed the proceeds from the sale of any materials obtained from razing the property, TCO § 7-15-3770(b) permits the Tulare County Board of Supervisors to

order that any such costs and fees that remain unpaid on or after the fifth (5th) calendar day following service of the County Hearing Officer decision confirming the costs and fees and demanding payment shall be placed upon the County tax roll by the County Auditor as special assessments against the property on which the building(s) or

² Plaintiff's Complaint filed on December 6, 2024 refers to Bankruptcy Rule 7001(2) (9). Compl. at ¶ 70, Doc. #90. However, on December 1, 2024, all Bankruptcy Rules were updated. The new reference to the Bankruptcy Rule cited by Plaintiff is Bankruptcy Rule 7001(b) and (i).

structure(s) were located, and collected at the same time and in the same manner as ordinary county taxes are collected, or placed on the unsecured roll. Service of the resolution confirming the abatement costs and fees, and demand for payment, shall be completed in the manner outlined in section 7-15-3600, though the statement of expenses need not be recorded. All laws applicable to the levy, collection, and enforcement of County taxes shall be applicable to such special assessments. If any person pays the expenses of abatement prior to the placement of the special assessment on the tax roll, then the County Auditor shall not place the special assessment on the tax roll.

TCO § 7-15-3770(b). If the Tulare County Board of Supervisors

orders the costs and fees to be specially assessed against the real property, the Board may also order that a notice of abatement lien be recorded against the affected real property until such costs and fees have been paid in full. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered, and the date the abatement was complete, and include a description of the real property subject to the lien and the amount of the abatement cost and fees.

TCO § 7-15-3770(c).

TCO § 7-15-3770 further provides that "[i]n lieu of specially assessing and liening the abatement costs pursuant to subsections (b) and (c) above, the Board of Supervisors may determine that the net expense to the County of abating the nuisance shall be a personal obligation of the property owner(s) and direct the County Counsel to bring legal action to collect said net expense." TCO § 7-15-3770(d).

Here, Tulare County proceeded under TCO § 7-15-3770(b) and TCO § 7-15-3770(c) to recover unpaid costs with respect to the abatement performed at the Property and did not proceed under TCO § 7-15-3770(d) so the abatement costs with respect to the Property are a special assessment against and lien on the Property only and are not a personal liability of Plaintiff. Ex. 2 to Compl., Doc. #93. Plaintiff's discharge does not affect the special assessment against and lien on the Property. Eady v. Bankr. Receivables Mgmt. (In re Eady), 2008 Bankr. LEXIS 4696, *12 (B.A.P. 9th Cir. 2008) (citing Johnson v. Home State Bank, 501 U.S. 78, 84 (1991)).

Plaintiff asserts that the special assessment had to be recorded in order for it to attach to the Property and be valid. However, this is not the case. There is nothing in the Tulare County Ordinance that requires a special assessment to be recorded before the special assessment attaches to a parcel of real property. In any event, paragraph 4 of the Resolution ordered that the costs awarded by the Resolution be placed on the Tulare County tax roll as a special assessment against the Property unless the amount awarded in the Resolution was paid prior to being placed on the tax roll. Ex. 2 to Compl., Doc. #93. Throughout the Complaint, Plaintiff concedes that the costs for abatement affirmed in the Resolution have not been paid.

Plaintiff also states that because a notice of final disposition was not recorded, the special assessment must be void but fails to explain how the recording of the notice determined the validity of the special assessment. In any event, TCO § 7-15-3800 provides that "[t]he enforcement officer shall record notice of final disposition of any action or proceeding instituted

pursuant to this Article immediately following final resolution of the action or proceeding.” TCO § 7-15-3800. Here, Plaintiff is still contesting the special assessment and the placement of the abatement lien in this adversary proceeding, so no final disposition has taken place.

Based on the above analysis, the Second Claim fails to state a claim upon which relief can be granted. Even if leave to amend were granted, the facts would not support a claim for relief for declaratory relief. The court finds that permitting additional pleading of this claim for relief would be futile.

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

3. THIRD CLAIM

In Plaintiff’s Third Claim, Plaintiff alleges that he has been financially prejudiced by the County of Tulare’s unlawful rejection of Plaintiff’s offer to pay a portion of real property taxes owed on the Property. Compl. at ¶¶ 74-75; Doc. #90. Specifically, Plaintiff states he was unlawfully denied a chance to pay the general real property taxes owed against the Property and believes he should not be held liable for any tax penalties or interest owed to the County of Tulare from January 1, 2022 until the time this adversary proceeding is concluded. Compl. at ¶ 46, Doc. #90; Ex. 3 to Compl., Doc. #93. Plaintiff requests this court make a determination on the amount of general real property taxes owed to the County of Tulare pursuant to 11 U.S.C § 505(a)(1). Compl. at ¶ 46, Doc. #90.

Defendant argues that Plaintiff’s Third Claim fails to state a claim in which relief can be granted because 11 U.S.C § 505 does not support Plaintiff’s Third Claim and Plaintiff’s failure to pay a portion of the real property taxes owed does not provide a basis for relief. Mtn. MPA at pp. 10-11, Doc. #100.

Pursuant to 11 U.S.C. § 505(a), the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction unless such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title. 11 U.S.C. § 505(a).

However, “when Congress provided in § 505(a)(1) that the Bankruptcy Court ‘may’ under certain circumstances determine a Debtor’s taxes, it meant ‘may’ and not ‘must,’ and that this Court has broad discretion under § 505(a)(1) to abstain from such a determination.” Delafield 246 Corp. v. City of New York (In re Delafield 246 Corp.), 368 B.R. 285, 294 (Bankr. S.D.N.Y. 2007) (citing New Haven Projects, LLC v. City of New Haven (In re New Haven Projects, Ltd.), 225 F.3d 283 (2d Cir. 2000)). “[T]he principle of abstention under § 505(a)(1) is based on respect for State law and State judicial processes. The basic grant of Federal bankruptcy jurisdiction also contains a broad grant of discretion to abstain ‘in the interest of justice, or in the interest of comity with State courts or respect for State law.’ 28 U.S.C. § 1334(c)(1).” Id. at 296 (case citation omitted). “[A]bstention would be proper even if it were clear that the Debtor would be barred from any remedy by State statutes of limitation and the bankruptcy proceedings were the Debtor’s only avenue for relief.” Delafield 246 Corp., 368 B.R. at 294.

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)).

Applying the Tucson Estates factors to the Third Claim, the court finds these factors support permissive abstention as follows:

1. Effect on Administration of the Estate if Court Abstains: Abstaining from the Third Claim to permit the state court to decide the issues raised in the Third Claim will have no effect on the efficient administration of Plaintiff's bankruptcy case because Plaintiff's bankruptcy case has no assets to distribute to creditors, the only creditors in Plaintiff's bankruptcy case are Defendant and the County of Tulare, and Plaintiff's bankruptcy case is ready to be closed but for resolution of this adversary proceeding. This factor weighs in favor of permissive abstention of the Third Claim.
2. Extent to Which State Law Issues Predominate: While the determination of tax liability can involve federal bankruptcy law, tax liability for real property taxes implicates state law. Non-bankruptcy state law predominates over the bankruptcy law in regard to determining issues raised in the Third Claim. This factor weighs in favor of permissive abstention of the Third Claim.
3. Difficulty or Unsettled Nature of Applicable Law: The determination of the real property tax liability at issue in this adversary proceeding does not appear to be unsettled law. This factor weighs against permissive abstention of the Third Claim.

4. Presence of Pending Related Proceeding: According to Plaintiff's bankruptcy schedules, the State Court Action is pending in the California state court. The state court could determine the issues raised in the Third Claim if this court abstains from the Third Claim. This factor weighs in favor of permissive abstention of the Third Claim.
5. Jurisdictional Basis Other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 is not the only basis for jurisdiction. However, to the extent the existence of an alternate ground for federal jurisdiction ordinarily might weigh against abstention, this weight is offset by the plain language of 11 U.S.C. § 505, which makes the exercise of jurisdiction under § 505 permissive rather than mandatory. CM Reed Almeda 1-3062, LLC v. Harris Cnty. (In re CM Almeda 1-3062, LLC), 2017 Bankr. LEXIS 1155 (B.A.P. 9th Cir. 2017). This factor weighs in favor of permissive abstention of the Third Claim.
6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: As noted with the first Tucson Estates factor, Plaintiff's bankruptcy case has no assets to distribute to creditors, the only creditors in Plaintiff's bankruptcy case are Defendant and the County of Tulare, and Plaintiff's bankruptcy case is ready to be closed but for resolution of this adversary proceeding. This factor weighs in favor of permissive abstention of the Third Claim.
7. Substance of the Asserted Core Proceeding: The Third Claim "falls within the ambit of 28 U.S.C. § 157(b)(2)(B), which identifies as 'core' the allowance or disallowance of claims against the estate." CM Almeda, 2017 Bankr. LEXIS 1155 at*22. Moreover, the Third Claim "arises under Title 11" because § 505 in essence creates a 'cause of action' for the determination of tax liability. 28 U.S.C. § 157(a)." Id. (citing Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard), 729 F.3d 1279, 1285 (9th Cir. 2013)). However, an analysis under the seventh Tucson Estates factor requires the court to "focus on the **substance** of the 'core' proceeding. Here, that substance is a dispute over taxes arising under state law, which dispute could and would arise regardless of the intervening bankruptcy case." CM Almeda, 2017 Bankr. LEXIS 1155 at *23 (emphasis in original). This factor weighs in favor of permissive abstention of the Third Claim.
8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: "[T]he eighth Tucson Estates factor requires us to focus on the existence of state law claims and the feasibility of severing them 'from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court.'" CM Almeda, 2017 Bankr. LEXIS 1155 at *23. Again, the issues raised in the Third Claim can be brought within the context of the State Court Action, to the extent not already done. This factor weighs in favor of permissive abstention of the Third Claim.
9. Burden of Bankruptcy Court's Docket: A trial would be required if this court were to hear Plaintiff's Third Claim under 11 U.S.C. § 505. Given this court's docket, there is no reason to believe that this court could hear and determine the issues Plaintiff has raised in the Third Claim more efficiently than the state court. In addition, Plaintiff has not explained why this court should start from scratch in analyzing California law governing the assessment of real property taxes when the currently pending State Court Action can determine the issues raised in Plaintiff's Third Claim. This factor weighs in favor of permissive abstention of the Third Claim.

10. Likelihood of Forum Shopping: Here, there could be a sense of forum shopping as a result of Plaintiff's conduct, particularly in light of the fact that the State Court Action was pending when Plaintiff filed his bankruptcy case and Plaintiff listed only the County of Tulare and Defendant as creditors in his bankruptcy case. This factor weighs in favor of permissive abstention of the Third Claim.
11. Existence of Right to Jury Trial: It is unlikely that there is a right to a jury trial with respect to the issues raised in the Third Claim. This factor weighs against permissive abstention of the Third Claim.
12. Presence of Non-Debtor Parties in Related Proceeding: It is does not appear that there are parties besides Plaintiff and Defendant in the State Court Action. This factor weighs against permissive abstention of the Third Claim.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising its jurisdiction over determining the issues raised in Plaintiff's Third Claim, and especially in light of the status of Plaintiff's bankruptcy case, the court finds that cause exists to permissively abstain from the Third Claim and DISMISS WITHOUT PREJUDICE the Third Claim to permit parties to proceed in a court of competent jurisdiction.

4. FOURTH CLAIM

In Plaintiff's Fourth Claim, Plaintiff seeks the disallowance of Defendant's abatement lien because Defendant has failed to comply with the California Government Code. Specifically: (1) an unqualified code enforcement officer was appointed to oversee the administration hearing; (2) the abatement lien is invalid because of the amount and information is inaccurate; (3) Defendant received a grant for the abatement, which makes Plaintiff entitled to an offset balance by what costs were received from a grant; and (4) the abatement lien was not timely recorded. Compl. at ¶¶ 20-33, 47-56, 72, Doc. #90. The court previously analyzed whether Plaintiff could plead a claim for relief for the failure of the abatement lien to be recorded timely in section V.A., above, and concluded that no such claim for relief can survive this motion. For the same reasons, that basis for disallowing Defendant's claim also does not survive a motion to dismiss the Fourth Claim. The court now turns to the remaining three grounds for Plaintiff's Fourth Claim.

A. Unqualified Code Enforcement Officer

Plaintiff asserts that Kings County Inspector Tromborg was an unqualified code enforcement officer acting as an administrative law judge because the person needs to be an attorney at law pursuant to California Government Code § 27724. Compl. at ¶¶ 10, 57, 72, Doc. #90.

California Government Code § 27720 states that "[t]he board of supervisors of any county may establish the office of county hearing officer. The duties of the office are to conduct hearings for the county of any board, agency, commission or committee of the county." Cal. Gov't. Code § 27720. California Government Code § 27724 states that any county hearing officer, or any deputy or assistant hearing officer, appointed pursuant to this chapter, shall be an attorney at law having been admitted to practice before the courts of this state for at least five years prior to his or her appointment. Cal. Gov't. Code § 27724.

Tulare County did not create the office of County Hearing Officer until Tulare County added TCO § 1-31-110 when Tulare County adopted TCO Ord. No. 3559,

effective June 20, 2019, nearly two years after Inspector Tromborg issued the Decision.

In any event, Plaintiff previously appealed the Decision, and all proceedings related to the issuance of the Decision were decided in favor of Defendant. As discussed in more detail with respect to the Fifth Claim, because Plaintiff has already appealed any issue with respect to the Decision and any actions by the County of Tulare with respect to the abatement that occurred prior to the Decision being issued, *res judicata* bars this court from reconsidering any actions taken prior to or with respect to the Decision, including whether Inspector Tromborg was an unqualified code enforcement officer.

B. Inaccurate Cost of Abatement and Information

Plaintiff claims the Notice of Abatement Lien contains an incorrect property description, which makes the Notice of Abatement Lien invalid. Compl. at ¶ 23, Doc. #90; Ex. 1 to Compl., Doc. #93. Plaintiff states he is not referring to the address of the Property nor the APN, but the property description itself, which Plaintiff believes proves Defendant does not satisfy the requirements set out in TCO § 7-15-3770(c) to include a description of the real property. Id. After reviewing the Notice of Abatement Lien, the property description is adequate to satisfy TCO § 7-15-3770(c), so the property description is not a basis to invalidate the Notice of Abatement Lien.

Plaintiff also alleges the Abatement Warrant was missing pertinent information, which means there could not have been hearing on February 22, 2019, and Defendant misrepresented when the Abatement Warrant was actually issued, which makes the Notice of Abatement Lien invalid. Compl. at ¶ 22, Doc. #90

Neither the California Government Code nor TCO § 7-15-3770(c) require that the date of a hearing be included on Abatement Warrant or that a hearing be held prior to its issuance. The Notice of Abatement Lien must set forth the date upon which abatement was ordered, which was done here. Ex. 1 to Compl., Doc. #93. The Abatement Warrant was entered in the Tulare County Superior Court on February 22, 2019, which was the same date set out on the Notice of Abatement Lien. Doc. #90; Exs. 1 & 10 to Compl., Doc. #93. While the Abatement Warrant was signed by the Tulare County Superior Court on February 21, 2019, the Abatement Warrant was not filed until the next day, February 22, 2019. Ex. 10 to Compl., Doc. #93. A document is deemed filed on the date the clerk receives it. See Cal. Rule of Court 8.817. Thus, it is the date the Abatement Warrant was filed, not the date the Abatement Warrant was signed, that governs the effective date of the Abatement Warrant. Under applicable court rules, February 22, 2019 is the date on which the abatement was ordered and is the accurate date.

C. Offset to Abatement Costs Due to Grant

Plaintiff claims the County of Tulare was reimbursed for costs for abating the Property by way of state and federal grants that were not accounted for in the Resolution, so the Notice of Abatement Lien fails to state accurately the amount of the abatement cost for the Property. Compl. at ¶ 24, Doc. #90. To support this assertion, Plaintiff cites to the Return Abatement Warrant and claims the Return Abatement Warrant states six vehicles from the Property were abated and the cost was included in Defendant's Notice of Abatement Lien even though the cost for removal of the vehicles from the Property was allegedly already paid with state funds. Compl. at ¶ 25, Doc. #90; Ex. 3 to Compl., Doc. #93.

Defendant argues Plaintiff believes the inaccuracy is based on the allegation that Defendant used grant funds to pay for the cost of towing vehicles from the

Property and relied on California Government Code § 25845(e) but these assertions are accusations not supported by accurate law or evidence. Mtn. MPA at pp. 13-14, Doc. #100.

California Government Code § 25845(b) provides that "the owner of a parcel upon which the nuisance is found shall be liable for all costs." Cal. Gov't. Code § 25845(b). There is nothing in California Government Code § 25845(e) that refers to net costs or a right to setoff. As stated in the Notice of Intent, "the estimated costs to complete the demolition, removal and temporary storage of property you wish to reclaim is between \$80,000.00 and \$100,000.00. All costs incurred will be your sole responsibility and collected as stated above." The owner of a parcel upon which the nuisance is found shall be liable for all costs. Ex. 9 to Compl., Doc. #93.

Because a property owner is responsible for the entire costs of an abatement on their property under California law, it is irrelevant whether Tulare County may have received grant funds for such services. No claim for relief can be asserted on this basis.

D. Conclusion

The Fourth Claim, which raises disallowance as a claim for relief, fails to state a claim upon which relief can be granted on any of the grounds asserted by Plaintiff. Even if leave to amend were granted, the facts would not support a claim for relief. The court finds that permitting additional pleading of this claim would be futile.

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

5. FIFTH CLAIM

Plaintiff's Fifth Claim asserts that Defendant lacks statutory jurisdiction because Inspector Tromborg was not qualified to enter an independent decision in the administrative proceeding to determine whether or not Plaintiff's Property conditions constituted a public nuisance because Inspector Tromborg was not an administrative law judge as required under California Government Code §§ 27720, 27724, 27727. Compl. at ¶¶ 23, 73-75, Doc. #90. Plaintiff asserts that the lack of an administrative law judge where one was required deprives Defendant of statutory jurisdiction over the stated administrative hearing and rendered Inspector Tromborg's Decision void. Compl. at ¶ 75, Doc. #90.

As an initial matter, lack of statutory jurisdiction is not a claim for relief that a Plaintiff can raise in an adversary proceeding. Instead, lack of statutory jurisdiction is a defense that can be raised by Defendant in response to a complaint if the court had no legal authority to hear the claim. For that reason alone, Plaintiff's Fifth Claim for lack of statutory jurisdiction is not a claim by which relief can be granted. However, the court will address the other issues raised by Plaintiff in his Fifth Claim to further support the court's decision to deem the facts alleged do not support a claim for relief.

As stated in section V.4.A., above, Tulare County did not create the office of County Hearing Officer until Tulare County added TCO § 1-31-110 when Tulare County adopted TCO Ord. No. 3559, effective June 20, 2019, nearly two years after inspector Tromborg issued the Decision. Thus, California Government Code §§ 27720, 27724 and 27727 do not apply to Inspector Tromborg.

Defendant also argues that Plaintiff's allegations are res judicata and barred by a court order. Mtn. MPA at p. 18, Doc. #100. Plaintiff opposes this

assertion and claims that res judicata does not and cannot apply to void judgments. Opp., Doc. #102.

Res judicata, also known as claim preclusion, prohibits the litigation in a subsequent action of any claims that were raised or could have been raised in the prior action. Wells v. Deutsche Bank Nat'l Trust Co. (In re Wells), 2013 Bankr. LEXIS 4646, *17 (B.A.P. 9th Cir. 2013). The qualifications of Inspector Tromborg are not enough to show the Decision should be void. Further, there is no case law or evidence presented that would support any assertion that the writ of mandamus was void and would therefore not be barred by res judicata. Additionally, there is no evidence that shows any procedures or notice to Plaintiff was incorrect and prejudiced Plaintiff. Because the state court has already made a finding that the writ of mandamus is valid, res judicata bars the allegations asserted by Plaintiff with respect to the Decision and any actions taken prior to the Decision. This court can only consider the Notice of Intent and anything procedurally that follows to determine whether Plaintiff can allege any facts to support a claim for relief.

If Plaintiff's allegations were not barred by res judicata, Plaintiff's assertion that California Government Code §§ 27720, 27722 and 27724 were violated with respect to Inspector Tromborg also does not support a claim for relief. Compl. at ¶¶ 57-59, Doc. #90. The cited code sections either do not apply or are not mandatory because the cited provisions were not adopted by the County of Tulare at the time of the June 28, 2017 hearing. Because Defendant was not required to comply with California Government Code §§ 27720, 27722 or 27724 at the time inspector Tromborg issued the Decision, any alleged failure to comply with those statutes does not state a claim for relief.

Finally, Plaintiff believes he was deprived of notice and an opportunity to be heard with respect to the Abatement Warrant, which makes the Abatement Warrant void, and res judicata does not apply to this matter. Opp., Doc. #102. However, as stated in section V.4.B., above, neither the California Government Code nor TCO § 7-15-3770(c) require that a hearing be held prior to the issuance of an Abatement Warrant. Thus, any failure of notice and an opportunity to be heard with respect to the Abatement Warrant does not support a claim for relief.

Therefore, the Fifth Claim fails to state a claim upon which relief can be granted. Even if leave to amend were granted, the facts would not support a claim for relief. The court finds that permitting additional pleading of this claim would be futile.

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

6. SIXTH CLAIM

Plaintiff's Sixth Claim asserts that Defendant lacks personal jurisdiction. Compl. at ¶¶ 76-80, Doc. #90. Specifically, Plaintiff asserts Defendant's Notice of Intent failed to notify Plaintiff and the Previous Owners that they had a right to appeal the abatement decision to the Tulare County Board of Supervisors. Compl. at ¶ 77, Doc. #90. Plaintiff believes he was deprived of due process of law under the state and federal constitutions as well as statutory rights and any abatement order relating to this matter and issued by the Board of Supervisors is void for lack of personal jurisdiction. Compl. at ¶ 79, Doc. #90.

As an initial matter, lack of personal jurisdiction is not a claim for relief that a Plaintiff can raise in an adversary proceeding. Instead, it is a defense that can be raised by a defendant in response to a complaint if the court had no legal authority to hear the claim against the defendant. For that reason

alone, Plaintiff's Sixth Claim is not a claim in which relief can be granted. However, the court will address the other issues raised by Plaintiff in his Sixth Claim to further support the court's decision to deem the facts alleged do not support a claim for relief.

Defendant argues that there was no violation of TCO § 7-15-3590 with the Notice of Intent because TCO § 7-15-3590 governs the Notice of Violation, not the Notice of Intent. Mtn. MPA at p. 24, Doc. #100. The court agrees with Defendant.

TCO § 7-15-3580 governs when a notice of violation is served as part of an abatement proceeding, and TCO § 7-15-3590 governs what the notice of violation must include. A copy of the Notice of Violation served in the underlying abatement proceedings for the Property was dated May 4, 2017, and was attached as Exhibit B to the Decision. Ex. 8 to Compl., Doc. #93. Plaintiff provided the letter as an exhibit to the Complaint, which shows that Plaintiff received the notice of right to appeal as required by TCO § 7-15-3590. Id. By contrast, the Notice of Intent was served on January 22, 2019. Ex. 9, Doc. #93. There is no Tulare County Ordinance that requires the Notice of Intent to include a notice of right to appeal. Therefore, the alleged failure of the Notice of Intent to include a notice of right to appeal did not violate TCO §§ 7-15-3590 or 7-15-3580.

Finally, Plaintiff alleges that California Government Code § 25845(a) was violated as it "requires that owners or those in possession of the property be given notice of the abatement proceeding and an opportunity to appear before the board of supervisors and be heard prior to the abatement of the nuisance by the county." Cal. Gov't. Code § 25845(a). However, Plaintiff's mother, who owned the property at the relevant time, filed an appeal to the Tulare County Board of Supervisors on September 26, 2017. Compl. at ¶ 12, Doc. #90. The Right to Appeal attached to the Decision states that the property owners had ten calendar days to appeal the Decision to the Board of Supervisors, which Plaintiff's mother did. Id.; Ex. 8 to Compl., Doc. #93. Therefore, there is no evidence or law cited to show that California Government Code § 25845 was violated, as notice was received by the owner of the Property.

Therefore, the Sixth Claim, which raises lack of personal jurisdiction as a claim for relief, fails to state a claim upon which relief can be granted. Even if leave to amend were granted, the facts would not support a claim for relief. The court finds that permitting additional pleading of this claim would be futile.

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

VI. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND as to the First Claim, Second Claim, Fourth Claim, Fifth Claim and Sixth Claim. The court abstains from the Third Claim and dismisses the Third Claim without prejudice to being raised by Plaintiff in a court of competent jurisdiction.

3. [24-12861](#)-A-7 **IN RE: HOUA YANG**
[24-1043](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-28-2024 [[1](#)]

YANG V. CKS PRIME INVESTMENTS, LLC ET AL
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A default judgment in favor of the plaintiff was entered on January 29, 2025. Doc. #39. Accordingly, this status conference is dropped from calendar. This adversary may be administratively closed when appropriate.

4. [23-12163](#)-A-7 **IN RE: THRIVE SPORTS INC.**
[24-1015](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-11-2024 [[1](#)]

FEAR V. EAGLE MOUNTAIN CASINO
DISMISSED 12/24/24; CLOSED 1/13/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on December 24, 2024. Doc. #63.

5. [23-12163](#)-A-7 **IN RE: THRIVE SPORTS INC.**
[24-1015](#) [WAS-4](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-1-2024 [[23](#)]

FEAR V. EAGLE MOUNTAIN CASINO
RACHEAL WHITE HAWK/ATTY. FOR MV.
DISMISSED 12/24/24; CLOSED 1/13/25

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on December 24, 2024. Doc. #63.

6. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[24-1020](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
7-30-2024 [[1](#)]

HACIENDA HOMEOWNERS FOR JUSTICE ET AL V. LA HACIENDA
TINHO MANG/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[24-1020](#) [OHS-2](#)

CONTINUED MOTION FOR REMAND
8-28-2024 [[25](#)]

HACIENDA HOMEOWNERS FOR JUSTICE ET AL V. LA HACIENDA
MARC LEVINSON/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

8. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[24-1027](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-21-2024 [[1](#)]

LA HACIENDA MOBILE ESTATES, LLC V. CITY OF FRESNO ET AL
ADAM BOLT/ATTY. FOR PL.

NO RULING.

9. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[24-1027](#) [JJB-2](#)

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
10-21-2024 [[26](#)]

LA HACIENDA MOBILE ESTATES, LLC V. CITY OF FRESNO ET AL
JONATHAN BELAGA/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

10. [24-12873](#)-A-11 **IN RE: GRIFFIN RESOURCES, LLC**
[WJH-4](#)

CONTINUED MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
MOTION FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION
11-22-2024 [[58](#)]

GRIFFIN RESOURCES, LLC/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.