

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 28, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

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. [17-14800](#)-B-7 **IN RE: BRENDA HEARON**
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-18-2018 [\[13\]](#)

STATEBRIDGE COMPANY, LLC/MV
SYLVIA BLUME/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 will be denied without prejudice for failure to comply with Local Bankruptcy Rule 9014-1(d)(3)(B)(iii). New Local Rules of Practice in the Eastern District became effective on September 26, 2017. In particular, Rule 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.

2. [17-14819](#)-B-7 **IN RE: AARON/KALLIE GARCIA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-25-2018 [\[10\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
D. GARDNER
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on December 21, 2017 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law. Also, there is no evidence the debtors notified the movant in writing of their desire to assume the lease or if so, the movant has notified the debtors expressing their willingness to have the lease assumed. 11 U.S.C. §365(p)(2).

Movant may submit an order denying the motion, and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted. No attorney fees will be awarded in relation to this motion.

3. [17-14130](#)-B-7 **IN RE: MARCO GONZALEZ AND BEATRIZ DEL CAMPO**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-26-2018 [[55](#)]

FREEDOM MORTGAGE
CORPORATION/MV
GRISELDA TORRES
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The moving papers do not include an appropriate Docket Control Number as required by LBR 9014-1(c). The movant has previously used Docket Control Number JCW-1 in this case.

4. [17-14036](#)-B-7 **IN RE: SANDRA SANCHEZ STONE**
[PPR-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-23-2018 [[26](#)]

MB FINANCIAL BANK/MV
SCOTT LYONS
ALEXANDER MEISSNER/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Granted in part and denied as moot in part.

ORDER: No appearance is necessary. The Moving Party shall
 submit a proposed order in conformance with the
 ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtor because her discharge was entered on February 6, 2018. The motion will be granted for cause shown as to the chapter 7 trustee.

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

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been surrendered and the discharge has been entered.

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

5. [17-14639](#)-B-7 **IN RE: ISALINO/MARTHA FONTES**
[MDE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-2018 [[13](#)]

CIT BANK, N.A./MV
JANINE ESQUIVEL
MARK ESTLE/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

The proposed order shall specifically describe the property or action to which the order relates.

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

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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

6. [17-14646](#)-B-7 **IN RE: IRA/KESHIA HARTLEY**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-9-2018 [[15](#)]

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

DISPOSITION: Conditionally denied.

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

The debtors shall attend the continued meeting of creditors rescheduled for March 5, 2018 at 11:00 a.m. in Fresno Meeting Room 1450. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

7. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-2](#)

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
2-13-2018 [[44](#)]

FRANCES ALARCON/MV
TIMOTHY SPRINGER

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. Federal Rule of Bankruptcy Procedure 4003(b)(1) allows parties in interest to object to an amended Schedule C within 30 days after the filing of the amended Schedule.

In this case, an amended Schedule C was filed on February 13, 2018. Docket #54. The 30 day deadline ends on March 15, 2018. Movant may refile, properly serve and set for hearing a motion to avoid lien for any court date available for hearing after March 15, 2018.

8. [11-62257](#)-B-7 **IN RE: FRANCES ALARCON**
[TCS-3](#)

MOTION TO AVOID LIEN OF CAPITAL COLLECTIONS, LLC
2-13-2018 [\[50\]](#)

FRANCES ALARCON/MV
TIMOTHY SPRINGER

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. Federal Rule of Bankruptcy Procedure 4003(b)(1) allows parties in interest to object to an amended Schedule C within 30 days after the filing of the amended Schedule.

In this case, an amended Schedule C was filed on February 13, 2018. Docket #54. The 30 day deadline ends on March 15, 2018. Movant may refile, properly serve and set for hearing a motion to avoid lien for any court date available for hearing after March 15, 2018.

9. [16-12266](#)-B-7 **IN RE: AVTAR SINGH**
[TMT-3](#)

OBJECTION TO CLAIM OF SUKHJINDER SINGH, CLAIM NUMBER 10
1-15-2018 [\[95\]](#)

TRUDI MANFREDO/MV
MARK ZIMMERMAN
TRUDI MANFREDO/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Resolved by stipulation of the parties.

10. [17-11381](#)-B-7 **IN RE: VERNON SILVA**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-22-2018 [[29](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
MARK ZIMMERMAN
JAMIE HANAWALT/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Granted in part and denied as moot in part.

ORDER: No appearance is necessary. The Moving Party shall
submit a proposed order in conformance with the
ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The motion will be denied as moot as to the debtor because his discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee.

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

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

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

11. [17-14781](#)-B-7 **IN RE: JORGE/SELMA GONZALEZ**
[JES-1](#)

MOTION TO EMPLOY BAIRD'S AUCTIONS AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
1-30-2018 [\[19\]](#)

JAMES SALVEN/MV
PETER FEAR
IRMA EDMONDS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled because
the motion documents are ambiguous as to the
description of the vehicle.

DISPOSITION: Granted.

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

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. It appears that the employment and sale are a reasonable exercise of the trustee's business judgment.

This motion is GRANTED. The proposed order shall specify whether the vehicle to be auctioned is a 2007 or a 1971 Dodge Charger. The proposed order shall also reflect that the commission is limited to 15% of the sale price, costs are capped at \$500.00, and the auctioneer may receive a buyer's premium of 10% on the purchase price payable by the buyer.

12. [17-14885](#)-B-7 **IN RE: KRISTINA BEHNKE**
[VVF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
2-8-2018 [\[15\]](#)

HONDA LEASE TRUST/MV
LISA HOLDER
VINCENT FROUNJIAN/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
shall submit a proposed order after hearing.

This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion for relief from the automatic stay will be granted. This motion relates to an executory contract or lease of personal property. The time prescribed in 11 U.S.C. §365(d)(1) for the lease to be assumed by the chapter 7 trustee has not yet run and, pursuant to § 365 (p)(1), the leased property is still property of the estate and protected by the automatic stay under § 362(a).

The proposed order shall specifically describe the property.

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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

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

13. [17-14587](#)-B-7 **IN RE: JOAQUIN CASTILLO**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-9-2018 [[12](#)]

SCOTT LYONS

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

DISPOSITION: Conditionally denied.

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

The debtors shall attend the continued meeting of creditors
rescheduled for March 5, 2018 at 10:00 a.m. in Fresno Meeting Room
1450. If the debtors fail to do so, the chapter 7 trustee may file a
declaration with a proposed order and the case may be dismissed
without a further hearing.

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

14. [15-12689](#)-B-7 **IN RE: MARK HANSEN**

OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM
NUMBER 7-1
1-9-2018 [[135](#)]

MARK HANSEN/MV
MARK HANSEN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Constitutional due process requires that the movant (the debtor and
the objector here) make a *prima facie* showing that they are entitled
to the relief sought. Here, the objection does not present
"sufficient factual matter, accepted as true, to 'state a claim to
relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503
B.R. 804, 811 (9th Cir. BAP, 2014), citing *Ashcroft v. Iqbal*, 556
U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S.
544, 570 (2007).

This objection is OVERRULED for failure to comply with the Local Rules of Practice ("LBR"), the Federal Rules of Bankruptcy ("Fed. R. Bankr. P."), and for failure to make a prima facie case. The substantive arguments the debtor makes have been dismissed in a pending adversary proceeding, case no. 17-01042, docket #88.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the web page under "COURT INFORMATION," "Local Rules & General Orders." The rules may also be obtained at the Clerk's counter on the second floor of the District Court. The newest rules came into effect on September 26, 2017.

First, there was no Docket Control Number ("DCN"). LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about 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 or objection applicable here requires a new DCN.

A DCN, MRH-9, was included on the caption page of the notice of hearing (docket #138), but not on the motion (docket #135), nor the proof of service (docket #136). Therefore this objection does not comply with the LBR.

Second, there was no evidence provided supporting the objection. LBR 9014-1(d)(1) states that every request for an order (including a claim objection) shall be comprised of a motion or other request for relief (e.g. disallowance of a claim), notice, evidence, and a certificate of service. Additionally, LBR 9014-1(d)(3)(D) states that the evidence must establish the motion's or objection's factual allegations and demonstrate that the movant (objector here) is entitled to the relief requested.

This objection does not contain any evidence supporting the debtor's factual contentions. No declaration was filed, no exhibits were filed, and no other evidence was filed. Therefore this objection does not comply with the LBR.

Third, 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. Movant's notice contained no such language. Therefore this objection does not comply with the LBR.

Fourth, Claimant, an LLC, was not served properly. Service did not comply with Fed. R. Bankr. P 7004(b)(3) or 7004(b)(7).

Fed. R. Bankr. P 7004(b)(3) requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated

association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

Here, the Claimant, Ocwen Loan Servicing LLC, must be served "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process..." The certificate of service filed with this objection names Timothy Hayes, General Counsel, at 2002 Summit Boulevard, Sixth Floor, in Atlanta, GA 30319 as the individual served. Timothy Hayes is not an officer, a managing or general agent, but general counsel, and without any evidence provided to the court proving otherwise, the court must deny without prejudice on these grounds. A business search on the California Secretary of State's website did not reveal Mr. Hayes to be a managing member of the LLC, and the website listed an address in Florida, not Georgia.

Fed. R. Bankr. P 7004(b)(7) states that service is "sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served . . . by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state." Without the court explaining the state law *ad nauseam*, California Code of Civil Procedure §§ 416.10 through 416.50 are the code sections that explain how to serve business entities like Ocwen Loan Servicing LLC under California procedural law. The service of this objection did not comply.

Fifth, the motion does not comply with LBR 3007-1. This rule is about objections to proofs of claim, and requires the objection to include (1) the name of the claimant, (2) the date the proof of claim was filed, (3) the amount of the claim, (4) the number of the claim as it appears on the claims register maintained by the court, and (5) unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be allowed.

Movant's objection did include the name of the claimant and the number of the claim, but the objection did not include the date the proof of claim was filed, the amount of the claim, nor any evidence to support the factual allegations. Therefore this objection does not comply with LBR 3007-1.

Sixth, even if the above deficiencies were not present or ignored by the court, the objection should still be overruled. Debtor's objection is in violation of Fed. R. Bankr. P. 3007(b). Rule 3007(b) states that a party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding. Rule 7001(2) states that an adversary proceeding is "a proceeding to determine the validity, priority, or extent of a lien or other interest in property..."

This objection to proof of claim is no more than a ghost of the adversary proceeding which is concurrently being litigated. The relief debtor seeks in this objection is substantially identical to the relief sought in the adversary proceeding, namely, a determination of the validity of a lien in property. All but one of the claims raised in debtor's complaint in said proceeding were dismissed without leave to amend. Docket # 88. No matter how debtor may disguise those claims in this objection, the court has carefully reviewed this objection and finds the arguments raised and the claims the debtor made are substantially identical to those dismissed in the adversary proceeding. A review of said claims and the court's previous analysis follows (substantially found in Doc # 88 in the Adversary Proceeding):

Debtor asserts that MERS, inter alia, has no rights to transfer any interest in the deed of trust or to take any action with regard to the deed of trust. Docket #135, ¶¶9-17. The California Court of Appeals has also rejected this argument, finding that

the deed of trust...establishes as a factual matter that his claims lack merit. As stated in the deed of trust, Gomes agreed by executing that document that MERS has the authority to initiate a foreclosure. Specifically..."MERS (as nominee for Lender and Lender's successors and assigns) has...the right to foreclose and sell the Property." The deed of trust contains no suggestion that the lender or its successors and assigns must provide [the borrower] with assurances that MERS is authorized to proceed with a foreclosure at the time it is initiated. [The borrower's] agreement that MERS has the authority to foreclose thus precludes him from pursuing a cause of action premised on the allegation that MERS does not have the authority to do so.

Gomes v. Countrywide Home Loans, Inc., 192 Cal. App. 4th 1149, 1157 (Cal. App. Ct. 2011). Because it is not plausible, the debtor has not pled or established a prima facie case to disallow the claim.

Debtor's "securitization" argument also fails on its face, alleging, for instance, that "securitization" of the Note removed any security interest against a specific property. But "the securitization of a loan does not in fact alter or affect the legal beneficiary's standing to enforce the deed of trust." Nordeen v. Bank of Am. N.A. (In re Nordeen), 495 B.R. 468, 479 (9th Cir. B.A.P. 2013). "[T]he borrower's loan contract...is distinct and separate from any securities transaction in the 'secondary market' encompassing assignment of the contract." *Id.* at 479-80. The Nordeen court stated that "the bankruptcy court did not err in rejecting and dismissing the Nordeens' claims based on their Securitization Theory, and its rulings are consistent with repeated determinations of the district courts sitting in Nevada and Arizona and elsewhere in the Ninth Circuit." *Id.* at 478. This claim lacks a cognizable legal theory and is therefore

not plausible. Because it is not plausible, the debtor has not made a prima facie case for disallowance of the claim.

Therefore this objection is in violation of Fed. R. Bankr. P. 3007(b).

Seventh, the court notes that the creditor filed a response to this objection, albeit late. The Notice of Hearing, which was filed by movant on January 10, 2018 (docket #138) stated that a written response must be filed at least 14 days prior to the hearing. 14 days prior to the hearing was February 14, 2018. This response was filed on February 20, 2018. Docket #140. However, the court notes that the Notice of Hearing was never served on Ocwen (just the Objection and that was not served properly), and if it was properly served, a proof of service in the form of a certificate of service, as required by LBR 9014-1(e)(2), was never filed with the court.

The court also notes, as the response explains, that debtor alleged that creditor's security interest in the property is invalid due to the fact that the Proof of Claim, which debtor filed under 11 U.S.C. § 501(c), was inadequate. Docket #135, ¶¶ 6 and 7. Debtor's reasoning, that the proof of claim he filed is invalid because the proof of claim "failed to set forth any documentation demonstrating that Ocwen is the holder of a secured loan on debtor's property," inter alia, fails on its face.

This was a "no asset" case. No party needed to file a proof of claim. The debtor chose to do so and object to the claim but the basis for the objection has been litigated except for one claim (forgery) which this objection does not raise. Even if it was raised, this is not the proper forum given the pending adversary proceeding dealing with the same issues.

The dismissal of the claims in the Adversary Proceeding without leave to amend acts an adjudication on the merits under FRCP 41(b) (FRBP 7041). See, Wagh v. Metris Direct, 348 F. 3d 1102, 1113 (9th Cir. 2003) overruled on other grounds Odom v. Microsoft Corp., 486 F. 3d 541, 551 (9th Cir., en banc 2007); Eminence Capital, LLC v. Asperon, Inc., 316 F. 3d 1048, 1052 (9th Cir., 2003). See also, Federated Department Stores v. Moite, 452 U.S. 384, 398-99; 101 S.Ct. 2424, 2428 (1981)[*res judicata* effect of dismissal on the pleading].

Even if the ruling on the motion to dismiss is not "final" for claim preclusion purposes, the court has been given no factual or legal basis to depart from the "law of the case" doctrine in this objection. The doctrine generally precludes a court from "reconsidering an issue that already has been decided by the same court or a higher court in the identical case." Rodriguez v. County of Los Angeles, 96 F. Supp. 3d 990, 997 (C.D. Cal. 2014) quoting U.S. v. Alexander, 106 F. 3d 874, 876 (9th Cir. 2001). The legal deficiencies in debtor's position here were described by the court in partially granting

claimant's Motion to Dismiss in the adversary proceeding are again present here (see above).

The debtor here has provided no new or any evidence supporting the objection. The debtor has not cited any new controlling authority that would change the court's prior ruling on the motion to dismiss. No argument or evidence has been presented establishing the court's decision on the motion to dismiss was clearly erroneous. The debtor has not provided any legal or factual basis suggesting that application of the "law of the case" doctrine here would result in an injustice. The debtor has presented no changed circumstances warranting a different result. See, Handi Inv. Co. v. Mobil Oil Corp., 653 F. 2d 391, 392 (9th Cir. 1981) citing Kimball v. Callahan, 590 F. 2d 768, 772 (9th Cir.) cert. den. 444 U.S. 826 (1979); White v. Murtha, 377 F. 2d 428 (5th Cir. 1967).

For the reasons above, this objection is OVERRULED.

15. [14-14593](#)-B-7 **IN RE: WAYNE HEAD**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
1-31-2018 [[200](#)]

JAMES SALVEN/MV
DAVID JENKINS

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

Mr. Salven will be awarded fees of \$4,025.00 and costs of \$244.97.

16. [17-13296](#)-B-7 **IN RE: LARRY CHAMPAGNE**
[DRJ-3](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
2-5-2018 [[45](#)]

LARRY CHAMPAGNE/MV
DAVID JENKINS

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
an order extending the deadline to March 30,
2018.

This motion was filed and served pursuant to LRB 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 was brought under Fed. R. Bankr. P. 4004(b) and 4007(c), which both require the court to find "cause" in order to extend the time to object to discharge (4004(b)) and to file a complaint under 11 U.S.C. § 523(c) to determine dischargeability (4007(c)). The four "cause" factors which a court should consider are: (1) whether the moving party had sufficient notice of the deadline and information to file an objection; (2) the complexity of the case; (3) whether the moving party has exercised diligence; and (4) whether the debtor has been uncooperative or acted in bad faith. In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011), citing In re Nowinski, 291 B.R. 302 (Bankr. S.D.N.Y. 2003).

Here, the moving party has had sufficient notice of the deadline and information to file an objection - movant "is fully prepared to commence an adversary proceeding against debtor." Docket #45, ¶3. The case is not complex, the moving party has exercised diligence, and the debtor has been cooperative and not acted in bad faith. Movant and debtor participated in BDRP in good faith, have mutually agreed on a settlement agreement, and is actively working to meet the terms of the agreement in order to avoid an adversary proceeding.

Movants have been diligent in their efforts as evidenced by their completion of BDRP; both parties are requesting this extension so there is no inconvenience to the opposing party nor the court; and while the movant may not suffer harm if the bankruptcy court denied this motion, it would not be in the best interests of the movants.

Therefore this motion is GRANTED and the deadline is extended to March 30, 2018.

17. [16-11598](#)-B-7 **IN RE: DIANNE LEE**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-29-2018 [\[43\]](#)

SANTANDER CONSUMER USA INC./MV
JAMES MILLER
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

The proposed order shall specifically describe the property or action to which the order relates.

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

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

18. [16-11598](#)-B-7 **IN RE: DIANNE LEE**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-17-2018 [\[37\]](#)

WELLS FARGO BANK, N.A./MV
JAMES MILLER
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted in part/Denied in part.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

The proposed order shall specifically describe the property or action to which the order relates.

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

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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

11:00 AM

1. [18-10104](#)-B-7 **IN RE: TONI BERRONES**

PRO SE REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
2-7-2018 [[12](#)]

NO RULING.

2. [17-14454](#)-B-7 **IN RE: WESLEY/CARIN HILL**

REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
1-24-2018 [[12](#)]

TIMOTHY SPRINGER

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors 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 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.

3. [17-14663](#)-B-7 **IN RE: AMBER HOLBROOK**

REAFFIRMATION AGREEMENT WITH TD RETAIL CARD SERVICES
1-22-2018 [[14](#)]

JEFFREY ROWE

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor's counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

4. [17-14565](#)-B-7 **IN RE: ROYAL/PATRICIA GOODMAN**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
2-7-2018 [[17](#)]

NO RULING.

1:30 PM

1. [16-10643](#)-B-12 **IN RE: MARK FORREST**
[16-1088](#) [DCS-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MARK ALAN FORREST
1-17-2018 [[48](#)]

MADRIGAL V. FORREST
DANIEL STEIN/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: No appearance is necessary. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014- 1(f)(1)(B) is considered as consent 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.

It appears from the moving papers that the trustee has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to FRBP 9019 is a reasonable exercise of the DIP's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the plaintiff Augustin Madrigal and defendant Mark Forrest. The claims were precipitated when plaintiff provided farm labor for defendant's farms and loaned him money to keep his farms running and producing.

Under the terms of the compromise, the defendant does not object to the allowance of Plaintiff's claim in the amount of \$50,786.64; the Trustee will pay Plaintiff the total amount of the claim over five years; the Plaintiff will be immediately entitled to payment from the bankruptcy estate of 1/5 of the claim (\$10,157.33); yearly payments in the amount of \$10,157.33 shall be made by the Chapter 12 Trustee to the Plaintiff in accordance with the terms of the Chapter 12 plan ("Plan") until completion of the Plan and the close of the Chapter 12 case; and if defendant materially defaults under the Plan, any outstanding amount on Plaintiff's claim will be reduced to a stipulated judgment between the parties to the underlying lawsuit and Plaintiff will have all rights remaining to proceed against Defendant as to the issue of dischargeability, including but not limited to the right to claim that the remaining amount on any stipulated judgment shall not be dischargeable as a result of any applicable provision of 11 U.S.C. § 523.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is highly likely; collection will be very easy as there has been projected enough money in the bankruptcy estate to pay Plaintiff's claim in full over five years without compromising any of the other classes of claims; also, the collection risk is tied to success of the Plan which is the same risk other creditors with claims provided for by the Plan must accept; while the litigation is not incredibly complex, settlement is more advantageous than requiring litigation, and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED.

This ruling is not authorizing the payment of any fees or costs associated with the litigation. Also, should the Plan need to be modified, the debtor shall do so as required by law. Nothing in this ruling is meant to modify the Plan.

Additionally, the court reminds counsel that Local Bankruptcy Rules 9004-2(c)(1) and 9014-1(d)(4) require that exhibits, inter alia, filed in a motion "shall be filed as separate documents."

Here, the exhibits were included in the motion, docket #48, and not filed separately.

2. [11-15871](#)-B-13 **IN RE: RANDY/PATRICIA BOYD**
[17-1082](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-26-2017 [[1](#)]

BOYD ET AL V. VERIPRO
SOLUTIONS, INC. ET AL
GABRIEL WADDELL/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [17-11376](#)-B-7 **IN RE: HECTOR MERCADO MUNOZ AND MIRTA MERCADO**
CARDENAS

[17-1092](#)

STATUS CONFERENCE RE: COMPLAINT
12-26-2017 [[1](#)]

BRAVO CAPITAL, LLC V. MERCADO
ANDREW ALPER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court reminds counsel that Local Bankruptcy Rules 9004-2(c)(1) and 9014-1(d)(4) require that exhibits, inter alia, filed "shall be filed as separate documents."

Here, the exhibits were included in the complaint, docket #1, and not filed separately.

4. [15-12689](#)-B-7 **IN RE: MARK HANSEN**
[17-1042](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
1-24-2018 [[96](#)]

HANSEN V. OCWEN LOAN
SERVICING, LLC ET AL
MARK HANSEN/ATTY. FOR PL.

NO RULING.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
12-28-2017 [[1](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 25, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

At the request of defendant, and because the parties have agreed to continuances of hearings regarding several procedural motions filed in this adversary proceeding, this status conference will be continued to April 25, 2018 at 1:30 p.m.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-1](#)

MOTION FOR REMAND
1-24-2018 [[17](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
HAGOP BEDOYAN/ATTY. FOR MV.

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

DISPOSITION: Continued to March 12, 2018 at 10:30 a.m.

ORDER: The court will issue an order.

Per stipulation of the parties, this motion is continued to March 12, 2018 at 10:30 a.m.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1001](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL
1-4-2018 [[1](#)]

GRAHAM PREWETT, INC. V. TULARE
LOCAL HEALTHCARE DISTRICT
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED. Dismissed by stipulation of the parties.