

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, March 9, 2017
Place: U.S. Courthouse, 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**
2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.
3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.
4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.
5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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.

9:00 A.M.

1. [10-61900](#)-B-13 EDWARD/DEBRA COPELAND MOTION TO AVOID LIEN OF CAPITAL
PK-10 ONE BANK (USA), N.A.
EDWARD COPELAND/MV 2-9-17 [[241](#)]
PATRICK KAVANAGH/Atty. for dbt.

The motion will be denied without prejudice. No appearance is necessary. The court will enter an order.

There is nothing in the record that shows that the motion was served on respondent in compliance with FRBP 7004.

The court notes that the notice of motion filed in this matter does not comply with the requirements for such notices. LR 9014-1(d)(4).

2. [15-11302](#)-B-13 DENISE WILEY MOTION TO MODIFY PLAN
RSW-5 1-17-17 [[83](#)]
DENISE WILEY/MV
ROBERT WILLIAMS/Atty. for dbt.

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [16-12407](#)-B-13 KEVIN/NICCOLE LOUISE MOTION TO DISMISS CASE
MHM-3 STONE 2-8-17 [[57](#)]
MICHAEL MEYER/MV
PHILLIP GILLET/Atty. for dbt.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown. The court will issue an order. No appearance is necessary.

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. Essentially, the trustee's motion is based on the failure of the debtor to obtain an order valuing the real property located at 3905 Loudon St. Bakersfield, after that motion was granted on January 5, 2017.

4. [16-12411](#)-B-13 CANDACE WILKERSON MOTION TO APPROVE LOAN
RSW-5 MODIFICATION
CANDACE WILKERSON/MV 2-7-17 [[74](#)]
ROBERT WILLIAMS/Atty. for dbt.

The motion will be granted without oral argument. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. The court does not approve or disapprove the terms of a mortgage modification outside of a chapter 13 plan. See *In re Wofford*, 449 B.R. 362 (Bankr. W.D. Wis. 2011). However, the court will authorize the debtor to enter into a modification agreement on terms to be negotiated between the debtor and the mortgagee so long as modification of the mortgage does not interfere with the debtor duties and trustee's administration of the chapter 13 plan. If the modification does so interfere, movant shall continue to perform under the plan and seek a modification of the plan. The court notes that this claim was scheduled in class 4 of the plan and thus is being paid directly by the debtor.

5. [16-13816](#)-B-13 ROBERT/CHRISTINE MC DUFF MOTION TO DISMISS CASE
MHM-1 2-6-17 [[23](#)]
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.

This matter will proceed unless it is withdrawn. The trustee's motion to dismiss the case is based on the debtors' failure to file and notice motions to value their residence as to judicial liens held by CACH, LLC, Capital One, and Portfolio Recovery. The court has reviewed the debtors' tardy response and it appears that the CACH, LLC, matter has been resolved through a stipulation, and the court intends to grant the debtors' motion below, at calendar number 6 (RSW-2). However the record does not show a resolution of any matter involving Capital One, and this motion has not been withdrawn.

6. [16-13816](#)-B-13 ROBERT/CHRISTINE MC DUFF MOTION TO AVOID LIEN OF
RSW-2 PORTFOLIO RECOVERY ASSOCIATES,
ROBERT MC DUFF/MV LLC
2-17-17 [[28](#)]
ROBERT WILLIAMS/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and 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. 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.

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

7. [16-13427](#)-B-13 JASON/NATASHA BATSON MOTION TO DISMISS CASE
MHM-1 1-26-17 [[41](#)]
MICHAEL MEYER/MV
PATRICK KAVANAGH/Atty. for dbt.
RESPONSIVE PLEADING

This motion is denied as moot. The court will enter an order. No appearance is necessary.

This case has been voluntarily converted to one under chapter 7 and compliance with the terms of the chapter 13 plan is no longer relevant.

8. [16-13427](#)-B-13 JASON/NATASHA BATSON MOTION TO VALUE COLLATERAL OF
PK-3 WELLS FARGO FINANCIAL NATIONAL
JASON BATSON/MV BANK
2-14-17 [[51](#)]

PATRICK KAVANAGH/Atty. for dbt.

This motion is denied as moot. The court will enter an order. No appearance is necessary.

This case has been voluntarily converted to one under chapter 7 and this valuation motion is not permitted in a chapter 7 case.

9. [16-13427](#)-B-13 JASON/NATASHA BATSON MOTION TO VALUE COLLATERAL OF
PK-4 COMENITY CAPITAL BANK/ZALES
JASON BATSON/MV 2-15-17 [[58](#)]
PATRICK KAVANAGH/Atty. for dbt.

This motion is denied as moot. The court will enter an order. No appearance is necessary.

This case has been voluntarily converted to one under chapter 7 and this valuation motion is not permitted in a chapter 7 case.

10. [16-11129](#)-B-13 DAVID/LINDA MILAZZO MOTION FOR COMPENSATION BY THE
LKW-5 LAW OFFICE OF LEONARD K. WELSH
FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
2-16-17 [[106](#)]

LEONARD WELSH/Atty. for dbt.

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion as to Comenity Capital Bank only. 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.

11. [16-14636](#)-B-13 ERIKA CENDEJAS
DWE-1
WELLS FARGO BANK, N.A./MV
PAULDEEP BAINS/Atty. for dbt.
DANE EXNOWSKI/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
2-16-17 [[25](#)]

This matter will be continued to April 6, 2017, at 9:00 a.m. The court will issue an order. No appearance is necessary.

The trustee has not yet concluded the meeting of creditors and by prior order of the court, the trustee has another 7 days after completion of the creditors' meeting to file his objection to the plan. At the continued hearing, if the § 341 has been concluded and this objection has not been withdrawn, the court will call the matter and set an evidentiary hearing.

12. [16-13549](#)-B-13 MATEO/ROSALIE HERNANDEZ
MHM-1
MICHAEL MEYER/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO DISMISS CASE
1-13-17 [[23](#)]

Unless it is withdrawn prior to the hearing, this motion will proceed as scheduled.

The trustee's motion is based on the debtors' failure to set a plan for hearing with notice to creditors. However, the record shows that the debtors' case was filed September 29, 2016, and that they filed their chapter 13 plan on October 11, 2016, 11 days later pursuant to LR 3015-1(c)(1). Pursuant to LR 3015-1(c)(2), the debtors are not required to notice creditors of the filing of their plan under the requirements of LR 3015-1(d)(1) if the plan is filed by or before 14 days after the case is filed.

13. [16-12653](#)-B-13 EDWARD HITTU
MHM-1
MICHAEL MEYER/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
11-29-16 [[16](#)]

This matter will proceed as scheduled.

14. [16-12653](#)-B-13 EDWARD HITTU
RSW-1
EDWARD HITTU/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
1-4-17 [[22](#)]

This matter will proceed as scheduled.

15. [16-14260](#)-B-13 OLUSEGUN LERAMO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-1-17 [[38](#)]

FRANCISCO ALDANA/Atty. for dbt.

The OSC will be vacated. This case has already been dismissed. No appearance is necessary.

16. [16-14260](#)-B-13 OLUSEGUN LERAMO
MHM-2
MICHAEL MEYER/MV
FRANCISCO ALDANA/Atty. for dbt.
DISMISSED

MOTION TO DISMISS CASE
1-26-17 [[34](#)]

The motion will be denied as moot. This case has already been dismissed on the trustee's unopposed motion, MHM-1. No appearance is necessary.

17. [16-13670](#)-B-13 FRANCISCO/REBECCA MENDOZA
NLG-1
KERN SCHOOL FEDERAL CREDIT
UNION/MV
ROBERT WILLIAMS/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
WITHDRAWN

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY KERN
SCHOOLS FEDERAL CREDIT UNION
12-1-16 [[14](#)]

The objection to confirmation has been withdrawn. No appearance is necessary.

18. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-10

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
2-15-17 [[157](#)]

LEONARD WELSH/Atty. for dbt.

This matter 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.

19. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-5
SHELBY KING/MV

OBJECTION TO CLAIM OF NORTHERN
CALIFORNIA COLLECTION SERVICES,
CLAIM NUMBER 8
1-12-17 [[113](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

The hearing will proceed as scheduled. The hearing will be a scheduling conference.

The court has insufficient proof by either debtors/objectors or by claimant to make a ruling on this objection and the parties should be prepared to discuss discovery and dates for scheduling of an evidentiary hearing.

The debtors object to allowance of an amended proof of claim filed by claimant NCCS on September 15, 2016. The claim is \$5,608.71 for allegedly unpaid interest, court costs and attorney's fees, stemming from NCCS's claim for unpaid workers compensation premiums. The debtors contend the liability is that of Our Valley Fence, Inc., a corporation, and not these debtors. These debtors were principals and officers of the corporation. NCCS claims the insured was a partnership, similarly named Our Valley Fence Company, and that these debtors were general partners and therefore liable jointly and severally.

Upon objection, the proof of claim provides some evidence as to its validity and amount and is strong enough to carry over a mere formal objection without more. *Lundell v. Anchor Const. Specialties Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) citing *Wright v. Holm (In re Holm)* 931 F.2d 620, 623 (9th Cir. 1991). To defeat the claim the objector must come forward with sufficient evidence to show facts tending to defeat the claim by probative force equal to that of the allegations in the proof of claim itself. *Lundell*, 223 F. 3d at 1039. The ultimate burden of persuasion remains at all times upon the claimant. *Id.*; *In re Holm*, 921 F.2d at 923.

First, the debtor's evidence is largely hearsay. The only supporting evidence is the declaration of debtor's counsel. The only personal knowledge established by debtor's counsel is that the debtor's dispute the claim as being enforceable against the debtors. That does not amount to evidence of any probative force to defeat the claim.

Second, that deficiency would be enough to overrule the objection if the claims (both original and amended) filed by NCCS established liability. They do not in light of an objection. There is nothing attached to the amended claim to show any basis for the charges allegedly owed by the debtors. The initial claim filed May 25, 2016, in the amount of \$30,330.75 has attachments including invoices directed to the corporation. The lawsuit cover page lists the debtors as defendants without any explanation of their alleged liability.

Third, the exhibits submitted in opposition are at most ambiguous. Most interesting is the "Partners Exclusion" dated August 22, 2014. The exclusion signed by the debtors and others clearly states the businesses

(whether corporate or a partnership) are operated as a partnership. The debtors and others sign as "general partners." The Rating Form is ambiguous because it lists the corporation and the shareholder as "partner." The Rating Endorsement does the same. The Endorsement Agreement states that Our Valley Fence Inc. changed its form to "Our Valley Fence, Inc. and/or" various partners including the debtors. The CSLB Licensing detail says Our Valley Fence Company was a partnership and identifies the licensees. The partnership is listed as having the germane worker's compensation insurance policy during the relevant period and that is not disputed by the debtors. That does not establish the partner's liability for this claim.

20. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-6
SHELBY KING/MV

OBJECTION TO CLAIM OF STATE
COMPENSATION INSURANCE FUND,
CLAIM NUMBER 13
1-12-17 [[119](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

This objection will be denied as moot. The record shows that claim number 13 has been withdrawn. No appearance is necessary.

21. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-7
SHELBY KING/MV
LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

OBJECTION TO CLAIM OF AMERICAN
EXPRESS BANK, CLAIM NUMBER 16
1-12-17 [[125](#)]

This matter will proceed as scheduled.

It appears there is a legal dispute regarding the affect of the cardmember agreement on the liability of the debtor for this debt.

The court notes that the exhibits were not filed in compliance with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.A-C, and accordingly, the exhibits were not reviewed by the court. If this matter is not resolved at the hearing, the exhibits must be properly re-filed if claimant wishes them to be considered.

22. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-8
SHELBY KING/MV

OBJECTION TO CLAIM OF
WESTCHESTER FIRE INSURANCE
COMPANY, CLAIM NUMBER 23
1-12-17 [[132](#)]

LEONARD WELSH/Atty. for dbt.
RESPONSIVE PLEADING

The hearing will proceed as a scheduling conference. Claimant has requested an evidentiary hearing. The parties should be prepared to set deadlines and provide estimates for the time an evidentiary hearing will require and when it can be scheduled.

The debtors object to the allowance of claim number 23 filed by Westchester Fire Insurance Company ("claimant" or "WFIC") on September 7, 2016, in the estimated amount of \$66,466, on two grounds. First, that the claim is asserted against these debtors solely because of their capacities as corporate principals of Our Valley Fence, Inc. Second, that there is no factual basis for claimant to simply estimate the claim.

WFIC contends in opposition that the written indemnity agreement between WFIC and these debtors was not only executed by the debtors in their corporate capacity but also in their individual capacities indemnifying WFIC for any payments made or expenses incurred pursuant to the payment and performance bond issued by WFIC. They also contend the evidence submitted in support of the objection is inadequate to affect the allowance of the claim.

There are numerous issues to be determined including:

1. What are the debtor's defenses to the indemnity agreement, if any?
2. What is the status of the "91 Freeway widening project?"
3. Has WFIC the ability to collect from another source?
4. Have all requisites to indemnitor liability under the agreement been met?
5. Has WFIC's claim been liquidated? The opposition states the claim is nearly \$108,000.00 at this time.

These and other issues need to be addressed in the appropriate proceeding.

23. [16-11473](#)-B-13 SHELBY/CAROL KING
LKW-9
SHELBY KING/MV

OBJECTION TO CLAIM OF
INTERNATIONAL FIDELITY
INSURANCE COMPANY, CLAIM NUMBER
26
1-12-17 [[138](#)]

LEONARD WELSH/Atty. for dbt.

The objection will be sustained without oral argument based on well-pled facts. The objecting party shall submit a proposed order. No appearance is necessary.

The court is sustaining this unopposed objection on procedural grounds only and is not ruling on its merits.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's default 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.

The claim will be disallowed in full on the grounds stated in the objection, without prejudice to the claimant's right to file an amended proof of claim. Any amendment to the claim shall be filed and served on the trustee within 30 days from service of the order. The objecting party shall prepare the proposed order, serve the signed order on the creditor at its address of record and file a proof of service within 14 days.

The court notes that the objection does not rest on the tardiness of the proof of claim; the proof of claim, however, was filed after the bar date.

The court has reviewed the late response to this objection to proof of claim and the terms of the unexecuted stipulation drafted by the objecting party. The response appears to be related to the contention of the objecting party that it did not have notice of the debtors' bankruptcy filing in time to file a timely claim.

The court lacks equitable discretion to enlarge the time to file proofs of claim. It may enlarge the filing time only according to exceptions in the Bankruptcy Code and Rules. *In re Gardenhire*, 209 F.3d 1145, 1147-48 (9th Cir. 2000).

An omitted creditor who did not receive notice or have actual knowledge of the filing in time to file a timely proof of claim has a remedy under §523(a)(3)(A), specifically incorporated in §1328(a)(2), excepting its claim from discharge. The provisions of §523(a)(3) are self-effectuating, *In re Petty*, 491 B.R. 554, 559 (8th BAP, 2013), and, in the absence of an adversary proceeding brought by the debtor that results in a determination to the contrary, these claims are excepted from the chapter 13 discharge.

24. [12-60481](#)-B-13 TERRY/DELENA HALL
PK-6
TERRY HALL/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO MODIFY PLAN
1-4-17 [[86](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

25. [16-13781](#)-B-13 GEREMY LATTA
MHM-1
MICHAEL MEYER/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
2-3-17 [[15](#)]

This motion will be denied as moot. The court will enter an order. No appearance is necessary.

The motion is based on the debtor's failure to file, serve, and set for hearing a motion to value the debtor's automobile. The court has reviewed the debtor's timely response and the record shows that a motion to value this vehicle was filed on February 8, 2017, and was set for a hearing on this calendar. Accordingly, no further relief appears appropriate or necessary.

26. [16-13781](#)-B-13 GEREMY LATTA
NES-3
GEREMY LATTA/MV

NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO VALUE COLLATERAL OF
AMERICREDIT FINANCIAL SERVICES,
INC.
2-8-17 [[19](#)]

Based on the respondent's opposition, this matter will be continued to April 6, 2017, at 9:00 a.m. This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The debtor shall make the subject property available for inspection on reasonable notice. The parties shall immediately commence formal discovery, exchange appraisals, meet and confer, set deposition dates if necessary, and be prepared for the court to set an early evidentiary hearing if the matter is not resolved by the continued hearing date. The court will issue an order. No appearance is necessary.

27. [16-13489](#)-B-13 JIMMY CANNON

SYSTEMS & SERVICES
TECHNOLOGIES, INC./MV

PHILLIP GILLET/Atty. for dbt.
TYNEIA MERRITT/Atty. for mv.

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY SYSTEMS
& SERVICES TECHNOLOGIES, INC.,
AMENDED MOTION TO DISMISS CASE
2-23-17 [[55](#)]

The objection will be overruled and the motion to dismiss will be denied. The court will enter an order. No appearance is necessary.

The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).

In addition, it appears the objection is untimely.

28. [15-11993](#)-B-13 MARIA ROSALES
RSW-3
MARIA ROSALES/MV
ROBERT WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO MODIFY PLAN
12-12-16 [[57](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice. The trustee has withdrawn his opposition. There is no other opposition and those respondents' defaults will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

9:30 A.M.

1. [16-13002](#)-B-12 WILLIAM/TRACY GREENLEE

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
8-17-16 [[1](#)]

LEONARD WELSH/Atty. for dbt.

This matter will be continued to April 6, 2017, at 9:30 a.m., to be heard with the motion to confirm the modified chapter 12 plan. The court will enter an order. No appearance is necessary.

2. [16-10643](#)-B-12 MARK FORREST
LKW-11

MOTION FOR COMPENSATION FOR
LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
2-15-17 [[165](#)]

LEONARD WELSH/Atty. for dbt.

This matter 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.

10:00 A.M.

1.	16-13420 -B-7	CASEY/KRISTI REIHNER	MOTION FOR RELIEF FROM
	JCW-1		AUTOMATIC STAY
	JPMORGAN CHASE BANK, NATIONAL		1-24-17 [28]
	ASSOCIATION/MV		
	JENNIFER WONG/Atty. for mv.		

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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 to the extent that it applies. A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted.

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

2. [10-15127](#)-B-7 NORMA BAKER
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF
HFC/HSBC
2-14-17 [[57](#)]

This motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

The motion suffers from numerous defects attributable to lack of familiarity with the Local Rules of Bankruptcy Practice in the E.D. of California. These defects include, but may not be limited to:

1. The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).
2. The form and/or content of the notice do not comply with LBR 9014-1(d) (2), (4), and (7).
3. The notice and pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section I.D; Section II.A, D, E; Section III.D; Section IV.B; Section V.A, C.
4. There is nothing in the record to show the motion was served on anyone.

This case was reopened to permit the debtor to file several motions to avoid liens on real property. If this motion is not properly filed, served, and set for hearing within 30 days the case will be re-closed and an additional fee will be required to reopen the case.

3. [10-15127](#)-B-7 NORMA BAKER
NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE
2-14-17 [[60](#)]

This motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

The motion suffers from numerous defects attributable to lack of familiarity with the Local Rules of Bankruptcy Practice in the E.D. of California. These defects include, but may not be limited to:

1. The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).
2. The form and/or content of the notice do not comply with LBR 9014-1(d) (2), (4), and (7).
3. The notice and pleadings do not comply with the Local Rules of

Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section I.D; Section II.A, D, E; Section III.D; Section IV.B; Section V.A, C.

4. There is nothing in the record to show the motion was served on anyone.

This case was reopened to permit the debtor to file several motions to avoid liens on real property. If this motion is not properly filed, served, and set for hearing within 30 days the case will be re-closed and an additional fee will be required to reopen the case.

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| 4. 10-15127 -B-7 NORMA BAKER

NORMA BAKER/MV
WILLIAM EDWARDS/Atty. for dbt. | MOTION TO AVOID LIEN OF CAPITAL
ONE
2-14-17 [63] |
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This motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

The motion suffers from numerous defects attributable to lack of familiarity with the Local Rules of Bankruptcy Practice in the E.D. of California. These defects include, but may not be limited to:

1. The moving papers do not include an appropriate docket control number as required by LBR 9014-1(c).
2. The form and/or content of the notice do not comply with LBR 9014-1(d)(2), (4), and (7).
3. The notice and pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section I.D; Section II.A, D, E; Section III.D; Section IV.B; Section V.A, C.
4. There is nothing in the record to show the motion was served on anyone.

This case was reopened to permit the debtor to file several motions to avoid liens on real property. If this motion is not properly filed, served, and set for hearing within 30 days the case will be re-closed and an additional fee will be required to reopen the case.

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| 5. 17-10037 -B-7 GEORGE FLUD
APN-1 | MOTION FOR RELIEF FROM
AUTOMATIC STAY |
|---|--|

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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 notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted. The record shows no insurance is being maintained on the vehicle and the debtor has scheduled it to be surrendered.

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.	17-10039 -B-7	EDRICO/YVONNE OLIVER	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	NISSAN-INFINITI, LT/MV		1-25-17 [11]
	NEIL SCHWARTZ/Atty. for dbt.		
	AUSTIN NAGEL/Atty. for mv.		

This motion for relief from the automatic stay will be denied as moot. No appearance is necessary.

This motion relates to an executory contract or lease of personal property. The case was filed on January 8, 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. 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.

7.	17-10039 -B-7	EDRICO/YVONNE OLIVER	MOTION FOR RELIEF FROM
	SW-1		AUTOMATIC STAY
	ALLY BANK/MV		2-13-17 [18]

NEIL SCHWARTZ/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

This matter will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtors' and the trustee's defaults and grant the motion for relief from stay.

The automatic stay will be 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 movant shall submit a proposed order after hearing that specifically describes the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted. The record shows that the property is in the 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).

8.	16-11349 -B-7	ARMANDO/JUDITH BELVEDERE	MOTION TO AVOID LIEN OF MICHELE
	PK-3		NOURAFCHAN
	ARMANDO BELVEDERE/MV		2-9-17 [30]
	PATRICK KAVANAGH/Atty. for dbt.		

This matter will be continued to April 6, 2017, at 10:00 a.m. The court will issue an order. No appearance is necessary. Additional evidence shall be filed and served on or before March 23, 2017.

The debtors shall file evidence to show that the debtors possessed an interest in the subject property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991).

In addition, an amended declaration must be filed that is consistent with the motion with regard to the value of the residence and the amount of the non-avoidable secured loan. The declaration filed is inconsistent with the motion.

9. [16-14472](#)-B-7 SWARAN SINGH
RAS-3
HITACHI CAPITAL AMERICA
CORP./MV
RICHARD SOLOMON/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-8-17 [[31](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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 notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied. The movant has failed to prove there is any equity in the collateral and thus no fees can be awarded pursuant to §506(b). Adequate protection is unnecessary in light of the relief granted herein.

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).

The court makes no finding as to who is the appropriate holder of the lien interest in the property.

10. [16-13285](#)-B-7 PAUL COOPER
ELR-2
ALTAONE FEDERAL CREDIT
UNION/MV
ASHTON DUNN/Atty. for dbt.
ERIKA RASCON/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
12-14-16 [[34](#)]

This matter will proceed as scheduled.

11. [11-19886](#)-B-7 JOEL/ELIZABETH GALVAN
PK-5
JOEL GALVAN/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF FORD
MOTOR CREDIT COMPANY, LLC
2-14-17 [[52](#)]

This matter 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.

12. [11-19886](#)-B-7 JOEL/ELIZABETH GALVAN
PK-6
JOEL GALVAN/MV
PATRICK KAVANAGH/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK
2-14-17 [[59](#)]

This matter 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.

13. [16-14490](#)-B-7 MARY CALDERON
APN-1
SANTANDER CONSUMER USA INC./MV
PATRICK KAVANAGH/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-25-17 [[13](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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 notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted. The record shows no insurance is being maintained on the vehicle and the property is scheduled to be surrendered.

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).

14. [16-13397](#)-B-7 CHRISTOPHER/BRITTANY
SMS-1 GATHINGS
CHRISTOPHER GATHINGS/MV
STEVEN STANLEY/Atty. for dbt.

MOTION TO AVOID LIEN OF HERBERT
P. SEARS CO., INC.
1-11-17 [[19](#)]

This matter will be continued to April 6, 2017, at 10:00 a.m. The court will issue an order. No appearance is necessary. Additional evidence shall be filed and served on or before March 23, 2017.

The debtors shall file evidence to show that the debtors possessed an interest in the subject property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991).

15. [16-13397](#)-B-7 CHRISTOPHER/BRITTANY MOTION TO AVOID LIEN OF JAMIE
SMS-2 GATHINGS BAKER
CHRISTOPHER GATHINGS/MV 1-11-17 [[25](#)]
STEVEN STANLEY/Atty. for dbt.

This matter will be continued to April 6, 2017, at 10:00 a.m. The court will issue an order. No appearance is necessary. Additional evidence shall be filed and served on or before March 23, 2017.

The debtors shall file evidence to show that the debtors possessed an interest in the subject property to which the judgment lien could have attached at the time the judgment lien was recorded. *Farrey v. Sanderfoot*, 111 S.Ct. 667 (1991).

1:30 P.M.

1. [10-16183](#)-C-7 SALMA AGHA STATUS CONFERENCE RE: COMPLAINT
[16-1107](#) 12-15-16 [[1](#)]
AGHA-KHAN V. BANK OF AMERICA
ET AL
SALMA AGHA-KHAN/Atty. for pl.

This matter will be dropped from calendar. No appearance is necessary. The reference of the case to the bankruptcy court has been withdrawn by order of the district court dated February 23, 2017.

2. [10-16183](#)-C-7 SALMA AGHA MOTION TO DISMISS ADVERSARY
[16-1107](#) PD-1 PROCEEDING/NOTICE OF REMOVAL
AGHA-KHAN V. BANK OF AMERICA 2-3-17 [[11](#)]
ET AL
EDDIE JIMENEZ/Atty. for mv.

This matter will be dropped from calendar. No appearance is necessary. The reference of the case to the bankruptcy court has been withdrawn by order of the district court dated February 23, 2017.