

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 1, 2021
Place: Department A - Courtroom #11
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [20-11200](#)-A-7 **IN RE: MANPREET/RAMANDEEP BRAR**
[NES-4](#)

MOTION TO AVOID LIEN OF CAPITAL FUNDING, LLC
3-3-2021 [\[62\]](#)

RAMANDEEP BRAR/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Manpreet Singh Brar and Ramandeep Kaur Brar (collectively, "Debtors"), the debtors in this Chapter 7 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 Leaf Capital Funding, LLC ("Creditor") on their residential real property commonly referred to as 5022 Villa Bella Lane, Bakersfield, CA 93311 (the "Property"). Doc. #62; Am. Schedule C, Doc. #60.

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 section 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 section 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)).

A judgment was entered against Manpreet Brar in the amount of \$24,226.51 in favor of Creditor on November 15, 2019. Ex. D, Doc. #66. The abstract of judgment was recorded in Kern County on January 22, 2020. Ex. D, Doc. #66. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #60. The Property also is encumbered by a lien in favor of PennyMac in the amount of \$259,026.73. Am. Schedule D, Doc. #49. Debtors claim an exemption of \$100,000.00 in the Property under California Code of Civil Procedure ("C.C.P.") § 704.950. Am. Schedule C, Doc. #60; see earlier Am. Schedule C, Doc. #49 (claiming exemption in C.C.P. § 704.730). Debtors assert a market value for the Property as of the petition date at \$355,000.00. Am. Schedule A/B, Doc. #60; Decl. of Marco Caracas ¶ 4, Doc. #64; Decl. of [Debtors] ¶ 3, Doc. #65.

Applying the statutory formula:

Amount of Leaf Capital Funding, LLC's judicial lien		\$24,226.51
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$259,026.73
Amount of Debtors' claim of exemption in the Property	+	\$100,000.00
	sum	\$383,253.24
Value of Debtors' interest in the Property absent liens	-	\$355,000.00
Amount Creditor's lien impairs Debtors' exemption	=	\$28,253.24

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.

2. [18-14905](#)-A-13 **IN RE: TRACEY PRITCHETT**
[TCS-7](#)

CONTINUED MOTION TO MODIFY PLAN
1-7-2021 [\[116\]](#)

TRACEY PRITCHETT/MV
NANCY KLEPAC/ATTY. FOR DBT.
TIMOTHY SPRINGER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Tracey Lavelle Pritchett ("Debtor") filed and served this motion to confirm the sixth modified Chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set for hearing on February 25, 2021 at 9:30 a.m. Doc. ##116-122. The Chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #123. The court continued this matter to April 1, 2021 and ordered Debtor to file and serve a written response to Trustee's objection by March 11, 2021; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by March 18, 2021. Doc. #126.

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 objection 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 the sixth modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

3. [16-14288](#)-A-13 **IN RE: RYAN/NIKOLE EKIZIAN**
[FW-4](#)

MOTION TO MODIFY PLAN
2-8-2021 [\[68\]](#)

NIKOLE EKIZIAN/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 13, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the second modified Chapter 13 plan. Tr.'s Opp'n, Doc. #81. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than April 15, 2021. 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 debtors' position. Trustee shall file and serve a reply, if any, by April 22, 2021.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 22, 2021. If the debtors do 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.

11:00 AM

1. [20-11908](#)-A-13 **IN RE: BRIAN/STEPHANIE RICH**
[21-1003](#)

STATUS CONFERENCE RE: COMPLAINT
2-1-2021 [[1](#)]

RICH ET AL V. ASPEN PROPERTIES GROUP, LLC AS TRUSTEE OF AG3
PETER BUNTING/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 1, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on March 23, 2021, the status conference will be continued to July 1, 2021, at 11:00 a.m.

The parties shall file and serve a joint or unilateral status report(s) not later than June 24, 2021.

2. [19-15321](#)-A-7 **IN RE: MARIA RAMIREZ**
[20-1037](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-9-2020 [[1](#)]

FEAR V. RAMIREZ ET AL
KELSEY SEIB/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

On March 23, 2021, the parties stipulated to dismiss the adversary proceeding with prejudice. Doc. #42. Therefore, the status conference will be dropped from calendar.

3. [02-10437](#)-A-13 **IN RE: MARK STEINHAUER**
[20-1064](#) [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
3-2-2021 [\[19\]](#)

STEINHAUER ET AL V. HSBC FINANCE CORPORATION
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure any 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). 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 in part.

Mark Edward Steinhauer and Marsha J. Steinhauer-Brazeal (together, "Plaintiffs") commenced this adversary proceeding by filing a complaint on November 24, 2020 (the "Complaint"). Adv. Proc. No. 20-01064, Doc. #1. By the Complaint, Plaintiffs sought a judgment from the court declaring the satisfaction and discharge of the deed of trust held by HSBC Finance Corporation, successor of acquired corporation Household Finance Corporation of California ("Defendant"). This court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1).

Defendant failed to respond to the Complaint. On January 29, 2021, Plaintiffs filed a request for entry of default (Doc. #11), and, on February 2, 2021, the United States Bankruptcy Court Clerk filed the Entry of Default. Doc. #14. Plaintiffs now move for default judgment (the "Motion"). Doc. #19. Defendant has not responded.

In support of the Motion, Plaintiffs request the court take judicial notice of six documents: (1) the Deed of Trust recorded June 17, 1994 as document number 1994-99165 in the office of the Fresno County Recorder ("Deed of Trust"); (2) Plaintiffs' chapter 13 plan filed as Doc. #4 in bankruptcy case number 02-10437-A-13, United States Bankruptcy Court, Eastern District of California (the "Bankruptcy Case"); (3) the Order Confirming Plan and Valuing Collateral filed as Doc. #19 in the Bankruptcy Case (the "Confirmation Order"); (4) the Discharge of Debtor After Completion of Chapter 13 Plan filed as Doc. #29 in the Bankruptcy Case; (5) the Preliminary Final Report and Account filed as Doc. #28 in the Bankruptcy Case; and (6) a document entitled "division of corporations - filing" printed from the Delaware Department of State, Division of Corporations website accessed on November 19, 2020. Doc. #22.

Federal Rule of Evidence 201(b) provides the criteria for judicially noticed facts. Courts may take judicial notice of matters of public record, and the

court takes judicial notice of the Deed of Trust recorded in Fresno County. See Rosal v. First. Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009). As to the documents filed in the Bankruptcy Case, the records of court proceedings cannot reasonably be questioned, and the court takes judicial notice of those documents. The court takes judicial notice of the division of corporations - filing document as a website of a government agency. See U.S. ex rel Modglin v. DJO Glob. Inc., 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014). The court does not take judicial notice of the truth of the contents of any documents. Faulkner v. M & T Bank (In re Faulkner), 593 B.R. 263, 273 n.2 (Bankr. E.D. Pa. 2018).

Federal Rule of Civil Procedure 55, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055, "gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." Televideo, 826 F.2d at 917. "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Factors which may be considered by the court in exercising discretion as to the entry of default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

The facts set out in the Complaint are as follows. Plaintiffs were chapter 13 bankruptcy debtors whose chapter 13 plan was confirmed on May 9, 2002. Bankr. Case No. 02-10437, Doc. #19. At the time Plaintiffs filed their Bankruptcy Case, Plaintiffs owed a debt to Defendant secured by the Deed of Trust on Plaintiffs' residence located at 206 E. Thomas Ave., Fresno, CA 93728 and recorded in Fresno County. Compl. ¶¶ 11-12, Doc. #1. As part of the Confirmation Order confirming Plaintiffs' chapter 13 plan, the bankruptcy court granted Plaintiffs' motion to value the collateral of Household Finance Corporation of California, Defendant's acquired corporation. Ex. C, Doc. #23. In the Confirmation Order, the court determined the replacement value of the collateral and the secured claim of Defendant to be \$0.00, and ordered any deficiency be allowed as a general unsecured claim. Ex. C, Doc. #23. Upon completion of the chapter 13 plan, Plaintiffs were granted a discharge under 11 U.S.C. § 1328(a) on April 3, 2007. Ex. E, Doc. #23. The completion of Plaintiffs' chapter 13 plan and subsequent discharge resulted in the satisfaction of the obligation secured by Defendant's Deed of Trust, and California law required Defendant to reconvey the Deed of Trust within thirty calendar days after the obligation was satisfied, which Defendant failed to do. Compl. ¶¶ 19, 36-38, Doc. #1. Because Defendant failed to reconvey the required documents, Plaintiffs request a judgment declaring the debt owed to Defendant satisfied and the Deed of Trust avoided. Compl. Prayer, Doc. #1. Plaintiffs also sought money damages, but Plaintiffs are not pursuing that relief as part of this Motion. Mot. § III, Doc. #19.

The court finds that entry of default judgment is appropriate in this case. The merits of Plaintiffs' claim, the sufficiency of the Complaint, and the lack of the possibility of disputes concerning material fact favor entering default judgment.

Plaintiffs completed their chapter 13 plan payments and were granted a chapter 13 discharge, satisfying the debt owed to Defendant. California Civil Code § 2941(b) requires the reconveyance of the note and Deed of Trust on satisfaction of the obligation. In California, a deed of trust is generally

extinguished by payment in an amount which satisfies the lien. Bank of New York Mellon v. Citibank, N.A., 8 Cal. App. 5th 935, 945-46 (2017). "However, it has long been recognized that whether the payment of a debt operates to release the lien of a mortgage depends on the mortgage's terms and conditions." Id. at 946 (citations omitted). The Deed of Trust states that "[u]pon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee." Deed of Trust ¶ 19, Ex. A, Doc. #23.

Under the terms of the Deed of Trust, Defendant should have taken the steps necessary to extinguish the lien at least in 2007 when Plaintiffs received their discharge. Defendant failed to do so, and Plaintiffs are entitled to have the Deed of Trust extinguished. However, California Civil Code § 2941(b) provides clear procedures for executing a full reconveyance of the Deed of Trust upon satisfaction of the underlying obligation. Plaintiffs have not explained or provided legal support for this court to avoid the Deed of Trust beyond the procedure for reconveyance of the Deed of Trust as provided by California statute. To the extent Plaintiffs seek a determination from this court that the Deed of Trust is avoided, that relief is denied without prejudice for lack of legal authority.

Accordingly, Plaintiffs' Motion for Entry of Default Judgment is GRANTED in part. The court will enter a judgment determining that Plaintiffs have satisfied their obligation to Defendant that is secured by the Deed of Trust. The satisfaction of that debt by Plaintiffs operates as a release of the lien created by the Deed of Trust. The judgment shall further provide that Plaintiffs are authorized, but not required, to take any and all steps necessary to effectuate a full reconveyance of the Deed of Trust in accordance with the procedures set forth in California Civil Code § 2941(b).

4. [18-14546-A-7](#) **IN RE: LANE ANDERSON**
[20-1062](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-5-2020 [\[1\]](#)

FEAR V. RODGERS ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[20-1056](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-1-2020 [\[1\]](#)

AHMED V. LUNA MANZO ET AL
DAVID GILMORE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar

ORDER: The court will issue an order.

An order dismissing the bankruptcy case was entered on March 11, 2021.
Doc. #151. Therefore, the status conference will be dropped from calendar.
This adversary may be administratively closed when appropriate.