



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Wednesday, April 19, 2023**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

**Post-Publication Changes:** 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 any possible updates.

9:30 AM

1. [22-11806](#)-B-13     **IN RE: GUSTAVO/ARACELI CERVANTES**  
[MHM-2](#)

MOTION TO DISMISS CASE  
3-16-2023    [[30](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:     Continued to May 10, 2023, at 9:30 a.m.

ORDER:             The court will issue an order.

The trustee's motion to dismiss will be continued to May 10, 2023 at 9:30 a.m. to be heard with the debtors' motion to confirm plan. TCS-2.

2. [16-10433](#)-B-13     **IN RE: DEAN GALLOWAY**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
3-3-2023    [[70](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this motion to dismiss on April 14, 2023. Doc. #82. Accordingly, the motion will be dropped and taken off calendar pursuant to the withdrawal.

3. [23-10243](#)-B-13     **IN RE: JAMES/REYNA SALAS**  
[DRT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PRESTIGE FINANCIAL  
SERVICES  
3-7-2023     [[15](#)]

PRESTIGE FINANCIAL SERVICES/MV  
JEFFREY ROWE/ATTY. FOR DBT.  
DIANA TORRES-BRITO/ATTY. FOR MV.

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Prestige Financial Services withdrew its objection to plan confirmation on April 13, 2023. Doc. #31. Accordingly, the objection will be dropped and taken off calendar pursuant to the withdrawal.

4. [20-11186](#)-B-13     **IN RE: JOSE RECILLAS**  
[TCS-5](#)

MOTION TO MODIFY PLAN  
3-10-2023     [[84](#)]

JOSE RECILLAS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
DISMISSED 03/02/2023

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

DISPOSITION:     Denied as moot.

ORDER:     The court will issue an order.

The court entered an order dismissing this case on March 2, 2023. Docs. ##76-77. On April 3, 2023, the court denied the debtor's request for an order vacating the dismissal. Docs. #91; #93. Accordingly, this motion to modify plan will be DENIED AS MOOT because the case has been dismissed.

11:00 AM

1. [21-10523](#)-B-7     **IN RE: ZARINA ROSENFELD**  
[23-1018](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL,  
MOTION FOR A MORE DEFINITE STATEMENT  
3-16-2023    [[9](#)]

EDMONDS V. ROSENFELD ET AL  
LAYNE HAYDEN/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Withdrawn; taken off calendar.

NO ORDER REQUIRED.

On April 7, 2023, defendant Zarina Rosenfeld withdrew her motion to dismiss and filed an answer. Docs. ##13-14. Accordingly, this motion to dismiss will be dropped and taken off calendar pursuant to the withdrawal.

2. [21-10523](#)-B-7     **IN RE: ZARINA ROSENFELD**  
[23-1018](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
2-17-2023    [[1](#)]

EDMONDS V. ROSENFELD ET AL  
PETER SAUER/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

3. [22-11127](#)-B-7     **IN RE: SCOTT FINSTEIN**  
[22-1017](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-19-2022    [[1](#)]

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG V. FINSTEIN  
KAREL ROCHA/ATTY. FOR PL.

NO RULING.

On March 1, 2023, the court noted that Scott Finstein ("Defendant") failed to file an answer by the deadline to do so, and therefore, this status conference was continued to April 19, 2023. Doc. #43. National Union Fire Insurance Company of Pittsburgh ("Plaintiff") was directed to seek entry of Defendant's default. *Id.* Docs #44.

Plaintiff requested entry of Defendant's default on April 14, 2023, but the request did not include a statement that Defendant is not an infant or incompetent person. Doc. #47.

This status conference will be called and proceed as scheduled.

4. [22-11943](#)-B-7     **IN RE: RAYMOND KRAUSE**  
[23-1017](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
2-16-2023     [[1](#)]

LABOR COMMISSIONER, STATE OF CALIFORNIA V. KRAUSE, III  
FELICIA ESPINOSA/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of the parties' joint discovery plan and status conference statement. Doc. #9. This status conference will be called and proceed as a scheduling conference. The parties shall be prepared to discuss scheduling dates and filing deadlines.

5. [20-13855](#)-B-11     **IN RE: MOHOMMAD KHAN**  
[21-1026](#)     [DCN-5201](#)

RESCHEDULED HEARING RE: MOTION TO SET ASIDE DISMISSAL OF  
CASE  
1-3-2023     [[44](#)]

KHAN V. WILMINGTON TRUST N.A

TENTATIVE RULING:     This matter will be called as scheduled.

DISPOSITION:     Denied.

ORDER:     The court will issue an order.

*Pro se* debtor Mohammad Khan, also known as Mohommad Mahmood Khan in other pleadings ("Plaintiff"), moves to set aside the dismissal, without leave to amend and with prejudice, of his adversary proceeding against Wilmington Trust, N.A. ("Defendant").<sup>1</sup> Doc. #44.

Plaintiff's adversary proceeding was dismissed on September 24, 2021. Doc. #23. Plaintiff moved to set aside the dismissal on September 26, 2022. Doc. #31.

On December 20, 2022, the court denied this motion to set aside the dismissal. Docs. ##40-41. On January 3, 2023, Plaintiff simultaneously filed this motion and a notice of appeal with respect to the court's order denying the motion to aside dismissal. Docs. ##44-45. That appeal is presently pending. B.A.P 9th Cir., EC-23-1004.

On April 14, 2023, Plaintiff filed an amended notice for this motion, which continued the hearing to June 14, 2023 without court approval. Doc. #58.

Since Plaintiff is *pro se*, this matter will be called as scheduled. The court intends to DENY this motion for lack of jurisdiction because Plaintiff filed a notice of appeal.

The filing of a notice of appeal is an event of jurisdictional significance that confers jurisdiction on the court of appeals and divests the district court of its control over the aspects of the case involved in the appeal. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

Although the filing of a notice of appeal generally divests a bankruptcy court of jurisdiction, a motion timely filed under Fed. R. Bankr. P. ("Rule") 9023 or 9024 effectively suspends the notice until disposition of the motion. Rule 8002(b)(1), (b)(2); *Dressler v. Seeley Co. (In re Silberkraus)*, 336 F.3d 864, 869 (9th Cir., 2003); *Moldo v. Ash (In re Thomas)*, 428 F.3d 1266, 1269 (9th Cir. 2005); *In re Adelphia Communs. Corp.*, 327 B.R. 175 (Bankr. S.D.N.Y. 2005).

"An appellate court is entitled to review a fixed, rather than a mobile, record." *FTC v. Enforma Nat. Prods.*, 362 F.3d 1204, 1215 n.11 (9th Cir., 2004), quoting *Kern Oil & Ref. Co. v. Tenneco Oil Co.*, 840 F.2d 730, 734 (9th Cir. 1988). Additional findings that "move the target are disfavored." *Id.* Additional findings that merely "set the target in place" however are acceptable. *Id.*

In this case, Plaintiff appealed the order denying his motion to aside dismissal and filed this motion within 14 days of that order. The court has already ruled on Plaintiff's motion to set aside dismissal. This "new" motion raises the issues already decided. A ruling by this court contrary to its previous ruling muddies the record and would not maintain the *status quo*. A contrary finding would result in multiple repetitive motions, continually extending the time to appeal. The trial court has already ruled on the request to set aside the dismissal of the adversary proceeding.

There are narrow exceptions to the jurisdictional bar: determining attorney's fees, *Budnich v. Becton Dickenson & Co.*, 486 U.S. 196, 202-03 (1988); to correct a clerical error under Rule 60(a), *Stein v.*

*Wood*, 127 F. 3d 1187, 89 (9th Cir., 1997); or ruling on issues or matters not appealed, *Castaic Partners II, LLC v. DACA-Castaic, LLC* (*In re Castaic Partners II, LLC*), 823 F.3d 966, 969 n.3 (9th Cir. 2016).

Even if this court had jurisdiction to rule on Plaintiff's motion, it would be denied for the following reasons.

First, Defendant was not properly served. Doc. #49. Defendant is a bank insured by the Federal Deposit Insurance Corporation ("FDIC"), so it is an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC).<sup>2</sup>

Service on insured depository institutions in adversary proceedings is governed by Fed. R. Bankr. P. ("Rule") 7004(h), which requires service to be made by certified mail and addressed to an officer, unless one of three exceptions specified in subsections (h)(1) to (h)(3) have been met. There is no indication that any of these exceptions apply.

Here, Plaintiff served the motion to reopen case and supporting documents on Defendant's attorney, Wright Finlay Zak, LLP. Doc. #49. As was the case at the September 22, 2021 hearing in which this case was dismissed and the December 20, 2022 hearing when this court denied Plaintiff's motion to set aside dismissal, Plaintiff entirely failed to properly serve Defendant. Despite repeatedly notifying Plaintiff in this action and related proceedings, he has made no attempt to ever correct these deficiencies.

Second, Plaintiff did not advise respondents whether and when opposition must be filed and served. Doc. #44. LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. For motions filed on 28 days or more of notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing. Furthermore, LBR 9014-1(d)(3)(B)(i) also requires the notice to include the names and addresses of persons who must be served with any opposition.

Third, Plaintiff failed to include the required disclosures in the notice of hearing regarding the court's pre-hearing dispositions that are available on the court's website. Doc. #44. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine: (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the prehearing dispositions prior to the hearing.



Fourth, continuances without court approval are not permitted. LBR 9014-1(j). Plaintiff's amended motion and notice constitutes an unauthorized continuance, which warrants denial of this motion.

Fifth, Rule 9024 incorporates Fed. R. Civ. P. ("Civ. Rule") 60(b) and permits the court to grant relief from a final judgment, order, or proceeding based on (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Civ. Rule 59(b); (3) fraud, misrepresentation, or misconduct; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Civ. Rule 60(b). Such request must be made "within a reasonable time" generally, and within one year when requested under Civ. Rule 60(b)(1), (b)(2), or (b)(3). Civ. Rule 60(c).

Though Plaintiff is correct that his last motion to set aside dismissal under Civ. Rule 60(b) was timely filed because the one-year deadline on September 24, 2022 was extended to September 26, 2022 under Rule 9006(a)(1)(C), such timeliness does not change the result here.

At bottom, Plaintiff contends that Defendant violated the automatic stay by foreclosing on Debtor's residence at 1810 Mora Ave., Calistoga, CA 94515 ("Property") on December 22, 2020. This court erred, says Plaintiff, when we found that the automatic stay was not in effect on December 22, 2020 at the time Defendant foreclosed on Property.

However, this court did not err because Property was subject to an *in rem* relief from stay order at the time Defendant foreclosed on Property. Plaintiff's business partner, Bruce Chadbourne, filed at least six bankruptcy cases in the Northern District of California between 2015 and 2019. All six cases were dismissed pre-confirmation. In the sixth case, Case No. 19-10346, Defendant filed a motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4). On July 8, 2019, the Honorable Dennis Montali issued an order denying as moot Defendant's motion under § 362(d)(1) and (d)(2) because the case had already been dismissed but granted the motion under § 362(d)(4). An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

Although Chadbourne appealed that order, there is no indication that it was ever stayed pending the outcome of the appeal. Case No. 20-60054 (9th Cir.). "Unless stayed, a federal judgment retains all of its preclusion effects and may be enforced during the pendency of the appeal." *In re Sunergy Cal. LLC*, Nos. 21-20172-C-11, RG-20, 2022 Bankr. LEXIS 3270 at \*6 (Nov. 18, 2022), citing *Tripati v. Henman*, 857 F.2d 1366, 1367 (9th Cir. 1988). Therefore, the automatic stay did not go into effect as to Property when Plaintiff filed this bankruptcy.

For the above reasons, this motion will be DENIED.

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<sup>1</sup> The court notes that Plaintiff was deemed to be a vexatious litigant in Napa County Superior Court, Case No. 19CV000046, on October 22, 2021. <https://www.courts.ca.gov/documents/vexlit.pdf> (visited Apr. 17, 2023). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid. 201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

<sup>2</sup> See FDIC Cert. #34069, *BankFind Suite*, <https://banks.data.fdic.gov/bankfind-suite/bankfind> (visited Apr. 17, 2023).

6. [22-10060](#)-B-7     **IN RE: CURTIS/CHARTOTTE ALLEN**  
[23-1005](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
1-23-2023     [[1](#)]

U.S. TRUSTEE V. ALLEN ET AL  
JASON BLUMBERG/ATTY. FOR PL.

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

DISPOSITION:     Continued to May 31, 2023 at 11:00 a.m.

ORDER:             The court will issue an order.

The plaintiff's motion for entry of default judgment and "prove up" hearing is scheduled on May 31, 2023. UST-1. Accordingly, this status conference will be CONTINUED to May 31, 2023 at 11:00 a.m.