

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, April 29, 2020
Place: Department B - Courtroom #13
Fresno, California

Pursuant to District Court General Order 617, no persons are permitted to appear in court unless authorized by order of the court until June 1, 2020. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by pro se (not represented by an attorney) parties through April 30, 2020. 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.

9:30 AM

1. [20-10104](#)-B-13 **IN RE: MARGARET GRAVELLE**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
3-6-2020 [\[15\]](#)

THOMAS MOORE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Debtor filed an amended plan.
Doc. #24.

2. [19-15406](#)-B-13 **IN RE: ANOFRE/MARIA OROSCO**
[EPE-1](#)

MOTION TO CONFIRM PLAN
3-18-2020 [\[38\]](#)

ANOFRE OROSCO/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The court must first note movant's procedural error. LBR 9004-2(c)(1) requires that notices, exhibits, *inter alia*, to be filed as separate documents. Here, the notice of hearing and chapter 13 plan were combined into one document and not filed separately. Failure to comply with this rule in the future will result in the motion being denied without prejudice. 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. 20-10208-B-13 **IN RE: LINDA TODD**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
3-6-2020 [20]

CASE DISMISSED 4/15/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #34.

4. 19-13111-B-13 **IN RE: DALE/MICHELLE SEAMONS**
TCS-2

MOTION TO MODIFY PLAN
3-18-2020 [38]

DALE SEAMONS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the

creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

5. [18-14914](#)-B-13 **IN RE: MARIA AVILA**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING TRANSFER
OF CLAIM
4-13-2020 [\[49\]](#)

NIMA VOKSHORI/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the CREDITOR, Santander Consumer USA, has not paid the Transfer of Claim fee in the amount of \$25.00 prior to the hearing, the Transfer of Claim will be vacated.

If the fee has been paid, the court will vacate the Order to Show Cause.

6. [20-10015](#)-B-13 **IN RE: JANICE HIXON**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
2-27-2020 [\[34\]](#)

MICHAEL MEYER/MV
CONTINUED TO 5/6/20 PER ECF ORDER #56

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

DISPOSITION: Continued to May 6, 2020 at 9:00 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #56.

The court notes debtor's request for continuance. Doc. #62. The court will consider the request for a further continuance at that time. The chapter 13 trustee and debtor shall appear telephonically at the May 6, 2020 hearing.

7. [19-15122](#)-B-13 **IN RE: DAVID/ANTOINETTE MORALES**
[MAZ-1](#)

MOTION TO CONFIRM PLAN
3-10-2020 [\[38\]](#)

DAVID MORALES/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

8. [19-14427](#)-B-13 **IN RE: ISIDRO AREVALO AND CARMEN GUZMAN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-2-2020 [\[29\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The sole ground of this motion is that debtor failed to confirm a chapter 13 plan which prejudiced creditors unreasonably by delaying the case. See doc. #29. The debtors' motion to confirm a chapter 13 plan is granted on debtors' motion, MJH-1, matter #9 below. Therefore this motion is DENIED AS MOOT.

9. [19-14427](#)-B-13 **IN RE: ISIDRO AREVALO AND CARMEN GUZMAN**
[MJH-1](#)

MOTION TO CONFIRM PLAN
3-17-2020 [\[35\]](#)

ISIDRO AREVALO/MV
MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10. [19-14935](#)-B-13 **IN RE: MARIA SOTO**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-2-2020 [\[30\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The sole ground of this motion is that debtor failed to confirm a chapter 13 plan which prejudiced creditors unreasonably by delaying the case. See doc. #30. The debtors' motion to confirm a chapter 13 plan is granted on debtors' motion, MJH-1, matter #11 below. Therefore this motion is DENIED AS MOOT.

11. [19-14935](#)-B-13 **IN RE: MARIA SOTO**
[MJH-1](#)

MOTION TO CONFIRM PLAN
3-13-2020 [\[36\]](#)

MARIA SOTO/MV
MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in

interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The chapter 13 trustee withdrew his opposition. Doc. #68. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

12. [19-14938](#)-B-13 **IN RE: ABEL ACEVEDO AND DENISE CASTILLO**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-3-2020 [\[46\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The sole ground of this motion is that debtor failed to confirm a chapter 13 plan which prejudiced creditors unreasonably by delaying the case. See doc. #46. The debtors' motion to confirm a chapter 13 plan is granted on debtors' motion, MJH-1, matter #13 below. Therefore this motion is DENIED AS MOOT.

13. [19-14938](#)-B-13 **IN RE: ABEL ACEVEDO AND DENISE CASTILLO**
[MJH-1](#)

MOTION TO CONFIRM PLAN
3-11-2020 [\[52\]](#)

ABEL ACEVEDO/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered, with the exception of the chapter 13 trustee, and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and the chapter 13 trustee's proposed language, and the confirmation order shall reference the plan by the date it was filed.

14. [20-10844](#)-B-13 **IN RE: JACOB MCCOY-BARBA**
[ETW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-1-2020 [\[23\]](#)

NEAL HORN/MV
EDWARD WEBER/ATTY. FOR MV.
DISMISSED 03/23/2020

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
will submit a proposed order after hearing.

This motion was filed and served 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.

The court notes movant's procedural errors. Due to the nature of the relief requested and that no prejudice is likely to reach any interested party, the court has decided to call the matter and tentatively grant the motion.

LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on April 1, 2020 and set for hearing on April 29, 2020. Doc. #24, 28. April 29, 2020 is 28 days after April 1, 2020, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and may be presented at the hearing. Doc. #24. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required and must be filed and served not later than 14 days before the hearing. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

The movant, Neal L. Horn, M.D., a single man ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (4) concerning real property located at 6324 North Bond Street in Fresno, CA 93710 ("Property"). Doc. #23. Movant also apparently seeks retroactive relief. Movant is the holder of a security interest in the Property. The original borrower ("Borrower") is not

the debtor in this proceeding. Borrower executed and recorded a grant deed to the debtor an interest in the subject property after Borrower filed bankruptcy twice, and both cases were dismissed. Doc. #26. Debtor has also filed two bankruptcy cases, which have now been dismissed. Id. A foreclosure sale was conducted on March 4, 2020 at around 10:00 a.m, which was apparently conducted under the presumptive protection of an order granting a Movant's motion for relief from stay in a previous case. See case no. 20-10478, doc. #25. This case was filed before the previous case was dismissed on March 10, 2020.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

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.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." Id. It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. Id. Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. Id.

The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." In re Aheong, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations omitted). In In re Fjeldsted, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003), the court outlined factors for a court to consider when deciding a motion to annul the automatic stay: the number of bankruptcy filings by the debtor; whether, in a repeat filing case, the circumstances indicate an intent to delay and hinder creditors; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; the relative ease of restoring the parties to the *status quo ante*; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the sale; whether creditors proceeded to take steps in continued violation of the stay, or whether they moved

expeditiously to gain relief; whether annulment of the stay will cause irreparable injury to the debtor; and whether stay relief will promote judicial economy or other efficiencies. One factor alone may be dispositive. *Id.* at 25.

The court finds that the *Fjeldsted* factors weigh in favor of the creditor. As mentioned previously, there are multiple bankruptcy filings by Borrower and debtor affecting the Property; there is evidence to supporting a finding of an intent to delay and hinder Movant; there would be prejudice to a bona fide purchaser if relief was not granted because the Property was sold at a foreclosure sale; debtor has not shown any good faith or compliance with the bankruptcy code as previously explained; Movant has not taken any steps in continued violation of the stay and moved quickly to gain relief, and annulment of the stay will not cause irreparable injury to debtor and will promote judicial economy.

Therefore, the court finds that "cause" exists to retroactively annul the automatic stay under 11 U.S.C. § 362(d)(1). This motion is GRANTED.

The court also that the automatic stay has not arisen in this case pursuant to § 362(c)(3), and even if it had, cause exists to grant relief pursuant to §§ 362(d)(1) and (4).

First, the court finds that "cause" exists to lift the stay because debtor has failed to make at least eight post-petition payments. The movant has produced evidence that debtor is delinquent at least \$23,308.11. Doc. #26, 27.

Second, the stay no longer applies in this case. Debtor previously filed bankruptcy on February 10, 2020. That case was dismissed on March 10, 2020. When this case was filed on March 4, 2020, the automatic stay was set to expire on April 3, 2020 under § 362(c)(3) unless debtor obtained a court order extending the stay on a motion filed within 30 days of the filing of the case. Debtor did not file a motion and no order extending the stay was entered.

Third, even if the stay did arise, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) did not arise and is vacated concerning real property located at 6324 North Bond Street in Fresno, CA 93710; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property

without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the property has already been sold.

15. [20-10746](#)-B-13 **IN RE: RAYMOND MADRID**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-6-2020 [\[19\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid in full on April 23, 2020. Therefore, the Order to Show Cause will be vacated.

16. [20-10747](#)-B-13 **IN RE: CARINA LOERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-6-2020 [\[16\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

17. [20-10550](#)-B-13 **IN RE: RICARDO GONZALEZ AND VERONICA JUAREZ**
[PBB-1](#)

MOTION TO CONFIRM PLAN
3-13-2020 [\[19\]](#)

RICARDO GONZALEZ/MV
PETER BUNTING/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 28, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") opposes confirmation because Trustee has not yet had an opportunity to hold the § 341 meeting of creditors. Doc. #28. Therefore the matter is continued to May 28, 2020 at 9:30 a.m. Due to the COVID-19 pandemic, § 341 meetings have not been able to take place and may not be able to happen prior to the continued hearing. If so, the court will continue the matter further out.

18. [19-12351](#)-B-13 **IN RE: ERICA GOMEZ**
[MHM-5](#)

CONTINUED MOTION TO DISGORGE FEES
3-4-2020 [\[69\]](#)

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.
DISMISSED 11/16/2019, RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 24, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the respondent's request, and due to the information contained in the request in addition to the circumstances surrounding the COVID-19 pandemic, this matter is continued to June 24, 2020 at 9:30 a.m.

Debtor shall file and serve a status report on the progress of the loan modification not later than June 10, 2020. Respondent may file and serve a supplemental response to address the merits of the chapter 13 trustee's motion not later than June 10, 2020. The chapter 13 trustee may file and serve a response not later than June 17, 2020.

19. [17-14157](#)-B-13 **IN RE: VICTOR ISLAS AND LORENA GONZALEZ**
[TCS-4](#)

MOTION TO MODIFY PLAN
3-17-2020 [\[137\]](#)

VICTOR ISLAS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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 for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("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 requires a new DCN.

A Motion to Disgorge Fees was previously filed on March 13, 2020. Doc. #133. The DCN for that motion is TCS-4. This motion also has a

DCN of TCS-4 and therefore does not comply with the local rules.
Each separate matter filed with the court must have a different DCN.

20. [20-10360](#)-B-13 **IN RE: ELESIA EVANS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-8-2020 [\[26\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due were paid on
April 24, 2020.

The order permitting the payment of filing fees in installments will
be modified to provide that if future installments are not received
by the due date, the case will be dismissed without further notice
or hearing.

21. [20-10360](#)-B-13 **IN RE: ELESIA EVANS**
 [MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
3-6-2020 [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #28.

22. [19-10462](#)-B-13 **IN RE: DAVID/DIXIE LACROIX**
[TCS-2](#)

MOTION TO MODIFY PLAN
3-17-2020 [\[33\]](#)

DAVID LACROIX/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

23. [20-10263](#)-B-13 **IN RE: MANUELA MATA**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL
H. MEYER
3-6-2020 [\[30\]](#)

BENNY BARCO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 28, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The matter is continued to May 28, 2020 at 9:30 a.m. The "only remaining issue" before the plan can be confirmed is that the debtor must be examined at the § 341 meeting. That meeting has been continued to May 26, 2020. This matter is continued to May 28, 2020 at 9:30 a.m. The matter may be further continued to the § 341 meeting cannot be held due to the COVID-19 pandemic.

24. [20-11364](#)-B-13 **IN RE: PATRICIA AGUIRRE**
[TCS-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-15-2020 [\[8\]](#)

PATRICIA AGUIRRE/MV
TIMOTHY SPRINGER/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 will submit a proposed order after hearing.

This Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Rule of Practice 9014-1(f)(2). Doc. #9. Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

If the debtor has had a bankruptcy case pending within the preceding one-year period, but was dismissed, then under 11 U.S.C. § 362(c)(3)(A), the automatic stay under subsection (a) of this section with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Debtor had one case pending within the preceding one-year period that was dismissed, case no. 18-13500. That case was filed on August 27, 2018 and was dismissed on January 21, 2020 for failure to make plan payments. This case was filed on April 9, 2020 and the automatic stay will expire on May 9, 2020.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because the prior case was dismissed because debtor failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

The first case was dismissed because the debtor was unable to make plan payments on her available income. Doc. #10. She has stated that her situation has changed because she is now receiving assistance from her sister and her plan payment will be lower under the new plan. Id.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.

25. [18-11872](#)-B-13 **IN RE: LAURIE BUDRE**
[FW-7](#)

MOTION TO MODIFY PLAN
3-17-2020 [[123](#)]

LAURIE BUDRE/MV
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

26. [19-14592](#)-B-13 **IN RE: ARTURO LEON AND ANA MARTINEZ**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-2-2020 [\[44\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The sole ground of this motion is that debtor failed to confirm a chapter 13 plan which prejudiced creditors unreasonably by delaying the case. See doc. #44. The debtors' motion to confirm a chapter 13 plan is granted on debtors' motion, MJH-1, matter #27 below. Therefore this motion is DENIED AS MOOT.

27. [19-14592](#)-B-13 **IN RE: ARTURO LEON AND ANA MARTINEZ**
[MJH-1](#)

MOTION TO CONFIRM PLAN
3-12-2020 [\[48\]](#)

ARTURO LEON/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. The chapter 13 trustee withdrew his opposition. Doc. #65. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

28. [20-10299](#)-B-13 **IN RE: MANUEL DICOCHEA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-3-2020 [\[26\]](#)

MARK HANNON/ATTY. FOR DBT.
\$231.00 FINAL INSTALLMENT PAYMENT 4/13/20

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the debtor paid the installment fees in full on April 13, 2020. Therefore, the Order to Show Cause will be vacated.

11:00 AM

1. [20-01013](#)-B-0 **IN RE: Yoon et al**

STATUS CONFERENCE RE: NOTICE OF REMOVAL
3-4-2020 [[1](#)]

YOON V. K.S. AVIATION, INC.
LAWRENCE SZABO/ATTY. FOR PL.

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

DISPOSITION: Vacated.

NO ORDER REQUIRED: The motion to transfer case, NJ-1, is granted
without hearing.

2. [20-01013](#)-B-0 **IN RE: Yoon et al**
[NJ-1](#)

MOTION TO TRANSFER CASE/PROCEEDING TO ANOTHER DISTRICT
3-18-2020 [[21](#)]

YOON V. K.S. AVIATION, INC.
JOSE RAUL ALCANTAR VILLAGRAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. Movant asks the court for an order transferring this adversary proceeding to the Northern District of California Bankruptcy Court pursuant to Federal Rule of Bankruptcy Procedure 7087 and 28 U.S.C. § 1412, where debtors' chapter 11 case is pending. Respondent has not filed opposition to this motion.

Plaintiff and debtor Dan Yoon ("Plaintiff") filed a chapter 11 case in the California Northern District Bankruptcy Court on December 6, 2019. Doc. #22. This adversary proceeding was removed from Merced County Superior Court. Doc. #23. There are at least seven adversary proceedings pending in the chapter 11 case. Doc. #22. Defendant and creditor K.S. Aviation ("Defendant") has previously filed matters in the chapter 11 case and Plaintiff therefore alleges that Defendant has consented to having this adversary proceeding heard in the Northern District. *Id.* Prior to retaining counsel, Plaintiff removed this adversary proceeding to the Eastern District of California.

Fed. R. Bankr. P. 7087 states "on motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412"

28 U.S.C. § 1412 states "a district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."

There is no opposition to this motion. The main chapter 11 case, including several other adversary proceedings, is pending in the Northern District. It would be most convenient for the parties for this adversary proceeding to be transferred to the Northern District. Though the Fresno federal courthouse is closer to Defendant's principal place of business, the Oakland federal courthouse is still less than 100 miles away.

In the absence of opposition and for the convenience of the parties, this motion is GRANTED and the matter shall be transferred to the Northern District.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-81](#)

FURTHER SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF JOSE
LAURO TELLO-JURADO, CLAIM NUMBER 40
12-27-2019 [[3009](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.
VACATED BY ECF ORDER #3222

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order vacating the status conference has
already been entered. Doc. #3222.

4. [18-14160](#)-B-7 **IN RE: BRYAN ROCHE**
[19-1013](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
1-17-2019 [\[1\]](#)

VANDENBERGHE V. ROCHE
DAREN SCHLECTER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**
[19-1100](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-24-2019 [\[1\]](#)

KIRKPATRICK V. CALLISON ET AL
MARTIN GAMULIN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 28, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the defendants' status report, the case can likely be settled. Defendants are waiting to review the settlement agreement being drafted by plaintiff's counsel. Doc. #58. Therefore the status conference is continued to May 28, 2020 at 11:00 a.m. Status reports shall be filed and served not later than May 21, 2020.

6. 19-14170-B-7 **IN RE: JOHNNY GONZALES**
20-1018 MB-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
4-1-2020 [9]

GONZALES V. MID VALLEY SERVICES, INC.
HAGOP BEDOYAN/ATTY. FOR MV.

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

DISPOSITION: Granted with leave to amend. An amended complaint, if any, must be filed and served on the necessary parties within 14 days of entry of the order granting this motion.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Plaintiff did not oppose. Therefore plaintiff's default is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a movant make a prima facie showing that they are entitled to the relief sought, which movant has done here.

This motion is GRANTED.

The complaint

Plaintiff Johnny Gonzales ("Plaintiff") filed a state civil complaint against Mid Valley Services, Inc. ("Defendant") on March 11, 2020 in Fresno County Superior Court. Defendant removed the matter to this court on March 18, 2020 (doc. #1) and Plaintiff has neither opposed this motion nor filed and served a motion to remand.

The complaint concerns a mortgage loan of \$114,000 which Plaintiff obtained from Defendant in 2007. The loan is secured by two properties: 4755 ("4755") and 4767 ("4767") E. Braly Ave., Fresno, CA 93702. The complaint alleges violations of the Homeowner Bill of Rights ("HBOR"), including that Defendant lacked authority to foreclose on Plaintiff's 4755 property across five causes of action. Doc. #4, Ex. C.

First, Plaintiff alleges violation of Civ. Code § 2924 for lack of authority to foreclose on the 4755 property. The Plaintiff cites Civ. Code § 2924(a)(1), which requires that the trust deed beneficiary or its agents authorize foreclosure proceedings by filing the Notice of Default and related documents. The complaint alleges that the Notice of Default and Notice of Trustee's Sale was void because the beneficiary of record stated on the Notice of Default was a company known as the Gerald M. Baker Survivors Trust, and that the notices did not have the party with authority to foreclose on the 4755 property. On this basis, the complaint alleges that the Notice of Default is void or voidable because the purported beneficiary was not the authorized party to foreclose in violation of Civ. Code § 2924(a)(6), and rendering the foreclosure sale void under Civ. Code § 2924a(e)

Second, Plaintiff alleges that on May 2, 2019, Defendant recorded a notice of default and failed to notify Plaintiff of all foreclosure prevention alternatives within five business days after recording the notice, required under Civ. Code § 2924.9. Plaintiff seeks an injunction on foreclosure and statutory damages to be proven at trial.

Third, Plaintiff alleges that Defendant was negligent in processing the loan modification application. Plaintiff states that Defendant breached its duty of care when it (1) used a trustee or beneficiary that lacked legal authority to conduct a trustee's sale in violation of Cal. Civ. Code § 2924(a)(1); and (2) failed to notify Plaintiff of foreclosure alternatives within five business days after recording a notice of default in violation of Civ. Code. § 2924.9. It asserts that Defendant "exceeded the traditional scope of money lending" when it "undertook to review Plaintiff for modification assistance." Doc. #4, Ex. A at ¶ 36. It states that Defendant ceased acting as a money lender and began acting instead as agents for the Department of Treasury and Housing and Urban Development. The Plaintiff cites damages in the form of (1) providing Defendant with updated financial documents; (2) loss of income due to lost work hours; (3) late penalties; (4) damaged credit reports; and (5) higher arrears that are no longer affordable. Id. at ¶ 38.

Fourth, Plaintiff alleges that Defendant engaged in unfair business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. Plaintiff claims that Defendant engaged in unlawful, unfair, and fraudulent business practices and purposefully violated Civ. Code. §§ 2924(a)(1) and 2924.9. The complaint alleges that Defendant provided misleading and inconsistent information to Plaintiff as to the status of the loan modification. Plaintiff claims that he suffered actual, pecuniary injury for the loss of equity in the value of the 4755 property, along with legal costs.

Fifth, the complaint states that Plaintiff has a reasonable belief that the Notice of Default and Notice of Trustee's Sale are voidable or void ab initio. If left outstanding, these instruments supposedly may cause injury due to those documents being void or voidable, and therefore Plaintiff seeks to cancel them under Civ. Code § 3412.

Plaintiff prays for compensatory, special, and general damages in an amount to be proven at trial; civil penalties under Civ. Code § 2924.12(b) for the greater of treble damages or \$50,000; an injunction enjoining Defendant from further recording a notice of default, notice of trustee's sale, and conducting a trustee's sale under § 2924.12; restitution and disgorgement of profits; an injunction to stop violations of the Homeowner Bill of Rights; an injunction canceling void written instruments; an order awarding reasonable attorney's fees under § 2924.12(i); costs under § 1032; recompense of damages and arrears; and any other relief.

Defendant asks the court to dismiss the action under Federal Rules of Civil Procedure¹ 12(b)(6) and (7) (made applicable in bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 7012). Doc. #12. Plaintiff did not oppose and his default is entered.

The underlying bankruptcy

On October 1, 2019, Plaintiff filed a chapter 7 petition (case no. 19-14170) and listed both 4755 and 4767 properties on his bankruptcy schedules. Peter Fear is the chapter 7 trustee ("Trustee") overseeing the bankruptcy estate.

These properties have been subject to a motion for turnover of the properties, motion to sell free and clear of liens and pay broker's commissions. This court granted, in part, the motion for turnover of the properties and denied the motion to sell the property free and clear of liens without prejudice. Additionally, the properties were also subject to an adversary proceeding from Plaintiff's wife, Minerva Gonzales, which was dismissed without prejudice. See case. no. 20-1011.

Throughout the bankruptcy, there has been much debate about whether Plaintiff resides at 4755, 4767, or a third property, 757 S. Burgan Ave., Fresno, CA ("Burgan Property").

Standard of review

Civil Rule 12(b)(6) states dismissal is warranted "for failure to state a claim upon which relief can be granted." Courts may dismiss a complaint if it "fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." Caltex Plastics, Inc. v. Lockeheed Martin Corp., 824 F.3d 1156, 1159 (9th Cir. 2016) (citing Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010)); see also Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). "A complaint need not state 'detailed factual allegations,' but must contain sufficient factual matter to 'state a claim to relief that is plausible on its face.'" Doan v. Singh, 617 F.App'x. 684, 685 (9th Cir. 2015) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544-55 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that

¹ Future references to the Federal Rules of Civil Procedure will be shortened to "Civil Rule;" future references to the Federal Rules of Bankruptcy Procedure will be shortened to "Rule."

the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556).

When considering a motion to dismiss, all material facts of the complaint are to be taken as true and should be viewed in the light most favorable to the plaintiff. Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012). "[T]he tenant that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 662 (citing Twombly, 550 U.S. at 555). The court may also draw on its "judicial experience and common sense." Id. at 679.

First cause of action - § 2924 (a) (6)

Cal. Civ. Code § 2924(a)(6) states:

No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest

Civ. Code "§ 2924(a)(6) does not create a private right of action for either monetary damages or injunctive relief." Ruegsegger v. Caliber Home Loans, Inc., 2018 WL 5993857 *17 (C.D. Cal. Apr. 30, 2018) (citing Zeppeiro v. Green Tree Servicing, LLC, 679 F.App'x 592, 593 (9th Cir. 2017)). "There is no private right of action under Section 2924(a)(6)." Wasjutin v. Bank of Am., N.A., 732 F.App'x 513, 516 (9th Cir. 2018) (citing Lucioni v. Bank of Am., N.A., 3 Cal. App. 5th 150, 158-59, 207 Cal.Rptr.3d 418 (2016), review denied (Nov. 30, 2016)).

Even if there was a private right of action under Civ. Code. § 2924(a)(6), plaintiff does not have standing to bring such a challenge. "As a general rule, California does not allow preemptive challenges to the authority to foreclose, 'because [such challenges] would result in the impermissible interjection of the courts' into California's nonjudicial foreclosure regime." Wasjutin, 732 F.App'x at 516 (quoting Saterbak v. JPMorgan Chase Bank, N.A., 245 Cal.App.4th 808, 814, 199 Cal.Rptr.3d 790 (2016), review denied, (July 13, 2016)). The California Supreme Court has held that homeowners have standing to challenge void, but not voidable, transfers of the authority to foreclose. Yvanova v. New Century Mortg. Corp., 62 Cal. 4th 919, 933-34, 365 P.3d 845 (2016) ("We do not hold or suggest that a borrower may attempt to preempt a threatened nonjudicial foreclosure by a suit questioning the foreclosing party's right to proceed."). Id.

Here, Defendant did not foreclose on the Property - Trustee is currently attempting to sell the Property. Plaintiff does not have standing and therefore cannot maintain a claim for an alleged violation of 2924(a)(6) as a matter of law.

Second cause of action - § 2924.9

The second cause of action asserts that Defendant failed to notify Plaintiff of all foreclosure prevention alternatives within five business days after the notice of default was recorded.

Civ. Code § 2924.9 states:

Unless a borrower has previously exhausted the first lien loan modification process offered by, or through, his or her mortgage servicer described in Section 2923.6, within five business days after recording a notice of default pursuant to Section 2924, a mortgage servicer that offers one or more foreclosure prevention alternatives shall send a written communication to the borrower that includes all of the following information:

- (1) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives.
- (2) Whether an application is required to be submitted by the borrower in order to be considered for a foreclosure prevention alternative.
- (3) The means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

Civil Code § 2924.9(c) further adds that "[t]his section shall apply only to mortgages or deeds of trust described in Section 2924.15." Section 2924.15 states that § 2924.9 "shall apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property." "For these purposes, 'owner-occupied' means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes." Id.

The complaint fails to specifically allege which of Plaintiff's properties is his principal residence. Plaintiff states that he is "the rightful and lawful owners of real property commonly known as [4755], and is his/her *personal* residence. Doc. #4, Ex. C, ¶ 1 (emphasis added). The complaint fails to specify whether this residence is his *principal* residence.

As previously mentioned, there has been dispute as to whether Plaintiff resides at 4755, 4767, or Burgan Property. Plaintiff attached deeds of trust for both 4755 and 4767. See doc. #4, Ex. C at Ex. A; doc. #5 at Ex. B. Trustee has contended his belief that Plaintiff does not live at 4755 and instead resided at Burgan Property at the time the chapter 7 petition was filed. See doc. #14, Ex. C.

The complaint fails to specify which of the three properties is his principal residence.

Additionally, the complaint later alleges that Defendant "was negligent in processing the loan modification application," which implies that Defendant did in fact offer foreclosure prevention alternatives. Doc. #4, Ex. C, ¶ 33.

Third cause of action - negligence

Plaintiff alleges that Defendant was negligent because it (1) used a trustee or beneficiary that lacked legal authority to conduct a trustee's sale; (2) failed to provide Plaintiff with foreclosure alternatives; (3) exceeded the scope of traditional money lending when it undertook to review Plaintiff for loan modification assistance. Plaintiff's negligence claim relies on statutory violations of the HBOR, which have not been properly alleged.

Additionally, "as a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." Nymark v. Heart Fed. Sav. & Loan Assn., 231 Cal. App. 3d 1089, 1096 (Ct. App. 1991). "[A] loan modification is the renegotiation of loan terms, which falls squarely within the scope of a lending institution's conventional role as a lender of money." Lueras v. BAC Home Loans Servicing, LP, 221 Cal.App.4th 49, 67, 163 Cal.Rptr.3d 804 (2013). "Loan modifications are essentially arms-length negotiations that impose no common-law duties. . . ." Shupe v. Nationstar Mortgage, 231 F.Supp.3d 597, 605 (E.D. Cal. 2017) (citing Lueras, 221 Cal.App.4th at 68, 163 Cal.Rptr.3d 804); Badame v. JP Morgan Chase Bank, N.A., 641 F.App'x 707, 709. Therefore, there is no common law duty of care for loan modifications and the Plaintiff has not stated a claim upon which relief can be granted.

Fourth cause of action - Bus. & Prof. Code § 17200

Fourth, Plaintiff alleges that Defendant engaged in unlawful, unfair, and fraudulent business practices because it purposefully violated Civil Code §§ 2924(a)(1) and 2924.9, and 15 U.S.C. 1641(g).

"The UCL prohibits 'any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.'" Lewis v. Wells Fargo Bank, N.A., No. SACV19655JVSACSX, 2019 WL 4284526 *3 (C.D. Cal. May 30, 2019). "Under the UCL's 'unlawful' prong, violations of other laws are 'borrowed' and made independently actionable under the UCL." Herron v. Best Buy Co., 924 F. Supp. 2d 1161, 1177 (E.D. Cal. 2013). "'Unfair' simply means any practice whose harm to the victim outweighs its benefits." Saunders v. Superior Court, 27 Cal.App.4th 832, 33 Cal.Rptr.2d 438 (1994). "'Fraudulent,' as used in the statute, does not refer to the common law tort of fraud, but only requires a showing members of the public 'are likely to be deceived.'" Id.

Plaintiff does not have standing under the UCL because he has not sufficiently pled an economic injury. “[P]rivate suits must also allege standing under the UCL and FAL, i.e., that the plaintiff ‘suffered injury in fact’ and ‘lost money or property’ as a result of the unfair competition.” Pulaski & Middleman, LLC v. Google, Inc., 802 F.3d 979, 985 n.6 (9th Cir. 2015) (citation omitted).

Here, Plaintiff states that he “has suffered an actual, pecuniary loss of the equity in value of [4755], and the costs of seeking a remedy.” Doc. #4, Ex. C, ¶ 47. “Plaintiffs allege only ‘that they have suffered an actual, pecuniary injury of the loss of equity in the value of the . . . Property, and the costs of seeking a remedy for [Wells Fargo’s] wrongful actions.’ This general allegation does not assert an actual injury or loss suffered by Plaintiffs . . .” Lewis, 2019 WL 4284526 at *3.

Therefore, Plaintiff lacks standing because he has not sufficiently plead economic injury.

Additionally, Plaintiff’s UCL claim involves fraudulent business practices. Because Plaintiff is alleging fraud, Civil Rule 9(b) (made applicable to bankruptcy proceedings under Rule 7009) imposes a heightened pleading requirement. Under Civil Rule 9(b), a plaintiff is required to “state with particularity the circumstances constituting the fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” The rule applies to claims arising under state law. Vess v. Ciba-Geigy Corp., USA, 317 F.3d 1097, 1103 (9th Cir. 2003). “[W]hile a federal court will examine state law to determine whether the elements of fraud have been pled sufficiently to state a cause of action, the Rule 9(b) requirement that the *circumstances* of the fraud must be stated with particularity is a federally imposed rule.” Hayduck v. Lanna, 775 F.2d 441, 443 (1st Cir. 1985).

Allegations of fraud must “be ‘specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.’” Kearns v. Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009) (citations omitted). “Averments of fraud must be accompanied by ‘the who, what, when, where, and how’ of the misconduct charged.” Vess, 317 F.3d at 1106 (quoting Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir. 1997)).

Therefore, Plaintiff’s allegations of fraudulent business practices do not meet the heightened pleading standard of Rule 9(b).

Fifth cause of action - cancellation of instruments

Fifth, Plaintiff states “reasonable belief that the Notice of Default . . . and Notice of Trustee’s Sale . . . are voidable or void ab initio.” Doc. #4, Ex. A., ¶ 51. Plaintiff states an apprehension that if these recorded instruments are left outstanding, they may cause serious injury due to being void or voidable. Since Plaintiff has not sufficiently alleged why the instruments are void or voidable, he is unable to proceed on this cause of action.

The court finds that dismissal with leave to amend is warranted under Civil Rule 12(b)(6).

Failure to join a required party

But even if Plaintiff's claims were correctly pled and the court was able to grant relief, the actions must be dismissed with leave to amend under Civil Rule 12(b)(7) for failure to join a required party under Civil Rule 19(a). Plaintiff has not joined the chapter 7 bankruptcy trustee to this adversary proceeding.

The court uses a three-step process for determining whether the court should dismiss a claim for failure to join an indispensable third party. United States v. Bowen, 172 F.3d 682, 688 (9th Cir. 1999). The court must determine: (1) whether the absent party is necessary; (2) whether joinder is feasible; and (3) whether the absent party is "indispensable." Id.

The court finds that Plaintiff failed to join an indispensable party under Civil Rule 19 and dismissal is therefore appropriate under Civil Rule 12(b)(7).

First, the chapter 7 trustee is a necessary party. The claims Plaintiff makes belong to the estate. Trustee has not abandoned those claims. Trustee is the party to assert the claims. The properties in question are part of the bankruptcy estate - the schedules list the properties, and the complaint alleges on its face that the properties were acquired pre-petition. It is well established that a bankruptcy trustee will always be a necessary party in any claim involving any property of a bankruptcy estate. "The trustee is the representative of the estate . . . and must be named as a party defendant in an action seeking to proceed against the assets of the estate." Bellini Imports, Ltd. V. Mason and Dixon Lines, Inc., 944 F.2d 199, 202 (4th Cir. 1991).

Second, joinder is feasible because venue is proper and the court has both personal and subject matter jurisdiction over the trustee. See E.E.O.C. v. Peabody W. Coal Co., 400 F.3d 774, 789 (9th Cir. 2005). The third step under Bowen is therefore moot.

The action is dismissed with leave to amend. Plaintiff shall file and serve an amended complaint, if any, on the necessary parties within 14 days of the entry of the order granting this motion.