

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 16, 2018
Place: Department B - Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [15-12901](#)-B-7 **IN RE: SCOTT/DARLYNN WEBSTER**
[DRJ-2](#)

MOTION TO AVOID LIEN OF TUCOEMAS FEDERAL CREDIT UNION
4-10-2018 [[31](#)]

SCOTT WEBSTER/MV
JOHN BIANCO

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 objection 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.

A judgment was entered against the debtor in favor of Tucoemas Federal Credit Union in the sum of \$17,565.76 on December 8, 2010. Doc. #34. The abstract of judgment was recorded with Tulare County on January 19, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Tulare, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$270,000.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$254,299.00 on that same date, consisting of a first deed of trust in favor of Ocwen Loan Servicing, LLC (doc. #1, Schedule D) and a second deed of trust in favor of Green Tree. Doc. #1. The debtor

claimed an exemption pursuant to Cal. Civ. Proc. Code
§ 703.140(b)(1) in the amount of \$15,701.00. Doc. #1, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. [15-12901](#)-B-7 **IN RE: SCOTT/DARLYNN WEBSTER**
[DRJ-3](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES
4-10-2018 [\[36\]](#)

SCOTT WEBSTER/MV
JOHN BIANCO

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 objection 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.

A judgment was entered against the debtor in favor of FIA Card Services, N.A. A/K/A Bank of America in the sum of \$22,740.97 on September 30, 2011. Doc. #39. The abstract of judgment was recorded with Tulare County on December 22, 2011. *Id.* That lien attached to the debtor's interest in a residential real property in Tulare, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$270,000.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$254,299.00 on that same date, consisting of a first deed of trust in favor of Ocwen Loan Servicing, LLC (doc. #1, Schedule D)

and a second deed of trust in favor of Green Tree. Doc. #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$15,701.00. Doc. #1, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

3. [15-12901](#)-B-7 **IN RE: SCOTT/DARLYNN WEBSTER**
[DRJ-4](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-10-2018 [[41](#)]

SCOTT WEBSTER/MV
JOHN BIANCO

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 objection 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.

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$4,862.80 on June 23, 2010. Doc. #44. The abstract of judgment was recorded with Tulare County on August 16, 2010. *Id.* That lien attached to the debtor's interest in a residential real property in Tulare, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$270,000.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$254,299.00 on that same date, consisting of a first deed of trust in favor of Ocwen

Loan Servicing, LLC (doc. #1, Schedule D) and a second deed of trust in favor of Green Tree. Doc. #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$15,701.00. Doc. #1, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. [15-12901](#)-B-7 **IN RE: SCOTT/DARLYNN WEBSTER**
[DRJ-5](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-10-2018 [[46](#)]

SCOTT WEBSTER/MV
JOHN BIANCO

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 objection 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.

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$3,191.48 on April 10, 2010. Doc. #49. The abstract of judgment was recorded with Tulare County on June 7, 2010. *Id.* That lien attached to the debtor's interest in a residential real property in Tulare, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$270,000.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$254,299.00 on that

same date, consisting of a first deed of trust in favor of Ocwen Loan Servicing, LLC (doc. #1, Schedule D) and a second deed of trust in favor of Green Tree. Doc. #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$15,701.00. Doc. #1, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

5. [18-11204](#)-B-7 **IN RE: PATRICIA WILSON**

MOTION TO RECONSIDER
4-13-2018 [\[26\]](#)

PATRICIA WILSON/MV
PATRICIA WILSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT.

Movant asked this court to reconsider denying her motion to waive the chapter 7 filing fee. Debtor paid the last installment of the filing fee on April 26, 2018. The case remains pending and Ms. Wilson is awaiting entry of discharge. Therefore, this motion is DENIED AS MOOT.

6. [18-10509](#)-B-7 **IN RE: GERALDINE LARSON**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-16-2018 [\[17\]](#)

NATIONSTAR MORTGAGE LLC/MV
MARK ZIMMERMAN
DANE EXNOWSKI/ATTY. FOR MV.
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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and the debtor filed a non-opposition. The trustee's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The collateral is a parcel of real property commonly known as 1229 Antelope Dr., Lemoore, CA 93245. Doc. #17. The collateral has a value of \$130,000.00 and the amount owed is \$128,032.55. Doc. #22.

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

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

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

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

7. [15-13712](#)-B-7 **IN RE: LEO LOOZA**
[JDW-7](#)

MOTION TO AVOID LIEN OF CACH, LLC.
5-1-2018 [\[73\]](#)

LEO LOOZA/MV
JOEL WINTER

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.

A judgment was entered against the debtor in favor of Cach, LLC in the sum of \$3,737.97 on February 12, 2013. Doc. #76. The abstract of

judgment was recorded with Fresno County on April 24, 2015. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$295,896.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$378,168.00 on that same date, consisting of a first deed of trust in favor of Shellpoint Mortgage (doc. #1, Schedule D) and a second deed of trust in favor of CBNA. *Id.* The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$25,575.00. Doc. #59.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

8. [18-11217](#)-B-7 **IN RE: YOLANDA GUTIERREZ**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-18-2018 [[14](#)]

BANK OF THE WEST/MV
MARK ZIMMERMAN
MARY TANG/ATTY. FOR MV.
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 for relief from stay was fully noticed in compliance with the Local Rules of Practice and the debtor filed a non-opposition. The trustee's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The collateral is a 2013 Mercedes-Benz E350. Doc. #16. The collateral has a value of \$19,825.00 and debtor owes \$26,096.55. *Id.*

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

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral has been repossessed by the movant prior to the filing of the bankruptcy and the collateral is a depreciating asset.

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

9. [18-10023](#)-B-7 **IN RE: EVELYN FREEMAN**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-18-2018 [[28](#)]

NATIONSTAR MORTGAGE LLC./MV
MICHAEL FLETCHER
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

10. [18-11226](#)-B-7 **IN RE: OLGA MENDOZA**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2018 [[11](#)]

THE GOLDEN 1 CREDIT UNION/MV
JEFFREY ROWE
VALERIE PEO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

The collateral is a 2014 Nissan Rogue. Doc. #15. The collateral has a value in between \$11,103.00 and \$13,346.00. *Id.* Debtor owes \$16,000.31. *Id.*

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

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

11. [18-11432](#)-B-7 **IN RE: HAROLD WILSON**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2018 [[10](#)]

THE GOLDEN 1 CREDIT UNION/MV
NEIL SCHWARTZ
VALERIE PEO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

The collateral is a 2012 Chevrolet Cruze. Doc. #13. The collateral has a value in between \$6,184.00 and \$8,171.00. *Id.* The debtor owes \$8,319.22. *Id.*

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under

applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

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

12. [17-12535](#)-B-7 **IN RE: OVADA MORERO**
[LKW-12](#)

MOTION TO COMPEL ABANDONMENT
4-18-2018 [[213](#)]

OVADA MORERO/MV
LEONARD WELSH

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 objection 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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the

bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset... Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

This motion is GRANTED. The court finds that the money on deposit in the Bank of America account no. 05715 is Social Security Benefits and NOT property of the estate, and that the money on deposit in the Trust Account is subject to a security interest held by debtor's counsel, perfected by possession as permitted by law. Therefore, trustee shall abandon any interest in money on deposit in the Bank of America Account and the Trust Account.

13. [17-12535](#)-B-7 **IN RE: OVADA MORERO**
[TGM-2](#)

MOTION TO EMPLOY MIRAMAR INTERNATIONAL R.E. AS BROKER(S)
4-18-2018 [\[205\]](#)

RANDELL PARKER/MV
LEONARD WELSH
TRUDI MANFREDO/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 objection 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. Trustee is authorized to employ Miramar International R.E. ("Broker") as broker to sell a piece of residential real property in Bakersfield, CA. Broker may receive a commission upon consummation of any such sale of 4.5% of the purchase price for the property. If the property is sold on an overbid to a buyer represented by a different broker, Broker shall be entitled to an additional fee equal to 50% of the allowed commission. If Broker rendered services and the property is disposed of by Trustee other than a sale through Broker, but Broker's services substantially benefitted the estate, Broker shall be entitled to submit a fee application for compensation for the services rendered and costs.

14. [18-11435](#)-B-7 **IN RE: JOSE ALMARAZ HURTADO AND SARA ALMARAZ**
[BPC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2018 [[9](#)]

THE GOLDEN 1 CREDIT UNION/MV
NEIL SCHWARTZ
VALERIE PEO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

The collateral is a 2016 Nissan Pathfinder. Doc. #12. The collateral is valued between \$21,836.00 and \$25,065.00. *Id.* Debtor owes \$32,265.30. *Id.*

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

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

15. [09-13444](#)-B-7 **IN RE: JEANA HERRON**
[PBB-3](#)

MOTION TO AVOID LIEN OF PACIFIC SERVICE CREDIT UNION
4-13-2018 [\[33\]](#)

JEANA HERRON/MV
PETER BUNTING

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 objection 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 case was filed on April 20, 2009 (doc. #1), the debtor received their discharge on August 3, 2009 (doc. #12), and the case was closed on August 7, 2009 (doc. #14). The case was reopened on March 12, 2018 (doc. #17) for the express purpose of avoiding this lien.

A judgment was entered against the debtor in favor of Pacific Service Credit Union in the sum of \$20,280.81 on April 3, 2008. Doc. #37. The abstract of judgment was recorded with Fresno County on May

16, 2008. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$160,000.00 as of the petition date. Doc. #35. The unavoidable liens totaled \$232,732.00 on that same date, consisting of a first deed of trust in favor of Indymac Bank (doc. #21, Schedule D) and a second deed of trust in favor of Citi Mortgage Inc. *Id.* The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.130(b)(1) in the amount of \$2,253.76 Doc. #21, Schedule C.

11 U.S.C. § 108(c) provides that "[i]f applicable nonbankruptcy law...fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor..., then such period does not expire until...30 days after notice of the termination or expiration of the stay under section 362..."

11 U.S.C. § 362(c)(1) provides that "the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate."

The stay in this case expired on August 7, 2009, the date which the case was closed. "Reopening does not bring property back into the estate nor does it cause the automatic stay to be revived." In re Lopez, 283 B.R. 22, 32 (B.A.P. 9th Cir. 2002).

Therefore, pursuant to the Ninth Circuit's holding in In re Spiritos, 221 F.3d 1079 (9th Cir. 2000), the 10 year expiration date under the California statute of limitations (Cal. Civ. Proc. Code § 683.020) was not April 3, 2018, but August 20, 2018. The bankruptcy case was filed one year and 18 days after the date of entry of the judgment. The time was then tolled until September 6, 2009, for four months and 17 days (September 6, 2009 is the date 30 days after the automatic stay expired). The time then began to again run on September 7, 2009. From that date until the date of this hearing is eight years, eight months, and 11 days, or 3175 days. Thus the amount of time that has passed pursuant to 11 U.S.C. § 108(c) is within the 10 years for expiration of judgments.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

16. [16-13046](#)-B-7 **IN RE: OSBALDO/NONNIE DELA MORA**
[DRJ-1](#)

MOTION TO AVOID LIEN OF VALLEY FIRST CREDIT UNION
4-9-2018 [\[33\]](#)

OSBALDO DELA MORA/MV
DAVID JENKINS

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 objection 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.

A judgment was entered against the debtor in favor of Valley First Credit Union in the sum of \$6,474.67 on June 7, 2016. Doc. #36. The abstract of judgment was recorded with Fresno County on June 27, 2016. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$282,544.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled \$202,716.00 on that same date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$15,701.00. Doc. #32.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

17. [18-10751](#)-B-7 **IN RE: MARGARET FACCHINO**
[BPC-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-1-2018 [[24](#)]

THE GOLDEN 1 CREDIT UNION/MV
TIMOTHY SPRINGER
JEANNIE KIM/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless opposed at the hearing.

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

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

The collateral is a 2012 Hyundai Genesis. Doc. #27. The collateral's value is in between \$14,864.00 and \$17,880.00. *Id.* Debtor owes creditor \$22,446.17. *Id.*

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

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

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

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

18. [16-12266](#)-B-7 **IN RE: AVTAR SINGH**
[DJP-5](#)

MOTION FOR COMPENSATION FOR WILD, CARTER & TIPTON, SPECIAL
COUNSEL(S)
4-18-2018 [[110](#)]

MARK ZIMMERMAN

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 objection 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. The law firm of Wild, Carter & Tipton shall be awarded fees of \$2,316.00. The court also approves, on a final basis, the interim fees and expenses previously authorized for payment as stated in DJP-4, doc. #81. Trustee is authorized to pay the applicant's fees and expenses at the trustee's discretion.

19. [18-10968](#)-B-7 **IN RE: LYDIA PEARSON**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-19-2018 [\[5\]](#)

LYDIA PEARSON/MV
LYDIA PEARSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Debtor's schedules show a higher income than what was listed in the application for the fee waiver. Debtor's schedules also state that applicant has no dependents, but the fee waiver application states there are two dependents. Additionally, the trustee in this case, Trudi Manfredo, filed a declaration on April 27, 2018 (doc. #17) and stated that debtor has one dependent living at home.

Debtor shall appear at this hearing and explain to the court how many dependents she has, what her correct income is, and why the court should not deny this motion.

20. [18-10375](#)-B-7 **IN RE: GARY VILLANUEVA AND RACQUEL JOHNSON**
[MRG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-24-2018 [\[29\]](#)

BRIDGECREST CREDIT COMPANY,
LLC/MV
ERIC ESCAMILLA
KRISTIN ZILBERSTEIN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The content of the notice do not comply with LBR 9014-1(d)(3)(B)(iii).

Counsel is reminded that new Local Rules became effective September 26, 2017. New Rule 9014-1(d)(3)(B) in particular requires the moving party to include more information in Notices than the old Rule 9014-1(d)(3) did. The court urges counsel to review the new rules in order to be compliant in future matters. The new rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

21. [17-11376](#)-B-7 **IN RE: HECTOR MERCADO MUNOZ AND MIRTA**
MERCADO CARDENAS
[17-1092](#)

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

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

NO RULING.

22. [17-11376](#)-B-7 **IN RE: HECTOR MERCADO MUNOZ AND MIRTA**
MERCADO CARDENAS
[JRL-4](#)

CONTINUED MOTION TO AVOID LIEN OF BRAVO CAPITAL, LLC
11-16-2017 [[160](#)]

HECTOR MERCADO MUNOZ/MV
JERRY LOWE
RESPONSIVE PLEADING

NO RULING.

23. [15-14995](#)-B-7 **IN RE: HIPOLITO MARIANO**
[WW-2](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA AND/OR MOTION TO
AVOID LIEN OF COASTAL NATIONAL BANK
4-17-2018 [[74](#)]

HIPOLITO MARIANO/MV
RILEY WALTER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). The court notes that the creditor, Wells Fargo Bank, N.A. withdrew their opposition on April 25, 2018. Doc. #42.

A writ of attachment was recorded against the debtor in favor of Coastal National Bank for the sum of \$117,949.83 on April 24, 2015. Doc. #77. This bankruptcy case was filed about eight months later. The writ of attachment attached to the debtor's interest in a residential real property in Clovis, CA. The subject real property had an approximate value of \$410,000.00 as of the petition date. Doc. #1, Schedule A/B.

The debtor claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 in Schedule C. Docket #1. Cal. Civ. Proc. Code § 704.730(a)(2) requires that the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

"Family unit" is defined in Cal. Civ. Proc. Code § 704.710(b). The declaration contains no evidence that this debtor was a member of a "family unit" when the petition was filed. Doc. #76. Plus, no qualification evidence regarding this exemption other than the fact that debtor claimed to reside at 5454 E Nees Ave., Clovis, CA when the petition was filed was in the declaration.

None of the evidence filed with the motion supported the allowance of this exemption. Debtors have that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If the debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

24. [15-10998](#)-B-7 **IN RE: MARIA SERRANO**
[TCS-2](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY
4-13-2018 [\[38\]](#)

MARIA SERRANO/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are

entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). The court notes that the creditor, Wells Fargo Bank, N.A. withdrew their opposition on April 25, 2018. Doc. #42.

A judgment was entered against the debtor in favor of Ford Motor Credit Company LLC for the sum of \$27,993.57 on July 24, 2010. Doc. #41. The abstract of judgment was recorded with Fresno County on September 1, 2010. *Id.* That lien attached to the debtor's interest in a residential real property in Winton, CA. The subject real property had an approximate value of 425,000.00 as of the petition date. Doc. #48.

The debtor claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 in amended Schedule C. Docket #48.

In order to be eligible for the exemption under Cal. Civ. Proc. Code § 703.140(b)(1), the real property must be used as a residence. None of the evidence filed with the motion supported the allowance of this exemption. Debtor's declaration simply states that the subject property located at 10256 Shaffer Road, Winton, CA is "real property I own." Doc. #40. The court notes that the street address listed in amended Schedule A is titled as "Principal Residence," and is the same address debtor lists in his declaration. Doc. #1, #48. However, the court is not required to go through the previous filings, because a debtor has that burden on these motions. Morgan v. FDIC (In re Morgan), 149 BR 147, 152 (9th Cir. B.A.P. 1993). This is true even in the absence of an objection to the exemption. *Id.* Unless debtor can provide such evidence at the time of hearing, this motion will be DENIED WITHOUT PREJUDICE.

If debtor is able to provide such evidence, then the court may continue the hearing permitting the creditor to respond.

25. [15-10998](#)-B-7 **IN RE: MARIA SERRANO**
[TCS-3](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY
4-13-2018 [\[43\]](#)

MARIA SERRANO/MV
TIMOTHY SPRINGER

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 objection 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.

A judgment was entered against the debtor in favor of Ford Motor Credit Company in the sum of \$27,993.57 on July 24, 2010. Doc. #46. The abstract of judgment was recorded with Fresno County on September 1, 2010. *Id.* That lien attached to the debtor's interest in a residential real property in Atwater, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$130,000.00 as of the petition date. Doc. #48. The unavoidable liens totaled \$145,381.18 on that same date, consisting of a first deed of trust in favor "A" Caliber Home Loans (doc. #48, Schedule D) and a second deed of trust in favor of Wells Fargo Home Loans. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.130(b)(5) in the amount of \$1.00. Doc. #48, Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11:00 AM

1. [18-10966](#)-B-7 **IN RE: ROSA VERA**

PRO SE REAFFIRMATION AGREEMENT WITH GATEWAY ONE LENDING &
FINANCE
4-26-2018 [[12](#)]

NO RULING.

1:30 PM

1. [17-14766](#)-B-7 **IN RE: JACQUELINE SILVA**
[18-1013](#)

STATUS CONFERENCE RE: COMPLAINT
3-15-2018 [[1](#)]

CLOETERS V. SILVA
DINA CLOETERS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 30, 2018 at 10:00 a.m.

ORDER: The court will issue an order.

Judge Lastreto has recused himself from this adversary proceeding.
The adversary proceeding has been transferred to Department A, Judge
Clement. This hearing will be continued to the date above. No
appearance is necessary.

2. [16-12687](#)-B-7 **IN RE: LORAIN GOODWIN MILLER**
[17-1039](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-29-2017 [[1](#)]

SALVEN V. GOODWIN MILLER ET AL
TRUDI MANFREDO/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [16-12687](#)-B-7 **IN RE: LORAIN GOODWIN MILLER**
[17-1039](#) [TGM-3](#)

MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY
ADJUDICATION
4-17-2018 [[67](#)]

SALVEN V. GOODWIN MILLER ET AL
TRUDI MANFREDO/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This Motion for Summary Judgment was fully noticed pursuant to Local Rule of Practice 9014-1(f)(1). Upon the court's review of the record, the court GRANTS this motion.

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. Federal Rule of Civil Procedure 56(c) (made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7056), Scott v. Harris, U.S. 372, 380 (2007). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). "As to materiality, the substantive law will identify which facts are material. Only disputes over fact that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248. ". . . while the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." *Id.*

Once the movant has come forward with uncontroverted facts entitling it to relief, the burden then shifts to the nonmovant to demonstrate that there are specific and genuine issues of material fact necessitating a trial. Celotex Corp. V. Catrett, 477 U.S. 317, 324 (1986). The nonmovant must go beyond the pleadings and introduce or point to specific evidence in the record supporting its position. *Id.* The reviewing court must view all facts genuinely in dispute "in the light most favorable to the non-moving party." Scott v. Harris, 550 U.S. at 380.

Fed. R. Civ. P. 56 "mandates" entry of summary judgment when, after adequate time for discovery, the non-moving party fails to present

evidence in response to the summary judgment motion sufficient to establish an essential element of that party's case, on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322-23. As the Supreme Court in Celotex explained, "[I]n such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.*

Nonetheless, "[e]ven in cases where elusive concepts such as motive or intent are at issue, summary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch), 237 B.R. 160, 165 (B.A.P. 9th Cir. 1999).

This adversary proceeding is for the turnover of funds held by Defendant Placer Title Company from an aborted escrow involving debtor/defendant Dr. Loraine Goodwin-Miller as buyer and James Walters as seller. The amount at stake, \$20,119, was a "down payment" Dr. Goodwin-Miller deposited into that escrow for the purchase of real estate. The source of funds was, according to her contention in exemption litigation, Dr. Goodwin-Miller's PERS benefits from the state of California. The title company and Mr. Walters claim no interest in the funds and the title company has agreed to turn the funds over to the trustee when so ordered (see Docs #25 and 52, adversary proceeding).

The trustee objected to Dr. Goodwin-Miller's exemption claim to the funds. An evidentiary hearing was held in early February, 2018. Following the hearing, this court issued a memorandum opinion and sustained trustee's objection. Doc. #152, main case. The opinion and the findings of fact will not be repeated here, but the most pertinent facts are as follows: On September 6, 2016, Debtor amended her Schedule C to claim 100% of the escrow funds as exempt from the bankruptcy estate. Doc. #22, main case. On March 29, 2017, the trustee filed an objection to amended Schedule C. Doc. #55, main case. The origin of the Escrow Funds was found to be from the debtor. Doc. #152, main case. On May 25, 2017, this court authorized a stipulation between the trustee and Placer Title (one of the defendants in the adversary proceeding) whereby Placer Title will hold the funds until a court directs otherwise. Doc. #25, adversary proceeding. On September 26, 2017, Trustee and James E Walters entered into a stipulation whereby Mr. Walters agreed he had no interest in the Escrow funds (Mr. Walters is the prevailing party in a state lawsuit filed by debtor against Mr. Walters. Mr. Walters was allegedly supposed to finance a piece of real property for debtor, and was sued for specific performance when he allegedly did not. Mr. Walters prevailed in Madera County superior court). Doc. #152, main case.

The trustee's motion asks for summary judgment that the funds should be turned over to the trustee. The trustee cites the memorandum opinion and the stipulations with Placer Title and Mr. Walters as well as the amended exemptions claimed by Dr. Goodwin-Miller.

Debtor filed a timely opposition to this motion. Doc. #74, adversary proceeding. The opposition is entirely without merit; it does not sufficiently demonstrate that there are specific and genuine issues of material fact that necessitate a trial of this adversary proceeding.

Debtor's opposition asserts a new theory not raised during the exemption litigation: the funds were not hers when transferred to the escrow company, but rather funds transferred to "Shapely, LLC", the successor to "Weight Management Center." Dr. Goodwin-Miller claims the funds deposited in escrow for the down payment were for acquisition of a new business location for "Shapely, LLC/Weight Management Center." Dr. Goodwin Miller did not oppose any of the undisputed facts the Trustee submitted in support of this motion. Doc. #74. Instead, she claims the funds in escrow were exempt retirement funds she received and transferred to the "Weight Management Center" (now "Shapely, LLC"), which LLC was then placed in a trust (listed under "Medical Supplies and Equipment") and are therefore not her property, but belong to "Shapely, LLC,"; "Shapely, LLC" put the funds in an escrow account to purchase a business location; and when the transaction was not completed, the funds in escrow should have been returned to "Shapely, LLC." Doc. #74, adversary proceeding.

The court found that debtor did not meet her burden of proof that the escrow funds were exempt when the petition was filed. Doc. #152, main case. The court also found that if all Dr. Goodwin-Miller's excluded evidence was admitted, the exemption claim would fail as a matter of law. *Id.* The court notes that debtor cites to and includes in her opposition what appears to be a page of the purported trust in which "Shapely, LLC", and presumably, the funds were placed in. Doc. #74, adversary proceeding. Debtor states that the business was placed in the trust, as evidenced under the section titled "MEDICAL SUPPLIES AND EQUIPMENT." *Id.*

But, that section cited by the debtor/defendant does not list "Weight Management Center," "Shapely, LLC," any bank accounts, nor any amount of money. *Id.* Debtor's arguments, to the extent they could be treated as new, and her exhibits to her opposition, do nothing to show that there are specific and genuine issues of material fact in this adversary proceeding. The court already decided what the facts were, and the opposition is void of novel, unique, or different facts that meet her burden on a motion for summary judgment. Debtor also does not provide any legal authority as to why her arguments are relevant to her claim of exemptions. Debtor provides no authority as to why a business escrow or purchasing a business location exempts the escrow funds from the bankruptcy estate. Doc. #74, adversary proceeding. And debtor's final argument:

when the escrow was not completed, the money should return the business in trust, now called Shapely, LLC, which sent the money to the escrow company. It does not become the personal property of the debtor, who gave up ownership, by giving it to the trust by

depositing in [sic] Wells Fargo Bank in 2014
(as per court testimony). *Id.*

is completely contrary to the court's findings as explained in the memorandum decision issued in the evidentiary hearing. Doc. #152, main case.

Introducing new legal theories and argument at the summary judgment stage is generally improper. Coleman v. Quaker Oats, 223 F.3d 1271, 1294 (9th Cir. 2000). The proper procedure is to first amend the pleadings under Fed. R. Civ. P. 15 or 16(b) (F.R.B.P 7015, 7016). Johnson v. Mammoth Recreations, Inc., 975 F. 2d 604, 607-09 (9th Cir. 1992). The exemption objection was tried before the court. Defendant's theory has always been the funds were exempt and traceable to her personal PERS benefits. The court ruled that given the journey of these funds from PERS to the escrow and a real estate broker, they were not exempt under applicable California law. Now, the defendant raises the theory that the funds were never hers at all (or transferred pre-petition) but rather owned by an LLC which is a "trust asset" Dr. Goodwin-Miller administers as trustee. She now claims the funds should be returned to "Shapely, LLC," not the Trustee. "Shapely, LLC" is not a defendant in this adversary proceeding. The summary judgment motion is based on the positions taken by the defendant at all stages in this litigation (including discovery). Dr. Goodwin-Miller's new theory was not asserted until this motion was before the court.

Even if Dr. Goodwin-Miller's "new theory" would be entertained, she is precluded by the doctrine of "law of the case" from asserting that another party owned the funds when they were deposited in escrow. Under the law of the case doctrine, a court is ordinarily precluded from re-examining an issue previously decided by the *same* court or a higher court in the *same* case. Mann v. GTCR Golder Rauner, LLC, 483 F.Supp.2d 864, 870 (D. Ariz, 2006), quoting Hydrick v. Hunter, 466 F.3d 676, 687 (9th Cir. 2006) (emphasis in original). To apply the doctrine, the issue in question must have been decided explicitly or by implication in the previous disposition. *Id.* The doctrine "promotes the finality and efficiency of the judicial process by protecting against agitation of settled issues." Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 816 (1988). Here the court ruled the exemption was unavailable to Dr. Goodwin-Miller despite her "tracing" the source of the funds to a PERS distribution. Necessarily implied is that the funds were "owned" by her when the petition was filed and her legal positions advanced throughout the exemption litigation were consistent with that fact. That is the "law of the case" now and not subject to further dispute.

Also, Dr. Goodwin-Miller has not established a material factual dispute concerning ownership of the funds. Her "response" to the motion for summary judgment simply raises, without evidence, her argument that she did not own the funds because they were deposited in a dormant "Weight Loss Center" business account before they were deposited to escrow.

First, Dr. Goodwin-Miller admitted in this proceeding the "Weight Loss Center" account was dormant for five years (Doc. 61 main case). Second, the account was actually in the name of "Weight Loss Center" and Dr. Goodwin-Miller. *Id.* Third, Dr. Goodwin-Miller has offered no objective evidence that the deposits made in escrow were from any entity other than her personally. There is no evidence that "Weight Loss Center" or "Shapely, LLC" made any deposits into the escrow account. Dr. Goodwin-Miller offered no evidence that she signed any escrow document "as trustee" for any trust or as a member or manager of an LLC. The cashier's checks offered in evidence in the exemption litigation are completely consistent with the funds originating from Dr. Goodwin-Miller. Fourth, she prayed to have the funds turned over to her in the event she prevailed. Doc. 61, main case. She did not make a claim on behalf of any other entity. Fifth, Dr. Goodwin-Miller has offered no evidence that the Trustee had either actual or inquiry notice of another entities' alleged claim to the escrow deposits. Perhaps more germane: what would any creditor have known about title to the funds on the petition date? See 11 U.S.C. § 544. There is simply no objective evidence that the escrow deposits were made on behalf of anyone else.

Finally, if "Shapely, LLC" has a claim to the funds, that is between the LLC and the Trustee. There may well be collateral estoppel concerns that would preclude such a claim even if it is asserted. The Trustee has met his burden on this motion involving the defendants in this adversary proceeding.

Because debtor has not demonstrated that there are specific and genuine issues of material fact necessitating a trial in this adversary proceeding, this motion is GRANTED.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-1](#)

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

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

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

DISPOSITION: Continued to June 27, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation (doc. #97), this matter will be continued to June 27, 2018 at 1:30 p.m. No appearance is necessary.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-2](#)

CONTINUED MOTION TO DISMISS COUNTERCLAIM AND/OR MOTION TO
STRIKE
1-29-2018 [[21](#)]

HEALTHCARE CONGLOMERATE
ASSOCIATES, LLC V. TULARE
MARC LEVINSON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 27, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation (doc. #98), this matter will be
continued to June 27, 2018 at 1:30 p.m. No appearance is necessary.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[17-1095](#) [OHS-3](#)

CONTINUED MOTION TO STRIKE
1-29-2018 [[26](#)]

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

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

DISPOSITION: Continued to June 27, 2018 at 1:30 p.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation (doc. #99), this matter will be
continued to June 27, 2018 at 1:30 p.m. No appearance is necessary.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[18-1005](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-23-2018 [[1](#)]

TULARE LOCAL HEALTHCARE
DISTRICT V. HEALTHCARE
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 27, 2018 at 1:30 p.m.

NO ORDER REQUIRED: The court already entered an order. Doc. #29.

Pursuant to the court's order (doc. #29), this status conference will be continued to June 27, 2018 at 1:30 p.m. No appearance is necessary.