

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, September 25, 2019  
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.

**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. [19-12800](#)-B-7      **IN RE: JESUS/LIZBETH BERNAGA**  
[TCS-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
9-5-2019    [\[14\]](#)

JESUS BERNAGA/MV  
TIMOTHY SPRINGER

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.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$7,969.81 on August 29, 2018. Doc. #17. The abstract of judgment was recorded with Fresno County on October 2, 2018. Id. That lien attached to the debtor's interest in a residential real property in Sanger, 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 \$236,338.00 as of the petition

date. Doc. #1. The unavoidable liens totaled \$170,574.00 on that same date, consisting of a first deed of trust in favor of Freedom Mortgage Corporation. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$65,764.00. Id., Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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. [14-16013](#)-B-7      **IN RE: ABRAHAM GARCIA AND ANGELA BECERRA**  
[NES-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
8-29-2019    [\[46\]](#)

ABRAHAM GARCIA/MV  
NEIL SCHWARTZ

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed and served on August 29, 2019 and set for hearing on September 25, 2019. Doc. #47, 51. September 25, 2019 is 27 days after August 29, 2019, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #47. That is incorrect. Because the hearing was set on 14 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

3. [19-13425](#)-B-7     **IN RE: JESSE CANALES**  
[GK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-11-2019    [\[27\]](#)

38SDJV HOLDINGS, LLC/MV  
JOSEPH WEST  
MILES GRANT/ATTY. FOR MV.

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

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. Federal Rule of Bankruptcy Procedure 7004(b)(1) requires the debtor be served. Fed. R. Bankr. P. 7004(g) also requires the debtor's attorney to be served, if the debtor has one.

In this case, debtor's attorney was served, but the debtor was not. Doc. #34. Therefore this motion is DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure. The chapter 7 trustee was also not served, and since the subject property may be property of the chapter 7 estate, the chapter 7 trustee may have an interest in the property and should be served.

4. [19-12928](#)-B-7     **IN RE: CHRISTOPHER CONTE**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-20-2019    [\[16\]](#)

ACAR LEASING LTD/MV  
WILLIAM COLLIER  
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION:     Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The collateral is a 2017 Chevrolet Cruze. Doc. #21.

The case was filed on July 8, 2019 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted.

5. [19-13528](#)-B-7     **IN RE: KIMBERLY KILGORE**  
[NES-1](#)

MOTION TO COMPEL ABANDONMENT  
8-23-2019    [\[9\]](#)

KIMBERLY KILGORE/MV  
NEIL SCHWARTZ

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.

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).

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship business "The Kru/Nails by Kim." See doc. #15, exh. B. The assets include tools of the trade, equipment, accounts receivable (if any), and business-related assets ("Business Assets").

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.

6. [19-13348](#)-B-7      **IN RE: FILIBERTO MAGANA VILLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-27-2019    [\[23\]](#)

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.

7. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[BN-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-14-2019    [\[91\]](#)

SIEMENS FINANCIAL SERVICES, INC./MV  
THOMAS HOGAN  
VALERIE PEO/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            An order granting the motion has already been  
entered. Doc. #174.

8. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[HRH-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-7-2019    [\[79\]](#)

TRANSPORTATION ALLIANCE BANK, INC./MV  
THOMAS HOGAN  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

9. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[RAP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-10-2019    [\[130\]](#)

SUMITOMO MITSUI FINANCE AND LEASING COMPANY LIMITED/MV  
THOMAS HOGAN  
RAYMOND POLICAR/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 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 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 collateral is a 2016 Volvo Truck. Doc. #132. The collateral has a value of \$60,000.00 and debtor owes \$78,168.85. *Id.*

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).

10. [19-13061](#)-B-7     **IN RE: MARIO GONZALEZ**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION  
8-20-2019    [\[13\]](#)

AMERICAN HONDA FINANCE CORPORATION/MV  
MARK ZIMMERMAN  
VINCENT FROUNJIAN/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. Movant filed a notice waiving the thirty (30) days requirement under 11 U.S.C. § 362(e) on August 20, 2019 (Doc. #18). Debtor filed non-opposition on August 29, 2019 (Doc. #21). 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 proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2015 Honda



Civic. Doc. #17. The collateral has a value of \$10,186.00 and debtor owes \$8,754.19. *Id.*

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

If adequate protection is requested, it will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein.

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

11. [16-13464](#)-B-7     **IN RE: COLIN MARBERRY**  
[NES-2](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, NATIONAL ASSOCIATION  
8-23-2019    [\[30\]](#)

COLIN MARBERRY/MV  
NEIL SCHWARTZ

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. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules

as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Wells Fargo Bank, National Association in the sum of \$56,213.37 on December 15, 2015. Doc. #34. The abstract of judgment was recorded with Kern County on February 10, 2016. Id. That lien attached to the debtor's interest in a rental real property in Bakersfield, 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 \$82,174.00 as of the petition date. Doc. #28. The unavoidable liens totaled \$89,793.00 on that same date, consisting of a first deed of trust in favor of Chase Mortgage. Doc. #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00. Doc. #28, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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).

12. [19-11167](#)-B-7     **IN RE: ROSA RODRIGUEZ**  
[RLF-2](#)

CONTINUED MOTION TO AVOID LIEN OF DISCOVER BANK  
8-1-2019    [\[26\]](#)

ROSA RODRIGUEZ/MV  
SHANE REICH

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. Movant filed another motion, RLF-4, matter #13 below.

13. [19-11167](#)-B-7     **IN RE: ROSA RODRIGUEZ**  
[RLF-4](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
9-11-2019    [\[33\]](#)

ROSA RODRIGUEZ/MV  
SHANE REICH

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.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Discover Bank in the sum of \$4,942.48 on March 6, 2017. Doc. #36. The abstract of judgment was recorded with Madera County on March 6, 2017. Id. That lien attached to the debtor's interest in a residential real property in Madera, 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 \$192,888.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$116,257.00 on that same date, consisting of a first deed of trust in favor of Mr. Cooper. Doc. #13. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$160,000.00. Doc. #1.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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).

14. [18-14473](#)-B-7     **IN RE: JOANNA PORTER JOHNSON**  
[JBA-1](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR  
VIOLATION OF THE DISCHARGE INJUNCTION  
7-3-2019    [\[21\]](#)

JOANNA PORTER JOHNSON/MV  
JOSEPH ANGELO  
RESPONSIVE PLEADING

NO RULING.

15. [18-14473](#)-B-7     **IN RE: JOANNA PORTER JOHNSON**  
[JBA-2](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR  
VIOLATION OF THE DISCHARGE INJUNCTION  
7-9-2019    [\[26\]](#)

JOANNA PORTER JOHNSON/MV  
JOSEPH ANGELO

NO RULING.

16. [19-10682](#)-B-7     **IN RE: SONIA ALVAREZ AND LUIS SERRANO-MARES**

MOTION TO AVOID LIEN OF DEUTSCHE BANK NATIONAL TRUST COMPANY  
8-23-2019    [\[65\]](#)

SONIA ALVAREZ/MV  
SONIA ALVAREZ/ATTY. FOR MV.  
DEBTOR DISMISSED: 07/11/2019; JOINT DEBTOR DISMISSED:  
07/11/2019; RESPONSIVE PLEADING

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).

First, movant did not properly serve the respondent Deutsche Bank National Trust Company under Federal Rule of Bankruptcy Procedure 7004(h).

Second, no evidence was provided to the court. Movant did not provide any evidence of this purported loan from "WMC Lender." Even if they did, the court is not sure if debtors are entitled to the requested relief based upon the motion. Only judicial liens or nonpossessory, nonpurchase-money security interests in

household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor; implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or professionally prescribed health aids for the debtor or a dependent of the debtor

can be avoided. Debtors' motion appears to allege that "WMC Lender" lent \$400,000.00 to debtors. Doc. #65. Debtors then gave a security interest to "WMC Lender" in their real property, consisting of "orchard of 10 acres of oranges, 21400 Road 224, Lindsay Ca 93247 which at 2009 got remodeled and changed to 21428 Road 224, Lindsay Ca 93247." This description does not appear to be a judicial lien, nor a nonpossessory, nonpurchase-money security interest in the above-mentioned items, and therefore not avoidable under 11 U.S.C. § 522(f).

There is a motion to vacate the dismissal of debtor's case to be heard concurrently with this motion. See matter #18 below. If the dismissal order is vacated, then this motion will be DENIED WITHOUT PREJUDICE. If the dismissal order is not vacated, then this motion will be DENIED AS MOOT.

MOTION TO AVOID LIEN OF GMAC/ALLY CT CORPORATION SYSTEM  
8-23-2019    [\[66\]](#)

SONIA ALVAREZ/MV  
SONIA ALVAREZ/ATTY. FOR MV.  
DEBTOR DISMISSED: 07/11/2019;    JOINT DEBTOR DISMISSED:  
07/11/2019;

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).

Debtors did not provide any evidence with their motion. Therefore the court cannot make the necessary findings as required by law to grant the relief requested. Additionally, the motion on its face appears to be deficient. The court is not sure if debtors are entitled to the requested relief based upon the motion. Only judicial liens or nonpossessory, nonpurchase-money security interests in

household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor; implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or professionally prescribed health aids for the debtor or a dependent of the debtor

can be avoided under 11 U.S.C. § 522(f). Debtors do not mention a judicial lien, and vehicles are not listed in the aforementioned categories above.

There is a motion to vacate the dismissal of debtor's case to be heard concurrently with this motion. See matter #18 below. If the dismissal order is vacated, then this motion will be DENIED WITHOUT PREJUDICE. If the dismissal order is not vacated, then this motion will be DENIED AS MOOT.

18. [19-10682](#)-B-7     **IN RE: SONIA ALVAREZ AND LUIS SERRANO-MARES**

MOTION TO VACATE DISMISSAL OF CASE  
8-23-2019    [\[61\]](#)

SONIA ALVAREZ/MV  
SONIA ALVAREZ/ATTY. FOR MV.  
DISMISSED 07/11/19

NO RULING.

19. [19-12397](#)-B-7     **IN RE: JEFFERY CASH**  
[PLG-3](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.  
9-4-2019    [\[37\]](#)

JEFFERY CASH/MV  
RABIN POURNAZARIAN

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

20. [19-13569](#)-B-7     **IN RE: JOHN ESPINOZA**  
[JRL-2](#)

MOTION TO COMPEL ABANDONMENT  
9-20-2019    [\[24\]](#)

JOHN ESPINOZA/MV  
JERRY LOWE  
OST 9/20/19

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 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)(3) and an order shortening time (doc. #22) 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.

Movant did not include the language under LBR 9014-1(d)(3)(B)(iii) in the notice of hearing. The court also notes that as of September 22, 2019, no certificate of servicing showing that the motion and declaration of John Espinoza have been served, in compliance with the court's order. Doc. #22.

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).



Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's sole proprietorship business "Johnny's Custom Paint." The assets include tools of the trade, equipment, and business-related assets ("Business Assets").

The court cannot find that the Business Assets are of inconsequential value and benefit to the estate. Debtor's Schedule A/B does not include the Wells Fargo Business Checking Account, nor the painting supplies and equipment. Those assets are therefore not listed on Schedule C and therefore not exempt. This motion is DENIED WITHOUT PREJUDICE.

11:00 AM

1. [19-13206](#)-B-7     **IN RE: DAISY HERNANDEZ-SALINAS**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
8-30-2019     [\[10\]](#)

TIMOTHY SPRINGER

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

DISPOSITION:     Dropped.

ORDER:             The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [19-13418](#)-B-7     **IN RE: JANE DEL RIO**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
9-5-2019     [\[11\]](#)

NO RULING.

3. [19-12839](#)-B-7     **IN RE: ERIN BRYANT**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK  
9-3-2019     [\[14\]](#)

NO RULING.

4. [19-13146](#)-B-7      **IN RE: SERGIO/MARIA RUIZ**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY FINANCIAL  
9-4-2019    [\[18\]](#)

THOMAS GILLIS

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

5. [19-12982](#)-B-7      **IN RE: ANGEL/JENNIFER MENDEZ**

PRO SE REAFFIRMATION AGREEMENT WITH VALLEY FIRST CREDIT UNION  
8-29-2019    [\[13\]](#)

TIMOTHY SPRINGER

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

1:30 PM

1. [18-13802](#)-B-7     **IN RE: ELVIA OLIVA**  
[18-1080](#)

DECLARATION IN SUPPORT OF REQUEST FOR DEFAULT JUDGMENT  
8-8-2019    [[36](#)]

NO RULING.

2. [18-13224](#)-B-7     **IN RE: ANTHONY CORRAL**  
[19-1046](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
7-23-2019    [[19](#)]

SALVEN V. THE UNITED STATES OF AMERICA DEPARTMENT OF THE TRE  
PETER FEAR/ATTY. FOR PL.

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

DISPOSITION:     Continued to October 22, 2019 at 1:30 p.m.

ORDER:             The court will issue an order.

Pursuant to the parties' stipulation (doc. #32), Defendant has until and including October 11, 2019 to file an answer to Plaintiff's amended complaint. Therefore this matter is continued to October 22, 2019 at 1:30 p.m.

3. [19-12236](#)-B-13     **IN RE: GABRIEL/SANDRA AYALA**  
[19-1076](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
6-21-2019    [[1](#)]

AYALA, SR. ET AL V. 3RD GENERATION, INC.  
PETER BUNTING/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.