



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 14, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-10006](#)-A-13 **IN RE: JOSE SANCHEZ**
[LGT-2](#)

MOTION TO DISMISS CASE
10-7-2024 [\[53\]](#)

LILIAN TSANG/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 12, 2024 at 9:30 a.m.

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

On October 30, 2024, the debtor filed a response to the trustee's motion to dismiss as well as a modified plan (SL-1, Doc. #59). Doc. #63. A motion to confirm the modified plan is set for hearing on December 12, 2024 at 9:30 a.m. Doc. ##57-62. Accordingly, the court is inclined to continue the hearing on the motion to dismiss to December 12, 2024 at 9:30 a.m.

2. [20-11419](#)-A-13 **IN RE: TRAVIS/MORGAN TERRY**
[JDR-1](#)

MOTION TO MODIFY PLAN
10-9-2024 [\[30\]](#)

MORGAN TERRY/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party

make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

3. [20-11419](#)-A-13 **IN RE: TRAVIS/MORGAN TERRY**
[JDR-2](#)

MOTION FOR COMPENSATION FOR JEFFREY D. ROWE, DEBTORS ATTORNEY(S)
10-9-2024 [\[37\]](#)

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Jeffrey D. Rowe ("Movant"), counsel for Travis Kenneth Terry and Morgan Rae Terry (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$6,500.00 and no reimbursement for expenses for services rendered from February 17, 2020 through September 8, 2024. Doc. #37. Debtors' confirmed plan provides, in addition to \$1,810.00 paid prior to filing the case, for \$15,000.00 in attorney's fees. Plan, Doc. #2; Order, Doc. #13. No prior fee application has been filed. Debtors' consent to the amount requested in Movant's application. Ex. F, Doc. #41.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) consulting and fact gathering to file bankruptcy case; (2) preparing petition, schedules and related pleadings; (3) preparing and filing original and modified plans; (4) preparing and attending 341 meeting of creditors; (5) general case administration; and (6) preparing fee application. Exs. A-C, Doc. #41. The court finds that the compensation and

reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows on a final basis compensation requested by this motion in the amount of \$6,500.00 and no reimbursement for expenses to be paid in a manner consistent with the terms of the confirmed plan.

4. [24-12321](#)-A-13 **IN RE: DOROTHY MCKINLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-17-2024 [[19](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.
\$78.00 FILING FEE PAID 10/17/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

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

5. [23-10943](#)-A-13 **IN RE: DE QIANG/AMY FENG**
[WLG-3](#)

MOTION TO MODIFY PLAN
10-9-2024 [[105](#)]

AMY FENG/MV
MICHAEL REID/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on October 22, 2024. Doc. #119.

6. [24-10846](#)-A-13 **IN RE: KENNETH MYERS**
[DCJ-2](#)

MOTION TO CONFIRM PLAN
9-11-2024 [[47](#)]

KENNETH MYERS/MV
DAVID JOHNSTON/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 19, 2024 at 9:30 a.m.

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

This motion was set for hearing on at least 35 days' notice as required by
Local Rule of Practice 3015-1(d)(1). Farmers & Merchants Bank of Central
California ("Creditor") opposes the motion, and the chapter 13 trustee
("Trustee") has concerns regarding the motion. Doc. #58, 60.

On November 7, 2024, Kenneth J. Meyers ("Debtor") and Trustee filed a joint
stipulation conditioning confirmation on resolution of a motion to avoid
Creditor's lien. Doc. #60. On November 12, 2024, Debtor and Creditor filed a
joint ex parte request to continue the hearing on Debtor's motion to confirm
the first amended chapter 13 plan to December 19, 2024 at 9:30 a.m. Doc. #61.

Accordingly, the court is inclined to continue the hearing on this motion to
December 19, 2024 at 9:30 a.m.

7. [24-10846](#)-A-13 **IN RE: KENNETH MYERS**
[LGT-1](#)

CONTINUED MOTION TO DISMISS CASE
8-22-2024 [[41](#)]

LILIAN TSANG/MV
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 19, 2024 at 9:30 a.m.

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

On August 22, 2024, the chapter 13 trustee ("Trustee") filed a motion to
dismiss this bankruptcy case that was previously continued to November 14,
2024. Doc. #41, 55. Based on the court's inclination to continue the hearing
on Debtor's motion to confirm the first amended chapter 13 plan to December 19,
2024 at 9:30 a.m. (calendar matter #6 above), the court is inclined to continue
the hearing on Trustee's motion to dismiss to December 19, 2024 at 9:30 a.m.

MOTION TO WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
10-11-2024 [\[61\]](#)

MARIA VALDEZ DE MORAN/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Scott Lyons ("Movant"), counsel for Tomas Moran Rosales ("Debtor") and Maria Concepcion Valdez De Moran ("Joint Debtor"), joint debtors in this chapter 13 case, requests the court name Movant as the successor to the incapacitated Debtor, permit the continued administration of this chapter 13 case, and waive the § 1328 certification requirements for Debtor. Doc. #61.

Upon the death or incompetency of a debtor in chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred upon a showing that further administration is possible and in the best interest of the parties. On or about May 17, 2023, Debtor was found to be incapacitated due to suffering from Alzheimer's disease by the Tulare County Probate Court. Decl. of Maria Concepcion Valdez De Moran, Doc. #63; Ex. A, Doc. #64. Joint Debtor was made Debtor's conservator. Id. Pursuant to Trustee's Final Report and Account filed on November 8, 2024, it appears that all plan payments required under Debtor and Joint Debtor's confirmed plan were completed on September 6, 2024. Doc. #67. Appointing Movant to be Debtor's representative to complete administration of this bankruptcy case is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Debtor's certification requirement for entry of discharge under 11 U.S.C. § 1328, Debtor failed to meet the post-petition financial education requirements of Debtor due to his incapacity, which Joint Debtor brought to the attention of her attorney upon receiving both 11 U.S.C. § 1328 certificates by mail in late September 2024. Valdez De Moran Decl.,

Doc. #63. Debtor's incapacity demonstrates an inability to provide the required certification, and Debtor's § 1328 certification requirement will be waived.

Accordingly, Movant's application to be appointed as the successor to Debtor for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Debtor's § 1328 certification requirement is GRANTED.

9. [23-10058](#)-A-13 **IN RE: HUMBERTO/VERONICA MARTINEZ**
[TCS-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF
TIMOTHY C. SPRINGER FOR TIMOTHY C. SPRINGER, DEBTORS ATTORNEY(S)
10-30-2024 [[34](#)]

VERONICA MARTINEZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion was sent by mail on October 30, 2024, with a hearing date set for November 14, 2024, which is 15 days before the hearing. Pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(6), motions for compensation may not be set on less than 21 days' notice.

10. [24-12268](#)-A-13 **IN RE: CHRIS ALCANTARA**
[AP-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
9-4-2024 [[12](#)]

U.S. BANK NATIONAL ASSOCIATION/MV
WENDY LOCKE/ATTY. FOR MV.

NO RULING.

11. [24-12268](#)-A-13 **IN RE: CHRIS ALCANTARA**
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG
9-19-2024 [[16](#)]

LILIAN TSANG/MV

NO RULING.

12. [24-12268](#)-A-13 **IN RE: CHRIS ALCANTARA**
[LGT-2](#)

MOTION TO DISMISS CASE
10-21-2024 [\[25\]](#)

LILIAN TSANG/MV

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 court will issue an order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #25. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; (3) make all payments due under the plan; and (4) file accurate and/or complete schedules. Id.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor has failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-11-2024 [\[11\]](#)

JERRY LEWANDOWSKI/MV
BRIAR KEELER/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 the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). The initial hearing on this motion was held on October 31, 2024 and was continued to November 14, 2024 to allow the debtor to file and serve a written response. Order, Doc. #42. Hilda Jimenez ("Debtor") filed written opposition on November 7, 2024. Doc. #46. This matter will proceed as scheduled.

The movant, Jerry Lewandowski ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to proceed with an unlawful detainer action in Kern County Superior Court Case No. BCL-23-017502 (the "Unlawful Detainer Action") against Debtor. Doc. ##11, 14. The Unlawful Detainer Action is in reference to the occupancy by Debtor and Debtor's partner and co-defendant, Bedros Balian ("Co-Defendant"), of real property located at 21369 McIntosh Street, Tehachapi, California 93561 (the "Property"). Id. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). Id.

Debtor filed this chapter 13 bankruptcy case on October 3, 2024. Doc. #1. Movant owns the Property. Decl. of Jerry Lewandowski, Doc. #13. According to Movant, in July 2021, Debtor asked Movant for a loan to purchase a home. Lewandowski Decl., Doc. #13. Instead of loaning money to Debtor, Movant purchased the Property and allowed Debtor to reside at the Property rent free for 6 months to allow Debtor to obtain financing to purchase the Property from Movant for \$399,999.00. Lewandowski Decl., Doc. #13; Ex. A, Doc. #15. No written agreement was ever signed between Movant and Debtor, and Debtor never paid Movant any rent while residing at the Property. Id. When Movant decided to sell the Property in 2023, Movant retained counsel to assist in terminating Debtor occupying the Property by serving Debtor with a 60-day Notice of Termination on August 1, 2023. Ex. B, Doc. #15. Debtor disputes Movant's version of the facts. Doc. #46.

Thereafter, Movant filed a state court action on November 28, 2023 to remove Debtor from the Property and subsequently sell the Property. Lewandowski Decl., Doc. #13; Ex. B, Doc. #15. On June 3, 2024, the state court served a notice on all parties in the Unlawful Detainer Action informing them of a trial date on June 18, 2024. Lewandowski Decl., Doc. #13. Co-Defendant filed a chapter 13 bankruptcy case on June 14, 2024, but that bankruptcy case was dismissed on October 2, 2024. Id.; see Case No. 24-11650 (Bankr. E.D. Cal). During Co-Defendant's bankruptcy case, Movant successfully obtained relief from the automatic stay to proceed with the Unlawful Detainer Action. Lewandowski Decl., Doc. #13. Movant obtained a new trial date for the Unlawful Detainer Action of

October 3, 2024, which is the same date on which Debtor filed the instant bankruptcy case. Id.; Ex. C, Doc. #15. Movant seeks relief from the automatic stay to proceed with the Unlawful Detainer Action against Debtor to regain possession and sell the Property. Lewandowski Decl., Doc. #13.

In Debtor's opposition, Debtor requests this matter be continued for another week to allow Debtor's chapter 13 plan be confirmed. Doc. #46. However, while Debtor filed her chapter 13 plan, no motion to confirm that plan has been filed or set for hearing. Moreover, such a hearing will cannot take place in one week. Pursuant to LBR 3015-1(c)(3) and 3015-1(d)(1), a hearing on a motion to confirm a plan must be filed and served at least 35 days prior to the hearing date. In addition, a review of Debtor's schedules shows Debtor does not claim any interest in the Property on her schedules or lists any lease agreement between Debtor and Movant with respect to the Property. Am. Schedules, Doc. ##30-39. The granting of this motion does not stop Debtor from continuing to pursue confirmation of a chapter 13 plan.

Debtor also opposes granting this motion asserting that Movant has misrepresented the relationship between Movant, Debtor and Co-Defendant in the Unlawful Detainer Action. Doc. #46. However, granting relief from the automatic stay does not mean that this court is deciding the merits of the Unlawful Detainer Action. Granting the motion merely means that this court is allowing the state court to proceed with the Unlawful Detainer Action, which this court is inclined to do based on the discrepancies in facts presented by both Movant and Debtor as well as other considerations.

11 U.S.C. § 362(d)(1) Analysis

11 U.S.C. § 362(d)(1) allows the court to grant relief from the automatic stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; and (6) the impact of the stay on the parties and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting Movant relief from the automatic stay will allow Movant to continue the Unlawful Detainer Action in state court, which will allow the issue of possession of the Property to be adjudicated on its merits. According to Movant, the state court could adjudicate the Unlawful Detainer Action via trial within a month if relief from the automatic stay is granted. Doc. #14.

While Debtor seeks to delay a ruling on this motion pending confirmation of Debtor's chapter 13 plan, the court finds that resolution of the Unlawful Detainer Action is wholly unrelated to Debtor's bankruptcy case because the Property is not a part of the estate and is not even mentioned in Debtor's schedules. Also, the Unlawful Detainer Action only seeks possession of the Property and does not seek to recover unpaid rent. Thus, allowing the Unlawful Detainer Action to proceed will not impact the bankruptcy at all.

In addition, an unlawful detainer is a matter of state law, and the state court is probably better situated to hear the Unlawful Detainer Action than this court given the absence of any nexus to the bankruptcy case. Any legal or factual issues which may complicate this matter are also implicate state law. The state court is more familiar with those issues. Debtor will suffer no legally cognizable harm by being forced to resolve the Unlawful Detainer Action in state court. Further, the interests of judicial economy favor granting relief from the automatic stay so that Movant can regain possession of the Property.

Further, granting stay relief will serve the interests of judicial economy, as the Unlawful Detainer Action has no connection to the bankruptcy estate or the bankruptcy case and only contains a state law claim to regain possession of property that is not a part of the estate. Moreover, the Unlawful Detainer Action was ready to be tried in state court on the day that Debtor filed this bankruptcy case.

Finally, the "balance of hurt" favors lifting the stay. Movant owns the Property and wishes to sell the Property but cannot do so while the Property is occupied by Debtor and Co-Defendant who, according to Movant, do not and have never paid rent. Meanwhile, Movant incurs expenses for maintenance, insurance, and taxes for the Property. Movant cannot alleviate this "hurt" until the Unlawful Detainer Action is resolved, and Movant can either take possession of the Property or at least obtain a judicial determination of Movant's rights in the Property. Debtor, on the other hand, has no legal right to occupy the Property, either through ownership or a lease agreement. Movant also suggests that the facts surrounding this pro se bankruptcy filed on the day of trial indicate that Debtor's purpose in filing for bankruptcy was solely to prevent the Unlawful Detainer Action from proceeding.

After consideration of the Curtis factors, the court finds that cause exists to lift the stay to permit Movant to proceed with the Unlawful Detainer Action in state court and enforce any resulting judgment.

11 U.S.C. § 362(d) (2) Analysis

11 U.S.C. § 362(d) (2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

Here, the court finds that Debtor has not asserted an interest in the Property in her bankruptcy schedules that were filed under penalty of perjury. Further, the Property is not necessary to an effective reorganization because, based on Debtor's filed schedules, Debtor has no legal right to occupy the Property either through ownership or a lease agreement.

Conclusion

Accordingly, the court is inclined to overrule Debtor's opposition and grant the motion pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) to allow the Unlawful Detainer Action to proceed in state court for the sole purpose of resolving the unlawful detainer question and Debtor's right, if any, to possession of the Property. Relief from the automatic stay also is granted to permit Movant to enforce any unlawful detainer judgment and take all necessary steps to obtain possession of the Property from Debtor. However, no claim against the estate may be asserted in the Unlawful Detainer Action without further order of the court.

Because Debtor has no legal right to occupy the Property either through ownership or a lease agreement and trial on the Unlawful Detainer Action was

set to proceed on the same day that Debtor filed her bankruptcy petition, the 14-day stay of Rule 4001(a)(3) will be ordered waived to permit Movant to prosecute the Unlawful Detainer Action in state court forthwith.

1. [24-10440](#)-A-7 **IN RE: ZAC FANCHER**
[24-1013](#) [CH-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
10-17-2024 [\[73\]](#)

FANCHER V. TULARE COUNTY
RESOURCE MANAGEMENT AGENCY
DARRYL HOROWITT/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The plaintiff late-filed written opposition on November 1, 2024, one day after the deadline. Doc. #78. On November 7, 2024, the defendant timely filed its reply to the plaintiff's opposition. Doc. #80. This matter will proceed as scheduled.

INTRODUCTION

Zac Fancher ("Plaintiff") is a chapter 7 debtor proceeding in pro se and the plaintiff in this adversary proceeding. On May 23, 2024, Plaintiff initiated this adversary proceeding against defendant Tulare County Resource Management Agency ("Defendant"). Doc. #1.

On July 8, 2024, Defendant moved to dismiss each claim for relief under Federal Rule of Civil Procedure ("Rule") 12(b)(6). Doc. #20. Rule 12(b) is made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7012. On September 12, 2024, this court granted that motion to dismiss with leave to amend. Order, Doc. #55.

On October 3, 2024, Plaintiff filed a first amended verified adversary complaint against Defendant ("Complaint") in which Plaintiff seeks to void an abatement lien recorded by Defendant on February 17, 2022 against Plaintiff's real property located at 19301 Campbell Creek Drive, Springville, California 93265 (the "Property") and also seeks declaratory relief that no special assessment has been recorded by Defendant against the Property. Doc. #61. Plaintiff asserts four claims for relief against Defendant for: (1) statute of limitations; (2) declaratory relief; (3) disallowance of claim; and (4) determination of tax liability.

On October 17, 2024, Defendant moved to dismiss each claim for relief of the Complaint under Rule 12(b)(6). Doc. #73. Plaintiff filed written opposition addressing Defendant's request for dismissal under Rule 12(b)(6). Doc. #78.

Having considered the motion, opposition, reply, and Complaint in its entirety, the court is inclined to grant Defendant's motion to dismiss without leave to amend with respect to the first claim for relief and deny the motion as to the second, third and fourth claims for relief.

JUDICIAL NOTICE

Defendant asks this court to consider certain public records and filings submitted by Defendant as a request for judicial notice to support Defendant's position and assertions in the motion to dismiss. Doc. ##75, 76. "Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citations omitted). When matters outside the complaint are presented to and not excluded by the court, a Rule 12(b)(6) motion is to be treated as one for summary judgment. Id.; Rule 12(d).

However, "a document is not 'outside' the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." Id. (quoting Townsend v. Columbia Operations, 667 F.2d 844, 848-49 (9th Cir. 1982)). "[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion into a motion for summary judgment. Branch, 14 F.3d at 454.

Here, Defendant requests the court consider the following documents to which the Complaint specifically refers and are not in dispute:

- (1) Verified Petition for Administrative Writ of Mandamus, Superior Court of Tulare County, Case No. GC170012 filed July 6, 2018 (Doc. #61 at ¶ 39);
- (2) Notice of Decision of Administrative Hearing Officer, Official Records of Tulare County as Document No. 2017-0042332 (Doc. #61 at ¶ 65);
- (3) Tulare County Board of Supervisors, Resolution No. 2020-0082 (Doc. #61 at ¶¶ 12-13); and
- (4) Tulare County Ordinance Section 1-31-1110 (Doc. #61 at ¶ 63).

Doc. ##75, 76. Accordingly, the court may consider these documents in ruling on the motion to dismiss under Rule 12(b)(6).

Federal Rule of Evidence 201(b) provides the criteria for judicially noticed facts. Courts may take judicial notice of matters of public record. See Rosal v. First. Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009). However, the court does not take judicial notice of the truth of the contents of any documents. Faulkner v. M&T Bank (In re Faulkner), 593 B.R. 263, 273 n.2 (Bankr. E.D. Pa. 2018). Federal Rule of Evidence 201(c)(2) requires the court "take judicial notice if a party requests it and the court is supplied with the necessary information."

Here, the court will exclude the request to take judicial notice of the (1) Judgment Denying Writ of Mandamus and Notice of Entry of Judgment, Superior Court of Tulare County, Case No. GC170012, entered on December 24, 2018, and (2) Opinion of the Court of Appeal, Fifth District California, issued on November 4, 2020, because Defendant's motion is made under Rule 12(b)(6). If this court were to take judicial notice of these documents when considering this motion, that reliance would change this motion from a motion to dismiss to a motion for summary judgment under Rule 12(d), which this court is not going to do. For the same reasons, the court will not take judicial notice of the original complaint filed in this adversary proceeding with accompanied pleadings because the original complaint has been dismissed with leave to amend and, at this stage, the court is only tasked with determining whether Plaintiff states plausible claims for relief in the Complaint.

RELEVANT FACTS

As set forth in the Complaint, on March 16, 2017, an inspection warrant was issued on the Property. Doc. #61. On June 28, 2017, an administrative hearing was held where a determination was made that the Property's conditions constituted a public nuisance. Id.

On February 22, 2019, an abatement warrant was issued on the Property. Doc. #61. On February 26, 2019, Plaintiff was served an abatement warrant dated February 21, 2019 by an RMA Enforcement Officer. Id. Plaintiff contests the validity of the abatement warrant. Id. After the abatement warrant was served, the primary dwelling on the Property was abated. Id.

On September 23, 2019, Plaintiff was served with a notice titled "Demand is Hereby Made", which demanded payment in the amount of \$86,722.95 for the cost of the abatement executed on the Property on February 26-28, 2019. Doc. #61. On or about February 27, 2020, a notice of hearing of the cost of abatement was personally served on Plaintiff for a hearing set for March 17, 2020 (the "Hearing") before the Tulare County Board of Supervisors and the Board of Chambers located in the City of Visalia. Id.

The Hearing occurred on March 17, 2020. Doc. #61. At the Hearing, the board confirmed the cost of abatement in the amount of \$86,722.95, ordered that the abatement costs be placed on the county tax roll as a special assessment, and authorized the recording of a notice of abatement lien with respect to the abatement costs. Id.; Ex. 5, Doc. #76. No special assessment was ever recorded, and Defendant did not record an abatement lien until February 17, 2022. Doc. #61.

In the fall of 2020, the former owner of the Property, Plaintiff's mother Cathy Fancher, received a property tax bill from the Tulare County Assessor's Office that included the cost of the abatement. Doc. #61. On February 22, 2021, Mrs. Fancher transferred all interest in the Property to Plaintiff by quitclaim deed, which was recorded on December 10, 2021. Id. Plaintiff has owned the Property since February 22, 2021. Id.

On February 17, 2022, a notice of abatement lien was recorded with the Tulare County Recorder's Office. Doc. #61. Plaintiff acknowledges that Plaintiff owes a debt to the County of Tulare in relation to the Property, but not in the amount of \$147,929.89. Id. Plaintiff believes Defendant exceeded the statute of limitations in recording an abatement lien or special assessment and that the abatement lien is unenforceable. Id. Plaintiff filed his chapter 7 petition on February 27, 2024 and filed this adversary proceeding on May 23, 2024. Doc. #1.

LEGAL AUTHORITY FOR A MOTION TO DISMISS

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on Rule 12(b)(6) motions] enunciated by the Supreme Court, a federal court must

construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers.” Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

SUFFICIENCY OF FIRST CLAIM FOR RELIEF

Defendant argues that Plaintiff’s first claim for relief based on the statute of limitations fails to state a claim on which relief may be granted. Doc. #74 at p. 5. To support this assertion, Defendant states that Plaintiff does not cite to a statute pursuant to California Code of Civil Procedure § 312 and, therefore, Plaintiff’s first claim for relief fails. Id. However, California Code of Civil Procedure § 312 merely states that an action can be commenced only within the statutorily limited procedural time period after which a claim for relief has “accrued” (not defining accrued), unless a statute provides that there is a different time notwithstanding the “accrual” of the claim. In re Carol, 586 B.R. 775, 788 (Bankr. E.D. Cal. 2018). California Code of Civil Procedure § 312 determines the timing by when a person may have access to the courts to try and enforce their rights. Id. Because Plaintiff refers to the statute of limitation in the context of the time period in which Defendant had to record a notice of abatement lien, this issue can be raised as a claim for relief in the Complaint.

However, the court finds that there is no applicable statute of limitation by when Defendant had to record a notice of an abatement lien or record a special assessment with respect to the costs of abating the Property.

Plaintiff first cites to Tulare County Ordinance § 7-15-100 that adopts the 2022 California Building Codes as requiring a nuisance abatement to be recorded within 60 days after the board resolution’s cost of accounting. Doc. #61 at ¶ 20. However, the 2022 edition of the California Building Code did not exist when the resolution regarding the abatement costs for the Property was issued in March 2020. Thus, this ordinance does not apply to the special assessment for the costs of abating the Property.

Plaintiff next cites to Chapter 15.04 § 114.13.3.2, which is an ordinance from the city of Patterson, California and is not applicable to City of Tulare. Doc. #61 at ¶ 21. The Tulare County Ordinance is the applicable ordinance for the City of Tulare and has no statutory deadline for recording the special assessment or notice of lien at issue.

Finally, the California Government Code sections referenced by Plaintiff in the Complaint do not exist or do not set a deadline by when the abatement lien needed to be recorded. Specifically, California Government Code § 3482 is listed in the table of authorities to the Complaint but is not listed on the page referenced and does not exist. California Government Code § 53930(e), referenced in the Complaint at ¶ 23, does not exist. California Government Code § 53930 has no subsections and the statutory language found in the Complaint for this code section is not in California Government Code § 53930. California Government Code §§ 14, 19, 20, 25845, 27724, 38773.5, 39577 and 54988 do not set a deadline by when notice of an abatement lien needs to be recorded.

Therefore, the first claim for relief fails to state a claim upon which relief can be granted. Even if leave to amend were granted, the law and facts would not support a claim for relief. The court finds that permitting leave to further amend this claim for relief would be futile.

Accordingly, the motion to dismiss the first claim for relief is GRANTED WITHOUT LEAVE TO AMEND.

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SUFFICIENCY OF REMAINING CLAIMS FOR RELIEF

The remaining claims for relief seek declaratory relief, disallowance and determination of tax liability. Doc. #61 at p. 23-24. The court is inclined to deny the motion to dismiss the remaining claims.

Defendant asserts that Plaintiff fails to allege any facts showing a procedural violation that would warrant nullification of Defendant's claim. Doc. #74 at pp. 11-18. Specifically, all procedural issues with respect to the abatement proceedings prior to July 2018 were fully adjudicated in the California state court and are subject to the Full Faith and Credit Act 28 U.S.C. § 1738. Even if 28 U.S.C. § 1738 does not apply, Plaintiff's claim fails because Plaintiff does not allege facts that would give rise to a plausible claim that there was a procedural defect in the abatement proceedings. Doc. #74.

In opposition, Plaintiff argues that res judicata does not apply because Plaintiff was never given a full and fair opportunity to litigate. Doc. #78 at p. 2. Plaintiff mentions that during the hearing on a demurrer in state court on September 19, 2018, Plaintiff was not allowed to speak in court due to his lack of standing because he was not the property owner. Id. According to the Complaint, Plaintiff did not own the Property on September 19, 2018. Doc. #61 at ¶ 15. When a party is representing themselves, that party cannot represent anyone else unless they are an attorney. Plaintiff is not an attorney. See Opposition at p. 2, Doc. #78. Because Plaintiff did not own the Property in September 2018, it appears that the state court properly denied permission for Plaintiff to speak in court at that hearing due to his lack of standing.

Turning to the procedures in which all warrants were issued and served, Defendant contends that the Complaint should be dismissed because the warrant and all other procedural steps were followed, so the Complaint fails to state a claim upon which relief can be granted. Doc. #74 at p. 16-18.

While it could be inferred that Defendant has followed all procedures necessary leading up to and following the recording of the abatement lien, Plaintiff, through the Complaint, alleges that the warrant served upon Plaintiff was counterfeit and falsified. Doc. #61 at ¶¶ 52-59. Specifically, Plaintiff claims that the Tulare County Sheriff's Office was not listed on the warrant despite their presence and no appropriate notice. Id. Defendant disagrees and attempts to argue that there was a need for reasonable force and cause for waiving notice, which is shown in documents Plaintiff did not include in the exhibits accompanying the Complaint. Doc. #74 at p. 17. Further, Defendant argues that Plaintiff's own evidence includes certified copies of the warrants issued by the Tulare County Superior Court based on evidence Plaintiff neglected to include in his exhibits. Exs. 5 & 8, Doc. #64; Doc. #80 at p. 13.

However, for purposes of the motion to dismiss, the court accepts as true all material facts alleged in the Complaint and draws all reasonable inferences in favor of Plaintiff. Accepting as true Plaintiff's allegations that Defendant did not comply with procedural requirements when serving the warrant and the warrant itself is not valid, the court finds that Plaintiff has adequately raised in the Complaint claims for which relief can be sought for purposes of a motion to dismiss under Rule 12(b)(6). Accordingly, Defendant's motion to dismiss the second, third and fourth claims for relief is denied.

CONCLUSION

For the reasons set forth above, the motion to dismiss the first claim for relief in the Complaint is GRANTED WITHOUT LEAVE TO AMEND. The motion to dismiss the second, third and fourth claims for relief is DENIED. Defendant shall file and serve an Answer to the Complaint no later than December 5, 2024.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[22-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
DISMISSED 10/24/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on October 24, 2024. Doc. #86.

3. [24-12145](#)-A-7 **IN RE: ERIK LUNA**
[24-1032](#) [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-10-2024 [[8](#)]

FEAR V. FRANCO ET AL
PETER SAUER/ATTY. FOR PL.
REISSUED SUMMONS ON AMENDED COMPLAINT 12/12/24

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

DISPOSITION: Dropped from calendar

No order required.

A reissued summons was issued on October 10, 2024, with a status conference date of December 12, 2024 at 11:00 a.m. Doc. #9. Therefore, this status conference will be dropped from calendar.

4. [24-12052](#)-A-13 **IN RE: PARAMJIT SINGH**
[24-1031](#) [CAE-1](#)

STATUS CONFERENCE RE: NOTICE OF REMOVAL
9-16-2024 [[1](#)]

SINGH V. LIL' WAVE FINANCIAL, INC. ET AL
UNKNOWN TIME OF FILING/ATTY. FOR PL.

NO RULING.

5. [23-10963](#)-A-7 **IN RE: JESUS GUERRA**
[24-1033](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-18-2024 [\[1\]](#)

GUERRA V. ADAMS ET AL
HENRY NUNEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[22-1022](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
DISMISSED 10/25/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on October 25, 2024. Doc. #73.

7. [24-10680](#)-A-7 **IN RE: CENTRAL CALIFORNIA CARTAGE CO, INC.**
[24-1030](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-12-2024 [\[1\]](#)

EDMONDS V. XTRA LEASE LLC
ANTHONY JOHNSTON/ATTY. FOR PL.

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

DISPOSITION: Continued to January 30, 2025 at 11:00 a.m.

ORDER: The court will issue an order.

On October 24, 2024, a motion to approve a settlement of this adversary proceeding was filed in the debtor's main bankruptcy case. Case No. 24-10680, Doc. #23. A hearing on that motion is set for December 11, 2024 at 1:30 p.m. Case No. 24-10680, Doc. #30. The settlement agreement provides for dismissal of this adversary proceeding approximately 20 business days after the settlement agreement is approved. Case No. 24-10680, Doc. #26.

Because it appears this adversary proceeding is subject to dismissal pursuant to the proposed settlement, this status conference is continued to January 30,

2025 at 11:00 a.m. If this adversary proceeding has not been dismissed by January 23, 2025, the plaintiff shall file and serve a status report no later than January 23, 2025 setting forth the status of this adversary proceeding.