

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Wednesday, December 11, 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. [19-14302](#)-B-7      **IN RE: SHAWN/JULIA WHITE**  
[KEH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-21-2019    [\[15\]](#)

BALBOA THRIFT & LOAN/MV  
D. GARDNER/ATTY. FOR DBT.  
KEITH HERRON/ATTY. FOR MV.

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.

2. [19-13911](#)-B-7      **IN RE: GERARD/JESSICA REINHART**  
[JRL-1](#)

MOTION TO AVOID LIEN OF DADSLAW, INC.  
10-16-2019    [\[17\]](#)

GERARD REINHART/MV  
JERRY LOWE/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 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 Dadslaw, Inc. in the sum of \$17,280.84 on March 28, 2010. Doc. #20. The abstract of judgment was recorded with Fresno County on December 4, 2015. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The schedules state the debtors reside at the property described in the motion. 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. #1. The debtor owns a 25% interest in the residence - debtor's 3 other siblings each own a 25% interest as well. The debtor claimed

an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$40,000.00. Doc. #20.

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).

3. [19-14011](#)-B-7     **IN RE: MARIA FAJARDO GONZALEZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-31-2019    [\[21\]](#)

SANTANDER CONSUMER USA INC./MV  
JENNIFER WANG/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. The debtor filed a response on November 25, 2019 (Doc. #30) indicating that it was her intention to surrender the vehicle. 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 2016 Hyundai Elantra. Doc. #26. The collateral has a value of \$10,800.00 and debtor owes \$12,450.73. *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).

4. [19-12913](#)-B-7      **IN RE: PAUL/ANNIE VITALE**  
[DRJ-1](#)

MOTION TO AVOID LIEN OF GLOBAL ACCEPTANCE CREDIT COMPANY, LP AND  
JEFFERSON CAPITAL SYSTEMS, LLC  
11-5-2019    [\[24\]](#)

PAUL VITALE/MV  
DAVID JENKINS/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 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 Global Acceptance Credit Company in the sum of \$49,917.13 on November 1, 2011. Doc. #27. The abstract of judgment was recorded with Tulare County on March 28, 2012. Id. That lien attached to the debtor's interest in a residential real property in Visalia, 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 \$306,726.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$255,471.00 on that same date, consisting of a first deed of trust in favor of

Pennymac Loan Services. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000.00. Id.

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). The motion explains the original judgment creditor may have assigned the claim to Jefferson Capital Systems. This relief is awarded against both respondents.

5. [18-14315](#)-B-7     **IN RE: BRANDON/SANDRA CAUDEL**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-28-2019    [\[27\]](#)

JPMORGAN CHASE BANK, N.A./MV  
D. GARDNER/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #34.

6. [19-13819](#)-B-7     **IN RE: DIONISIO/SILVINA PELAYO**  
[GT-3](#)

MOTION TO COMPEL ABANDONMENT  
11-14-2019    [\[33\]](#)

DIONISIO PELAYO/MV  
GRISELDA TORRES/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 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 November 14, 2019 and set for hearing on December 11, 2019. Doc. #34, 37. December 11, 2019 is 27 days after November 14, 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. #34. That is incorrect. Because the hearing was set on less than 28 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.

This is the third time this motion is being denied without prejudice for procedural reasons. If this motion is again denied without prejudice for procedural reasons, the court may issue an order to show cause why sanctions should not be imposed.

7. [19-10526](#)-B-7      **IN RE: GORDON/LESLIE SMITH**

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY  
11-6-2019    [\[79\]](#)

GORDON SMITH/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 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) and will proceed as scheduled. 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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 DENIED. There is no declaration from the debtors. 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 Ford Motor Credit Company in the sum of \$16,776.35 on March 4, 2005 and the judgment was renewed on December 22, 2014. Doc. #81. The total current outstanding amount is \$18,476.00. Id. A writ of execution was issued on February 8, 2016 in Tulare County. 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 \$180,000.00 as of the petition date. Id. The unavoidable liens totaled \$38,842.06 on that same date, consisting of a first deed of trust in favor of Ocwen, a judicial lien in favor of The Internal Revenue Service, and a voluntary lien in favor of KYHC. Doc. #79. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00. Doc. #81.

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).

8. [19-10526](#)-B-7     **IN RE: GORDON/LESLIE SMITH**  
[GSS-5](#)

MOTION TO AVOID LIEN OF TCM FUNDING CORPORATION  
11-6-2019     [\[83\]](#)

GORDON SMITH/MV

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 for failure to comply with the Federal Rules of Bankruptcy Procedure.

Fed. R. Bankr. P. 7004(b)(3) requires service upon domestic corporations to be made "by mailing a copy [of the motion and other papers] to the attention of an officer, a managing or general agent,



or to any other agent authorized by appointment or by law to receive service of process . . . ."

The certificate of service shows that the motion and other papers were served on "Goldsmith & Hull" to the attention of "William I Goldsmith (agent)." Doc. #86. However, apart from the abstract of judgment, which the court does not find persuasive in this regard, no evidence has been submitted that William I Goldsmith is the "general agent" or "any other agent authorized by appointment or by law" to receive service of process on behalf of TCM Funding Corporation ("TCM"). Judgment was entered in favor of TCM over 14 years ago and renewed over four years ago. Debtors may re-file and re-serve the motion in accordance with Fed. R. Bankr. P. 7004(b)(3).

9. [19-10828](#)-B-7      **IN RE: MICHAEL PETTY**  
[SL-3](#)

MOTION TO AVOID LIEN OF UNIFUND CCR, LLC  
11-22-2019    [\[45\]](#)

MICHAEL PETTY/MV  
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion 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 Inifund CCR, LLC in the sum of \$4,288.00 on August 22, 2017. Doc. #47. The abstract of judgment was recorded with Tulare County on September 22, 2017. 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 \$209,006.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$191,879.00 on that same date, consisting of a first deed of trust in favor of CENLAR. Doc. #1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$19,825.00. Doc. #14.

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).

10. [19-14338](#)-B-7     **IN RE: FERNANDO IBARRA**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-28-2019     [\[10\]](#)

TD AUTO FINANCE LLC/MV  
PETER BUNTING/ATTY. FOR DBT.  
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults 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 Dodge Journey. Doc. #15. The collateral has a value of \$10,353.00 and debtor owes \$19,404.89. *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).

11. [19-14353](#)-B-7     **IN RE: ALFREDO/ROSA GUERRA**  
[GT-1](#)

MOTION TO AVOID LIEN OF PATELCO CREDIT UNION  
11-14-2019    [\[13\]](#)

ALFREDO GUERRA/MV  
GRISELDA TORRES/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 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 November 14, 2019 and set for hearing on December 11, 2019. Doc. #14, 17. December 11, 2019 is 27 days after November 14, 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. #14. That is incorrect. Because the hearing was set on less than 28 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.

12. [19-12754](#)-B-7     **IN RE: SUPER TRUCK LINES INC.**  
[JDC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-12-2019    [\[243\]](#)

VOLVO FINANCIAL SERVICES/MV  
THOMAS HOGAN/ATTY. FOR DBT.  
JEFFREY CAWDREY/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 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.

The movant, Volvo Financial Services, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to five separate Volvo VNL64T-670s.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least seven post-petition payments. The movant has produced evidence that debtor is delinquent at least \$262,435.00. Doc. #245, 246.

After review of the included evidence, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Debtor is in chapter 7. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor is delinquent over \$200,000.00 in payments to Movant.

13. [19-11357](#)-B-7     **IN RE: ROBERTO/VERONICA AYALA**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-8-2019    [\[106\]](#)

MATRIX FINANCIAL SERVICES CORPORATION/MV  
THOMAS GILLIS/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults 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 parcel of real property commonly known as 17250 El Camino Road, Madera, CA 93636. Doc. #109. The collateral has a value of \$303,149.00 and the amount owed is \$362,876.23. Doc. #111.

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).

14. [19-11960](#)-B-7     **IN RE: SHERLEY LEE**  
[TCS-2](#)

MOTION TO AVOID LIEN OF PACIFIC SERVICE CREDIT UNION  
11-7-2019    [\[21\]](#)

SHERLEY LEE/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

This motion was set for hearing on 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 Pacific Service Credit Union in the sum of \$25,320.57 on April 10, 2019. Doc. #24. The judgment was renewed on March 28, 2019 in the amount of \$47,924.84. Id. The abstract of judgment was recorded with Fresno County on May 5, 2009. 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 \$210,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$199,122.00 on that same date, consisting of a first deed of trust in favor of Select Portfolio Servicing. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$10,878.00. Id.

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).

15. [19-14061](#)-B-7     **IN RE: IRENE LEYVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-8-2019    [\[23\]](#)

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 fee due at the time of the hearing has not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

16. [19-13569](#)-B-7     **IN RE: JOHN ESPINOZA**  
      [JRL-3](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC  
11-5-2019    [\[50\]](#)

JOHN ESPINOZA/MV  
JERRY LOWE/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 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 Cavalry SPV I, LLC in the sum of \$11,940.15 on July 2, 2012. Doc. #53. The abstract of judgment was recorded with Fresno County on November 20, 2012. 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 \$225,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$124,732.00 on that same date, consisting of a first deed of trust in favor of Rushmore Loan Management Services. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) (though the schedules incorrectly cite Cal. Civ. Proc. Code § 704.950) in the amount of \$100,000.00. Doc. #40.

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).

The court notes the declaration supporting the motion contains no facts establishing debtor's qualifications to claim a \$100,000.00 exemption under C.C.P. § 704.730. The schedules do reflect a minor child resides with debtors.



17. [19-13569](#)-B-7     **IN RE: JOHN ESPINOZA**  
[JRL-4](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.  
11-5-2019    [\[55\]](#)

JOHN ESPINOZA/MV  
JERRY LOWE/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 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 Cavalry SPV I, LLC in the sum of \$11,940.15 on July 2, 2012. Doc. #53. The abstract of judgment was recorded with Fresno County on November 20, 2012. 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 \$225,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$124,732.00 on that same date, consisting of a first deed of trust in favor of Rushmore Loan Management Services. Id. The debtor claimed an exemption pursuant to

Cal. Civ. Proc. Code § 704.730(a)(1) (though the schedules incorrectly cite Cal. Civ. Proc. Code § 704.950) in the amount of \$100,000.00. Doc. #40.

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).

The court notes the declaration supporting the motion contains no facts establishing debtor's qualifications to claim a \$100,000.00 exemption under C.C.P. § 704.730. The schedules do reflect a minor child resides with debtors.

18. [19-12972](#)-B-7     **IN RE: IRVIN/YADIRA LEYVA**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-8-2019    [\[32\]](#)

BANK OF AMERICA, N.A./MV  
D. GARDNER/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
DISCHARGED

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

DISPOSITION:     Granted in part as to the trustee's interest and  
denied as moot in part as to the debtors' interest.

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 there was no opposition. The motion will be DENIED AS MOOT as to the debtors pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on November 5, 2019. Docket #30. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 proposed order shall specifically describe the property or action to which the order relates. The order shall also state the motion is denied as moot as to the debtors. The collateral is a parcel of real property commonly known as 8900 Rockaway Beach Court, Bakersfield, California 93311. Doc. #35. The collateral has a value of \$275,659.00 and the amount owed is \$163,658.61. Doc. #34. The order shall provide the motion is DENIED AS MOOT as to the debtors.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be denied. 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).

19. [19-14274](#)-B-7     **IN RE: MICHELE GUERRERO-DE LA CRUZ**  
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-31-2019    [\[18\]](#)

THE BANK OF NEW YORK MELLON/MV  
DANIEL FUJIMOTO/ATTY. FOR MV.

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

DISPOSITION:        Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults 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 parcel of real property commonly known as 7412 North Ciancetti Avenue, Fresno, CA 93722. Doc. #20. The collateral has a value of \$306,000.00 and the amount owed is \$298,296.31. Doc. #21.

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).

20. [19-14075](#)-B-7     **IN RE: MINERVA HERNANDEZ**  
[CGF-1](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES LLC  
11-5-2019    [\[14\]](#)

MINERVA HERNANDEZ/MV  
CHRISTOPHER FISHER/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 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 Portfolio Recovery Associates, LLC in the sum of \$3,525.04 on July 5, 2019. Doc. #17. The abstract of judgment was recorded with Fresno County on September 5, 2019. 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 \$129,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$87,944.00 on that same date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage and a second deed of trust in favor of

City of Fresno Home Buyer Assistance Program. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$41,056.00. Id.

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).

21. [10-16687](#)-B-7     **IN RE: ADELA NOLAZCO**  
[TCS-2](#)

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.  
11-26-2019     [\[20\]](#)

ADELA NOLAZCO/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 motion is DENIED WITHOUT PREJUDICE. Federal Rule of Bankruptcy Procedure 4003(b)(1) allows a party in interest to object to claim of exemptions within 30 days after an amended Schedule C has been filed. Amended Schedule C (doc. #25) was filed on November 26, 2019. The 30 day time period will expire on December 26, 2019. Therefore, this motion is premature.

22. [19-13887](#)-B-7     **IN RE: NICHOLAS/TINA THOMPSON**  
[WLG-1](#)

MOTION TO COMPEL ABANDONMENT  
10-25-2019     [\[16\]](#)

NICHOLAS THOMPSON/MV  
NICHOLAS WAJDA/ATTY. FOR DBT.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Denied as moot.

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

This motion is DENIED AS MOOT. The motion and declaration both state that the "business" (joint-debtor's self-employment as a house keeper), to the extent it is one, has no assets. Any assets joint-

debtor uses in cleaning her aunt's rental unit are apparently owned by her aunt and kept at the rental unit. Because the motion does not state any assets to be abandoned, nor does the petition list any business assets nor exempt any business assets, the court cannot order the chapter 7 trustee to abandon assets that do not exist and cannot belong to the bankruptcy estate. The motion is denied as moot.

23. [18-14689](#)-B-7     **IN RE: JAVIER GONZALEZ**  
[FW-3](#)

CONTINUED MOTION FOR TURNOVER OF PROPERTY  
4-15-2019    [\[22\]](#)

JAMES SALVEN/MV  
THOMAS GILLIS/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #73.

24. [19-14392](#)-B-7     **IN RE: GRACE FOWLER**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-11-2019    [\[17\]](#)

FIRST INVESTORS FINANCIAL  
SERVICES/MV  
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION:                    Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults 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 2013 Jeep Patriot. Doc. #23. The collateral has a value of \$10,000.00 and debtor owes \$16,463.48. *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).

25. [19-14197](#)-B-7     **IN RE: MIGUEL ANDRADE**  
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
11-7-2019    [\[12\]](#)

FIRST TECH FEDERAL CREDIT UNION/MV  
THOMAS GILLIS/ATTY. FOR DBT.  
NICHOLE GLOWIN/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults 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 2017 Nissan Titan. Doc. #14. The collateral has a value of \$25,249.00 and debtor owes \$31,732.17. *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 an award of attorney fees has been requested, it will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. In addition, any future request for an award of attorney's fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C. §506(b).

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

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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).



11:00 AM

1. [19-14224](#)-B-7      **IN RE: ROBERT JOHNSON**

PRO SE REAFFIRMATION AGREEMENT WITH LENDMARK FINANCIAL  
SERVICES, LLC  
11-18-2019    [[37](#)]

NO RULING.

2. [19-14229](#)-B-7      **IN RE: DANIEL COUTO**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP,  
LLC  
11-13-2019    [[21](#)]

NO RULING.

3. [19-14241](#)-B-7      **IN RE: MELVIN/AMANDA BROWN**

REAFFIRMATION AGREEMENT WITH BANK OF THE WEST  
11-21-2019    [[14](#)]

LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtors would be able to make the payments.

4. [19-13960](#)-B-7      **IN RE: DAVID/PAMELA SHANK**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
11-20-2019    [\[17\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

5. [19-13964](#)-B-7      **IN RE: KENNETH/KATHLEEN BLACKWELL**

REAFFIRMATION AGREEMENT WITH HIGH PERFORMANCE CAPITAL, INC.  
10-31-2019    [\[9\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

6. [19-14178](#)-B-7      **IN RE: ZACHARY SANTANA**

PRO SE REAFFIRMATION AGREEMENT WITH PREMIER AUTO CREDIT  
11-15-2019    [\[15\]](#)

NO RULING.

7. [19-14399](#)-B-7      **IN RE: DARLENE KEMMER**

PRO SE REAFFIRMATION AGREEMENT WITH LOANCARE, LLC  
11-20-2019    [\[16\]](#)

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

DISPOSITION:                      Dropped.

NO ORDER REQUIRED.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

1:30 PM

1. [19-13048](#)-B-7     **IN RE: CRAIG BREWER**  
[19-1103](#)

STATUS CONFERENCE RE: COMPLAINT  
10-2-2019    [\[1\]](#)

MACLOVIO V. BREWER  
DENIS DELJA/ATTY. FOR PL.

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

DISPOSITION:     Dropped from calendar.

ORDER:             The court will issue the order.

It appears that the plaintiff did not timely serve the summons and complaint on the defendants. Federal Rule of Bankruptcy Procedure 7004(e) states that "service . . . shall be by delivery of the summons and complaint within 7 days after the summons is issued." The summons was issued on October 3, 2019 and service was made on October 30, 2019 and filed with the court on December 5, 2019. Doc. #8.

Debtor must request a new summons and serve the new summons and complaint on the defendants within seven days of the issuance of the new summons in accordance with the Federal Rules of Bankruptcy Procedure. When the new summons is issued, a new status conference will be set for hearing.

If a new summons is not promptly issued and service completed, the court will issue an order to show cause why this case should not be dismissed for lack of prosecution. The court warns counsel the complaint may be dismissed for lack of service. See Federal Rule of Civil Procedure 4(m) (applicable in adversary proceedings under Federal Rule of Bankruptcy Procedure 7004).

2. [18-11651](#)-B-11     **IN RE: GREGORY TE VELDE**  
[19-1038](#)

CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL  
9-7-2018    [\[1\]](#)

SINECO CONSTRUCTION, LLC V. BOARDMAN TREE FARM, LLC ET AL  
DOUGLAS HOOKLAND/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

3. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**  
[19-1100](#)

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

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

NO RULING.

4. [17-11570](#)-B-13 **IN RE: GREGGORY KIRKPATRICK**  
[19-1100](#) [JLW-2](#)

MOTION REQUESTING ABSTENTION PURSUANT TO 28 U.S.C. 1334(C)  
11-7-2019 [\[12\]](#)

KIRKPATRICK V. CALLISON ET AL  
JODY WINTER/ATTY. FOR MV.  
RESPONSIVE PLEADING

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. Preparation of the order determined at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Plaintiff states seven claims for relief in the complaint; turnover of property of the estate pursuant to 11 U.S.C. § 542; declaratory relief determining the validity, priority, and extent of defendants' lien in debtor's residence; fraud and deceit; breach of contract; cancellation of deed of trust; quiet title, and; rescission. Doc. #1.

Defendants Christopher Callison and Perla Perez ("Defendants") ask the court to abstain under 28 U.S.C. § 1334(c). Defendants argue that the court must abstain, or in the alternative, has the discretion to abstain, and should do so. Doc. #12.

Plaintiff timely opposed, stating that mandatory abstention is not warranted because the first and second causes of action are core proceedings. Doc. #31. Plaintiff also states that the court should not abstain under its permissive abstention authority because Defendants' prior motion for relief in the chapter 13 main case was denied and granting this motion would be "in effect granting relief from stay to Defendants when the Court has already denied such motion." Id. Defendants responded. Doc. #33.

Defendants' prior motion for relief from the automatic stay in the chapter 13 main case sought relief to foreclose on the deed of trust - not to continue with the state court lawsuit. That argument is not

persuasive here. See doc. #79, RCA-1 (denied without prejudice for procedural reasons); doc. #119, MC-1 (denied as moot. Doc. #183). The court on the record stated that because the chapter 13 plan was confirmed, the plan controls. However, failure to make payments may warrant stay relief later in the case. Also, the pending lawsuit filed by the debtor in the Superior Court is probably not stayed since it is not an action against the debtor but an action brought by the debtor. 11 U.S.C. § 362(a)(1). So, the denial of defendant's stay relief motions is irrelevant.

This court has ruled on the allowance of defendants' claim in this case and has liquidated the claim. No appeal has been taken from those orders, so they are final. Those rulings have issue and claim preclusion effects which may be relevant in the Superior Court litigation. Neither party has analyzed those issues.

Defendants first claim this court must abstain under 28 U.S.C. § 1334(c)(2). The "factors" to consider are:

- A timely motion;
- A purely state law question
- A non-core proceeding;
- Lack of independent federal jurisdiction other than jurisdiction under the bankruptcy law;
- The action was commenced in state court;
- The state court action can be timely adjudicated;
- An appropriate state court forum exists.

Certain Underwriters at Lloyds, Syndicates 2623/623 v. GACN, Inc. (In re GACN, Inc.), 555 B.R. 684 (B.A.P. 9th Cir. 2016).

All factors are present here except the non-core proceeding. While the theory raised for the "core" proceeding asserted in the complaint involves predominately state law issues as discussed below, the relief requested—turnover and determination of the nature of interests—in two claims raise "core" issues. So, mandatory abstention does not apply.

28 U.S.C. § 1334(c)(1) provides for the court's ability to exercise discretion to abstain. Ninth Circuit law states that "abstention can exist only where there is a parallel proceeding in state court. That is, inherent in the concept of abstention is the presence of a pendent state action in favor of which the federal court must, or may, abstain." Sec. Farms v. Int'l Bhd. of Teamsters, 124 F.3d 999, 1009 (9th Cir. 1997). In re Tucson Estates, Inc., 912 F.2d 1162 (9th Cir. 1990) provides courts 12 factors a court must consider when deciding whether to abstain. They are

- (1)The effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2)The extent to which state law issues predominate over bankruptcy issues,
- (3)The difficulty or unsettled nature of the applicable law,

- (4)The presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5)The jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6)The degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7)The substance rather than form of an asserted "core" proceeding,
- (8)The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9)The burden of the [bankruptcy court's] docket,
- (10)The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11)The existence of a right to a jury trial, and
- (12)The presence in the proceeding of nondebtor parties.

The first factor is neutral. The chapter 13 plan has been confirmed. If the court abstains, the estate will still be administered efficiently.

The second factor weighs in favor of abstention. State law issues predominate over bankruptcy issues. To the extent state law issues do not predominate, the court will reserve jurisdiction ONLY to those issues. In Plaintiff's opposition, Plaintiff stated that the first two claims for relief were core matters. Doc. #31. In their response, Defendants did not dispute Plaintiff's contention. Doc. #33.

A close reading of the complaint shows that even the "core" claims rely on the prerequisite that fraud, breach of contract or violation of California statutes relating to foreclosure are found and in the litigation. This militates strongly in favor of discretionary abstention.

The third factor is neutral. The applicable law does not appear to be difficult or unsettled.

The fourth factor weighs in favor of abstention. There is a related proceeding in state court, commenced prior to this bankruptcy case.

The fifth factor weighs in favor of abstention. This is not a federal question or diversity case - the only jurisdiction appears to arise under 28 U.S.C. § 1334.

The sixth factor is neutral. The chapter 13 plan has been confirmed. If plaintiff is successful, there will be a need to modify the Chapter 13 Plan. That does not change the remote nature of this litigation to the administration of the bankruptcy case.

The seventh factor does weigh in favor of abstention. As noted above, there appear to be at least two core claims in this adversary proceeding. But, the relief requested in those claims depends first on findings that defendants committed fraud or otherwise caused injury to plaintiff. Those claims arise under state law. There is no bankruptcy issue uniquely applicable. If Plaintiff is found to be entitled to set aside the deed of trust, the turnover of title can be taken up by the bankruptcy court. The court must look to substance rather than form of the "core" claims. Tera Res. Co. v. Lee (In re Cuzco Dev. U.S.A., LLC.), 592 B.R. 352, 364 (Bankr. D. Haw. 2018).

The eighth factor weighs in favor of abstention. It is feasible that state law claims can be severed from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court.

The ninth factor is neutral. The bankruptcy court's docket is neither light nor at capacity. But there is no reason the matter should be tried by the bankruptcy court when it is a claim brought by the debtor.

The tenth factor weighs in favor of abstention. This bankruptcy case was filed approximately one month after plaintiff filed a complaint in state court. This indicates forum shopping.

The eleventh factor weighs in favor of abstention. Defendants have requested a jury trial.

The twelfth factor weighs in favor of abstention. There are nondebtor parties in this proceeding.

The court finds that abstention is proper with regard to the third, fourth, fifth, sixth, and seventh claims. The court reserves jurisdiction to decide the first and second claims, which appear to arise under the bankruptcy code. Those claims will be severed and stayed until the state court litigation is concluded. FRBP 7042. This motion is GRANTED IN PART and DENIED IN PART.



5. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1105](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
10-4-2019    [[7](#)]

TULARE LOCAL HEALTHCARE DISTRICT V. PEREZ  
MICHAEL WILHELM/ATTY. FOR PL.  
REISSUED SUMMONS 1/10/20, RESPONSIVE PLEADING

NO RULING.

6. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1108](#)

STATUS CONFERENCE RE: COMPLAINT  
10-7-2019    [[1](#)]

TULARE LOCAL HEALTHCARE DISTRICT V. MARTINEZ, MD  
MICHAEL WILHELM/ATTY. FOR PL.  
REISSUED SUMMONS FOR 1/10/20

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            A reissued summons and complaint were served.  
A new status conference is set for hearing on  
January 10, 2020 at 11:00 a.m. This status  
conference is dropped from calendar.

7. [17-13797](#)-B-9      **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1109](#)

STATUS CONFERENCE RE: COMPLAINT  
10-7-2019    [[1](#)]

TULARE LOCAL HEALTHCARE DISTRICT V. TELNET-RX, INC.  
MICHAEL WILHELM/ATTY. FOR PL.  
CONTINUED TO 1/29/20 PER ECF ORDER #9

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

DISPOSITION:                    Continued to January 29, 2020 at 11:00 a.m.

NO ORDER REQUIRED:            The court already issued an order. Doc. #9.

8. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1110](#)

STATUS CONFERENCE RE: COMPLAINT  
10-7-2019    [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. AIRGAS USA, LLC  
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION:        Continued to January 10, 2020 at 11:00 a.m.

ORDER:                The court will issue an order.

Pursuant to the joint status report (doc. #8), this status conference is continued to January 10, 2020 at 11:00 a.m. to coincide with the settlement hearing.

9. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1111](#)

STATUS CONFERENCE RE: COMPLAINT  
10-14-2019    [\[1\]](#)

TULARE LOCAL HEALTHCARE DISTRICT V. AYA HEALTHCARE,  
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION:        Continued to January 10, 2020 at 11:00 a.m.

ORDER:                The court will issue an order.

The complaint has not been answered and the parties cannot commence discovery until the defendant has responded. Therefore this status conference is continued to January 10, 2020 at 11:00 a.m.

10. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1112](#)

STATUS CONFERENCE RE: COMPLAINT  
10-14-2019    [1](#)

TULARE LOCAL HEALTHCARE DISTRICT V. SOHRABI, MD  
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION:        Continued to January 10, 2020 at 11:00 a.m.

ORDER:                The court will issue an order.

Plaintiff has filed a request for entry of default of the defendant. The default may be entered soon, at which time a prove-up hearing will be set. This status conference will be continued to January 10, 2020 at 11:00 a.m. If a prove-up hearing has been set by that time, the status conference may be continued or dropped from calendar.

11. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1113](#)

STATUS CONFERENCE RE: COMPLAINT  
10-14-2019    [1](#)

TULARE LOCAL HEALTHCARE DISTRICT V. KOLLEN, MD  
MICHAEL WILHELM/ATTY. FOR PL.

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

DISPOSITION:        Continued to January 10, 2020 at 11:00 a.m.

ORDER:                The court will issue an order.

Plaintiff has filed a request for entry of default of the defendant. The default may be entered soon, at which time a prove-up hearing will be set. This status conference will be continued to January 10, 2020 at 11:00 a.m. If a prove-up hearing has been set by that time, the status conference may be continued or dropped from calendar.

12. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1114](#)

STATUS CONFERENCE RE: COMPLAINT  
10-14-2019    [[1](#)]

TULARE LOCAL HEALTHCARE DISTRICT V. OSTROM, DO  
MICHAEL WILHELM/ATTY. FOR PL.  
REISSUED SUMMONS 1/10/20

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            A reissued summons and complaint were served.  
A new status conference is set for hearing on  
January 10, 2020 at 11:00 a.m. This status  
conference is dropped from calendar.

13. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[19-1115](#)

STATUS CONFERENCE RE: COMPLAINT  
10-14-2019    [[1](#)]

TULARE LOCAL HEALTHCARE DISTRICT V. SMITH, MD  
MICHAEL WILHELM/ATTY. FOR PL.  
REISSUED SUMMONS FOR 1/10/20

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            A reissued summons and complaint were served.  
A new status conference is set for hearing on  
January 10, 2020 at 11:00 a.m. This status  
conference is dropped from calendar.