

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**  
**DATE: DECEMBER 15, 2015**  
**CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS**

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [14-14453](#)-A-7 SAMUEL LOPEZ  
[14-1141](#)  
CALLISON V. LOPEZ  
DANIEL BARADAT/Atty. for pl.  
RESPONSIVE PLEADING

RESCHEDULED STATUS CONFERENCE  
RE: COMPLAINT  
11-21-14 [[1](#)]

### **Final Ruling**

This matter is continued to April 9, 2016, at 10:00 a.m. Not later than 14 days prior to the continued hearing date, the parties shall file a joint status report.

2. [14-15856](#)-A-7 SOHIL ESCHEIK  
[15-1029](#) MWQ-1  
NEXTGEAR CAPITAL, INC. V.  
ESCHEIK  
MATTHEW QUALL/Atty. for mv.  
DISMISSED, CLOSED

MOTION TO VACATE DISMISSAL OF  
CASE  
11-3-15 [[29](#)]

### **Final Ruling**

**Motion:** Vacate Dismissal of Adversary Proceeding

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **DISCUSSION**

Plaintiff Nextgear Capital, Inc. presents a properly noticed motion under Rule 60(b) to vacate the dismissal of its adversary proceeding against Sohil Escheik. The motion will be granted.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Plaintiff Nextgear Capital, Inc.'s motion to vacate dismissal of its adversary proceeding has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted and the dismissal, Civil Minute Order, filed September 12, 2015, ECF #26, is vacated.

IT IS ALSO ORDERED that a status conference will be held on January 27, 2016, at 10:00 a.m.

IT IS ALSO ORDERED that not later than 30 days prior to the continued status conference, the plaintiff shall: (1) obtain a reissued summons; (2) serve the reissued summons, complaint, a copy of Form EDC 3-100, Notice to Pro Se Debtor(s) and Form EDC 3-101, answer, in accordance with Local Bankruptcy Rule 7004-1 on the defendant debtor and his counsel of record; and (3) file a certificate of service. The parties shall not enlarge time for filing a response to the complaint without an order of this court. Failure to properly serve the adversary proceeding within the time specified herein will likely result in a dismissal of the complaint. Fed. R. Civ. P. 4(m), *incorporated by* Fed. R. Bankr. P. 7004(a); Fed. R. Civ. P. 41(b), *incorporated by* Fed. R. Bankr. P. 7041.

3. [15-10966](#)-A-7 RODNEY HARON  
[15-1092](#)  
HARON V. CAPITAL ONE BANK,  
N.A.

MOTION TO SUBSTITUTE ROBERT  
HAWKINS, CHAPTER 7 TRUSTEE, AS  
PLAINTIFF IN PLACE AND STEAD OF  
THE FORMER DEBTOR IN POSSESSION  
11-12-15 [[19](#)]

GABRIEL WADDELL/Atty. for mv.

### **Final Ruling**

**Motion:** Substitute Robert Hawkins, Chapter 7 Trustee, as Plaintiff

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

This case has been converted from chapter 11 to chapter 7. The present adversary proceeding to recover a preference was initiated in chapter 11 by the debtor in possession, Rodney Haron. Now the trustee has standing to pursue the action, and the debtor in possession no longer exists. Pursuant to Federal Rules of Civil Procedure 17(a) and 25(c), the court will substitute Robert Hawkins, chapter 7 trustee, as the plaintiff in this action in the stead of Rodney Haron, the former debtor in possession.