UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 27, 2022 at 10:30 a.m.

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1. 94-92001-E-7 **STEVEN FORD** **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
21-9009 **DCJ-1**
FORD V. SIMMONS ET AL **12-30-21 [17]**

Note: 2:00 pm Status Conference to be conducted with this motion.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants on December 30, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Federal Rules of Civil Procedure Rule 4 as incorporated into the Federal Rules of Bankruptcy Procedure Rule 7004 governs adversary proceedings. Under Federal Rules of Civil Procedure Rule 4(b)(1) as incorporated into the Federal Rules of Bankruptcy Procedure Rule 7004(b)(1), an individual can be served by first class mail to their "dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Service on individuals and corporations are to be liberally construed to further the purpose of finding personal jurisdiction in cases in which the party received *actual notice*. *In re Villar*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) (citing *Wallace v. Shapiro* 265 B.R. 373, 378 (E.D.N.Y. 2001)). Service on a post office box does not trigger the presumption that the party received actual notice. *In re Villar*, 317 B.R. at 94.

Upon review of the Summon's Proof of Service (Dckt. 6) and Motion's Proof of Service (Dckt. 23), Defendants were served at post office boxes in Oakdale, California. It is unclear to the court why Defendants were served at this address. Here, service to Defendants at a post office box does not trigger the presumption that they received actual notice. Additionally, nothing in the plain language of the rule states an individual can be served at a post office box. Service to the post office box of Defendants appears insufficient.

At the hearing, XXXXXXXXXX

~~The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.~~

The Motion for Entry of Default Judgment is ~~granted~~.

Steven Alan Ford ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on December 30, 2021. Dckt. 17. Plaintiff-Debtor seeks an entry of default judgment requesting the court to determine a superior court judgment, subsequent renewals, and abstracts of judgment are void and to enjoin Defendants Thomas E. Simmons and LaDonna Simmons (collectively, "Defendant-Creditor") from continuing to violate the Discharge Order under 11 U.S.C. § 524.

The instant Adversary Proceeding was commenced on September 21, 2021. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on September 23, 2021. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 6.

Defendant-Creditor failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant-Creditor pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 24, 2021. Dckts. 10, 11.

SUMMARY OF COMPLAINT

Plaintiff-Debtor filed a complaint to determine a superior court judgment in favor of Defendant-Creditor (who was the state court Plaintiff) entered on or about April 13, 1990 (the "Superior Court Judgment") is void.

State Court Action

The 1990 state court action was an unlimited case commenced in the Superior Court of California, County of Sonoma, Case No. SCV142736. As detailed in the present complaint (Dckt. 1), the facts surrounding the state court action involved an automobile accident where Plaintiff-Debtor owned a vehicle his brother was driving when it was involved in a collision, resulting in injuries to Defendant-Creditor. Judgment was entered on in favor of Defendant-Creditor for the amount of:

1. As to joint negligence claims in the sum of $297,000.

2. As to loss of consortium in the amount of $100,00.

3. As to individual claim of La Donna Simmons in the net amount of $291,666.67.

Plaintiff-Debtor's Chapter 7 Discharge

On May 19, 1994, Plaintiff-Debtor filed a voluntary petition in the court seeking Chapter 7 relief (the "Bankruptcy Case"). *See* Bankr. E.D. Cal. No. 94-92001. Defendant-Creditor filed an adversary proceeding to have the Superior Court Judgment treated as nondischargeable (the "1994 Adversary Proceeding"). *See* Bankr. E.D. Cal. No. 94-09131.

Upon review of the 1994 Adversary Proceeding's docket, the case was closed on December 27, 1995 without entry of judgment. Below is as summarized procedural history of the 1994 Adversary Proceeding:

August 16, 1994 - Complaint filed

September 23, 1994 - Motion made by Debtor Steven Alan Ford to dismiss case for failure to state a claim upon which relief could be granted.

October 25, 1994 - Opposition to Motion to Dismiss filed by Creditor

November 7, 1994 - Hearing held

November 14, 1994 - Amended Complaint filed

December 12, 1994 - Answer to Amended Complaint filed

June 28, 1995 - Pretrial hearing conducted and trial set to July 18, 1995

July 18, 1994 - Order striking answer, entering default, and requiring evidence to be submitted in written form no later than August 18, 1995 entered

August 22, 1995 - Deadlines terminated

December 5, 1995 - Order dismissing case

December 27, 1995 - Adversary proceeding closed. The Adversary Proceeding has not been reopened.

May 23, 1996 - *Ex Parte* Motion by Creditor for Relief from Dismissal

October 28, 1996 - Civil Minutes State that Motion for Relief from Order of Dismissal was granted. However, no order granting such relief was entered by the court.

No further prosecution of this Adversary Proceeding was done by the Plaintiff.

Upon review of the docket, it appears that after the 1994 Adversary Proceeding was closed on December 27, 1995 with no action taken to reopen the case. There was no Motion nor any fees paid to Reopen that Adversary Proceeding. It appears that Defendant-Creditor, the plaintiff in the prior Adversary Proceeding, merely filed the *Ex Parte* Motion for Relief from Dismissal. Although the Motion for Relief was granted at the hearing, the case was still closed.

Additionally, there was no order entered for the relief granted. It appears to the court that the Judge in that Adversary Proceeding either: (1) recognized the case was not reopened and therefore did not enter an order or (2) requested Defendant-Creditors lodge with the court such order upon reopening the case. As no further action was taken on behalf of Defendant-Creditor after the October 28, 1996 hearing, it appears Defendant-Creditor abandoned the 1994 Adversary Proceeding.

Post-Discharge Judgment Renewals

Upon review of the Sonoma County's Superior Court Docket (which Plaintiff-Debtor requests judicial notice of, Dckt. 21) and Plaintiff-Debtor's Complaint, Defendant-Creditor renewed the Superior Court Judgment numerous times since Plaintiff-Debtor received their discharge:

1. January 11, 2001 - Renewed for $1,969,343.28

2. September 21, 2009 - Renewed for $3,839,440.08

3. January 28, 2019 - Renewed for $7,043,561.72.

Prayer for Relief

Plaintiff-Debtor is requesting the Superior Court judgment be declared void under 11 U.S.C. § 524(a)(1) and to determine that the three renewals were in violation of 11 U.S.C. § 524(a)(2). Additionally, Plaintiff-Debtor requests the court to issue an injunction under 11 U.S.C. § 105(a) to prevent Defendant-Creditor from continuing to violate the discharge order.

DISCUSSION

Entry of Default Judgment

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits

whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

Effect of a Discharge on Judgments

Under 11 U.S.C. § 524(a)(1), when a Debtor receives a discharge, it voids any judgment at any time obtained, to the extent it is for personal liability of the debtor, whether or not discharge of such debt is waived, with the exception to 11 U.S.C. § 523.

11 U.S.C. § 523 enumerates debts that are nondischargeable. 11 U.S.C. § 523(a)(6) generally relates to tortious acts. Under 11 U.S.C. § 523(a)(6), a debt is nondischargeable if debtor willfully or maliciously injured another entity or the property of another entity. Plaintiff must show that the debts were intentionally caused. Reckless or negligently inflicted injuries do not suffice to fall within § 523(a)(6). *Kawaauhau v. Geiger*, 523 U.S. 57, 64 (1998); *See also Barboza v. New Form, Inc. (In re Barboza)*, 548 F.3d 693 (9th Cir. 2008)(injuries resulting from recklessness are not "willful" under 523(a)(6)); *Ditto v. McCurdy*, 510 F.3d 1070 (9th Cir. 2007)(failure of doctor to obtain informed consent without evidence of intent to injury does not constitute willful and malicious).

Under 11 U.S.C. § 523(c)(1), a debt under § 523(a)(6) may be considered nondischargeable only if after notice and hearing a court determines such debt is excepted from the discharge.

Here, although an adversary proceeding was commenced to determine the nondichargeability of the underling State Court Judgment, the court never determined such debt was nondischargeable. In fact, after review of the adversary proceeding's docket, it appears that the action was essentially abandoned by the Defendant-Creditor. Since the debt was never determined to be nondischargeable, pursuant to 11 U.S.C. § 524(a)(1), the judgment was void upon Plaintiff-Debtor receiving a discharge.

Even if the Defendant-Creditor prosecuted the adversary proceeding, upon review of the state court's docket the Courtroom Minutes from March 21, 1990 read (emphasis added) "Court finds

judgment in favor of plaintiffs as to **joint negligence claims** in the sum of $297,000. Court finds judgment in favor of plaintiff as to loss of consortium in the amount of $100,000. Court finds judgment in favor of plaintiff as to individual claim of La Donna Simmons in the net amount of $291,666.67." It is clear the underlying state court judgment was for a negligence action, not for a willful or malicious injury as required under 11 U.S.C. § 523(a)(6). As such, even if Defendant-Creditor litigated the 1994 Adversary Proceeding, they would not have been successful in arguing nondischargeable under 11 U.S.C. § 523(a)(6). The judgment would still be considered void under 11 U.S.C. § 524.

Additionally, Defendant-Creditor may have attempted to argue nondischargeable under § 523(a)(9). However, § 523(a)(9) only creates a nondischargeable debt for death or personal injury caused by unlawful operation of a motor vehicle if debtor was intoxicated. The state court docket specifically refers to the judgment as a negligence action, not driving while under the influence. As such, 11 U.S.C. § 523(a)(9) does not apply.

Injunction Against Legal Proceedings
or Other Acts to Collect Discharged Debts

Under 11 U.S.C. § 524(a)(2), a discharge "operates as an injunction against . . . an act, to collect, recover or offset any such debt as a personal liability of the debtor". As detailed in Collier on Bankruptcy, 11 U.S.C. § 524(a)(2):

> "provides for a broad injunction against not only legal proceedings, but also any other acts to collect a discharged debt as a personal liability of the debtor, whether or not discharge of the debt has been waived. It extends to all forms of collection activity, including letters, phone calls, threats of criminal proceedings or other adverse actions intended to bring about repayment. . . . [A]ny violation of the injunction can be sanctioned as contempt of court."

4 Collier on Bankruptcy P 524.02 (16th 2021).

Defendant-Creditor renewed the state court judgment three times after Plaintiff-Debtor received a discharge in their bankruptcy proceeding. Renewing the State Court Judgment is an action taken to collect on the discharged debt of the personal liability of Plaintiff-Debtor. As such, renewing the Superior Court Judgment on the discharged debt is a violation of the injunction provided for in 11 U.S.C. § 524.

COURT'S RULING

~~Applying these factors, the court finds that Plaintiff-Debtor will be prejudiced if default judgment for injunctive relief is not entered against Defendant-Creditor because Defendant-Creditor may continue to try to enforce the discharged debt in violation of 11 U.S.C. § 524(a)(2). The court finds that the Complaint is sufficient, and the request for relief requested therein is meritorious. It has not been shown to the court that there is or may be any dispute concerning material facts. Defendant-Creditor has not contested any facts in this Adversary Proceeding. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant-Creditor has been given several opportunities to respond, and there is no indication that Defendant-Creditor has a meritorious defense or disputes Plaintiff-Debtor's right to judgment in this Adversary Proceeding. The court finds it necessary and proper for the entry of a default judgment against Defendant-Creditor.~~

The court grants default judgment in favor of Plaintiff-Debtor and against Defendant-Creditor Thomas E. Simmons and LaDonna Simmons.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default Judgment filed by the United States Trustee ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment is granted. The court shall enter judgment pursuant to 11 U.S.C. § 105(a), determining the Superior Court Judgment, California Court for Sonoma County Case No. SCV142736 entered on or about April 13, 1990, is void pursuant to 11 U.S.C. § 524. Any actions taken to recover such debt is a violation of the injunction under 11 U.S.C. § 524(a)(2).

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order, which judgment includes the express authorization to reject a presented filing by Defendant-Creditor for which there is not a prior authorization from the chief bankruptcy judge in that District.

2.	**21-90510-E-7** **BLF-2**	**SEAN/MELISSA CHILDRESS** **Simran Singh Hundal**	**MOTION TO SELL** **1-3-22 [23]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 3, 2022. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary R. Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property commonly known as 2003 Chevrolet Silverado 1500 HD Crew Cab, 1979 Chevrolet K5 Blazer, potential 2021 Tax Refund, cash, and annual bonus. ("Property").

The proposed purchaser of the Property is Sean William Childress and Melissa Leanne Childress, and the terms of the sale are:

A. The Debtors shall purchase from the bankruptcy estate, and Mr. Farrar shall sell to the Debtors, the estate's nonexempt interest in the Personal Property for $16,555.00.

B. The Debtors shall pay the Purchase Amount by delivering to Mr. Farrar cashiers' checks totaling $16,555.00 made payable to " Gary R. Farrar, Chapter 7 Trustee, *In re Childress*," in 4 monthly payments.

C. $4,138.75 to be received by Mr. Farrar on or before January 22, 2022;
$4,138.75 to be received by Mr. Farrar on or before February 22, 2022;
$4,138.75 to be received by Mr. Farrar on or before March 22, 2022; and
$4,138.75 to be received by Mr. Farrar on or before April 22, 2022.

D. The Debtors shall not claim any part of the Purchase Amount exempt.

E. If Mr. Farrar does not timely receive the payments required to be made by the Debtors, them that shall constitute a material breach of this Agreement and an event of default. If there is an Event of Default, Mr. Farrar shall have each of the rights and remedies set forth in this paragraph, as well as all rights and remedies at law and in equity. If there is an Event of Default Mr. Farrar shall be entitled to have the Personal Property immediately turned over to him. In addition, if the Debtors do not timely pay the full Purchase Amount, they forfeit all of their rights under this Agreement and any amounts they have delivered to Mr. Farrar shall be nonrefundable.

F. The transactions described in this Agreement are conditional on Bankruptcy Court approval. Mr. Farrar shall seek Bankruptcy Court approval by motion, which the Debtors shall reasonably support.

G. The Agreement shall be void and Mr. Farrar will return the Purchase Amount to Debtors if (I) the Court does not approve the proposed Sale, (ii) the Court approves the proposed Sale but such approval is reversed on appeal, or (iii) the Court orders a bid accepted that exceeds the Purchase Amount .

H. Each party to this Agreement shall sign such further documents and take such further action as reasonably may be necessary to effectuate the terms of this Agreement.

Debtor's Non-Opposition

On January 10, 2022, Debtors, Sean William Childress and Melissa Leanne Childress, filed a Non-Opposition to Trustee's Motion to Sell. Dckt. 29. The Non-Opposition states the Debtors do not oppose the sale of the Estate's Interest in Property of the Estate.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the estate will collect $16,555.00. Additionally, the Trustee believes

he would not be able to collect more than the Purchase Amount if he attempted to sell the Silverado and the Blazer at public auction and obtain turnover of the remaining Personal Property.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Gary R. Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sean William Childress and Melissa Leanne Childress or nominee ("Buyer"), the Property commonly known as 2003 Chevrolet Silverado 1500 HD Crew Cab, 1979 Chevrolet K5 Blazer, potential 2021 Tax Refund, cash, and annual bonus ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $16,555.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 26, and as further provided in this Order.
>
> B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

3. 18-90029-E-11 JEFFERY ARAMBEL MOTION TO USE CASH COLLATERAL
FWP-21 Pro Se 1-13-22 [1617]

Note: 2:00 pm Status Conference to be conducted with this motion.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Authority to Use Cash Collateral is granted.

Focus Management Group USA, Inc. ("Plan Administrator") moves for an order approving the use of cash collateral pursuant to stipulation with SBN V AG I LLC. Plan Administrator requests the use of cash collateral to operate the Reorganizing Debtor's business and pay Plan Expenses.

Plan Administrator proposes to use cash collateral for the following expenses:

> Plan Expenses in accordance with the Stipulated Budget such as insurance and professional fees for the time period of January 1, 2022 through March 31, 2022.
>
> A windup period if the estate is fully administered at that time and as may be extended by Summit's further stipulation.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

The Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for reorganizing Debtor's business and paying Plan expenses. The Motion is granted, and the Plan Administrator is authorized to use the cash collateral for the period January 1, 2022 through March 31, 2022, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any

"profit" by The Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by the Plan Administrator.

Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this ruling.

4.	**18-90030-E-11** **FWP-2**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN** **12-9-21 [522]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Order in Aid of Execution of the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Entry of Order in Aid of Execution of the Plan is xxxxxxx.

REVIEW OF MOTION

Focus Management Group USA, Inc., the Plan Administrator in the Jeffery Arambel Chapter 11 Case, moves the court for an entry of an order in aid of execution of the First Amended Plan of Reorganization, dated January 10, 2019, in this Chapter 11 case. Dckt. 398. The Motion is supported by the Declarations of Juanita Schwartzkopf, Jay Crom, and Jason E. Rios. Dckts. 524, 525.

The Plan Administrator seeks an order compelling Jeffrey Arambel, the sole shareholder and Representative of Reorganized Debtor Filbin Land & Cattle Co., Inc. ("Reorganized Debtor"), to transfer the remaining property to the Arambel Estate subject to the senior rights of SBN V Ag I LLC ("Summit") as provided by the Reorganized Debtor's Plan and as represented by the Reorganized Debtor to the Internal Revenue Service in Federal Tax Returns filed on behalf of both FLCC and the Arambel Estate.

Reorganized Debtor's Opposition

On December 30, 2021, Reorganized Debtor filed an opposition. Dckt. 531. Reorganized Debtor opposes the Motion on the following grounds:

1. The Plan requires Reorganized Debtor exercise its discretion to dissolve, and Reorganized Debtor has not exercised such discretion.

2. Mr. Arambel was not aware the tax returns implied Reorganized Debtor would be dissolved.

3. Reorganized Debtor is working to sell the remaining property to pay toward the Class 4 Claim.

Reorganized Debtor states that based on the provisions of the Plan, transferring their assets is contingent on their Dissolution. Mr. Arambel does not intend to dissolve Reorganized Debtor.

Plan Administrator's Reply

The Plan Administrator filed a reply on January 6, 2022. Dckt. 535. The Plan Administrator states Mr. Arambel's statements regarding dissolution are not credible. Plan Administrator states this is evidenced by:

A. Testimony of the Professional Tax Advisor, Mr. Crom, employed by Reorganized Debtor and the Arambel Estate. In paragraphs 3-4 of Mr. Crom's Declaration, he details Mr. Arambel's election to dissolve the to "preserve and capture certain tax benefits for the Arambel estate." Dckt. 526.

B. The federal tax returns signed and filed by Mr. Arambel. The 2019 tax return for the fiscal year ending on November 30, 2019 is filed as Exhibit A. Dckt. 527.

C. The statements of Reorganized Debtor's former counsel, Mr. St. James. Reorganized Debtor's Counsel, Michael St. James, told Mr. Rios, Plan Administrator's Counsel, that it had elected to dissolve to realize certain tax benefits. Declaration of Jason E. Rios, Dckt. 525.

D. The reorganized Debtor's own conduct in turning over $500,389.95 in furtherance of the dissolution. In furtherance of dissolution, Reorganized Debtor transferred its remaining cash of $500,389.95 on March 15, 2021,

subject to Summit's senior rights and consent. Declaration of Juanita Schwartzkopf, Dckt. 524.

Applicable Law

Congress provides in 11 U.S.C. § 1142 the statutory basis for the bankruptcy court addressing issues concerning performance under the confirmed Chapter 11 plan:

> § 1142. Implementation of plan
>
> (a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.
>
> (b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

This section focuses on the debtor or other party performing the plan. Collier on Bankruptcy provides an discussion of this provision.

> ¶ 1142.03 Authority of Court to Direct Compliance with a Confirmed Plan; § 1142(b)
>
> Section 1142(b) empowers the court to direct any necessary party, including the debtor, to perform acts necessary for consummation of the plan. The statute effectively streamlines the substantive and procedural requirements that might otherwise constrain a plan proponent from obtaining affirmative injunctions, as may be necessary to cause plan implementation. For example, courts can order specific performance of plan provisions under section 1142 without having to weigh the adequacy of monetary damages.
>
> [1] Broad Scope of Section 1142(b); Authority of Court to Issue Orders Necessary for Plan Implementation
>
> Section 1142(b) grants courts authority to compel parties to take actions considerably broader than merely ministerial acts. Pursuant to section 1142(b), the court may issue any order necessary for the implementation of the plan.
>
> Compliance orders that may be issued under section 1142(b) include those compelling:
>
> (1) lenders to execute and deliver loan documents required under the plan, clarify provisions of loan documents in accordance with the terms

of the plan and supply commercially reasonable terms and conditions to loan documents where such terms were not otherwise addressed;

(2) execution of documents extinguishing a lien that is released by the plan;

(3) an investor to advance committed funds necessary to consummate the plan;

(4) a change in corporate control or governance;

(5) distributions on claims as required by the plan;

(6) principals of the debtor to submit to examinations under Bankruptcy Rule 2004 to determine the extent to which they have acted in conformance with the plan; and

(7) execution of instruments enabling asset transfers, enforcement mechanics or other agreements contemplated by the plan.

In addition to directing parties to take actions, the court may order parties to refrain from taking actions if those actions interfere with implementation of the plan.

[2] Limitations on Court's Authority to Issue Orders under Section 1142(b)

While phrased broadly, section 1142(b) has limits. Courts should not use section 1142(b) to authorize the debtor to avoid a law or regulatory requirement regarding public health and safety. Courts also should refrain from issuing orders directing or authorizing third parties to take action unless the action specifically is called for by the terms of the plan or is necessary to implement the plan. For example, the U.S. Bankruptcy Court for the Southern District of New York recognized that section 1142(b) does not operate on a stand-alone basis or confer any substantive rights beyond what is provided for in a plan. Accordingly, the court ruled that section 1142(b) did not permit a plan administrator to retroactively issue preferred stock where the plan did not expressly authorize it and the terms of the debtor's amended charter and amended bylaws, which prohibited the issuance of securities, were incorporated into the plan. Additionally, section 1142(b) does not authorize a court to order parties to execute an agreement where there is no agreement on the terms or if the terms are uncertain.

The authority of the court to act under 1142(b) also is constrained by limitations periods. Although section 1142(b) does not specify a limitations period, the Supreme Court has recognized that, "courts do not ordinarily assume that Congress intended that there be no time limit on actions at all" and so must borrow "the most suitable statute or other rule of timeliness from some other source." In considering the correct limitations period for an action under section 1142, the Bankruptcy Court for the Southern District of Florida concluded that

> while a confirmed chapter 11 plan often is compared to a state law contract, it is "a creature of the Bankruptcy Code, a comprehensive federal statute" and so obligations arising under a confirmed plan "are necessarily federal in nature."

8 Collier on Bankruptcy P 1142.03 (16th 2020). The term "judgment" as used in the Bankruptcy Rules is defined to mean "any appealable order." Fed. R. Bankr. P. 9001. See also Federal Rule of Bankruptcy Procedure 7054, which incorporates Federal Rule of Civil Procedure 54(a) that defines the word "judgment" to include "[a] decree and any order from which an appeal lies" for adversary proceeding.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(d) that notwithstanding the entry of the order of confirmation, the bankruptcy court may issue any order necessary to administer the estate.

In Federal Rule of Bankruptcy Procedure 7001, the Supreme Court specifies the types of relief that must be requested through an adversary proceeding, which include (identified by paragraph number used in Rule 7001):

> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
> . . .
> (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
> . . .

Confirmation of the Chapter 11 plans works as a modification of the pre-petition obligations of the parties, binding the debtor and creditors to such modified terms. 11 U.S.C. § 1141(a).

Federal Rule of Bankruptcy Procedure 9014 makes the enforcement of judgments provisions of the Federal Rules of Civil Procedure incorporated into the Federal Rules of Bankruptcy Procedure, including:

A. Fed. R. Civ. P. 70, Fed. R. Bankr. P. 7070; Judgment for Specific Acts; Vesting Title, including:

1. Judgment Divesting a Party of Title to Property;

2. Ordering Another Person to Perform the Specific Acts of a Party that Fails to Comply Within the Time Period to Complete a Specific Act;

3. Issue a Writ of Assistance; and

4. Holding the Disobedient Party in Contempt (for which the civil sanctions issued by the bankruptcy judge include incarceration until there is compliance with the Order.

Review of Evidence Presented

In review of the Plan Administer's Motion and supporting pleadings, the Reorganized Debtor's Opposition, and the Plan Administrator's Reply, there exists a disputed material fact as to whether Mr. Arambel intends to dissolve the Reorganized Debtor. From the evidence presented from the Plan Administer, the Plan Administrator asserts there are serious doubts as to Mr. Arambel's credibility.

The Declaration from Juanita Schwartzkopf, the Senior Managing Director of the Plan Administrator declares under penalty of perjury that Mr. Arambel elected to dissolve the Reorganized Debtor and filed a tax return pursuant to such election. Declaration at ¶ 4, Dckt. 524. Additionally, Ms. Schwartzkop declared under penalty of perjury that the Plan Administrator received consent from Summit for the dissolution and the Reorganized Debtor transferred its remaining cash in the amount of $500,389.95 in furtherance of this dissolution.

The Declaration of Jason E. Rios, attorney for the Plan Administrator, states under penalty of perjury that Counsel for the Reorganized Debtor, Mr. St. James, indicated that Reorganized Debtor was dissolving and distributing the remaining property to the Arambel Estate to "realize certain tax benefits." Additionally, Mr. St. James stated Mr. Arambel signed a deed of trust transferring the remaining property to the Arambel Estate, but Mr. Arambel would not record the deed until receiving Summit's consent. Mr. Rios stated Summit provided its consent in August of 2021 to the dissolution of Reorganized Debtor. Summit signed a proposed Stipulation evidencing this "winding up," however, Reorganized Debtor's attorney failed to sign. Exhibit C, Dckt. 527.

Mr. Crom, the Arambel Bankruptcy Estate's and the Reorganized Debtor's public accountant, who was employed by Mr. Arambel when he was the debtor in possession in his case and as the responsible representative for the debtor in possession in the Filbin case, testified that Mr. Arambel elected to dissolve the Reorganized Debtor to preserve and capture certain tax benefits. Declaration at ¶ 3, Dckt. 526. This led to the Arambel Estate receiving benefits in the amount of $680,000.00. Mr. Crom declares under penalty of perjury that if the remaining property is not transferred to the Arambel estate as represented in the 2019 tax returns, there could be a cost to the Arambel Estate of approximately $680,000.00 to $850,000.00.

Jeffery Arambel, as representative for Reorganized Debtor, states under penalty of perjury that Reorganized Debtor has not made an election to dissolve. Declaration at ¶ 2, Dckt. 532. Mr. Arambel also does not understand how the tax returns indicate Reorganized Debtor has been or will be dissolved. Mr. Arambel states the tax returns should be corrected to show Reorganized Debtor is not and will not be dissolving.

Exhibit A filed by the Plan Administrator is identified as a copy of the Arambel Bankruptcy Estate Fiscal Year 2019 Tax Return. Dckt. 527. On the first page, it states that $1,348,000 in estimated tax payments were made, but only $176,941 was owed, resulting in a $1,171,059 overpayment. Tax Return, lines 25, 22, 30; *Id*. at 3.

On Schedule D for the 2018 Arambel Bankruptcy Estate Return, it is stated that there was a ($4,340,311) loss (line 10) and that the total Net long-term capital gain was $6,239,899 (line 15), after applying the ($4,340,311) to the $10,580,210 long term gain (line 11) for 2018. *Id*. at 4.

The Arambel Bankruptcy Estate lists the ($4,340,311) loss as relating to the asset identified as "Filbin Land & Cattle Co, Inc.," stating that it was disposed on November 30, 2019 (stated to be the end of the Arambel Bankruptcy Estate fiscal year). *Id*. at 5.

On Form 4797 for, Sales or Exchanges of Business Property, the Arambel Bankruptcy Estate lists property describe of as "Filbin Land & Cattle, Inc. (2019)" resulting in a gain of $10,580,210. *Id*. at 6. No information as to date of acquisition, sale, depreciation or other field for the Form 4797 are filled out. The identification of the property is marked with a "*" and the following information is provided as the bottom of the Form 4797, "* ENTIRE DISPOSITION OF ACTIVITY." (Emphasis in original).

In the Declaration of Jay Crom, he testifies that:

> 4. Thus, in coordination with the filing of the Arambel Estate's 2019 tax return, Mr. Arambel also signed and caused to be filed for FLCC a final corporate tax return for its dissolution showing the "real property distribution" of the Remaining Property to the Arambel Estate with a value of $2.5 million at Statement 10. This final return further shows the Remaining Property as "disposed" on Form 4797 at a "sale price" of $2.5 million based upon the value of the distribution to the Arambel Estate. This $2.5 million pass through gain triggered by the distribution of the Remaining Property to the Arambel Estate. The distribution left FLCC with no assets and the stock was rendered worthless. . . .

Declaration, ¶ 4; Dckt. 526. The asserted 2019 final corporate tax return for Filbin has not been provided as an exhibit in support of the Motion. Mr. Crom testifies that this dissolution and distribution of property generated approximately $680,000 in tax benefits for the Arambel Bankruptcy Estate. He further states that if the property is not transferred as stated on the final tax return for Filbin and tax benefit taken by the Arambel Bankruptcy Estate, for which both Mr. Arambel was the fiduciary serving as the responsible representative of the Filbin Debtor in Possession and as the fiduciary Debtor in Possession the Arambel bankruptcy case, the financial losses to the Arambel Bankruptcy Estate, and now Plan Estate could total $850,000.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Order in Aid of Execution of the Plan filed by Focus Management Group USA, Inc. ("Plan Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Entry of Order in Aid of Execution of the Plan is xxxxxxxx.

5. 21-90562-E-7 DCJ-1 | **JOSEPH CUETO** **David Johnston** | **MOTION TO COMPEL ABANDONMENT** **1-13-22 [15]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Joseph Reyes Cueto, Jr. ("Debtor") requests the court to order Gary R. Farrar ("the Chapter 7 Trustee") to abandon property commonly known as Escalon Country Flowers ("Business"). There is no retail location for the business, the business is operated out of the Debtor's home in Modesto as an online/telephone florist. The Declaration of Joseph Reyes Cueto, Jr. has been filed in support of the Motion and values the Property at $5,000.00. The Declaration states Trustee has indicated they do not desire to operate the Business, does not wish to arrange flowers, does not wish to deliver floral arrangements, and has indicated to Debtor's Attorney that the business is burdensome and of inconsequential value and benefit to the estate. Debtor refers to Trustee not desiring the Business

largely based on "the large exemption available to me which far exceeds the value of the Business." It is not clear to the court what exemption Debtor is referring to.

Upon review of Debtor's Schedule C, Debtor lists the value of the Business as $5,000.00 and wishes to exempt $23,938.00 pursuant to California Code of Civil Procedure § 703.140(b)(5). California Code of Civil Procedure § 703.140(b)(5) allows for the following to be exempted:

> The debtor's aggregate interest, not to exceed one thousand five hundred fifty dollars ($1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

The statute does not indicate Debtor can receive an amount greater than the value of the property in which Debtor is claiming the exemption for. As the value of the business is $5,000.00, that is the amount of the claimed exemption. The Debtor cannot claim a $23,938.00 exemption.

However, given the facts and circumstances surrounding the Business, the court determines that the Property of the Business is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Joseph Reyes Cueto, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as Escalon Country Flowers and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Gary R. Farrar ("Trustee") to Joseph Reyes Cueto, Jr. by this order, with no further act of the Trustee required.

6. **19-90464-E-7** **RICHARD RICKS** **MOTION TO SELL AND/OR MOTION**
BLF-7 **Pro Se** **FOR COMPENSATION FOR CAROL BERRY, REALTOR(S)**
12-21-21 [152]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2021. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1957 North Boston Place, East Tulsa, Oklahoma ("Property").

The proposed purchaser of the Property is A Equities, LLC, and the terms of the sale are:

A. Purchase Price: $100,000.00; Initial Deposit: $500.00, cash; and Balance of Purchase Price: $99,500.00, cash.

B. Close of Escrow shall be within 15 days of entry of the Final Order approving sale.

C. Buyer shall pay Buyer's Closing fee, and Buyer's recording fees; Seller shall pay documentary stamps required, Seller's Closing fee, and Seller's recording fees, if any.

D. No representations by Seller regarding the condition of the Property or environmental hazards are expressed or implied, other than as specified in the Oklahoma Residential Property Condition Disclosure Statement or the Oklahoma Property Condition Disclaimer Statement, If applicable.

E. Property is sold in its "AS-IS" condition with any and all faults and defects. Buyer will make its own investigation of the Property. The sale of the Property is without any representation or warranty, expressed or implies, of any kind by Seller and Seller will make no repairs to the Property.

F. Buyer, at Buyer's expense, shall obtain a Commitment for Issuance of a Title Insurance Policy based on an Attorney's Title Opinion which is rendered for Title Insurance purposes for the Owner's and Lender's Title Insurance Policy.

G. Seller, at Seller's expense, within thirty (30) days of Closing, will make available to Buyer the Title Evidence.

H. Seller will provide a Mortgage Inspection Certificate.

I. The Property shall not be covered by a Residence Service Agreement.

J. Sale is subject to U.S. Bankruptcy Court approval and possible overbid.

L. Paragraph 14 (Mediation) is omitted from the Agreement and the United States Bankruptcy Court, Eastern District of California has full jurisdiction to determine and resolve all disputed between the parties.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow Ms. Edmonds to collect $86,395.00 for the estate. Additionally, the proposed sale is the highest and best available price for the Property on the terms set forth in the Agreement.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $6,000.00, which will be divided 50/50 with the Buyer's broker. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Irma C. Edmonds, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to A Equities, LLC or nominee ("Buyer"), the Property commonly known as 1957 North Boston Place, East Tulsa, Oklahoma ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $100,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 156, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be divided between the Seller's Broker and the Buyer's Broker, with each receiving 50% of the Commission.

7.	**21-90381-E-7** **SLC-1**	**RANDALL/SUSAN HARRIS INC.** **Michael Germain**	**MOTION TO EMPLOY WEST AUCTIONS, AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES** **1-4-22 [19]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, creditors, and Office of the United States Trustee on January 4, 2022. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Employ West Auctions, Inc. as Auctioneer, Authorizing Sale of Property at Public Auction and and Authorizing Payment of Auctioneer Fees and Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Employ West Auctions, Inc. as Auctioneer is granted.
The Motion Authorizing Sale of Property at Public Auction is granted.
The Motion Authorizing Payment of Auctioneer Fees and Expenses is granted.

Sheri L. Carello, Chapter 7 Trustee, ("Trustee") requests multiple levels for relief through this one Motion.

The first being to sell by public auction the Bankruptcy Estate's interest in a 1979 Chevrolet Blazer, and that the 14 day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) be waived.

The second motion is for the authority to employ West Auctions, Inc. ("Auctioneer"), as Auctioneer.

Lastly, the third motion is for the allowance of compensation to Auctioneer, in the amount of fifteen percent (15%) of the gross sale proceeds, plus reimbursement for expenses in an amount up to $950.00.

The court notes that Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules."

Additionally, Federal Rule of Civil Procedure 18, which allows for the joining of multiple claims for relief into one complaint, is incorporated into adversary proceeding practice by Federal Rule of Bankruptcy Procedure 7018 for adversary proceedings, but it is not incorporated into Federal Rule of Bankruptcy Procedure 9014(c). However, as provided in Federal Rule of Bankruptcy Procedure 9014(c), the court may authorize Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 to apply to specific contested matters. This court has not yet adopted a local rule making these rules applicable to contested matters.

No request has been made by the Trustee for the court to make Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable in this Contested Matter.

Though no request has been made in connection with this Motion, the court makes Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 effective for this Contested Matter seeking multiple claims for relief. Movant should not rely upon such *sua sponte* relief being granted in the future. A party seeking to have such rules effective for a contested matter may seek such relief by an ex parte order in advance of filing or prior to service; or for what appear to be obvious Rule 18 situations like this Motion, request it as additional relief at the start of the motion.

FIRST CLAIM FOR RELIEF REQUESTED
SALE OF PROPERTY BY AUCTION

The Bankruptcy Code permits Sheri L. Carello, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property commonly known as 1979 Chevrolet Blazer ("Property"). The Trustee proposes the sale be made via online auction with West Auctions, Inc., as the Auctioneer.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will provide a greater net return to the estate than attempting to sell the item through a private sale.

Movant has estimated that a fifteen percent broker's commission from the sale of the Property, plus reimbursement for expenses in an amount up to $950.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than fifteen percent commission and up to $950.00 in reimbursed expenses.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the Trustee does not anticipate any opposition to this motion and allows for the auction to move forward immediately upon entry of Bankruptcy Court order approving the sale.

SECOND CLAIM FOR RELIEF
EMPLOYMENT OF AUCTIONEER

Sheri L. Carello ("Trustee") seeks to employ West Auctions, Inc. ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to assist the Trustee in liquidating the bankruptcy estate's interest in the Blazer.

Trustee argues that Auctioneer's appointment and retention is necessary to sell Bankruptcy Estate's interest in a 1979 Chevrolet Blazer. Auctioneer will receive compensation of fifteen percent (15%) of the gross sale proceeds, plus reimbursement for expenses up to $950.00. The estate shall be paid all net proceeds of the sale due to the estate within twenty-one working days of any auction. All gross proceeds of the sale shall be maintained separate from Auctioneer's personal or general funds and accounts pursuant to California Civil Code Section 1812.607(j). Finally, at the conclusion fo the sale Auctioneer shall provide the U.S. Trustee and the Trustee, and file with the Court, an itemized statement of the assets sole, name of purchaser(s), and price received for each asset.

Donna Bradshaw, a Vice President of West Auctions, Inc., testifies that Auctioneer will sell the property via online auction from February 8, 2022 to February 10, 2022. Auctioneer estimates that the property will sell for around $4,000.00. Donna Bradshaw testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court continues the motion to employ West Auctions, Inc. as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Declaration of Donna Bradshaw, Dckt. 22. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

THIRD CLAIM FOR RELIEF
COMPENSATION FOR AUCTIONEER

The Auctioneer, for Sheri L. Carello, the Chapter 7 Trustee, makes a Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 8, 2022, through February 10, 2022. The Auctioneer, requests fees in the amount of fifteen percent of gross sale proceeds and costs in the amount up to $950.00.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both

the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include marketing and sell the property via online auction. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Contingency Fee: Percentage of Sale

Auctioneer, computes the fees for the services provided as a percentage of the monies recovered for Trustee. Auctioneer represented Trustee in the marketing and sale of personal property described as 1979 Chevrolet Blazer ("Property"). The Property will be sold by public auction.

Costs & Expenses

Auctioneer also seeks the allowance and recovery of costs and expenses in the amount up to $950.00 pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Auctioneer in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of fifteen percent (15%) of gross sale proceeds pursuant to 11 U.S.C. § 330 for these services provided to Trustee by Auctioneer. The Chapter 7 Trustee is authorized to pay from the gross proceeds of the sale in a manner consistent with the order of distribution in a Chapter 7 case

Costs & Expenses

Costs in the amount up to $950.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the gross sale proceeds in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	fifteen percent (15%) of gross sale proceeds
Costs and Expenses	Up to $950.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property, the Motion to Employ, and the Motion for Allowance of Fees and Expenses for West Auctions, Inc., filed by Sheri L. Carello, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Sheri L. Carello, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b), the Property commonly known as 1979 Chevrolet Blazer ("Property"), on the following terms:

A. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

C. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 15 percent of the actual purchase price upon consummation of the sale. The 15 percent commission shall be paid to the Chapter 7 Trustee's auctioneer West Auctions, Inc..

IT IS FURTHER ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ West Auctions, Inc. as Auctioneer for Trustee on the terms and conditions as set forth in the Declaration of Donna Bradshaw, Dckt. 22.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that West Auctions, Inc., is allowed the following fees and expenses as a professional of the Estate:

West Auctions, Inc., Professional employed by the Chapter 7 Trustee

Fees in the amount of fifteen percent (15%) of gross sale proceeds
Expenses in the amount up to $950.00,

IT IS FURTHER ORDERED that the Chapter 7 Trustee authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the gross sale proceeds in a manner consistent with the order of distribution in a Chapter 7 case.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

IT IS FURTHER ORDERED that Federal Rule of Civil Procedure 18, as incorporated into Federal Rule of Bankruptcy Procedure 7018 and 9014(c), is made applicable to this Contested Matter, allowing for the joinder of multiple claims for relief in this one Motion.

8. 21-90484-E-11 BSH-4 | **TWISTED OAK WINERY, LLC** **Brian Haddix** | **MOTION TO APPROVE STIPULATION FOR USE OF CASH COLLATERAL WITH THE SMALL BUSINESS ADMINISTRATION** **1-13-22 [51]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Amended Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, and Office of the United States Trustee on January 13, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Approve Stipulation for Use of Cash Collateral with The Small Business Administration was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Approve Stipulation for Use of Cash Collateral with The Small Business Administration is granted.

Twisted Oak Winery, LLC ("Debtor/Debtor in Possession") moves for an order approving a stipulation with U.S. Small Business Administration ("Creditor") to the use of cash collateral.

The Stipulation Agreement provides:

A. Subject to approval of the Bankruptcy Court, SBA consents to Debtor/Debtor in Possession's continued use of Cash Collateral in accordance with the terms of this Stipulation.

B. Debtor/Debtor in Possession acknowledges SBA's intention to assert a claim for post-petition interest and other amounts and costs authorized under Section 506(b) of Bankruptcy Code to the extent permitted under the Loan Documents.

C. The Cash Collateral shall be used only for ordinary and reasonable disbursements.

D. As adequate protection to SBA, Debtor/Debtor in Possession is authorized to grant to SBA a replacement security interest and lien in such of Debtor/Debtor in Possession's post-petition assets of the same type and nature as SBA held validly perfected and unavoidable security interests and liens pre-petition. The Replacement Lien shall secure any diminution in value of the Collateral occurring after the petition date to the extent of the aggregate amount of Cash Collateral used by Debtor/Debtor in Possession and such Replacement Lien shall be of the same priority and validity as the pre-petition security interests and liens of SBA. The Replacement Lien shall be deemed granted, valid, and perfected as of the petition date; shall not attache to any avoidance actions under Chapter 5 Bankruptcy Code; and in addition to SBA's other liens and interests.

E. SBA reserves the right to seek allowance of a super priority claim under Section 507(b) of Bankruptcy Code to the extent authorized under Section 507(b) of Bankruptcy Code.

F. Debtor/Debtor in Possession hereby waives its right to surcharge the Collateral under 11 U.S.C. § 506(c). This waiver of Debtor/Debtor in Possession's right to surcharge the Collateral shall not be binding on a subsequent trustee appointed under Chapter 7 Bankruptcy Code.

G. Debtor/Debtor in Possession agrees: (a) not to conclude any transactions outside the ordinary course of business without Court approval; (b) maintain insurance on the insurance of the type and nature required under the Loan Documents; (c) pay all post-

petition withholding, sales and other tax obligations as they come due; (d) maintain Collateral in good working condition; and (e) provide SBA with inspection and appraisal rights on the Collateral at all reasonable times.

H. Unless SBA otherwise consents in writing, the right to use Cash Collateral under this stipulation shall expire on the earlier of (a) the date of confirmation of a plan of reorganization by Debtor/Debtor in Possession, or (b) the occurrence of an Event of Default and expiration of any applicable cure period.

I. The occurrence of any of the following shall constitute an "Event of Default" hereunder: (a) material breach by Debtor/Debtor in Possession of any term or condition of this Stipulation; (b) any order of the Court approving and authorizing Debtor/Debtor in Possession to enter into and perform under this Stipulation is reversed, vacated, or materially modified; (c) appointment of a trustee pursuant to 11 U.S.C. § 1104; (d) conversion of Debtor/Debtor in Possession's Chapter 11 case to a Chapter 7 case, or dismissal of Debtor/Debtor in Possession's case; (e) appointment of an examiner with any powers of a trustee pursuant to 11 U.S.C. §§ 1104 and 1106; or (f) any certificate, statement, report or document furnished to SBA, the Court or the United States Trustee subsequent to the Petition Date shall prove to have been false or misleading in any material respect on the date as of which the facts set forth therein were stated or certified.

J. Upon the occurrence of an Event of Default, SBA may withdraw its consent to use of Cash Collateral upon three business days' notice, at which time Debtor/Debtor in Possession shall not use Cash Collateral without further order of the Court. SBA amy, upon the occurrence of default, file and serve a motion for expedited relief from stay, which motion may be heard and decided on no more than five business days' notice to Debtor/Debtor in Possession, in order to foreclose upon the Collateral and Replacement Collateral.

K. Notices pursuant to this stipulation shall be in writing and shall deemed given when sent if sent by (a) hand delivery; (b) facsimile; or (c) e-mail at the addresses for the parties listed below. Otherwise, notice shall be deemed given when received, unless the following addresses are changed pursuant to notice given under this Stipulation.

L. In the event that SBA agrees to extend the term of this Stipulation, Debtor/Debtor in Possession shall timely apply to the Court for approval of such extension and, pending such approval, may continue to use Cash Collateral, but only in accordance with

the terms of this Stipulation as the same may be modified by an extension agreement, and the above grant fo the Replacement Lien to SBA shall continue in full force and effect to the same extent as herein provided.

M. SBA ha snot waived any rights to which it is entitled under the terms of the Loan Documents or other agreements.

N. This Stipulation represents the entire agreement of the parties with regard to the subject of use of Cash Collateral.

O. In the event any portion of this Stipulation is held unenforceable, the enforce ability of any other provision shall not be affected.

P. The Section headings contained are for reference purposes only and shall not affect in any way its meaning or interpretation.

Q. This Stipulation may be signed in counterpart originals, which taken together shall constitute one agreement. A facsimile signature or other digital signature of this Stipulation shall be deemed the equivalent of an original signature for all purposes.

R. The parties agree that this Stipulation was jointly prepared through the joint negotiations of the parties, and the provisions of this Stipulation are not to be strictly or liberally construed for or as against any of the parties.

S. This Stipulation is subject to and shall be effective upon the entry of an order of the Bankruptcy Court authorizing Debtor/Debtor in Possession to enter into this Stipulation and approving its terms.

Debtor/Debtor in Possession presents SBA has a Loan Agreement dated June 24, 2020, in connection with a Loan Authorization issued by SBA dated June 24, 2020, as application number 9785. Note (SBA Loan No. 3405588002) in favor of SBA in the original principal amount of $150,000.00, on June 24, 2020. The collateral described in the Security Agreements consist of substantially all the personal property of Debtor/Debtor in Possession, including, but not limited to, all of Debtor/Debtor in Possession's equipment, tools, parts, supples, accounts and rights to payment, general intangibles, inventory, chattel paper, and all proceeds and products thereof, and whether now owned or hereafter acquired.

As of the Petition Date, the following sums are stated as due and owing under the Loan Documents:

Loan No. 8002

Principal: $150,000.00

Interest: $7,500.00

Late Charges: $0.00

Total Amount Due: $157,000.00

Debtor/Debtor in Possession further acknowledges and agrees that the proceeds of the Collateral constitute cash collateral of SBA within the meaning of 11 U.S.C. § 363(a).

Debtor in Possession argues that Creditor has agreed to use the cash collateral for the following expenses:

> To allow the Debtor/Debtor in Possession to operate and fund on-going business operations.

The Debtor/Debtor in Possession's motion vaguely provides what the Cash Collateral will be used for and does not provide any further evidence how the Cash Collateral will be used. Further, the Debtor/Debtor in Possession's motion is poorly written and does not provide the Court with any grounds for which the Court should grant this motion. The Debtor/Debtor in Possession's motion relies on the Court to find the grounds for the motion in Exhibit A. Dckt. 54. After reviewing Exhibit A, the grounds for which this motion should be granted are minimally stated and Debtor/Debtor in Possession is relying on the Court to be gracious enough to do their work for them. The Debtor/Debtor in Possession acknowledges the and agrees that the proceeds of the Collateral constitute cash collateral, which is great, but does not provide the Court with any reason why the proceeds constitute cash collateral. The Debtor/Debtor in Possession through out this motion imputes Bankruptcy Code Sections but never explains how or why they apply to the facts of their case.

The Court also noticed, after careful consideration, that Exhibit A provides background facts leading up to the Stipulation Agreement. Dckt. 54. The Court is confused as to why background facts would solely be in an exhibit. The Debtor/Debtor in Possession's motion does not provide these background facts or any background facts for that matter. Once again it seems like the Debtor/Debtor in Possession is relying on the Court to be gracious enough to do the work for the Debtor/Debtor in Possession.

Additionally, the Debtor/Debtor in Possession attaches a spreadsheet as the last page of their Exhibit. This spreadsheet appears to be earning potentials and costs report. The spreadsheet indicates a time period of September, 2021 to December, 2022. We are currently in the month of January, 2022, but slowly approaching February, 2022, so anything beyond February 2022, is mere projection. Further, the spreadsheet is apart of Exhibit A and nine of the ten pages of Exhibit A is the Stipulation Agreement. The Court is confused as to why a spreadsheet representing future costs and revenue would belong to a Stipulation Agreement based on a Loan. It seems as if the Debtor/Debtor in Possession filed all their exhibits together rather than taking the time to properly separate them into Exhibits A, B, etc. Dckt. 54

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession exercises the powers fo a bankruptcy trustee in the Chapter 11 case. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for allowing the Debtor/Debtor in Possession to operate and fund on-going business operations. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral identified as equipment, tools, parts, supples, accounts and rights to payment, general intangibles, inventory, chattel paper, and all proceeds and products thereof, and whether now owned or hereafter acquired. including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Twisted Oak Winery, LLC ("Debtor/Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Debtor/Debtor in Possession is authorized to use the cash collateral of the Small Business Administration on the terms and conditions stated in the Stipulation (Dckt. 41) filed by these two Parties in this case.

IT IS FURTHER ORDERED that the Small Business Administration is granted a replacement security interest and lien in such of Bankruptcy Estate's post-petition acquired assets of the same type and nature as SBA held validly perfected and unavoidable security interests and liens pre-petition. The Replacement Lien shall secure any diminution in value of the Collateral occurring after the petition date to the extent of the aggregate amount of Cash Collateral used by Debtor and such Replacement Lien shall be of the same priority and validity as the pre-petition security interests and liens of SBA. The Replacement Lien shall be deemed granted, valid, and perfected as of the petition date; shall not attache to any avoidance actions under Chapter 5 Bankruptcy Code; and in addition to SBA's other liens and interests.

9. 21-90186-E-7 SSA-3 | **SARGON BEBLA** / **Steve Altman** | **CONTINUED MOTION TO AVOID LIEN OF ASCENTIUM CAPITAL, LLC** / **9-29-21 [88]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is xxxxxxxxxx.

This Motion requests an order avoiding the judicial lien of Ascentium Capital, LLC ("Creditor") against property of the debtor, Sargon Belba ("Debtor") commonly known as 7731 E. Keyes Rd., Hughson, California 95326 ("Property"). The Motion requests the lien be avoided for all amounts in excess of $162,640.40 (which is the value of the property in excess of senior liens and Debtor's homestead exemption).

A judgment was entered against Debtor in favor of Creditor in the amount of $665,917.59. Exhibit 1, Dckt. 93. An abstract of judgment was recorded with Stanislaus County on March 18, 2020, that encumbers the Property. *Id.*

In the Motion, Debtor lists the following liens against this property and order of priority:

7731 E. Keyes Rd., Hughson, California Value	$1,050,000.00
Wescon Central Deed of Trust Deed of Trust Recorded..... March 31, 2017	($527,359.66)
Homestead Exemption Schedule C, Dckt. 1	($360,000.00)
	==========
Value in Property for Junior Judgment Liens [Fn.1.]	$162,640.34
Judgment Liens	
Ascentium Capital, LLC Judgment Lien Recorded..... March 18, 2020	($665,917.59)
Fowler Brothers Abstract of Judgment Recorded.....July 21, 2020	($15,021.32)
Stoddard, LLC Judgement Lien Recorded.....November 5, 2020	($71,871.87)

FN. 1. It appears that there may be a slight rounding difference between the $1,62,640.40 and the number as computed above. The court accepts Debtor's calculation in ruling on this Motion.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $1,050,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $665,917.59 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of $360,000.00 on Schedule C. Dckt. 1.

At the hearing, Creditor presented the opposition based on the value of the Property, and is proceeding with discovery (an appraisal). The court continued the hearing to conduct a scheduling conference if evidence of conflicting value is filed and the parties are unable to resolve this dispute.

December 16, 2021 Hearing

No evidence of conflicting value has been presented by Creditor.

At the hearing, the parties requested a continuance so they can wrap up a stipulation resolving this matter.

January 25, 2022 Hearing

At the Hearing, **xxxxxxx**

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sargon Bebla ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Judicial Lien is xxxxxxxxxxx

10. 17-90494-E-7 SSA-12 | **DALJEET MANN** | **MOTION FOR COMPENSATION FOR BOB BRAZEAL, BROKER(S)**
Pro Se | **1-4-22 [145]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2022. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Allowance of Professional Fees is granted.

Bob Brazeal, the Real Estate Broker ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 15, 2018, through May 21, 2021. The order of the court approving employment of Applicant was entered on December 5, 2018. Dckt. 93. Applicant requests fees in the amount of $330.00 and costs in the amount of $0.00.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is

mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include researching chain of title, public records, deed of trust chain, providing escrow company and broker information for previous April 25, 2017, transaction. Along with reviewing and updating comparable sales and establishing valuation and possible equity. The Estate has $144,749.52 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

October 15, 2018: Applicant spent 0.75 hours in this category. Applicant researched chain of title, deed of trust chain, and provided escrow company and broker information for previous April 25, 2017 transaction.

October 29, 2018: Applicant spent 1.25 hours in this category. Applicant researched public record, reviewed comparable sales, and established valuation and possible equity.

May 21, 2021: Applicant spent 1.00 hours in this category. Applicant updated public records, comparable sales, and established updated valuation and possible equity.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Bob Brazeal, Broker	3.0	$110.00	$330.00
Total Fees for Period of Application			$330.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $0.00 pursuant to this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $330.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $0.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case .

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$330.00
Costs and Expenses	$0.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Bob Brazeal ("Applicant"), Real Estate Broker for Irma Edmonds, the Chapter 7 Trustee,

("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bob Brazeal is allowed the following fees and expenses as a professional of the Estate:

Bob Brazeal, Professional employed by the Chapter 7 Trustee

Fees in the amount of $330.00
Expenses in the amount of $0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

FINAL RULINGS

11. 04-94131-E-7 FWP-20
UNIQUE HEALTHCARE MANAGEMENT, INC.
David Johnston
MOTION TO APPROVE DISTRIBUTION AGREEMENT
12-29-21 [417]

Final Ruling: No appearance at the January 25, 2022 hearing is required.

Pursuant to prior order of the court, **the hearing on the Motion to Approve Distribution Agreement has been continued to 10:30 a.m. on March 10, 2022.**

12. 04-94131-E-7 FWP-22
UNIQUE HEALTHCARE MANAGEMENT, INC.
David Johnston
MOTION TO APPROVE CLAIMS AND ADDRESSES FOR DISTRIBUTION EXHIBITS
12-29-21 [423]

Final Ruling: No appearance at the January 25, 2022 hearing is required.

Pursuant to prior order of the court, **the hearing on the Motion to Approve and Addresses for Distribution has been continued to 10:30 a.m. on March 10, 2022.**

13. 04-94131-E-7
FWP-23

UNIQUE HEALTHCARE MANAGEMENT, INC.
David Johnston

MOTION FOR COMPENSATION BY THE THE LAW OFFICE OF FELDERSTEIN FITZGERALD WILLOUGHBY PASCUZZI AND RIOS LLP FOR THOMAS A. WILLOUGHBY, TRUSTEES
ATTORNEY(S)
12-30-21 [429]

Final Ruling: No appearance at the January 25, 2022 hearing is required.

Pursuant to prior order of the court, **the hearing on the Motion to Approve Compensation for Counsel to the Chapter 7 Trustee has been continued to 10:30 a.m. on March 10, 2022.**

14. 21-90393-E-7 MSN-1 | **MARLON/GRISELLE CRUZ** **Mark Nelson** | **MOTION TO COMPEL ABANDONMENT** **11-15-21 [19]**

Final Ruling: No appearance at the January 27, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2021. By the court's calculation, 73 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Marlon Sarzaba Cruz and Griselle B Cruz ("Debtors") requests the court to order Sheri L. Carello ("the Chapter 7 Trustee") to abandon property commonly known as 737 Skimmer Drive, Patterson, California 95363 ("Property"). The Property is encumbered by the lien of Chase Mortgage, securing a claim of $260,385.00. The Declaration of Marlon Cruz and Griselle Cruz has been filed in support of the Motion and values the Property at $545,800.00.

Debtors wish to abandon the property pursuant to California Code of Civil Procedure § 704.730. After deducing the secured lien from the value of the property, $285,415.00 in equity remains. This equity is subject to the Homestead Exemption under California Code of Civil Procedure § 704.730. Upon applying the homestead exemption, there is no net benefit to the estate.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Marlon Sarzaba Cruz and Griselle B Cruz ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 737 Skimmer Drive, Patterson, California 95363 and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Sheri L. Carello ("Trustee") to Marlon Sarzaba Cruz and Griselle B Cruz by this order, with no further act of the Trustee required.

15. 20-90576-E-7 BSH-3 | **WESTLEY/IRINA KLEIN** **Brian Haddix** | **MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A. O.S.T. 12-9-21 [33]**

Final Ruling: No appearance at the January 27, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Creditor on December 9, 2021. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Bank of America, N.A. ("Creditor") against property of the debtor, Westley Cory Klein and Irina Marie Klein ("Debtors") commonly known as 2636 El Charro Drive, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,805.32. Exhibit 1, Dckt. 36. An abstract of judgment was recorded with Stanislaus County on March 16, 2020, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $280,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $5,059.41 as of the commencement of this case are not stated on Debtor's Schedule D. Debtor provides in the Motion the Original Lien Amount of $4,805.32 and the Outstanding Balance of $5,059.41. However, these values are not indicated on Debtor's Schedule D or E. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C. Dckt. 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 the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Westley Cory Klein and Irina Marie Klein ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Bank of America, N.A., California Superior Court for Stanislaus County Case No. CV-19-007074, recorded on March 16, 2020, Document No. 2020-0018219-00, with the Stanislaus County Recorder, against the real property commonly known as 2636 El Charro Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.