UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 28, 2016 at 10:30 a.m.

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1. 13-20051-E-7 TYRONE BARBER
Cory Birnberg

OBJECTION TO TRUSTEE'S FINAL REPORT BY ROSE MAGNO, ET AL.
12-14-15 [372]

Tentative Ruling: The Objection to Trustee's Final Report has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney and Chapter 7 Trustee on December 14, 2015. By the court's calculation, 45 days' notice was provided. 42 days' notice is required..

The Objection to Trustee's Final Report has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Trustee's Final Report is overruled and the Trustee's Final Report is approved.

On December 14, 2016, Rose Mango ("Creditor") filed the instant Objection to Trustee's Final Report AKA Trustee's Report Motion & Creditor's Claims to be Paid in 1st Priority. Dckt. 372. FN.1. Creditor states that she, on the behalf of her children who are minors, holds a claim for $27,500.00 plus

added interest accruing since 2007. Creditor further states that she holds a claim for child arrears, totaling $16,233.00 plus interest accrued since 2007.

FN.1. The court notes that within the present motion, Creditor states "if no written objection is filed . . . within 14 days."Dckt. 372. However, Creditor fails to complete her thought, and thus did not add a much wanted "then" to her motion outlining the repercussions of failure to respond within the aforementioned 14 days.

Creditor's Notice of Hearing provides us with a complete sentence, but has the added defect of mislabeling the motion, stating "if no written objection is filed . . . the motion for relief from the automatic stay may be granted." Dckt. 374.

Even though this creates obvious confusion, the Trustee has timely responded. Therefore, the court will waive the defect even though the motion may not comply with the requirements of Local Bankruptcy Rule 9014-1(f)(1).

Creditor argues that she is entitled to Debtor's full account balance, as her claims receive priority over the Trustee's claims under 507 U.S.C. § 507(a)(1)(A). Creditor seeks the full amount of Debtor's account held by the Bankruptcy Court and $2,000.00 in funds refunded to the Debtor's estate from Debtor's attorney John Guthrie.

Creditor provides no legal authority why she is entitled to take all of the money from the bankruptcy estate, other than asserting that she is entitled to a priority pursuant to 11 U.S.C. § 507(a)(1)(A), which priority she asserts is superior to the "Trustee's claims." Motion ¶ 6, Dckt. 372.

As evidence, Creditor has provided her "Declaration." Dckt. 373. This "Declaration" is merely a copy of the "Motion" with a different heading on it. Creditor fails to attest under penalty of perjury that any of her statements in the document are true and correct under penalty of perjury. The "Declaration" also purports to state Creditors personal statements of the law.

As the court recalls, and the Trustee recounts in his Narrative Report (Dckt. 373), Creditor, Dr. Rose Mango, a medical doctor, is a highly educated person. Throughout this bankruptcy case Creditor has chosen to represent herself and not hire someone who is trained in the law. This is akin to a lawyer who wakes up, has a stabbing pain in his side, and decides that he doesn't need to see someone who is trained in medicine, but he'll just diagnose it himself, because "how hard can that medical stuff really be." As the doctor would surely attest, "it's pretty hard and requires specialized training." Legal proceedings can be the same.

TRUSTEE'S OPPOSITION

On January 14, 2016, Garry Farrar ("Trustee") filed an Opposition to Creditor's Motion. Dckt. 378. The Trustee states that his Trustee's Final Report allows for Administrative expenses of $3,750.00 to the Trustee, and $15,000.00 previously allowed to the Trustee's counsel, Hefner, Stark, & Marois, LLP ("Trustee's Counsel"). Dckt. 366. The Trustee further states that expenses to the Trustee are based on 31.4 hours of work in connection with this

matter, supported by Trustee's time records. Exhibit A, Dckt. 381. Trustee also states that expenses to Trustee's Counsel reflect approximately 100 hours of work in connection with this matter, supported by Trustee's Counsel's time records. Exhibit B, Dckt. 381. The Trustee stresses that both his and his counsel's services have been significantly discounted for the benefit of the estate, and that the multitudinous communications from Creditor have contributed significantly to increased administrative expenses.

The Trustee argues that under 507(a)(1)(C), administrative expenses allowed under paragraph's (1)(A), (2), and (6) of section 503(b) are paid before Creditor's domestic support obligations under subparagraphs (A) and (B). The Trustee cites *In re Yelverton* for the proposition that Trustee's Counsel's fees also receive priority over domestic support obligations. *In re Yelverton*, 2014 Bankr. LEXIS 27 (Bankr. D.D.C., January 6, 2014).

APPLICABLE LAW

For purposes of the instant Motion, 11 U.S.C. § 507 instructs on the order of distribution:

> (a) The following expenses and claims have priority in the following order:
>
> (1) First:
>
> (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.
>
> (B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.
>
> (C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, **the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of**

> **section 503(b) shall be paid *before payment of claims under subparagraphs (A) and (B)***, to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

11 U.S.C. § 507 (emphasis added). Collier on Bankruptcy provided the following explanation as to what expenses are priority:

> This priority applies to certain administrative expenses incurred by a trustee in administering assets that are used to pay such domestic support obligations. The types of administrative expenses are those described in sections 503(b)(1)(A) (costs of preserving the estate), 503(b)(2) (compensation awarded under section 330) and 503(b)(6) (fees and mileage under chapter 119 of title 28). If an administrative expense falls into one of these three categories, and if it was incurred by the trustee in administering assets used toward the payment of such claims, the trustee will be entitled to be reimbursed ahead of the holders of priority claims under sections 507(a)(1)(A) and (B).

4 COLLIER ON BANKRUPTCY ¶ 507.03[2] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Courts have addressed the specifics of the "super priority" treatment of administrative expenses. The court in *In re First Magnus Financial Corp.* stated

> Under the Bankruptcy Code, certain types of claims are entitled to administrative claim status. These expenses include "the actual, necessary costs and expenses of preserving the estate ....," and are accorded top-tier priority for payment, even ahead of most other "priority" claims. 11 U.S.C. § 507(a)(1)(C) and (2). The theory behind this "super-priority" treatment for administrative expenses is that the services rendered to a debtor, which help preserve the value of the estate, whether for continuation of the business or immediate liquidation, benefit all of the pre-petition creditor body. 4 Collier on Bankruptcy ¶ 503.06[1], at 503-24.1 to 24.2 (15th ed. rev.2008).

In re First Magnus Fin. Corp., 390 B.R. 667, 673 (Bankr. D. Ariz. 2008) aff'd, 403 B.R. 659 (D. Ariz. 2009).

DISCUSSION

The Trustee's arguments are well-taken. Congress drafted 11 U.S.C. § 507(a)(1)(C) to allow for certain administrative expenses to be given what is colloquially called "super priority." As discussed supra, the super priority treatment for expenses that are actual and necessary to preserve the estate.

To support this, the Trustee has provided the time sheets for both the Trustee and Trustee's counsel. It is clear from the review of the records, along with the declarations of both the Trustee and Trustee's counsel, that the

time and services provided for by the Trustee were necessary. The Trustee spent significant time investigating, administering, and liquidating complex assets in an orderly and efficient manner for the benefit of the estate. The Trustee states that the ownership interest in an operating beach resort property in the Phillippines was the most significant asset that required hours of work to determine the actual value of the property but also to sell. The Trustee states that this was further exasperated by a typhoon which destroyed virtually all the real property and personal property in the structure. This rental property is just a single example of the work the Trustee had to exert to determine the actual value of the Debtor's property as well as selling.

Additionally, the Trustee has provided sufficient narrative and evidence that a notable portion of the services provided was communicating with the Creditor based on her extensive requests to the Trustee. The Trustee, as evidenced by the time sheets, responded to multiple calls and emails from the Creditor. Due to the personal nature of the Creditor's claim, the Trustee was in constant communication with the Creditor over the status of the case. The Trustee, to ensure equitable treatment, even went as far to reach out to the Creditor to offer the rental property first prior to looking for other buyers.

The international nature of the various assets of the estate and the extenuating circumstances that had a direct effect on the value of these assets, the Trustee had to work diligently and swiftly.

The Trustee states that the court had previously granted Trustee's Counsel $15,000.00 in fees, which was significantly and voluntarily reduced in order to accommodate the estate. The Trustee and Trustee's counsel has provided more than sufficient evidence that the work done by both were necessary and reasonable for the continued administration of the estate.

Creditor's Claim Does Not Have Priority Over Administrative Expenses in This Case

The Creditor provides no basis for her allegation that her domestic support obligations should be given priority over the administrative fees of the Trustee. The Creditor's objection is merely a regurgitation of the alleged monies due to the Creditor from the Debtor. Outside of citing 11 U.S.C. § 506(a)(1)(A), the Creditor does not provide any basis as to why the Trustee's fees should not be given the "super priority" treatment that Congress explicitly provided in 11 U.S.C. § 507(a)(1)(C).

The plain language of 11 U.S.C. § 507(a)(1)(C) states that a Trustee appointed in a Chapter 7 case the administrative expenses of the Trustee (wages, salaries, taxes, trustee's compensation, compensation of other professionals employed by the Trustee, and Trustee's expenses). 11 U.S.C. § 504(a)(1)(C), giving priority to the above expenses and fees specified in 11 U.S.C. § 503(b)(1)(A), (2), and (6). Creditor ignores this provision and does not provide any analysis as to why it does or does not apply.

The Trustee's final report lists the Trustee having recovered $30,000.00 for the Estate from the Debtor. Dckt. 366. Even after the case was converted to one under Chapter 7, Debtor amended his Schedules 7 times. Narrative Report, Dckt. 371. The assets the Trustee pursued were located in the Philippines, not sitting in a bank account in California or a safe deposit box. The list of assets in the Philippines sold by the Trustee as listed in

the Order Approving the Sale. Dckt. 313.

The Trustee is administering $30,000.00 in assets (proceeds from the sale) which are "otherwise available for payment of" Creditor's priority claim. By the plan language of 11 U.S.C. § 507(a)(1)(C), the administrative expenses in this case are paid ahead of Creditor's priority claim. To do otherwise would not only create an unpaid servitude for a trustee to a creditor with such claim, but result in a trustee and professionals not throughly investigating assets and recovering monies which could go to pay the priority and other claims. As stated in Collier on Bankruptcy, "The purpose of this special priority [11 U.S.C. § 507(a)(1)(C)] is to incentivize trustees to administer assets that could be used for payment of these claims and to protect trustees who do so." COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 507.03[2].

The Trustee has presented evidence of the active litigation of this case by Creditor and her demands on the Trustee for action. In reviewing the file, the state court battles which has led to Creditor having $115,735.24 claim come back to light. Proofs of Claim No. 11, 12. Back in May 2014, the amount of the outstanding claim was $71,233 ($55,000 lump sum payment and $16,233 in child support arrears). Creditor Motion for Relief, Dckt. 236. Creditor testified that the $16,233 in child support arrearage dates back to 2007. In ruling on the Motion for Relief, the court noted the dysfunctional litigation of Debtor and Creditor:

> "The Motion has been filed by Ms. Mango in pro se and supported by a two page declaration that has attached to it 23 pages of unauthenticated exhibits. Dckt. 236. As with the Debtor, these unauthenticated documents are dumped on the court.
>
> This Motion and the Opposition by Debtor is a prime example of how battles between Exs being waged in state court often times is attempted to be exported to the federal court so the parties can continue in a War of the Roses Battle without regard to their actual respective rights and their obligations to minors. FN.2.
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> FN.2. War of the Roses is a 1998 Movie directed by Danny DeVito which stars Michael Douglas, Kathleen Turner, and Danny DeVito. The storyline for the movie relates to the unrelenting campaign spouses wage against the other in a divorce battle over who will be victorious in retaining their home, and successfully punishing the other. One description of the plot line is,
>
> > 'In an effort to win the house, Oliver offers his wife a considerable sum of cash in exchange for the house, but Barbara still refuses to settle. Realizing that his client is in a no-win situation, Gavin advises Oliver to leave Barbara and start a new life for himself. In return, Oliver fires Gavin and takes matters into his own hands. At this point, Oliver and Barbara begin spiting and humiliating each other in every way possible, even in front of friends and potential

> business clients. Both begin destroying the house furnishings; the stove, furniture, Staffordshire ornaments, and plates. Another fight results in a battle where Barbara nearly kills Oliver by using her monster truck to ram Oliver's antique automobile. In addition, Oliver accidentally runs over Barbara's cat in the driveway with his car. When Barbara finds out, she retaliates by trapping him inside his in-house sauna, where he nearly succumbs to heatstroke and dehydration.'
>
> www.Wikipedia.org and www.imbd.com.
>
> Such battles are not permitted to be transported to federal court.
> ----------"
>
> While the Debtor appears to be indigent that Ms. Magno states that the case was filed as a Chapter 13 case rather than the Chapter 11, Debtor ignores the reasons why the case was converted to one under Chapter 7
> ...
> The prosecution of the Chapter 11 case by the Debtor, serving as Debtor in Possession, was not a highwater mark for him, and it is curious that he wants to bring this back to the courts attention.
>
> From the Motion for Relief, the court cannot identify what relief Ms. Mango desires beyond that already granted statutorily by Congress. She cannot have the state court intrude on the bankruptcy process or the Trustee's administration of property of the estate (including recovery of any such property which is undisclosed or in the hands of Ms. Mango, the Debtor, or third-parties)."

Civil Minutes, Dckt. 280.

Debtor continued the battle, objecting to Creditor's two proofs of claim. Objections, Dckts. 315, 317. The objection is basically that "Debtor does owe the money." The court overruled both objections, without prejudice, for a number of reasons, including: Debtor in a non-surplus case not having standing to object to these two claims, failure to state grounds upon which the claims could be disallowed, and failure to provide testimony under penalty of perjury. In ruling on the object to claims, the court quoted the state court judge in the family law case with respect to the conduct of Debtor and Creditor:

> "FN.1. One of the documents filed by Objector in connection with the Objection to Proof of Claim No. 11 filed by this Creditor is the ruling by the State Court in one of the matters between these parties. The State Court
> judge noted that while each party seeks to blame the other for the costs of the divorce litigation,
>
> 'However, the Court suggests that each party take a

> good, hard look in the mirror to view one of the primary causes for the high amount of fees and costs that were amassed in this matter. This was a hotly contested, contentious post-judgment case that was extremely litigious and each party must share the blame in the ultimate cost of the case.'
>
> Dckt. 316, Pg. 2. The incomplete pleading of the Objection only further adds to unnecessary cost and expense for not only the parties, but the court."

Civil Minutes, FN.1., Dckt. 325.

Creditor's contentions, not supported by the Bankruptcy Code, attempt to draw the Trustee and Trustee's professionals into the dysfunctional, financially improvident, litigation morass of the Debtor-Creditor litigation. Such is not required, nor permitted, by the Bankruptcy Code.

Additionally, the Creditor does not provide any basis for the request for the $2,000.00 to be refunded by the Debtor's family lawyer. The Trustee in his response states that at no point did he have control over the alleged refund. The Creditor appears to be merely attempting to gather all of the liquidated monies in the estate for her domestic support obligations without regard to the priority structure established in 11 U.S.C. § 507.

Therefore, the Creditor has not provided sufficient grounds to justify the payment of the Creditor's domestic support obligations over the Trustee's "super priority" administrative claims. The objection is overruled and the Trustee's Final Report is approved.

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 Objection to Trustee's Final Report filed by Creditor 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 Objection is overruled.
>
> **IT IS FURTHER ORDERED** that the Trustee's Final Report is approved.

2. 14-29361-E-7 KJH-2 WALTER SCHAEFER Douglas Jacobs

MOTION FOR ADMINISTRATIVE EXPENSES
1-1-16 [291]

Final Ruling: No appearance at the December 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Administrative Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See 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 Administrative Fees is granted.

Kimberly Husted, the Chapter 7 Trustee, filed the instant Motion for allowance of Administrative Income Tax Claims on January 1, 2016. Dckt. 291. The Trustee requests that the court authorize the payment of admiistrative expense claims resulting from taxes incurred by the estate that became due and owing post-petition in the amount of $1,300.00 to the Internal Revenue Service and $4,400.00 to the Franchise Tax Board for 2015 subject to the provisions of 11 U.S.C. § 726, to pay the balance due, if any, on account of said claims from available funds

The Trustee hired a certified public accountant to prepare the estate's income tax returns and tax year 2014 and 2015 have been filed.

In relevant part, 11 U.S.C. § 503 states:

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--
>
> (1)(A) the actual, necessary costs and expenses of preserving

> the estate including–
>
> (B) any tax--
>
> (I) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
>
> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;. . .

When a case is converted to one under Chapter 7, 11 U.S.C. § 726(b) provides that the administrative expenses of § 503(b) incurred under Chapter 7 after conversion have priority in distribution over the administrative expenses incurred under the other Chapters. 4 COLLIER ON BANKRUPTCY ¶ 726.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). 11 U.S.C. § 503(a) states that an entity may timely file a request for payment of an administrative expense, "or may tardily file such request if permitted by the court for cause."

Here, the Trustee is seeking authorization to pay the taxes owed for 2014 and 2015 tax year. Pursuant to 11 U.S.C. § 503(b)(1)(B), these taxes to be paid by the Trustee are administrative expenses. These fees to be paid by the Trustee are actual and necessary administrative expenses of the estate.

Therefore, the Motion is granted and the Trustee is authorized to pay a total of $2,400.00 to the Franchise Tax Board for income taxes for tax years 2013, 2014, and 2015.

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 Administrative Fees filed by Trustee 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 Trustee is authorized to pay a total of $1,300.00 to the Internal Revenue Service and $4,400.00 to the Franchise Tax Board for income taxes for tax years 2014 and 2015.

3. 14-29284-E-7 CHARLES MILLS **OBJECTION TO DEBTOR'S CLAIM OF**
DNL-14 Lucas Garcia **EXEMPTIONS**
11-30-15 [314]

Final Ruling: No appearance at the January 28, 2016 hearing is required.

The court having issued an order continuing the Objection to Debtor's Claim of Exemptions to 10:30 a.m. on February 25, 2016, **the matter is removed from the calendar.**

4. 15-25998-E-7 KEVIN/ARLENE QUACKENBUSH **MOTION TO CONFIRM TERMINATION**
WFM-1 Marc Caraska **OR ABSENCE OF STAY**
12-17-15 [46]

Tentative Ruling: The Motion to Confirm Termination or Absence of Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, Jr. Lienholder Webster Bank and Office of the United States Trustee on December 17, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Confirm Termination or Absence of Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See 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.

The Motion to Confirm Termination or Absence of Stay, as to the Debtor, is granted, and the balance of the requested relief denied.

CitiMortgage, Inc. ("Movant") files the instant Motion to Confirm Termination of Stay on December 17, 2015. Dckt. 46. Movant brings the instant Motion pursuant to 11 U.S.C. §§ 362(c)(3)(A) and (j).

Movant asserts it is the original mortgagee or beneficiary or the assignee of the mortgage or deed of trust of the real property commonly known as 16425 Meadow Road, Sutter Creek, California ("Property") of which the Movant alleges Kevin and Arlene Quackenbush ("Debtor") executed the promissory note.

APPLICABLE LAW

11 U.S.C. § 362(c) provides, in relevant part:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--
>
> > (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

11 U.S.C. § 362(j) states that a party in interest can request the court to" issue an order under subsection (c) confirming that the automatic stay has been terminated."

DISCUSSION

Failure to Comply with Fed. R. Bankr. P. 9013 and Improperly Combining Motion and Points and Authorities

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

> A. Secured Creditor CitiMortgage, Inc. ("Movant"), by and through its attorney of record, hereby moves for an order confirming termination of stay under the 11 U.S.C. § 362(c)(3)(A) as it applies to Movant and the real property located at 16425 Meadow

Road, Sutter Creek, California 95685 (the "Property")

B. The Motion is based on the following Memorandum of Points & Authorities and the Notice of Motion for Order Confirming Termination of the Automatic Stay Under 11 U.S.C. § 362(c)(3)(A) and all other pleadings and papers on file herein, and upon such oral and documentary evidence as may be presented by the parties as [sic] the hearing.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the court should look at the Points and Authorities for the grounds. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Failure to Comply With Local Bankruptcy Rule 9004-1 and the Revised Guidelines For Preparation of Documents

In addition to the failure to comply with Fed. R. Bankr. P. 9013, the Movant also improperly combines the Motion and points and authorities. The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

However, even in light of this failure, the court will review the Mothorities to review the grounds.

Relief Requested in Mothorities

Movant states that Debtor has had a pending chapter 13 bankruptcy case pending within the preceding one-year period that was dismissed that limits the automatic stay in the instant case to 30 days.

Debtor filed a Chapter 13 case on October 15, 2014. Case No. 14-30250. On March 11, 2015, the court issued an order dismissing the case for unreasonable delay in getting a plan confirmed that is prejudicial to creditors. Dckt. 27.

On July 29, 2015, the Debtor filed the instant Chapter 7 case. Case No. 15-25998.

The Movant argues that more than 30 days have passed since the commencement of the instant bankruptcy case. The Debtor has not moved the court to request the continuance of the stay prior to the expiration of the 30 days.

Here, the Movant has shown that the Debtor has had a pending Chapter 13 bankruptcy withing the preceding one-year period prior to the filing of the

instant case but was dismissed. The prior case was filed October 15, 2014 and dismissed on March 11, 2015. Case No. 14-30250. This was four months prior to the Debtor filing the instant case on July 29, 2015.

Stay as to Debtor

Pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay terminated as to "any action taken with respect to a debt or property securing such debt. . .with respect to the ***debtor***" after 30 days of the filing of the instant case. Therefore, by operation of law, the automatic stay terminated as of August 29, 2015 as to the Debtor.

Stay as to Property of the Estate

The Movant also seeks an order confirming that the automatic stay no longer applies to the property. Unfortunately, the language of 11 U.S.C. § 362(c)(3)(A) only applies to the stay as to the Debtor, not to the property of the estate. The Movant appears to have misread the automatic termination of the stay when there was a prior bankruptcy case pending within the past year since the filing of a second case.

The Mothorities does not provide the court with any legal analysis, legislative history, or controlling or persuasive appellate case for the proposition that the automatic stay was terminated as to the bankruptcy estate by operation of 11 U.S.C. § 362(c)(3)(A). No discussion of statutory construction is provided in support of the Motion. The Mothorities merely states that the "automatic stay terminates 30 days after" the commencement of the second case.

Upon the commencement of a bankruptcy case the bankruptcy estate, into which all property of the debtor is transferred by operation of law, is created. 11 U.S.C. § 541(a). Property of the bankruptcy estate is not property of the Debtor unless abandoned by the Trustee (either as approved by order of the court, upon dismissal of the case, or closing of the bankruptcy case). 11 U.S.C. §§ 554(a) or (b), 349(b)(3), 554(c).

The Supreme Court has been very clear in reading and applying the "plain language" stated by Congress in statutes. *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000); *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)*. The basic direction is that Congress says in a statute what it means and means in a statute what it says. *Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992);* (quoting *Caminetti v. United States, 242 U.S. 470, 485, 61 L. Ed. 442, 37 S. Ct. 192 (1917)*; *United Savings Association of Texas v. Timbers of Inwood Forest Associates, LTD.*, 484 U.S. 365, 371 (1988).

In 11 U.S.C. § 101 Congress has defined "debtor" as a person, whether living or entity such as a corporation, partnership or limited liability company, (11 U.S.C. § 101(13)); estate and property of the estate (11 U.S.C. § 541(a)); and exempt property (11 U.S.C. § 522). These terms for individuals, entities, estate, and property are all defining different things. The terms "debtor," "estate," "property of the estate," and "property of the debtor" are not terms describing the same thing.

Congress created the automatic stay as specified in 11 U.S.C. § 362(a). The automatic stay applies and stays actions with respect to a number of persons, items, and acts, including:

A. Commencement or continuation of action **against the debtor** [11 U.S.C. § 362(a)(1)];

B. Enforcement of a judgment obtained prior to the commencement of the case against,

1. **Property of the Debtor** or

2. **Property of the Estate** [11 U.S.C. § 362(a)(2)];

C. Any act to obtain possession of **property of the estate**, **property from the estate**, or exercise control over **property of the estate** [11 U.S.C. § 362(a)(3)];

D. Any act to create, perfect, or enforce any lien against **property of the estate** [11 U.S.C. § 362(a)(4)]; and

E. Any act to create, perfect, or enforce a lien, which secures a claim which arose before the commencement of the case, against property of the debtor [11 U.S.C. § 362(a)(5)]

As shown in 11 U.S.C. § 362(a), Congress recognizes that the debtor, property of the debtor, and property of the estate are different.

In 11 U.S.C. § 362(c) Congress provides that the automatic stay terminates, without order of the court, in the following circumstances:

a. As to property of the estate, when such property is no longer property of the estate [11 U.S.C. § 362(c)(1)];

b. The stay of any other act until the earlier of:

i. The case is closed;

ii. The case is dismissed; or

iii. The time the debtor is granted or denied a discharge [11 U.S.C. § 362(c)(2)(A), (B), and (C)].

To address a perceived abuse of the Bankruptcy Code by repeat filers, Congress provides in 11 U.S.C. § 362(c)(4) that the automatic stay does not go automatically into effect in a bankruptcy case if there were two or more prior cases filed by the debtor which were dismissed within one year of the bankruptcy case then before the court. The language used by Congress in § 362(c)(4) is that "the stay under subsection [362](a) shall not go into effect upon the filing of the later case [then before the court]." Congress clearly provides that the entire stay provided for in 11 U.S.C. § 362(a) will not go into effect.

In 11 U.S.C. § 362(c)(3) cited to by Movant, Congress does not say that upon the expiration of 30 days the automatic stay under subsection 362(a)

terminates, but instead,

> "(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease **shall terminate with respect to the debtor** on the 30th day after the filing of the later case;...."

11 U.S.C. § 362(c)(3)(A) [emphasis added]. The plain language of the Congress is that the stay terminates as to the debtor, and not any further.

Interestingly, Debtors were granted their discharge on January 12, 2016. Dckt. 51. On November 11, 2015, the Chapter 7 Trustee filed a No Distribution Report. Nov. 11, 2015 Docket Entry Report. On December 8, 2015, the Chapter 7 Trustee was discharged. Dckt. 45. It appears that the only reason the Clerk of the Court is not closing this case, which will result in all disclosed property of the estate being abandoned to the Debtor, is this Motion.

However, as the case currently stands, the property of the estate has yet to be abandoned to the Debtor and remains protected by the automatic stay. The Movant has not provided any declarations, any exhibits, nor any evidence to support the contention that 11 U.S.C. § 362(c)(3) also terminates the stay as to property of the estate.

Therefore, the request for relief from the stay as to the Property is denied. FN.1.

FN.1. It is likely that the court determining that the automatic stay is not terminated as to the estate or property of the estate will be of little moment to Movant. With the entry of this order, it appears that the Clerk of the Court will be able to process the closing of this case, which will then bring into play 11 U.S.C. § 554(c) and 11 U.S.C. § 362(c)(1) and (2)(A).

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 Relief From the Automatic Stay filed by Citibank, N.A. ("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 the court confirms that the automatic stay terminated on August 29, 2015 as to Kevin and Arlene Quackenbush ("Debtors").
>
> **IT IS FURTHER ORDERED** that the request for an order confirming that the automatic stay as to the real property commonly known as 16425 Meadow Road, Sutter Creek, California, as property of the bankruptcy estate, is denied.