UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 30, 2020 at 10:30 a.m.

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1. **19-27132-A-7** **CHRISTAL SAMI** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
VVF-1 **Candace Brooks** **1-3-20 [14]**

MECHANICS BANK VS.

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, parties requesting special notice, and Office of the United States Trustee on January 3, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.

Mechanics Bank, a California Banking Corporation, Successor by Merger to California Republic Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a

2013 Dodge Charger, VIN ending in 4255 ("Vehicle"). The moving party has provided the Declaration of Carina Olivares to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Christal L. Sami ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $475.61 in post-petition payments past due. Declaration, Dckt. 16.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $12,660.36 (Declaration, Dckt. 16), while the value of the Vehicle is determined to be $8,687.00, as stated in Schedules B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant,

and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay 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.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.
No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by Mechanics Bank, a California Banking Corporation, Successor by Merger to California Republic Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Dodge Charger, VIN ending in 4255 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

2. **19-26085-A-7** **JACQUELINE EVERETT**
Chad Johnson

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 12-11-19 [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.

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, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is xxxxxxxxxx.

The Chapter 7 Trustee, Geoffrey Richards ("Trustee"), seeks dismissal of the case on the grounds that Jacqueline M. Everett ("Debtor") did not appear at the continued Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 01:00 p.m. on February 4, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 16, 2020. Dckt. 28. Debtor states her absence was due to writing down the wrong date and time for the meeting. Debtor requests this Court conditionally deny the Motion to Dismiss conditioned upon the Debtor appearing at the next scheduled Meeting of Creditors on February 4, 2020.

Additionally, on January 16, 2020 Debtor submitted an application for substitution of attorney. Previously Debtor was *Pro Se*. Chad M. Johnson has substituted as Debtor's attorney. Dckt. 27.

DISCUSSION

Debtor appeared at the Meeting of Creditor's on November 5, 2019 but failed to appear at the continued meeting on December 10, 2019.

Attendance of a Meeting of Creditor's is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1). The next scheduled Meeting of Creditor's is on February 4, 2020. Failure to appear at this Meeting of Creditor's will be cause for dismissal.

~~Based on the foregoing, the Motion is denied without prejudice.~~

~~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 to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Geoffrey Richards ("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 to Dismiss is denied without prejudice.~~

~~**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including April 4, 2020.~~

3. **19-27888-A-7** **DIX LESTER MENDOZA** **MOTION FOR RELIEF FROM**
VVF-1 **Scott Johnson** **AUTOMATIC STAY**
1-10-20 [11]

AMERICAN HONDA FINANCE
CORPORATION VS.

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, parties requesting special notice, and Office of the United States Trustee on January 10, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Honda Civic, VIN ending in 1330 ("Vehicle"). The moving party has provided the Declaration of Courtney Solomon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Dix Lester Lumagui Mendoza ("Debtor").

Movant argues that there are 5.27 pre-petition payments in default, with a pre-petition arrearage of $3,089.40. Declaration, Dckt. 15.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

TRUSTEE'S RESPONSE

Trustee filed a statement of no-opposition on January 24, 2020. Trustee's January 24, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $28,933.44 (Declaration, Dckt. 15), while the value of the Vehicle is determined to be $24,075, which is less than the retail value as stated on the NADA Valuation Report.

Movant has possession of the Vehicle as it was recovered before the petition was filed. Motion at 3.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their

contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay 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.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by American Honda Finance Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Honda Civic, VIN ending in 1330 ("Vehicle"), and applicable non-bankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

4. **17-20689-A-7** **MONUMENT SECURITY, INC.** **AMENDED MOTION FOR RELIEF**
KCO-1 **Matthew Eason** **FROM AUTOMATIC STAY**
1-6-20 [792]

MOTEL 6 OPERATING L.P. AND
ROMAN ESCAMILLA VS.

Tentative Ruling: The Motion for Relief From the 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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 26, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.

Motel 6 Operating L.P. ("Movant") seeks relief from the automatic stay to allow *Williams, et al. v. G6 Hospitality, et. al.* Fresno County Superior Court Case No. 18CECG01845 (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Mark Van Beest to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by

Monument Security, Inc. ("Debtor").

Movant argues that Movant must be allowed to proceed in pursue certain claims under Debtor's insurance policy, seek indemnification and defense under the insurance policy, and pursue and recover the insurance policy proceeds. Declaration, Dckt. 791.

Further, Movant points that this identical relief was provided to G6 Hospitality LLC, which is Movant's General Managing Partner. (Dckt. 684). Movant filed this motion "in an abundance of caution" as Movant was subsequently named as defendant in the same lawsuit.

CHAPTER 7 TRUSTEE'S RESPONSE

J. Michael Hopper ("the Chapter 7 Trustee") filed a statement of non-opposition on January 3, 2020. Trustee's January 3, 2020 Docket Entry Statement.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

FAILURE TO COMPLY WITH BASIC PLEADING FORMAT LOCAL RULES

Under the Local Bankruptcy Rules the motion, each declaration, the points and authorities, and the exhibits document, are each filed as separate pleadings. L.B.R. 9004-2, 9014-1. An exception exists for a "Mothorities," in which a motion may be filed with the motion and points and authorities combined, so long as the total document is not more than six pages in length.

Here, Movant has plopped on the court an 18 page document titled "Amended Motion." The Motion reads like an extensive points and authorities, loaded with citations, quotations, and legal arguments. Dckt. 792. The footnote on page 1 states that the amendment is to add a docket control number.

Looking at the Docket, on December 26, 2019, Movant appears to have filed the same eighteen-page Motion as the Amended Motion filed on January 6, 2020. There is no docket control number for the December 26, 2019 Motion or other pleadings filed that day that relate to the December 26, 2019 motion.

GRANTING OF MOTION

The Chapter 7 Trustee has filed a statement of nonopposition to the requested relief. January 3, 2020 Trustee Docket Entry Nonopposition Statement.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, J. Michael Hopper ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

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 Motel 6 Operating L.P. ("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 automatic stay provisions of 11 U.S.C. § 362(a) are modified, retroactive to May 6, 2019, as applicable to Monument Security, Inc. ("Debtor") to allow Movant, its attorneys, agents, representatives, and successors to proceed with litigation in *Williams, et al. v. G6 Hospitality, et. al.* Fresno County Superior Court Case No. 18CECG01845 to pursue the Insurance Policy, indemnity and defense thereunder, and to recover the Insurance Policy proceeds at issue in that action, including the entry of a final judgment and the conclusion of all appeals therefrom.
>
> **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, J. Michael Hopper ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.
>
> No other or additional relief is granted.

5. **19-20617-A-7** **DAISY CUARESMA** **CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS**
HSM-6 **Mark Hannon** **11-26-19 [65]**

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, parties requesting special notice, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay 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 Sanctions for Violation of the Automatic Stay is xxxxx.

Gary Farrar, the Chapter 7 Trustee, has filed the present Motion to have Daisy Cuaresma, the Chapter 7 Debtor, held in contempt for failure to comply with the prior order of this court to comply with the ordered turnover of records, monies, and other property of the bankruptcy estate.

In the Motion, the Chapter 7 Trustee states with particularity, (Fed. R. Bankr. 9013) the following grounds and relief requested:

A. This court entered an order on October 28, 2019, compelling Debtor to turn over certain real property on or before noon on Friday November 15, 2019.

B. The property ordered to be turned over specified in this court's prior Order, Dckt. 62, is identified as:

1. the Funds consisting of: "Investment with Trust Investment & Crypto Company, with bit coins, through a Chung Lee A" valued at $823,409.20, listed in the Debtor's Amended Schedule A/B (Docket 43), or the value thereof;

2. Copies of all checks, wire transfer receipts, or transfer receipts for transfers of $2,000 or more from or to any bank or retirement account controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions);

3. Account statements for all financial accounts, including bank and retirement accounts, in which the Debtor had an interest during the 4 years pre-petition;

4. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms;

5. Account statements for any account held or previously held with the above entities;

6. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition;

7. All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same;

8. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

9. Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

10. All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California;

11. Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California;

12. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California;

13. Lease agreement for of 16922 Rail Way, Lathrop, California; and

14. Identification of and access information to any cryptocurrency "wallet," including public or private keys, in which the Debtor had in interest during the 4 years pre-petition, as well as the username and password for any portfolio/account related to the Funds

The Trustee asserts that Debtor has failed to turnover the funds with a value of $823,409.20 listed on Debtor's Amended Schedule A/B (Dckt. 43) that has been identified as "Investment with Trust Investment & Crypto Company, with Bitcoins, through a Chung Lee A." It is further asserted that Debtor has provided "essentially no meaningful information in connection with the Funds" as of the date the Motion was filed. As addressed at the hearing and in the Response by Debtor, no further information has been provided.

The Trustee questions how Debtor, who has a stated million dollar investment, has no or provides no information about the people involved in the investment.

Review of Communications

The Trustee directs the court to emails from Debtor's counsel concerning this asset. The first is from August 12, 2019, the day before the continued First Meeting of Creditors. Debtor's Counsel includes what is identified an email thread from Ms. Lee stating that there was a "breach," resulting in some of Debtor's funds being lost. This is filed as Exhibit C, Dckt. 70.

Beginning at the earliest in date email, there is a July 12, 2019 (time stamped 01:04) email from Chung Lee to Debtor. *Id.* at 17. She states that the market is slow and it has been a bloody week for the "altcoins." Chung Lee posits that the drop in the altcoin market has been caused by FOMO.

The Debtor responds with a July 12, 2019 email (time stamped 4:07) stating that when there is a positive result in the market Debtor "really need funds to settle things immediately." bottom of the email thread, the first in time is dated August 8, 2019 (time stamped 13:01). *Id.* at 18. It begins with an email from Chung Lee to Debtor, stating that "Here are the final list of Documents requested by you." Further, that other information from 2018 and 2017 have been lost due to hackers. Four pages of documents are attached.

The next email in the thread is from the Debtor on August 8, 2019 (time stamped 8:10 p.m.). *Id.* Debtor expresses concern over all the money invested and her personal financial information.

Chung Lee them responds with an email dated August 8, 2019 (time stamped 11:53 p.m.). *Id.* Ms. Chung responds that Debtor's "transaction is well secured. . . ."

The latest email in Exhibit C is one dated August 12, 2019 (time stamped 4:05) from Mark Hannon to Gary Farrar, the Chapter 7 Trustee. It states that documents (not specified) showing crypto currency investments is attached. Mr. Hannon requests that the 341 meeting be continued, suggesting that based on the documents the Trustee may be able to recover "half a million or more." *Id.* at 16.

The Trustee then references the court to a September 18, 2019 (time stamped 2:18 p.m.)

email from Debtor's counsel stating that Debtor has instructed that the Bitcoin account be liquidated, with that instruction resulting in a 55% penalty, reducing the value of the asset from $719,998.00 to $395,999.00. Exhibit D, Id. at 23. That will generate enough monies to pay the Internal Revenue Service and California Franchise Tax Board nondischargeable claims, but no enough to pay what Debtor asserts to be the dischargeable interest and penalties.

The email does not state the basis by which Debtor could order the liquidation of property of the bankruptcy estate or authorize the payment of a 55% penalty. The document attached to the email states that Debtor's December 18th, 2019 instruction to liquidate the fund will result in a "forfeit" of 55% of the total investment.

The next document in the Exhibits is part of Exhibit E, which is a fax cover sheet dated September 23, 2019 from Debtor's counsel to counsel for the Trustee. *Id.* at 25. In it counsel for the Debtor states:

- Counsel for the Trustee is no longer to call him, but instead to communicate by letter or email.

- Counsel for Debtor does "not take order from attorneys and I do not like to reason with someone who is unable."

- Counsel for Debtor found it unreasonable that the Internal Revenue Service attorney questioned the Debtor at the First Meeting of Creditors for four hours, repeating the same questions over and over. Counsel for the Debtor then express displeasure that when he stated his objections to the questions, the Trustee "just smiled."

At this point, the Fax Cover Sheet does not state what was expected of the Trustee or why Debtor's counsel who was at the 341 Meeting did not object and instruct his client not to answer questions presented by the Internal Revenue Service which Debtor's counsel deemed not to be proper to the test of filing a motion to compel and giving Debtor's counsel the opportunity to present his argument to a judge who could then rule on the objection.

- That the maturity date for the investment is 2022, but that Debtor is proceeding to liquidate, and suffer the 55% forfeiture, with that generating only enough monies to pay the priority (nondischargeable) claims of the Internal Revenue Service and California Franchise Tax Board.

- That counsel for Debtor thinks that the Trustee not agreeing to the 55% forfeiture of the value today so that Debtor can pay her nondischargeable debt, with there being nothing for other creditors or the bankruptcy estate, is unreasonable.

- Debtor states under oath that she does not have the documents, Debtor's counsel has never read them, and questions whether the Trustee will seek a court order to "further the abuse of the 341 process."

- If the Trustee wants deposit records, the Trustee is to identify the date, amount, and bank account number.

- The bitcoin investment and records for the over $800,000 Debtor invested "are almost as tangible as a snowflake and records about as tangible as a blade of grass.

On the point of the "snowflake" investment and the 55% forfeiture, Debtor's counsel does not state in the email a basis for a contention that the fiduciary of the Bankruptcy Estate should accept a 55% forfeiture of the investment caused by the Debtor purporting to instruct (without authorization from the Trustee) that the investment be liquidated so that Debtor could immediately have her nondischargeable taxes paid.

Exhibit F is a October 7, 2019 (time stamped 9:42 p.m.) email from Debtor's counsel to his client, on which the Trustee is copied, in which Debtor's counsel states that he has $5,000 of time into Debtor's case, Debtor has not been paying him, and that Debtor has been yelling at him (Debtor's counsel). Further, that Debtor is failing to cooperate with Debtor's counsel and if she does not pay $4,200.00 to him (Debtor's counsel), then he file a motion to withdraw from the case. *Id.* at 26.

Exhibit I is a letter from Debtor's Counsel to the Trustee, and Exhibit J is a copy of Trustee's counsel's response. *Id.* at 29 and 30-31, respectively. In Debtor's counsel's letter he states that he will not be present for the 2004 examination scheduled for 9:00 a.m. on November 15, 2019. *Id.* at 29. He states that it was not a date and time "arranged with him" and that such is "highly unprofessional."

Debtor's counsel continues, stating that the believes that "It would be best if you allow her to go ahead and liquidate on the December date." *Id.*

Exhibit J is a response letter from counsel for the Trustee. *Id.* at 30. In the letter counsel for the Trustee disputes the assertion that the 2004 examination was scheduled without consulting Mr. Hannon, Debtor's counsel, stating:

> Your assertion is not true. On October 9, 2019, prior to service of the subpoena, you and I spoke by telephone. On that telephone call, you agreed to accept service of the subpoena on your client by email. Also on that telephone call, I stated that I was planning to notice the deposition for November 15, 2019. You said that was okay.

Id.

Exhibit K is an email dated November 8, 2019 (time stamped 4:59 p.m.) from Debtor's counsel to Trustee's counsel. *Id.* at 32. Debtor's counsel disputes the assertion that the 2004 exam date and time had been agreed to, stating:

> Mr. Avery, I do not care what your self serving notes indicate.
>
> Mr. Farrar said you were going to email me about an informal meeting sometime this Tuesday. You failed to do so.
>
> You did not contact me about agreeing to a meeting in Sacramento for a Rule 2015 no phone call from you your secretary or Mr. Farrar.
>
> So I will not appear on November 15, 2019 and neither will the debtor. I have not

> spoken with you by phone for over a month when I asked you not to call me. Your assertion otherwise is false.

Id.

Exhibits L, M, N, and O (*Id.* 33-39) are a series of correspondence between Debtor's counsel and Trustee's counsel, generally stating the "displeasure" that each counsel is having communicating with the other.

Exhibit P is a November 13, 2019 letter from the Trustee to Debtor's counsel, stating it is in response to an email from Debtor's counsel earlier that day. The Trustee states that he does not understanding Debtor's counsel conduct in a phone conference on November 12, 2019. *Id.* at 40-41. In it, the Trustee points out that on Schedule A/B filed in this case under penalty of perjury, the Debtor did not disclose her $800,000 investment. The Trustee learned of this asset from a creditor. Though requested, Debtor has not produced documents concerning the $800,000 investment.

Attached to the Trustee's Exhibit P letter is Debtor's Counsel's November 13, 2019 (time stamped 10:16 a.m.) Email that prompted the Trustee's November 13, 2019 response letter from the Trustee and then Debtor's Counsel's reply. *Id.*. at 42-44. Debtor's Counsel states the Trustee should have gotten ex parte orders liquidating the bitcoin investments months earlier. Debtor's counsel recounts how the Trustee and Trustee's counsel had only 20 minutes of questions at the First Meeting(s) of Creditors, but it was the Internal Revenue Service representatives who conducted the hour of questioning.

Exhibit P includes a Fax Cover Sheet from Debtor's counsel to the Trustee dated November 19, 2020. In it he expresses an apology for "non professional language" and discusses the highly stressful nature of the case. He makes an insightful comment concerning this bitcoin investment, stating:

> This is a simple case actually, My client poured money into a fools gold (bit coin) account while not paying any taxes. She had no idea how much.

Id. at 44. There is a fools aspect to such an investment, the lack of control, as well as Debtor choosing not to pay taxes. Given the magnitude of the investment, even for chasing "fools gold," one has to wonder how Debtor could have "no idea" of how much she plowed into that mineshaft.

The Motion continues, stating that Debtor's Counsel and Debtor have been instructed that they are not authorized to subject the property of the Bankruptcy Estate to a purported 55% penalty reduction. It also points out what the Trustee alleges was "unprofessional" conduct by Debtor's Counsel.

The Trustee alleges that Debtor has failed or refused to comply with the court's order and Subpoena issued for production.

RESPONSE FILED BY DEBTOR

Debtor filed no opposition or response pleading to the Motion why she should not be held in contempt. What Debtor has done is have her counsel file his own declaration in response. Dckt. 72. In it, Debtor's counsel provides the following as his personal knowledge testimony (Fed. R. Evid. 601, 602), which are identified by the paragraph number of the Declaration:

1. Mark Hannon affirms that the facts stated in the Declaration are true based on his own knowledge.

2. Debtor invested over $800,000 in bit coins between 2016 and 2019.

3. Debtor has filed all tax returns since 2016.

4. For an unstated period of time Debtor worked as a registered nurse and failed to have income taxes withheld, which resulted in over $300,000 owed to the Internal Revenue Service and California Franchise Tax Board .

   Debtor began working two jobs for several years earning over $300,000 a year.

5. "Recently, Debtor has been able to work only one job and now earns less than $100,000 a year.

6. Debtor attended two 341 meetings, both of which lasted more than two hours. Debtor has provided 500 pages of documents, including four years of bank statements, tax returns, and the closing documents on his house.

7. At the 341 Meetings, "over ninety (90) of the questioning was performed by four Internal Revenue Service agent.

8. Trustee and Trustee's counsel conducted an informal telephonic conference with the Debtor, Debtor's counsel, and Trustee's counsel.

9. Though presented as an "informal conference," it was not informal and the Trustee questioned the Debtor for one and one-half hours.

10. Debtor has undergone five and a half hours of questioning.

11. The Debtor's bitcoin account does not mature for two years (in 2022). To pay her tax obligations Debtor arranged to have the bitcoin account liquidated on December 18, 2019 (which was ten months after this bankruptcy case was commenced). This would have been sufficient to pay the tax claims (which Debtor states are priority, nondischargeable claims), but the Trustee's attorney told the Debtor to stop liquidating property of the Bankruptcy Estate.

12. Debtor has lost $200,000 from her bit coin account due to the bit coin bank manager stealing it.

13. The Trustee could easily intercept the bit coin liquidation (not stating how this could be easily done) and obtain it for the bankruptcy estate.

14. No further questioning of Debtor is appropriate.

15. Five and one-half hours of questioning of the Debtor in this case is excessive, and possibly abusive in light of the questioning not generating anything to show for the Bankruptcy Estate.

16. Counsel for the Trustee refuses to explain how the Debtor is to comply with the turnover order without liquidating the bitcoin investment.

Other than with respect to the 341 meetings and the telephonic questioning, it is unclear how Debtor's counsel has personal knowledge of the financial and bit coin "facts."

December 12, 2020 Hearing

At the December 12, 2020 hearing, the court questioned Debtor's Counsel as to how he could have personal knowledge testimony as to the facts concerning the investments, Debtor's income, Debtor's working, Debtor's losses, and other testimony other than the First Meeting of Creditors testimony. Federal Rule of Evidence 602, as every attorney knows, requires that a witness may provide testimony "only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."

When asked, Debtor's Counsel stated that he had "knowledge" because he had read various papers provided to him by his client. Debtor's Counsel, in stating such, admitted that he had no personal knowledge and knew he did not have personal knowledge when he purported to so testify under penalty of perjury.

At the hearing, Debtor's Counsel strongly argued (though no opposition other than his substantially non-personal knowledge "testimony" was filed) that documents had been provided, that the Trustee was unreasonable, and the Debtor was liquidating the investment for which there would be a 55% penalty loss.

DISCUSSION

As stated by the Trustee, on Original Schedule A/B filed by Debtor under penalty of perjury she does not list the $800,000 bitcoin investment as an asset. Dckt. 1 at 8-12. On Schedule E/F Debtor lists the California Franchise Tax Board as having a ($57,618.00) priority claim and the Internal Revenue Service having a ($279,607.26) priority claim. Id. at 16-17.

For general unsecured claims, Debtor lists creditors having a total of ($88,566.39) in claims.

On Schedule I, Debtor lists having monthly gross income of $13,928.05, and on Schedule J monthly expenses of ($3,854.90). Id. at 25-29. Debtor's computes her monthly net income, her projected disposable income, to be $6,756.00. Id. at 29.

For the Internal Revenue Service, Amended Proof of Claim No. 1-4 is for ($390,779.79), of

which ($384,375.79) is asserted as a priority claim.

For the California Franchise Tax Board, Amended Proof of Claim No. 3-2 has been filed for ($60,844.90), of which $53,839.76 is asserted as a priority claim.

On August 26, 2019, (seven months after Debtor commenced this case) Debtor filed the Amended Schedule A/B which lists the bitcoin investment of $823,409.20. Dckt. 43 at 6.

While Debtor's counsel argues, both in his Declaration and correspondence that the Internal Revenue Service agents have been using the 341 Meeting process to ask extensive questions of the Debtor, the U.S. Supreme Court provides in Federal Rule of Bankruptcy Procedure 2003(b):

> (b) Order of Meeting.
>
> (1) Meeting of Creditors. The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths.

As further discussed in Collier on Bankruptcy ¶ 2003.02[c] (emphasis added):

> [c] Examination of Debtor under Oath
>
> The examination of the debtor at the meeting of creditors is usually all that occurs. The debtor must attend the meeting and is not entitled to travel expenses. While this may be perfunctory, and usually is, **creditors may question the debtor concerning acts, transfers, financial condition or any matter that may affect the administration of the estate or the debtor's right to a discharge**. If the debtor asserts the right to the Fifth Amendment privilege, the court must determine whether reasonable grounds exist for the purpose of the privilege.
>
> **A creditor should not abuse the right to examine the debtor**. Meetings under Rule 2003(b)(1) are **not to be considered as substitutes for examinations under Rule 2004.15.** A **Rule 2004 examination allows a creditor great latitude to examine the debtor at length regarding almost any issue concerning the debtor's case**. If a creditor attempts to go into great detail at a meeting of creditors, the result may well be that other creditors will not have adequate opportunity to ask relevant questions and that other meetings scheduled on the same docket for other cases will be unavoidably delayed.
>
> The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Act") amended section 341 to permit creditors to appear and examine the debtor by non-attorney agents, such as a credit manager, at section 341 meetings.

While Debtor may complain that the Internal Revenue Service agents conducted extensive questioning at the 341 meetings, it is Debtor's counsel who properly intercedes to the extent that such is

contended to be excessive. It is not the Chapter 7 Trustee who advocates and defends Debtor.

With respect to the requests for sanctions, a properly issued subpoena was served on the Debtor and Debtor's counsel. Whether it was "unprofessionally done" without first conferring with Debtor's counsel or Debtor and Debtor's counsel reneged on an agreed date and time, if one does not want to comply with a subpoena, it is not an option to just state "I don't agree and I'm not going to be there." Such a response all but guarantees that attorneys' fees and costs in compelling the attendance is required. If the date and time was not reasonably set, then relief must be obtained from the court rather than the subpoena ignored.

As clearly provided in Federal Rule of Bankruptcy Procedure 2004(c), attendance at a 2004 examination is compelled through the issuance of a subpoena (Fed. R. Bankr. P. 9016). Federal Rule of Bankruptcy Procedure 9016 incorporates the subpoena provisions of Federal Rule of Civil Procedure 45.

Federal Rule of Civil Procedure 45(g) expressly provides that the court may hold a person in contempt who fails, without adequate excuse, to obey the subpoena. Federal Rule of Civil Procedure 45(d) provides the procedure by which a person may obtain relief from a subpoena, which requires seeking such relief from the court.

As addressed by the Seventh Circuit Court of Appeals in United States *SEC v. Hyatt*, 621 F.3d 687, 693 (7th Cir. 2010):

> The contempt provision in subsection (e) does not distinguish between subpoenas issued with some court involvement--those issued in blank by the court clerk and completed by the party who requests it--and those issued without any court involvement at all by an attorney as an officer of the court. Instead, subsection (e) of Rule 45 broadly refers to the contempt power of the "issuing court," which implies that all discovery subpoenas are contempt-sanctionable orders of the court whether issued in blank by the clerk or by an attorney as an officer of the court.

While in contempt, at this point the "damage" has been forcing the Trustee to bring this present Motion to compel the Debtor to actually comply with the subpoena and attend the 2004 examination. That cost and expense for the estate was caused by, and rests at the foot of, Debtor and Debtor's counsel.

The present Motion also addresses the asserted failure to comply with the turnover order of this court. While on the one hand Debtor asserts that she has no documents as ordered to turn over, such appears suspect. While Debtor can argue, "Hey, how do I turnover the bitcoin monies if I don't liquidate the bitcoin account," it stretches credulity that Debtor, who had almost $1,000,000 to invest, says that she doesn't have and cannot produce:

> a . Copies of all checks, wire transfer receipts, or transfer receipts for transfers of $2,000 or more from or to any bank or retirement account controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions);
>
> b. Account statements for all financial accounts, including bank and

retirement accounts, in which the Debtor had an interest during the 4 years pre-petition;

c. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms;

d. Account statements for any account held or previously held with the above entities;

e. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition;

f. All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same;

g. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

h. Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;

i. All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California;

j. Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California;

k. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California;

l. Lease agreement for of 16922 Rail Way, Lathrop, California;

m. Identification of and access information to any cryptocurrency "wallet," including public or
private keys, in which the Debtor had in interest during the 4 years pre-petition; and

n. The username and password for any portfolio/account related to the Funds

The present Motion also seeks to have the court compel the Debtor to comply with the prior order of the court (as compared to a “mere” subpoena issued pursuant to Federal Rule of Bankruptcy Procedure 2004) and produce these documents.

Of the $7,728 in fees sought as part of the sanctions, the court computes that $4,380.00 of it relates to the present Motion which has been necessitated by Debtor's failure to comply with the Rule 2004 Examination Subpoena and the Order of this court to turnover and produce various records and documents.

The remaining amounts may properly be sanctions or damages flowing from the violations, but more information is required by the court.

The court orders Debtor to pay the sum of $4,380.00 as compensatory, corrective sanctions caused by her failure to comply with the subpoena issued for the Rule 2004 Examination and the order of this court to turnover the documents and records, which amount is to reimburse the Bankruptcy Estate from having to commence the necessary proceedings to begin in the enforcement of the subpoena and turnover over of this court.

Further Discovery

The court shall issue an order for the Rule 2004 Examination and production of documents, and the turnover of documents as previously ordered by this court (Order, Dckt. 62), to be conducted beginning at **xx:00 a.m. on xxxxx,** 2020, at the United States Bankruptcy Court, 501 I Street Sixth Floor, Courtroom 33.

The court sets the document and records turnover and Rule 2004 examination to be conducted in the courtroom, taking the lead from former Chief Judge Christopher M. Klein, who has conducted such discovery proceedings in the courtroom when the parties and their counsel have demonstrated an inability to do so in the normal conference room setting. In that way, to the extent that any discovery or production disputes exist, the judge is a courtroom deputy call away from coming into the courtroom, hearing the discovery dispute, and issuing an order resolving the dispute right then and there. It is akin to having a judge available by phone during a deposition to address discovery disputes, but giving everyone the benefit of having that in person opportunity to present their position to the court.

Food for Further Thought for the Parties

As with many legal matters, the Parties may continue in an economically disadvantageous spiral, something that one often sees in non-bankruptcy courts. Or the parties may seek out the "bankruptcy solution," in which adverse parties find the common ground that leaves each of them with an equally bad taste in their mouths but constructive action is taken.

Debtor argues that she does not want to wait until the contract matures in 2022 and the Trustee can recover 100% of the investment. Debtor asserts that the Trustee should forfeit 55% of the value so that just enough money can be obtained to pay Debtor's nondischargeable tax debt and Debtor can go forward, free of such nondischargeable liabilities.

The Trustee counters, not so jaded to the bitcoin market, seeing his fiduciary duties being to the Bankruptcy Estate and not merely the collection agent for the Internal Revenue Service and California Franchise Tax Board to recover monies for their nondischargeable debt. The court understands the Trustee's position to be that he has made the business decision that it is better to ride the market, have confidence in the Debtor's wisdom in making the investment in bitcoin, and recover not only enough to pay all claims.

In looking at the claims filed in this Chapter 7 case (the claims bar date having passed), those that have been timely filed appear to be:

Proof of Claim No.	Creditor	Secured	Priority Unsecured	General Unsecured
1	Internal Revenue Service	($384,375.79)	($6,245.00)	($155.00)
3	Cal Franchise Tax Board		($53,839.76)	($7,005.14)
	Total Tax Claims	($384,375.79)	($60,084.76)	($7,160.14)
2	Jefferson Capital Systems			($2,564.96)
4	LVNV Funding, LLC			($5,190.62)
5	LVNV Funding, LLC			($1,665.02)
6	Merrick Bank			($1,554.86)
7	Velocity Investments, LLC			($11,645.08)
8	Velocity Investment, LLC			($7,289.39)
9	Capital One			($681.00)
10	Velocity Investments			($21,591.38)
11	Portfolio Recovery Associates, LLC			($2,228.36)
12	Webcollex LLC D/B/A CKS Financial			($8,577.83)
		Total Non-Tax General Unsecured Claims		($62,988.50)

Fortunately, Debtor has "only" ($62,988.50) in general unsecured claims. Assuming a 50% general unsecured claim dividend and reasonable attorney's fees, costs, Trustee fees, and accountant fees, if the Bankruptcy Estate were to have $60,000 (stating high for sake of the discussion) for those expenses, the Trustee might well see it as an opportunity to approach the taxing agencies about agreeing not only to a carve out of that amount for non-tax claims, but the two taxing agencies agreeing to waive

some portion of their priority claims if the Trustee were to proceed with an immediate liquidation, accepting the 55% forfeiture so long as the "hurt" was spread around to everyone.

Debtor and Debtor's counsel might, as part of working with the Trustee, put together an agreed payment plan for any unpaid, non-waived nondischargeable taxes, that Debtor could (relatively) easily pay, and with a possible final forgiveness if a specified amount is timely paid.

Given the nature of the bitcoin investment, even the United States Government might not want to hang out for several, or more years, and try to track that down.

Quite possibly like that philosopher from the 1950's who would say, "Hey Rocky, watch me pull a rabbit out of my hat," the Trustee and Debtor might well show BJM that a financial rabbit could come out of the hat in this case.

6. **19-23519-A-7 BLF-3** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA**
Seth Hanson

CONTINUED MOTION TO APPROVE STIPULATION REGARDING DISTRIBUTION OF NET PROCEEDS OF SALE OF REAL PROPERTY
10-9-19 [58]

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, creditors, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Approval of Compromise has been xxxxx.

REVIEW OF MOTION

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Maira Pinto Chavez De Grima and Jose Carlos Grima Hernandez ("Settlor/Debtor"). The claims and disputes to be resolved by the proposed settlement are that Debtor is in agreement that Trustee will sell the Property and that Settlor/Debtor will reduce their homestead exemption in the Property to $10,000.00.

Movant and Settlor/Debtor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit H in support of the Motion, Dckt. 63):

A. Movant will employ a realtor and list the Property for sale.

B. Settlor/Debtor will amend their Schedule C to reduce their exemption in the Property from $100,000.00 to $10,000.00.

C. Settlor/Debtor will maintain the Property in good condition and will

maintain insurance on the Property.

D. Settlor/Debtor will cooperate with Trustee and his realtor in showing the Property.

E. Upon court's approval of the proposed sale of the Property, the costs of sale, standard in the industry, will be paid through escrow. After payment of all liens and costs of sale, the Net Sale Amount will be distributed from escrow as follows: $10,000.00 to Settlor/Debtor, and remainder to the bankruptcy estate.

F. Upon court's approval of the sale, Settlor/Debtor will vacate the Property.

G. Upon court's approval of the Stipulation, Trustee will file an application to employ Bob Brazeal of Remax Executive to list and market the Property for sale.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); see also *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues that by working together with Settlor/Debtor in order to sell the Property and reduce the exemption, the estate will receive some proceeds for the benefit of unsecured creditor. Trustee will recover approximately $55,160.00 for the estate without the uncertainty or delay of continued litigation.

Difficulties in Collection

Movant does not foresee any difficulties in collection as Settlor/Debtor has agreed to cooperate with Trustee in selling the house and will receive $10,000.00 of the Net Sale Amount.

Expense, Inconvenience, and Delay of Continued Litigation

Movant states that there is no specific dispute with respect to the Property and that by moving forward with the sale, Movant avoids incurring unnecessary administrative costs.

Paramount Interest of Creditors

Movant argues that the stipulation allows Movant to collect approximately $55,160.00, which is in the best interests of the creditors. Additionally, without the stipulation, Movant would likely abandon the Property as there would be no net proceeds for the estate after payment of costs of sale, payment of the Mortgage, and payment of the Settlor's/Debtor's previously scheduled exemption of $100,00.00. Thus, leaving nothing for unsecured creditors.

7. **19-23519-A-7 BLF-4** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA**
Seth Hanson

CONTINUED MOTION TO COMPROMISE CONTROVERSY/ SETTLEMENT AGREEMENT WITH CHAN AND SYLVIA M. CHAN
11-7-19 [67]

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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 7, 2019. By the court's calculation, 84 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Approval of Compromise is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Leo Chan and Sylvia M. Chan ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's objection to Debtors' homestead exemption and Settlor's assertion that the case should be dismissed on the grounds of fraud as the Debtors allegedly filed this case in bad faith.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 71):

A. Pursuant to the Compromise, Debtors will pay to Trustee $121,230.17 (the "Settlement Payment"), $105,000.00 of which Trustee will distribute to Settlor.

B. Upon receipt of the Settlement Payments, Trustee will withdraw his Motion to Approve Stipulation Regarding Distribution of Net Proceeds

of Sale of Real Property filed on October 9, 2019. (Dckt. 58)

C. Trustee will also distribute $6,230.17 to the scheduled unsecured creditors.

D. Pay the following administrative expenses: $5,000.00 to Loris L. Bakken, Bakken Law Firm for her fees and costs incurred in this case (reduced from an estimated $9,026.40 as a courtesy), and Trustee to retain $5,000.00 for his reduced compensation.

E. Upon receipt of the Settlement Payment, Settlor will withdraw Objection to Homestead Exemption.

F. This case will be dismissed upon the expiration of 60 days from the date of the court approving the Compromise unless the Debtors of not pay the Settlement Payment within 10 days of the order approving the Compromise and Trustee notifies the court by filing a Stipulation for Entry of Order to Turn Over (Exhibit A).

G. In the event of Default, Trustee shall have each of the rights and remedies set forth in paragraph 4d of the Compromise as well as all rights and remedies at law and in equity.

H. Concurrently with the signed Compromise, Debtors will deliver a signed Stipulation for Entry of Order of Turn Over so that in the event that Debtors default, Trustee shall file it and immediately obtain an order for turnover without a hearing or further notice to Debtors.

I. In addition to filing said Stipulation to Turn Over in the event of a Default, Trustee shall proceed with the Motion to Approve Stipulation Regarding Distribution of Net Proceeds of Sale of Real Property filed on October 9, 2019 (Dckt. 58) and upon court approval, Trustee shall market and sell the Property.

J. There are no admissions and further no determination of facts nor is the Stipulation to conclusively establish the truth about the matters at hand including the value of the Property or any claim. Each party expressly denies any liability to the other Party or to third parties.

K. Parties exchanged general mutual releases, except for the rights and obligations created by the Compromise. Parties specifically waive the benefit of the provisions of California Civil Code Section 1542.

L. Each party is to bear their own attorneys' fees and costs in connection with the Agreement unless there is a breach. The breaching party will pay reasonable attorneys' fees and costs of the non-breaching parties. All disputes relating to the Agreement shall be resolved in Bankruptcy Court.

U.S. TRUSTEE'S OPPOSITION

U.S. Trustee, Tracy Hope Davis (U.S. Trustee), filed an Opposition to the Compromise on December 190, 2019. Dckt. 94. U.S. Trustee opposes the Compromise on the basis that the proposed Compromise provides no justification to deviate from well-established procedures for making distributions and closing "asset" cases and does not comply with 11 U.S.C. § 726(a):

1. Trustee and counsel would be paid without first having their fees awarded under Section 330.

2. Wells Fargo would receive payment even though it has failed to file a proof of claim.

3. Settlement's case dismissal within 60 days ignores Trustee's statutory duty to file a final report and account.

U.S. Trustee that she would not oppose the Compromise (though reserves her right to make any and all objections thereto) with the following modifications which would allow for the Compromise to be achieved in a manner that complies with the Bankruptcy Code:

1. The Compromise Motion would be treated as a motion to make an interim distribution to unsecured creditors that have filed proofs of claim, in accordance with 11 U.S.C. 726(a) and Federal Bankruptcy Rule 3009.

2. Trustee's counsel fees would be paid only to the extent awarded under 11 U.S.C. § 330.

3. Trustee would be required to file a final report in accordance with 11 U.S.C. § 704(a)(9), and the Trustee's fees would be paid only in accordance with the final report and 11 U.S.C. §§ 326, 330.

4. Trustee would be required to file a final account in accordance with 11 U.S.C. § 704(a)(9).

5. Thus, according to normal procedures, the case would be closed but not dismissed.

CREDITOR'S RESPONSE TO OPPOSITION

Settlor/Creditors filed a Reply to U.S. Trustee's Opposition on January 15, 2020. Dckt. 109. Creditors respond that U.S. Trustee's Opposition fails to appreciate or take into consideration the amount of negotiations conducted by the attorneys or significant concessions by all parties.

Negotiations ensued which resulted in an agreement whereby the case would be dismissed provided assurances were made to pay all creditors in full. This is the common practice in the case of a dismissal. Debtors have borrowed the funds necessary to pay Settlor the sum of $105,000, to pay the $6,000 of other unsecured debt, and to pay the fees of Trustee and Trustee's counsel in a reduced amount.

The Compromise avoids a dischargeability exemption., an exemption dispute, and a motion to dismiss for bad faith. If the Motion fails, Settlor's deem the Compromise "off the table."

Due to U.S. Trustee's Opposition, Settlor has filed an application requesting extension of the time for objecting to discharge and dischargeability of debt, to hear the exemptions issue and to move for dismissal.

TRUSTEE'S RESPONSE & JOINDER

Trustee filed a Response to U.S. Trustee's Opposition and a Joinder to Creditor's Reply on January 20, 2020. Dckt. 112. Like Settlor, Trustee states that the Compromise is the result of extensive and a good faith effort of all parties involved to pay all scheduled unsecured creditors and dismiss the case.

Trustee's appreciate U/S/Trustee suggested modifications but turns to Settlor's response stating that if the motion to compromise is denied, the Settlor's position is that the settlement is "off the table." Additionally, the proposed modification would require Trustee to hire an accountant, file a tax return, pay resulting taxes, increase his fees which would further deplete the funds that have been set aside for creditors.

Trustee requests that the court take these reasons into consideration and grant the Motion.

DEBTORS' JOINDER

Debtors filed a Joinder to Trustee's Reply on January 24, 2020. Dckt. 115. Debtors join Settlor and Trustee in their Responses to the U.S. Trustee's Opposition.

DISCUSSION

Before beginning the analysis of the proposed settlement, which appears to be reasonable, the court addresses the thunderous response to the conditional opposition filed by the U.S. Trustee, including the Settlor's threat that if the court does not rubber stamp what Settlor and the Chapter Trustee have developed through their long hard work, then Settlor will take its marbles, go home, and the matter can devolve into litigation hell. If the parties want to devolve into litigation hell, that is there choice and the threats of such cannot move the court into ignoring the law.

The court reads the U.S. Trustee's "Opposition" to merely be a statement that the Trustee, Debtor, and even the court must follow the law. The Trustee, Settlor, and Debtor cannot rewrite the Bankruptcy Code, sweep away the court's obligation to approve counsel and Trustee fees, and the Trustee actually file a final report. In large part, the reaction to the U.S. Trustee's "Opposition" is in the nature of bankruptcy court proceedings in the early 1980's - "it's not real court," "the judges are not real federal judges," "the law is whatever we say it is," and "anyway, § 105(a) is a magic incantation by

which the bankruptcy judge[lite] just gives his or buddies whatever they ask for." The United States Supreme Court, the Ninth Circuit Court of Appeals, the District Court judges in the Eastern District of California, and all of the bankruptcy judges in this District do not subscribe to such philosophy.

As show below, the Trustee, Debtor, and counsel for the Trustee actually following the law will not derail the settlement – so long as the settlement is in good faith and there is not some hidden "deal" just below the surface that compliance with the law will expose.

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues the court should approve the Compromise because it is in the best interest of the Estate.

Probability of Success

Trustee argues that there is no certainty regarding the result of litigation on Settlor's contention that Debtor refused to give them the deed of trust so that Debtor could claim the homestead exemption. The Compromise will avoid litigation and thus the uncertainty and delay that comes with continued litigation.

Difficulties in Collection

Trustee is unaware of any difficulties in collection.

Expense, Inconvenience, and Delay of Continued Litigation

The Compromise allows Trustee to recover approximately $121,230.17 for the estate, and eliminate the costs related to Settlor's continued litigation related to their objection to Debtor's homestead exemption and their motion to dismiss the case for fraud. Thus, arguing that the Compromise avoids expense, inconvenience and delay of continued litigation.

Paramount Interest of Creditors

The creditors listed on Schedule E/F holding general unsecured claims, excluding Settlor, that are not disputed by Debtor are:

Creditor	Unsecured Claim Amount	Proof of Claim Filed	POC #
Amex	($2,030.00)	($1,947.89)	3
Capital One bank USA	($1,236.00)	($1,529.54)	1
Macy's	($1,042.00)	($1,214.03)	4
Td Bank	($686.00)	($686.53)	2
Wells Fargo	($1,236.17)	None Filed	
Total General Unsecured Claims	($6,230.17)	($5,377.99)	

Under the Stipulation, the Trustee has $6,230.17. That would allow the creditors filing proofs of claims to be paid in full, $5,377.99, and leaves $852.18 "surplus" that the Debtor can direct the Trustee to disburse to Wells Fargo Bank, which hasn't chosen to file a proof of claim in this case.

Given that the claim deadline has long past and the Debtor did not file a proof of claim for Wells Fargo Bank, N.A., the Bank is lucky to be getting a 69% dividend on its general unsecured claim. With all the other creditors getting paid 100% of their filed general unsecured claims, they cannot be heard to complain about Wells Fargo Bank, N.A. (at least with respect to getting a distribution on the late, could be filed claim, in this case). This properly provides for the distribution as required by law (the Bankruptcy Code enacted by Congress) 11 U.S.C. § 726(a).

The Chapter 7 Trustee can get his final report prepared and filed promptly, including the requested fees. His counsel can get on file a very simple fee application, which may very well bypass the lodestar, hourly time sheet analysis, and instead provide a narrative of what was done, the approximate hours, and request a fixed fee for payment instead of the normal hours x hourly rate = allowed fees.

To expedite, the Trustee may well request as part of the order approving the settlement, given the small number of claims timely filed and the 100% dividend on all such timely filed claims, authorization to immediately disburse payment on such claims, including the could be tardily filed Wells Fargo Bank, N.A. claims for the 69% dividend, that the Trustee immediately pay those claim disbursements.

Possibly this could all be done within the sixty-days, and if not, then likely not much past that. But in doing so, the Trustee, counsel for the Trustee, and the court all properly comply with and apply the law as written by Congress - not as rewritten by Settlor.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Motion is granted.

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 to Approve Compromise filed by Michael D. McGranahan, 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 the Motion for Approval of Compromise between Movant and Leon Chan and Sylvia M. Chan ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 71), except that the court does not approve or allow any provisions that require the case to be closed by any specific date, requires the payment of any trustee fees or administrative expenses other than as permitted by law on order of the court, or any provision that would not make a 100% dividend to non-Settlors creditors for their general unsecured claims pursuant to their timely filed proof of claim.
>
> **IT IS FURTHER ORDERED** **xxxxxxxxxx**

8. **19-23519-A-7 MF-1** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA** **Seth Hason** **CONTINUED OBJECTION TO HOMESTEAD EXEMPTION** **7-25-19 [18]**

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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 non-opposition. *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 Objection to Claimed Exemptions is xxxxx.

Creditors Leo Chan and Sylvia M. Chan ("Creditor") filed this Objection to the debtors', Maira Pinto Chavez De Grima and Jose Carlos Grim Hernandez's ("Debtor"), claimed homestead exemption.

Creditor argues Creditor was fraudulently induced into releasing its lien on Debtor's home, allowing Debtor to obtain refinancing, under the premise Creditor would receive a replacement lien. However, no subsequent deed of trust was ever recorded in favor of Creditor.

Creditor asserts that because of Debtor's misconduct, the claimed homestead exemption should be disallowed.

Continuance of December 12, 2019 Hearing

Pursuant to the Motion of the Chapter 7 Trustee, the court has continued the hearings on the Motions to Approved Compromises which, if approved, then resolve this Objection. Therefore, the court continues the hearing on this Motion.

CHAPTER 7 TRUSTEE'S RESPONSE

Michael D. McGranahan, the Chapter 7 Trustee ("Trustee") filed a Response on September 9, 2019. Dckt. 40. Trustee asserts that after negotiations, Debtor has agreed to reduce Debtor's claimed exemption from $100,000.00 to $10,000.00 and agreed to cooperate with the sale of the Property. Trustee argues a motion to approve compromise is pending.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 9, 2019. Dckt. 44. Debtor opposes this Objection on the grounds that Schedule C was already amended consistent with a settlement entered with the Trustee.

TRUSTEE'S MOTION TO APPROVE COMPROMISE

Michael D. McGranahan, the Chapter 7 Trustee ("Trustee") filed a Motion to Approve Stipulation Regarding Distribution of Net Proceeds of Sale of Real Property on October 9, 2019. Dckt. 58. Through this stipulation, Trustee will sell the property and Debtors have agreed to lower their homestead exemption from $100,000.00 to $10,000.00 with the remainder of the net sale proceeds (an estimated amount of $55,000.00), going to unsecured creditors.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Debtor filed Amended Schedule C on September 10, 2019. Dckt. 45. Amended Schedule C reduces Debtor's claimed exemption to $10,000.00 pursuant to California Code of Civil Procedure 703.140(b)(5).

The court having approved the compromise to allow the homestead exemption in the amount of $10,000.00, the Objection is overruled without prejudice.

9.	17-22347-E-11 JJG-15	UNITED CHARTER LLC Jeffrey Goodrich	CONTINUED MOTION TO USE CASH COLLATERAL 3-12-19 [340]

This Motion Will Be Heard On the Court's 11:30 a.m. Calendar on January 30, 2020, in conjunction with the other pending matters in this Case

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. Dckt. 347. The court set the hearing for March 21, 2019, requiring 9 days' notice. Order, Dckt. 338. 9 days' notice was provided.

The Motion For Authority To Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, 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. No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

The Motion for Authority to Use Cash Collateral xxxxx.

The Debtor in Possession, United Charter, LLC ("ΔIP"), moves for an order approving the use of cash collateral from ΔIP's real property identified as an industrial warehouse property located in Stockton, California ("Property"). Debtor in Possession requests the use of cash collateral to pay an average of $7,785 per month of budgeted property-related expenses such as property taxes, insurance, utilities and maintenance that EWB had approved for payment.

Stipulation

Along with the Motion, ΔIP filed a Stipulation between ΔIP, and creditors East West Bank ("EWB") and Wayne Bier ("Bier"). Dckt. 339. The Stipulation consents to the aforementioned expenses

sought to be paid by ΔIP, as well as a variance of 10 percent in any individual line item expense as long as the total amount used does not exceed five percent of the monthly budget.

Pursuant to the Stipulation and as a adequate protection for the use of cash collateral, the ΔIP has offered, and EWB and Bier have agreed to accept:

> (a) Replacement liens in post-petition rents to the same extent, and with the same validity and priority, as such lenders held in the cash collateral expended, to the extent the DIP's use of such cash collateral resulted in a reduction of such lender's secured claim; and
>
> (b) Turnover to EWB of all net rents received between August 1, 2018 and May 31, 2019 after payment of the previously approved or to be authorized monthly and one-time expenses described in the Stipulation and this Motion.

Supplemental to Motion

OCTOBER 24, 2019 CONTINUED HEARING

The court continued the hearing on the Motion to Use Cash Collateral to October 24, 2019.

ΔIP filed a Supplement to the Motion on October 10, 2019. Dckt. 461. The Supplement lists the following proposed expenses:

Monthly Operating Expenses for the period November 30, 2019 through January 31, 2020, 2019, as follows:

Expense	**Amount**
Cal Water	$250
PGE	$3800
Insurance	N/A
Maintenance	$1,000
Bay Alarm	$105
Contingency	$1,000
FTB	$75
Accounting	$500
Storm Drain	$450
Backflow Test	$7
TOTAL	**$7,187**

In addition, the following expenses are also included in the used of cash collateral:

(a) the real property tax installment due on December 10, 2019 in the amount of about $44,000; and

(b) the following real estate leasing commissions: $26,665.31 to Realty Executives for leasing commissions arising from the DIP's post-petition leases with: (i) Inland Express for 1885 E. Market Street; (ii) LGN Products for 1811-A E. Market Street; (iii) Hotel Furniture Liquidators for 1811-B E. Street; and (iv) White Glove Delivery Services, Inc. for 1821 E. Market Street., with the payment of any such commissions not be made except upon court approval of such commissions

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

ΔIP has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for various expenses to maintain the collateral, including payment of taxes, utilities, and repair costs, as well as various one-time expenses necessary for the ΔIP's successful reorganization. The Motion is granted, and ΔIP is authorized to use the cash collateral for the period September 1, 2019 through November 30, 2019, including the one-time expenses stated in the Motion.

10.	**19-26375-A-7** **TLA-1**	**JOSEPH/TONYA WHITWORTH** **Thomas Amberg**	**AMENDED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY** **12-30-19 [25]**

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, Creditor, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay 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 Sanctions for Violation of the Automatic Stay is xxxxx.

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Joseph Thomas Whitworth and Tonya Ellis Whitworth ("Movant"). The claims are asserted against Velocity Investments, LLC ("Velocity"), FarMar Law Group ("FarMar"), and Ali Farzin ("Farzin"), the three persons asserted to have violated the automatic stay (collectively the "Violators").

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C. § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. Velocity commenced a lawsuit in Sacramento County Superior Court on May 24, 2019. Velocity was represented by FarMar and Ali Farzin (the attorney signing the Complaint).

B. On October 27, 2019, Debtor Tonya Whitworth was served a summons and complaint in the above-referenced suit. This occurred 16 days after

the filing of the bankruptcy case.

C. Debtor Tonya Whitworth became immediately frightened, concerned and scared as to why this lawsuit was still proceeding in state court.

D. Immediately upon being notified of the service of the summons and complaint, a fax was sent to the attorneys for Velocity, FarMar Law Group

E. No response to the October 28, 2019 fax was received prior to the filing of the present motion.

F. In an effort to avoid the filing of the present motion, Debtors' counsel faxed a second notice to the attorneys for Velocity at approximately 12:56 PM PST on October 29, 2019 requesting the halting of the lawsuit.

G. Debtor has suffered actual damages as a result of Velocity's conduct. Mrs. Whitworth is anxious, nervous and frightened at the continued litigation that she believed to have been halted. This has manifested itself in general anxiety and uncertainty.

H. The Joint Debtor is uncertain whether Velocity will try to garnish her wages or levy her bank accounts, as she has received no indication that Velocity intends to cease the lawsuit. This uncertainty has caused great fear for the Debtor. Debtor's Counsel has been forced to expend time and expense in attempting to remedy this violation, which, as of the date of this motion, appears to be continuing against the Debtor.

I. Velocity had (and has) actual knowledge of the Debtor's bankruptcy case, as it was listed on the Debtor's Schedule F, multiple faxes have been sent and the petition was filed 19 days ago (from the date of submission of this motion).

As evidence, Movant filed four properly authenticated exhibits: Exs. A, B, C, D.

Movant has provided the following Declarations in support of the Motion: Declaration of Joseph Thomas Whitworth and Tonya Ellis Whitworth ("Whitworth Declaration"), Dckt. 15, and Declaration of Thomas L. Amberg, Dckt. 16.

The Whitworth Declaration testifies that obtaining the Velocity summons and complaint on October 27, 2019 caused fear and panic to Mrs. Whitworth as she thought the lawsuit was halted by the bankruptcy proceeding Further, Debtors notified Counsel who, they understand, reached out to the Violators on two occasions so that the Violators stopped the lawsuit. Debtors state that dealing with the lawsuit has been stressful and the continued prosecution of the lawsuit is causing them to doubt the bankruptcy process.

In his declaration, Counsel testifies that because Debtors were aware of Velocity's lawsuit, Debtors listed Velocity as a creditor on Schedule F of the Debtor's petition and listed FarMar Law Group as a notice party since he was aware that they represented Velocity in the pending lawsuit. Counsel then directs the court's attention to the two faxes he sent to Velocity informing them of the violation and providing them with a deadline to cure the violation. Moreover, Counsel testifies that he

has yet not received any communication from the Violators to his second fax dated October 29, 2019. He also testifies that he has not received any correspondence from the Bankruptcy Court Clerk's Office indicating that the mail addressed to Velocity or FarMar Law Group was undeliverable.

SUPPLEMENTAL DECLARATION

Debtor's Counsel filed a Supplemental Declaration on January 23, 2020. Dckt. 33. According to Counsel, he communicated via email with Matthew Kumar of the FarMar Law Group ("FarMar"). Counsel communicated his own analysis and invited FarMar to call him to discuss the matter. After the email, he did not hear from Mr. Kumar or any other representative from FarMar. No responsive pleadings were filed. Counsel searched the Sacramento County Superior Court's website and found that a "request for dismissal" of the underlying lawsuit against Debtor Tonya Whitworth was filed on January 9, 2020. However, neither FarMar nor Velocity provided Counsel with evidence that the dismissal occurred.

The dismissal on January 9, 2020 filed by FarMar for Velocity was:

1. Ninety (90) days after this case was filed,

2. Seventy-three (73) days after the first facsimile was sent to counsel FarMar,

3. Seventy-two (72) days after the second facsimile was sent to counsel Far Mar,

4. Seventy-one (71) days after the first motion for sanctions was filed (Dckt. 13)

5. Ten (10) days after the amended motion for sanctions which included the FarMar Law Group and attorney Ali Farzin, in addition to creditor Velocity as the Violators for the continuing violation of the automatic stay.

DISCUSSION

The present Motion seeks sanctions and damages for the alleged violations of the automatic stay relating to the post-petition conduct of Velocity Investments, LLC, a creditor, for having its attorneys concerning a state court action ("State Court Action") to enforce a pre-petition obligation that was commenced on May 24, 2019. Debtor commenced this bankruptcy case on October 11, 2019 - five months later.

Though it is alleged that the State Court Action after this bankruptcy case was filed five months prior to the commencement of this case, it is alleged that debtor Tonya Whitworth was served with the complaint in the State Court Action on October 27, 2019 - sixteen days after this bankruptcy case was filed.

A copy of the complaint in the State Court Action is not provided as an exhibit. The Exhibits do include a copy of the Mailing Matrix in this case, which includes both Creditor and its attorneys, the FarMar Law Group, PC, with a listed address in Sherman Oaks California. Exhibit 2, Dckt. 18.

Exhibit 3 is a copy of the letter sent by Debtor's counsel to the FarMar Law Group, dated October 27, 2019, stating that the bankruptcy case was pending, that debtor Tonya Whitworth had been served post-petition, that notice of the bankruptcy case had been previously provided to Creditor and the FarMar Law Group, that counsel requested a copy of a notification to the state court that the State Court Action proceedings had been stayed, and that confirmation of such be provided by 5:00 p.m. on October 28, 2019. Dckt. 18. Further, that failure to respond would necessitate the filing of a motion seeking sanctions for violation of the automatic stay.

Exhibit 4 is a copy of a second letter, dated October 28, 2019, stating that the response to the prior letter had not been received, that the motion for sanctions had been prepared, and that the motion would be filed by 9:00 a.m. on October 30, 2019, if confirmation of notification that the State Court Action had been stayed was not received by Debtor's counsel. *Id.*

Debtor's counsel's testimony includes that no responses were received by him to either of the requests for confirmation of notification that the State Court Action was stayed. Declaration, Dckt. 16.

The Exhibits do not include a copy of the complaint in the State Court Action or identify who the attorney of record is in the State Court Action for Creditor.

Conduct in Violation of Automatic Stay

The Person Violating the Automatic Stay Has the Burden of Avoiding the Violation, and When a Violation Occurs, to Remedy Such Violation

The automatic stay is just that, automatic, with no obligation on a debtor to affirmatively enforce the stay for it to be effective. When a creditor has notice of a bankruptcy case, it is the creditor's burden to determine the extent of the automatic stay and seek such relief as is appropriate.[1]

The automatic stay imposes an affirmative duty of compliance by the creditor.[2] As one of the fundamental principles girding the Bankruptcy Code, "the automatic stay requires a creditor to maintain the *status quo ante* and to remediate acts taken in ignorance of the stay."[3] The automatic stay imposes an affirmative duty to discontinue actions in violation of the stay.[4] A creditor cannot use the state court

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[1] COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362.02; *Carter v. Buskirk (In re Carter)*, 691 F.2d 390 (8th Cir. 1982); *Hillis Motors v. Hawaii Automobile Dealers' Association (In re Hillis Motors)*, 997 F.2d 581, 586 (9th Cir. 1993) ("Where through an action an individual or entity would exercise control over property of the estate, that party must obtain advance relief from the automatic stay from the bankruptcy court. *Carroll v. Tri-Growth Centre City Ltd. (In re Carroll)*, 903 F.2d 1266, 1270-71 (9th Cir. 1990).")

[2] *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996).

[3] *Franchise Tax Bd. v. Roberts* (*In re Roberts*), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994).

[4] *Sternberg v. Johnson*, 595 F.3d 937, 944 (9th Cir. 2010); *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002) (addressing the obligation to discontinue post-

enforcement action as leverage in negotiations once the bankruptcy case has been commenced.[5]

Once the creditor learns or has notice of a bankruptcy case having been filed, any actions that it intentionally undertakes are deemed willful.[6] As the Ninth Circuit Court of Appeals explained in *Goichman v. Bloom*:[7]

> A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

It is well established that an "ignorance of the law" or advice of counsel is not a *bona fide* defense to a willful violation of the automatic stay.[8]

Though ignorance of a bankruptcy case being filed may be a defense to liability for damages (not taking a willful act with knowledge of a bankruptcy case), such "innocent" violation does not absolve the creditor of liability for failing to correct the violation once the creditor learns of the bankruptcy case having been filed.[9] A party who takes an action in violation of the stay not only has an obligation to cease the continuing violation, but also has an affirmative duty to remedy the violation.[10] It is not for the debtor, debtor-in-possession, Chapter 7 trustee, or Chapter 11 trustee to chase the creditor and correct the continuing violation and force the creditor to begrudgingly comply with federal law.[11] "The responsibility is placed on the creditor to address the continuing violation of the automatic stay because to place the burden on the debtor to undo the violation 'would subject the debtor to the

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petition collection proceedings).

[5] *Eskanos & Alder*, 309 F.3d at 1215.

[6] *In re Risner*, 317 B.R. 830, 835 (Bankr. D. Idaho 2004); *see also Eskanos and Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002); *Thompson v. GMAC, LLC*, 566 F.3d 699, 702-3 (7th Cir. 2009); *Emp't. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996) (holding that the knowing retention of estate property violates the automatic stay).

[7] *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 227 (9th Cir. 1989) (citing *INSLAW, Inc. v. United States (In re INSLAW, Inc.)*, 83 B.R. 89, 165 (Bankr. D.D.C. 1988)).

[8] *Botell v. United* States, No. 2:11-cv-01545-GEB-GGH, 2012 U.S. Dist. LEXIS 41172 (E.D. Cal. March 26, 2012)*; Joe Hand Promotions, Inc. v. Estradda*, No. 1:10-cv-02165-OWW-SKO, 2011 U.S. Dist. LEXIS 61010 (E.D. Cal. June 8, 2011).

[9] *In re Cordle*, 187 B.R. 1, 4 (N.D. Cal. 1995).

[10] *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

[11] *Taxel*, 98 F.3d at 1151.

financial pressures the automatic stay was designed to temporally abate.'"[12]

Liability for Violations of the Automatic Stay

A violation of the automatic stay is addressed as "ordinary civil contempt." For individual debtors Congress has created additional statutory remedies pursuant to 11 U.S.C. § 362(k).[13]

The basic analysis as discussed by the Ninth Circuit Court of Appeals in *Dyer v. Lindblade*[14] for considering civil contempt is stated as follows:

> "The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *Bennett*, 298 F.3d at 1069. Because the "metes and bounds of the automatic stay are provided by statute and systematically applied to all cases," *Jove Eng'g v. IRS (In re Jove Eng'g)*, 92 F.3d 1539, 1546 (11th Cir. 1996), there can be no doubt that the automatic stay qualifies as a specific and definite court order.
>
> In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.' *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996) (internal citations omitted); accord *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191, 93 L. Ed. 599, 69 S. Ct. 497 (1949). (Because civil contempt serves a remedial purpose, "it matters not with what intent the defendant did the prohibited act.")
>
> The threshold standard for imposing a civil contempt sanction in the context of an automatic stay violation therefore dovetails with the threshold standard for awarding damages under § 362(h). *Pace*, 67 F.3d at 191 (incorporating the willfulness standard of § 362(h) as explicated by *Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992)). Under both statutes, the threshold question regarding the propriety of an award turns not on a finding of 'bad faith' or subjective intent, but rather on a finding of 'willfulness,' where willfulness has a particularized meaning in this context:
>
> > '[W]illful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional.

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[12] *Johnson v. Parker* (*In re Johnson*), 321 B.R. 262, 283 (D. Ariz. 2005) (citation omitted).

[13] *Dyer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190-91 (9th Cir. 2003).

[14] *Id.*

Pace, 67 F.3d at 191; see also *Pinkstaff*, 974 F.2d at 115; *Hardy*, 97 F.3d at 1390; cf. *Bennett*, 298 F.3d at 1069 (describing standard for imposing civil contempt sanctions under § 105(a) for violation of discharge injunction).

Congress has created the additional statutory remedies for an individual debtor who asserts claims for violation of the automatic stay, providing in 11 U.S.C. § 362(k) [emphasis added]:

> (k) (1) Except as provided in paragraph (2), an **individual injured by any willful violation** of a stay provided by this section **shall recover** actual damages, including costs and attorneys' fees, and, in appropriate circumstances**, may recover punitive damages**.
>
> (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

Actual Damages

The basic measure of damages for violation of the automatic stay is the amount of economic loss the debtor has suffered as the proximate result of the defendant's violation. The court takes into account the fair market value of the property that was disposed of in violation of the automatic stay.[15] Actual damages for violation of the automatic stay include emotional distress damages.[16] For a debtor to state a claim for emotional distress damages, the individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between the significant harm and the violation of the automatic stay.[17] Medical evidence of emotional distress is not required; the testimony of family members, friends, and co-workers is sufficient to establish an emotional distress claim.[18] In some cases no corroborating evidence is required. An example cited in *Dawson* is where the egregious conduct was the creditor pretending to hold a gun to the debtor's head.[19] Additionally, the court in *Dawson* stated that even when the conduct was not egregious, the court could award emotional distress damages where the circumstances make it obvious that a reasonable person would suffer emotional harm, such as the emotional distress of having to cancel a child's birthday party because the debtor's checking account was frozen.[20]

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[15] *In re Kaufman*, 315 B.R. 858, 866 (N.D. Cal. 2004).

[16] *Dawson v. Wash. Mut. Bank* (*In re Dawson*), 390 F.2d 1139, 1148 (9th Cir. 2004).

[17] *Id.* at 1149.

[18] *Id*., citing *Varela v. Ocasio* (*In re Ocasio)*, 272 B.R. 815, 821-22 (B.A.P. 1st Cir. 2002) (holding that testimony of debtor's wife was sufficient to support an award of medical damages without medical testimony).

[19] *Dawson*, 390 F.2d at 1149 (citing *Wagner v. Ivory* (*In re Wagner*), 74 B.R. 898, 905 (Bankr. E.D. Pa. 1987)).

[20] *Id.* (citing *United States v. Flynn* (*In re Flynn*), 185 B.R. 89, 93 (S.D. Ga. 1995) ($5,000.00 award of emotional distress damages because 'it is clear that the appellee suffered

Congress has also provided that the "actual damages" for an individual debtor seeking to redress a violation of the automatic stay "shall" include "costs and attorneys' fees." 11 U.S.C. § 362(k)(1). The costs and attorneys' fees include those incurred in the individual debtor in having to prosecute the action to recover the damages caused by the violation of the stay even after the violation has been abated, but the violating party fails to pay the then existing damages (as with the violation now before the court).[21]

Punitive Damages

In addition to actual damages, 11 U.S.C. § 362(k)(1) permits the recovery of punitive damages "in appropriate circumstances." The Ninth Circuit has cautioned that punitive damages are only appropriate if there has been some showing of "reckless or callous disregard for the law or rights of others."[22] The bankruptcy court is given considerable discretion in granting or denying punitive damages under 362(k).[23] Punitive damages are properly awarded to punish unlawful conduct and deter its repetition.[24]

A debtor entitled to actual damages does not automatically qualify under § 362(k)(1) to recover punitive damages. The court must decide whether the circumstances of each case warrant punitive damages.[25] When considering an award for damages, the court considers the gravity of the offense and sets the amount of punitive damages to assure that they will both punish and deter.[26] A creditor's good faith or lack thereof is relevant to sanctions under § 362(k)(1).[27] In determining the appropriate amount of punitive damages, the court usually considers the following factors: (1) the nature of the defendants' acts; (2) the amount of compensatory damages awarded; and (3) the wealth of the

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emotional damages' when she was forced to cancel her son's birthday party because her checking account was frozen)); *see also Sternberg*, 595 F.3d at 943.

[21] *America's Servicing Company v. Schwartz-Tallard (In re Schwartz Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). This even includes the right to attorneys' fees for having to defend an award of damages pursuant to 11 U.S.C. § 362(k) on appeal. *Id.*

[22] *Bloom*, 875 F.2d at 228.

[23] *Id*.

[24] *See Cooper Indus. v. Leatherman Tool Group*, 532 U.S. 424, 432 (2001); *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996);.

[25] *Henry v. Assocs. Home Equity Servs. (In re Henry)*, 266 B.R. 457, 481-83 (Bankr. C.D. Cal. 2001).

[26] *Id*.

[27] *See Walls v. Wells Fargo Bank (In re Walls)*, 262 B.R. 519, 529 (Bankr. E.D. Cal. 2001).

defendants.[28]

In evaluating the "nature" of the Defendant's acts, the court considers the purpose of the automatic stay and the role it serves in the bankruptcy process. The automatic stay, as stated by Congress, is a fundamental protection given the debtor and creditors.[29] Violations of the automatic stay are not something with which a creditor may trifle. Even when a violation occurs, the creditor can purge the improper conduct and avoid more significant damages by correcting the violation.

The court also considers the proportionality of the punitive damages to the compensatory damages awarded to the Plaintiff-Debtors. The rule in both the Ninth Circuit and in California is that punitive damages must be proportional and be reasonably related to compensatory damages.[30] However, there is no fixed ratio or formula for determining the proper proportion between the two.[31] In a 2004 decision, *State Farm Mutual Auto Insurance Company v. Campbell*, 538 U.S. 408 (2004), the Supreme Court discussed the Constitutional reasonableness requirement in determining the amount of punitive damages. While not setting a maximum ratio between punitive damages and compensatory damages, the Supreme Court stated that punitive damage awards that are a single digit multiple of the compensatory damages are more likely to withstand constitutional scrutiny.[32] The Court in *State Farm* cited to its earlier holding in *BMW of North America v. Gore*[33] that a punitive damage award (that in *Gore* was 500 times the compensatory damages) in excess of four times the compensatory damages might be close to

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[28] *Bauer v. NE Neb. Fed. Credit Union (In re Bauer)* No. EC-09-1281, 2010 Bankr. LEXIS 5096, (B.A.P. 9th Cir. Apr. 8, 2010).

[29] H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) pp. 340-344:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.
>
> The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

[30] *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1162-63 (9th Cir. 1987).

[31] *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1024-25 (9th Cir. 1985).

[32] *Cooper Industries v. Leatherman Tool Group*, 532 U.S. at 425.

[33] 517 U.S. at 582.

the line of constitutional impropriety.

AWARD OF DAMAGES

Debtor has clearly established that Velocity, FarMar, and Ali Farzin, and each of them had actual knowledge (whether directly or via their attorney who was prosecuting the litigation for the principal Velocity) of the bankruptcy case and the violation of the automatic stay. Counsel for the Debtor carefully and professionally afforded each of the three persons violating the stay to correct that act. Not once, not twice, not three times, but four times and filing the Motion and Amended Motion before there was the simple act of staying the state court action.

As provided in 11 U.S.C. § 362(k), an individual debtor is properly awarded actual damages cause by the violation, which includes economic damages, emotional distress damages, and attorneys' fees, all as part of the actual damages.

Here, counsel for the Debtor has been prudent in the time expended, not rushing off to litigation but attempting to communicate professionally with the opposing counsel. Then, when the Motion was filed and amended, careful to provide the court with the necessary pleadings and not turn a modest matter into the proverbial "federal case" (thought this actually is a "federal case").

First, Debtor requests the payment of the attorneys' fees damages resulting from the violation of the stay. Counsel for the Debtor has provided his declaration as to the attorneys' fees damages. Dckt. 28. As of the December 30, 2019 filing of the Amended Motion, counsel accounts for $4,425.00 in fees, which is 15 hours billed at counsel's reasonable, regular hourly rate of $295.00.

Since that time counsel has provided an additional declaration and has to be at court to prosecute the Motion at the January 30, 2020 hearing. The court computes this as being an additional four hours. Ironically, the additional pleading filed on January 23, 2020, is counsel's supplemental declaration that inures to the benefit of the three violators - Debtor's counsel confirming that he had located the January 14, 2020 dismissal and that attorney Matthew Kumar of FarMar had made one attempt to communicate with Debtor's counsel.

The court awards actual damages of $5,605.00 in attorneys' fees for those actually incurred and reasonably provided through the January 30, 2020 hearing.

The Debtor's have provided their declaration of the damages caused by the violation of the stay. As with the debtor in *Dawson* and the emotional distress from the lost birthday party, it is clear that for individual debtors who make the difficult decision to file bankruptcy to obtain that extraordinary relief, to be pursued with a continuing lawsuit in violation of the stay causes emotional distress. Merely because the Debtors in this case are not "snowflakes" (as some use that term in political discussions these days) and were crippled in the corner, unable to work and looking for a "safe room," this created an emotional burden. The court computes the emotional distress damages to be $750.00 for each Debtor, for a total award of $1,500.00 in emotional distress damages.

For actual damages, the court awards $7,105.00 ($5,605.00 attorneys' fees and $1,500.00 emotional distress) jointly and severally against each of the three stay violators.

The conduct of each of the three violators was knowing, intentional, and done with the

knowledge that the stay was being violated. The Violators, and each of them, acted in reckless and callous disregard for the law or rights of Debtor. Though Debtor's counsel reached out to communicate and quickly resolve the violation, each of the three Violators stood fast with their violations.

The court determines that punitive damages are not only proper, but necessary to deter the conduct of each of the Violators, as well as others in the same position as the Violators who might be tempted to ignore the communications of a "mere" consumer counsel.

The Motion requests punitive damages against each of the three Violators of "not less than $1,000. Here, punitive damages equal to the actual damages, would be just $7,105.00, well within the punitive damages guidelines enunciated by the U.S. Supreme Court.

Debtor's counsel prudently requests modest punitive damages, manifesting a knowledge of how appellate courts consider such damages. Taking that lead, the court divides the modest $7,105.00 between the three violators, awarding Debtor $2,400.00 in punitive damages against each of the three Violators as separate liability of each of the three Violators.

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 Sanctions for Violation of the Automatic Stay filed by Joseph Withworth, Jr. and Tonya Whitworth, the Chapter 7 Debtors in this bankruptcy case 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, the court determining that Velocity Investments, LLC, the FarMar Law Group, and Ali Farzin, and each of them have violated the automatic stay and have caused damages to Joseph Withworth, Jr. and Tonya Withworth.
>
> **IT IS FURTHER ORDERED** that Joseph Withworth, Jr. and Tonya Withworth are jointly awarded actual damages in the amount of $7,105.00 ($5,605.00 attorneys' fees and $1,500.00 emotional distress) jointly and severally against Velocity Investments, LLC, the Far Mar Law Group, and Ali Farzin, and each of them.
>
> **IT IS FURTHER ORDERED** that Joseph Withworth, Jr. and Tonya Withworth are jointly awarded actual punitive damages against each of the following persons as such person's separate damage obligation:
>
> (1) Velocity Investments, LLC in the amount of $2,400.00;
>
> (2) The Far Mar Law Group in the amount of $2,400.00; and
>
> (3) Ali Farzin in the amount of $2,400.00.

IT IS FURTHER ORDERED that in additional to costs of enforcement, the court awards Joseph Withworth, Jr. and Tonya Withworth post judgment attorneys' fee incurred in enforcing the payment of the obligation on this Order, which shall be requested by post-judgment motion.

This Order shall be enforced as a judgment of this court. Federal Rule of Civil Procedure 54(a), Federal Rule of Bankruptcy Procedure 7054, 9002(5).

11. **19-26375-A-7** **JOSEPH/TONYA WHITWORTH** **CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY**
TLA-1 **Thomas Amberg** **10-30-19 [13]**

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, Creditor, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay 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.

An Amended Motion for Sanction for Violation of the Automatic Stay was filed on December 30, 2019, to be heard on January 30, 2020. Thus, this Motion for Sanctions for Violation of the Automatic Stay is removed from the calendar.

12. **20-20175-E-11** **HERBERT MILLER** **MOTION TO EXTEND AUTOMATIC STAY**
HEM-1 **Pro Se**
1-16-20 [10]

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*), creditors, and Office of the United States Trustee on January 16, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is xxxxx.

Herbert Miller ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-23392) was dismissed on July 15, 2019, after Debtor failed to pay the required filing fee installment. *See* Order, Bankr. E.D. Cal. No. 19-23392, Dckt. 35, July 15, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because his previous counsel was unable to effectively represent a chapter 11 reorganization, failed to do the basic tasks needed, or file the appropriate documents in a timely manner.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

The court takes a close look at Debtor's statements concerning the reasons why he has not been able to previously prosecute a Chapter11 case. A look at Debtor's history with this court shows that there was another pending and dismissed case in 2018, that was not closed until April 2019. On October 9, 2018, Debtor filed a Chapter 13 case (18-26373) which was dismissed on November 7, 2018 for failure to timely file documents. 18-26373; Order, Dckt. 23.

On January 15, 2019, Debtor filed a Motion to Reconsider the Dismissal, asserting that he "inadvertently" failed to file Form 122C-1. Debtor was *Pro Se* at the time he filed the petition. He obtained counsel only after the case was dismissed. In denying the Motion to reconsider and vacate the dismissal, the court's findings and conclusions include:

> Debtor has not provided an explanation as to why documents were not timely filed, other than that it was "pure oversight and inadvertence." Dckt. 30 at 4:21-24. Based on the evidence presented, the court finds there was no mistake, inadvertence, surprise, or excusable neglect. Debtor was proceeding in Pro Se. Debtor knew he did not have the specialized knowledge of a licensed bankruptcy attorney, and assumed the risk of proceeding without counsel. Debtor received clear notice of the documents necessary for filing, and the court issued an extension on the time for filing. Debtor did not file all necessary documents, and did not file proof of service on all creditors as required by this court's Order. Dckt. 16.
> . . .

Debtor attempted to convert that case from a chapter13 case to a chapter 11 case by filing a post-dismissal motion on February 28, 2019. *Id.*, Dckt. 47. That request was denied on March 25, 2019. *Id.* Dckt. 62.

Debtor is again filing *Pro Se.* He testifies in his declaration that he is being assisted by two attorneys on a pro-bono basis but that he is actively searching for an attorney to fully represent him in this case. Declaration, at 2.

Review of Schedules

On January 22, 2020, Debtor filed his Schedules in this case. The significant assets show on Schedule A/B (Dckt. 22) include:

1. Alta Mesa East Road Property.....$450,000 Value
2. Hilton Dr. Property.....$500,000 Value
3. Shadow Court Property.....$600,000 Value

For secured claims, on Schedule D the following significant claims relate to the above significant assets:

1. Bayview Servicing - Alta Mesa Rd Prop.....($ Unknown) Debt
2. Caliper Home Loans - Hilton Drive Prop.....($ Unknown) Debt
3. Citibank - Unidentified Collateral.....($194,300) Debt
4. Wells Fargo - Unidentified Collateral.....($600,000) Debt
5. CIT Small Biz Lend Corp - Unidentified.....($ 2,910) Debt

Id. It is curious in looking at Schedule D, Debtor either does not know what the creditor is owed or cannot identify the property that secures the debt.

On Schedule I Debtor lists his employment as Real Property Owner and Manager." *Id.* at 32. For this business he has net monthly income of $1,500. Debtor's other monthly income is stated to be Social Security in the amount of $1,400, for total gross monthly income of $2,900.

On Schedule J Debtor lists having monthly expenses of only ($1,510). *Id.* at 34-36. Some of the questionable items on Schedule J, for Debtor's family unit of one person are:

1. He has no rent or mortgage payment
2. He has no property taxes or owner/renter insurance payment
3. He has no expenses for home maintenance and upkeep

4. His food and housekeeping supplies are only $300 a month. If $45 is allowe3d for housekeeping supplies, then the $255 a month for food is $2.83 per meal (in a 30 day month).

5. Debtor has no expense for clothing.

6. Debtor's transportation expense (fuel, repairs, maintenance, registration) for two vehicles is only $250 a month.

7. Though owning two vehicles and having transportation expense, Debtor does not have any vehicle insurance.

While not listed on Schedule E/F, in Debtor's prior case (19-23392) the Internal Revenue Services field a proof of claim for ($110,589.71), of which ($85,107.82) was asserted as a priority claim and ($25,481.89) as a general unsecured claim.

At the bottom of Schedule I Debtor states that by March 15, 2020, he will have additional monthly income of $6,000 to $10,000 as an "independent jewelry contractor working for Windsor Diamonds in Folsom, California.

DISCUSSION

At the January 30, 2020 hearing, **xxxxxxxxxx**

~~Debtor [has / has not] sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.~~

~~The Motion is xxxx, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.~~

~~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 to Extend the Automatic Stay filed by Herbert Miller ("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 is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.~~

~~**IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.~~

13. 16-21585-E-11 FWP-40 **AIAD/HODA SAMUEL** **Pro Se** **CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES 11-9-18 [1292]**

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, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Cost is xxxxx.

JANUARY 16, 2020 STATUS REPORT

Scott M. Sackett, Chapter 11 Trustee ("Trustee") and Plan Administrator submitted a status report on January 16, 2020. Dckt. 1447.

Trustee asserts that Debtor's claim against them in the Samuel Litigation are improper on the basis that Plan provisions provide for the estate to defend, indemnify and hold harmless the Trustee and Trustee's Counsel for claims and expenses (including attorney's fees) arising as a result of claims asserted based upon acts related to serving as Trustee in the bankruptcy case; Anti-SLAPP-- California Code §§ 425.16 et seq; FRCP 11; case law setting forth principles requiring leave before commencing litigation against a bankruptcy trustee; and the court's inherent powers.

Trustee asserts that since the Samuel Litigation is in its early stages, the total of fees, costs, damages, and other expenses to be incurred is not clear at this time.

Trustee provides the court with an update of several relevant matters which affect or may increase the bankruptcy estate expenditures and thus support his contention that the best course of action is to wait until completion:

1. Completing Final Tax Returns and Potential Tax Refunds: Trustee expects to receive refunds from the IRS of $31,442 for each Debtor for a total of $62,884 for the estate. In addition to these federal IRS refunds, in October Trustee received two refund checks in the amount of $21,403.36 each from the California Franchise Tax Board as a result of the estate's amended returns for a total to the estate of $42,806.72.

2. Resolving the Cure Amount for 209 Prairie Circle: Trustee sent a check to the attorneys for the claimant in the amount that Trustee believed to be the correct cure amount. The holder of the Class 2E claim has since deposited this check. Accordingly, Trustee considers the Class 2E cure claim resolved and does not currently anticipate further expenditures on this issue.

3. Resolving the Brake Masters Class 3A Claim: The Debtors' continued prosecution of this appeal has increased and is likely to further increase Brake Master's attorneys' fee claim as the prevailing party, which will impact whether the Debtors shall receive a surplus under the Plan. Trustee expects a supplemental motion by Brake Masters for additional fees and costs incurred as a result of the Debtors' appeal before making payment to Brake Masters from the $175,000 reserved for this claim. Therefore, the Debtors will be responsible for responding to any supplemental motion for fees and costs brought by Brake Masters. Trustee anticipates further expenditures due to the Debtors' continued prosecution of this litigation.

4. Resolving the Debtors' Bankruptcy Appeal: The appeal by the Debtors of the order confirming the Plan has been dismissed. Trustee does not anticipate further expenditures on this issue.

5. Resolving the Samuel Litigation: Debtor Hoda Samuel continues to prosecute the complaint that she filed against the Trustee and his counsel in the United States District Court for the Eastern District of California, Case No. 18-cv-2343. The District Court currently has before it an untimely filed Third Amended Complaint subject to screening. Debtor Hoda Samuel's continued prosecution of this action means that the Trustee and Counsel will continue to incur fees and costs addressing this action and potential damages that are payable from the estate. Thus, the Plan administrator anticipates further expenditures due to the Debtors' continued prosecution of this litigation. Thus, Trustee anticipates further expenditures due to the Debtors' threats of continued new litigation.

6. Resolving the USA Class 2A Secured Claim: The Magistrate Judge in the District Court issued proposed findings and recommendations regarding matters related to the satisfaction of the USA Claim in accordance with the Plan. The Magistrate Judge's findings and recommendations were adopted by the District Court. Debtor Hoda Samuel has filed four appeals to the Ninth Circuit relating to these District Court orders. Samuel argues that her compliance with the BOP Inmate Financial Responsibility Program precluded the USA from otherwise enforcing the unpaid criminal judgment. Three of the Hoda Samuel's four Ninth Circuit appeals have been dismissed, leaving only the appeal, Appeal No. 18-10349. Those pending appeals have delayed and continue to delay the Plan Administrator's ability to complete the administration of the USA Claim and caused additional expense to the estate to address issues raised by the Debtors' prosecution of this litigation. Trustee anticipates further expenditures due to the Debtors' continued litigation regarding the USA Claim.

7. Potential Claim Objections: Trustee has informally resolved all of the potential objections to Claim Nos. 26-28 filed by Pacific Property Advisors without the need and expense of formal claim objections and has paid Pacific Property Advisors and paid the compromised amounts. Trustee does not anticipate further expenditures on this issue.

8. Reporting: Trustee has filed and served all quarterly reports as required by the United States Trustee's office and the Plan. There will be further expenditures as Debtors continued

litigation which delays completion of the estate.

9. Administering Final Assets: Trustee has continued to administer the Residential Properties collecting rent, making required repairs, maintaining insurance, and paying property taxes as required. Trustee anticipates further expenditures related to the properties. For example, Trustee had to put a new roof on 209 Prairie Circle. The roof had never been replaced by the Debtors and was leaking. Finally, Trustee may need to pursue eviction of the tenant at 148 Estes for failure to pay rent. Trustee continues to evaluate whether a sale of the Residential Properties would be appropriate under the circumstances.

10. Final Reports and Fee Applications: Administration of this bankruptcy case is not yet complete. As explained above, Trustee has resolved the general estate matters but continues to incur ongoing expense. The primary impediment to closing this case continues to be the Debtors' continued prosecution of litigation in multiple venues: (i) Brake Masters appeal, (ii) District Court complaint, and (iii) 9th Circuit appeals regarding the USA's criminal restitution judgment.

Trustee requests the Motion be continued and asserts that the current remaining funds of $441,000.00 are not enough to complete all remaining matters (described above), retain funds for ongoing litigation, and distribute any advance surplus to Debtor. Trustee contends that any determination of whether Debtor will have any surplus will need to wait until Plan Administrator's completion of his administration of the estate. Trustee finds that any surplus determination at this juncture is uncertain and suggests that the best course of action is to wait for all of Debtor's litigation be resolved instead of estimating and quantifying the claim at this time.

Further, Trustee requests that if the matter is not continued, the court set a schedule for further proceedings to establish the allowed amount of the Trustee's claim for the recoverable amounts.

Staying of Proceedings and Scheduled Status Conference

At this juncture, the Trustee and Trustee's Counsel are not actively prosecuting their respective motions in light of the District Court Action not proceeding at this point. The Debtor Plaintiff in that action has been granted leave to file an amended complaint, but one has not yet been filed.

Debtor Aiad Samuel attended the May 30, 2019 hearing, his first appearance in this case since it was transferred to the current judge. At the hearing the court reviewed with Mr. Samuel the need for him to prosecute his case, properly filing motions and opposing pleadings, and the need to properly present evidence. The court reenforced the judicial requirements on a party with Mr. Samuel, pointing out several times that merely showing up in court to argue against the trustee or assert allegations was not the prosecution of his rights.

The court reenforced with Mr. Samuel the need to obtain, in light of the significant dollar amount which Mr. Samuel asserts are at issue, competent, experienced Chapter 11 counsel (the court emphasizing the need for Chapter 11 counsel). When on several occasions at the hearing Mr. Samuel made reference to, "the person at the franchise tax board says I've been wronged" and "people tell me that . . .," the court pointed out that those people: (1) were not Mr. Samuel's attorney, and (2) that they did not have the benefit of knowing all of the facts concerning the case and have the basis for providing Mr. Samuel with a legal opinion.

Mr. Samuel also expressed concern, saying that "people" told him that all attorneys so feared the Trustee and Trustee's counsel that Mr. Samuel would find it impossible to find counsel, all other attorneys scared away from his case. The court, recounting the judge's twenty-six years of litigation experience and nine-plus years on the bench, noted that while knowledgeable, experienced Chapter 11 attorneys would respect/not underestimate the Trustee and Trustee's Counsel, none would be scared away from representing Mr. Samuel.

The caveat to the above is that Mr. Samuel might not like the advice and counsel of such experienced counsel based on the law and facts of his case because such might not fit with what Mr. Samuel "knows" should be the result because he "knows" that he and Mrs. Samuel have to be right.

The court, having Mr. Samuel in the court personally for the first time (and Mrs. Samuel not having made any telephonic appearances since the case has been assigned to the current judge) addressed what had been a running dispute in when the case was assigned to the prior judge. Mr. Samuel asserted and asserts that the prior judge's nephew(s) was involved in this case, that the prior judge has some connection with the attorneys for the Trustee in the case, and that the prior judge was biased against Mr. Samuel and his wife.

Affording Mr. Samuel the opportunity to look the current judge in the eye, the court addressed for Mr. Samuel the following:

1. The bankruptcy legal community, whether in the Sacramento region or a large area such as Los Angeles, is a community in which the active lawyers know each other, regularly have cases against each other, and know who they can trust and who they cannot trust.

2. The current judge was never an attorney with, involved in a law firm with, or had any business connections with Mr. Sackett the Trustee and the attorneys in Trustee's Counsel's law firm

3. When this judge was an associate attorney and then a new partner in his law firm during the period from Fall of 1983 into the early 1990's, one of the senior partners in that law firm; Hefner, Stark & Marois, LLP; was John Bessey, a very well known bankruptcy attorney in the community. Mr. Bessey was at the Hefner Firm until the early 1990's, when he left to establish his own firm. There were no further business, professional, or personal connections with Mr. Bessey after his leaving the Hefner Firm with the judge in this case, except for interaction at any bankruptcy conferences, events, or court appearances as would be experienced with any other attorney. Mr. Bessey passed away in the late 1990's.

4. The court further explained to Mr. Samuel that the bankruptcy trustee in this case (which Mr. Samuel assets has acted improperly) is Scott Sackett is the son of Marilyn Bessey, the former wife of John Bessey (with their divorce occurring in the early 1990's). Mr. Bessey is not Scott Sackett's father.

5. With respect to Mr. Sackett and Mrs. Bessey, who it is known in the legal community has been involved in receivership work with her son, the contacts with the two of them and the judge to whom this case is assigns consists of seeing them at an annual bankruptcy conference or meeting or two a year, in the same manner as occurs with other attorneys and bankruptcy related professionals in the community.

Given the concern and consternation that appears in the record based on the perceived by Mr.

and Mrs. Samuel between the prior judge and various parties, the current judge to whom this case is assigned has chosen to take the time at the May 30, 2019 hearing, when Mr. Samuel and the judge could look each other in the eye, and in these Minutes, to review this history. In light of Mrs. Samuel being unable to be in court in person and not making a telephonic appearance, the court orders the Clerk of the Court to serve copies of the Minutes from the hearing on the two fee applications on Mr. and Mrs. Samuel, and each of them.

REVIEW OF MOTION

Scott M. Sackett, the duly appointed Chapter 11 Trustee ("Movant") requests payment of future expenses that are anticipated to be incurred as administrative expenses. Specifically, the Motion is based upon to-be-determined fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343.

REVIEW OF MOTION

The Motion (Dckt. 1292) sets forth and states with particularity (FED.R. BANKR. P. 9013) the following grounds and relief requested from the court:

The asserted administrative expenses are those for "fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343."

Motion, p. 1:21-24; Dckt. 1292.

The amount is not liquidated at this time.

Because the amount is unlimited, the Trustee requests that the court have all otherwise surplus funds of the estate reserved and no distributed to Debtor Hoda Samuel.

Id., p. 1:24-26.

The Trustee was appointed on May 6, 2016.

Id. ¶ 3.

The attorneys of Felderstein, Fitzgerald, Willoughby, and Pascuzzi ("FFWP") were authorized to be employed as counsel for Trustee effective May 10, 2016.

Id. ¶ 4.

On August 28, 2018, Debtor Hoda Samuel filed a pro se complaint in the United States District Court ("District Court Complaint"). In that action, on October 9, 2018, Debtor Hoda filed a motion to amend the District Court Complaint. Trustee is named as a defendant in the District Court Complaint. Debtor Hoda Samuel has filed a motion to amend the District Court Complaint to add FFWP and attorneys in that firm to a first amended complaint.

Id. ¶¶ 5, 8; and Exhibit 1, Dckt. 1294.

The Trustee requests allowance and payment of all fees, costs, damages, time, or other expenses (collectively defined as "Recoverable Amounts) that the Trustee incurs in responding to the District Court Complaint action. FFWP and its attorneys have filed a similar motion.

Motion ¶ 11, Dckt. 1292.

On September 27, 2018, the court entered its order confirming the Trustee's First Amended Chapter 11 Plan of Liquidation in this bankruptcy case.

Id. ¶ 6.

No stay pending appeal of the order confirming the First Amended Plan of Liquidation has been issued.

Id. ¶ 7.

Debtor Aiad Samuel filed an attachment to another notice of appeal which makes reference to it supporting an appeal of the bankruptcy judge confirming the First Ame4nded Plan of Liquidation in this bankruptcy case. [FN. 1]

Id.

FN. 1. A review of the Docket in this case discloses that on November 29, 2018, the Bankruptcy Appellate Panel issued Orders dismissing appeals as untimely, but further states that with respect to the order confirming the Chapter 11 Plan:

> Appellant submits that with respect to timeliness, "[t]his issue has now been settled by an Amendment made by Mr. Aiad Samuel to include the proposed Plan in the appeal BAP #18-1252." See Response at 2. A review of the bankruptcy courts docket indicates that on October 11, 2018, Aiad Samuel filed a document stating that he intended to appeal the order denying recusal as well as the plan confirmation order. Bankruptcy Court Docket at 1263 (Document Filed Debtor Aiad Samuel) •1 We disagree. The October 11, 2018 paper does not save these appeals.
>
> > 1 However, we construe this document as a timely appeal by Mr. Samuel from the September 27, 2018 order confirming the Chapter 11 plan and will open this notice of appeal as BAP Appeal No. EC-18-1318.

BAP Orders Denying Motion for Stay Pending Appeal and Dismissing Appeals (August 8, 2018 Order denying motion to recuse), p. 5; Dckts. 1333 and 1335.

Thus, it appears that the Bankruptcy Appellate Panel indicates that an appeal of the order confirming the plan is pending.

Several different legal grounds are asserted for the right to recover legal fees and expenses as administrative expenses, including:

California Code of Civil Procedure §§ 425.16 et seq. (Anti-SLAPP statute);

Federal Rule of Civil Procedure 11;

The case law setting for the principles requiring leave before commencing litigation against a receiver or bankruptcy trustee or other officers appointed in bankruptcy cases; and

The court's inherent powers.

Id., p. 3:25-28, 4:1-7.

Because the amount of the administrative expenses has not been determined and the litigation is pending, the Trustee requests that final hearing on this Motion be continued until the District Court Complaint and action relating thereto is completed.

Id., p.3:8-13.

Because the amount could exceed any surplus in the bankruptcy case (which amount is not stated in the Motion), none of the surplus should be disbursed to the Debtors in this case until the final amounts of the requested administrative expenses are determined.

Id., p. 5:14-21.

Whether an administrative expense exists at this point is speculative. The potential for such expense is shown, but such is a "potential" based on future events which the court cannot evaluate as an administrative expense, Anti-SLAPP damages, Rule 11 sanctions from the district court, or damages flowing from unauthorized litigation against an officer or authorized professional representing such officer in a bankruptcy case.

The court cannot "allow" such an expense today. Movant recognizes this in the Motion, noting that at this time administrative expenses are an open issue, the amount of surplus under the Chapter 11 Plan of Liquidation cannot be determined, and therefore requests that the court authorize the Plan Administrator to hold all potential surplus monies generated under the Plan until the final determination of the requested administrative expenses are finally determined.

However, the Plan Administrator cannot disburse purported "surplus monies" in light of the possible administrative expenses.

The Motion does not assert the amount of such potential surplus and how a proper reserve can be determined. Neither of the two Debtors have filed any opposition to the Motion and the request to delay any potential surplus disbursements prior to any required priority administrative expenses be finally determined.

SUPPLEMENTAL MOTION FOR ALLOWANCE OF ADMINISTRATIVE CLAIMS

Scott Sackett, the Chapter 11 Trustee ("Trustee") filed a Supplemental Motion on January 10, 2019. Dckt. 1355. Trustee states the amount of the claim is unliquidated at this time, and requests that the court defer determination of the amount of this claim until the litigation is completed and that the Estate reserve all funds and other assets that might otherwise be distributed to the Debtors pending determination.

Trustee argues in the Supplemental Motion that notwithstanding the Motion Debtors do not actually have a surplus, because any surplus is contingent on the litigation yet to be resolved. Trustee relies on the Plan, which states "In no event shall any distribution to the Debtors be made prior to the Court having approved the Plan Administrator's and the Professional Persons' final fee applications, the Plan Administrator's final accounting, and the payment of all allowed fees and all Allowed Claims." Plan, Section 6.6, p. 22:17-19. The Trustee further identifies "at least" 10 items to be resolved that will require further expenditure of Estate funds, including:

> Completing final tax returns and potential tax refunds
> Resolving the cure amount for 209 Prairie Circle
> Brake Master Class 3A Claim
> Debtors' Bankruptcy Appeal
> Litigation in the district court (referenced as "Samuel Litigation")
> USA Class 2A secured claim
> Claim objections
> Reporting
> Administration of final assets
> Final reports and fee applications

Along with Trustee's Supplemental Motion, filed as Exhibit C, is a claims payment projection sheet. Exhibit C, Dckt. 1358. The Exhibit provides an overview of claims paid, cash on hand, remaining claims to be paid, post confirmation expenses, and estimated litigation costs (though merely stating "amount unknown" as to the litigation).

MOVANT'S REPLY

Movant filed a Reply on April 12, 2019. Dckt. 1381. Movant's Reply notes the court's prior civil minutes states the following:

> Several different legal grounds are asserted for the right to recover legal fees and expenses as administrative expenses, including:
>
> California Code of Civil Procedure §§ 425.16 et seq (Anti-SLAPP statute);
>
> Federal Rule of Civil Procedure 11;
>
> The case law setting for[th] the principles requiring leave before commencing litigation against a receiver or bankruptcy trustee or other officers appointed in

bankruptcy cases; and

The court's inherent powers.

(Civil Minutes, Dckt 1377), and seeks to clarify Movant is also seeking fees based on 11 U.S.C. §§ 330 and 503, and Section 6.8.7 of the Confirmed Plan for indemnity.

MOVANT'S STATUS REPORT

Movant filed a status Report on May 16, 2019. Dckt. 1397. Movant requests the motion again be continued until the fees requested have been liquidated, and the following description of remaining matters which may increase the Estate's expenditures:

1. The Plan Administrator is working with his professionals to file an amended tax return for 2017 to assert administrative loss carryback claims arising from the recent filing of the estate's tax return for 2018 that the Plan Administrator estimates could result in a refund of approximately $100,000. The Plan Administrator expects to file the amended 2017 return by late June/mid-July 2019. It typically takes the IRS a few months to process the amendment and issue the refund, but it can take a year or more.

2. The Plan Administrator sent a check to the attorneys for the claimant in the amount of $8,550.74, which is the stipulated cure amount. As of May 7, 2019, that check has not cleared and the claimant has still not provided an accurate cure amount.

3. The Debtors continue to prosecute an appeal of a Sacramento County Superior Court judgment entered in favor of Brake Masters and against the Debtors. The Plan Administrator is informed and believes that the appeal has been fully briefed as of April 13, 2018 but still awaits oral argument, if any, and a ruling by California's Third District Court of Appeal regarding the Debtors' appeal. The Plan Administrator expects a supplemental motion by Brake Masters for additional fees and costs incurred as a result of the Debtors' appeal before making payment to Brake Masters from the $175,000 reserved for this claim.

4. The appeal by the Debtors of the order confirming the Plan has been dismissed.

5. Hoda Samuel continues to prosecute the complaint that she filed against Movant and his counsel. On April 30, 2019, the District Court granted Hoda Samuel's third request for a 30 day extension of time to file her amended complaint.

6. The Magistrate Judge in the District Court issued proposed findings and recommendations regarding matters related to the satisfaction of the USA Claim pursuant to the Plan, which were adopted by the District

Court. Debtor Hoda Samuel has filed four appeals to the Ninth Circuit relating to these District Court orders.

7. The Plan Administrator has informally resolved all of the potential objections to Claim Nos. 26-28 filed by Pacific Property Advisors without the need and expense of formal claim objections and has paid Pacific Property Advisors and paid the compromised amounts.

8. The Plan Administrator has filed and served all quarterly reports as required by the United States Trustee's office and the Plan. See Plan, Section 6.3.5.

9. The Plan Assets include the residential rental properties located at 209 Prairie Circle, Sacramento, California and 148 Estes Way, Sacramento, California (collectively, the "Residential Properties"). The Plan Administrator has continued to administer the Residential Properties collecting rent, making required repairs, maintaining insurance, and paying property taxes as required.

10. Administration of this bankruptcy case is not yet complete. The primary ongoing expense and impediment to closing this case continues to be the Debtors' continued prosecution of litigation in multiple venues: (i) Brake Masters appeal, (ii) District Court complaint, and (iii) 9th Circuit appeals regarding the USA's criminal restitution judgment. Upon completion of administration, the Plan Administrator will file his final report and any final fee applications.

Status Report, Dckt. 1397 at p. 2:19-5:13.

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, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Cost is xxxxx.

JANUARY 16, 2020 STATUS REPORT

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP ("Counsel") submitted a status report on January 16, 2020. Dckt. 1449.

Counsel asserts that Debtor's claim against them in the Samuel Litigation are improper on the basis that Plan provisions provide for the estate to defend, indemnify and hold harmless the Trustee and Trustee's Counsel for claims and expenses (including attorney's fees) arising as a result of claims asserted based upon acts related to serving as Trustee in the bankruptcy case; Anti-SLAPP-- California Code §§ 425.16 et seq; FRCP 11; case law setting forth principles requiring leave before commencing litigation against a bankruptcy trustee; and the court's inherent powers.

Counsel asserts that since the Samuel Litigation is in its early stages, the total of fees, costs, damages, and other expenses to be incurred is not clear at this time.

Trustee and Counsel provide the court with an update of several relevant matters which affect or may increase the bankruptcy estate expenditures and thus support his contention that the best course of action is to wait until completion:

1. Completing Final Tax Returns and Potential Tax Refunds: Trustee expects to receive refunds from the IRS of $31,442 for each Debtor for a total of $62,884 for the estate. In addition to these federal IRS refunds, in October Trustee received two refund checks in the amount of $21,403.36 each from the California Franchise Tax Board as a result of the estate's amended returns for a total to the estate of $42,806.72.

2. Resolving the Cure Amount for 209 Prairie Circle: Trustee sent a check to the attorneys for the claimant in the amount that Trustee believed to be the correct cure amount. The holder of the Class 2E claim has since deposited this check. Accordingly, Trustee considers the Class 2E cure claim resolved and does not currently anticipate further expenditures on this issue.

3. Resolving the Brake Masters Class 3A Claim: The Debtors' continued prosecution of this appeal has increased and is likely to further increase Brake Master's attorneys' fee claim as the prevailing party, which will impact whether the Debtors shall receive a surplus under the Plan. Trustee expects a supplemental motion by Brake Masters for additional fees and costs incurred as a result of the Debtors' appeal before making payment to Brake Masters from the $175,000 reserved for this claim. Therefore, the Debtors will be responsible for responding to any supplemental motion for fees and costs brought by Brake Masters. Trustee anticipates further expenditures due to the Debtors' continued prosecution of this litigation.

4. Resolving the Debtors' Bankruptcy Appeal: The appeal by the Debtors of the order confirming the Plan has been dismissed. Trustee does not anticipate further expenditures on this issue.

5. Resolving the Samuel Litigation: Debtor Hoda Samuel continues to prosecute the complaint that she filed against the Trustee and his counsel in the United States District Court for the Eastern District of California, Case No. 18-cv-2343. The District Court currently has before it an untimely filed Third Amended Complaint subject to screening. Debtor Hoda Samuel's continued prosecution of this action means that the Trustee and Counsel will continue to incur fees and costs addressing this action and potential damages that are payable from the estate. Thus, the Plan administrator anticipates further expenditures due to the Debtors' continued prosecution of this litigation. Thus, Trustee anticipates further expenditures due to the Debtors' threats of continued new litigation.

6. Resolving the USA Class 2A Secured Claim: The Magistrate Judge in the District Court issued proposed findings and recommendations regarding matters related to the satisfaction of the USA Claim in accordance with the Plan. The Magistrate Judge's findings and recommendations were adopted by the District Court. Debtor Hoda Samuel has filed four appeals to the Ninth Circuit relating to these District Court orders. Samuel argues that her compliance with the BOP Inmate Financial Responsibility Program precluded the USA from otherwise enforcing the unpaid criminal judgment. Three of the Hoda Samuel's four Ninth Circuit appeals have been dismissed, leaving only the appeal, Appeal No. 18-10349. Those pending appeals have delayed and continue to delay the Plan Administrator's ability to complete the administration of the USA Claim and caused additional expense to the estate to address issues raised by the Debtors' prosecution of this litigation. Trustee anticipates further expenditures due to the Debtors' continued litigation regarding the USA Claim.

7. Potential Claim Objections: Trustee has informally resolved all of the potential objections to Claim Nos. 26-28 filed by Pacific Property Advisors without the need and expense of formal claim objections and has paid Pacific Property Advisors and paid the compromised amounts. Trustee does not anticipate further expenditures on this issue.

8. Reporting: Trustee has filed and served all quarterly reports as required by the United States Trustee's office and the Plan. There will be further expenditures as Debtors continued

litigation which delays completion of the estate.

9. Administering Final Assets: Trustee has continued to administer the Residential Properties collecting rent, making required repairs, maintaining insurance, and paying property taxes as required. Trustee anticipates further expenditures related to the properties. For example, Trustee had to put a new roof on 209 Prairie Circle. The roof had never been replaced by the Debtors and was leaking. Finally, Trustee may need to pursue eviction of the tenant at 148 Estes for failure to pay rent. Trustee continues to evaluate whether a sale of the Residential Properties would be appropriate under the circumstances.

10. Final Reports and Fee Applications: Administration of this bankruptcy case is not yet complete. As explained above, Trustee has resolved the general estate matters but continues to incur ongoing expense. The primary impediment to closing this case continues to be the Debtors' continued prosecution of litigation in multiple venues: (i) Brake Masters appeal, (ii) District Court complaint, and (iii) 9th Circuit appeals regarding the USA's criminal restitution judgment.

Counsel requests the Motion be continued and asserts that the current remaining funds of $441,000.00 are not enough to complete all remaining matters (described above), retain funds for ongoing litigation, and distribute any advance surplus to Debtor. Trustee contends that any determination of whether Debtor will have any surplus will need to wait until Plan Administrator's completion of his administration of the estate. Trustee finds that any surplus determination at this juncture is uncertain and suggests that the best course of action is to wait for all of Debtor's litigation be resolved instead of estimating and quantifying the claim at this time.

Further, Counsel, like Trustee, requests that if the matter is not continued, the court set a schedule for further proceedings to establish the allowed amount of the Trustee's claim for the recoverable amounts.

Staying of Proceedings and Scheduled Status Conference

At this juncture, the Trustee and Trustee's Counsel are not actively prosecuting their respective motions in light of the District Court Action not proceeding at this point. The Debtor Plaintiff in that action has been granted leave to file an amended complaint, but one has not yet been filed.

Debtor Aiad Samuel attended the May 30, 2019 hearing, his first appearance in this case since it was transferred to the current judge. At the hearing the court reviewed with Mr. Samuel the need for him to prosecute his case, properly filing motions and opposing pleadings, and the need to properly present evidence. The court reenforced the judicial requirements on a party with Mr. Samuel, pointing out several times that merely showing up in court to argue against the trustee or assert allegations was not the prosecution of his rights.

The court reenforced with Mr. Samuel the need to obtain, in light of the significant dollar amount which Mr. Samuel asserts are at issue, competent, experienced Chapter 11 counsel (the court emphasizing the need for Chapter 11 counsel). When on several occasions at the hearing Mr. Samuel made reference to, "the person at the franchise tax board says I've been wronged" and "people tell me that . . .," the court pointed out that those people: (1) were not Mr. Samuel's attorney, and (2) that they did not have the benefit of knowing all of the facts concerning the case and have the basis for providing

Mr. Samuel with a legal opinion.

Mr. Samuel also expressed concern, saying that "people" told him that all attorneys so feared the Trustee and Trustee's counsel that Mr. Samuel would find it impossible to find counsel, all other attorneys scared away from his case. The court, recounting the judge's twenty-six years of litigation experience and nine-plus years on the bench, noted that while knowledgeable, experienced Chapter 11 attorneys would respect/not underestimate the Trustee and Trustee's Counsel, none would be scared away from representing Mr. Samuel.

The caveat to the above is that Mr. Samuel might not like the advice and counsel of such experienced counsel based on the law and facts of his case because such might not fit with what Mr. Samuel "knows" should be the result because he "knows" that he and Mrs. Samuel have to be right.

The court, having Mr. Samuel in the court personally for the first time (and Mrs. Samuel not having made any telephonic appearances since the case has been assigned to the current judge) addressed what had been a running dispute in when the case was assigned to the prior judge. Mr. Samuel asserted and asserts that the prior judge's nephew(s) was involved in this case, that the prior judge has some connection with the attorneys for the Trustee in the case, and that the prior judge was biased against Mr. Samuel and his wife.

Affording Mr. Samuel the opportunity to look the current judge in the eye, the court addressed for Mr. Samuel the following:

1. The bankruptcy legal community, whether in the Sacramento region or a large area such as Los Angeles, is a community in which the active lawyers know each other, regularly have cases against each other, and know who they can trust and who they cannot trust.

2. The current judge was never an attorney with, involved in a law firm with, or had any business connections with Mr. Sackett the Trustee and the attorneys in Trustee's Counsel's law firm

3. When this judge was an associate attorney and then a new partner in his law firm during the period from Fall of 1983 into the early 1990's, one of the senior partners in that law firm; Hefner, Stark & Marois, LLP; was John Bessey, a very well known bankruptcy attorney in the community. Mr. Bessey was at the Hefner Firm until the early 1990's, when he left to establish his own firm. There were no further business, professional, or personal connections with Mr. Bessey after his leaving the Hefner Firm with the judge in this case, except for interaction at any bankruptcy conferences, events, or court appearances as would be experienced with any other attorney. Mr. Bessey passed away in the late 1990's.

4. The court further explained to Mr. Samuel that the bankruptcy trustee in this case (which Mr. Samuel assets has acted improperly) is Scott Sackett is the son of Marilyn Bessey, the former wife of John Bessey (with their divorce occurring in the early 1990's). Mr. Bessey is not Scott Sackett's father.

5. With respect to Mr. Sackett and Mrs. Bessey, who it is known in the legal community has been involved in receivership work with her son, the contacts with the two of them and the judge to whom this case is assigns consists of seeing them at an annual bankruptcy conference or meeting or two a year, in the same manner as occurs with other attorneys and bankruptcy related professionals in the community.

Given the concern and consternation that appears in the record based on the perceived by Mr. and Mrs. Samuel between the prior judge and various parties, the current judge to whom this case is assigned has chosen to take the time at the May 30, 2019 hearing, when Mr. Samuel and the judge could look each other in the eye, and in these Minutes, to review this history. In light of Mrs. Samuel being unable to be in court in person and not making a telephonic appearance, the court orders the Clerk of the Court to serve copies of the Minutes from the hearing on the two fee applications on Mr. and Mrs. Samuel, and each of them.

REVIEW OF MOTION

Felderstein Fitzgerald Willoughby & Pascuzzi LLP ("FFWP"), the bankruptcy attorneys for Scott M. Sackett, the duly appointed Chapter 11 Trustee (the "Trustee") requests payment of administrative expenses that are anticipated to be incurred. Specifically, the Motion is based upon to-be-determined fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343.

REVIEW OF THE MOTION

The Motion (Dckt. 1298) sets forth and states with particularity (Fed.R. Bankr. P. 9013) the following grounds and relief requested from the court:

The asserted administrative expenses are those for "fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343."

Motion, p. 1:22-25; Dckt. 1292.

The amount is not liquidated at this time.

Because the amount is unlimited, the FFWP requests that the court have all otherwise surplus funds of the estate reserved and no distributed to Debtor Hoda Samuel.

Id., p. 1:25-27.

The Trustee was appointed on May 6, 2016.

Id. ¶ 3.

The attorneys of Felderstein, Fitzgerald, Willoughby, and Pascuzzi ("FFWP") were authorized to be employed as counsel for Trustee effective May 10, 2016.

Id. ¶ 4.

On August 28, 2018, Debtor Hoda Samuel filed a *pro se* complaint in the United States District Court ("District Court Complaint"). In that action, on October 9, 2018, Debtor Hoda filed a motion to amend

the District Court Complaint. Trustee is named as a defendant in the District Court Complaint. Debtor Hoda Samuel has filed a motion to amend the District Court Complaint to add FFWP and attorneys in that firm to a first amended complaint.

Id. ¶¶ 5, 8; and Exhibit 1, Dckt. 1300.

The FFWP requests allowance and payment of all fees, costs, damages, time, or other expenses (collectively defined as "Recoverable Amounts) that FFWP incurs in responding to the District Court Complaint action. The Trustee has filed a similar motion.

Motion ¶ 11, Dckt. 1292.

On September 27, 2018, the court entered its order confirming the Trustee's First Amended Chapter 11 Plan of Liquidation in this bankruptcy case.

Id. ¶ 6.

No stay pending appeal of the order confirming the First Amended Plan of Liquidation has been issued.

Id. ¶ 7.

Debtor Aiad Samuel filed an attachment to another notice of appeal which makes reference to it supporting an appeal of the bankruptcy judge confirming the First Ame4nded Plan of Liquidation in this bankruptcy case. [FN. 1]

Id.

FN. 1. A review of the Docket in this case discloses that on November 29, 2018, the Bankruptcy Appellate Panel issued Orders dismissing appeals as untimely, but further states that with respect to the order confirming the Chapter 11 Plan:

> Appellant submits that with respect to timeliness, "[t]his issue has now been settled by an Amendment made by Mr. Aiad Samuel to include the proposed Plan in the appeal BAP #18-1252." See Response at 2. A review of the bankruptcy courts docket indicates that on October 11, 2018, Aiad Samuel filed a document stating that he intended to appeal the order denying recusal as well as the plan confirmation order. Bankruptcy Court Docket at 1263 (Document Filed Debtor Aiad Samuel) •1 We disagree. The October 11, 2018 paper does not save these appeals.
>
> > 1 However, we construe this document as a timely appeal by Mr. Samuel from the September 27, 2018 order confirming the Chapter 11 plan and will open this notice of appeal as BAP Appeal No. EC-18-1318.

BAP Orders Denying Motion for Stay Pending Appeal and Dismissing Appeals (August 8, 2018 Order denying motion to recuse), p. 5; Dckts. 1333 and 1335.

Thus, it appears that the Bankruptcy Appellate Panel indicates that an appeal of the order confirming the plan is pending.

Several different legal grounds are asserted for the right to recover legal fees and expenses as administrative expenses, including:

California Code of Civil Procedure §§ 425.16 et seq. (Anti-SLAPP statute);

Federal Rule of Civil Procedure 11;

The case law setting for the principles requiring leave before commencing litigation against a receiver or bankruptcy trustee or other officers appointed in bankruptcy cases; and

The court's inherent powers.

Id., p. 3:25-28, 4:1-7.

Because the amount of the administrative expenses has not been determined and the litigation is pending, the Trustee requests that final hearing on this Motion be continued until the District Court Complaint and action relating thereto is completed.

Id., p.3:8-13.

Because the amount could exceed any surplus in the bankruptcy case (which amount is not stated in the Motion), none of the surplus should be disbursed to the Debtors in this case until the final amounts of the requested administrative expenses are determined.

Id., p. 4:14-20.

Whether an administrative expense exists at this point is speculative. The potential for such expense is shown, but such is a "potential" based on future events which the court cannot evaluate as an administrative expense, Anti-SLAPP damages, Rule 11 sanctions from the district court, or damages flowing from unauthorized litigation against an officer or authorized professional representing such officer in a bankruptcy case.

The court cannot "allow" such an expense today. FFWP recognizes this in the Motion, noting that at this time since should administrative expenses are an open issue, the amount of surplus under the Chapter 11 Plan of Liquidation cannot be determined, and therefore requests that the court authorize the Plan Administrator to hold all potential surplus monies generated under the Plan until the final determination of the requested administrative expenses are finally determined.

However, the Plan Administrator cannot disburse purported "surplus monies" in light of the possible administrative expenses.

The Motion does not assert the amount of such potential surplus and how a proper reserve can be determined. Neither of the two Debtors have filed any opposition to the Motion and the request

to delay any potential surplus disbursements prior to any required priority administrative expenses be finally determined.

SUPPLEMENTAL MOTION FOR ALLOWANCE OF ADMINISTRATIVE CLAIMS

Scott Sackett, the Chapter 11 Trustee ("Trustee") filed a Supplemental Motion on January 10, 2019. Dckt. 1355. Trustee states the amount of the claim is unliquidated at this time, and requests that the court defer determination of the amount of this claim until the litigation is completed and that the Estate reserve all funds and other assets that might otherwise be distributed to the Debtors pending determination.

Trustee argues in the Supplemental Motion that notwithstanding the Motion Debtors do not actually have a surplus, because any surplus is contingent on the litigation yet to be resolved. Trustee relies on the Plan, which states "In no event shall any distribution to the Debtors be made prior to the Court having approved the Plan Administrator's and the Professional Persons' final fee applications, the Plan Administrator's final accounting, and the payment of all allowed fees and all Allowed Claims." Plan, Section 6.6, p. 22:17-19. The Trustee further identifies "at least" 10 items to be resolved that will require further expenditure of Estate funds, including:

> Completing final tax returns and potential tax refunds
> Resolving the cure amount for 209 Prairie Circle
> Brake Master Class 3A Claim
> Debtors' Bankruptcy Appeal
> Litigation in the district court (referenced as "Samuel Litigation")
> USA Class 2A secured claim
> Claim objections
> Reporting
> Administration of final assets
> Final reports and fee applications

Along with Trustee's Supplemental Motion, filed as Exhibit C, is a claims payment projection sheet. Exhibit C, Dckt. 1358. The Exhibit provides an overview of claims paid, cash on hand, remaining claims to be paid, post confirmation expenses, and estimated litigation costs (though merely stating "amount unknown" as to the litigation).

MOVANT'S REPLY

Movat filed a Reply on April 12, 2019. Dckt. 1383. Movant's Reply notes the court's prior civil minutes states the following:

> Several different legal grounds are asserted for the right to recover legal fees and expenses as administrative expenses, including:
>
> California Code of Civil Procedure §§ 425.16 et seq (Anti-SLAPP statute);
>
> Federal Rule of Civil Procedure 11;

The case law setting for[th] the principles requiring leave before commencing litigation against a receiver or bankruptcy trustee or other officers appointed in bankruptcy cases; and

The court's inherent powers.

(Civil Minutes, Dckt 1378), and seeks to clarify Movant is also seeking fees based on 11 U.S.C. §§ 330 and 503, and Section 6.8.7 of the Confirmed Plan for indemnity.

MOVANT'S STATUS REPORT

Movant filed a status Report on May 16, 2019. Dckt. 1399. Movant requests the motion again be continued until the fees requested have been liquidated, and the following description of remaining matters which may increase the Estate's expenditures:

1. The Plan Administrator is working with his professionals to file an amended tax return for 2017 to assert administrative loss carryback claims arising from the recent filing of the estate's tax return for 2018 that the Plan Administrator estimates could result in a refund of approximately $100,000. The Plan Administrator expects to file the amended 2017 return by late June/mid-July 2019. It typically takes the IRS a few months to process the amendment and issue the refund, but it can take a year or more.

2. The Plan Administrator sent a check to the attorneys for the claimant in the amount of $8,550.74, which is the stipulated cure amount. As of May 7, 2019, that check has not cleared and the claimant has still not provided an accurate cure amount.

3. The Debtors continue to prosecute an appeal of a Sacramento County Superior Court judgment entered in favor of Brake Masters and against the Debtors. The Plan Administrator is informed and believes that the appeal has been fully briefed as of April 13, 2018 but still awaits oral argument, if any, and a ruling by California's Third District Court of Appeal regarding the Debtors' appeal. The Plan Administrator expects a supplemental motion by Brake Masters for additional fees and costs incurred as a result of the Debtors' appeal before making payment to Brake Masters from the $175,000 reserved for this claim.

4. The appeal by the Debtors of the order confirming the Plan has been dismissed.

5. Hoda Samuel continues to prosecute the complaint that she filed against Movant and his counsel. On April 30, 2019, the District Court granted Hoda Samuel's third request for a 30 day extension of time to file her amended complaint.

6. The Magistrate Judge in the District Court issued proposed findings and recommendations regarding matters related to the satisfaction of the USA Claim pursuant to the Plan, which were adopted by the District Court. Debtor Hoda Samuel has filed four appeals to the Ninth Circuit relating to these District Court orders.

7. The Plan Administrator has informally resolved all of the potential objections to Claim Nos. 26-28 filed by Pacific Property Advisors without the need and expense of formal claim objections and has paid Pacific Property Advisors and paid the compromised amounts.

8. The Plan Administrator has filed and served all quarterly reports as required by the United States Trustee's office and the Plan. See Plan, Section 6.3.5.

9. The Plan Assets include the residential rental properties located at 209 Prairie Circle, Sacramento, California and 148 Estes Way, Sacramento, California (collectively, the "Residential Properties"). The Plan Administrator has continued to administer the Residential Properties collecting rent, making required repairs, maintaining insurance, and paying property taxes as required.

10. Administration of this bankruptcy case is not yet complete. The primary ongoing expense and impediment to closing this case continues to be the Debtors' continued prosecution of litigation in multiple venues: (i) Brake Masters appeal, (ii) District Court complaint, and (iii) 9th Circuit appeals regarding the USA's criminal restitution judgment. Upon completion of administration, the Plan Administrator will file his final report and any final fee applications.

Status Report, Dckt. 1399 at p. 2:19-5:13.

15. 17-22887-E-7 DBJ-4 | **SEAN STODDARD** / **Douglas Jacobs** | **CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS 10-10-19 [60]**

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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 20, 2019. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

The Motion to Hold in Contempt and for Sanctions 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 Hold in Contempt and for Sanctions is xxxxx.

The present Motion to Hold in Contempt and for Sanctions provided by 11 U.S.C. §524(a)(2) and the inherent power of this court has been filed by Sean Robert Stoddard ("Movant/Debtor"). The claims are asserted against Patsy Carter, Monty Carter ("Respondent Carter"), and Steven H. Schultz, attorney for the Carters ("Respondent Schultz"), (collectively "Respondents").

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990);

Miller v. Cardinale (In re DeVille), 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

Relevant Bankruptcy Code Sections

Section 523 of 11 U.S. Code covers exceptions to discharge, namely:

> (a)A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> . . .
>
> (3)neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
>
> (A)if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
>
> (B)if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

11 U.S.C. § 523(a).

Section 524 is the Code section that provides the basic protections of the bankruptcy discharge, regardless of the chapter in which the discharge is obtained. Specifically,

> Section 524(a)(2) provides that a discharge granted a debtor under section 727, 944, 1141, 1228 or 1328 operates as an

> injunction against the commencement or continuation of an action, the employment of process, or an act, including telephone calls, letters and personal contacts, to collect, recover or offset any discharged debt as a personal liability of the debtor, whether or not discharge of the particular debt has been waived by the debtor. Subsections 524(a)(3) and (b) establish the effect of the discharge injunction on community property.

4 Collier on Bankruptcy P 524.01 (16th 2019).

Enforcement of the Discharge Injunction

> Civil contempt, imposed under the court's section 105 powers, is the normal sanction for violations of the discharge injunction. A proceeding to enforce the discharge injunction is a core proceeding under section 157(b)(2)(O) of title 28, and courts should readily reopen a closed bankruptcy case to ensure that the essential purposes of the discharge are not undermined. Often, a major issue in such a proceeding is whether the debt is one that was discharged, a question that sometimes turns on whether it was a prepetition claim as defined by section 101.

4 Collier on Bankruptcy P 524.02 (16th 2019)

In *Taggart v. Lorenzen*, the Supreme Court held that the standard for finding contempt of the discharge injunction is the same as for other injunctions—a finding that there was no fair ground for believing that the conduct did not violate the injunction. The Court rejected the holding of the Court of Appeals for the Ninth Circuit that a party with a good faith subjective belief that it was not violating the injunction could not be held in contempt. The Court described its standard as an objective standard generally based on a reasonable belief about whether conduct was permitted:

> This standard is generally an objective one. We have explained before that a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable. As we said in *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 69 S. Ct. 497, 93 L. Ed. 599 (1949), "[t]he absence of wilfulness does not relieve from civil contempt." *Id.*, at 191, 69 S. Ct. 497, 93 L. Ed. 599.
>
> We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith. See *Chambers v. NASCO, Inc.*, 501 U. S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Thus, in *McComb*, we explained that a party's "record of continuing and persistent violations" and "persistent contumacy" justified placing "the burden of any uncertainty in the decree … on [the] shoulders" of the party

> who violated the court order. 336 U. S., at 192–193, 69 S. Ct. 497, 93 L. Ed. 599. On the flip side of the coin, a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction.

Taggart v. Lorenzen, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (2019).

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. Violation of the discharge injunction is remedied under the court's contempt power.

B. Creditors actions are knowing and intentional because they were informed of Debtor's bankruptcy, they received notice of reopening and listing of their debt; and they have had time to file an objection and have chosen not to do so.

C. Respondents have been informed that the debt has been included in the bankruptcy and is therefore barred by 11 U.S.C. § 524(a)(2).

D. Debtor has incurred actual damage on the basis that Respondent's behavior has caused Debtor emotional distress and has incurred attorney's fees and costs in the state court action and in seeking remedy to the violation.

E. Debtor's Counsel has communicated with Respondents nine (9) times over four (4) months requesting the litigation be dismissed but was ignored.

Movant has provided the Declaration of Douglas B. Jacobs ("Debtor's Counsel") in support of the Motion. Dckt. 62. Debtor's Counsel testifies to the following:

A. Debtor hired Counsel on April 30, 2019 to determine the effect of his Chapter 7 bankruptcy on the pending state court action *Carter v. Stoddard, et.al*.

B. After reviewing the case, Counsel reopened Debtor's bankruptcy case on May 16, 2019, and filed an amendment to Schedule F on May 22, 2019.

C. Counsel called Respondent Schultz and spoke with him about the need to dismiss the state court action as to Debtor. He informed Respondent about his rights regarding the bankruptcy case and that he should seek competent bankruptcy counsel to understand the process.

D. He followed up the phone conversation with a letter to Respondent

Schultz on May 6, 2019. (Exhibit D).

E. After being unable to reach Respondent Schultz over the phone again, Counsel sent another letter on May 28, 2019 again stating their request that Debtor be dismissed from the state court action. (Exhibit E).

F. Counsel spoke to Respondent Schultz again on July 25, 2019 and understood him to agree to dismiss Debtor in return for Debtor not pursuing any rights against the Carters, and agree to a deposition or testify regarding the other defendants in that matter.

G. Counsel called Respondent Schultz the same day to confirm the arrangement after Debtor had agreed to submit to a deposition and to testify (without admitting to any wrong-doing) in the state court action.

H. Counsel also wrote him a letter on August 3, 2019 inquiring as to when he could expect to see Debtor's dismissal.

I. Counsel again sent a letter to Respondent Schultz on August 5, 2019 after not hearing or receiving the state court dismissal. (Exhibit F).

J. Counsel states that as of October 10, 2019 he has not received the dismissal nor heard from Respondent Schultz.

K. Counsel asserts that during this proceeding Debtor has been deprived of his peace of mind and quiet enjoyment of life, worrying about the state court action and the cost of the defense. Thus, he should be entitled to sanctions against Respondents in an amount to compensate him for their behavior.

L. Counsel states the following regarding attorney's fees:

1. Counsel charges $350.00 per hour.

2. Counsel has worked 9.5 hours in reopening the bankruptcy case twice; talking to Respondent Schultz; sending five (5) letters to him, and preparing this motion and accompanying pleadings and papers.

3. Counsel anticipates working another hour in responding to any defensive pleadings as well as at least 30 minutes appearing at the preliminary court hearing.

4. Total charges come to $3,372.50.

5. The costs to reopen an add a creditor to Debtor's bankruptcy case have $291.00 in additional charges.

M. Finally, Counsel requests that the court sanction Respondents for inaction regarding this matter and forcing Counsel to bring this motion and that such sanction be equal to damages cause to Debtor as per the above and attorney's fees and costs in pursuing this.

Exhibits

Additionally, Movant provides properly authenticated Exhibits A through F as follows:

A. Order of Discharge for Sean Robert Stoddard

B. Complaint for Damages

C. Amendment to Schedule F

D. Correspondence from Counsel to Respondent Schultz dated 5/6/2019

E. Correspondence from Counsel to Respondent Schultz dated 5/28/2019

F. Correspondence from Counsel to Respondent Schultz dated 8/5/2019

Exhibit A- Order of Discharge for Debtor

The Order granted a discharge to Debtor as of August 14, 2017. Dckt. 24.

Exhibit B- State Court Action Complaint

The State Court Action Complaint was filed at the Butte County Superior Court on September 6, 2018 listing Debtor as a defendant. It alleges the following causes of action against Debtor and his various corporations: (1) medical negligence, (3) fraud and deceit, and (4) loss of consortium.

Exhibit C- Amendment to Schedule F

Counsel filed on May 22, 2019 an Amended Schedule F to add pre-petition creditors, namely– Respondents Patsy Carter and Monty Carter, items 4.7 on page 5 of Schedule F.

Exhibit D- May 6 Letter

May 6 Letter to Respondents was sent by Douglas B. Jacobs ("Counsel"), attorney for Movant. The letter informs respondents that Debtor will be re-opening his bankruptcy case in order to include the debt owed to respondents. Counsel informs Respondents that absent a showing of negligent acts as intentional and done with malice, their debt will be treat it as unsecured and discharged. The letter also suggests to Respondents that the best way to proceed would be to dismiss with prejudice the complaint against Movant but that it would allow Respondents to proceed against the other defendants involved.

Exhibit E- May 28 Letter

May 28 Letter informs Mr. Schultz that as confirmed by Movant, four LLCs owned by Movant are defunct entities and have been legally dissolved or abandoned. Thus, the Complaint would be against Movant individually and dba Norcal Foot and Ankle, and against Oroville Hospital.

The letter also states that Movant was unaware of the debt owed to Respondents when he filed bankruptcy. But proceeds to inform Respondent that lack of knowledge does not affect the fact that all unsecured obligations of a Chapter 7 Debtor are included in the case, whether not listed or known.

Additionally, Counsel informs Respondent that they can challenge the discharge but that it must be brought within a specified time– generally 60 days from the date of the Section 341 Meeting of Creditors hearing. Noting that the only exception he knows to this time-line being if the creditor did not know of the bankruptcy. Counsel mentions that the possible applicable subsection to prevent discharge would be section 523(a) and that bankruptcy court is the appropriate venue for such an action.

Counsel also informs Respondent that the bankruptcy case has been reopened to list their dent and that he does not think that Respondent could win a challenge to the discharge and again suggests that Debtor be dismissed from the action and that they proceed against the hospital.

Finally, Counsel notes that Debtor's was an asset case and as such Respondent Carters would be entitled to a share of the distribution given to unsecured creditors, which Debtor would forward upon Respondent Carter's agreement to dismiss Debtor from the complaint.

Exhibit F- August 5 Letter

The letter notes that Counsel had spoken to Respondent Schultz about dismissing the case per their conversation two weeks before but that no such document had been received. Counsel asserting that counsel and Respondent Schultz had agreed that Debtor would cooperate in their litigation against the Hospital but that his statements would not include any statements of malpractice or wrongdoing on his part. Counsel requests that the dismissal be forwarded and informs Respondent that Debtor is anxious to put the situation behind him.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on January 13, 2020. Dckt. 73. Respondent opposes the Motion on the following grounds:

A. Respondents did not violate the discharge injunction because their debt was not properly listed in the Chapter 7 case;

B. Respondent Carter had no knowledge of the bankruptcy until April 2018.

C. Respondents were not afforded an opportunity to file a claim, object to distribution, and/or object to discharge; and

D. Debtor's Chapter 7 case was an asset case.

E. Respondents Carter had no actual notice of the bankruptcy until after the deadlines to file a claim or objection had passed, thus their claim was not discharged.

F. Respondent Carter were not aware of the discharge injunction being applicable and contested the applicability by filing within a reasonable time an adversarial proceeding with this court once Debtor's counsel alleged that the debt was discharged.

G. Respondent further argues that the Debtor was aware of his misconduct and his misrepresentation to Respondent Carter, and was in the best position to know there was a pre-petition claim.

H. Respondent alleges that the pleadings on file show that none of the Respondents believed the discharge injunction applied and therefore could not have violated the discharge injunction.

I. Respondents argue that Debtor should have know that there could be potential claims for medical negligence and failed to list Respondents Carter.

J. Respondent Carter did not have an opportunity to timely file due to Debtor's failure to notify Respondents of the deadlines to file a proof of claim or a request for determination of dischargeability; and continued misrepresentation of Respondent Carter's condition.

K. Because of this failure to list and to notify Respondents, and for the continued misrepresentations, Respondents believed that their claim was excepted from discharge and thus the discharge injunction did not apply to them.

L. In their belief that the injunction did not apply to them, Respondents argue that thus they cannot be held in contempt.

For purposes of the present Motion, the court stops short of summarizing and making determinations on the dischargeability grounds extensively alleged in Respondent's Opposition. Movant and Respondent are presently litigating these issues on the adversary proceeding, Case No. 19-02119.

Respondents provide the Declaration of Steven H. Schultz ("Respondent Schultz") in support of the Opposition. Dckt. 74. Respondent Schultz testifies to the following:

A. He was unaware of Debtor's bankruptcy when Respondent Carters contacted him.

B. He has communicated with Debtor's Counsel regarding the state court action several times, including phone calls and letters.

C. He reviewed Respondent Carter's medical records and found that Debtor recommended ankle surgery, performed said surgery, provided care for over one year after the surgery, and did not inform Respondent Carter of the failure of the ankle surgery– but instead mislead her into believing

that she was healing as planned.

D. Debtor misled Respondent Carter into believing that she would benefit from surgery even though she did not have end stage arthritis; Debtor did not perform imaging studies; and she had other problems that made her inappropriate candidate for the surgery.

E. Debtor has a pattern of recommending ankle replacement surgeries to inappropriate patients and that there are at least three other cases against Debtor pending in Butte County Superior Court.

F. The complaint asserts causes of action of intentional misconduct for engaging in the above mentioned intentional conduct against Debtor, not allegations of negligence.

Exhibits

Additionally, Respondent provides Exhibits A through C. Such exhibits are not properly authenticated but the court provides the following brief summary nonetheless:

A. Complaint for Damages filed by Respondents

B. Correspondence dated 4/4/2018 and bankruptcy cover sheet

C. Correspondence dated 5/28/2019

Exhibit A- Complaint

As explained above, the Complaint alleges three causes of action against Debtor and his related corporations.

Exhibit B- April 4 Letter

April 4 Letter was sent by Debtor's former counsel, Michael O. Hays ("Hays"), to Respondent Schultz in response to his request for medical record and billing request to Debtor for Respondent Carter. Hays informs Respondent Schultz that Debtor filed bankruptcy and received discharge in August 14, 2017. He also states that Respondent Carter's injury having been sustained before the bankruptcy filing, any claim would be covered and discharged.

As a post-script, Hays informs Respondent Schultz that "As I believe you are aware any suit commenced against someone where the debt or claim has been discharged in bankruptcy is potentially a violation of the Bankruptcy Discharge Injunction for which sanctions and attorney fees are regularly awarded."

Exhibit C- May 28 Letter

As explained above, the May 28 Letter is a series of points as to Debtor, the discharge injunction effects, the possible course of action that Respondents could take regarding their claims, and

request for dismissal of Debtor from the state court action.

DEBTOR'S REPLY

Debtor filed a Reply to the Opposition on January 20, 2020. Dckt. 77. Debtor re-asserts that Respondents had knowledge of the bankruptcy since April 4, 2018, that they were informed of it several other times, but yet chose to ignore the bankruptcy and proceed with the state court action (filed September 6, 2018). Thus, argues Debtor, such actions are a violation of the bankruptcy "injunction" under U.S.C. § 524(a)(2).

DISCUSSION

Debtor filed his petition on April 28, 2017. Dckt. 1. The court issued a discharge on August 14, 2017. Dckt. 24. The last day to file a proof of claim was September 8, 2017.

Respondent was under Debtor's care from at least June 2016 (surgery occurred on June 24, 2016) through June 2017. Respondent Carter underwent an amputation of her leg allegedly due to Debtor's medical malpractice on December 21, 2017.

After a request for medical record and billing to Debtor, Debtor's previous counsel contacted Respondent Schwartz on April 4, 2018 and informed him of the bankruptcy filing and discharge. Respondent Schultz contends that prior to April 2018 Respondents had no knowledge of Debtor's bankruptcy case.

On May 18, 2018, the Trustee's final report was approved and distribution was ordered. Dckt. 37. On June 25, 2018, the bankruptcy case was closed. Dckt. 40.

Respondent's Complaint was filed on September 6, 2018.

On May 16, 2019, Debtor's Counsel, filed an ex-parte motion to reopen the bankruptcy case. Dckt. 42. Debtor filed an Amended Schedule F to include respondents on May 22, 2019.

Respondents filed a determination of exception to discharge case in bankruptcy court on September 19, 2019, Case No. 19-02119.

<u>Time Line</u>

Beginning with the Motion, there is no dispute that Debtor did not list or give notice to Respondents of his bankruptcy case. It is asserted that he did not know that Respondents might have a claim against Debtor.

The bankruptcy case was filed on April 28, 2017. Debtor's bankruptcy case was an "asset case" and the claims bar date was set as September 8, 2017. Notice, Dckt. 16.

The Chapter 7 Trustee administered assets of the Bankruptcy Estate and filed his final report on February 22, 2018. Dckt. 30. This final report states that a dividend was paid to the Internal Revenue Service for its priority unsecured claim, which exhausted all of the monies that the Trustee had to administer, with there being no dividend paid on general unsecured claims.

In the Motion, Debtor makes passing reference to 11 U.S.C. § 523(a)(3), stating that since "Debtor did not know," then "Debtor did not list" Respondent on the Schedules.

In the twenty-two (22) page opposition, Respondent recounts the Debtor's conduct and alleges that Debtor had actual knowledge, as the doctor who performed the surgery and then provided the post-surgery treatment of the surgery "gone wrong."

It is further asserted, and does not appear to be in dispute, that the first that Respondents and their attorney learned of the bankruptcy case was the April 4, 2018 letter from Michael O Hays, Debtor's former counsel.

While the Parties make reference to 11 U.S.C. § 523(a)(3), nobody cites the seminal Ninth Circuit case directly on point - *Beezley v. California Land Title Co*, 994 F.2d 1433 (9th Cir. 1993). In discussing the application of 11 U.S.C. § 523(a)(3), unscheduled claims for what would be nondischargeable obligations under 11 U.S.C. § 523(a)(2), (4), or (6) and creditors of such claims, the Ninth Circuit panel held:

> Beezley's [that bankruptcy debtor's case], however, **was a no asset, no bar date Chapter 7 case**. After such a case has been closed, dischargeability is unaffected by scheduling; amendment of Beezley's schedules would thus have been a pointless exercise. *See American Standard Ins. Co. v. Bakehorn*, 147 Bankr. 480, 483 (N.D. Ind. 1992); *In re Stecklow*, 144 Bankr. 314, 317 (Bankr. D. Md. 1992); *In re Tucker*, 143 Bankr. 330, 334 (Bankr. W.D.N.Y. 1992); *In re Peacock*, 139 Bankr. 421, 422 (Bankr. E.D. Mich. 1992); *In re Thibodeau*, 136 Bankr. 7, 10 (Bankr. D. Mass. 1992); *In re Hunter*, 116 Bankr. 3, 5 (Bankr. D.D.C. 1990); In re Mendiola, 99 Bankr. 864, 865 (Bankr. N.D. Ill. 1989). If the omitted debt is of a type covered by 11 U.S.C. § 523(a)(3)(A), it has already been discharged pursuant to 11 U.S.C. § 727. **If the debt is of a type covered by 11 U.S.C. § 523(a)(3)(B), it has not been discharged, and is non-dischargeable**.

Beezley v. California Land Title Co, 994 F.2d at 1434-1436 (emphasis added).

In his concurring opinion, Judge O'Scannlain explains in pertinent part:

> Unscheduled debts are thus divided into two groups: those that are "of a kind specified in paragraph (2), (4), or (6) of this subsection," and those that are not. Loosely speaking, the paragraphs in question describe debts arising from intentional wrongdoing of various sorts (respectively, fraud, fiduciary misconduct, and the commission of malicious torts). What distinguishes these from all other debts is that, under section 523(c) and rule 4007(c), a creditor must file a complaint in the bankruptcy court within 60 days after the date established for the first meeting of creditors in order to assert their nondischargeability. Failure to litigate the dischargeability of these sorts of debts right away disables the creditor from ever doing so; an intentional tort debt will be discharged just like any other.
>
> Section 523(a)(3) threatens nondischargeability in order to safeguard the rights of creditors in the bankruptcy process. The difference between subparagraphs (A) and (B) reflects the different rights enjoyed by and requirements imposed upon

> different kinds of creditors. For most creditors, the fundamental right enjoyed in bankruptcy is to file a claim, since this is the *sine qua non* of participating in any distribution of the estate's assets. **Section 523(a)(3)(A) safeguards this right by excepting from discharge debts owed to creditors who did not know about the case in time to file a claim.** By contrast, for creditors holding intentional tort claims the salient rights are not only to file a claim but also to secure an adjudication of nondischargeability. **Thus, section 523(a)(3)(B) excepts intentional tort debts from discharge notwithstanding the creditor's failure to file a timely complaint under section 523(c) if the creditor did not know about the case in time to file such a complaint (even if it was able to file a timely proof of claim).**

Id. at 1435-1436.

An exception to the prophylactic application rule in § 523(a)(3) is discussed in Collier on Bankruptcy, ¶ 523.09[5], stating:

> [5] Applicability of Section 523(a)(3)(A) Exception in No-Asset Cases
>
> It is not uncommon for a debtor to discover, after the entry of the discharge order and the closing of a no-asset chapter 7 bankruptcy case, that a creditor was omitted from the schedules. Some debtors, apparently believing that debts must be scheduled to be discharged, have moved to reopen the case to amend the schedules to add the creditor. Some courts have permitted this unless there is evidence of fraud or intentional design in omitting the creditor from the schedules. Other courts have refused to permit the reopening of a bankruptcy case to permit a debtor to schedule an omitted debt.
>
> Under the language of section 523(a)(3)(A) it is unnecessary to reopen a case to obtain a discharge of an unscheduled debt in a no-asset case. **In a no-asset chapter 7 case, no deadline is set for the filing of claims. Therefore, the lack of notice to the creditor does not deprive the creditor of the opportunity to file a timely proof of claim**. In such circumstances, **unless the debt falls within subsection 523(a)(2), (a)(4) or (a)(6), it is discharged**. If the **debt does fall within those subsections**, since the deadline for filing a dischargeability complaint will have passed before the case is closed, **reopening the case will not alter the fact that the debt is nondischargeable**. Nevertheless, a bankruptcy court has the discretion to reopen a case to permit a debtor to amend the schedules to add a creditor so that the debtor may have an accurate list of the discharged debts, thereby assisting, in a practical manner, in the implementation of the debtor's fresh start.

(Emphasis added.) Once of the cases cited for the proposition that if it is a claim for which the nondischargeable grounds are 11 U.S.C. § 523(a)(2), (4), or (6) renders it nondischargeable, even if it was a no asset case, is the Ninth Circuit decision in *Beezley*.

At the hearing, **xxxxxxxxxx**

FINAL RULINGS

16.	**19-20902-A-7** **DMW-5**	**ARTHUR/MARJORIE DRUMM** **David Boucher**	**MOTION FOR COMPENSATION FOR DOUGLAS M. WHATLEY, CHAPTER 7 TRUSTEE(S)** **12-10-19 [45]**

Final Ruling: No appearance at the January 30, 2020 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2019. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Douglas M. Whatley, the Chapter 7 Trustee, ("Applicant") for the Estate of Arthur Brook Drumm and Marjorie Jeanne Drumm ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 15, 2019, through December 27, 2019.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
>
> (ii) services that were not—
>
> (I) reasonably likely to benefit the debtor's estate;
>
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood,*

Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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 general case administration and sale of real property. The Estate has $54,039.39 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 REQUESTED

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

General Case Administration: Applicant opened the case and entered it into the trustee's case management software system; reviewed the petition and related schedules, and mail; reviewed case with the attorney; discussed case with debtor's attorney regarding the transfer of funds to trustee account, prepared and conducted the 341 examination of debtor, prepared and filed Forms 1, 2, and 3 as required by the U.S. Trustee for successive six-month periods, examined proofs of claim to eliminate duplication and to identify those claims that may be in addition to or in different amounts from claims listed on the debtor's schedules; prepared monthly bank reconciliations and proper accounting of all assets and disbursements made; and prepared final accounting and maintained a proper bond.

Real Property Sale: Applicant retained counsel to assist in drafting the real estate sale motion, employment of the real estate broker/agent, preparing and discussing offer(s) and counter offers; retained of an accountant to perform tax preparation for proceeds acquired from the sale of the estate's real property; and assisted accountant to obtain a cost basis for the residence and filing accountant's application for final compensation.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$10,028.82
3% of the balance of over $950,000.00	$ none
Calculated Total Compensation	$15,778.82
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$15,778.82
Less Previously Paid	$0.00
Total First and Final Fees Requested	$15,778.82

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $15,778.82 are approved pursuant to 11 U.S.C. § 330 are 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.

In this case, the Chapter 7 Trustee currently has $54,039.39 of unencumbered monies to be administered. The Chapter 7 Trustee conducted general case administration and sale of real property. Applicant's efforts have resulted in a realized gross of $54,039.39 recovered for the estate. Dckt. 52.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	$15,778.82
Costs and Expenses	$152.00

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 Douglas M. Whatley, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Douglas M. Whatley is allowed the following fees and expenses as a professional of the Estate:

Douglas M. Whatley, the Chapter 7 Trustee

Fees in the amount of $15,778.82
Expenses in the amount of $152.00,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees 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.

17.	**19-27316-E-7** **GC-1**	**MICHAEL/HEATHER GAVIA** **Julius Cherry**	**MOTION TO COMPEL ABANDONMENT** **12-5-19 [9]**

Final Ruling: No appearance at the January 30, 2020 Hearing is required.

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2019. By the court's calculation, 57 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.

The Chapter 7 Trustee has filed a statement of non-opposition.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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 Michael Stanley Gavia and Heather Lynn Gavia ("Debtor") requests the court to order Susan K. Smith ("the Chapter 7 Trustee") to abandon property commonly known as certain business assets, including a carpet cleaner and interest in The Top to Bottom Cleaning Co. ("Property"). Debtors are self-employed as The Top to Bottom Cleaning Co. Debtors clean homes. The Declarations of Michael Stanley Gavia and Heather Lynn Gavia has been filed in support of the Motion and values the Property at $4,500.00.

The Trustee filed a statement of non-opposition on December 19, 2019. Trustee's December 19, 2019 Docket Statement.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property 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 (not 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 to Compel Abandonment filed by Michael Stanley Gavia and Heather Lynn Gavia ("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 certain business assets, including a carpet cleaner and interest in The Top to Bottom Cleaning Co. and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Name of Trustee ("Trustee") to Michael Stanley Gavia and Heather Lynn Gavia by this order, with no further act of the Trustee required.

18. **18-25323-A-7** **DNL-6**

LESLIE RAY
Thomas Amberg

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)
12-26-19 [92]

Final Ruling: No appearance at the January 30, 2020 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 26, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Carmody MacDonald, Special Counsel ("Applicant") for Alan S. Fukushima, 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 March 13, 2019, through November 26, 2019. The order of the court approving employment of Applicant was entered on March 26, 2019. Dckt. 46. Applicant requests fees in the amount of $6,192.50 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 attorney'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 attorney 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 cab 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 attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "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 assisting

Trustee with pursuing and protecting the estate's rights in the Illinois Probate Action. The Estate has $89,000.00 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.

State Court Probate Action: Applicant spent 17.5 hours in this category. Applicant facilitated the prosecution of the Probate Action; investigated and worked with Trustee's general counsel to favorably settle the claims underlying the Probate Action; and sought approval of the settlement agreement by the Illinois Court.

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**
Robert E. Eggmann	17.5	$395.00	$6,912.50
	0	$0.00	$0.00
Total Fees for Period of Application			$6,912.50

Costs & Expenses

Applicant incurred no expenses during is employment as special counsel.

FEES AND COSTS & EXPENSES ALLOWED

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 $6,192.50 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

Applicant incurred no expenses during is employment as special counsel.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts

as compensation to this professional in this case:

Fees	$6,912.50
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 Carmody MacDonald ("Applicant"), Special Counsel for Alan S. Fukushima, 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 Carmody MacDonald is allowed the following fees and expenses as a professional of the Estate:
>
> Carmody MacDonald, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $6,912.50
> 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.

19. 19-27831-A-7 MICHELE MONTEFORTE
Scott Shumaker

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-3-20 [14]

Final Ruling: No appearance at the January 30, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on January 5, 2020. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to January 3, 2020.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 21, 2020 (Dckt. 21), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, this case having been previously dismissed (Order, Dckt. 21) and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered**.**

20. **19-21042-E-7 UST-1** | **MICHAEL/BERNADETTE AMBERS** **Lucas Garcia** | **MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B) AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 12-3-19 [97]**

Final Ruling: No appearance at the January 30, 2020 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, and parties requesting special notice on December 3, 2019. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 Extend Deadline to File a Complaint Objecting to Discharge is granted.

Tracy Hope Davis, the United States Trustee for Region 17, ("Movant") moves to extend the deadline to file a complaint objecting to Michael Rae Ambers and Bernadette Elizabeth Ambers's ("Debtor") discharge because Debtor has failed to provide Trustee with documents requested on October 23, 2019, specifically documents pertaining to Debtor's inheritance of $127,000.00..

The deadline for filing a complaint objecting to discharge was December 3, 2019. Dckt. 84. The Motion requests that the deadline to object to Debtor's discharge be extended to April 1, 2020.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on December 3, 2019, the day of the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to April 1, 2020.

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 to Extend Deadline to File a Complaint Objecting to Discharge filed by Tracy Hope Davis, the United States Trustee for Region 17, ("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 Motion is granted, and the deadline for Movant to object to Michael Rae Ambers and Bernadette Elizabeth Ambers' ("Debtor") discharge is extended to April 1, 2020.

21. **19-27251-A-7** **MICHAEL CHAPMAN** **MOTION FOR RELIEF FROM**
CAS-1 **Charles Hatings** **AUTOMATIC STAY**
12-13-19 [11]

FINANCIAL SERVICES VEHICLE TRUST VS.

Final Ruling: No appearance at the January 30, 2020 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.

Financial Services Vehicle Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 BMW X1xDrive28i Sport Utility 4D, VIN ending in 7519 ("Vehicle"). The moving party has provided the Declaration of Pamela Weems to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Chapman ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $627.39 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there are six (6) pre-petition payments in default, with a pre-petition arrearage of $3,764.34. *Id.*

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $28,613.00 (Exhibit C, Kelly Blue Book Valuation, Dckt. 15; Declaration authenticating Exhibit C, Dckt. 13;).

Debtor provides for the surrender of the Vehicle in the Statement of Intention. Dckt. 1. The Vehicle was repossessed by Movant on November 20, 2019. Dckt. 11.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir.

2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay 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.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by Financial Services Vehicle Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 BMW X1xDrive28i Sport Utility 4D ("Vehicle"), and applicable non-bankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

22. **19-27857-E-7** **MARION MILLIGAN** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **1-3-20 [13]**

Final Ruling: No appearance at the January 30, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on January 5, 2020. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to January 3, 2020.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 6, 2020 (Dckt. 15), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the case having been previously dismissed (Order, Dckt. 15) and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

23. **19-25965-A-7** **HOUMAN SANJIDEH AND** **MOTION FOR RELIEF FROM**
AP-1 **BANAFSHEH JAHAN** **AUTOMATIC STAY**
Gerald White **12-27-19 [19]**
U.S. BANK N.A., VS.

Final Ruling: No appearance at the January 30, 2020 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 27, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2006-5 ("Movant") seeks relief from the automatic stay with respect to Houman Sanjideh and Banafsheh Javaheri Jahan's ("Debtor") real property commonly known as 2111 Outrigger Drive, El Dorado Hills, California ("Property"). Movant has provided the Declaration of Ruth Mendonza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payments, with a total of $6,768.14 in post-petition payments past due. Declaration, Dckt. 24. Movant also provides evidence that there are nine (9) pre-petition payments in default, with a pre-petition arrearage of $61,193.30. *Id*.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $1,189,114.76 (Declaration, Dckt. 24), while the value of the Property is determined to be $1,125,000.00, as stated in Schedules B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In*

re Silverling, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Prior Discharge

Debtor was granted a discharge in this case on January 14, 2020. Dckt. 26. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay 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.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2006-5 ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2111 Outrigger Drive, El Dorado Hills, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Houman Sanjideh and Banafsheh Javaheri Jahan ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

24. **19-26986-A-7** **LAWRENCE/SONJA ANGLE** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
DVW-1 **Paul Bains** **1-10-20 [15]**

21ST MORTGAGE CORPORATION
VS.

Final Ruling: No appearance at the January 30, 2020 hearing is required.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.

21st Mortgage Corporation ("Creditor") having filed a Notice of "Withdrawal of Motion", which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 28, 2020, Dckt. 26; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Lawrence Bennett Angle and Sonja Jean Angle ("Debtor"); the Ex Parte Motion is granted, Creditor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Relief from the Automatic Stay filed by 21st Mortgage Corporation ("Creditor") having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 26, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is dismissed without prejudice.