UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

February 1, 2018, at 10:30 a.m.

1.	**17-90802-E-7**	**LORRE HOPSON**	**MOTION TO REDEEM**
	PBG-1	**Patrick Greenwell**	**1-16-18 [12]**

APPEARANCE OF PATRICK GREENWELL, ESQ. COUNSEL FOR DEBTOR REQUIRED FOR HEARING

TELEPHONIC APPEARANCE PERMITTED

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 Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the U.S. Trustee on January 16, 2018. By the court's calculation, 16 days' notice was provided. The court set the hearing for February 1, 2018.

The Motion to Redeem was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Redeem is denied without prejudice.

Lorre Hopson ("Debtor") seeks to redeem a 2015 Toyota Prius, VIN ending in 1985 ("Property") from the claim of First Tech Credit Union ("Creditor") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Lorre Hopson. Dckt. 14. Debtor seeks to value the Property at a replacement value of $12,955.00 as of the Motion's filing date, not the petition date as specified by 11 U.S.C. § 506(a)(2). An appraisal of the Property is filed as an exhibit. Exhibit 2, Dckt. 20 (valuing the Property at $12,955.00 on the Motion filing date).

Debtor amended Schedule A/B on January 16, 2018, to list the Property's value as $12,955.00. Dckt. 16. Amending a schedule—not supplementing—indicates that the valuation goes back to the commencement of the case. When this case was filed, Debtor scheduled (stated under penalty of perjury) the Property's value as $14,392.00. Dckt. 1.

The court has now been presented with two statements under penalty of perjury by Debtor: First, the Property has a value of $14,392.00, and now, (when pursuing a Motion to Redeem) the value of the Property has dropped to $12,955.00.

Debtor offers no testimony under penalty of perjury as to how Debtor comes to the value—but appears to merely rely on the two conflicting amounts stated under penalty of perjury in the Original and the Amended Schedules A/B.

Debtor has filed three exhibits. The first is identified as Loan Disclosure and Note, the second is the "appraisal" by Sharon Monroe, and the third is stated to be an "Edmunds Report of Value." Dckt. 20. However, nobody has come forward to provide any testimony authenticating those exhibits. FED. R. EVID. 901 et seq. While purporting to be an Edmunds valuation report, the court has no good idea of where it came from, and nobody has been willing to come out and state under penalty of perjury the source of the exhibit and why the court should find it credible valuation evidence.

The court also notes that the purported "appraisal" by Sharon Monroe merely states that the valuation is parroting the unauthenticated Edmunds valuation.

Debtor having failed to provide the court with credible, properly authenticated evidence, the Motion is denied without prejudice. At best, Debtor has provided the court with conflicting statements under penalty of perjury as to the value.

What is exceedingly troubling about this motion is the abject failure of Debtor to make any attempt to provide the court with evidence as provided by the Federal Rules of Evidence. It is as if Debtor is testing the court, to see if after eight years the court has thrown the Federal Rules of Evidence, Federal Rules of Civil Procedure, and Federal Rules of Bankruptcy Procedure to the wind. The court has not. Possibly, Debtor believes that complying with these simple Rules is not required. Debtor must comply.

In light of this failure, for any new motion to value, Debtor shall provide the testimony by direct testimony statements pursuant to Local Bankruptcy Rule 9017-1. The court shall then conduct an evidentiary hearing at the regularly scheduled hearing on the new motion. Each witness providing a direct testimony statement shall appear at the hearing, and Debtor's counsel shall call each witness and conduct his direct testimony examination.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Redeem filed by Lorre Hopson ("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 denied without prejudice.
>
> **IT IS FURTHER ORDERED** that if Debtor files another motion to redeem the 2015 Toyota Prius, VIN ending 1985, Debtor shall provide the testimony by direct testimony statements pursuant to Local Bankruptcy Rule 9017-1. The court shall then conduct an evidentiary hearing at the regularly scheduled hearing on the new motion. Each witness providing a direct testimony statement shall appear at the hearing, and Debtor's counsel shall call each witness and conduct his direct testimony examination.

2. **09-90311-E-7** **BRIAN/PATTY CARROLL** **MOTION TO DETERMINE PRODUCT LIABILITY SETTLEMENT IS NOT PROPERTY OF THE BANKRUPTCY ESTATE**
GMW-3 **G. Michael Williams**
1-3-18 [75]

No 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, parties requesting special notice, and Office of the United States Trustee on January 3, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Determine Property Is Not Property of the Estate 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 Determine Property Is Not Property of the Estate is xxxxxxxx.

Patricia Carroll, a co-debtor in this case, ("Debtor") moves for a court order declaring that product liability settlement proceeds listed in her case are not property of the Bankruptcy Estate. The lawsuit giving rise to those proceeds is listed on Amended Schedule B as having a value of $240,000.00, and Debtor claimed an exemption of $240,000.00 pursuant to California Code of Civil Procedure § 704.140 on Amended Schedule C. Dckt. 54.

Debtor relates that she had a transvaginal mesh patch implanted on August 22, 2003, that led to subsequent issues and to Debtor pursuing a legal claim in 2015. Dckt. 78. Debtor's bankruptcy case on February 6, 2009, and Debtor received a discharge on May 19, 2009. Dckt. 31. Debtor argues that she did not know about the legal claim that was available to her until 2014, and as such, the claim was not "sufficiently rooted" in her pre-petition past such that it would be an interest of the Bankruptcy Estate. Debtor argues that her claim did not accrue until 2014 when she learned of a United States Drug and Food Agency ("FDA") warning and when she subsequently that year learned about being able to sue the manufacturer of her transvaginal mesh patch.

Debtor argues that the settlement proceeds are not part of the Bankruptcy Estate in this case and requests that the court issue an order holding the same.

Debtor elected not to file a points and authorities in support of the Motion. As is required under the Local Bankruptcy Rules in this District, the motion is a separate pleading from the points and authorities, which are separate from each declaration, which are separate from the exhibits (which may be combined into one document). LOCAL BANKR. R. 9004-1(c), 9014-1(d)(4). A recent addition to the Local Bankruptcy Rules allows for the filing of a "Mothorities," a pleading in which the points and authorities may be included with the motion (which motion must state with particularity the grounds upon which the relief is based, FED. R. BANKR. P. 9013), so long as the Mothorities does not exceed six pages in length. *Id.* Here, the Motion is seven pages in length, so it does not fall within the Mothorities exception.

Counsel for Debtor may argue, "but judge, it is only one page, so let it go, it's not 'fair' that Debtor has to follow the Rules." The six-page limit and the Mothorities exception were the result of more than a year-long effort, with active participation from members of the bar. It was to find a method to allow for "simple" motions and continue to prohibit the abusive Mothorities that some attorneys attempted to file. (The abuse was not only to the court, but also to the opposing party, hiding the grounds amid extensive citations, quotations, arguments, conjecture, and speculation for which the movant would disavow any Federal Rule of Bankruptcy Procedure 9011 responsibility.)

The court has looked at Debtor's citations and quotations in the improper Mothorities filed in this Contested Matter.

CHAPTER 7 TRUSTEE'S REPLY

Michael McGranahan ("the Chapter 7 Trustee") filed a Reply on January 17, 2018. Dckt. 86. The Chapter 7 Trustee alleges that determination of whether the settlement proceeds are property of the estate will depend on the date Debtor's claim accrued. *Id.* at 4:17–18.

The Chapter 7 Trustee argues that claim accrual is a matter of state law, not federal law. *Id.* at 4:18–19 (citing *Goldstein v. Wells Fargo Bank, N.A. (In re Goldstein)*, 526 B.R. 13, 21 (B.A.P. 9th Cir. 2015)). He argues pursuant to California case law that a cause of action—under the delayed discovery rule—begins to run once "plaintiff has reason to suspect an injury and a wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for that cause of action." *Id.* at 5:8–11 (citing *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797 (2005)).

The Chapter 7 Trustee restates a number of dates that Debtor revealed:

A. August 22, 2003, mesh implantation;

B. October 8, 2003, excision of exposed section of mesh implant;

C. June 10, 2005, excision of pelvic foreign body and repair of implant; and

D. November 14, 2005, excision of mesh pieces and clips.

The Chapter 7 Trustee argues that Debtor knew or suspected that she had a claim around 2005 when she first consulted an attorney. *See* Exhibit to Amended Schedule B, Dckt. 54 (stating that "wife consulted an attorney regarding a possible claim" around 2005).

The Chapter 7 Trustee relies heavily on the Bankruptcy Appellate Panel's ruling in *Goldstein v. Wells Fargo Bank, N.A. (In re Goldstein)*, for a similar legal scenario about a legal claim becoming available post-petition based on pre-petition facts. In that case, the Bankruptcy Appellate Panel rejected the debtor's contention that his claim did not accrue until post-petition when he learned certain facts. Instead, the Panel focused on California law holding that accrual happens "upon the occurrence of the last element essential for the cause of action." 526 B.R. at 21 (citing *Howard Javis Taxpayers Assn. v. City of La Habra*, 25 Cal. 4th 809, 815 (2001)).

The Chapter 7 Trustee argues that all of the necessary facts for Debtor's products liability claim arose between 2003 and 2005, pre-petition. Therefore, any settlement proceeds from her products liability lawsuit are property of the Estate.

CHAPTER 7 TRUSTEE'S OBJECTION TO EXHIBIT A

The Chapter 7 Trustee filed an Objection to Exhibit A on January 17, 2018. Dckt. 87. He argues that Exhibit A (FDA safety notice) has been introduced without any evidentiary basis and has not been properly authenticated in violation of Federal Rule of Evidence 901. Further, the Chapter 7 Trustee argues that Debtor is not a medical specialist or expert who can introduce the FDA safety notice as part of her expert opinion by Federal Rules of Evidence 702 through 706. He also argues that the document is hearsay under Federal Rule of Evidence 801 to which no exception applies.

DEBTOR'S REPLY

Debtor filed a Reply on January 25, 2018. Dckt. 94. Debtor, like the Chapter 7 Trustee, raises the delayed discovery rule, but Debtor argues that she did not become aware of the potential defective nature of the pelvic mesh device until 2014. Debtor argues that after consulting with an attorney in 2005 about the device, she was informed that there was no factual or legal basis to believe that the mesh implant was defective at that time, meaning that she had no knowledge of a viable claim.

Debtor agrees with the Chapter 7 Trustee's reading of *In re Goldstein* that the Bankruptcy Appellate Panel "found that if a claim could have been [brought], it has accrued." Debtor disagrees that her claim could have been brought pre-petition, however. She believes that she had no support for her claim until the FDA safety notice was issued in July 2011.

IMPROPER ADJUDICATION BY MOTION

Federal Rule of Bankruptcy Procedure 7001 specifies when an adversary proceeding, rather than a motion or application pursuant to Federal Rule of Bankruptcy Procedure 9014, is required. Federal Rule of Bankruptcy Procedure 7001(2) provides:

> "An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:
> . . .
>
> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d); . . . ."

Here, Debtor seeks to have the court adjudicate the respective interests of Debtor and the Bankruptcy Estate in the Property at issue. Thus, such adjudication is by an adversary proceeding. FN.1.

FN.1. Collier on Bankruptcy, Sixteenth Edition, ¶ 7001.03[3] states:

> [3] Other Interests in Property
>
> In addition to requiring adversary proceedings to determine the extent of a lien, clause (2) of Rule 7001 also applies to the determination of the extent of any "other interest in property." Accordingly, an adversary proceeding is necessary for the determination of such matters as disputes as to the ownership of stock in the debtor, the extent of a debtor's interest in partnership property and whether mortgaged property belongs to the debtor.
>
> *See In re RMS Titanic, Inc.*, No. 3:16-bk-2230-PMG, 2016 Bankr. LEXIS 4560 (Bankr. M.D. Fla. July 22, 2016) (French government asserted interest in artifacts recovered from the wreck of the R.M.S. Titanic); *In re Indian Nat'l Finals Rodeo Inc. & Indian Nat'l Finals Rodeo Ass'n*, No. 11-60113-11, 2011 Bankr. LEXIS 2400, at *22 (Bankr. D. Mont. June 20, 2011) (proceeding to determine whether sponsor funds and membership fees belong to the estate); *In re Cadiz Properties, Inc.*, 278 B.R. 744 (Bankr. N.D. Tex. 2002) (extent of stock ownership); *In re Corky Foods Corp.*, 85 B.R. 903 (Bankr. S.D. Fla. 1988) (interest in limited partnership); *In re Colrud*, 45 B.R. 169 (Bankr. D. Alaska 1984) (debtor's interest in mortgaged property); *but see Mission Prod. Holdings v. Tempnology LLC (In re Tempnology LLC)*, 559 B.R. 809, 823 (B.A.P. 1st Cir. 2016) (holding that dispute over the "scope of [the movant's] rights as a licensee of intellectual property in light of its election under § 365(n) after the Debtor rejected the contract giving rise to the license" did not need to be brought as an adversary proceeding because the movant did not assert "ownership rights in the Debtor's property")."

The Chapter 7 Trustee has filed a response, not raising the issue. Though the Supreme Court has specified an adversary proceeding in adopting this Rule, the courts generally allow the parties to stipulate to adjudicating what would otherwise require an adversary proceeding as a contested matter. That allows the parties to take into account the economics of the issues, the amount in dispute, and whether the full "federal case" procedures are warranted. That is especially true when there are few, if any, factual issues in dispute and the real dispute is over the law.

However, to do so, all of the parties must so consent to using the contested matter procedure. At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

DISCUSSION

No Tentative Ruling Posted

In Light of the Parties Not Having Filed Consents to Have the Interests at Issue Determined by Contested Matter, the Court Does Not Post a Tentative Ruling to Avoid the Appearance That a Party May Have Withheld Consent to Proceed by Contested Matter to Avoid an Apparent Adverse Ruling.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Determine that Property is Not Property of the Estate filed by Patricia Carroll ("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 **xxxxxxxxxxxxx**.

3. **14-91520-E-7** **JOANN TEEM**
WFH-7 **Gilbert Vega**

CONTINUED MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH JOANN MARY TEEM
12-5-17 [92]

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 December 5, 2017. By the court's calculation, 37 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 McGranahan, the Chapter 7 Trustee, ("Movant" or "Trustee") requests that the court approve a compromise and settle competing claims and defenses with Joann Teem, the Chapter 7 Debtor ("Settlor"). The claims and disputes to be resolved by the proposed settlement are about Settlor's interest in Varni Corporation stock and interest in payments from Varni Trust.

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 B in support of the Motion, Dckt. 95):

A. Settlor consents to the sale of common stock by the Trustee to Varni Corporation through a stock redemption purchase. The Trustee shall retain all of the proceeds received for the sale of the Varni Corporation common stock;

B. Settlor and Trustee will instruct the Varni Trust to pay accrued but undistributed distributions in the amount of $3,125.00 to the Trustee for the benefit of the bankruptcy estate;

C. Settlor will not claim an exemption in the $3,125.00 distributed from the Varni Trust to the Trustee, and Settlor will only assert an exemption in the "remainder of the Varni Trust, exclusive of the [$3,125.00] distribution." Settlor will amend Schedule C to assert this exemption, to which the Trustee has no objection;

D. Settlor agrees not to claim any exemption in any proceeds of the sale of the Varni Corporation stock or the $3,125.00 distributed from the Varni Trust. Settlor agrees not to further amend her Schedule C;

E. Settlor executed an addendum to the stock redemption agreement declaring that the original stock certificate had been lost and agreed to indemnify Varni Corporation from any damages that might arise from discovering the original stock certificate;

F. The interests in the Varni Trust beyond the $3,125.00 distribution are to be abandoned to the Settlor; and

G. The Parties will bear own respective attorney's fees and costs relating to this Agreement and the litigation involving the subject matter thereof.

JANUARY 11, 2018 HEARING

At the hearing, the court noted that Debtor amended Schedule C, but an exemption for the 169.54 shares was listed still, which is inconsistent with the proposed settlement with Debtor and with the repurchase of stock by Varni Corporation. Dckt. 105.

The parties reported that the claimed exemption was an oversight by Debtor, but Debtor's counsel was not present at the hearing to address it. The court continued the hearing to 10:30 a.m. on February 1, 2018, to allow the parties to address the matter. Dckt. 107. The court ordered Debtor's counsel to appear at the continued hearing. *Id.*

DISCUSSION

A review of the docket shows that Debtor has amended Schedule C on January 12, 2018. Dckt. 110. Debtor's exemption in "All current and future payments from the Varni Trust except $3,125.00, which will be disbursed by the Trustee, per agreement" is listed as having an unknown value and unknown exemption amount. Debtor deleted the prior claimed exemption in the Varni Corporations Stock, which Debtor agreed would not be claimed as exempt, and the proceeds of the sale (redemption by Varni Corporation) was payable to the bankruptcy estate free and clear of any claim of exemption or interest being asserted by Debtor. This re-Amended Schedule C is consistent with the Settlement Agreement.

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 Estate faces significant litigation risk if Settlor attempts to amend Schedule C to exempt all of the sale proceeds, but this settlement prevents such litigation. Movant believes he would incur substantial fees opposing 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 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 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 Joann Teem, the Chapter 7 Debtor, ("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 B in support of the Motion (Dckt. 95).

4.	**14-91520-E-7** **WFH-6**	**JOANN TEEM** **Gilbert Vega**	**CONTINUED MOTION TO APPROVE REDEMPTION OF CORPORATE SHARES** **12-5-17 [97]**

APPEARANCE OF GILBERT VEGA, COUNSEL FOR DEBTOR, REQUIRED AT THE HEARING

TELEPHONIC APPEARANCE PERMITTED

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 December 5, 2017. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Estate's interest in Varni Corporation stock ("Property").

The proposed purchaser of the Property is Varni Corporation, and the terms of the sale are:

A. $20,000.00 purchase price for redemption of 169.55 shares of Varni Corporation common stock;

B. Pursuant to a separate settlement with Joann Teem ("Debtor"), she will not assert an exemption in the proceeds of stock or in $3,125.00 of distributions currently due from Varni Trust;

C. Debtor shall instruct Varni Trust to pay $3,125.00 to the Chapter 7 Trustee;

D. Debtor executed an addendum to the stock redemption agreement declaring that the original stock certificate had been lost and agreed to indemnify Varni Corporation from any damages that might arise from discovering the original stock certificate;

E. The Chapter 7 Trustee agrees that Debtor may amend Schedule C to claim an exemption in the remainder of Varni Trust;

F. Debtor agrees that she will not file any further amendments to Schedule C; and

G. Varni Trust will be abandoned to Debtor upon closing this case, with Debtor being able to seek abandonment earlier.

JANUARY 11, 2018 HEARING

At the hearing, the court noted that Debtor amended Schedule C, but an exemption for the 169.54 shares was listed still, which is inconsistent with the proposed settlement with Debtor and with the repurchase of stock by Varni Corporation. Dckt. 104.

The parties reported that the claimed exemption was an oversight by Debtor, but Debtor's counsel was not present at the hearing to address it. The court continued the hearing to 10:30 a.m. on February 1, 2018, to allow the parties to address the matter. Dckt. 106. The court ordered Debtor's counsel to appear at the continued hearing. *Id.*

DISCUSSION

A review of the docket shows that Debtor has amended Schedule C on January 12, 2018. Dckt. 110. Debtor's exemption in "All current and future payments from the Varni Trust except $3,125.00, which will be disbursed by the Trustee, per agreement" is listed as having an unknown value and unknown exemption amount.

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

At prior hearings, the court expressed concern about closing the case and abandoning liquid assets back to Debtor, and the current proposed sale and settlement reflect a good faith attempt by the parties

to resolve any remaining issues in this case. Based on the evidence before the court, the court determines that the proposed sale is xxxxxxxxxxxxxx.

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 Sell Property filed by Michael McGranahan ("the Chapter 7 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 Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Varni Corporation or nominee ("Buyer"), the Property commonly known as 169.55 shares of common stock of Varni Corporation ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $20,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 100, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

5. **17-90320-E-7** **JESUS ALVARADO RODRIGUEZ** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH JOANNA SALINAS, ALEJANDRA A. ALVARADO, ALINE ALVARADO, AND JOSE JUAREZ**
SSA-3 **Pro Se** **1-9-18 [36]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2018. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Joanna Salinas, Alejandra Alvarado, Jose Juarez, Aline Alvarado ("Settlor"). The claims and disputes to be resolved by the proposed settlement arise out of Adversary Proceeding No. 17-09014.

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 1 in support of the Motion, Dckt. 40):

A. Settlor will pay the sum of $10,000.00 to Jesus Rodriquez's ("Debtor") bankruptcy estate.

B. The $10,000.00 shall be derived from refinancing 2416 Snapdragon Court, Modesto California ("Property"), through the cooperation of Settlor.

C. Settlor will be responsible for any costs and fees resulting from the borrowing application, except for the Movant's counsel's fees and costs of the present motion and any borrowing motion that shall be an administrative expense of the bankruptcy estate.

D. Settlor shall not be able to file a proof of claim.

E. Settlor shall not receive any dividend from the bankruptcy estate.

F. During the refinance process, Debtor, Joanna Salinas, and Alejandra Alvarado will be removed from the Property's title, and title shall vest in Jose Juarez and Aline Alvarado.

G. Upon payment to the bankruptcy estate of the $10,000.00, Movant and Settlor will waive and release each other from any and all claims in this estate.

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).

Probability of Success

The issue in Adversary Proceeding No. 17-09014 concerns the bankruptcy estate's interest in the Property. Movant argues that a prima facie case to determine that the Estate holds an interest in the Property is established by Debtor's credit standing and name on the Property's title. However, Settlor claims a defense by asserting that Debtor has never made a payment toward the mortgage, taxes, or upkeep of the Property. Though the outcome of the litigation would be uncertain, the Settlement Agreement is for $10,000.00 and the claims of the estate would not exceed $7,500.00.

Difficulties in Collection

Continued litigation would produce additional attorney's fees and costs associated with legal research and a protracted discovery process. Through refinancing, though, the ability to realize the $10,000.00 will benefit creditors of the estate.

Expense, Inconvenience, and Delay of Continued Litigation

The litigation in this case would require resolving factual and legal issues, including the significance of using Debtor's credit to secure the Property and the legal effect of Debtor's name on the Property's title. If trial preparation had been required, further discovery would have been devoted to claims of a constructive trust to the Property and equitable defenses. The settlement avoids the uncertainty associated with continued litigation.

Paramount Interest of Creditors

The settlement of this dispute eliminates the need continued and protracted litigation and costs due to the nature of the litigation. By approving this Settlement Agreement, Movant, in her business judgment, believes the result is economically advantageous for creditors in general.

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 because it will eliminate liability associated with Settlor's litigation and provide monies to aid in estate administration. 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 Irma Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Joanna Salinas, Alejandra Alvarado, Jose Juarez, Aline Alvarado ("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 1 in support of the Motion (Dckt. 40).

6. 17-90729-E-7 ADRIAN GARCIA
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-5-18 [23]

Final Ruling: No appearance at the February 1, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Chapter 7 Trustee, and creditors as stated on the Certificate of Service on January 7, 2017. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on December 22, 2017.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

7. **17-90346-E-7** **ENRIQUEZ/LISA SANCHEZ** **MOTION TO SELL, MOTION FOR COMPENSATION FOR BOB BRAZEAL, BROKER(S) AND/OR MOTION TO PAY**
HSM-12 **Thomas Hogan** **1-10-18 [68]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted .

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 715 S. Wilma Avenue, Ripon, California ("Property").

The proposed purchaser of the Property is Tony Lai and So Ngan Sarah Ly ("Buyer"), and the terms of the sale are:

A. The purchase price for the Property is $410,500.00.

B. Buyer has made a non-refundable $12,000.00 deposit into escrow.

C. Buyer waives all buyer contingencies.

D. Buyer will pay the purchase price and close escrow within fifteen days of entry of the order approving the sale. That includes a mortgage of $310,500.00 and a down payment for the difference.

E. Seller shall pay for a natural hazard zone disclosure report and the cost of compliance with any other minimum mandatory government inspections and reports if required.

F. Buyer shall provide smoke detectors, carbon monoxide detectors, and water heater bracing, if necessary.

G. Buyer will acquire the Property "AS IS," "WHERE IS," and "WITH ALL FAULTS."

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will satisfy all monetary encumbrances on the Property, including those of Iron Oak Home Loans, Inc.'s First and Second Deeds of Trust, real property taxes, and personal property taxes. Movant argues that those encumbrances will be paid out of escrow as follows:

A. Iron Oak Home Loans, Inc.'s first deed of trust securing a debt in the original amount of $200,900.00;

B. Iron Oak Home Loans, Inc.'s second deed of trust securing a debt in the original amount of $21,800.00;

C. Three real property taxes of approximately $10,573.31 in the aggregate; and

D. Six personal property taxes of approximately $2,084.02 in the aggregate.

Dckt. 68 at 9:7–11:2.

Movant requests that the court approve a six percent broker's commission from the sale of the Property, which the court calculates will equal approximately $24,630.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because escrow may close sooner than fifteen days after the court's order because Buyer has waived all contingencies. *Id.* at 12:17–13:4.

Movant argues that the Property is vacant and is incurring ongoing accruals and expenses, which can be mitigated by closing sooner.

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 6004(h), and this part of the requested relief is granted.

Request for Authorization to Pay Administrative Expenses Through Escrow

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Movant requests authorization to pay himself $1,554.02 for expenses incurred in refunding a security deposit to a tenant, for obtaining a Trustee's insurance policy for the Property, and for changing the locks on the Property. *Id.* at 11:3–12:16.

Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules." Movant has requested relief arising from two different sections of the Code, containing separate notice requirements for a motion and hearing.

While arguably this request for repayment for monies advanced should have first been brought as a motion for the court to authorize unsecured credit outside of the ordinary course of business, even if retroactively sought, the dollar amount is modest—(1) $1,000.00 to refund a security deposit to former tenants of the property (though no security deposit had been received by or retained by Debtor, however, it facilitated Movant getting the tenants out of the property more easily), (2) $392.08 for six months of property insurance to protect the interests of the bankruptcy estate, and (3) $161.94 for a locksmith to change the locks and secure the Property when it was recovered by Movant.

The court allows for purposes of this motion—And This Motion Only—the application of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 through Federal Rule of Bankruptcy Procedure 9014 to allow for the presentation of multiple claims for relief in one motion. More significantly, the court does have some concerns when a trustee takes it upon him or herself to become a creditor of the bankruptcy estate, advance loans to the estate, and then have an interest in being paid something beyond the trustee's fees and reimbursement of costs. At the hearing, counsel for Movant addressed those concerns, stating **xxxxxxxxxxxxxxxxxxxxxxxxxx**.

The court authorizes the payment of $1,554.02 for the above necessary expenses incurred to obtain, preserve, and protect the property of the bankruptcy estate, to be paid directly from escrow.

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 Sell Property filed by Gary Farrar ("the Chapter 7 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 Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tony Lai and So Ngan Sarah Ly ("Buyer"), or their assigns, the Property commonly known as 715 S. Wilma Avenue, Ripon, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $410,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 72, and as further provided in this Order.

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

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

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Chapter 7 Trustee's agent, Bob Brazeal.

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

IT IS FURTHER ORDERED that the request for authorization to pay directly from escrow administrative expenses of $1,554.02 to the Chapter 7 Trustee consisting of $1,000.00 to refund a security deposit to former tenants of the property, $392.08 for six months of property insurance to protect the interests of the bankruptcy estate, and $161.94 for a locksmith to change the locks and secure the Property when it was recovered by the Chapter 7 Trustee is granted. The above expenses are approved as administrative expenses in this case payable to Gary Farrar, the Chapter 7 Trustee.

8. **17-90548-E-7** **HECTOR CASTILLO** **MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
KWS-2 **Kyle Schumacher** **12-28-17 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on December 28, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions for Violation of the Discharge Injunction 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 Sanctions for Violation of the Discharge Injunction is denied without prejudice.

The present Motion for Sanctions for Violation of the Discharge Injunction provided by 11 U.S.C. § 524(a)(2) and for damages pursuant to 11 U.S.C. § 105(a) and the inherent power of this court has been filed by rehabilitated Chapter 7 Debtor Hector Castillo ("Movant"). The claims are asserted against Citibank, N.A. ("Respondent").

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013.

See 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

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

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

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, or even unsupported conclusions of law. The insufficient statements made by Movant are:

A. "Debtor Hector Manuel Castillo ("Debtor"), by and through his bankruptcy attorneys Sagaria Law, P.C., moves this Court for an Order holding Citibank, N.A. ("Citi") in contempt of the discharge order, pursuant to 11 U.S.C. §§105(a) and 524(a)(2)." (Footnotes omitted);

B. "This court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334(b) and Fed. R. Bankr. P. 7001. This is a core proceeding under 28 U.S.C. § 157(b)(2)(F). Venue in this Court is proper pursuant to 28 U.S.C. § 1409 because this motion arises in this bankruptcy case."

Those "grounds" are merely an introductory statement and procedural conclusions of law by Movant. Presumably, Movant believed that the court would make the conclusion that an order was appropriate, but the "grounds" cannot merely be requests for an order.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion does not even state that grounds are found in other documents, although the court notes that Movant has provided a Memorandum of Points and Authorities, two Declarations, and a set of Exhibits. Dckts. 26–29.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should

be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant. FN.1.

FN.1. The Points and Authorities filed in this case are twelve pages long. The first five pages appear to consist of either factual allegations or factual arguments (to which Movant might contend that are not subject to Federal Rule of Bankruptcy Procedure 9011 certifications). Beginning on page six of the Points and Authorities and continuing through page twelve, various factual allegations are wound between citations, quotations, legal arguments, contentions, and speculation.

While Movant may argue that Movant's counsel writes really clear points and authorities, as well as appellate briefs, so the court should just waive the Federal Rules of Bankruptcy Procedure, it does not work that way in a trial court that fairly, equally, and equitably applies the rules to all parties. Given the short time periods in which a motion is filed and heard, the need to clearly state the grounds upon which the movant relies is at a premium. A trial court does not have months for multiple law clerks to review, dissect, analyze, and then conduct oral argument on the way an appellate judge can address an appellate brief.

The trial court on the law and motion calendar, as opposed to an appellate court, also does not have the benefit of a prior judge having clearly stated findings of fact and conclusions of law upon which the decision was based. The trial court, within an approximate two-week period after all the pleadings have been filed, must determine all of the findings of fact and conclusions of law from the grounds clearly stated with particularity in the motion, the succinct and on-point legal authorities and citations, and the well-organized evidence presented by the parties.

Further, the grounds that must be stated with particularity are governed by the certifications made through Federal Rule of Bankruptcy Procedure 9011. The points and authorities may well be chock full of citations, quotations, arguments, contentions, and speculation, which Movant might argue are not governed by Rule 9011 in the same manner as the grounds that must be stated with particularity.

Finally, the court will not engage in a differential application of the Rules, telling one attorney that his or her work is good enough to be exempt from the Rules while another attorney must comply with the Rules. Though in an academic sense one might be able to distinguish based on such quality differences, it inevitably creates the appearance that the judge is not impartial, but has his or her "favorite" attorneys who get whatever they ask for from the judge.

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 Discharge Injunction by Hector Castillo, rehabilitated Chapter 7 Debtor, ("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 denied without prejudice.

9.	**17-90861-E-7**	**RAJA AHMED AND**	**MOTION TO COMPEL ABANDONMENT**
	GSR-1	**SURRAYA AFZAL**	**12-29-17 [15]**
		Gurjeet Rai	

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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 29, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Raja Ahmed and Surraya Afzal ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon property commonly known as a 2012 Peterbilt 587 Truck ("Property"). The Property is encumbered by the lien of Wholesale Truck and Fi, securing a claim of

$11,001.00. Debtor's Declaration has been filed in support of the Motion and asserts that there is no nonexempt equity in the Property. Schedule A lists a value of $31,825.00 for the Property, and Debtor has claimed a total of $20,824.00 as exempt on Schedule C pursuant to California Code of Civil Procedure § 703.140(b)(2), (5) & (6). Dckt. 1.

The court finds that there is no equity beyond the debt secured by the Property and 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 Raja Ahmed and Surraya Afzal ("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 2012 Peterbilt 587 Truck and listed on Schedule B by Debtor is abandoned by Irma Edmonds ("the Chapter 7 Trustee") to Raja Ahmed and Surraya Afzal by this order, with no further act of the Chapter 7 Trustee required.

10. **14-91565**-E-7 **RICHARD SINCLAIR**
15-9008 **HAR-3**
CALIFORNIA EQUITY MANAGEMENT GROUP, INC. ET AL V. SINCLAIR

MOTION TO DISMISS FOX HOLLOW OF TURLOCK OWNER'S ASSOCIATION AND/OR MOTION FOR ENTRY OF JUDGMENT IN FAVOR OF PLAINTIFF CALIFORNIA EQUITY MANAGEMENT GROUP, INC.
12-14-17 [112]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 14, 2017. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Dismiss Plaintiff Fox Hollow of Turlock Owners' Association is granted. The Motion to Amend Complaint to dismiss the claim for relief pursuant to 11 U.S.C. § 523(a)(4) is granted.

California Equity Management Group, Inc. ("CEMG"), and Fox Hollow of Turlock Owners' Association ("Fox Hollow") (collectively, "Plaintiff") move for the court to dismiss Fox Hollow's complaint against Richard Sinclair ("Defendant-Debtor") pursuant to Federal Rule of Civil Procedure 41 and Federal Rule of Bankruptcy Procedure 7041. Plaintiff also moves to amend the complaint to remove 11 U.S.C. § 523(a)(4) as a ground for non-dischargeability and moves for the court to then enter judgment in a separate document in this Adversary Proceeding.

On November 29, 2017, the court entered its Memorandum Opinion and Decision and Order Granting Motion for Summary Judgement for CEMG in this Adversary Proceeding. Dckts. 105, 106. The Decision and Order thereon adjudicated all issues of CEMG in its claim for nondischargeability based on

fraud (11 U.S.C. § 523(a)(2)(A)) and willful and malicious injury (11 U.S.C. § 523(a)(6)) of the obligation owing under the District Court Judgment. Memorandum Opinion and Decision, and Order; Dckts. 105, 106.

However, the Complaint assert asserted claims of Fox Hollow against Defendant-Debtor, as well as an assertion that the District Court Judgment owing to CEMG was nondischargeable based on the fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny (11 U.S.C. § 523(a)(4)). Because those issues were outstanding, the court has not entered judgment in this Adversary Proceeding. Order, Dckt. 106.

At the November 30, 2017 Status Conference, the court ordered Fox Hollow to file pleadings by December 15, 2017, necessary to have its claims dismissed from this Adversary Proceeding or to file a status report confirming that it is prosecuting claims and identifying what those claims may be. Dckt. 111.

Fox Hollow filed the instant Motion on December 14, 2017, electing to dismiss Fox Hollow and its claims from the Complaint, as well as CEMG dismissing the asserted grounds under 11 U.S.C. § 523(a)(4). Motion, Dckt. 112.

OPPOSITION FILED BY DEFENDANT-SINCLAIR

On January 26, 2018, Defendant-Sinclair filed an Opposition to all motions set for hearing on February 1, 2018. Dckt. 118. (Timely opposition was to be filed and served by January 18, 2018. LOCAL BANKR. R. 9014-1(f)(1).) The court has reviewed the Opposition and summarizes it as follows.

Defendant-Sinclair objects because Mr. Katakis, a principal of CEMG, is in prison for foreclosure fraud. Defendant-Sinclair asserts that Mr. Katakis and his attorneys got a judgment against Defendant-Sinclair when it is Defendant-Sinclair who is entitled to a judgment.

Defendant-Sinclair continues to repeat a contention that Mr. Katakis has "stalked" Defendant-Sinclair since 1994 and swore to "take Richard Sinclair down." The Opposition repeats prior asserted contentions that other judicial proceedings were improper, that a settlement agreement exists, and that prior courts (including the California Court of Appeal) improperly determined that there was not a settlement agreement. In substance, the Opposition reargues adjudications made in other proceedings and collaterally attacks final rulings in other courts.

This court's ruling on the Motion for Summary Judgment considers in detail the prior decisions of the United States District Court, the California Superior Court, the California District Court of Appeal, the California State Bar Court, and this court. Mem. Op. and Dec., Dckt. 105. The "Opposition" does not state an opposition to the present Motion but Defendant-Sinclair's contention that the prior final judgments and rulings are wrong. This is a further collateral attack asserted on the prior rulings and final judgments.

Motion to Dismiss Fox Hollow

Federal Rule of Bankruptcy Procedure 7041 governs the dismissal of adversary proceedings. The rule incorporates Federal Rule of Civil Procedure 41 and provides further instruction for adversary proceedings based upon objection to a debtor's discharge. For proceedings in which the complaint objects

to a debtor's discharge, Federal Rule of Bankruptcy Procedure 7041 specifies that the complaint "shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper."

Plaintiff argues that without Fox Hollow and without the ground of 11 U.S.C. § 523(a)(4), then all other "remaining claims and grounds for non-dischargeability alleged in the complaint have already [been] determined in favor of CEMG and against Mr. Sinclair." Dckt. 112 at 2:8–10.

A review of the proof of service shows that the Chapter 7 Trustee, United States Trustee, and all creditors were served with notice of this Motion. Dckt. 117. Service upon those parties satisfies the criterion of Federal Rule of Bankruptcy Procedure 7041 that particular parties be served of a motion to dismiss when the complaint in the proceeding objects to a debtor's discharge.

No party has filed any pleading to this Motion either objecting to it or seeking to substituted into the adversary proceeding in Plaintiff's stead. The court treats silence by the non-filing parties as acquiescence to granting the Motion.

The Motion to Dismiss Adversary Proceeding is granted, and Fox Hollow is dismissed as a plaintiff in this Adversary Proceeding.

Motion to Amend Complaint

Federal Rule of Civil Procedure 15(a)(2) states that "a party may amend its pleading only with the opposing party's written consent or the court's leave" and directs the court to "freely give leave when justice so requires." Leave to amend pleadings is freely given unless the opposing party makes a showing of undue prejudice, bad faith, or dilatory motive on the part of the moving party. *Sonoma County Ass'n of Retired Employees v. Sonoma County*, 708 F.3d 1109 (9th Cir. 2013).

Moore's Federal Practice provides insight as to how this 1962 cornerstone of federal pleading practice is to be applied:

> In determining whether justice requires granting leave to amend, a court should balance the factors set forth by the Supreme Court in *Foman v. Davis*, especially **prejudice to the non-moving party (see [2], below), against any harm to the movant if leave is not granted**. Prejudice to the moving party if leave is denied should be considered, even if there is substantial reason to deny leave based on the other factors.
>
> A court should also consider judicial economy and its ability to manage the case. In determining the impact of granting leave on judicial economy, **a court should consider how the amendment would affect the use of judicial resources and the impact on the judicial system.** The court should also temper the favoring freely granting leave to amend with consideration of the ability of the district court to manage the case adequately if amendment is allowed. **Another factor**

> **occasionally considered by a court is whether a party previously amended or had the opportunity to amend the pleading**.
>
> One of the key factors considered by a court in ruling on a motion for leave to amend is whether permitting the amendment would result in undue prejudice to the non-moving party. Prejudice may result from delay by the movant in requesting leave to amend, but the passage of time alone is usually not enough to deny leave to amend; in most cases, a court will deny leave to amend only if the non-moving party is in fact prejudiced by the delay. **Prejudice is especially likely to exist if the amendment involves new theories of recovery or would require additional discovery.** Whether a defendant would be prejudiced by a "new" theory of recovery does not depend on whether the earlier pleading formally pleaded the theory, but on whether the earlier pleading put defendant on sufficient notice of the potential claim. **If delay is unduly excessive, however, the court may deny leave based on that factor alone**.
>
> **If the delay is particularly egregious, some decisions shift the burden to the moving party to show that its delay was due to oversight, inadvertence, or excusable neglect before the court will allow the amendment.** These decisions do not explicitly explain the initial allocation of a burden of production in amendment cases. Presumably, the liberal ethos of amendment means that the party opposing amendment bears a burden of production to come forward with reasons or evidence to deny leave to amend. These decisions would then shift the burden to the movant to come forward with reasons justifying an especially lengthy delay in moving to amend.

Moore's Federal Practice, Civil § 15.15[1]–[2] (emphasis added).

On November 29, 2017, the court entered its Memorandum Opinion and Decision and Order Granting Motion for Summary Judgement for CEMG in this Adversary Proceeding. Dckts. 105, 106. The court granted relief under 11 U.S.C. § 523(a)(2)(A) & (6). Dckt. 105. Plaintiff seeks to remove 11 U.S.C. § 523(a)(4) as a ground asserted in the Complaint because favorable judgment has been entered already on the other grounds.

Motion and proposed amendments reduce the grounds asserted for nondischargeability as well as the claim being asserted by Fox Hollow against Defendant-Debtor. The Motion is granted, and the claim for relief pursuant to 11 U.S.C. § 523(a)(4) is dismissed from the Complaint.

Request for Entry of Judgment

Plaintiff CEMG, as the only remaining plaintiff if Fox Hollow is dismissed, requests the court to enter judgment in this Adversary Proceeding for it and against Defendant-Debtor based on the ruling on the Summary Judgment now having adjudicated all remaining claims for all remaining parties in this case.

With only two grounds remaining being asserted by Plaintiff, and with the court having already granted summary judgment on those grounds, the court grants Plaintiff's request for a separate judgment to be entered.

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 Adversary Proceeding filed by California Equity Management Group, Inc., ("Plaintiff") and Fox Hollow of Turlock Owners' Association 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 Fox Hollow of Turlock Owners' Association as a plaintiff in this Adversary Proceeding No. 15-9008 is granted.
>
> **IT IS FURTHER ORDERED** that Plaintiff is granted leave to amend the Complaint to strike references to 11 U.S.C. § 523(a)(4), leaving 11 U.S.C. § 523(a)(2)(A) & (6) as the two grounds asserted in the Complaint for the sole Plaintiff California Equity Management Group, Inc.
>
> **IT IS FURTHER ORDERED** that the court shall enter judgment for California Equity Management Group, Inc., ("Plaintiff") and against Richard Sinclair ("Defendant-Debtor") pursuant to the prior order of this court granting Plaintiff summary judgment on the remaining claims in the Complaint, there being no other claims being prosecuted in this Adversary Proceeding.

11. 17-90565-E-7 RICKY/CHRISTINE LUYSTER MOTION TO SELL
MDM-1 David Foyil 12-20-17 [39]

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, parties requesting special notice, and Office of the United States Trustee on December 20, 2017. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the non-exempt equity in personal property commonly known as a 2004 Chevrolet Silverado, VIN ending in 3184 ("Property").

Movant argues that the Vehicle has an approximate value of $8,000.00 (based on a Kelley Blue Book Valuation Report), and there is $5,750.00 in non-exempt equity in the Vehicle. Ricky Luyster and Christine Luyster ("Debtor") propose to buy the excess equity in the Vehicle for $5,750.00.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides $5,750.00 in funds to the Estate up to the full current value of the Vehicle.

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 Sell Property filed by Michael McGranahan ("the Chapter 7 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 Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ricky Luyster and Christine Luyster or nominee ("Buyer"), the Property commonly known as a 2004 Chevrolet Silverado ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $5,750.00 and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

12. 17-90767-E-7 SARAH VELTMANN
Rosalina Nunez

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-16-18 [23]

Final Ruling: No appearance at the February 1, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 7 Trustee, and creditors as stated on the Certificate of Service on January 18, 2018. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on December 30, 2017.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

13. 10-94089-E-7 SSA-3 | **JOSE GONSALVES** **Steven Altman** | **MOTION TO AVOID LIEN OF PROFESSIONAL LENDERS ALLIANCE, LLC** **12-29-17 [27]**

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, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on December 29, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Professional Lenders Alliance, LLC ("Creditor") against property of Jose Gonsalves ("Debtor") commonly known as 3905 Rotterdam Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $34,846.75. An abstract of judgment was recorded with Stanislaus County on May 3, 2010, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $95,000.00 as of the petition date. Dckt. 25. The unavoidable consensual liens that total $194,239.81 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $21,000.00 on Amended Schedule C. Dckt. 25.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jose Gonsalves ("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 judgment lien of Professional Lenders Alliance, LLC, California Superior Court for Stanislaus County Case No. 649523, recorded on May 3, 2010, Document No. 2010-0039065-00, with the Stanislaus County Recorder, against the real property commonly known as 3905 Rotterdam Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.