UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 13, 2020 at 10:30 a.m.

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1. 19-27119-E-7 **MICHELLE DIALS** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **1-16-20 [26]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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 18, 2020. The court computes that 26 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 January 2, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $31.00.

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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

2. **19-26046-A-7** **PATRICIA ARCHULETA** **MOTION TO AVOID LIEN OF SIERRA CENTRAL CREDIT UNION**
RSG-1 **Robert Gimblin** **1-3-20 [13]**

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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 15, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is xxxxx.

This Motion requests an order avoiding the judicial lien of Sierra Central Credit Union ("Creditor") against property of the debtor, Patricia Lynn Archuleta ("Debtor") commonly known as 615 Spring Creek Court, Yuba City, California ("Property").

The Motion alleges that a judgment was entered against Debtor in favor of Creditor in the amount of $9,320.60. Debtor refers to Exhibit A. However, no exhibits were filed with this Motion. There is no copy of the abstract of judgment filed in support of the Motion.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $340,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $177,326.86 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $162,673.14 on Schedule C. Dckt. 1. Debtor asserts that Creditor's lien impairs the exemption to which the Debtor has claimed.

Debtor provides her Declaration, which states the following testimony:

1. At the time of filing her petition, the Property was encumbered by a first deed of trust, held by California Department of Veteran Affairs in the amount of $177,326.86.

2. There is a judicial lien against me and recorded in favor of Sierra Central Credit Union in the County of Sutter, recorded on January 24, 2017 as number 2017-0001027. A True and Correct copy of the Abstract recorded as described is attached herewith as Exhibit A.

3. Debtor claimed an exemption to the property under C.C.P. §704.730 in the amount of $162,673.14 which can be found on the Amended Schedule C.

Though Debtor also refers to Exhibit A, no such exhibit was filed.

Creditor's Opposition

Creditor filed an Opposition on January 30, 2019. Dckt. 23. Creditor asserts that liens are only avoided to the extent they impair an exemption claimed by Debtor. Dckt. 23. That a Court determines impairment if a lien impairs an exemption to the extent that the amount of the lien, plus the amount of all other liens on the property plus the amount the debtor could claim as exempt if there were no liens on the property, exceeds the value the debtor's interest in the property would have in the absence of any liens. *Id.* Additionally, Creditor states that value should be determined *as of the date of the filing of the petition*. *Id.* (Emphasis added).

Creditor then claims that debtor's valuation of the home of $340,000.00 is incorrect and provides the Court higher valuations of the home from online real estate databases. *Id.* These databases value the home at $375,143.00 to $384,000.00 and are time-stamped January 30, 2020. Dckt. 25. Yet, these valuations lack a determination date of the filing of the petition as Creditor so forcefully argues.

However, the court has more serious concerns with the valuations. Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. FED. R. EVID. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common hearsay exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

Debtor's Reply

Debtor filed a Reply on February 4, 2020. Dckt. 27. Debtor asserts Creditor's declaration of Stephanie Terell contains nothing to suggest that Mrs. Terrell is personally qualified to give an expert opinion regarding the value of the Property. Dckt. 27. Debtor also asserts that the declaration is problematic because:

> (1) the reports are dated months after the filing date of the petition and fail to shed any light on the value of the Property as of the petition filing date, and
>
> (2) there is nothing to suggest that any applicable hearsay exception applies to the website where the figures were obtained by Creditor. *Id.*
>
> Though filing a Reply, Debtor again failed to provide the court with a copy of the judgment.

Counsel for the Debtor reported **xxxxxxxxxxxx**

DISCUSSION

With respect to the value of the Property, the court has been provided with evidence in the form of the Debtor's owner's opinion of value. That is $340,000.

For Creditor, the Declaration of Stephanie Terrell makes its asserted valuation problematic. Ms. Terrell states that she is employed as a "Bankruptcy Repossession Legal Specialist" by Creditor. Ms. Terrell provides no explanation of what such specialist title means and what specialized knowledge she has.

Ms. Terrell testifies that she performed online searches for values of the Property. She then directs the court to exhibits so that the court can see what Ms. Terrell heard the online "persons" say to her about value. The court finds that Ms. Terrell telling the court what she heard said by another online person not to be credible testimony.

Creditor's obligation is $9,320.60. It may be that such small amount does not warrant the cost and expense of providing the court with proper testimony of value and properly authenticated evidence of value.

The court has computed the amount of value in the Property for Creditor's lien for purposes of this avoidance Contested Matter as shown in the chart below.

	Debtor's Assertions	Creditor's Assertions
Value	$340,000	$380,000
Dept. of Veteran Affairs Secured Claim	($177,326)	($177,326)
Debtor's Exemption	($162,673)	($162,673)
Value for Creditor's Lien	$1	$40,001

Debtor states that an exemption of $162,673 is claimed on Schedule C. A review of Schedule C shows that this odd amount exemption is claimed pursuant to California Code of Civil Procedure § 704.730. That provision of California exemption law provides for the following amounts of homestead exemptions:

§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty–five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty–five thousand dollars ($35,000) and the sale is an involuntary sale.

It appears, though not stated, Debtor asserts the right to a homestead exemption amount of $175,000 pursuant to California Code of Civil Procedure § 704.730. It appears that rather than stating the full amount of the homestead exemption, on Schedule C Debtor merely stated the amount estimated to be the equity in the property above the senior lien, so the amount on Schedule C is a little understated.

Given the evidence of value at $370,000, the senior lien on the property being ($177,326), and the Debtor electing to claim an exemption of only $162,673, there is $1 in value to secure Creditor's claim.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is $1.00 in equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property for all amounts in excess of $1.00, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B) for all amount in excess of $1.00.

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 Patricia Lynn Archuleta ("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 Sierra Central Credit Union, California Superior Court for Sutter County Case No. xxxx, recorded on xxxx, 201x, [Document No. xxxx / Book xxxx and Page xxxx], with the xxxx County Recorder, against the real property commonly known as 615 Spring Creek Court, Yuba City, California, is avoided for all amount in excess of $1.00 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.

3. **20-20260-E-7** **QUANG HA AND THUY TRUONG** **MOTION TO ABANDON**
SLC-1 **Nikki Farris** **1-27-20 [9]**

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, creditors, and Office of the United States Trustee on January 27, 2020. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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 Abandon is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 Sheri L. Carello ("the Chapter 7 Trustee") requests that the court authorize her to abandon property commonly known as desk, tables, five spa chairs, spa pedicure tubs, nail dryers, nail polish, acrylic powder, and miscellaneous pedicure/manicure tools including a nail liner, nail clippers, nail polish removal, moisturizing cream & oil, and cuticle nippers ("Property"). The Property has all been exempted in Debtor's Petition. The Declaration of Sheri L. Carello has been filed in support of the Motion and provides testimony that the value of the Property is of inconsequential value and benefit to the estate and are burdensome.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Sheri L. Carello ("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 the Motion to Compel Abandonment is granted, and the Property identified as desk, tables, five spa chairs, spa pedicure tubs, nail dryers, nail polish, acrylic powder, and miscellaneous pedicure/manicure tools including a nail liner, nail clippers, nail polish removal, moisturizing cream & oil, and cuticle nippers is abandoned to Quang The Ha and Thuy Ann Truong by this order, with no further act of the Chapter 7 Trustee required.

4. **18-27665-A-7** **CORY MADISON**
HSM-4 **Mark Briden**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CORY SCOTT MADISON
1-17-20 [31]

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, and Office of the United States Trustee on January 17, 2020. By the court's calculation, 27 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.

Michael P. Dacquisto, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Cory Scott Madison ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's contention that his retirement pension is fully exempt under C.C.P. § 703.140(b)(10)(e) in the aggregate amount of $3,126,392.43.

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 ("Agreement") filed as Exhibit A in support of the Motion, Dckt. 35):

A. Settlor agrees to pay Trustee from funds in the Pension, or otherwise available to him, an amount sufficient to pay in full: (1) all filed claims including interest accrued to the date of distribution by the Trustee, and

(2) all approved administrative expense.

B. The payment shall be made no later than December 31, 2020, or such later date the parties may agree to in writing.

C. If at time of payment, all amounts are not yet fully determined, Debtor shall make a payment sufficient to cover the payment as reasonably estimated by the Trustee. Any surplus from this estimate after all claims have been paid will be returned to Debtor.

D. The claim filing bar date in this case has passed. As of January 17, 2020, proofs of claims filed by creditors for both secured and unsecured claims total $88,809.77.

E. Trustee anticipates various administrative expenses will be incurred in connection with administration of this case.

F. Payment shall be in the form of wire transfer or cashier's check, or other form satisfactory to Trustee. The payment shall be delivered to the Trustee.

G. In addition to making the payment to the Trustee Settlor shall: (1) to the extent of the payment, agrees to waive his claimed exemption stated in his Schedule C; (2) represents and agrees that he will not file any further amendment to Schedule C with respect to the Pension or its proceeds; (3) he shall make no effort to assign, sell transfer or encumber his interest in the Pension to any third party; (4) he shall make no effort to obstruct or impede in any way Trustee's right and ability to obtain payment when due.

H. After Bankruptcy Court approval, Trustee agrees that he will not undertake any efforts to liquidate the Pension, in full or in part.

I. The Agreement is conditioned upon an order from the Bankruptcy Court granting the Trustee's motion for approval of this Agreement.

J. In the event of a default of the Agreement by any party, Trustee may commence an adversary proceeding to enforce any and all of his rights and remedies under this Agreement.

K. The Agreement shall be governed by the laws of the State of California, and by federal law to the extent it supersedes California law.

L. Modifications to the Agreement must be made in writing.

M. Settling Parties shall be responsible for their own attorneys' fees. In any action arising out of this Agreement, other than the Motion, the prevailing party shall recover its reasonable attorneys' fees.

N. This Agreement is intended to settle and dispose of claims that are contested and denied. Nothing in this agreement shall be construed as an admission by any party of any liability.

O. The Agreement shall be binding on and inure to the benefit of the respective successors and predecessors and others to the extend provided by law.

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

Trustee asserts the probability of success favors settlement rather than litigation. Debtor "hotly disputes" the estate's position and litigation involves risk of loss.

Trustee states the central issues presented, namely the ownership of the Pension and its exemptability, present complex legal issues. These legal issue will be inherently fact intensive and expose the estate to the risk of not prevailing in the litigation. Thus, the agreement mitigates risks of litigation.

Difficulties in Collection

Trustee contends the Agreement allows the Trustee to access the funds in the Pension at this time or any time in the near future instead of actual accessibility which could mean several years. Further, the Agreement mitigates uncertainty with collection by obtaining a promise from Debtor to

make the settlement payment no later than December 31, 2020. The Agreement provides certain collection for the Trustee that would not be guaranteed in litigation.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee asserts the complexity, expense, and delay of the litigation would arise from the research, drafting and legal analysis of issues, and related discovery. This would create substantial delay and expense. The Agreement allows the estate mitigate the risks related to litigation.

Paramount Interest of Creditors

Trustee states the creditors are also served through this compromise because the estate anticipates recovering the full amount needed to satisfy all allowed administrative and creditor claims, in full.

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 is a cost effective resolution to generate sufficient monies to pay all claims and administrative expenses, while allowing the Debtor to select how such monies will be disbursed from the retirement assets. 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 P. Dacquisto, 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 Cory Scott Madison ("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. 35).

5. **20-20066-A-7** **MELINDA GRAF** **MOTION FOR RELIEF FROM**
WAJ-1 **Pro Se** **AUTOMATIC STAY**
1-29-20 [18]

WILLIE HAIDARI 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on January 29, 2020. By the court's calculation, 15 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Willie Haidiri, dba Magnolia Court Apartments ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4845 Myrtle Avenue, #61, Sacramento, California ("Property"). The moving party has provided the Declaration of Willie Haidiri to introduce evidence as a basis for Movant's contention that Melinda Kristine Graf ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on December 9, 2019. Exhibit A, Dckt. 22.

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).

The instant case was dismissed on February 5, 2020, for failure to timely file documents. Dckt. 27.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

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

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
>
> (2) the stay of any other act under subsection (a) of this section continues until the earliest of—
>
> > (A) the time the case is closed;
> >
> > (B) ***the time the case is dismissed***; or
> >
> > (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> > (1) reinstates—
> >
> > > (A) any proceeding or custodianship superseded under section 543 of this title;
> > >
> > > (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
> > >
> > > (C) any lien voided under section 506(d) of this title;
> >
> > (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
> >
> > (3) ***revests the property of the estate in the entity in which such***

> ***property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of February 5, 2020, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on February 5, 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 for Relief from the Automatic Stay filed by Willie Haidiri, dba Magnolia Court Apartments ("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 as moot, this bankruptcy case having been dismissed on February 5, 2020 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Melinda Kristine Graf ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 4845 Myrtle Avenue, #61, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the February 5, 2020 dismissal of this bankruptcy case.

6. **12-23669-E-7** **CYNTHIA MARAL** **MOTION FOR COMPENSATION FOR**
ASF-2 **Rajdep Chima** **GABRIELSON & COMPANY,**
ACCOUNTANT(S)
1-13-20 [98]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2020. By the court's calculation, 31 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).

With respect to the short notice given, at the hearing, Applicant **xxxxxxxxxx**

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 xxxxx.

Gabrielson & Company, the Accountant ("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 June 25, 2019, through January 6, 2020. The order of the court approving employment of Applicant was entered on June 29, 2019. Dckt. 43. Applicant requests fees in the amount of $2,488.50 and costs in the amount of $80.95.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include consultation and preparation of 2019 federal and state tax returns and administrative functions. 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.

2019 Federal and State Estate Tax Returns: Applicant spent 4.7 hours in this category. Applicant consulted with Trustee and Counsel regarding tax issues involving litigation action and preparation of first and final 2019 federal and California estate income tax returns.

General Case Administration: Applicant spent 1.6 hours in this category. Applicant prepared accountant declaration and elated employment documents for trustee review; and prepared first and final fee application, including detailed description of tax services.

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**
Michael Gabrielson, Principal	6.3	$395.00	$2,488.50
	0	$0.00	$0.00

Total Fees for Period of Application	$2,488.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $80.95 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying		$46.60
Postage		$34.35
		$0.00
Total Costs Requested in Application		$80.95

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,488.50 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

First and Final Costs in the amount of $80.95 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.

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

Fees $2,488.50
Costs and Expenses $80.95

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 Gabrielson & Company ("Applicant"), Accountant for Alan 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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,488.50
Expenses in the amount of $80.95,

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

7. **19-21976-E-7** **CONQUIP, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RUBY INDUSTRIAL TECHNOLOGIES LLC**
DNL-12 **Eric Nyberg** **1-7-20 [135]**

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 7, 2020. 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.

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Ruby Industrial Technologies LLC fka Kaman Industrial Technologies ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a disputed payment of $12,729.48 that was received by Settlor from Debtor within 90 days of the filing of the bankruptcy Petition in this case.

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. 138):

A. The Settlement Agreement ("Agreement") is conditioned upon an order granting the motion to approve the Agreement entered on the docket of the Bankruptcy Case.

B. Settlor shall pay Trustee $10,183.58 within 14 calendar days of Court

approval.

C. Upon Trustee's receipt of the payment Settlor shall be allowed a $10,183.58 general unsecured claim against the Estate.

D. Trustee and Settlor hereby release and forever discharge each other and their respective beneficiaries from any and all actions.

E. The Parties expressly waive all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code.

F. The Agreement is under the laws of the State of California and the United States Bankruptcy Court for the Eastern District of California shall retain jurisdiction to enforce and interpret the provisions of this Agreement.

G. Parties shall bear their own attorney fees and costs incurred. If, however, there is litigation of any kind to enforce the provision of this Agreement the prevailing party shall be entitled to recover from the defaulting party his/her reasonable attorney fees and costs incurred in such litigation.

H. This Agreement supersedes any prior agreement written or oral. The Agreement cannot be modified except by a written document signed by all the Parties.

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.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims

of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Trustee argues the probability of successful litigation is unknown. But asserts that he has been advised by counsel that the Agreement is a fair and equitable result taking into account the risks of litigation as the estate strands to recover an additional $2,545.90 if Trustee prevails in avoiding the entire disputed payment.

Difficulties in Collection

Trustee contends the Agreement provides for immediate payment to Trustee. Whereas litigation would still require the Trustee to collect on the judgment to realize any financial benefit for the estate.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee states that litigation would require time and expense that is avoidable through this Agreement. Additionally, litigation would only recover an additional $2,545.90 that would quickly be consumed with fees and costs of litigation.

Paramount Interest of Creditors

Trustee is of the opinion that the Agreement is in the best interest of the estate. Declaration, Dckt. 33. The Agreement will ensure a return to creditors on account of the disputed payment saving the estate resources otherwise associated with continued litigation.

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 is a cost effective resolution for the estate and creditors. 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 J. Michael Hopper, 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 Ruby Industrial Technologies LLC fka Kaman Industrial Technologies ("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. 138).

8. **19-25886-E-7 RHS-1 14 thru 15** | **TIMOTHY/BRITTNEY ESTEP** **Bruce Dwiggins** | **ORDER TO SHOW CAUSE 1-13-20 [37]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office if the U.S. Trustee as stated on the Certificate of Service on January 13, 2020. The court computes that 31 days' notice has been provided.

The Order to Show Cause is xxxxx.

On November 20, 2019, the court attempted to conduct the noticed hearing on Debtor's Reaffirmation Agreement with Members 1st Credit Union. The court had serious reservations concerning the Reaffirmation Agreement and issues existed with respect to whether such reaffirmation was a knowing economic decision by Debtor after explanation of the reaffirmation process and effect by counsel. The Minutes from the November 20, 2019 hearing outline these concerns.

> An agreement to reaffirm a debt owed to Members 1st Credit Union, which is secured by a 2016 Kerystone RV Hideout Series M-26 BHS having a value of $16,338, was filed by Timothy and Brittney Estep ("Debtor"). A hearing on this reaffirmation was conducted pursuant to order of the court.
>
> No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 5.24% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is ($16,338.67) which has not been reduced from the pre-petition claim.
>
> Debtor having income of $7,940 and expenses of ($8,179), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) does not arise solely because the creditor is a credit union in connection with this reaffirmation agreement. The proposed monthly payment is ($295.15) for 64 months. Based on the income and expense information there is not a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

> Notwithstanding no demonstrated ability to pay, counsel for Debtor has certified that reaffirmation of this obligation is not an undue burden on the Debtor or dependants, and the counsel has advised Debtor of the legal consequences of reaffirming the debt on these terms given the financial ability of Debtor.

Civil Minutes, Dckt. 23.

To afford Debtor and Debtor's counsel the opportunity to address these concerns and demonstrate that Debtor was making a knowing, informed economic decision, the court continued the hearing on the Reaffirmation Agreement to January 8, 2020. (The Minutes misstate the year as 2019, but the order correctly stated the continued hearing date as January 8, 2020.) The court's order also required that each of the two debtors and their counsel appear at the continued hearing, expressly authorizing them to do it by phone from Debtor's counsel's office to avoid the travel to and from the Sacramento Courthouse. Order, Dckt. 25.

No appearance was made by Debtor or Debtor's counsel at the January 8, 2020 hearing. That necessitated the court having to further continue the hearing on the two Reaffirmation Agreements before the court to March 4, 2020. Civil Minutes, Dckts. 35, 36.

The two debtors and Debtor's counsel failing to appear as ordered, the court issued an order to show cause, addressed below, as to why sanctions should not be ordered.

The Order to Show Cause now before the court was issued due to Timothy Wayne Estep, Brittney Ann Estep, the two debtors, and Bruce Dwiggins, their attorney failing to appear at the January 8, 2020 hearing as ordered by the court. Order, Dckt. 25.

The Order to Show Cause requires Timothy Wayne Estep, Brittney Ann Estep, and Bruce Dwiggins, and each of them to personally appear on February 13, 2019 hearing in person, with no telephonic appearance authorized. The court ordered that any response or opposition to the Order shall be in writing and filed with the court in compliance with Local Rule 9014-1, and must be filed at least fourteen (14) days before the date of the hearing.

As of February 11, 2020, no response or opposition was filed with the court.

Sanction Powers of A Bankruptcy Judge

Bankruptcy courts have jurisdiction and the 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, 548-549 (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).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court 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 *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

DECISION

Timothy Estep, Brittney Estep, and Bruce Dwiggins, and each of them have failed to provide the court with any written responses. If filed, such could have provided a basis for the court to have determined whether sanctions were not necessary and the Order to Show Cause could have been discharged by final ruling, or whether the issues needed to be addressed further. The failure of the two debtors and counsel to proactively address the issue is troubling.

The two debtors are not now opposing the U.S. Trustee's motion to dismiss this Chapter 7 case. Stipulation, Dckt. 23.

At the hearing, **xxxxxxxxxx**

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 **xxxxxxxxxx**.

9. **19-25886-E-7 UST-1** **TIMOTHY/BRITTNEY ESTEP** **Bruce Dwiggins** **MOTION TO APPROVE STIPULATION TO DISMISS CASE** **12-31-19 [31]**

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 parties requesting special notice on December 31, 2019. By the court's calculation, 44 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 to Approve Stipulation to Dismiss Chapter 7 Case Without entry of Discharge is xxxxx.

The United States Trustee, Tracy Hope Davis ("U.S. Trustee"), seeks approval of a stipulation between U.S. Trustee and debtors Timothy Wayne Estep and Brittney Ann Estep ("Debtors") who have stipulated to dismissing this chapter 7 case prior to the entry of discharge.

The deadline to file a motion to dismiss under 11 U.S.C. § 707(b)(3) is January 6, 2020. The U.S. Trustee is prepared to file a motion to dismiss case for presumptive abuse under 11 U.S.C. §§ 707(b)(1), 707(b)(2) and/or for totality of the circumstances abuse under 707(b)(3)(B). U.S. Trustee alleges that Debtors do not wish to defend the allegations and have stipulated to the dismissal of their chapter 7 case.

STIPULATION

U.S. Trustee and Debtors stipulate to dismissal of the bankruptcy case, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Settlement to Dismiss Chapter 7 Bankruptcy Case Without Entry of Discharge filed in support of the Motion, Dckt. 33):

A. Debtors filed the present case on September 19, 2019. Dckt. 1.

B. The Meeting of Creditors was scheduled for November 6, 2019, continued to December 4, 2019, and further continued to January 82, 2020.

C. The U.S. Trustee is prepared to file a motion to dismiss case for presumptive abuse under 11 U.S.C. §§ 707(b)(1), 707(b)(2) and/or for totality of the circumstances abuse under 707(b)(3)(B).

D. Debtors desire to voluntarily dismiss this chapter 7 case prior to entry of discharge.

E. Parties hereby stipulate to dismissal of this chapter 7 case prior to entry of discharge in this matter.

F. U.S. Trustee will file a motion to approve the Parties stipulation with the court on appropriate notice.

CHAPTER 7 TRUSTEE

On January 15, 2020, Chapter 7 Trustee, Nikki Farris, filed a statement of non-opposition. Trustee's January 15, 2020 Docket Entry Statement.

DISCUSSION

U.S. Trustee asserts that a debtor does not have an absolute right to dismiss a chapter 7 case voluntarily. Then points the court to 11 U.S.C. § 707(a) of the Bankruptcy Code which sets forth three examples of "cause" for dismissal, and a further requirements for such a dismissal, namely a motion, notice to all creditors and parties in interest, and a hearing. U.S. Trustee also includes that dismissals under 11 U.S.C. § 707(b) also require a motion, notice to the debtor, the panel trustee, the U.S. trustee and any other entity as the court directs along with a hearing. *See* 11 U.S.C. § 707(b)(1), Fed. R. Bankr. P. 1017(a), 1017(e), 2002(a)(4), and 9014.

Here, Debtors have stipulated the case with the U.S. Trustee. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 44 days notice was provided for oppositions or responses. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

U.S. Trustee contends that the Parties are not aware of any pre-petition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the Debtor's right to dismiss the case.

On January 13, 2019, the court issued an Order to Show Cause due to Debtors failure to appear at the January 8, 2020 hearing as ordered by the court. On January 8, 2020, Debtor failed to appear at the hearing on the Reaffirmation Agreement with Members First Credit Union. The Reaffirmation Agreement hearing was continued to 1:35 p.m. on March 4, 2020.

At the hearing, **XXXXXXXXXX**

Based on the foregoing, cause exists to approve the stipulation and dismiss this case. The Motion is granted, and the case is dismissed.

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 United States Trustee, Tracy Hope Davis ("U.S. 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 Approve the Stipulation is granted and the cased is dismissed.

10. **15-29890-A-7** **GRAIL SEMICONDUCTOR** **MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS ATTORNEY(S)**
DNL-62 **Paul Pascuzzi** **1-16-20 [1369]**

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, Official Committee of Creditors Holding General Unsecured Claims, and Office of the United States Trustee on January 16, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

Sheri L. Carello ("Trustee") seeks to employ Desmond, Nolan, Livaich & Cunningham ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist Trustee in moving the Debtor's case towards closure, including assisting Trustee analyze and compromise claims filed in the instant matter.

Trustee argues that Counsel's appointment and retention is necessary to facilitate the closure of the case. Trustee requests Counsel be employed pursuant to an hourly fee agreement. Dckt. 1369. The current hourly rates of the attorney who may work on the matter are:

(a) Gary Livaich	$450
(b) William W. Nolan	$400
(c) J. Russell Cunningham	$425
(d) Brian T. Manning	$300
(e) Edward K. Dunn	$275

(f) Kristen Ditlevsen Renfro $325
(g) Nicholas Kohlmeyer $275

J. Russell Cunningham, Partner at Desmond, Nolan, Livaich & Cunningham, testifies that the firm has represented Trustee since April 25, 2016 pursuant to an hourly fee agreement. Dckt. 1372. His firm was granted a final compensation in the amount of $715,167.50 in fees and $25,809.27 in expenses, for a total of $741,624.27 by the court. *Id.* The requested final compensation was paid to the firm on May 16, 2019, but the firm has continued working on the case with Trustee since that date. *Id.*

J. Russell Cunningham testifies that neither he nor the firm represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor besides for Michael F. Burkart who was employed and retained by the Debtor to act as the Debtor's Chief Resolution Officer. The firm represented Burkart in matters unrelated to this case in he 1990's and 2000's. Additionally J. Michael Hopper is represented by the firm in his capacity as the Chapter 7 trustee for the estate of Shepard Johnson and Monte Johnson, in which Burkart in his capacity as trustee is a creditor.

Judge Richard L. Gilbert is an interested party in this case. The firm has been involved in matters unrelated to this case, where Judge Gilbert was involved.

Gordon Rees LLP, Downey Band LLP, Jamie Dreher, David Haberbush, Mark Campbell, Paul Pascuzzi, Howard Nevins, Jennifer Niemann, and Boutin Jones Inc., are interested parties in this case. The firm is currently involved and has in the past been involved in matters, unrelated to this case, where these firms and attorneys were involved.

Except as stated above, the firm and its members have no connections with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Creditor's Opposition

Creditor Macdonald Fernandez LLP ("Creditor") filed an Opposition on January 30, 2020. Dckt. 1382. Creditor states nothing has been done about closing the case and making a distribution to creditors. *Id.* Further, no facts are presented in justification for the failure to close the case and obtain approval of Trustee's counsel eight months ago. *Id.* Thus, Creditor requests the application be denied. *Id.*

Trustee's Response

Trustee filed a Response on February 6, 2020. Dckt. 1386. Trustee argues that they have been actively working for the closure of the bankruptcy but clarifies as to the delays encountered. First, the Estate included 1,247,500 shares of Nemaska Lithium, Inc. common stock. *Id.* Rather than liquidating the stock in a single transaction, Trustee staggered her sales to realize the highest return for the estate. *Id.* Additionally, Trustee waited to distribute funds until an Adversary Proceeding was finalized. *Id.* With the sale of the stock and the Adversary Proceeding coming to a close, Trustee has now begun to review claims. *Id.* Upon review Trustee has identified 16 filed proofs of claim that she contends are based on equity investments and subject to subordination pursuant to 11 U.S.C. § 510(b). *Id.*

DISCUSSION

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to

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

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

As this is a case where Trustee seeks re-approval of Applicant's employment while Applicant has continued to provide services, Debtor points the court to *In re THC Financial Corp.* 837 F.2d 389, (9th Cir. 1988). Debtor argues that in that case, the court found that retroactive approval of services rendered without bankruptcy approval is allowed if (1) the applicant's services benefitted the bankruptcy estate in some significant manner and (2) there is a satisfactory explanation for the applicant's failure to receive judicial approval. *Id.* at 392. Debtor further cites to *In re Gutterman*, 239 B.R. 828, (Bankr. N.D. Cal. 1999) for the definition of what constitutes "satisfactory explanation." Debtor argues that in that case the court found that in deciding what is a satisfactory explanation, a court may consider the prejudice, or the lack thereof, to the estate resulting from the delay. *Id.* at 831.

While the court takes Creditor Macdonald Fernandez objections into consideration, Trustee is acting in the best interest of the estate and creditors. Trustee argues that at the beginning of the re-employment period in May 2019, Trustee assumed the services would be minimal but that since then the need has grown substantially. Further arguing that no prejudice to the estate will result from the delay in obtaining prior court approval. In her Response, Trustee addresses the delays, provides valid explanations, and further shows the need for retroactive employment of Applicant. This is not an easy single transaction type of Chapter 7 case. Trustee has managed the sale of millions of common stock shares, has been waiting for the pendency of an adversary proceeding, and sorted through various proofs of claims that are now considered "contested claims." Response, at 2.

The court also notes that there is a separate Motion to Approve Compromise to reduce the amount of sixteen secured claims in this case totaling approximately $1,830,000 by 50 percent. Motion, Dckt. 1374. Creditor Macdonald Fernandez has opposed (Dckt. 1384) that compromise, asserting that the Trustee and the Trustee's professionals should engage in further administration of this estate (and incur further administrative expenses) by attempting to further reduce those claims by a greater percentage.

The court is retroactively approving Counsel's employment for the period commencing May 2019. Trustee and Counsel for Trustee shall file an application for fees for the specific time during which these additional services were provided.

At the hearing, Trustee **xxxxxxxxxxxxx**

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Desmond, Nolan, Livaich & Cunningham as Counsel

for the Chapter 7 Estate on the terms and conditions set forth in the Agreement for Legal Services filed as Exhibit A, Dckt. 1371.

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 Employ filed by Sheri L. Carello ("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 Employ is granted, and Trustee is authorized to employ Desmond, Nolan, Livaich & Cunningham as Counsel on the terms and conditions as set forth in the Agreement for Legal Services filed as Exhibit A, Dckt. 1371.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

11. **15-29890-A-7** **GRAIL SEMICONDUCTOR**
DNL-63 **Paul Pascuzzi**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JAMES D. MCDOWELL, DAVID ROTHCHILD, CHARLES AND ARLENE BAUDER, ETAL.
1-16-20 [1374]

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, Official Committee of Creditors Holding General Unsecured Claims, and Office of the United States Trustee on January 16, 2020. By the court's calculation, 28 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 xxxxx.

Sheri L. Carello, the Chapter 7 Trustee requests that the court grant her authority to compromise certain claims filed in the Debtor's case. The claims and potential claims to be resolved with this authority are Claim Nos.: 4-2, 6-2, 7-1, 8-1, 13-1, 14-2, 15-1, 17-1, 19-1, 20-1, 21-1, 22-1, 23-1, 25-2, 33-2, 38-1 ("Contested Claims").

The court may fix a class or classes of controversies and authorize a trustee to compromise or settle controversies within such class or classes without further hearing or notice. Fed. R. Bankr. P. 9019(b). Movant has requested authority to compromise any of the claims subject to approval by the court on the following terms and conditions summarized by the court (terms are set forth in the Motion,

Dckt. 1374):

A. 50% of each Contested Claims will be treated as a general unsecured claim.

B. The balance of each Contested Claims to be subordinated to all other general unsecured claims.

Creditor's Opposition

Creditor states no evidence of the settlement, such as settlement agreements is presented. Dckt. 1384. Creditor asserts the Motion to Compromise ("Motion") does not state any facts from which the merits of any of the settlement can be obtained. *Id.* Further, the settlement number of 50% is a "number picked out of the air" that does not properly account for the merits of each individual claim. *Id.*

Trustee's Reply

Trustee states litigation of the Contested Claims would require fact intensive analyses of the underlying nature of the transactions giving rise to the Contested Claims. Dckt. 1388. Trustee is of the opinion that the costs and delays of fully litigating the Contested Claims is outweighed by the benefit of the proposed compromise, which will allow the Trustee to move this case towards closure and issue distribution to creditors. *Id.*

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

Trustee asserts the probability of success in any litigation is ultimately unknown. Further

Trustee states she has limited information on the basis of each claim and that litigating the claims would be fact-intensive requiring the testimony of those involved in the underlying transactions.

Difficulties in Collection

Trustee states she is in a defensive position regarding the payment of the Claims; thus, this factor is neutral.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee states that litigation would be a "serious detriment" to the estate as the Trustee is moving the case towards closure. Additionally, the authorization to compromise would avoid expense and delay associated with any claims litigation. Further, Trustee contends litigating the validity of these claims would be fact-intensive and quite costly.

Paramount Interest of Creditors

While the Trustee states it is her opinion that the Compromise is the best interest of the estate, a more rigorous review is necessary to evaluate the economic ramifications of the Compromise. For the court to merely blindly accept such a conclusion without some minimal economic analysis provided by the Trustee would effectively turn over to the Trustee the power to issue orders, rendering the judge a rubber stamp for the Trustee.

While not provided by the Trustee, the court has constructed the following economic analysis from the economic information provided in the Motion.

When evaluating this factor, the court may consider each affected class's relative benefit. *In re Iridium*, 478 F.3d 452, 462 (2nd Cir. 2007).

In her earlier declaration, the Trustee testified that she had approximately $5,143,202.49 in unencumbered assets and estimated administrative expenses of $891,000. Declaration, ¶¶ 6, 7; Dckt. 1272. The Trustee computed having $4,140,000 to disburse for $20,300,000 in claims. *Id.*, ¶ 8. Thus, she projected a 20% distribution on these claims. *Id.*

At issue for the 50% reduction are the following claims totaling $1,422,217.19, these representing seven 7% of the total claims stated by the Trustee, which are the following:

Claim No.	Claimant	Amount of Claim Filed
4	James D. McDowell	$100,000.00
6	David Rothchild	$145,808.00
7	Charles and Arlene Bauder	$20,000.00
8	Morris Zarbi	$5,000.00

13	Wanda Clark	$3,000.00
14	Danielle Leibowitz	$40,271.19
15	Mark Bauder	$5,000.00
17	Jonathan Leibowitz	$11,000.00
19	Anex Boxenbaum Devora Weiss	$10,138.00
20	Kamal and Shirley Benyamin	$10,000.00
21	Rahmata & Lidia Hanaei	$10,000.00
22	James Kaplan	$540,000.00
23[1]	Rowena Reed (This Proof of Claim is not filed in a dollar amount but being a claim for "485,000 shares")	$485,000.00
25	Jay David Roth	$20,000.00
33	Joseph Kohler	$12,000.00
38	Melvin Katz	$5,000.00
		=========
	Total Amount of Claims to be compromised at 50% of amount	$1,422,217.19
	Amount of Claims to be allowed after compromise	$711,108.60

Using the Trustee's monies to distribute and amount of claims, the court creates the following chart showing the effect of fifty percent (50%) reduction and if the above claims were disallowed in their entirety.

[1] It appears that the Claims Register for this case maintained by the court contains a clerical error. It lists Claim No. 23 as having an amount of $0 and Claim No. 24 being a claim for $485,000 having been filed by creditor Rowena Reed. However, a withdrawal of Claim No. 24 was filed on May 16, 2019.

	Distribution to Claims For Proofs of Claims As Filed	Distribution For Claims With 50% Reduction in Compromised Claims	Distributions For Claims if 100% Were Disallowed
Monies to Distribute	$5,143,202.49	$5,143,202.00	$5,143,202.00
Maximum Reduction Under Proposed Stipulation Authorization		($711,108.60)	($1,422,271.19)
Total Claims	$20,300,000.00	$19,588,891.40	$18,877,728.81
Dividend Percentage	25.34%	26.26%	27.24%
Increased Dividend Percentage Per Claim		0.92%	1.90%
Corresponding Dollar Amount Increase Available For Other Creditors		$47,317.46	$97,720.84

Objecting Creditor asserts that the compromise is not fair and that the Trustee and Trustee's professionals should investigate and actively prosecute claims objections actively to reduce the at-issue-claims more than fifty percent (50%) to create an additional $50,000 for distribution (a 1% increase) to the other creditors.

There being sixteen claims at issue, allocating the $50,000 of additional distribution monies for the costs of such further administration, that allows $3,125.00 of increase for each claim. Presumably, if such further action is to be taken, then Creditor would not want all of the $3,125.00 per claim to be spent in reducing the claim further.

Even if the Trustee and Trustee's professionals spent only five hours of time, assuming a $350 an hour expense, that would eat up $1,750.00 of the possible increase in benefit from further reduction, leaving only $1,355.00 on average per claim, times the sixteen claims, for a total "benefit" of $21,680, a distribution enhancement of only 1.4%, and that is only if everything went perfectly and no significant acts by the Trustee and Trustee's professionals were required.

Creditor's objection is not based on the economic realities of the proposed settlement.

The Trustee's counsel is not alone in ignoring the basic economics. While criticizing (not undeservedly) the Trustee for not explaining why a fifty percent (50%) reduction is a reasonable business decision, Creditor does nothing to show that there is a potential better result if the administration of the case and these claims is further undertaken on an individual, claim by claim basis.

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 the benefits of compromise substantially outweigh the costs associated with litigation. 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 Sheri L Carello, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise is granted, in that Chapter 7 Trustee is authorized to compromise Contested Claims (4-2, 6-2, 7-1, 8-1, 13-1, 14-2, 15-1, 17-1, 19-1, 20-1, 21-1, 22-1, 23-1, 25-2, 33-2, 38-1) under the following terms:
>
> A. 50% of each Contested Claims will be treated as a general unsecured claim.
>
> B. The balance of each Contested Claims to be subordinated to all other general unsecured claims.

12. **15-29890-A-7** **GRAIL SEMICONDUCTOR** **MOTION FOR ADMINISTRATIVE EXPENSES**
SLC-6 **Paul Pascuzzi** **1-16-20 [1378]**

Final Ruling: No appearance at the February 13, 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, Official Committee of Creditors Holding General Unsecured Claims and Office of the United States Trustee on January 16, 2020. By the court's calculation, 28 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). 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 Administrative Expenses is granted.

Sheri L. Carello, Chapter 7 Trustee ("Movant") requests payment of administrative expenses, in the form of corporate taxes due to the Franchise Tax Board, in the estimated amount of $800.00 in the amount of $800.00 resulting from estimated 2020 taxes incurred by the estate which will become due and owing post-petition to the Franchise Tax Board, and authority to pay the balances due, if any, on account of said claims from available funds.

DISCUSSION

Movant argues that the administrative expenses is needed and allowed by the Bankruptcy Code for the payment of corporate taxes to the Franchise Tax Board.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant states Section 503(b)(1)(B) allows the payment of any tax incurred by the estate. Further, Section 503(b)(2)(D) does not require the filing of a request for payment as a condition for the Franchise Tax Board to be allowed as an administrative claim. Therefore, the payment to the Franchise Tax Board is proper as an allowance

of administrative expense.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing payment of corporate taxes for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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 Allowance of Administrative Expense filed by Sheri L. Carello, 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 is granted, and the Chapter 7 Trustee is authorized to pay Franchise Tax Board $800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

13. **19-22393-A-7** **GARY TEIXEIRA** **MOTION TO FILE CLAIM AFTER**
RAH-3 **Richard Hall** **CLAIMS BAR DATE**
20 thru 21 **1-24-20 [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 Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on January 24, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to File Claim After Claims Bar Date 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 File Claim After Claims Bar Date is denied without prejudice.

Gary Arthur Teixeira ("Debtor") requests that the court allow Internal Revenue Service's ("IRS") late filed claim to be treated as timely filed. Debtor filed Proof of Claim Number 2-1 on behalf of the IRS on January 24, 2020, almost two (2) months after the claims bar date expired in this case.

The Claim is asserted to be unsecured in the amount of $51,082.38. The deadline for filing proofs of claim in this case is October 28, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 30.

DISCUSSION

The deadline for filing a proof of claim in this matter was October 28, 2019. Creditor's Proof of Claim was filed on January 24, 2020.

Debtor acknowledges that because the claim was filed after the deadline, a party in interest may object to the claim pursuant to Federal Rule of Bankruptcy Procedure 3007. However, Debtor's Motion asserts that under Federal Rule of Bankruptcy Procedure 3008, the Debtor has standing to ask

that the court nonetheless allow this claim.

With respect to the authority cited by Debtor for allowing the Debtor to file a late claim for the Internal Revenue Service, Federal Rule of Bankruptcy Procedure 3008 cited by Debtor states:

> Rule 3008. Reconsideration of Claims
>
> A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

Debtor then asserts that the Internal Revenue Service claim is important to the administration of the Estate and it is in the interests of the Debtor that this claim should be allowed, regardless of the untimeliness.

In his Declaration, Debtor testifies that his voluntary petition was prepared under the assumption that the IRS claim would be paid through the Trustee's distribution of the estate assets. Declaration, Dckt. 70. He adds that he recognizes that the claim was not timely filed but that he "join[s]" with his attorney in requesting the court allow this claim in spite of its late filing.

While the court understands the reason behind Debtor's filing of the proof of claim, the Motion is without sufficient legal grounds. Debtor relies on Federal Rule of Bankruptcy Procedure Rule 3008 for the court to allow the late filing of a claim. That Rule relates to the court reconsidering a prior final order on the merits allowing or disallowing a claim.

There is no order that is the subject of this Motion for the court to reconsider.

It the Debtor believes that grounds based on facts and law exists for a "Tardily-Filed" claim, Debtor can bring such motion.

Without grounds to grant this relief, the court denies the Motion 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 File Claim After Claims Bar Date of the Internal Revenue Service filed in this case by Gary Arthur Teixeira ("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 File Claim After Claims Bar Date of the Internal Revenue Service is denied without prejudice.

14. **19-22393-A-7** **GARY TEIXEIRA** **MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE**
RAH-4 **Richard Hall** **1-24-20 [76]**

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, Creditor, creditors, and Office of the United States Trustee on January 24, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to File Claim After Claims Bar Date 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 File Claim After Claims Bar Date is denied without prejudice.

Gary Arthur Teixeira ("Debtor") requests that the court allow California Franchise Tax Board's late filed claim to be treated as timely filed. Debtor filed Proof of Claim Number 3-1 on behalf of the California Franchise Tax Board on January 24, 2020, almost two (2) months after the claims bar date expired in this case.

The Claim is asserted to be unsecured in the amount of $13,255.01. The deadline for filing proofs of claim in this case is October 28, 2019. Notice of Bankruptcy Filing and Deadlines, Dckt. 30.

DISCUSSION

The deadline for filing a proof of claim in this matter was October 28, 2019. Debtor's Proof of Claim for FTB was filed on January 24, 2020.

Debtor acknowledges that because the claim was filed after the deadline, a party in interest may object to the claim pursuant to Federal Rule of Bankruptcy Procedure 3007. However, Debtor's Motion asserts that under Federal Rule of Bankruptcy Procedure 3008, the Debtor has standing to ask that the court nonetheless allow this claim.

With respect to the authority cited by Debtor for allowing the Debtor to file a late claim for the Internal Revenue Service, Federal Rule of Bankruptcy Procedure 3008 cited by Debtor states:

> Rule 3008. Reconsideration of Claims
>
> A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

Debtor then asserts that the California Franchise Tax Board claim is important to the administration of the Estate and it is in the interests of the Debtor that this claim should be allowed, regardless of the untimeliness.

Debtor further contends that the California Franchise Tax Board claim is important to the administration of the Estate and the interests of the Debtor that this claim should be allowed, regardless of the untimeliness. In his Declaration, Debtor testifies that his voluntary petition was prepared under the assumption that the California Franchise Tax Board claim would be paid through the Trustee's distribution of the estate assets. Declaration, Dckt. 70. He adds that he recognizes that the claim was not timely filed but that he "join[s]" with his attorney in requesting the court allow this claim in spite of its late filing.

While the court understands the reason behind Debtor's filing of the proof of claim, the Motion is without sufficient legal grounds. Debtor relies on Federal Rule of Bankruptcy Procedure Rule 3008 for the court to allow the late filing of a claim. That Rule relates to the court reconsidering a prior final order on the merits allowing or disallowing a claim.

There is no order that is the subject of this Motion for the court to reconsider.

It the Debtor believes that grounds based on facts and law exists for a "Tardily-Filed" claim, Debtor can bring such motion.

Without grounds to grant this relief, the court denies the Motion 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 File Claim After Claims Bar Date of the Franchise Tax Board filed in this case by Gary Arthur Teixeira ("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 File Claim After Claims Bar Date of the Franchise Tax Board is denied without prejudice.

15. 19-27254-A-7 EAH-1 THOMAS HANAGAN MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT O.S.T. 2-5-20 [21]

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 8 days' notice was provided. 14 days' notice is required.

With respect to the short notice given, the court entered an Order granting Creditor's Motion to Shorten time on February 6, 2020. Dckt. 25.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge was not 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 Extend Deadline to File a Complaint Objecting to Discharge is ~~granted~~.

LEG Enterprises and LEG Investments, Creditors and Interested Parties, ("Movant") moves to extend the deadline to file a complaint objecting to Thomas W. Hanagan's ("Debtor") discharge because Movant seeks to investigate financial documents and records that Debtor recently disclose to the Chapter 7 Trustee may be held by third parties. Movant asserts review of such documents is necessary for determining Debtor's role in the disposition of millions of dollars in a real estate project which may have been in the nature of a Ponzi scheme.

The deadline for filing a complaint objecting to discharge was February 18, 2020. Dckt. 5. The Motion requests that the deadline to object to Debtor's discharge be extended to April 17, 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 February 5, 2020, before 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 17, 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 LEG Enterprises and LEG Investments, Creditors and Interested Parties, ("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 Thomas W. Hanagan's ("Debtor") discharge is extended to ~~April 17, 2020~~.

FINAL RULINGS

16.	**15-24202-A-7** **ASF-2**	**CHERYL MCNEIL** **Pro Se**	**MOTION FOR ADMINISTRATIVE EXPENSES** **1-9-20 [112]**

Final Ruling: No appearance at the February 13, 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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2019. By the court's calculation, 69 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). 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 Administrative Expenses is granted.

Chapter 7 Trustee Alan Fukushima ("Movant") requests payment of administrative expenses in the amount of $79,000.00, for claims resulting from taxes incurred by the estate that became due and owing post-petition to the Internal Revenue Service ("IRS") in the amount of $58,000.00 and to the Franchise Tax Board ("FTB") in the amount of $21,000.00, and authority, subject to the provisions of 11 U.S.C. Section 726, to pay the balance due on account of said claims from available funds.

DISCUSSION

Movant argues that he employed a certified public accountant to prepare income tax returns on behalf of the bankruptcy estate to comply with state and federal authorities. Income taxes for calendar tax year ended December 31, 2019 consist of $58,000.00 due and payable to the IRS and $21,000.00 due

and payable to the FTB by April 15, 2020. Section 503(b)(1)(B) provides that tax expenses incurred by the estate are allowed as administrative expenses. The section does not require the filing of a request for payment as a condition for the IRS and FTB being allowed an administrative claim. The estate has incurred taxes that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant incurred the taxes while administering the bankruptcy estate for the 2019 year. Movant testifies that to date, he is holding approximately $269,890.00 in funds from the administration of estate assets.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for claims resulting from taxes incurred by the estate that became due and owing post-petition to the Internal Revenue Service ("IRS") in the amount of $58,000.00 and to the Franchise Tax Board ("FTB") in the amount of $21,000.00, is authorized to pay the balance due on account of said claims from available funds for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses in the amount of $79,000.00, for claims resulting from taxes incurred by the estate that became due and owing post-petition to the Internal Revenue Service ("IRS") in the amount of $58,000.00 and to the Franchise Tax Board ("FTB") in the amount of $21,000.00.

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 Allowance of Administrative Expense filed by Chapter 7 Trustee Alan Fukushima ("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 Chapter 7 Trustee is authorized to pay the Internal Revenue Service ("IRS") in the amount of $58,000.00 and the Franchise Tax Board ("FTB") in the amount of $21,000.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

17. **19-26620-A-7** **LYNDA MCLAIN** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JHW-1 **Seth Hanson** **1-2-20 [17]**

FORD MOTOR CREDIT COMPANY LLC VS.

Final Ruling: No appearance at the February 13, 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 January 2, 2020. By the court's calculation, 42 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 xxxxx.

Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Escape, VIN ending in 0937 ("Vehicle"). The moving party has provided the Declarations of Jacklyn Larson and John Eng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Lynda Jeanne McLain ("Debtor").

Movant argues Debtor has not made three (3) post-petition payments, with a total of $1,442.18 in post-petition payments past due. Declaration, Dckt. 20.

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 $16,429.64 (Declaration, Dckt. 20), while the value of the Vehicle is determined to be $9,275.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the NADA Valuation Report.

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 Ford Motor Credit Company LLC ("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 2016 Ford Escape ("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.

18. **19-27435-A-7** **TRAYVON WILLIS KENNEDY** **CONTINUED ORDER TO SHOW CAUSE**
Justin Kuney **FAILURE TO PAY FEES**
12-17-19 [18]

Final Ruling: No appearance at the February 13, 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 December 19, 2019. The court computes that 20 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: $335.00 due on November 27, 2019.

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 Docket reflects that Debtor made the payment of $335.00 on February 11, 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 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, and the Bankruptcy Case shall proceed in this court.

19. **20-20138-A-7** **JACOB/AMANDA GOMES** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **1-24-20 [13]**

Final Ruling: No appearance at the February 13, 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 26, 2020. The court computes that 18 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: $335.00 due on January 10, 2020.

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.

20. **19-27951-A-7** **SUZIE SZIJARTO** **MOTION TO AVOID LIEN OF CAPITAL COMMUNITY BANK**
DAO-1 **Dale Orthner** **1-6-20 [10]**

Final Ruling: No appearance at the February 13, 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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 6, 2020. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital Community Bank ("Creditor") against property of the debtor, Suzie Zsuzsanna Szijarto ("Debtor") commonly known as 8528 Blakepointe Way, Antelope, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $54,359.18 Exhibit B, Dckt. 13. An abstract of judgment was recorded with Sacramento County on June 6, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $300,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $243,259.66 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000.00 on Schedule C. Dckt. 1.

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

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 Suzie Zsuzsanna Szijarto ("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 Capital Community Bank, California Superior Court for Sacramento County Case No. 34-2019-00250187, recorded on June 6, 2019, Document No. 201906060742, with the Sacramento County Recorder, against the real property commonly known as 8528 Blakepointe Way, Antelope, 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.

21. **19-27655-A-7** **JORGE TAUIL MARQUEZ AND FABIANA ARAUJO TARIBA** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JHW-1 **Dale Orthner** **1-14-20 [14]**

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the February 13, 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 January 14, 2020. By the court's calculation, 30 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.

Santander Consumer USA Inc. dba Chrysler Capital ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Ram 1500, VIN ending in 7464 ("Vehicle"). The moving party has provided the Declaration of Erica Engel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jorge Enrique Tauil Marquez and Fabiana Araujo Tariba ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $699.20 in post-petition payments past due. Declaration, Dckt. 17. Movant also provides evidence that there are three (3) pre-petition payments in default, with a pre-petition arrearage of $3,330.03 *Id.*

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 $21,779.43 (Declaration, Dckt. 17), while the value of the Vehicle is determined to be $10,000.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the NADA Valuation Report.

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 Santander Consumer USA Inc. dba Chrysler Capital ("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 2014 Ram 1500 ("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.

22. **19-27986-A-7** **ARTEM EMMANUILOV AND** **MOTION TO AVOID LIEN OF MARIA**
MS-1 **IANA MAISTRENKO** **MENDEZ**
Mark Shmorgon **1-10-20 [12]**

Final Ruling: No appearance at the February 13, 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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 10, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Maria Mendez ("Creditor") against property of the debtor, Artem Emmanuilov ("Debtor") commonly known as $916.69 in garnished funds held in custody by the Los Angeles County Sheriff ("Property").

A Wage Garnishment Order was entered against Debtor in favor of Creditor in the amount of $11,140.71 on November 18, 2019. Exhibit D. Dckt. 15.

Pursuant to Debtor's Schedule A, the subject personal property has an approximate value of $916.69 as of the petition date. Dckt. 14. The unavoidable consensual liens that total $11,140.71 as of the commencement of this case. Exhibit D, Dckt. 15. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $916.69 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the personal 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 Artem Emmanuilov ("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 Maria Mendez, arising from the California Superior Court for San Francisco County Case No. CPF-12-512533, Earnings Withholding Order dated November 18, 2019, against the personal property consisting of $916.69 in garnished funds held in custody by the Los Angeles County Sheriff, 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.