UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 26, 2015 at 10:30 a.m.

1.	**14-29231-E-11 RLC-13**	**MIZU JAPANESE SEAFOOD BUFFET, INC. Stephen M. Reynolds**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH HUI LONG, WAN FANG FU, MAGGIE CHAN, DAO LIU, AND RACHEL LIU 1-29-15 [122]**

Final Ruling: No appearance at the February 26, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent 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 Approval of Compromise is granted.

Mizu Japanese Seafood Buffed, Inc., the Debtor-in-Possession, ("Debtor in Possession" or "Movant") requests that the court approve a compromise and settle competing claims and defenses with Hui Long, Wan Fang Fu, Maggie Chan, Dao Lui, and Rachel Liu ("Settlor"). The claims and disputes to be resolved by the proposed settlement are: (1) Maggie Chan's judgment lien pursuant to California Code of Civil Procedure § 697.510(a) in the amount of $70,690.99; (2) Hui Long's judgment lien pursuant to California Code of Civil Procedure

§ 697.510(a) in the amount of $73,142.42; (3) Wang Fang Fu's judgment lien pursuant to California Code of Civil Procedure § 697.510(a) in the amount of $30,982.52; (4) Want Fang Fu and Hio Long's California Labor Code § 98.2(g)(1) liens which attach only to real property; (5) Dao Liu's disputed general unsecured claim in the amount of $67,703.62; and (6) Rachel Liu's disputed general unsecured claim in the amount of $45,682.52.

Movant and Settlor has 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 is set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 125):

A. Counselor for Settlor shall pay to the bankruptcy estate (now the post-confirmation estate), c/o counsel for Debtor in Possession the sum of $17,512.23 within three business days of the approval of the Agreement. This is to recover $22,512.23 that Settlor obtained in enforcing the judgment pre-petition. Debtor-in-Possession shall abandon any claims against Maggie Chan and Hio Long for their alleged embezzlement. The Settlors agree to support the proposed sale set for hearing on February 5, 2015. The claims of Settlors shall be allowed as general unsecured claims in the following amounts:

1. Hui Long - $73,142.42

2. Wan Fang Fu - $30,982.52

3. Maggie Chan - $70,631.61

4. Dao Liu - $67,703.62

5. Rachel Liu - $45,682.52

B. The Settlors agree that all rights under Civil Code § 1542 are waived.

C. Settling parties hereby irrevocably and unconditionally release any and all potential, current, and future claims.

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 Construction)*, 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 Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (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); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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

This factor weighs in favor of settlement because it is the position of the Debtor-in-Possession that Settlors do not have a defense to the preferential transfer of the Debtor-in-Possession's funds or the preferential creation of a judgment lien. Both transfers were within 90 days of the filing of the case.

Difficulties in Collection

Collection of the levied funds would likely be relatively simple. However, the proposed settlement eliminates any collection risk.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated at $5,000.00 as well as the additional delay. A trial, even upon an agreed statement of facts, would consume resources of the Debtor-in-Possession, Settlors, and the court. The settlement eliminates this cost.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since it is the least cost solution to the estate's claims against Settlors. Settlors represent a majority of the creditors in this case. Although the dividend to general unsecured creditors is small in this case, the desire of these creditors to finally resolve matters between themselves and the estate is beneficial. Furthermore, the settlement will also allow final distributions to be made under the Plan sooner than would otherwise be possible.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Mizu Japanese Seafood Buffed, Inc., the Debtor-in-Possession, ("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 to Approve Compromise between Movant and Hui Long, Wan Fang Fu, Maggie Chan, Dao Lui, and Rachel Liu ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion(Docket Number 125).

2. 14-91565-E-11 HAR-1 RICHARD SINCLAIR Pro se

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 1-23-15 [66]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is denied without prejudice.

This Motion to Convert the Chapter 11 bankruptcy case of Richard Sinclair ("Debtor") has been filed by creditors Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Movant").

The Movants, along with the instant Motion, filed a Motion to Shorten Time. Dckt. 65.

JANUARY 25, 2015 ORDER

On January 25, 2015, the court issued an order setting the Motion for 10:30 a.m. on February 26, 2015. Dckt. 71. The court further ordered that on or before January 29, 2015, Movants shall file and serve a Supplemental Pleading which states the grounds (and only the grounds) upon which the requested relief is based in this contested matter as required by Federal Rule of Bankruptcy Procedure and the Local Bankruptcy Rules which requires that the motion, points and authorities, each declaration, and the exhibits be separately filed with the court. The court ordered that any opposition shall be filed and served on or before February 13, 2015 and replies to be filed and served on or before February 20, 2015.

GROUNDS UPON WHICH RELIEF IS BASED

Movants filed a supplemental pleading on January 28, 2015. Dckt. 77. The Movants base the instant Motion on the following grounds (Fed. R. Bankr. P. 9013):

1. There is substantial or continuing loss to, or diminution of the Estate. Debtor has not practiced law much for several years and his only income has been people paying on their receivables. Any effort to collect on the receivables has resulted in a cross-complaint for legal malpractice, two of which remain pending. The only source of income for Debtor is his social security and possible collection of accounts receivables. Any collection of accounts receivable will be used for cost of administration expenses and constitute a diminution of the estate.

The estate is suffering a continuing loss in that the Debtor is incurring obligations as costs of administration that he is unable to pay. These obligations include spousal support of $1,600.00 per month. The failure to pay spousal support accruing post-petition also constitutes cause under 11 U.S.C. 1112(b)(4)(P). Stanislaus County Superior Court has mandated payments by Debtor to the holder of the first deed of trust of $3,000.00 per month, which obligation is secured by the real property in which Debtor resides but has only a leasehold interest. He is, at a minimum, accruing rent to an irrevocable trust to which he conveyed the property but has no interest in the trust. Debtor has continued to employ his long-time secretary, Tanya Brockman, for the salary of $3,500.00 per month. Debtor has been unable to pay his utilities and will incur an obligation to the United States Trustee beginning January 31,2015. The Chapter 1l estate is already administratively insolvent. Debtor's only non-exempt assets are his accounts receivable that he deems to be uncollectible. To the extent receivables are collected and utilized by Debtor for paying costs of administration, the estate is decreasing in value.

2. There is an absence of a reasonable likelihood of rehabilitation

in the Chapter 11 Case. 11 U.S.C. § 1112(b)(4)(A). Debtor does not have an ongoing legal practice or other business that would form the basis for a plan of reorganization. He has not actively worked for several years in the legal profession other than two remaining contingency fee cases that are still open. Debtor cannot confirm a liquidating plan because there are no assets in the estate to liquidate other than exempt assets and accounts receivable that he deems to be uncollectible. All of the assets that he formerly held have been transferred to an irrevocable trust, his children or his ex-wife.

Furthermore, Debtor cannot confirm a plan. The unsecured class is controlled by the Movants who will not vote in favor of any plan proposed by Debtor. His draft plan requires the Movants to dismiss all pending litigation without any legal justification for the requirement. It also requires that two malpractice claimants to dismiss their pending cross-claim for malpractice and pay the receivable due to Debtor. Lastly, the proposed plan anticipates priming the lien of Ocwen secured by the home which Debtor is currently leasing but has no ownership interest in. The 20 year oral lease is not enforceable under the Statute of Frauds. Debtor has no secured creditors and therefore no possibility of having a consenting class.

3. Movants allege that cause exists under 1112(b)(4) because of Debtor's pre-petition actions transferring the property to an irrevocable trust, his children and ex-wife, A third party needs to examine these transfers as potential fraudulent conveyances to recover property for the estate. Debtor and the Movants have been engaged in litigation since 2003.

Starting with the filing of the RICO action in 2003, Debtor transferred essentially all of his non-exempt assets to various trusts and failed to disclose these transfers in the last ten years as required by Statement of Affairs No. 10(b). Assets transferred to the Richard C. Sinclair Family Trust dated June 25, 2005 ("Trust"), included but are not limited to the Oak View Drive home where Debtor currently resides, the Twain Harte house and $578,000.00 in accounts receivable. The Trust was initially a revocable family estate planning trust that Debtor subsequently converted to an irrevocable trust and gave up is beneficial interest and stopped acting as the trustee, Under 11 U.S.C. 544, a Trustee in a Chapter 7 can reach back and assert a fraudulent conveyance under California law up to seven years from the date this Chapter 11 case was filed. Debtor was unsure when the trust was made irrevocable but he thought in 2010, and that he resigned and gave up his beneficial interest in 2012 or 2013.

The Movant allege that the division of property was not equal and the transfer to the ex-wife was a fraudulent conveyance. Over the last eleven years after extensive litigation with the Movants and having a judgment entered against him in excess of $1,200,000.00 on which nothing has been recovered, Debtor has no assets and no means of support other than social security. Debtor's actions in ridding himself of all non-exempt assets over a period of eleven years constitutes cause for conversion of the case and the appointment of an independent third party to examine the transactions for the benefit of this estate. Movants believe many of the transfers the Debtor claims he has made may be avoided as fraudulent conveyances.

DEBTOR’S OPPOSITION

Debtor filed an opposition on February 12, 2015. Dckt. 87. The

Opposition consists of 30 pages with over 90 exhibits, totaling 1500 pages.

In his opposition, the Debtor requests that the Motion for conversion is denied and that the court should "set aside all awards to Andrew Katakis."

In short, the Debtor objects on the following grounds:

1. Movant has not established an bad faith and Debtor is currently preparing an Amended Plan which has not been filed.

2. Debtor's plan will seek to remove Movant Katakis for his criminal fraudulent foreclosures and Debtor will seek to re-establish his income of approximately $40,000.00 per month through Debtor's law practice and the proposed establishment of a rehabilitation center.

3. Two previous state and district court judges have reviewed the transfers, which allegedly found that the transfers were in good faith.

MOVANTS' REPLY

Movants filed a reply on February 20, 2015. Dckt. 102. The Movants reply as follows:

1. Debtor's liquidating plan is speculative and his workout plan is speculative given the Debtor's age, pending disbarment proceedings, and lack of any significant legal practice sing 2009.

2. The only non-exempt asset in the estate is Debtor's accounts receivable that Debtor intends to use, even though Debtor deems them uncollectible, to pay ongoing costs of administration claims. Any receivable collected should be impounded for payment of unsecured creditors. Failure to do so results in a diminution of the estate. The continuing obligations include spousal support of $1,600.00 per month, $3,000.00 per month to the holder of the first deed of trust secured by the real property in which Debtor resides but only has a leasehold interest. Debtor is, at a minimum, accruing rent to an irrevocable trust to which he conveyed the property but has no interest in the trust, Debtor has continued to employ his long-time secretary, Tanya Brockman, for the salary of $2,500.00 per month. Debtor has been unable to pay his utilities and will incur an obligation to the United States Trustee beginning January 31, 2015.

3. The transfers Debtor made prior to 2008 were made for estate tax purposes, the distribution to Debtor's former spouse of half the assets including 40 acres, the 2003, 2004, 2005, 2006, and 2007 transfer of the property of Sinclair Ranch require the review by an independent third party. The former judges' reviews of the transfers were not to whether they were fraudulent conveyances. The Movants allege that the division of property was not equal and the transfer to Debtor's former spouse was fraudulent as well as the transfers to his Trust that was made irrevocable and transfers to his children.

4. Debtor misstates the law that if the Movants allege the Chapter 11 case was filed in bad faith, that as long as Debtor shows that it was filed in good faith, the good faith apparently cancels the bad faith.

5. There is no feasible plan because even the amended plan requires a first deed of trust on the Oak View property to raise the $200,000.00 to cure the first deed of trust and provide the necessary operating capital to get a state license for the senior citizens home. Debtor does not own the home and has no interest in the home because it is in the irrevocable trust, according to Debtor. There is no reason for the trustee, Debtor's sister to provide the Debtor anything other than a gift.

6. The Debtor misstates the history of the current RICO Complaint and the reason for the dismissal of his counter-claim was due to the Debtor's failure to abide the court's orders. The Debtor improperly states that the results in the federal court action were procured by Movants California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association's fraud.

7. The Debtor's collateral attack on the state court judgment is an attempt to reargue the same issues the Debtor lost in both the trial court and court of appeal.

8. The Debtor's disability arguments are a rehash of assertions Debtor previously made and lost in both the state court and federal court action. The Debtor's suggestion that the outcome in the federal court action was because of his disability rather than his disobedience of court orders is incorrect.

9. Debtor is incorrect in stating that Movants fraudulently withheld documents during the state court trial.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

This case is clearly a highly contentious one between the Movant and the Debtor, which is apparent by the torrid history of past litigation.

Improper Request to Vacate

The court first addresses the Debtor's request to vacate all orders pursuant to Fed. R. Civ. P. 60. Debtor combination of two types of relief in one pleading is procedurally incorrect. Federal Rule of Bankruptcy Procedure 7018 makes Federal Rule of Civil Procedure 18 applicable in adversary proceedings. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, however, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014 does not incorporate Rule 7018 for contested matters, which includes motions. Debtors have improperly attempted to join two separate requests for relief in one motion.

As with the Debtor's objection, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate– proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. The Supreme Court and Rules Committee excluded the provision of Fed. R. Bankr. P. Rule 7018 and Fed. R. Civ. P. Rule 18 from the rapid law and motion practice in the bankruptcy court. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

The Debtor has improperly attempted to join an objection to the Motion with a request to vacate orders. This is improper. Each motion must assert one claim against the other party.

Furthermore, the request to vacate itself is improper. The Debtor is requesting that this court vacate orders of both a state and federal court judge. The scope of Fed. R. Civ. P. 60 allows this court only to vacate orders that are issued by this court. The Debtor here is seeking to have this court overreach its jurisdictional authority and vacate "orders," none of which are specifically pled in Debtor's nonsensical opposition, of both a district court and state court. This is plainly improper.

The Grounds Asserted Currently Are Not Sufficient

As evidenced by the lengthy and heated pleadings by both the Movant and the Debtor, there is "bad blood" between the parties. Here, the pile of pleadings and cross-allegations clearly evidence that the litigation tactics used in other courts are working into this court.

This case was filed on November 24, 2014, approximately three months ago. Debtor filed schedules on December 12, 2014. Dckt. 42. On December 16, 2014, the Debtor filed a Chapter 11 Plan.

The Movant argues that conversion to a Chapter 7 is justified under 11 U.S.C. § 1112(b) because there will not be a confirmable plan and the estate there is substantial and continuous diminution of the estate. Namely, the Movants essentially are arguing that the Debtor's continued post-petition obligation, specifically, the Debtor's spousal support and other administrative claims, are diminishing the estate in a way that is a detriment to any of Movants' claims. The Movants further assert that there are possible transfers that may be deemed fraudulent which would bring further assets into the estate and that an independent Chapter 7 Trustee would be able to evaluate those

transfers.

While alleging grounds for relief, the pleadings and evidence presented offer no basis for the court concluding that a Chapter 7 Trustee or Chapter 11 Trustee could get anywhere in this case. Basically, it is argued that the Debtor has stripped himself of all assets, there is nothing in the estate, and someone should be appointed to go and get it all back. Unfortunately, the court cannot see how a Trustee could do anything at this early stage of the case.

The Debtor's opposition provides no clarification but instead adds further confusion to what appears to be a convoluted and complicated history in the courts. Debtor's mountain of documents in opposition and the vague, general request that this court vacate judgments and order of other courts lends credibility to Movant's contention that nothing productive can come of this Chapter 11 case while the Debtor in Possession remains in control of the estate.

While the court can imagine that once further discovery takes place, conversion or dismissal may be proper, it appears that converting the case to a Chapter 7 is premature. Based on the evidence provided and the assertions by the parties, it appears that a Chapter 7 Trustee may be stepping into a case that has no funds to support the duties that the Movants hope the "independent third party" would be able to accomplish.

A conversion at this point may act as a detriment to the Movants, seeing that the estate may be liquidated, resulting in less to the creditors. The Debtor, electing to continue as Debtor in Possession in this Chapter 11 case is bound by his fiduciary duty to the estate under 11 U.S.C. § 1107. *Wolf v. Weinstein*, 372 U.S. 633 (1963); *In re United Healthcare Sys., Inc.*, 200 F.3d 170 (3d Cir. 1999). He is not, and cannot merely act in his own self-interest, but only as the fiduciary for the bankruptcy estate. If a fiduciary fails to so act, then he or she suffers the consequences of such failure.

At this juncture, though the court questions whether the Debtor in Possession can properly and successfully prosecute a Chapter 11 case and fulfill his fiduciary duties as Debtor in Possession (in light of the responsive pleadings filed to date), conversion of the case to Chapter 7 or the appointment of a Chapter 11 Trustee are not viable alternatives.

Creditors have a vital tool in bankruptcy cases, the 2004 examination. Movant has already obtained an order providing for 2004 examinations of a number of related persons and entities. Possibly such discovery will turn up evidence which supports other alternatives or becomes the basis for the Debtor and Creditors addressing the debts which are owed.

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 Convert the Chapter 11 case filed by the Movants having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

3. 15-20465-E-7 JOSELYN HOWARD — **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Scott D. Shumaker — **2-6-15 [9]**

Final Ruling: No appearance at the February 26, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Joselyn Howard("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 8, 2015. 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 ($310.00 due on January 15, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

4. 10-23577-E-11 GLORIA FREEMAN
WFH-46 Reno F.R. Fernandez

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 30-1
1-6-15 [1575]

Final Ruling: No appearance at the February 26, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 51 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 30-1 of Internal Revenue Service is continued to 10:30 a.m. on March 19, 2015 .

David Flemmer, the Chapter 11 Plan Administrator ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 30-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be an administrative claim in the amount of $64,831.36. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is November 30, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 483.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence

must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

NOTICE OF CONTINUANCE

Objector filed a Notice of Continuance on February 13, 2015 stating that the hearing on the Objection shall be continued to 10:30 a.m. on March 19, 2015. Dckt. 1623.

DISCUSSION

This case has been riddled with contentious proceedings, reasonable delays due to medical conditions, confirmation of a plan, a competency hearing, improper conduct of counsel, recovery of legal fees between related bankruptcy cases. Much has been accomplished by the parties. Though no motion to continue has been filed with the court, FN.1. the court grants the request of the Objector to continue the hearing. No response has been filed by the Internal Revenue Service.

FN.1. Though under the Local Bankruptcy Rules a party selects the hearing date from the court's calendar, once it has been set for a hearing it is within the court's providence, not the parties, to continue the hearing. L.B.R. 9014-1(j). The parties should keep that in mind to prevent from being caught by surprise and having to litigate their contested matter or adversary proceeding in federal court, or having the matter dismissed and having to start all over.

In light of the agreement between the Objector and Debtor and in an effort to afford the parties an opportunity to settle, the Objection to the Proof of Claim is continued to 10:30 a.m. on March 19, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service, Creditor filed in this case by David Flemmer, the Chapter 11 Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 30-1 of Internal Revenue Service is continued to 10:30 a.m. on March 19, 2015.

5. 10-23577-E-11 GLORIA FREEMAN
WFH-47 Reno F.R. Fernandez

OBJECTION TO CLAIM OF FRANCHISE TAX BOARD, CLAIM NUMBER 31-1
1-6-15 [1579]

Final Ruling: No appearance at the February 26, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 51 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim number 31-1 of Franchise Tax Board is continued to 10:30 a.m. on March 19, 2015. .

David Flemmer, the Chapter 11 Plan Administrator ("Objector") requests that the court disallow the claim of Franchise Tax Board ("Creditor") filed by Gloria Freeman, Proof of Claim No. 31-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be an administrative claim in the amount of $9,806.50. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is November 30, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 483.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim.

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

NOTICE OF CONTINUANCE

Objector filed a Notice of Continuance on February 13, 2015 stating that the hearing on the Objection shall be continued to 10:30 a.m. on March 19, 2015. Dckt. 1625.

DISCUSSION

This case has been riddled with contentious proceedings, reasonable delays due to medical conditions, confirmation of a plan, a competency hearing, improper conduct of counsel, recovery of legal fees between related bankruptcy cases. Much has been accomplished by the parties. Though no motion to continue has been filed with the court, FN.1. the court grants the request of the Objector to continue the hearing. No response has been filed by the Internal Revenue Service.

FN.1. Though under the Local Bankruptcy Rules a party selects the hearing date from the court's calendar, once it has been set for a hearing it is within the court's providence, not the parties, to continue the hearing. L.B.R. 9014-1(j). The parties should keep that in mind to prevent from being caught by surprise and having to litigate their contested matter or adversary proceeding in federal court, or having the matter dismissed and having to start all over.

In light of the agreement between the Objector and Debtor and in an effort to afford the parties an opportunity to settle, the Objection to the Proof of Claim is continued to 10:30 a.m. on March 19, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service, Creditor filed in this case by David Flemmer, the Chapter 11 Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 30-1 of Franchise Tax Board is continued to 10:30 a.m. on March 19, 2015.

6. 10-23577-E-11 GLORIA FREEMAN
WFH-48 Reno F.R. Fernandez

OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 32-2
1-6-15 [1583]

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 51 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 32-2 of Internal Revenue Service is sustained and the claim is disallowed in its entirety.

David Flemmer, Chapter 11 Plan Administrator ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 32-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be an administrative claim in the amount of $11,887.79. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is November 30, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 483.

Objector states that on July 29, 2014, the Internal Revenue Service filed Claim No. 32-1 in the amount of $18,840.34. The claim purports to seek allowance of an administrative claim. On August 11, 2014, the Internal Revenue

Service filed Claim No. 32-2 amending Claim No. 32-1 and asserting an administrative claim in the amount of $11,887.70. The description of the claim states "CIVIL PEN." The claims asserted that the bankruptcy estate became indebted to the Internal Revenue Service for the tax periods June 30, 2010, March 31, 2011, and June 30, 2011. Each of these tax periods occurred after the petition date, and do not constitute pre-petition.

Objector objects to the claim on the grounds that: (1) the claim is an administrative claim and is bared as untimely; (2) the claim is a pre-petition claim that is barred by the bar date established by Local Bankr. R. 3003-1; and (3) the claim constitutes a claim for penalties not in compensation for pecuniary loss and therefore is, at best, a subordinated Class 3-c claim under the confirmed plan.

DEBTOR'S LIMITED OPPOSITION

Gloria Freeman ("Debtor") filed a limited opposition to the instant Objection on February 12, 2015. Dckt. 1621. The Debtor states that on August 9, 2013, the Debtor filed Claim No. 30-1 on behalf of the Internal Revenue Service, seeking recovery of administrative expenses in the amount of $64,831.36. Subsequently, on July 29, 2014, the Internal Revenue Service filed Claim No. 3201, seeking allowance of administrative expenses in the amount of $18,840.34. Shortly thereafter, on August 11, 2014, the Internal Revenue Service amended Claim No. 32-1 by filing Claim No. 32-2 in the amount of $11,887.79.

Debtor argues that Debtor's Claim No. 30-1 covers the amount requested by Internal Revenue Service in Claim No. 32-2. The Debtor does not oppose the relief requested in the instant Objection. However, to the extent the aforesaid two claims are duplucative, the Debtor asserts to reserve all rights with respect to Claim No. 30-01. Debtor's counsel and Trustee's counsel agreed to continue the hearing on the Trustee's objection to Claim No. 30-1 for two week period. Trustee filed a notice of the continuance with the court.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

On October 2, 2012, the court issued an order that explicitly ordered that "applications for all administrative expenses accrued prior to or on September 30, 2012, except for claims for professional fees and expenses, must be filed and served on or before November 30, 2012." Dckt. 483.

Claim No. 32-1 was filed on July 29, 2014. Claim No. 32-2 was filed on August 11, 2014.

Internal Revenue Service does not argue that the expenses sought are for "professional fees and expenses" nor does the Internal Revenue Service argue that the claim qualifies for an exception under Fed. R. Bankr. P. 3003(c)(3). No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Furthermore, reviewing Debtor's filed Proof of Claim No. 30 on behalf of Internal Revenue Service appears to include the alleged penalties of the Internal Revenue Service's Proof of Claim No. 32-2.

Additionally, the Internal Revenue Service, in Proof of Claim No. 32, is not asserting a "claim" in this bankruptcy case. On the face of the documents filed on July 29, 2014, August 8, 2014, and August 11, 2014, the Internal Revenue Service states that it believes it is entitled to an administrative expense. The period's are for the quarters ending June 30, 2010, March 31, 2011, and June 30, 2011. This Chapter 11 case was commenced by the Debtor on February 16, 2010. Each of the tax periods at issue are clearly post-petition.

Gloria Freeman also filed a "Proof of Claim" for the Internal Revenue Service on August 9, 2013. Proof of Claim No. 30. The taxes at issue in this proof of claim are for the quarters ending June 30, 3010, March 31, 2011, June 30, 2011, and September 30, 2011 – all clearly post-petition.

The Bankruptcy Code defines a claim to be,

> "(5) The term "claim" means–
>
> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured."

11 U.S.C. § 101(5).

Only a person who has a ***pre-petition claim*** is a creditor in a bankruptcy case. 11 U.S.C. § 101(10). For a person to have the status of a creditor, and thereby be entitled to have a *claim* in the bankruptcy case, the debt must arise pre-petition. *Wright v. Owens Corning*, 679 F.3d 101, 106 (3rd Cir. 2012); *Epstein v. Official Comm. Of Unsecured Creditors (In re Piper Aircraft, Corp)*, 58 F.3d 1573, (11th Cir. 1995).

The Internal Revenue Service and Gloria Freeman have both demonstrated that the obligations asserted in Proof of Claim No. 32 are not a pre-petition obligation. As such, they cannot be a ***claim***.

If the Internal Revenue Service desired to have the court allow it an administrative expense, then either may, or could have, complied with the requirements of 11 U.S.C. § 503. Merely filing a proof of claim and titling it "Administrative Expense" does not comply with the notice and hearing

requirements of 11 U.S.C. § 503(a) and (b).

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. As a separate and independent grounds, the claim is disallowed in that it is not based on a pre-petition obligation of the Debtor. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Internal Revenue Service, Creditor filed in this case by David Flemmer, Chapter 11 Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim, or as titled Proof of Administrative Expense, Number 32-2 of Internal Revenue Service is sustained and the claim is disallowed in its entirety.

7. 14-29284-E-7 CHARLES MILLS
Lucas B. Garcia

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-21-14 [90]

Final Ruling: No appearance at the February 26, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Charles Mills ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 23, 2015. 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 ($429.00 due on November 17, 2014).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

8. 14-29284-E-7 CHARLES MILLS
DNL-3 Lucas B. Garcia

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR KELLER WILLIAMS REALTY, BROKER(S)
1-29-15 [196]

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Kimberly Husted, Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Movant proposes to sell the "Property" described as follows:

A. 201 Rua Esperanza, Lincoln, California

The proposed purchaser of the Property is Ibrahim Salama and Sousan Herzallah and the terms of the sale are:

1. Purchase price is $2,100,000.00 (all cash) payable as follows:

a. $50,000.00 initial deposit; and

b. The balance of $2,050,000.00 due at close of escrow

2. The transfer of the Property shall be “as is” and “where is” without representation or warranty.

3. The Trustee shall be responsible for applicable prorations and all closing costs, including escrow, title, and recording fees; transfer taxes/fees; HOA fees; and an amount not to exceed $900.00 for a one-year warranty plan;

4. The sale is subject to overbidding through conclusion of the sale hearing

The Trustee argues that the proposed sale has a sound business justification and is in the best interest of the estate. The Trustee estimates that the estate will benefit from the net sale proceeds in the amount that will exceed $100,000.00. The estate will also benefit from an efficient administration of the Property, which is particularly important given the creditor Lackeys’ pending relief from stay motion. The Trustee has received no higher or otherwise better offers.

The Trustee also requests that the court approve the Broker’s compensation in the amount of 4% of the gross sale proceeds, in the amount of $84,000.00.

Furthermore, the Trustee requests reimbursement for the expenses advanced by the Trustee in the amount of $3,666.00 in an effort to protect the estate’s interest in the Property following the conversion. The Trustee advanced $1,296.00 to cure a property insurance deficiency, $605.00 to change the locks on the Property, and $1,765.00 to the City of Lincoln Utilities Department to cure a deficiency on the water bill and re-connect the water services.

Lastly, the Trustee requests that the 14 day stay period imposed by Fed. R. Bankr. P. 6004(h) be waived so the sale can be completely immediately upon approval.

CREDITOR’S STATEMENT IN SUPPORT

Joseph and Stacy Lackey (“Creditors”) filed a statement in support on February 5, 2015. Dckt. 202. The Creditors state that they believe the terms of the proposed sale are reasonable and that the timely sale of the Property is in the best interest of the estate.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The court finds that the 4% commission for the broker is reasonable in light of the services rendered.

The court further finds that the $3,666.00 advanced by the Trustee in the efforts to sell the Property are reasonable and are permitted to be paid from the sale proceeds pursuant to 11 U.S.C. § 331. While unusual for a fiduciary

to advance monies to the estate for such operational expenses (as opposed to travel, postage, and the like), at least without prior court authorization, these expenses were required on an emergency basis. The Trustee shall include these expenses, and credit for payment, as part of her final application for fees and costs in this case. Lastly, the court finds that given the history of past sales of the Property falling through, that waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h) is proper and for cause.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kimberly Husted, 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 Kimberly Husted, Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ibrahim Salama and Sousan Herzallah or nominee ("Buyer"), the Property commonly known as 201 Rua Esperanza, Lincoln, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $2,100,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 200, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to four percent (4%) of the actual purchase price upon consummation of the sale. The four percent (4%) commission shall be paid to the broker, Keller Williams Realty.
>
> 5. The Trustee be and hereby is authorized to reimburse the Trustee in the amount of $3,666.00 for reasonable fees advanced by the Trustee in efforts of selling the Property, pursuant to 11 U.S.C. §331.
>
> 6. The 14-day stay pursuant to Fed. R. Bankr. P. 6004(h) is waived for cause.

9. 15-20791-E-13 SHIRLEY STEELE — MOTION TO EXTEND AUTOMATIC STAY
SCS-1 Pro se — 2-11-15 [13]

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Certificate of Notice states that the Motion and supporting pleadings were served on Debtor, creditors, and Chapter 13 Trustee on February 11, 2015. By the court's calculation, 15 days' notice was provided.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is denied.

Shirley Steele ("Debtor") filed the instant *ex parte* Motion to Extend the Automatic Stay on November 11, 2015. Dckt. 13. The court set the *ex parte* motion, for which no notice was provided any party in interest, for hearing. Dckt. 12.

BACKGROUND

On February 2, 2015, Shirley C. Steele ("Debtor") commenced her current bankruptcy case. She has filed two prior cases in the last four years. Case No. 11-44457, a Chapter 7 case file on October 12, 2011, in which she received her discharge on December 17, 2013. The case was not closed until January 9,

2014. The Chapter 7 case was open and pending until 13 months before the filing of the current case.

On May 27, 2014, Debtor filed a Chapter 13 case with the assistance of counsel, Case No. 14-25552 ("Prior Chapter 13 Case"). That case was dismissed on December 3, 2014. Debtor in the Prior Chapter 13 Case confirmed her plan with an order filed on August 6, 2014. 14-25552; Order, Dckt. 41. The confirmed Plan in the Prior Chapter 13 Case required the Debtor to make monthly plan payments of $160.00 for 36 months. *Id.*, Dckt. 5. That Plan made no provision for the payment of any Class 1, 2, 3, 4, 5, or 6 claims, but only for a 100% dividend to creditors holding general unsecured claims which were stated to total $2,885.00.

On August 1, 2014, the bankruptcy court issued an order terminating the automatic stay in the Prior Chapter 13 Case to allow Bank of America, N.A. to proceed with an unlawful detainer concerning real property commonly known as 2900 Polaris Road, Tahoe City, California. *Id.*, Dckt. 40. The court granted the relief to allow Bank of America, N.A. to proceed with appropriate post-foreclosure state court proceedings to obtain possession of said real property.

Debtor's bankruptcy petition lists the Polaris Road Property as her street address. *Id.*, Dckt. 1. On Schedule D Debtor listed no creditors with secured claims in the Prior Chapter 13 Case. *Id.* at 14. On Schedule J Debtor lists no mortgage or rent expense. *Id.* at 22. In her opposition to the motion for relief from the stay, Debtor asserted that Bank of America, N.A.'s foreclosure on the Polaris Road Property was "illegitimate," "a breach of contract," and that Debtor was hiring counsel to sue Bank of America, N.A. One of the alternatives stated in the opposition was to give Debtor 60 days (from July 2014) to move to another place to live. *Id.*, Dckt. 31.

In the Petition filed in the current Chapter 13 case Debtor lists her address as the Polaris Road Property. (The court notes that this is now more than 150 days from July 2014 when the Debtor requested 60 days to move.) Dckt. 1 at 1. On Schedule A Debtor lists no real property in which she has an interest. *Id.* at 9. On Schedule B Debtor lists a claim described as a wrongful foreclosure suit against Bank of America, N.A., which is stated to have a value of $1.00. *Id.* at 11.

On Schedule D Debtor lists one creditor named as "Vertical Infill LLC as Trustee For Polaris Trust #2900 c/o Micole Simes, 27372 Aliso Creek Road, Suite 230, Aliso Viejo, CA 92656." *Id.* at 14. The claim of this creditor is stated to be $1,400,000.00 and that the amount of debt securing the claim is also ($1,400,000.00). Debtor also states that the Debtor disputes the claim. This creditor is identified as having purchased "the property from Bank of America, N.A. in 2014."

ORDER SETTING HEARING

On February 11, 2015, the court issued an order setting the hearing on the instant Motion for 10:30 a.m. on February 26, 2015. Dckt. 15. The court noted that the Debtor did not show sufficient grounds for ex parte relief. However, rather than just denying the Motion, the court ordered that a hearing on the Motion shall be conducted at 10:30 a.m. on February 26, 2015 (the court specially setting it for that date and time). The court ordered that if the Debtor wished to pursue the Motion, supplemental pleadings shall be filed, and

all pleadings and notice of hearing for February 26, 2015, shall be filed and served on or before February 17, 2015. Opposition may be stated orally at the hearing, but if written opposition is filed, it shall be filed and served on or before February 23, 2015.

VERTICAL INFILL LLC'S OPPOSITION

Vertical Infill LLC as Trustee for Polaris Trust #2900 ("Creditor") filed an opposition to the instant Motion on February 3, 2015. Dckt. 33. The Creditor objects on the following grounds:

1. The instant case was presumptively filed in bad faith. The Debtor has had multiple bankruptcies pending within the preceding year. There has been no substantial change in Debtor's financial or personal affairs since the dismissal of the previous bankruptcies. In fact, Debtor's Schedule I and J filed in the instant case are identical to those that were filed in case no. 14-25552. There is otherwise no evidence that this case will conclude any differently than the prior cases. The presumption arises pursuant to 11 U.S.C. § 362(c)(c)(d) because Creditor initiated an action pursuant to 11 U.S.C. § 362(d) in the case no. 14-25552 and Debtor voluntarily dismissed said case.

2. Debtor cannot rebut the presumption of bad faith. The Debtor failed to explain the procedural history at that the property Debtor is wishing to protect was sold in a foreclosure sale on June 6, 2010 and the Debtor has failed to prosecute any alleged causes of action against Bank of America, N.A. for wrongful foreclosure action. Debtor failed to give a good faith explanation to justify extending the automatic stay.

    a. There does not appear to be any material change in Debtor's personal or financial affairs since the Schedules I and J are identical in the instant case as to those in case no. 14-25552.

    b. Debtor does not offer any explanation concerning the successive bankruptcy filings and how they are not part of a plan to delay, hinder, and defraud Creditor from exercising its state law remedies. Creditor has incurred substantial attorneys' fees in connection with its prosecution of attempting to protect its interest in the Polaris Property.

3. The Debtor's instant case was filed in bad faith because it is Debtor simply attempting to prevent the Creditor from pursuing its rights under state law for possession of the Property. The numerous prior bankruptcies have been in an effort to stay the state court proceedings. Simply put, the totality of the circumstances reflect that Debtor filed this case for no other reason than to delay, hinder, and defraud Creditor from gaining possession of the Property.

4. The Creditor should be awarded its attorney' fees incurred in connection with the instant Motion.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

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

Elliot-Cook, 357 B.R. at 814-815.

First, the Motion to Extend the Automatic Stay has not be served on any person and it has not been set for hearing. The Motion has been presented for *ex parte* review. No reason has been given why this Motion has not, or could not, be set for hearing as required by Local Bankruptcy Rule 9014-1(f)(1) or (2).

The Motion states the following grounds upon which the relief is requested:

A. Debtor's one prior bankruptcy case which was pending and dismissed within the one year preceding the commencement of the current case was case no. 14-25552.

B. Debtor has not had a case dismissed for: (1) failure to file or amend required documents; (2) failure to provide adequate protection as ordered by the court; or (3) failure to perform the terms of a plan confirmed by the court.

C. There has been a substantial change in the financial or personal affairs of the Debtor since the prior dismissal and Debtor believes that this case will result in a confirmed plan that will be fully performed.

D. The court is directed to read the Declaration of Shirley Steele in support of the Motion.

Dckt. 13.

The Declaration of Shirley Steele was filed on February 2, 2015. Dckt. 10. In her Declaration the Debtor testifies:

A. Debtor filed the prior case to save her home and pay 100% of her general unsecured debt.

B. Debtor states that her financial difficulties arose from her attempts to obtain a loan modification with Bank of America, N.A.

C. Debtor voluntarily dismissed the Prior Chapter 13 Case because she believed that she had made progress for a loan modification and she no longer needed bankruptcy protection.

D. A modification was not reached and Bank of America, N.A. sold the Polaris Road Property to Vertical Infill LLC in September 2014.

E. Vertical Infill LLC has obtained a judgment, which it asserts can be enforced against the Debtor and her family concerning possession of the Polaris Road LLC Property.

F. Debtor seeks to have the automatic stay extended to prevent the unlawful detainer from proceeding and to allow her in her dealings with Bank of America, N.A. and its successor.

In her declaration, Debtor states that she was not originally named as a party in the unlawful detainer action. She attached a copy of the September 24, 2014 complaint to her declaration. The named Defendant is Christian M. Steele and Does 1 to 10. The court notes that Christian M. Steele is listed as the Debtor's non-filing spouse in the Prior Chapter 13 Case and the current case. Question 16, Statements of Financial of Affairs in each case.

The court notes, with respect to the contention that the Debtor was unaware of the unlawful detainer proceeding relating to her and of there being only one prior case filed by the "Debtor" within the prior year:

A. Bank of America, N.A. filed a motion for relief from the automatic stay on June 25, 2014, to proceed against the Debtor to obtain post-foreclosure possession of the Polaris Road Property. 14-25552, Dckt. 15.

B. The motion for relief from the stay alleges that Christian Steele and the Debtor entered into a stipulation in the state court by a stipulated judgment by which Debtor and Christina Steele agreed to move out of the Polaris Road Property by October 18, 2010. When the Debtor and Christian Steele failed to move out, after obtaining relief from the stay in the Debtor's Chapter 7 case, a judgment for possession was obtained. Id.

C. Christian Steele has filed three bankruptcy cases since June 22, 2011. These are:

1. Case No. 11-35515. Chapter 13 case filed on June 23, 2011, and dismissed on September 8, 2011.

2. Case No. 13-33383. Chapter 13 case file on October 15, 2013, and dismissed on August 6, 2014.

a. The court granted relief from the automatic stay in the Christine Steele case by order filed on March 20, 2014, to allow Bank of America, N.A. to obtain possession of the Polaris Road Property.

3. Case No. 14-31726. Chapter 13 case file on November 30, 2014, and dismissed on January 27, 2014.

a. The court granted Vertical Infill LCC, Trustee, relief from the stay by order filed on January 12, 2015, to obtain possession of the Polaris Road Property.

When the court considers the bankruptcy filings by Christian Steele and the Debtor, the following pattern emerges,

Christian Steele	**Christian Steele Case Dates Relief From Stay**	**Shirley Steele Case Dates Relief From Stay**	**Shirley Steele**
10-48269	Filed.....01/24/2010		
	Relief From Stay....01/28/2011 (Dckt. 36)		
	Discharge.....02/08/2011		
11-35515	Filed.....06/22/2011		
	Voluntary Dismissal...09/08/2011		
		10/12/2011.....File	11-44457
		07/27/2012.....Relief From Stay	
13-33383	Filed.....10/16/2013		
		12/17/13.....Discharge	
		01/09/2014.....Case Closed	
	Relief From Stay.....03/20/2014 (Dckt. 88)		
		05/27/2014.....Filed	14-25552
		08/01/2014.....Relief From Stay (Dckt. 40)	
	Voluntary Dismissal.....08/06/2014		
14-31726	Filed.....11/30/2014		
		12/03/2014....Voluntary Dismissal	

	Relief From Stay.....01/12/2015 (Dckt. 36)		
	Voluntary Dismissal.....01/27/2015		
		02-02/2015.....Filed Current Case	15-20791

Christian Steele and Debtor have been filing a series of interlocking bankruptcy cases, electing to voluntarily dismiss the then existing case after relief from the stay is granted, with the other person having filed, or will be filing, another case in which there is an automatic stay which will be asserted to apply to the Polaris Road Property.

The Debtor has failed to file any supplemental pleadings or responses in support of the instant Motion.

The Debtor has failed to provide any evidentiary or persuasive argument as to why the automatic stay should be extended. A review of the Debtor's and Christian Steele's repeated bankruptcy filing history evidences that Debtor is abusing the bankruptcy process in order to prevent the Creditor for prosecuting its state court action. As shown in the chart above, the Debtor along with Christian Steele have filed case after case in order to attempt to block Creditor from exercising its rights. The minute the Debtor did not persuade the court to re-instate the automatic stay, the Debtor would dismiss and refile in hopes of a different outcome.

The Debtor's bare bones motion provides absolutely no argument as to why the presumption of bad faith does not apply to the instant case. The burden is on the Debtor to rebut this presumption and show that the case was in fact filed in good faith. Debtor has not done so. In fact, it appears based on the fact that the Debtor filed the instant Motion on an ex parte basis that the Debtor was attempting to circumvent the need for a hearing on the extension of automatic stay, perhaps in the hopes have having the court not to recognize the Debtor's extensive bankruptcy history. The Motion only states that there "has been a substantial change in the financial or personal affairs of the debtor" and that the instant case will "result in a confirmed plan that will be fully performed." These conclusory statements are not evidence that overcome the burden of 11 U.S.C. § 362(c), especially in light of Debtor's history.

Therefore, the Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

As to the Creditor's request for attorneys' fees, the Creditor has not provided any time sheets or evidence of the time expended in connection with the response and defense of its rights. While the intentions of the Debtor may constitute sufficient grounds for the court to issue sanctions in the form of reimbursement of attorneys' fees, the Creditor does not provide any specific dollar amount.

The court denies without prejudice the request in the Opposition. If Vertical Infill, LLC believes that it is entitled to recover attorneys' fees and costs in connection with Debtor's current Motion, it may request such by separate motion (whether contractual, statutory, or Rule 9011). Such motion

shall document the fees requested using the standard loadstar analysis used in the federal courts.

The Motion to Extend the Automatic Stay is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.
>
> **IT IS FURTHER ORDERED** that Vertical Infill, LLC request for attorneys' fees and costs is denied without prejudice. If Vertical Infill, LLC believes that it is entitled to recover attorneys' fees and costs in connection with Debtor's current Motion, it may request such by separate motion (whether contractual, statutory, or Rule 9011). Such motion shall document the fees requested using the standard loadstar analysis used in the federal courts.