UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 5, 2020 at 10:30 a.m.

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1. 20-20321-A-7 **JESSIAH WILLARD**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-4-20 [15]

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*), and Chapter 7 Trustee as stated on the Certificate of Service on February 6, 2020. The court computes that 28 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 February 4, 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: $335.00.

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. **20-20029-A-7** **EDEN WREN**
Pro Se

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
1-3-20 [5]

Tentative Ruling: The Motion Fee Waiver has been set for hearing by order of the court.

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.

The Application for Fee Waiver is ~~Denied.~~

An Application for Waiver of Chapter 7 filing fee has been filed by Eden Wren ("Debtor"). The Debtor's family unit consists of six persons (Debtor and six children) as listed on Schedule J. Dckt. 1. Debtor's gross income is $5,019 (Schedule I).

However, on the Application for the Fee Waiver (Dckt. 5) Debtor states having eight dependants, for a family unit of nine persons. At the hearing, Debtor stated **xxxxxxxxxx**

The First Meeting of Creditors has been concluded and the Trustee has filed his report of there being no assets to be distributed in this case. Trustee's February 13, 2020 Docket Entry Report.

The court finding that Debtor ~~does not~~ meet the financial guidelines for a fee waiver ($4,323.75), upon consideration of the Debtor's income, assets, the Schedules in this case, and the additional information provided at the hearing, **the court ~~denies/grants~~ the application for waiver of the Chapter 7 filing fees.**

~~The court shall order an installment payment schedule for the Chapter 7 filing fees.~~

3. **15-21479-E-7** **MARC CHRISTY** **MOTION TO AVOID LIEN OF**
SS-2 **Scott Shumaker** **MIDLAND FUNDING, LLC**
2-20-20 [40]

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

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of the debtor, Marc Alan Christy ("Debtor") commonly known as 3697 Halter Court, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,199.64. Exhibit A, Dckt. 43. An abstract of judgment was recorded with Sacramento County on December 23, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $265,880.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $364,855.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 2. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 45.

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 Marc Alan Christy ("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 Midland Funding, LLC, California Superior Court for Sacramento County Case No. 34-2013-00143874, recorded on December 23, 2014, Book 20141223 and Page 0965, with the Sacramento County Recorder, against the real property commonly known as 3697 Halter Court, Sacramento, 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.

4. **19-26085-A-7** **JACQUELINE EVERETT** **CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 12-11-19 [23]**

Chad Johnson

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is dismissed without prejudice.

FEBRUARY 26, 2020 STIPULATION

Trustee and Debtor stipulate to dismissing the Trustee's Motion to Dismiss Case set for hearing on March 4, 2020 at 10:30 a.m. Dckt. 36. Debtor and Counsel attended the February 4, 2020 Meeting of Creditors. The Meeting was continued to February 25, 2020 to allow Debtor to file amendments and produce additional documents. Debtor filed an amended Petition and Schedules on February 20, 2020. See Dckts. 33, 34. Debtor has yet to file the 2019 tax return. Trustee concluded the meetings. Due to Debtor's cooperation and attendance at the Meeting of Creditors, Trustee has agreed to dismiss the Motion to Dismiss.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Geoffrey Richards ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

5. **19-26730-E-11 TBG-4** **HAESHING HWANG** **Stephan Brown** **MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY** **2-20-20 [41]**

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 in Possession, Debtor in Possession's Attorney, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Approve Stipulation 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 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 Approve Stipulation for Relief from the Automatic Stay is granted.

Haeshing Hwang, Debtor in Possession, ("Movant") requests that the court approve a stipulation between Debtor in Possession and Creditor 1824 Swan Falls LLC providing for a time line as to the effects of the automatic stay over ("Property").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 44):

A. The automatic stay for the residence at 1824 Swan Falls LLC shall continue until the earlier of 1) June 30, 2020 ("Termination Date"), 2) the sale of the Residence and dismissal of the above-captioned bankruptcy case, or 3) default under the Stipulation, subject to 3 business days' notice and application to the Court for relief.

B. Relief from the Stay will be automatic and without further order from the court.

C. Creditor 1824 Swan Falls LLC reserves all rights and remedies.

D. Debtor shall make commercially reasonable efforts to sell the Property or to otherwise satisfy the Swan Falls claim prior to the termination date.

E. Debtor will serve upon Creditor monthly narrative reports describing the efforts made to market the Property. First report is due March 20, 2020 and on the 20th of each month thereafter.

F. The Stipulation is subject to court-approval of this motion.

G. Debtor shall receive an average of $12,000.00 per month in gifts from her son to pay for maintenance of the Property.

H. If Debtor defaults as to any term or condition or covenant of this Stipulation, Debtor shall be in default of the Stipulation and upon court approval, the automatic stay shall terminate three days from the date of notice with respect to Swan Falls and its collateral, if said default is not cured prior to the expiration of said cure period.

I. Stipulation shall be binding as to any trustee hereafter elected or appointed in this case, whether in Chapter 11 or after conversion to Chapter 7.

J. Nothing in this Stipulation prohibits the parties from seeking other and further relief from the court atthis time.

K. Bankruptcy court is to retain jurisdiction over the subject matter of the Stipulation in order to resolve any disputes in connection with the rights and duties specified hereunder.

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).

Debtor in possession ("DIP") argues that the Stipulation is with DIP's sound business judgment because it allows DIP to market and sell the property through June 30, 2020, sell the primary asset of the estate for more than the liquidation value; it avoids litigation over a motion for relief from the stay; and it avoids the attorneys' fees and costs for prosecuting a disclosure statement and Chapter 11 Plan.

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 resolves issues concerning the commencement and prosecution of this case, and affords Debtor the opportunity to market the property in a commercially reasonable manner. 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 Haeshing Hwang, 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 for Approval of Stipulation between Movant and 1824 Swan Falls LLC is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 44).

6. **15-29541-E-12 MHM-1** **TIMOTHY WILSON** **Mark Wolff** **MOTION TO DISMISS CASE 1-17-20 [148]**

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on January 17, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxxxxxxx.

The Chapter 12 Trustee, Michael H. Meyer ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Timothy Wilson ("Debtor"), has caused unreasonable delay that is prejudicial to creditors. [11 U.S.C. § 1208(c)(1)]

2. Debtor is in material default with respect to the terms of a confirmed plan. [11 U.S.C. § 1208(c)(6)]

TRUSTEE'S DECLARATION

In support of the Motion, Trustee filed a Declaration, Dckt. 150, stating:

1. This Motion is sought on grounds of unreasonable delay pursuant to 11 U.S.C. § 1208(c)(1) and 11 U.S.C. § 1208(c)(6), material default with respect to the terms of a confirmed plan.

2. As of January 17, 2020 Debtor is delinquent in the sum of $40,600.00, not including the $4,300.00 payment which will be due February 25, 2020.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 11, 2020. Dckt. 152.

A. Debtor asserts he has completed four (4) years of his five (5) year

Chapter 12 Plan.

B. Debtor's Plan provides for an annual lump sum payment in the amount of $36,000.00, this payment stems from his timber harvest in December each year. Debtor has not paid the lump sum payment due in December 2019.

C. Debtor currently has receivables in excess of $40,000.00 resulting from the timber harvest but he has been unable to collect this receivable because the buyer has not been able to complete their job due to weather. This job may not be completed until the rainy season has subsided, Debtor speculates this will be on or around April or May.

D. Debtor has continued to make regular monthly payments due under his Plan.

E. Debtor is currently working to modify his Plan to push the lump sum payment to a later date. Debtor is also considering selling real property in the spring or summer and has communicated with a real estate agent to make the lump sum payment.

F. Further, Debtor provides another possible solution with him making the lump sum payment in December 2020 after the timber harvest.

G. Debtor requests te court give him additional time to make the lump sum payment. Debtor is working on modifying the Chapter 12 Plan. But two uncertainties prevent him from doing so: (1) timing as to the sale of the property and (2) whether he will be able to collect the receivables owed to him.

Review of Minimum Pleading Requirements for a Motion

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

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary

proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

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

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

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

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

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

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

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

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to

mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

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

A. "Unreasonable delay by the debtor that is prejudicial to creditors."

B. "Material default by the debtor with respect to the terms of a confirmed plan...*as fully set forth in the declaration of Michael H. Meyer*." (Emphasis added).

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

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that his Declaration is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The rules do not provide for a declaration to serve as the "motion" to state the grounds with particularity upon which the relief is requested. The declaration provides the evidence in support of the grounds as stated with particularity in the motion.

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 Motion to Dismiss the Chapter 12 case filed by The Chapter 12 Trustee, Michael Meyer ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxxxxx**

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

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 Objection. 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—Continued Hearing

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.

The court set the matter for final hearing on March 5, 2020.

The Motion for Relief from the Automatic Stay is granted.

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.

The court's tentative ruling was to deny the Motion without prejudice due to case having been dismissed due to the failure of Debtor to file the required documents.

Debtor appeared at the February 13, 2020 hearing and advised the court that she had filed a motion requesting a further extension on February 4, 2020, prior to the entry of a dismissal order. While filed, such Motion was not on the Docket. During the hearing the Clerk of the Court located the Motion and

confirmed that it had not been put on the docket, though filed with the court. That motion is now on the Docket as Docket Entry No. 29.

The court vacated the Order dismissing the Bankruptcy Case, such order having been entered due to clerical error or mistake of the Clerk of the Court.

The court has ordered Debtor to file a motion for final extension of time to file documents on or before February 19, 2020.

The court also addressed with the Debtor the need to provide adequate protection payments if she was opposing this Motion in light of the continued occupancy and use during the proceedings in this Chapter 7 Contested Matter. Additionally, the court noted that if such payments could be made, communicating with counsel for Movant prior to March 5, 2020, for Movant's consideration thereof and how Debtor could address rent payments going forward might be productive for the Parties.

March 5, 2020 Hearing

On February 13, 2020, Debtor filed a request for a further extension of time to file the documents. Dckt. 30. The court entered an order on extending the time for Debtor to file the documents, which expired on February 27, 2020. Order, Dckt. 35. Debtor still has not filed her schedules or statement of financial affairs.

The hearing on the Motion for Relief is continued to 10:30 a.m. on March 5, 2020.

In re-reviewing the Motion, the court sees Exhibit A, Dckt. 22, which is a copy of the Unlawful Detainer Complaint which Movant seeks relief to set for trial. The Complaint has a filed date of December 9, 2019.

Though the Debtor clearly is laboring under a series of unfortunate circumstances, this case has now been pending for two months within any headway in the prosecution thereof by Debtor.

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 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4845 Myrtle Avenue, #61, Sacramento, California

8. **14-20890-E-7** **TODD RADKE**
MPD-2 **Michael Hays**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARK EDMUND YOUNGHOLM AND STATE OF CALIFORNIA, FRANCHISE TAX BOARD AND/OR MOTION TO SELL
2-4-20 [44]

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, interested parties, creditors, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 30 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.

Nikki Farris, the Chapter 7 Trustee, ("Movant") requests that the court (1) approve a compromise and settlement of the bankruptcy estate claims to interpled funds in the amount of $25,000.00 is state court litigation and/or (2) approve sale of the bankruptcy estate's claim over the interpled funds. The parties to this compromise are: Mark Edmund Youngholm (the plaintiff who interpled the funds), State of California Franchise Tax Board (Defendant who asserted a lien interest in the Funds), and Debtor Todd Frederick Radke (Defendant who had an interest in the excess of Funds, not subject to claims from Youngholm or the Franchise Tax Board (collectively, "Parties")

The Parties 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. 7):

A. The default of Debtor shall be set aside. Trustee shall be allowed to appear in the action, as the chapter 7 trustee for the bankruptcy estate of Debtor.

B. The clerk of the court is requested to disburse, or cause to be disbursed the $25,000.00 in the following manner:

1. The Clerk is authorized to retain any statutory costs incurred in connection with the interpled funds.

2. Mark E. Youngholm shall be paid the sum of $955.00 for costs and fees incurred in filing and serving the Complaint in the interpleader action.

3. The State of California, Franchise Tax Board shall be paid the sum of $13,076.82.

4. The remaining sum of $10,968.00, or lesser amount if clerk retains any statutory costs, shall be paid to Nikki Farris, Chapter 7 Trustee for the Bankruptcy Estate of Todd Frederick Radke.

C. Upon payment of the sums listed above, all claims to the interpled funds shall be deemed satisfied in full and no party to this action shall have any further right, title or claim to the interpled funds.

D. Other than as set as firth above, each party to this action shall bear its own costs and attorneys fees.

Trustee further requests that the court consider this settlement as a motion to sell. And asserts that if the court considers the settlement as a sale of the interest over the Funds, the following would apply:

A. The sale of the estate's interest over the funds meets all criteria under 11 U.S.C. §363 for sale of estate property.

B. Any sale will be as is and where is, without warranty or representation of any kind.

C. In the event of a sale to a third party, Farris proposes overbids in minimum increments of $1,000.00.

D. If no bids are received the proposed Stipulation and Stipulated Judgment will be approved.

E. If a third party is the high bidder, the proposed Stipulation and Stipulated Judgment will be of no force and effect and the estate's Ownership Claim to the Funds in the Interpleader will be assigned to the third party high bidder.

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 argues that this factor weighs in favor of the settlement because the probability of success in the interpleader is high. Both competing claims to the Funds are less than the amount interpled with the state court. Meaning that the likelihood of a portion of the funds coming to the bankruptcy estate is high.

Difficulties in Collection

Trustee argues there will be no difficulties in collection as the funds in dispute are being held by the state court and available for distribution once the settlement is approved.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee asserts that while the issues are not complex, the delay will increase the FTB's lien over the funds and increase the administrative expenses incurred by the estate as it deals with the interpleader action. The settlement avoids time consuming and expensive litigation between the Parties.

Paramount Interest of Creditors

Trustee states this factor is neutral as Trustee has no knowledge of any creditor's position. Trustee is unaware of any objections to the proposed settlement. However, if approved, the settlement will result in additional distributions to the creditors who had filed claims and had only received a small distribution.

Consideration of Additional Offers

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Nikki Farris, 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 the following parties: Mark Edmund Youngholm, State of California Franchise Tax Board, and Debtor 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. 46).

9. **19-27628-A-7** **TATIANA SMOLENSKY** **MOTION TO VACATE DISMISSAL OF CASE**
AP-2 **Pro Se** **2-20-20 [29]**

DEBTOR DISMISSED: 01/10/2020

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 February 20, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Vacate Dismissal 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 Vacate is denied.

Tatiana Smolensky ("Debtor") filed the instant case on December 11, 2019. Dckt. 1.

On December 13, 2019, the clerk of the court filed a Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed due to Debtor's failure to file the supporting documents required for a voluntary petition. Dckt. 10. On January 10, 2020, a Notice of Entry of Order of Dismissal was filed and the case was dismissed for failure to timely file documents. Dckt. 20.

On February 20, 2020, Creditor Select Portfolio Servicing Inc. as servicing agent for Deutsche Bank National Trust Company, as Trustee on behalf of the certificate holders of the HSI Asset Securitization Corporation Trsut 2007-NCI Trust, Mortgage Pass Through Certificates, Series 2007-NCI ("Movant") filed this instant Motion to Vacate, claiming that the dismissal should be vacated to ensure that the court has jurisdiction to hear and rule upon Movant's concurrently filed Motion to Terminate the Automatic Stay and for In Rem relief.

Movant seeks to have the order dismissing the case vacated, per Federal Rule of Civil

Procedure 60(b).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest.

The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The Motion to Vacate the Dismissal states with particularity the following grounds upon which the requested relief is based:

A. Movant acquired title to the 309 Del Sur St., Vallejo, California property (the "Property") on July 6, 2018 at a foreclosure sale.

B. On August 2, 2018, Movant served a Notice to Quit upon Robert Lozier, who is identified as the former owner of the Property, and all occupants.

C. On December 7, 2018, Movant filed a Complaint for Unlawful Detainer in the Superior Court of California for Solano County.

D. On March 3, 2019, Debtor filed a prior voluntary Chapter 7 bankruptcy petition in this District, Case No. 19-21430.

E. The prior bankruptcy case was dismissed on April 8, 2020, for the Debtor's failure to file the required documents for a Chapter 7 case.

F. On June 27, 2019, Anthony Crowley filed a voluntary Chapter 7 bankruptcy case in this District, Case No. 19-24073.

G. Anthony Crowley's case was dismissed on July 15, 2019, for failure to file the required documents for a Chapter 7 case.

H. On or about August 5, 2019, Richard Mazon filed a voluntary Chapter 7 case in this District, Case No. 19-24932.

I. Richard Mazon's case was dismissed on August 23, 2019, for the failure to file the required documents for a Chapter 7 case.

J. On August 6, 2019, Richard Mazon filed another Chapter 7 case in this District, Case No. 1924945.

K. Richard Mazon's second Chapter 7 case was dismissed on October 9, 2019.

L. On October 22, 2019, Anthony Crowley filed a second Chapter 7 case in this District, Case No. 19-26564.

M. Richard Mazon's second Chapter 7 case was dismissed on November 20, 2019.

N. On December 11, Debtor commenced this Chapter 7 case.

O. On December 17, 2019, a trial was held in Movant's Unlawful Detainer Action and judgement was entered in favor of Movant. At that time, Movant was unaware of Debtor's current bankruptcy case.

P. Only after the Unlawful Detainer trial was completed did Debtor notify Movant of the filing of the current bankruptcy case.

Q. On January 10, 2020, the current bankruptcy case was dismissed, and on January 28, 2020, the bankruptcy case was closed.

R. On February 27, 2020, the bankruptcy case was reopened and Movant filed this Motion for Relief From the Automatic Stay.

In the present Motion, Movant seeks to vacate the dismissal so that this court may grant relief to: (1) annul the stay as it applied to the December 17, 2019 trial and (2) grant "In Rem" relief to prevent future bankruptcy filings.

A review of Motion for Relief From the State discloses that the basis for the In Rem relief is states as: "(2) Pursuant to 11 U.S.C. § 362(d)(4), cause exists for In Rem relief due to the bad-faith bankruptcy filings by multiple parties which are impacting the Property." Motion, p. 4:17-18; Dckt. 36.

The Motion does not identify which of the six grounds specified under Federal Rule of Civil Procedure 60(b) the relief is warranted. While citing and quoting Federal Rule of Civil Procedure 60(b) in the Points and Authorities (Dckt. 32), it does not state which of those legal provisions are applicable and why the granting of such relief is proper.

Post-Dismissal Jurisdiction of the Court

The dismissal of a bankruptcy case does not deprive the bankruptcy court of jurisdiction to address such remaining necessary issues as are proper under the Bankruptcy Code and relate to the proceedings before the court. See 11 U.S.C. § 349, Effect of Dismissal, § 105(a), and *Carraher v. Morgan Electric*, 971 F.2d 327, 328 (9th Cir. 1992) (Congress did not include termination of jurisdiction as one of the effects of dismissal.).

A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause. 11 U.S.C. § 350. The effect of this statute is merely to "pull" the court file from the stacks of the closed cases, or even from the archives, to enable it to receive a new request for relief. *In re David*, 106 B.R. 126, 128 (Bankr. E.D. Mich. 1989). Movant filed a Motion to Reopen the case on February 12, 2020. Dckt. 25. The Motion was granted and the case was reopened on the same date. Dckt. 27. By virtue of reopening the case and filing the Motion for Relief from the Automatic Stay to be heard concurrently with the instant motion, Movant did not need to file a Motion to Vacate the Dismissal.

Here, the relief ultimately requested is to annul the stay. In looking at the Motion for Relief, the additional relief is stated to be "In Rem," based on 11 U.S.C. § 362(d)(4). The court notes that for a party to have standing to seek such relief , it must be " a creditor whose claim is secured by an interest in such real property." 11 U.S.C. § 362(d)(4). Here, Movant does not claim to be a creditor with a claim

secured by the Property, but the owner of the property. If such "*in rem*" relief is sought, Movant may want to consider other avenues.

Therefore, in light of the foregoing, the Motion 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 Vacate filed by Creditor Select Portfolio Servicing Inc. as servicing agent for Deutsche Bank National Trust Company, as Trustee on behalf of the certificate holders of the HSI Asset Securitization Corporation Trsut 2007-NCI Trust, Mortgage Pass Through Certificates, Series 2007-NCI ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Vacate the Dismissal of this Chapter 7 case is denied. The court has, and exercises federal jurisdiction in this case to address issues arising herein, including requests for annulment of the automatic stay and prohibitory or injunctive relief as proper relating to asserted abuses of the Bankruptcy Laws and the federal court system.

10. **19-27628-A-7** **TATIANA SMOLENSKY** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
AP-3 **Pro Se** **2-20-20 [36]**
SELECT PORTFOLIO SERVICING INC. VS.

DEBTOR DISMISSED: 01/10/2020

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 February 20, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted to annul the automatic stay, and all other relief is denied.

Select Portfolio Servicing Inc as servicing agent for Deutsche Bank National Trust Company, as Trustee on behalf of the certificate holders of the HSI Asset Securitization Corporation Trust 2007-NCI Trust, Mortgage Pass Through Certificates, Series 2007-NCI ("Movant") seeks relief from the automatic stay with respect to Tatiana Smolensky's ("Debtor") real property commonly known as 309 Del Sur Street, Vallejo, California ("Property").

The first relief sought is to annul the automatic stay that existed in this case as it relates to the Unlawful Detainer action that was tried in December 17, 2019, in California Superior Court, for the County of Solano, Case FCM163317, *Deutsche Bank National Trust Company, as Trustee, v. Nancy Smith, et al.* (the "State Court Action"). See Exhibit 3, Dckt. 40. Judgment was issued in the State

Court Action Exhibit 4, *Id.*

The second requested relief is for the "In Rem" relief provided for by Congress in 11 U.S.C. § 362(d)(4).

Debtor's bankruptcy case was dismissed on January 10, 2020, for failure to timely file documents. Dckt. 20.

Annulment of Automatic Stay

Movant argues that Debtor is part of a scheme with Anthony Crowley and Richard Mazon to prevent Movant from exercising its rights over the Property where all three lived. Movant acquired title to the property at a pre-petition foreclosure. Movant caused a Notice to Quit to be served upon the former owner of the Property and all "Occupants, Tenants, and Subtenants" of the Property. Debtor, Anthony Crowley and Richard Mazon seem to be tenants at the time. Movant then filed a Complaint for Unlawful Detainer related to the Property in Solano County Superior Court. All three individuals are included as defendants in that action.

A. Movant acquired title to the 309 Del Sur St., Vallejo, California property (the "Property") on July 6, 2018 at a foreclosure sale.

B. On August 2, 2018, Movant served a Notice to Quit upon Robert Lozier, who is identified as the former owner of the Property, and all occupants.

C. On December 7, 2018, Movant filed a Complaint for Unlawful Detainer in the Superior Court of California for Solano County.

D. On March 3, 2019, Debtor filed a prior voluntary Chapter 7 bankruptcy petition in this District, Case No. 19-21430.

E. The prior bankruptcy case was dismissed on April 8, 2020, for the Debtor's failure to file the required documents for a Chapter 7 case.

F. On June 27, 2019, Anthony Crowley filed a voluntary Chapter 7 bankruptcy case in this District, Case No. 19-24073.

G. Anthony Crowley's case was dismissed on July 15, 2019, for failure to file the required documents for a Chapter 7 case.

H. On or about August 5, 2019, Richard Mazon filed a voluntary Chapter 7 case in this District, Case No. 19-24932.

I. Richard Mazon's case was dismissed on August 23, 2019, for the failure to file the required documents for a Chapter 7 case.

J. On August 6, 2019, Richard Mazon filed another Chapter 7 case in this District, Case No. 1924945.

K. Richard Mazon's second Chapter 7 case was dismissed on October 9, 2019.

L. On October 22, 2019, Anthony Crowley filed a second Chapter 7 case in this District, Case No. 19-26564.

M. Richard Mazon's second Chapter 7 case was dismissed on November 20, 2019.

N. On December 11, 2019 Debtor commenced this Chapter 7 case.

O. On December 17, 2019, a trial was held in Movant's Unlawful Detainer Action and judgement was entered in favor of Movant. At that time, Movant was unaware of Debtor's current bankruptcy case.

P. Only after the Unlawful Detainer trial was completed did Debtor notify Movant of the filing of the current bankruptcy case.

Q. On January 10, 2020, the current bankruptcy case was dismissed, and on January 28, 2020, the bankruptcy case was closed.

R. On February 27, 2020, the bankruptcy case was reopened and Movant filed this Motion for Relief From the Automatic Stay.

Movant alleges that Debtor did not disclose the filing of this bankruptcy case until after the state court trial was completed and Debtor, and her co-defendants, had lost. No declaration is provided in connection with this Motion providing testimony as to such. In a related motion (DCN:AP-2), attorney William R. Jarrell, who an attorney for Movant, testifies under penalty of perjury to the following:

> 6. On December 17, 2019, a trial was held in the UD Action and Judgment was entered in favor of Movant, entitling Movant to possession of the Property. A true and correct copy of the Judgment is attached to the Exhibits as Exhibit 4 and incorporated herein by reference.
>
> 7. At the time of the trial, Movant was not aware that Debtor had filed the Bankruptcy Case. After the trial was concluded, Movant received notice of the Bankruptcy Case from Debtor Tatiana Smolensky. A true and correct copy of the notice is attached to the Exhibits as Exhibit 5 and incorporated herein by reference.

Declaration, ¶¶ 6,7; Dckt. 33.

The specific relief requested with respect to annulment in the Motion is:

(1) Pursuant to 11 U.S.C. § 362(d)(1), cause exists to annul the automatic stay because:

a. As of the petition date, Debtor has no right to continued occupancy of the Property, as Movant acquired title to the Property by foreclosure sale pre-petition.

b. Judgment has been entered in the UD Action related to the Property. The trial in the UD Action took place before Movant had knowledge of the Bankruptcy Case. Movant seeks to annul that automatic stay, to avoid a re-trial of the UD Action.

Motion, p. 4:11-16; Dckt. 36.

Applicable Law and Application to Grounds Asserted

Retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. Id. at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* The Bankruptcy Appellate Panel for the Ninth Circuit suggests consideration of 12 additional factors *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003). The factors are not a scorecard, but merely a framework for the analysis in which any one factor may outweigh the others as to be dispositive in a particular case. *Id.*

The court reviews the various framework of factors and states how they apply in this Motion as follows:

Nat'l Envtl. Waste Corp Factors

(1) whether the creditor was aware of the bankruptcy petition;

Based on the evidence presented, Movant was not aware of this most recent bankruptcy filing and the existence of the automatic stay in prosecuting the State Court Action and obtaining the Judgment therein.

(2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor

The evidence presented shows a pattern of non-productive bankruptcy case filings in which a series of debtors did not even file the minimal documents (such as Schedules and Statement of Financial Affairs) necessary to get a Chapter 7 case moving to the First Meeting of Creditors.

Further, the Debtor held the filing of this bankruptcy case secret, until the State Court Action trial was completed and the Judgment issued.

This Debtor's conduct, individually, and collectively with the other debtors filing non-productive, non-prosecuted Chapter 7 cases is both unreasonable and inequitable conduct. Debtor has acted, keeping this bankruptcy case a secret, to prejudice the rights and interests of Movant.

Additional Fjeldsted Factors

1. Number of filings;

Here, there have been six bankruptcy cases filed by multiple "debtors," including the two by this Debtor. None have been minimally prosecuted by any of the debtors, each failing to file the necessary schedules and statement of financial affairs that a debtor who is seeking bankruptcy relief, in good faith, must file.

2. Whether, in a repeat-filing case, the circumstances indicate an intention to delay and hinder creditors;

The filing of the cases, by this Debtor and the other debtors establish a pattern of filing to hinder and delay Movant in seeking to obtain possession of the Property which it asserts ownership of.

3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;

For Movant, failure to annul the stay renders the trial void, forcing it to pay for yet another trial. Additionally, in light of the repeat filings, failure to annul the stay could well subject Movant to yet another series of bankruptcy filings by Debtor and the other debtors.

4. The Debtor's overall good faith (totality-of-circumstances test);

Looking at the totality of the circumstances, the Debtor has not filed this case, nor the prior case, in good faith to prosecute a Chapter 7 case for the extraordinary relief thereunder. Rather, the petitions were filed without the required schedules and statement of financial affairs. In both of Debtor's cases, they were never filed and Debtor made no effort to prosecute the Chapter 7 cases.

5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;

Movant was unaware of the automatic stay and the filing of this bankruptcy case, and Debtor waited to "spring" the bankruptcy on Movant only after the State Court Action trial had been completed.

6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;

Debtor has not complied with the basic requirements for prosecuting her two Chapter 7 cases. Debtor has merely filed the bankruptcy petitions and nothing more. Reviewing the Creditor Matrix filed by Debtor, neither Movant nor the loan servicer appear on the Matrix. Dckt. 4.

7. The relative ease of restoring parties to the status *quo ante*;

Annulling the stay puts the parties, Movant and Debtor, exactly where they were upon the completion of the trial and entry of the Judgment in the State Court Action. Debtor chose to prosecute that action, apparently holding the bankruptcy filing as an ace in the hole to trump the judge in the State Court Action.

8. The costs of annulment to debtors and creditors;

There are no costs to Debtor, Movant, or any other creditors in this dismissed bankruptcy

case. To not annul the stay will cause both Debtor and Movant to incur substantial additional costs and expenses in re-trying the State Court Action which Debtor and Movant have already tried.

9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;

Movant has moved within a month of learning of the bankruptcy case to seek this relief annulling the stay.

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

Movant has expeditiously sought the relief in the form of annulling the stay to give full force and effect to the Judgment in the State Court Action which Debtor chose to take to trial without disclosing the filing of bankruptcy.

11. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor. The Debtor chose to, and was afford the opportunity to present her best case in the State Court Action and lost. A determination that Debtor does not have the right to stay in possession is not an injury to the Debtor, but merely a determination of what rights Debtor had or did not have.

12. Whether stay relief will promote judicial economy or other efficiencies.

Annulment of the automatic stay will promote judicial economy in several ways. First, there will not be waste of State Court judicial resources in retrying the State Court Action that was litigated by Debtor. Second, it will not cause further waste of federal judicial resources by filing of further non-productive Chapter 7 cases by the Debtor, and other debtors, to derail the State Court Action by abusing the Bankruptcy Laws.

Therefore, the court grants the relief requested and the automatic stay is annulled, effective as of the commencement of this bankruptcy case for Movant as to the State Court Action, all proceedings therein, and the entry of the judgment therein.

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.*

Here, Movant argues that Debtor is part of a scheme with Anthony Crowley and Richard

Mazon to prevent Movant from exercising its rights over the Property where all three lived. Movant acquired title to the property at a pre-petition foreclosure. Movant caused a Notice to Quit to be served upon the former owner of the Property and all "Occupants, Tenants, and Subtenants" of the Property. Debtor, Anthony Crowley and Richard Mazon seem to be tenants at the time. Movant then filed a Complaint for Unlawful Detainer related to the Property in Solano County Superior Court. All three individuals are included as defendants in that action.

While Movant has been the victim of a series of non-productive filing of cases by Debtor and the other Debtor, seeking relief pursuant to 11 U.S.C. § 362(d)(4) is not relief that Movant may obtain. This is because of how Congress has drafted the statute and defined who may seek such relief.

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
> . . .
>
> (4) with respect **to a stay of an act against real property** under subsection (a), **by a creditor whose claim is secured by an interest in such real property**, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—
>
> > (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
> >
> > (B) multiple bankruptcy filings affecting such real property.
>
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

11 U.S.C. § 362(d)(4) (emphasis added). See 3 Collier on Bankruptcy ¶ 362.07[6]

Movant is not a "creditor whose claim is secured by an interest in such real property." Movant asserts to be the owner of the Property, not a "mere" creditor with a lien on the Property. Movant may be a creditor of Debtor, asserting right to recover fees, costs, damages from Debtor, but those obligations are not secured by the Property that Movant asserts it owns.

The relief requested pursuant to 11 U.S.C. § 362(d)(4) is denied without prejudice.

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

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

hearing.

The Motion for Relief from the Automatic Stay filed by Select Portfolio Servicing Inc as servicing agent for Deutsche Bank National Trust Company, as Trustee on behalf of the certificate holders of the HSI Asset Securitization Corporation Trust 2007-NCI Trust, Mortgage Pass Through Certificates, Series 2007-NCI ("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 automatic stay is annulled, effective as of the December 11, 2019 filing of this Bankruptcy Case, as it applies to Movant, and its agents, representatives, and successors, with respect to all proceedings in, trial conducted, judgment entered, and other orders made in *Deutsche Bank National Trust Company, as Trustee, v. Nancy Smith, et al.*, California Superior Court, for the County of Solano, Case FCM163317, as said automatic stay applied to the Debtor and the real property commonly known as 309 Del Sur Street, Vallejo, California, and each of them.

IT IS FURTHER ORDERED that the relief requested pursuant to 11 U.S.C. § 362(d)(4) is denied without prejudice.

No other or additional relief is granted.

11. 19-27621-E-7 JAMES/INA BRENTLINGER
Eric Vandermey

MOTION TO COMPEL ABANDONMENT
2-20-20 [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 was not filed in support of this Motion. Thus, the court is unable to determine who was served.

Local Bankruptcy Rule 9014-1(d)(3)(B) specifies the minimum required information for a notice for a contested matter. As addressed below, the Notice provided by Movant fails to comply with the Local Rule.

The Motion to Compel Abandonment is denied without prejudice.

Review of Notice of Motion

The Notice of Hearing for the present Motion was filed on February 20, 2020. Dckt. 22. The Notice provides, in its entirety, the following information,

> NOTICE IS HEREBY GIVEN THAT WESTGATE WOODLAND, LLC, a California corporation ("Westgate"), has filed the attached Motion to Compel the Trustee to Abandon Property (the "Motion"), in the above-entitled and numbered Chapter 7 case. The Motion will be heard before the Honorable Judge Ronald H. Sargis,

Dckt. 22.

Local Bankruptcy Rule 9014-1(d)(3)(B) specifies the information to be included in a Notice for any motion or other contested matter.

> (d) Format and Content of Motions and Notices.
>
> 3) Component Parts.
>
> A) Motion or Other Request for Relief. The application, motion,

contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

B) Notice.

(i) The **notice** of hearing **shall advise** potential respondents **whether and when written opposition must be filed**, the deadline for filing and serving it, and **the names and addresses of the persons who must be served** with any opposition.

(ii) If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

(iii) The **notice of hearing shall advise** respondents that **they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling,** and can **view [any] pre-hearing dispositions** by checking the Court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

(iv) When **notice of a motion is served without the motion** or supporting papers, the notice of hearing shall also **succinctly and sufficiently describe the nature of the relief being requested and set forth the essential** facts necessary for a party to determine whether to oppose the motion. However, the motion and supporting papers shall be served on those parties who have requested special notice and those who are directly affected by the requested relief.

L.B.R. 9014-1(d)(3) (emphasis added).

Here, the required information is not provided.

Additionally, for a motion to abandon filed by a party in interest, Federal Rule of Bankruptcy Procedure 6007(b) requires in addition service of the motion and notice on others parties in interest, including the other creditors. To the extent that just the Notice was served on the other creditors, it fails to provide the minimum information required in Local Bankruptcy Rule 9014-1(d)(3)(B)(iv).

Failure of Service
Lack of Docket Control Number

No certificate of service has been filed by Movant. As required by the Local Bankruptcy

Rules, the motion, each declaration, the points and authorities, the exhibits (which may be combined into one exhibit document), and the certificate of service are filed as separate documents. L.B.R. 9004-2(c), (c); 9014-1(d)(2).

The court has double checked the Motion, Notice, Declaration, and the forty-nine (49) page Request for Judicial Notice to see if a certificate of service was improperly appended thereto. No certificate of service was identified.

Additionally, Movant has failed to designate a docket control number for this Contested Matter. L.B.R. 9014-1(c). The use of docket control numbers is a necessary practice for maintaining organization of the court's files and providing a useful docket for attorneys and parties in interest attempting to wade their way through a bankruptcy case with a multitude of motions, objections, applications, and other contested matters.

Review of the Motion

The Motion filed by Westgate Woodland, LLC, a Delaware Limited Liability Company ("Creditor") requests the court to order Geoffrey Richards ("the Chapter 7 Trustee") to abandon property commonly known as (a) the approximate 2,363 sq/ft premises commonly known as the "Westgate Wash N Dry," located at 353 W. Main St., Woodland, CA 95695; and (b) personal property: (I) commercial washers for Laundromat; (ii) ten 30lb commercial washers, and eight 50lb commercial dryers, located at the Westgate premises ("Property"). Movant contends that Property is encumbered by the following liens:

1. Lien of Dexter Financial, securing a claim of $3,160.00,
2. Lien of Pawnee Leasing, securing a claim of $6,400.00, and
3. Lien of Pacific Financial Leasing, securing a claim of $12,960.00.

Citing *Church Jolint Venture, L.P. v. Bedwell* (*In re Blasingame*) 598 B.R. 864 (B.A.P. 6th Cir. 2019), Movant argues that F.R.B.P. 6007(b) permits a party of interest, including Movant, to file a motion seeking to compel the Trustee to abandon the property of the estate where the likely value which could be obtained from sale is inconsequential to the bankruptcy estate as it would not provide benefit to unsecured creditors, as any amount received from liquidation of the personal property would likely be consumed by administrative costs, liens, and the like.

Review of Declaration

The Declaration of Mujib Nayebkhel ("Declarant") has been filed in support of the Motion. Dckt. 23. Declarant testifies as to there being a lease between various persons, for which Westgate Associates, LLC is now the property owners and "Landlord.

Declarant then states that he has no personal knowledge of, but is only informed and believes, that the Debtors in this case are the principals of Maeshowe, LLC, who Declarant states is the "Tenant" under the lease. No basis is provided for Declarant to provide non-personal knowledge testimony. Fed. R. Evid. 601, 602.

Declarant further states that Declarant lacks any personal knowledge, but is informed and believe that Debtors have an interest in various items of personal property.

Declarant further state that Declarant lacks any personal knowledge, but is informed and believes that another entity, Dexter Financial, has an ownership interest in the personal property.

Declarant does state, not merely on information and belief, that Movant is owed $29,897.83 by the Debtors.

Review of Request for Judicial Notice

The Federal Rules of Evidence provide for the court to take judicial notice of certain facts in adjudicating a matter in federal court. Federal Rule of Evidence 201 states, in pertinent part, (emphasis added):

> Rule 201. Judicial Notice of Adjudicative Facts
>
> (a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
>
> (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is **not subject to reasonable dispute because it**:
>
> (1) is **generally known within the trial court's territorial jurisdiction**; or
>
> (2) can be accurately and **readily determined from sources whose accuracy cannot reasonably be questioned**.
>
> (c) Taking Notice. The court:
>
> (1) may take judicial notice on its own; or
>
> (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

Here, Movant, presents the following unauthenticated exhibits for which Judicial Notice is requested:

A. Exhibit A, Identified as "The attached Lease."

1. This Exhibit consists of three main documents (identified by the title at the top of the first page of each document):

a. "First Amendment to Lease, Speedy Wash - Westgate Shopping Center (Maeshowe LLC, DBA Speedy Wash Lavanderia).

b. "Alliance Laundry Systems LLC Agreement to Assign Lease (The 'Assignment')"

c. Shopping Center Lease, Westgate Shopping Center (Speedy

Wash Lavanderia)

2. Mujib Nayebkhel does not authenticate this lease for Movant. The court cannot identify this as being a document is a fact generally known within this court's territorial jurisdiction, nor something that can be readily determined from some source whose accuracy cannot reasonably be questioned.

B. Exhibit B, Identified as Schedules A/B, D, and G filed in this bankruptcy case; and Exhibit C, Identified as Official Forms 107 and 108 filed in this bankruptcy case.

1. While not a judicial notice issue, the court can and does consider the pleadings and other documents filed with this court, not only for their being filed in this case, but the statements made therein under penalty of perjury and subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011.

2. The Motion directs the court to Schedules D and G, and Forms 107 and 108 for the assertion that Movant has an interest in the Property and lease, and that Debtors value the Property and Lease at $0.00.

DISCUSSION

With respect to the requested abandonment, the Ninth Circuit Court of Appeals has stated the law, at least in this Circuit, on the issue. In *Catalano v. Commissioner of Internal Revenue*, 279 F.3d 682, 685 (9th Cir. 2002), the Circuit states:

> "Abandonment" is a term of art with special meaning in the bankruptcy context. It is the formal relinquishment of the property at issue from the bankruptcy estate. Upon abandonment, the debtor's interest in the property is restored *nunc pro tunc* as of the filing of the bankruptcy petition.

The use of the phrase, "*nunc pro tunc*" needs to be qualified in light of the Supreme Court's recent discussion in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, ___ U.S. ___, 2020 U.S. LEXIS (2020), [FN. 1.] and *Wirum v. Warren (In re Warren)*, 568 F.3d 2009, *nunc pro tunc* is to give corrective effect to an error, not retroactively change what was not in error. The property is placed back as it was as of the commencement of the case, and not retroactively given, to a person entitled to possession of the property. See 5 Collier on Bankruptcy, ¶ 554.02[3], which states:

> [3] Effect of Abandonment
>
> Upon abandonment under section 554, the trustee is divested of control of the property because it is no longer part of the estate. Thus, abandonment constitutes a divesture of all of the estate's interests in the property. **Property abandoned under section 554 reverts to the debtor, and the debtor's rights to the property are treated as if no bankruptcy petition was filed**. Although section 554 does not specify to whom property is abandoned, **property may be abandoned by the trustee to any party with a possessory interest in it.**

> Normally, the **debtor is the party with a possessory interest**. However, in some cases, it may be some other party, such as a **secured creditor who has possession of the property when the trustee abandons the estate's interest**. In any event, property abandoned under subsection (c) (scheduled but not administered property) is deemed abandoned to the debtor.
>
> Abandonment should not be considered a judicial sale of the property. Therefore, when property is subject to a security interest, abandonment does not take the place of a proper foreclosure sale. Even if the secured party is given possession, it will still have to comply with any nonbankruptcy law requirements for sale. Abandonment also should not be considered to divest the court of jurisdiction to enforce the rights of a debtor to claim an exemption under section 522.

FN. 1. The Supreme Court states, with respect to *nunc pro tunc* order:

> Federal courts may issue *nunc pro tunc* orders, or "now for then" orders, Black's Law Dictionary, at 1287, to "reflect[ ] the reality" of what has already occurred, *Missouri v. Jenkins*, 495 U. S. 33, 49, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo v. Cuebas y Arredondo*, 223 U. S. 376, 390, 32 S. Ct. 277, 56 L. Ed. 476 (1912).
>
> Put colorfully, "*[n]unc pro tunc* orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States v. Gillespie*, 666 F. Supp. 1137, 1139 (ND Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U. S., at 49.

Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano

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Thus, property that is abandoned reverts to debtor. The court notes that the Motion only request these assets be abandoned, which indicates abandoned to the Debtor, Movant asserting no possession interest therein.

The notice being defective, no certificate of service filed showing compliance with Federal Rule of Bankruptcy Procedure 6007(b), and the incomplete evidence presented, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Westgate Woodland, LLC, a Delaware Limited Liability Company ("Creditor") having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. 19-22038-A-7 BLF-3 GREGORY/MICHELLE STITT Charles Hastings MOTION TO APPROVE STIPULATION REGARDING DISTRIBUTION OF NET PROCEEDS OF SALE OF REAL PROPERTY 2-13-20 [67]

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

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 13, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Stipulation for Distribution of Net Proceeds of Sale of Real Property is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") seeks approval of a stipulation between Chapter 7 Trustee and Sheryl Stitt and Domini Mills (sisters of Debtor and co-owners) ("Settlor") who have stipulated to the distribution of net proceeds of sale of the real property located at 4575 N. Lake Blvd. Carnelian Bay, California.

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. 70): This more of the rational behind why the sale makes sense and how much money the estate would receive.

A. Debtors and Co-Owners of the Property, Sheryl Stitt, Domini Mills and Rita Stitt will cooperate in showing of the Property.

B. Upon court's approval of the proposed sale of the Property, standard costs of sale will be paid through escrow. The proceeds left after payment of such costs of sale will be referred to as the "Net Sale Amount. " The Net Sale Amount will be distributed from escrow as follows: (1) 1/3 to Mr. McGranahan less reimbursable Expenses, which will be paid by Trustee to Sheryl Stitt, Domini Mills and/or Rita Stitt; (2) 1/3 to Sheryl Stitt; and (3) 1/3 to Domini Mills.

C. Sheryl Stitt and/or Domini Mills individually or collectively may, by no later than the time of the hearing on a motion for Bankruptcy Court approval of a proposed sale, be allowed to make a matching offer, or if there are overbidders, when the highest bid has been made, make a matching bid and purchase the Property at the price at which the sale would be consummated. In such a situation, they would be bound by the terms of the agreement for sale and must sign an identical purchase agreement.

D. If Sheryl Stitt or Domini Mills individually or collectively make a matching bid to purchase the Property she/they will receive a credit for their proportionate share of the value of the Property; however, such credit will not diminish the Realtors' commission, which will be 6% of the full sale price without consideration of the credit given. Nothing in this paragraph however will preclude them from receiving reimbursement from the Debtor's share of the sale proceeds for their share of Reimbursable Expenses as defined herein.

Specifically, Trustee will disburse the estimated sales proceeds as follows (Declaration, Dckt. 69):

A. The purchase price is $950,000.00.

B. The net proceeds before disbursement to Co-Owners are $874,140.00. These proceeds have been reduced by: (1) a six percent (6%) commission paid to the Realtors totaling $57,000.00 collectively; (2) a $6,000.00 credit to the Buyers for possible repairs; (3) estimated closing costs of $9,500.00; and (4) estimated sewer clearance of $3,360.00.

C. Each Co-Owner will receive 1/3 of the proceeds from the sale, which is $291,380.00. Thus, Sheryl Stitt will receive $291,380.00 and Domini Mills will receive $291,380.00.

D. There are reimbursable expenses of $10,944.66.

E. The net proceeds will be reduced by capital gains tax of $28,000.00. This leaves a remaining balance for the bankruptcy estate of $252,435.34.

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 he does not have specific dispute with the Co-Owners with respect to the ownership of the Property. Rather, Trustee states the Stipulation ensures the Bankruptcy estate will receive proceeds from the sale of the Property which benefit unsecured creditors.

Trustee contends without the Stipulation he would be forced to file an adversary proceeding against the Co-Owners regarding the appropriate amount of Reimbursable Expenses to the Co-Owners.

Difficulties in Collection

Trustee and the Co-Owners do not have a specific dispute with respect to the ownership of the Property, thus he is unaware of any difficulties in collection. If sale is approved, the proceeds of sale would be distributed through escrow.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee reiterates that he does not have a specific dispute with respect to the Property with the Co-Owners. Rather, Trustee states the Stipulation allows him to distribute the Net Sale Amount of 1/3 to each Co-Owner and the bankruptcy estate. Trustee claims the Stipulation allows him to move

forward to sell the Property and pay some or all of the claims filed in the case without incurring unnecessary administrative costs.

Paramount Interest of Creditors

Trustee asserts the Stipulation allows Trustee to collection approximately $252,435.34 without the expense, uncertainty or delay of litigation. Thus, the Stipulation results in a significant savings in time and administrative expense. Therefore, Trustee contends the Stipulation is in the best interests of the creditors and the estate.

Consideration of Additional Offers

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Sheryl Stitt and Domini Mills ("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. 70).

13. **19-22038-A-7** **GREGORY/MICHELLE STITT** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR CHASE INTERNATIONAL, BROKER(S)**
BLF-2 **Charles Hastings** **2-13-20 [61]**

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 13, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 4575 North Lake Boulevard, Carnelian Bay, California ("Property").

The proposed purchaser of the Property is Reed Kinglsey and Kassia Kingsley, and a summary of the terms of the sale are:

A. The purchase price is $950,000.00. With an initial deposit of $27,000.00. The First Loan is $700,000.00. With the balance of purchase price $223,000.00 cash.

B. Seller to pay for a natural hazard zone disclosure report, including tax, environmental, and smoke alarm and carbon monoxide device installation and water heater bracing, if required by law.

C. Seller does not agree to pay the cost of compliance with any other minimum mandatory government inspections and reports and retrofit standards if required as a condition of closing escrow under any law.

D. Buyer and Seller to pay escrow fee and owner's title insurance policy 50/50.

E. Seller shall pay County transfer tax and sewer clearance. Seller shall also pay for the cost, not to exceed $630.00 of an upgraded one-year home warranty plan, issued by Old Republic Home Protection.

F. All stoves, refrigerators, and washers and dryers included in sale.

G. If the existing snow removal agreement (if any) is transferrable to Buyer, then Seller will assign that agreement to Buyer and the annual cost of that agreement will be prorated at Close of Escrow.

H. If there is propane, Seller has 7 days after Acceptance to provide Buyer with all documentation and information regarding the ownership, use and/or leasing information of the propane tank, including non-compliance or citation notices, if any.

I. Seller shall provide Buyer copies of all plans permits, certification, inspections or other documentation in their possession that are pertinent to the Property within 7 days after acceptance or as specified in the purchase Contract.

J. Seller shall remove all paint, stain, household cleaning products and other hazardous waste prior to close of escrow unless otherwise agreed in writing.

K. Snow is to be removed form all walkways, driveways and decks at close of escrow and house is to be cleaned by a professional cleaning service of Seller's choice within 5 days prior to close to escrow.

L. Seller to provide defensible space inspection from the North Tahoe Fire Protection District.

M. The sale is subject to bankruptcy court approval and subject to overbid.

N. The sale is subject to Co-Owners' right to buy the Property per Stipulation.

O. All disputes are to be resolved by the Bankruptcy Court.

P. Seller will file motion for Bankruptcy Court approval of the sale when the Buyers have removed all contingencies.

Q. Close of escrow will occur within 15 days of court's approval of the sale.

R. Seller and Buyer agree that the Kingsley Offer of January 8, 2020 , is extended to and through the date of the presentation of Seller Counteroffer dated January 21, 2020.

S. Should buyer be outbid, Seller agrees to reimburse Buyer for Home and Pest Inspection reports.

T. The Property is being sold "AS IS, WHERE IS" without any representation or warranty, express or implied of any kind by the seller.

Overbidding Procedures

Trustee proposes the following overbidding procedures:

1. Any party overbidding must agree to purchase the property on the same terms as te proposed agreement.

2. Bidder must qualify by showing at the hearing that they have the financial ability to close the transaction according to the agreement.

3. The first overbid must be at least $955,000.00.

4. Successive bids must be in increments of at least $1,000.00

5. The successful overbidder must deliver to Trustee at the hearing, by cashier's check, a deposit of $27,000.00. If overbidder becomes the actual purchaser, the deposit will apply to the purchase price. If overbidder defaults, the deposit will be non-refundable.

DISCUSSION

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

Trustee argues that the proposed sale is the highest and best available price. The proposed sale is in good faith as the property was inspected. Buyer inspected the Property prior to making an offer. Buyer has no connections to Debtors. Neither Trustee not those employed by Trustee have any relationship with the Buyer.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate and 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 Sell Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Reed Kingsley and Kassia Kinglsey or nominee ("Buyer"), the Property commonly known as 4575 North Lake Boulevard, Camelian Bay, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $950,000.00, on the terms and conditions set forth in the Purchase Agreement and Addendum, Exhibits D and E, Dckt. 65, and as further provided in this Order.

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

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

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase, with one-half of the commission (3%) paid to Chris Hernandez and Brooke Hernandez, Chase International, as the real estate brokers to Chapter 7 Trustee, and one-half of the commission (3%) to Buyer's Realtor, Linda Granger, Intero Real Estate Services.

14. **18-21644-E-7** **ANGELO/LISA OLIVA** **MOTION FOR A GOOD FAITH PURCHASER DETERMINATION**
DNL-6 **Anh Nguyen** **2-12-20 [205]**

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for a Good Faith Purchaser Determination 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 a Good Faith Purchaser Determination is xxxxx.

J. Michael Hopper ("Trustee")requests an order from the court finding Qi Zhao and Qingzhu Yin ("Buyer") or Amit Bandyopadhyay and Snigdha Ghosh ("Overbidder") in the event of overbidding to be good faith purchasers with respect to the purchase 3046 Prado Lane, Davis, California ("Property").

Trustee filed a Motion to Approve Sale of the Property to the Buyer for the purchase price of $700,000.00. This motion is set to be heard concurrently with the instant motion.

According to Trustee, the Overbidder had previously entered into sales contract with Trustee for purchase of the Property but later cancelled. The Overbidder has expressed interest in overbidding for the Property at the March 5, 2020 hearing set for the Motion to Sell.

Trustee directs the court to *In re Ewell*, 958F.2d 276,281 (9th Cir. 1992) for the premise that a "good faith purchaser" pursuant to 11 U.S.C. § 363(m) is one who buys 'in good faith' and 'for

value.'" Further adding that, "typically, lack of good faith is shown by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Id*.

Declaration from both buyers and overbidders were filed in support of this Motion.

Trustee further asserts that the Buyer and Overbidder are not creditors of the Debtor, nor do they have a professional relationship with Debtor. Trustee asserts that no fraud has been committed by either party. Further asserting that no collusive bidding tactics have been employed so as to lower the value of the Property or to dissuade others from submitting qualifying bids. Adding that the potential of having Overbidder overbid contradicts any claims of price manipulation.

While the two bidders assure the court that they qualify as "good faith" purchasers so as to not block any subsequent challenge to the purchase, such assurances are thin. The Bankruptcy Appellate Panel discussed this in *Thomas v. Namba (In Re Thomas)*, 287 B.R. 782, 785 (9th Cir. 2002), stating:

> "Good faith" is a factual determination to be reviewed for clear error and can be defeated by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Id.; Southwest Prods., Inc. v. Durkin (In re Southwest Prods., Inc.)*, 144 B.R. 100, 102-03 (9th Cir. BAP 1992).
>
> The difficulty with the factual determination is that evidence genuinely probative of "good faith" is not commonly introduced, or even reasonably available, at the time a bankruptcy court approves a sale. To the contrary, the fact-intensive evidence regarding the buyer and relations with parties in interest that may indicate fraud, collusion, or unfair advantage-i.e. evidence suggesting lack of "good faith"-tends to emerge after the sale.
>
> Recognizing this difficulty, a bankruptcy court may, in the absence of a well-developed factual record, prefer to take the cautious approach of either refusing to make "good faith" findings or limiting remarks about "good faith" to the nonspecific observation that the court has no reason to doubt that the parties are proceeding in "good faith."
>
> A bankruptcy court that does have a proper evidentiary basis for a finding of "good faith" is, of course, entitled to do so as part of the sale process.
>
> The choice of whether to make a finding of "good faith" as part of the initial sale process belongs, in this circuit, to the bankruptcy court. Because findings of "good faith" made at the time of the sale may be premature because they are made before the really interesting facts emerge, the Ninth Circuit does not require that a finding of "good faith" be made at the time of sale and has rejected the Third Circuit's contrary rule. *Onouli-Kona Land Co.*, 846 F.2d at 1174, rejecting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3rd Cir. 1986).

Here, what the court appears to have are representations that the two possible buyers are "good faith bidders," there not being any sale transaction that has been completed.

At the hearing, **xxxxxxxxxx**

~~As such, Trustee contends Buyer and Overbidder qualify as good faith purchasers.~~

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 a Good Faith Purchaser Determination 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 ~~is granted, and Qi Zhao and Qingzhu Yin ("Buyer") or Amit Bandyopadhyay and Snigdha Ghosh ("Overbidder") are deemed good faith purchasers as provided in 11 U.S.C. § 363(m) for the purchase of the real property commonly known as 3046 Prado Lane, Davis, California if they are the buyer authorized by the court to purchase the property and they complete the purchase on the terms and conditions as authorized by this court~~.

15. **18-21644-E-7** **ANGELO/LISA OLIVA** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR KELLER WILLIAMS REALTY, BROKER(S)**
DNL-5 **Anh Nguyen** **1-7-20 [177]**

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 Debtors, 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, 58 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 363(f)(4). Here, Movant proposes to sell the real property commonly known as 3046 Prado Lane, Davis, California ("Property").

The proposed purchaser of the Property is Qi Zhao and Qinqzhi Yin, and the terms of the sale are:

A. The Purchase Price is $700,000.00.

B. Buyer will give a $15,000.00 initial deposit, balance of $685,000.00 due prior to the close of escrow.

C. Transfer of Property shall be "AS IS" and "WHERE IS" without representation or warranty.

D. The estate shall pay for a home warranty not to exceed $600.00, a natural hazard zone disclosure report, county transfer taxes, and smoke alarm

and carbon monoxide installation and water heating bracing, if required by law.

E. The Estate and Buyer shall split escrow fees and owner's title insurance 50/50.

F. Close of escrow shall occur within 15 days of the court's order approving the sale agreement.

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

Overbidding Procedures

Trustee proposes the following bidding procedures:

1. A proposed overbidder prior to or at the hearing on this motion, must provide Trustee with a deposit by cashier's check in the amount of $16,000.00 ($15,000.00 plus first bid of $1,000.00)

2. Provide proof of funds for the balance of the purchase price.

3. Any overbidding shall proceed in increments of at least $1,000.00.

CREDITOR'S NON-OPPOSITION

On February 20, 2020, Creditor filed a Non-Opposition. Dckt. 212. Creditor is the beneficiary of the first priority Deed of Trust encumbering the Property. Creditor does not oppose the Motion for it references and provides for Creditor's lien which will be paid in full from the sale proceeds through escrow.

The Motion seeks to sell the Property free and clear of the lien of State of California, Employment Development Department ("EDD") ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that the interest of EDD is in *bona fide* dispute. The EDD abstract was recorded post-petition on July 8, 2019. Thus, the automatic stay protections of 11 U.S.C. § 362 prohibit the EDD's post-petition perfection of its lien. Therefore, the EDD Abstract is in bona fide dispute and Section 363(f)(4) applies. The court is not required to resolve the underlying dispute as a condition to authorizing the sale under § 363(f)(4). As such, the sale of the Property free and clear of the EDD claim is appropriate.

DISCUSSION

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

Trustee contends the sale to Buyer is a valid business justification and is in the best interests of the estate. Trustee states that a higher or better offer has not been received and creditors with unsecured claims will benefit from the net proceeds resulting from the sale, estimated to be $85,640.00.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

Movant has estimated that a six 6% percent broker's commission from the sale of the Property will equal approximately $42,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six 6% percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Movant does not anticipate any opposition to the sale and waiving the stay would make it so that the sale can move forward immediately upon entry of the court's order approving the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 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 J. Michael Hopper, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) 6004 to Qi Zhao and Qinqzhi Yin or nominee ("Buyer"), the Property commonly known as 3046 Prado Lane, Davis, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $700,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 181, and as further provided in this Order.

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

C. The Property is sold free and clear of the lien of State of California, Employment Development Department Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(4), with the lien of such creditor attaching to the net proceeds after payment of senior liens and costs of sale as authorized by this Order. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

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

E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six (6%) percent of the actual gross purchase price. The six (6%) percent commission shall be paid to the Chapter 7 Trustee's broker, Kendell Konecny, Keller Williams Realty.

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

16. 10-27435-E-7 THOMAS GASSNER
SGB-3
CAROL GASSNER VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RETROACTIVE RELIEF FROM AUTOMATIC STAY
12-11-19 [188]

Due to the anticipated length of oral arguments, the Motion for Relief from the Automatic Stay and the accompanying Status Conference will be heard at the end of the March 5, 2020 10:30 a.m. calendar.

No Tentative Ruling for the Motion for Relief of the Automatic Stay will be posted at this time.

17. **10-27435-E-7** **THOMAS GASSNER** **CONTINUED STATUS CONFERENCE**
19-2038 **RE: AMENDED COMPLAINT**
GASSNER V. GASSNER ET AL **7-12-19 [20]**

Due to the anticipated length of oral arguments, the Motion for Relief from the Automatic Stay and the accompanying Status Conference will be heard at the end of the March 5, 2020 10:30 a.m. calendar.

Plaintiff's Atty: Holly A. Estioko
Defendant's Atty:
Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]
Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19
Answer:
4/11/19 [Laura Strombom]
4/11/19 [Alfred M. Gassner; Carol L. Gassner]
Amd. Cmplt. Filed: 7/12/19
Answer:
8/5/19 [Alfred M. Gassner; Carol L. Gassner]
8/13/19 [Laura Strombom]
Amd. Answer: 8/13/19 [Alfred M. Gassner; Carol L. Gassner]
8/26/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:
Sanctions for willful violation of automatic stay (against Settlors and Strombom)
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
Declaratory judgment
Injunctive relief - other

Notes:
Continued from 2/13/20 by request of the Parties to be heard in conjunction with the Motion for Relief from Stay in the bankruptcy case.

Status Conference Statement of Plaintiff Georgene Gassner filed 2/27/20 [Dckt 110]

FINAL RULINGS

18.	**19-22795-A-7** **BLF-3**	**KARL THAO AND PANG MOUA** **Alia Khan**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **1-27-20 [33]**

Final Ruling: No appearance at the March 5, 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 Debtors , Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2020. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken, the Attorney ("Applicant") for Michael D. McGranahan, 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 21, 2019, through March 5, 2020. The order of the court approving employment of Applicant was entered on July 3, 2019. Dckt. 21. Applicant requests fees in the amount of $2,070.00 and costs in the amount of $108.90.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis 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 an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include providing general case administration and strategies on how to handle property of the estate and assisting Trustee in the sale to the Debtors of the estate's nonexempt interest in real property located at 9162 Blue Grass Drive in Stockton. The Estate has $8,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.4 hours in this category. Applicant prepared Applicant's fee agreement, employment application, and the instant fee application, and anticipates attending the hearing on the fee application. (Applicant did not bill for any time spent on general case administration.)

Efforts Related to interest in 9162 Blue Grass Drive: Applicant spent 6.9 hours in this category. Applicant reviewed the offer submitted by Debtor for purchasing of the property interest and discussed it with Trustee; prepared the sale agreement; prepared and filed the motion to sell the estate's nonexempt interest in the property to the debtors; and appeared by telephone at the hearing.

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**
Loris L. Bakken	10.3	$300.00	$3,090.00

	0	$0.00	$0.00
Total Fees for Period of Application			$3,090.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $108.90 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	N/A	$43.70
Copying	$0.10 per page	$65.20
		$0.00
Total Costs Requested in Application		$108.90

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $2,070.00 for its fees incurred for Client. First and Final Fees in the amount of $2,070.00 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 $108.90 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 $2,070.00
Costs and Expenses $108.90

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 Loris L. Bakken ("Applicant"), Attorney for Michael D. McGranahan, 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 Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,070.00
Expenses in the amount of $108.90,

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

19. 20-20119-A-7 JHW-1 CAB WEST, LLC VS.

STEVEN CURTIS
Charles Hastings

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-17-20 [9]

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 17, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Cab West, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Ford Escape, VIN ending in 8073 ("Vehicle"). The moving party has provided the Declaration of Jacklyn Larson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Steven Bruce Curtis ("Debtor").

Movant provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of $362.60. Declaration, Dckt. 12.

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 $23,750.48 (Declaration, Dckt. 12), while the value of the Vehicle is determined to be $17,000.00, as stated in Schedules B and D filed by Debtor.

According to the Statement of Intention, Debtor intends to surrender the Vehicle. Dckt. 1.

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Cab West, 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 2019 Ford Escape, VIN ending in 8073 ("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.

20. **19-26426-A-7** **PRUDENCIO FARIAS**
PLG-1 **Jeffrey Meisner**

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
1-21-20 [21]

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and to Determine Dischargeability of Debt is granted.

Creditor Oscar Vargas dba Vargas Foam and Trim ("Movant") moves to extend the deadline to file a complaint objecting to Prudencio Farias's ("Debtor") discharge because Movant has been denied the opportunity to question Debtor, and the Trustee has been unable to complete his questioning of Debtor, at either the November 20, 2019 § 341 Meeting of Creditors, or the December 18, 2019 First (341) Meeting of Creditors.

Specifically, Movant and the Trustee have been unable to question Debtor about the disposal of over four hundred thousand dollars he received within the last year prior to filing this bankruptcy case. Debtor's § 341 Meeting of Creditors was continued to January 22, 2020, the day after the January 21, 2020 deadline to file a complaint or objection under 11 U.S.C. §§ 523 or 727.

The deadline for filing a complaint objecting to discharge was January 21, 2020. Dckt. 9. The present Motion was filed on January 21, 2020. Dckt. 21.

The present Motion requests that the deadline to determining nondischarageability of debt and to object to Debtor's discharge be extended by 90 days to April 20, 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 January 21, 2020, the day of the deadline to object to the discharge of Debtor. Trustee reports that Debtor appeared at the continued Meeting of Creditors held January 22, 2020 and the Meeting was adjourned.

January 18, 2020 Stipulation & Subsequent Order

On January 18, 2020, Trustee and Debtor stipulated to extending the deadline to file a complaint objecting to discharge. The stipulation provided to extend the deadline to March 9, 2020. Dckt. 20. Pursuant to court's Order, the Stipulation with the March 9, 2020 date was approved on January 27, 2020. Dckt. 29. However, this was an extension just for the Trustee to object to the Debtor's discharge.

Decision

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 file a complaint for nondischarageability of debt and/or object to Debtor's discharge is extended to April 20, 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 Oscar Vargas dba Vargas Foam and Trim, Creditor , ("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 Prudencio Farias's ("Debtor") discharge or file a complaint for the nondischargeability of debt is extended to and including April 20, 2020.

21. **19-26330-A-7** **MOH-1** | **ARNETTA HANSEN** **Michael Hays** | **MOTION TO AVOID LIEN OF NATIONAL CREDIT ACCEPTANCE, INC.** **1-31-20 [16]**

Final Ruling: No appearance at the March 5, 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 31, 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 Sacor Financial, Inc. ("Creditor") against property of the debtor, Arnetta C. Hansen ("Debtor") commonly known as 12680 Ashland Avenue, Red Bluff, California ("Property").

A judgment was entered against Debtor in favor of National Credit Acceptance, Inc. in the amount of $20,397.57. Exhibit A, Dckt. 19. The Judgement was assigned to Sacor Financial, Inc. on September 9, 2011. Exhibit C, Dckt. 19. An abstract of judgment was entered with Butte County on July 28, 2003, with a judgment renewal on March 28, 2013, 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 $167,719.00 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 $175,000.00 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 Arnetta C. Hansen ("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 National Credit Acceptance, Inc., California Superior Court for Butte County Case No. NC48770, recorded January 25, 2019, Document No. 2019000983, with the Tehama County Recorder, against the real property commonly known as 12680 Ashland Avenue, Red Bluff, 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.

22.	**20-20442-A-7 MS-1**	**GREGORY SWANGIN AND LADRENA GUNN-SWANGIN Mark Shmorgon**	**MOTION TO AVOID LIEN OF LUIS SANTIZO 1-27-20 [5]**

Final Ruling: No appearance at the March 5, 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 Debtors, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 27, 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 Luis Santizo and Nicole Santizo, as Co-Trustees of the Santizo 2003 Living Trust ("Creditor") against property of the debtor, Gregory Swangin and LaDrena Gunn-Swangin ("Debtors") commonly known as 100 Luna Grande Circle Unit #10, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $700.00. Exhibit D, Dckt. 7. An abstract of judgment was recorded with Sacramento County on October 25, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $175,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $11,451.02 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 $175,000.00 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 Gregory Swangin and LaDrena Gunn-Swangin ("Debtors") 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 Luis Santizo and Nicole Santizo, as Co-Trustees of the Santizo 2003 Living Trust , California Superior Court for Sacramento County Case No. 10UD04775, recorded on October 25, 2010, Book 20101025 and Page 0469, with the Sacramento County Recorder, against the real property commonly known as 100 Luna Grande Circle Unit #10, Sacramento, 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.

23.	**20-20442-A-7** **MS-2**	**GREGORY SWANGIN AND LADRENA GUNN-SWANGIN** **Mark Shmorgon**	**MOTION TO AVOID LIEN OF UNITED AUTO CREDIT CORPORATION** **1-27-20 [10]**

Final Ruling: No appearance at the March 5, 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 Debtors, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 27, 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 United Auto Credit Corporation ("Creditor") against property of the debtor, Gregory Swangin and LaDrena Gunn-Swangin ("Debtors") commonly known as 100 Luna Grande Circle Unit #10, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,202.68. Exhibit D, Dckt. 12. An abstract of judgment was recorded with Sacramento County on June 13, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $175,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $11,451.02 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 $175,000.00 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 Gregory Swangin and LaDrena Gunn-Swangin ("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 United Auto Credit Corporation, California Superior Court for Sacramento County Case No. 34-2010-00070516, recorded on June 13, 2011, Book 20110613 and Page 0715, with the Sacramento County Recorder, against the real property commonly known as 100 Luna Grande Circle Unit #10, Sacramento, 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.

24. 19-27152-A-7 JOSHUA NELSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 Jeffrey Ogilvie
FLAGSTAR BANK VS.
1-23-20 [11]

Final Ruling: No appearance at the March 5, 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, Mortgagor, and Chapter 7 Trustee on January 23, 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 granted.

Flagstar Bank ("Movant") seeks relief from the automatic stay with respect to Joshua P. Nelson's ("Debtor") real property commonly known as 4341 Main Street, Shasta Lake, California ("Property"). Movant has provided the Declaration of Jamie Garcia Troester to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made two (2) post-petition payments, with a total of $2,530.96 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there are twelve (12) pre-petition payments in default, with a pre-petition arrearage of $15,185.76. *Id*.

CHAPTER 7 TRUSTEE'S OPPOSITION

Nikki B. Farris ("the Chapter 7 Trustee") filed a statement of non-opposition on January 29, 2020. Trustee's January 29, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $212,406.73 (Declaration, Dckt. 13), while the value of the property is determined to be $240,000.00, as stated in Schedules B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

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

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

Request for 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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Flagstar Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 4341 Main Street, Shasta Lake, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

25. **19-26566-A-7** **ANTHONY SIPPIO** **MOTION TO APPROVE STIPULATION**
UST-1 **Lucas Garcia** **TO DISMISS CHAPTER 7 CASE**
WITHOUT ENTRY OF DISCHARGE
1-21-20 [30]

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Approve Stipulation to Dismiss Case 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 Approve Stipulation to Dismiss Case is granted.

Tracy Hope Davis, the United States Trustee for Region 17, ("Movant") seek approval of a stipulation between U.S. Trustee and debtor Anthony Sippio who has 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 21, 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 Debtor does not wish to defend the allegations and has 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. Debtor filed the present case on October 22, 2019. Dckt. 1.

B. The Meeting of Creditors was scheduled for November 20, 2019, continued to December 18, 2019, and further continued to January 22, 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. Debtor desires 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.

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, Debtor has stipulated to the dismissal 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.

A review of the docket shows that Debtor has failed to prosecute this case. An order dismissing the case for failure to timely file documents was issued on November 20, 2019. Dckt. 22. The order was vacated on November 22, 2019 after Debtor filed the required Schedules, Statement of Financial Affairs, Statement of Intention, Statement of Current Monthly Income, and the Attorney Compensation Disclosure Form. See Dckt. 23. On January 7, 2019, the Clerk of the Court filed a Notice of Intent to close Chapter 7 Case without Entry of Discharge due to failure to file financial management course certificate. Dckt. 28. And, finally, on February 20, 2020, the Clerk of the Court filed a Notice of

Intent to close Chapter 7 Case without entry of discharge due to failure to pay filing fee and administrative fee. Dckt. 34.

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.

26. **20-20467-A-7** **JESSICA PARK** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Julia Young
2-12-20 [11]

Final Ruling: No appearance at the March 5, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, creditors, and Chapter 7 Trustee as stated on the Certificate of Service on February 14, 2020. 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 January 29, 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.

27. **18-20774-A-7** **S360 RENTALS, LLC** **OBJECTION TO CLAIM OF LA VIDA INC., CLAIM NUMBER 8-1**
DL-2 **Steven Shumway** **1-15-20 [334]**

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2020. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 8-1 of La Vida Inc. is sustained, and the claim is disallowed in its entirety.

Hank M. Spacone, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of La Vida Inc. ("Creditor"), Proof of Claim No. 8-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $505,000.00. Objector asserts the following three grounds for the objecting:

1. Debtor's petition, schedules, and statements filed under penalty of perjury do not include the Claimant as Creditor.

2. Claimant failed to attach copies of any documents in support of the amount claimed.

3. Brenna Labine is not the CEO of Claimant, and lacks apparent authority to file the Claim on behalf of Claimant. According to the California Secretary of State, the Chief Executive Officer, Secretary, Chief Financial Officer and sole Director is Yasi Wang. (Exhibit A)

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 evidence 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). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

The Bankruptcy Code requires that a Proof of Claim must be filed with accompanying documents which support or substantiate the amount claimed. Here, Claimant's proof of claim states under penalty of perjury, that Debtor owes La Vida Inc $505,000.00 for "Money Loaned." Proof of Claim 8-1. No documents are attached to support this amount.

Furthermore, the proof of claim, again filed under penalty of perjury, lists Brenna Labine as "CEO" of La Vida Inc. This was refuted by Trustee with a properly authenticated copy of the California Secretary of State Statement of Information for La Vida Inc, which lists a "Yasi Wang" as its CEO, CFO, Secretary and sole Director.

Claimant and Debtor's location of principal assets are the same: 4209 Almond Lane Davis, CA 95618. *See* Petition, Dckt. 1. According to Trustee, Brenna Labine is the wife of Raymond Sahadeo, Debtor's Managing Member.

As detailed above, Trustee has provided evidence that supports the conclusion that this claim might not be legitimate. Claimant has not filed an Opposition or amended the proof of claim to include supporting documents.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. 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 La Vida Inc. ("Creditor"), filed in this case by Hank M. Spacone, the Chapter 7 Trustee, ("Objector") 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 8-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

28. 20-20175-E-11 HERBERT MILLER — **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Judson Henry — **2-18-20 [32]**

Final Ruling: No appearance at the March 5, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor in Possession, and Debtor in Possession's Attorney as stated on the Certificate of Service on February 20, 2020. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $430.00 due on February 12, 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, and the case shall proceed in this court.

29.	**19-21976-E-7** **DNL-13**	**CONQUIP, INC.** **Eric Nyberg**	**MOTION FOR ADMINISTRATIVE EXPENSES** **1-30-20 [140]**

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2020. By the court's calculation, 35 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.

J. Michael Hopper ("Movant") requests payment of administrative expenses in the amount of $800.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Franchise Tax Board ("FTB") for the estate's 2020 California corporate tax liability.

DISCUSSION

Movant argues that the CPA employed by the estate has estimated the estate's California corporate tax liability due to the FTB as $800.00 for the 2020 tax year.

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 shows that the

administrative expenses are tax liabilities incurred by the estate and as such is an administrative expense under this section. .

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing $800.00 to the Franchise Tax Board as part of managing the estate 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 J. Michael Hopper ("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).

30. 16-22482-E-7 HCS-7 — TIMOTHY MUNSON — Charles Hastings — MOTION FOR COMPENSATION FOR PAUL E. QUINN, ACCOUNTANT(S) — 1-15-20 [100]

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the

record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Paul E. Quinn, CPA at Ryan, Christie, Quinn & Horn, the Accountant ("Applicant") for Gary R. Farrar, 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 2, 2019, through August 15, 2019. The order of the court approving employment of Applicant was entered on June 13, 2019. Dckt. 83. Applicant requests fees in the amount of $1,475.00 and costs in the amount of $24.27.

Trustee explains that by inadvertent error Trustee made payment to Applicant without counsel having filed an application for authority to pay him or an order allowing the Trustee to pay him. Declaration, ¶ 8. Trustee and Counsel discovered their error when Trustee was contacted by the United States Trustee's Office, which advised him that it could not find the application for compensation or the order authorizing payment. *Id.*, ¶ 7. Trustee has also made all other distributions as outlined in the Trustee's Final Report, such that he is holding no more funds, and the estate is in a position to close. *Id.*, ¶ 6.

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 preparing the estate's federal and state 2018 tax returns and related matters. 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.

General Administration: Applicant spent 2.7 hours in this category. Applicant communicated with Trustee regarding an overview of the case, reviewed the list of creditors to ensure absence of conflicts of interest, prepared correspondence to tax authorities and to Trustee, and prepared the materials for the instant fee application.

Federal and State Tax Matters: Applicant spent 3.2 hours in this category. Applicant prepared the estate's federal and state 2018 tax returns and related matters.

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**
Paul E. Quinn	5.9	$250.00	$1,475.00
	0	$0.00	$0.00
Total Fees for Period of Application			$1,475.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $24.27 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies (125)	$0.05	$6.25
Postage		$18.02
		$0.00
		$0.00
Total Costs Requested in Application		$24.27

FEES AND COSTS & EXPENSES ALLOWED

While Applicant is seeking a "retroactive authorization" for compensation, Applicant fails to provide the court with any law supporting that the court can do what it requests of this court. However, a bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974.

Under penalty of perjury, Trustee explains that the lack of authorization was due to inadvertent error as Trustee was getting ready to close the case. Trustee further explains that once he confirmed this inadvertence he filed the instant application.

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 $1,475.00 are retroactively 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 $24.27 are retroactively 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	$1,475.00
Costs and Expenses	$24.27

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 Paul E. Quinn, CPA at Ryan, Christie, Quinn & Horn ("Applicant"), Accountant for Gary R. Farrar, 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 Paul E. Quinn, CPA at Ryan, Christie, Quinn & Horn is allowed the following fees and expenses as a professional of the Estate:
>
> Paul E. Quinn, CPA at Ryan, Christie, Quinn & Horn, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,475.00
> Expenses in the amount of $24.27,

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

31. **19-24684-A-7** **HURSCHEL HIMES** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JCW-1 **Pro Se** **1-24-20 [30]**

JPMC SPECIALTY MORTGAGE LLC
VS.

DEBTOR DISMISSED: 08/12/19

Final Ruling: No appearance at the March 5, 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*), and Chapter 7 Trustee on January 24, 2020. By the court's calculation, 41 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

JPMC Specialty Mortgage LLC fka WM Specialty Mortgage LLC ("Movant") seeks relief from the automatic stay with respect to Hurschel Allen Himes's ("Debtor") real property commonly known as 551 3rd Street, Tehama, California ("Property"). Movant has provided the Declaration of Della Walker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on August 12, 2019, for failure to timely file documents. Dckt. 16.

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 August 12, 2019, 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.

Reopening of Bankruptcy Case

It is curious that the Debtor has sought to reopen this bankruptcy case to file documents. The order dismissing this case has not been vacated and it remains dismissed. Reopening a bankruptcy case does not vacate the dismissal. A closed bankruptcy case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause. 11 U.S.C. § 350. The effect of this statute is merely to "pull" the court file from the stacks of the closed cases, or even from the archives, to enable it to receive a new request for relief. *In re David*, 106 B.R. 126, 128 (Bankr. E.D. Mich. 1989). Movant filed a Motion to Reopen the case on February 12, 2020. Dckt. 25. The Motion was granted and the case was reopened on the same date. Dckt. 27. By virtue of reopening the case and filing the Motion for Relief from the Automatic Stay to be heard concurrently with the instant motion, Movant did not need to file a Motion to Vacate the Dismissal.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on August 12, 2019.

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 JPMC Specialty Mortgage LLC fka WM Specialty Mortgage 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** that the Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on August 12, 2019 (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 Hurschel Allen Himes ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 551 3rd Street, Tehama, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the August 12, 2019 dismissal of this bankruptcy case.

32. **20-20585-A-7** **LISA BYRD** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**

Pro Se **2-18-20 [16]**

DEBTOR DISMISSED: 02/21/20

Final Ruling: No appearance at the March 5, 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 February 20, 2020. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on February 3, 2020.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on February 21, 2020 (Dckt. 18), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

33. **19-25888-A-7** **RAMESHWAR PRASAD** **MOTION FOR RELIEF FROM**
EAT-1 **Charles Hastings** **AUTOMATIC STAY**
1-23-20 [35]

NATIONSTAR MORTGAGE LLC VS.

Final Ruling: No appearance at the March 5, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 23, 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 granted.

Nationstar Mortgage LLC dba Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to Rameshwar Prasad's ("Debtor") real property commonly known as 341 Anjou Circle, Sacramento, California ("Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of $6,957.69 in post-petition payments past due. Declaration, Dckt. 39.

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 $315,676.08 (Declaration, Dckt. 39), while the value of the Property is determined to be $370,000.00, as stated in Schedules B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

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

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

Request for 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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Nationstar Mortgage LLC dba Mr. Cooper ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 341 Anjou Circle, Sacramento, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.