UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

As required by District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall (which is waiving the fee for the use of its serve by *pro se* (not represented by an attorney) parties. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

March 26, 2020 at 10:30 a.m.

1.	**19-27418-E-7** **UST-1**	**STEPHANIE BOWSER-GLASCO** **Alia Khan**	**MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT ENTRY OF DISCHARGE** **1-31-20 [13]**

NO APPEARANCE TO BE MADE AT THE HEARING
UNLESS IT IS TO STATE OPPOSITION ON THE RECORD

IF OPPOSITION STATED, THE COURT WILL SET THE MATTER FOR FINAL HEARING

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)(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 31, 2020. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion to Approve Stipulation 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 Dismiss is granted.

The United States Trustee, Tracy Hope Davis ("U.S. Trustee"), seeks approval of a stipulation between U.S. Trustee and debtor Stephanie M Bowser-Glasco ("Debtor") who have stipulated to dismissing this chapter 7 case prior to the entry of discharge.

While styled as a Motion to Approve a Stipulation, the court construes this as a Motion to Dismiss this bankruptcy case as stipulated to by the Debtor. The court cannot identify a legal basis for the court to "approve" a stipulation to dismiss the case. Nothing at issue appears to be within Federal Rule of Bankruptcy Procedure 9019. If the relief as literally requested by the U.S. Trustee was granted, the court would merely order that the stipulation is "approved," and the bankruptcy case would continue in effect until a motion to dismiss pursuant to the approved stipulation was filed and heard.

The deadline to file a motion to dismiss under 11 U.S.C. § 707(b)(3) is February 25, 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 her chapter 7 case.

In substance, the Motion is actually one to dismiss this case pursuant to the Stipulation of the U.S. Trustee and the Debtor, not merely "approve" a stipulation.

The court construes the Motion as one to dismiss this case pursuant to the stipulation with the Debtor, and not merely to approve a stipulation.

STIPULATION

According to U.S. Trustee's Motion, Debtor stipulates to dismissal of the bankruptcy case, subject to approval by the court upon the following facts:

A. Debtor filed the present case on November 27, 2019. Dckt. 1.

B. The Meeting of Creditors was scheduled for December 27, 2019, continued to January 23, 2020, and further continued to March 5, 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. Parties hereby stipulate to dismissal of this chapter 7 case prior to entry of discharge in this matter.

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.

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.

Here, the Motion to Approve the Stipulation was filed and was set for hearing. A total of 55 days notice was provided for oppositions or responses. The Motion's Certificate of Service provides for all who received notice of this Stipulation. Indeed, the Certificate lists that the Stipulation was served to the parties. However, no Stipulation was filed with the court.

In lieu of filing the Stipulation, the Office of the U.S. Trustee directs the court to collect such evidence as follows:

> 5. The Debtor does not wish to defend the US Trustee's allegations and has stipulated to dismissal of this chapter 7 bankruptcy case without discharge. See ECF Docket generally.

Motion, ¶ 5; Dckt. 13.

Unfortunately, the court does not for the parties assemble documents and evidence in support of requests for relief. That is not the role of the court. While the court does not doubt that a stipulation exists, even for the U.S. Trustee, the court cannot just assume it exists because an attorney argues such.

Possibly, documents due exist in the file in this case which Movant could present the court from which the court could then use as basis for the dismissal being pursuant to a stipulation. Such an example could be the Stipulation to Extend Deadline for the U.S. Trustee for filing a motion to dismiss under 11 U.S.C. § 707(b). However, the U.S. Trustee has not presented that to the court.

Dismissal Ordered

Though the U.S. Trustee has not provided the court with a Stipulation to Dismiss, the Motion now before the court can be construed as a Motion to Dismiss. In the Motion Movant states the legal conclusions that the filing of the case by Debtor would be presumed to be an abuse of the Bankruptcy Code. No grounds with particularity are stated, just the conclusion. *See* Fed. R. Bankr. 9013.

It is alleged in the Motion that Debtor does not oppose the dismissal. This Motion having been filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), no written opposition was required to be filed.

The court notes that the Trustee's Report of the First Meeting of Creditors states that Debtor and Debtor's Counsel failed to appear at the March 5, 2020, Meeting of Creditors. March 5, 2020 Docket Entry Report. Such failure to appear is consistent with not opposing the dismissal of the case.

In looking at Schedule I filed by Debtor, the court notes that Debtor is a high income earner, significantly over the median income levels. Dckt. 1 at 31,32. This is also borne out on the Statement of Financial Affairs not only for the year in which the bankruptcy case was filed, but also the two prior years. *Id.* at 36-37. Such could well have been particular grounds stated in a motion to dismiss (as required by Fed. R. Bankr. P. 9013).

The court grants 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 United States Trustee, Tracy Hope Davis ("U.S. Trustee"), having been presented to the court, the Debtor not opposing dismissal of this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the bankruptcy case is dismissed.

2.	**12-40720-A-7** **MKJ-1**	**VICTORY STRATTON** **Michael Johnson**	**MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB** **2-17-20 [33]**

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, Creditor, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 37 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 American Express Bank FSB ("Creditor") against property of the debtor, Victory Stratton ("Debtor") commonly known as 7014 McGill Court, Elk Grove, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,338.69. Exhibit 4, Dckt. 36. An abstract of judgment was recorded with Sacramento County on December 13, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $224,292.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $451,553.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 30. 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. 29.

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 Victory Stratton ("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 American Express Bank FSB, California Superior Court for Sacramento County Case No. 34-2011-00103623, recorded on December 13, 2011, Book 20111213 and Page 1014, with the Sacramento County Recorder, against the real property commonly known as 7014 McGill Court, Elk Grove, 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.

3. **18-27920-A-7** **GREEN BELT CARRIERS** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WESTERN AG LOGISTICS, INC.**
MHK-9 **Stephen Reynolds** **2-11-20 [91]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2020 By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Susan Smith, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Western Ag Logistics, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a payment of $92,102.96 made by Debtor to Settlor within the ninety-day (90) period before the petition date.

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 Agreement of Settlement and Release ("Agreement") filed as Exhibit A in support of the Motion, Dckt. 94):

A. Settlor is to pay the Estate the sum of $10,000.00 ("the Settlement Payment") and mail the check to 2701 Del Paso Road, Suite 130 - PMB 399, Sacramento CA 95835. Upon the receipt of the Settlement Payment, Trustee shall request an order from the Bankruptcy Court approving the Agreement pursuant to Federal Rule of Bankruptcy

Procedure 9019.

B. Both parties acknowledge that the Agreement is a compromise of disputed claims and that neither party admits, and each expressly denies, any liability on its part.

C. Except for the obligation and rights set forth in the Agreement, the Parties effect a mutual general release of claims.

D. Settlor shall not file or assert any claim under 11 U.S.C. section 502(h) and shall not amend the Proof of Claim by adding the Settlement Payment amount to the Claim Amount. The Trustee shall not object to allowance of the Proof of Claim as currently filed.

E. Each of the Parties agrees to bear his, her or its own costs and expenses, including attorneys' fees, arising out of the matters related to this Agreement.

F. No amendment or modification of the Agreement shall be binding or enforceable unless in writing and signed by the parties.

G. The Agreement shall be construed and enforced in accordance with the provisions of the Bankruptcy Code and other applicable federal law. The Parties acknowledge and agree that the Bankruptcy Court shall jurisdiction to hear and determine any claims or disputes between the Parties with respect to this Agreement.

H. In the event the Trustee is required by any court of competent jurisdiction to disgorge to Settlor or repay the Settlement Payment; (i) the releases set forth in this Agreement shall be deemed null and void, and (ii) Settlor shall waive only those defenses based on the lapse of time that may apply to the claims that could be asserted against the Transferee in any adversary proceeding including, without limitation, any statute of limitations or laches defenses, but shall retain all other defenses to any claims or cause of action asserted by the Trustee.

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

According to Trustee, Settlor has asserted ordinary-course of business and new value defenses. Trustee contends that because Debtor's records reflect its receipt of new value from Settlor, at trial this could reduce Settlor's potential liability to approximately $60,870.00. However, as to Settlor's ordinary course defense, Trustee asserts that this defense would be harder for Settlor to prove given the varied history of amounts in debt incurred by Debtor.

Thus, Trustee asserts that it is unclear if the estate will prevail, further stating that the $10,000.00 payment is a significant portion of the amount in controversy after new value is taken into account.

Difficulties in Collection

Trustee anticipates no difficulties in collecting the amount of a money judgement against Settlor.

Expense, Inconvenience, and Delay of Continued Litigation

Though not a complex situation, Trustee asserts that litigation would be costly in light of the limited resources available to the Estate. Further, litigation would significantly delay administration of the bankruptcy case.

Paramount Interest of Creditors

Trustee asserts that the interest of the creditors is served by the Agreement on the basis that Settlor stipulated to not increase the Claim Amount based on their rights under 11 U.S.C. section 502(h), and the Proof of Claim is essentially fixed.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it adds $10,000.00 to the Estate and prevents further expenses by avoiding litigation. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Susan Smith, 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 Western Ag Logistics, Inc. ("WAL") ("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. 94).

4. **20-21031-A-7** **STEVEN MADISON** **MOTION FOR RELIEF FROM**
MET-1 **Helga White** **AUTOMATIC STAY**
3-12-20 [9]

BANK OF THE WEST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 12, 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.

Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Cruiser ViewFinder Travel Trailer, VIN ending in 4243 ("Vehicle"). The moving party has provided the Declaration of Aimee Nanon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Steven Gene Madison ("Debtor").

Movant alleges that there are six (6) pre-petition payments in default. Declaration, Dckt. 11.

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

Though the court will *sua sponte* take notice that the NADA Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of

Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Aimee Nanon to be that she obtained the NADA Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 $30,491.69 (Declaration, Dckt. 11), while the value of the Vehicle is determined to be $28,000.00, as stated in Schedules B and D filed by Debtor.

According to Movant, Debtor intends to surrender the Vehicle. However, a review of Debtor's Statement of Intention, states

> "Retain the property and [explain]: pay according to contract."

Dckt. 1 at 43.

Thus, it seems Debtor does not intend to surrender the Vehicle.

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

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se*

not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Bank of the West ("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 2015 Cruiser ViewFinder Travel Trailer, VIN ending in 4243 ("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.

5. **20-21144-A-7** **PURA HERNANDEZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
VVF-1 **Pro Se** **3-4-20 [24]**

AMERICAN HONDA FINANCE CORPORATION VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on March 4, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Honda CTX700NF, VIN ending in 0028 ("Vehicle"). The moving party has provided the Declaration of Crystal Estrada to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Pura Taymi Hernandez ("Debtor").

Movant provides evidence that there are 1.99 pre-petition payments in default, with a pre-petition arrearage of $327.14. Declaration, Dckt. 26. Movant recovered the Vehicle pre-petition on February 8, 2020. *Id*.

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

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $3,790.82 (Declaration, Dckt. 26), while the value of the Vehicle is determined to be $3,325.00, as stated on the NADA Valuation Report.

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

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

11 U.S.C. § 362(d)(2)

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

Movant has pleaded adequate facts and presented sufficient evidence to support the court

waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by American Honda Finance Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2015 Honda CTX700NF, VIN ending in 0028 ("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.

6. **19-22859-E-7** **GREGORY/NADINE SANOSKI** **MOTION FOR TURNOVER OF PROPERTY**
DNL-3 **Steele Lanphier**
3-2-20 [75]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2020. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Turnover 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 Turnover is granted.

Hank Spacone, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover from the Debtors of the real property commonly known as 4311 26th Avenue, Sacramento, California ("Property").

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Gregory George Sanoski, II and

Nadine Melanie Sanoski ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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 Turnover of Property filed by Hank Spacone, 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 Turnover of Property is granted.
>
> **IT IS FURTHER ORDERED** that Gregory George Sanoski, II and Nadine Melanie Sanoski ("Debtor"), and each of them, shall deliver on or before **May 1, 2020**, possession of the real property commonly known as 4311 26th Avenue, Sacramento, California ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

7. **18-27665-A-7** **CORY MADISON**
HSM-6 **Mark Briden**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP TRUSTEES ATTORNEY(S)
3-4-20 [42]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 4, 2020. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Michael P. Dacquisto, the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 16, 2019, through January 31, 2020. The order of the court approving employment of Applicant was entered on February 5, 2019. Dckt. 14. Applicant requests fees in the amount of $16,150.00 and costs in the amount of $12.30.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by 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; investigating estate assets and impact of IRS claim over assets; assisted Trustee in asset disposition and obtaining full execute agreements with respect to sales; and communicating with Trustee on potential employment of special counsel.

The Estate has $20,000.00 of unencumbered monies to be administered as of the filing of the application. This is the money from the Trustee resolving the exemption dispute with Debtor concerning a retirement account. The Trustee projects that the administration of this Chapter 7 case will result in a 100% dividend for all claims in this case. Declaration, ¶ 6; Dckt. 45.

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 6.10 hours in this category. Applicant reviewed Debtor's petition, schedules, statement of financial affairs and other documents; prepared employment application; and assisted Trustee in other work related to stipulations and orders to extend the deadline to object to exemptions.

Asset Investigation and Disposition: Applicant spent 30.80 hours in this category. Applicant assisted Trustee in the review and analysis of Debtor's pension and Debtor's claim of exemption in the pension; investigated Debtor's pre-petition wrongful termination claim; investigated the impact of the IRS claim over this asset; negotiated with Debtor's Counsel regarding possible settlement of the disputes over the pension and the wrongful termination claim; and drafted the final agreements to document the settlements reached and the motions related to these settlements as well as attending their corresponding hearings.

Litigation: Applicant spent 1.30 hours in this category. Applicant communicated with Trustee and Debtor's bankruptcy counsel regarding the employment of special counsel to handle the wrongful termination claim.

Claims: Applicant spent 0.40 hours in this category. Applicant reviewed claims as needed in

connection with the two asset dispositions.

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**
Howard S. Nevins	3.1	$440.00	$1,364.00
	33.4	$420.00	$14,028.00
Aaron A. Avery	2.0	$360.00	$720.00
	0.10	$380.00	$38.00
Total Fees for Period of Application			$16,150.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $12.30 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.25	$12.30
		$0.00
Total Costs Requested in Application		$12.30

In looking at the costs, Applicant states that they charge clients $0.25 a page for photocopies. Commonly, a cost of $0.10 per page is allowed. Applicant has not provided the court with evidence that his actual cost of photocopies is $0.25 a page in 2020.

On an interim fee basis, the court reduces the photocopy charge to $0.10 a page, thus reducing costs to $4.90. This is without prejudice to Applicant documenting in the final fee application that the actual cost for photocopies is more than $0.10 a page and that such higher amount is reasonable. [FN.1]

FN. 1. The court recalls a case from a few years back where the attorney asserted that the $0.25 a page copy fee was the actual cost he paid a third party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney $0.25 a page for her time and effort in operating the copy machine. Not surprisingly, that $0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current

applicant, the rules regarding fees are applied across the board to all applicants.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $16,150.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review 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 Interim Costs in the amount of $4.90 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved 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	$16,150.00
Costs and Expenses	$4.90

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Hefner, Stark & Marois, LLP ("Applicant"), Attorney for Michael P. Dacquisto, 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 Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $16,150.00
> Expenses in the amount of $4.90,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

8. **18-26175-A-7** **JOSHUA MOREHOUSE** **MOTION TO SELL**
BHS-2 **Seth Hanson** **2-13-20 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2020. By the court's calculation, 42 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 Douglas M. Whatley, 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 120 Egloff Circle, Folsom, California ("Property").

The proposed purchaser of the Property is Roya R. Morehouse. The sale being subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the sale are set forth in the Purchase and Sale Agreement filed as Exhibit A in support of the Motion, Dckt. 26):

A. Buyer to pay $44,000.00 to the Trustee.

B. Sale is "as-is" and "where-is" with no warranties, representations, or guarantees. Buyer assumes all responsibility and liability for these amounts.

C. The Property is subject to existing liens and encumbrances, except for the liens placed by the Alameda County DCSS and the attorney statutory lien that are debts of the Debtor only. These two liens to be paid by the estate.

D. If Buyer is the successful bidder, Buyer will withdraw all proofs of claim filed in this case by her or her representatives and will not file any new proofs of claim in this case.

E. Buyer to give a $5,000.00 deposit. If not the successful bidder, deposit to be immediately returned.

F. Buyer to add Trustee as an additional insured on the Property and provide proof of the same.

G. Transaction subject to court's approval and subject to overbidding.

H. Buyer to retain possession of Property pending court approval and maintain in the same condition it was in when the case was filed. Buyer shall not transfer any interest in the Property or cause or allow any liens or encumbrances to be placed on the Property.

I. Buyer to bear costs or fees that may be incurred in connection with the transaction related to this Agreement.

Overbidding Procedures

Trustee requests the following overbidding procedures to be followed at the hearing:

1. Overbidding shall start at $45,000.00 with the overbids in minimum $1,000.00 increments.

2. Successful bidder, if not Buyer, will be required to sign a Purchase and Sale Agreement. Successful bidder is responsible for any and all costs of transfer, including, but not limited to Realtor fees.

3. Bidder must bring to the court or deliver to the Trustee and his attorney prior to the hearing, a cashier's check or a certified check for $6,000.00, which will be non-refundable if the overbid is successful.

4. Successful bidder must deliver to the Trustee a cashier's check or a certified check for the bid amount within 30 days of court approval of the sale.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because as presented by Trustee the purchase price is the highest value that can

be added the to the estate and allows for the orderly liquidation of the estate.

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 the Debtor has not lived in the Subject Property for well over a year.

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 Douglas M. Whatley, 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 Douglas M. Whatley, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Roya R. Morehouse or nominee ("Buyer"), the Property commonly known as 120 Egloff Circle, Folsom, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $44,000.00, on the terms and conditions set forth in the Purchase and Sale Agreement, Exhibit A, Dckt. 26, 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 the Alameda County lien, now being administered by San Joaquin County, in the approximate amount of $8,310.96 and the attorney statutory lien placed by Robert C. Pacuinas in the amount of $15,000.00.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived

for cause.

9.	**19-27477-A-7** **DNL-3**	**CARMAZZI, INC., A CALIFORNIA CORPORATION** **Walter Dahl**	**MOTION TO EMPLOY MICHAEL A. SWEET AS SPECIAL COUNSEL** **2-25-20 [52]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 25, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is xxxxx.

J. Michael Hopper ("Trustee") seeks to employ Fox Rothschild LLP ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Special Counsel to evaluate and advise the Trustee with respect to rights based on approximately 32 separate translation service contracts ("Service Contracts") between Debtor and the

United States Social Security Administration ("USSA") relating to USSA offices in 32 cities.

Prior to the bankruptcy, Debtor was involved in litigation against USSA, asserting a $25 million claim against the USSA related to alleged termination of services contracts. Debtor was represented by two firms: (1) Nelson Mullins and (2) Busch Law Firm. Nelson has moved to withdraw as attorney of record, while Busch Law seeks to be paid approximately $300,000.00 in outstanding and unpaid fees.

According to the Trustee, the Estate has $60,000.00 on hand. Trustee needs Special Counsel to evaluate the service contracts. The proposal seeks to hire Fox Rothschild LLP, and in particular Michael A. Sweet, for services described as "obtaining a **holistic review** of the Services Contracts and related rights for the proposed $25,000.00 flat fee." (Emphasis added.)

The court appreciates the need for Trustee to have Special Counsel to evaluate this potential claim. It appears that pre-petition counsel for the Debtor has refused to provide legal services for the Chapter 7 Trustee, either entirely or by demanding payment of amounts of money that the Trustee does not have. This is unfortunate, and appears very shortsighted, but former counsel for the Debtor can elect to not pursue what they presumably believed to be valid, bona fide claims for which there would be substantial recover.

In reviewing the present Motion, the Trustee and his Chapter 7 bankruptcy case have not provided the court with the engagement agreement or a description of the legal services other than to state that the Trustee needs to obtain a "holistic review" in exchange for the payment of a $25,000.00 flat fee.

While the Trustee may understand the scope of legal services that flows from a "holistic review," the court is unaware of it being a description of the scope of legal services (such as filing and prosecuting a motion for relief from the stay, motion to sell, or representation of a trustee for general administration of a bankruptcy case).

While the court would not expect this to be the situation given the experienced Chapter 7 Trustee and the Trustee's knowledgeable, experienced bankruptcy counsel, it could be that proposed Special Counsel would spend five hours "meditating" over the possible claim and then report to the Trustee that yes, for a $5,000 an hour fee, if taken as a whole it could be possible to make the $25,000,000.00 claim asserted by Debtor. Though the court does not believe, nor fear, that proposed Special Counsel would contemplate in such a scheme with the Trustee, the court cannot merely rubber stamp the request of the Trustee. The court requires all parties to provide the scope of services by proposed counsel, and does not grant "favored person exceptions" for attorneys and trustees who would then appear to be given "special, favored treatment by the court."

At the hearing, Counsel for the Trustee explained **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 Employ filed by J. Michael Hopper ("Trustee") having

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

IT IS ORDERED that the Motion to Employ is **xxxxx**.

10.	**19-27477-A-7** **DNL-5**	**CARMAZZI, INC., A CALIFORNIA CORPORATION** **Walter Dahl**	**MOTION FOR ADMINISTRATIVE EXPENSES** **3-3-20 [60]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, J. Michael Hopper ("Movant") in his capacity as Trustee for the bankruptcy estate of Carmazzi Inc. 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 for the estate's 2020 California corporate tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate. The accountant prepared the estate's income tax return and has estimated the estate's California corporate tax liability due to the Franchise Tax Board for the year 2020 is $800.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the 2020 California corporate tax liability was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by the Chapter 7 Trustee, 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 the 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).

11. **19-25478-E-7** **WILLIAM/ELLEN FERNANDEZ** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR REED BLOCK REALTY, REALTOR(S)**
BLF-3 **Jenny Doling** **2-18-20 [35]**

APPEARANCE OF WENDY LOCKE, COUNSEL FOR BANK OF AMERICA, N.A. REQUIRED FOR MARCH 26, 2020 HEARING

TELEPHONIC APPEARANCE ONLY

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly J. Husted, 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 22737 Montclaire Court, Grass Valley, California ("Property").

The proposed purchaser of the Property is Robert Ingle. The sale being subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the sale are set forth in the original Purchase Agreement as modified by the Counteroffer and Addendum filed as Exhibits A, B, and C in support of the Motion, Dckt. 39):

A. Buyer to pay Trustee a purchase price of $785,000.00.

B. Buyer to give Trustee an initial deposit of $7,600.00.

C. Sale with a first loan of $532,000.00 and with a balance of $245,000.00 to paid in cash.

D. Buyer and Seller to pay escrow fees 50-50.

E. Seller to pay for owner's title insurance policy, County and City transfer tax (if applicable), HOA transfer fee (if applicable), and HOA fees for preparing documents other than those required by Civil Code § 4525.

F. Title and escrow to be with Orange Coast Title.

G. Close of escrow to occur within 15 days of court's approval of the sale.

H. Sale of Property is "as-is" and where-is" with all faults and with no right of setoff or reduction in the purchase price. Sale without representation or warranty. Seller will make no repairs to the Property. Seller will not provide a Home Warranty.

I. Buyer responsible for all inspections.

J. All stoves to be included in sale, but refrigerators are not included.

K. The Bankruptcy Court to maintain full jurisdiction to determine and resolve all disputes between parties.

Overbidding Procedures

Trustee requests the court follow the following overbidding procedures at the hearing:

1. Any party overbidding must agree to purchase the Property on the identical terms as the proposed Agreement, except for the purchase price.

2. Overbidders must first qualify by demonstrating (to the Trustee's and the court's satisfaction) 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 $789,000.00 with successive bids in increments of at least $1,000.00.

4. The Successful overbidder must deliver to Trustee at the hearing a cashier's check a deposit of $7,600.00. If overbidder timely completes the purchase, the deposit will be applied to the purchase price. The deposit is non-refundable if overbidder defaults.

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.

Response by Bank of America, N.A. [FN. 1]

Bank of America, N.A. supports the sale provided the following provisions are included:

1. Bank of America, N.A.'s claim is to be paid in full or in accordance with any short sale approval authorized by Creditor before satisfying any other lien.

2. Bank of America, N.A. shall be permitted to submit an updated payoff demand to the applicable escrow or title company facilitating the sale so that Bank of America, N.A.'s claim is paid in full at the sale the sale of the Property is finalized.

3. The deadline for the sale closing and receipt of funds should be within ninety days from the date the order approving the instant motion is entered.

4. In the event the sale does not occur, Bank of America, N.A. shall retain its lien for the amount due under the subject loan.

Response, at 2-3.

FN. 1. In the Response Bank of America, N.A. states that it is the creditor and that Wells Fargo Bank, N.A. is the loan servicer. Bank of America, N.A. provides unauthenticated copies of what are identified as copies of the Note and Deed of Trust on which it asserts the secured claim in this case. Dckt. 42. The lender/payee on the unauthenticated Note is Wells Fargo Bank, N.A. On the last page of the Note contains an endorsement in blank by Wells Fargo Bank, N.A. Such endorsement in blank would not be placed on the Note, assuming reasonable commercial practices, unless it was assigned to someone.

The Trustee is not seeking to conduct a short sale and is not seeking a sale of the Property free and clear of liens as provided in 11 U.S.C. § 363(f). The Motion expressly and clearly states that he requests the authorization to conduct sale as provided in 11 U.S.C. § 363(b). The Trustee is not seeking to force a sale free and clear of Bank of America's lien.

In making the request that any sale be ordered to paid only if Bank of America N.A. secured claim is paid in full or as approved by the Bank appears to be an admission that the Bank has already waived its lien rights. Otherwise, requesting such provision would appear without any legal effect.

The Bank then requests that the court expressly order that the Bank be authorized to make its demand in escrow to be paid. This appears to be another admission by the Bank that it does not have the

right to make a demand to be paid, and an admission that the Trustee could sell the Property free and clear of the Bank's lien. Otherwise, such a provision in the court's order would be illusory and of no legal effect.

The Bank then requests that the court alter the contract and set a ninety (90) day closing date. The Bank offers no basis for the ninety day closing date to be imposed, why ninety days is reasonable, and how imposing such term does not interfere with the Trustee's administration of the property of this estate. Also, in light of the Bank's apparent admission that it does not have the right to demand payment, why should the court be imposing a deadline for the closing of escrow that is requested by the Bank.

Finally, Bank of America, N.A. requests that if the sale does not close, then the Bank should "retain" its lien. This appears to be an admission by the Bank that the court, in granting the Motion, would terminate the Bank's lien.

The court denies the requested "tweaks" by the Bank, concluding that three of the four would be of no legal force and effect, and the fourth as an intrusion on the Trustee's rights and abilities to administer the property of the Bankruptcy Estate without providing any grounds for such intrusion.

Response of PNC Bank, N.A.

Additionally, Creditor PNC Bank, N.A. has no opposition to this motion provided the following language is included as part of the order granting the motion:

> PNC Bank's loan secured by a lien on real property located at 22737 Montclaire Court, Grass Valley, CA 95949 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from PNC Bank, N.A.

Non-Opposition, at 2.

As with Bank of America, N.A., PNC Bank, N.A. requesting the above appears to be an admission that it has no right to be paid from escrow and that absent such an order the Trustee can sell the Property free and clear of its lien without paying PNC Bank, N.A. While apparently admitting as to such, the court will not include a provision that appears to be of no actual force and effect.

GRANTING OF MOTION

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will bring approximately $34,000.00 for the estate for the benefit of the Bankruptcy Estate.

Movant has estimated that a 5% percent broker's commission from the sale of the Property will equal approximately $39,250.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the Trustee's broker an amount not more than 2.5% percent commission as well as an amount not more than 2.5% percent commission to the buyer's realtor.

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

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

The Motion to Sell Property filed by Kimberly J. Husted, 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 Kimberly J. Husted, the Chapter 7 Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) to Robert Ingle or nominee ("Buyer"), the Property commonly known as 22737 Montclaire Court, Grass Valley, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $785,000.00, on the terms and conditions set forth in the original Purchase Agreement as modified by the Counteroffer and Addendum, Exhibits A, B, and C, Dckt. 39, and as further provided in this Order.

B. The sale proceeds shall first be applied to pay in 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 5 percent of the actual purchase price upon consummation of the sale, and divided as follows: a 2.5 percent commission shall be paid to the Chapter 7 Trustee's broker, Reed Block, and a 2.5 percent commission shall be paid to Buyer's Realtor.

12. 12-92479- E-12 DAVID/ESPERANZA AGUILAR ORDER TO SHOW CAUSE
NFG-5 3-17-20 [142]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 12 Trustee as stated on the Certificate of Service on March 17, 2020. The court computes that 9 days' notice has been provided.

The Order to Show Cause is xxxxx.

On September 17, 2012, David Aguilar and Esperanza Aguilar, the Chapter 12 Debtors, commenced their bankruptcy case. Debtors confirmed and completed their Chapter 12 Plan. On February 22, 2018, discharges were entered for the Debtors.

On September 16, 2019, Debtors filed a Motion to have OneWest Bank and its successor CIT Bank and its servicer LOANCARE, LLC held in contemp for violating the "injunction" against collection of a debt. In the prayer, Debtors identify the injunction to be the "discharge injunction."

In the Declaration in Support of the Motion, debtor Esperanza Aguilar's testimony under penalty of perjury includes:

> 4. I am familiar with the request by Loancare, LLC, for me to pay $12,943.03 of unsecured debt which was discharged by the Bankruptcy Court as called for in my confirmed Chapter 12 Plan. See Exhibit A, attached to this declaration.
>
> 5. I began making payments of $908.46 to Loancare, LLC, in March of 2018, as called for in my confirmed Chapter 12 Plan, however, Loancare, LLC never cashed my checks. See Exhibit B, attached to this declaration.
>
> 6. I made the monthly payments of $908.46 from March 2018, until November of 2018, when Loancare, LLC began a foreclosure proceeding against my Business Property. See Exhibit C, attached to this declaration.

Declaration, Dckt. 125.

Exhibit A, improperly attached to the Declaration (L.B.R. 9014-1, 9004-2), is a letter stating

that the servicing of Debtors' mortgage loan had been transferred to LoanCare, LLC and notice that Debtors are in default in the payment of the mortgage loan. Exhibit C is a letter dated December 17, 2018, stating that because there are defaults in the mortgage loan payments, foreclosure proceedings have been initiated.

The second declaration filed in support of the Motion is that of Debtors' counsel. Dckt. 126. Counsel testifies that pursuant to a stipulation, the court entered an order valuing the secured claim of OneWest Bank to be $115,630.00. This was in 2013. In 2014, Debtors confirmed their Amended Chapter 12 Plan, which provided for payment of the OneWest Bank claim for the first 36 months through the plan and then directly by Debtors for the 204 months thereafter.

Counsel further testifies that when the plan was completed he attempted to obtain the address at which payments should be made by the Debtors directly to OneWest Bank. He testifies that no response was received from OneWest Bank or its counsel.

Counsel then testifies that he then received the validation letter from Loancare, LLC demanding payments in excess of what was provided in the Chapter 12 Plan. Further, that Loancare, LLC is proceeding with a foreclosure on the property securing the mortgage loan that is based upon an amount in excess of that stipulated to by OneWest Bank and provided for in the completed Chapter 12 Plan.

The persons served with the Motion, Notice of Hearing, and supporting pleadings include:

LOANCARE, LLC
P.O. Box 8068
Virginia Beach, VA 23450

CIT Bank, NA
P.O. Box 4045
Kalamazoo, MI 49003

Trustee Corps
Foreclosure Department
17100 Gillette Avenue
Irvine, CA 92614

Malcolm Cisneros
A Law Corporation
2112 Business Center Drive
Irvine, CA 92612

Multiple Continuances

No responsive pleading has been filed by OneWest Bank, CIT Bank, or Loancare, LLC. What have been filed are multiple stipulations to continue the hearing in this Contested Matter. The court reviews the Stipulations and representations made to the court as follows.

October 23, 2019 Filed Stipulation For Continuance

The Debtors' Motion for Contempt was set for hearing on November 8, 2019. On October 23, 2019, a Stipulation was filed with Nelson Gomez (attorney for Debtors), Nathan Smith (attorney for LOANCARE, LLC), Debtors, and LOANCARE, LLC representing to the court that (subject to the certifications made pursuant to Fed. R. Bankr. P. 9011):

> 1. The Debtors and LOANCARE, LLC are discussing settlement of this matter, but seek additional time in order to finalize settlement.
>
> 2. As such, The Debtors and LOANCARE, LLC agree and request the Court to continue the hearing on Debtors' Motion for Contempt for a Violation of the Permanent Injunction against the Collection of a Discharged Debt, currently set for November 7, 2019, at 10:30 A.M. in Department E, Modesto Division, with Judge Ronald H. Sargis, to December 19, 2019 at 10:30 A.M. in Department E, Modesto Division, with Judge Ronald H. Sargis of the above-captioned U.S. Bankruptcy Court.

Dckt. 129. The court treating the Stipulation as also being an *ex parte* motion for an order continuing the hearing (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 9013) continued the hearing to allow the parties the opportunity to "finalize [the] settlement." Dckt. 131.

December 5, 2019 Filed Second Stipulation for Continuance

On December 5, 2019, which was eighty (80) days after the Motion for Contempt was filed, Debtors and LoanCare, LLC (in the pleadings the formatting of the letters is inconsistent, sometimes spelling it LOANCARE, LLC and other times LoanCare, LLC). Dckt. 133. The new grounds given for a further continuance in the diligent prosecution of this contested matter are stated by the Debtors and LoanCare, LLC as follows:

> 1. The Debtors and LoanCare are currently in the process of discussing settlement of the Debtors' Motion for Contempt for a Violation of the Permanent Injunction Against the Collection of a Discharged Debt ("Motion"). As such, the Parties seek additional time in order to finalize settlement.
>
> 2. The Debtors and LoanCare agree and request the Court to continue the hearing on Debtors' Motion, which is currently set for hearing on December 19, 2019 at 10:30am in Courtroom 33, Sacramento Division, before the Honorable Judge Ronald H. Sargis, to January 23, 2020 at 10:30 am in Courtroom 33, Sacramento Division, before the Honorable Judge Ronald H. Sargis.

Dckt. 133. Other than the spelling of LoanCare, LLC and the dates for the pending and continued hearing, the reason for the "necessary" additional time was to "finalize settlement." The court afforded the parties the additional time to "finalize settlement." Order, Dckt. 135.

January 9, 2020 Filed Third Stipulation for Continuance

On January 9, 2020, which was then one hundred fourteen (114) days after the Motion for

Contempt was filed, Debtors and LoanCare, LLC filed a third Stipulation to further continue the hearing on the Motion for Contempt. Dckt. 137. For this third Stipulation, the grounds upon which additional time is stated as follows:

> 1. The Debtors and LoanCare are currently in the process of discussing settlement of the Debtors' Motion for Contempt for a Violation of the Permanent Injunction Against the Collection of a Discharged Debt ("Motion"). As such, the Parties seek additional time in order to finalize settlement.
>
> 2. The Debtors and LoanCare agree and request the Court to continue the hearing on Debtors' Motion, which is currently set for hearing on January 23, 2020 at 10:30am in Courtroom 33, Sacramento Division, before the Honorable Judge Ronald H. Sargis, to March 26, 2020 at 10:30 am in Courtroom 33, Sacramento Division, before the Honorable Judge Ronald H. Sargis.

Dckt. 137. Again, the grounds for the continuance were cut and pasted from the prior two Stipulations and again says that it is to "finalize settlement." The court gave the parties the additional requested time to "finalize settlement." Order, Dckt. 139.

March 12, 2020 Fourth Stipulation For Continuance

On March 12, 2020, now one hundred seventy-seven (177) days – which is just three days shy of six months – Debtors and LoanCare, LLC filed yet a fourth Stipulation that merely repeats the now stale line that the parties seek to further delay the prosecution of this Contested Matter to "finalize a settlement" (this request being modified to insert "a" before "settlement" as the grounds). Dckt. 140.

DENIAL OF REQUEST FOR CONTINUANCE

The Debtors and LoanCare, LLC, and their respective attorneys offer the court no basis to continue this Contested Matter further. Both attorneys, and their respective clients, have represented that there is a settlement, which "merely" needs to be "finalized." If the attorneys and their clients cannot "finalize" a settlement after six months, there is no settlement to be finalized.

The Debtors, LoanCare, LLC, and their attorneys have not provided the court with any indication that the prosecution or defense of this Contested Matter are being diligently prosecuted.

The request for a continuance is denied.

At the hearing, **xxxxx**

13. **12-92479-E-12 NFG-5** **DAVID/ESPERANZA AGUILAR** **Nelson Gomez** **CONTINUED MOTION FOR CONTEMPT** **9-16-19 [123]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditor, and Office of the United States Trustee on September 16, 2019. By the court's calculation, 192 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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 Contempt is xxxxx.

The present Motion for Contempt for Violation of the Permanent Injunction Against the Collection of a Discharged Debt has been filed by Debtors David Tafolla Aguilar and Esperanza Aguilar ("Movant"). The claims are asserted against Creditor West Bank, its successor in interest CIT Bank, and its servicer, Loancare, LLC (collectively "Respondent") on September 16, 2019.

Since Debtors' Motion was filed, nothing has been done to prosecute this Motion. No responsive pleadings have been filed by One West Bank, CIT Bank, or Loancare, LLC. Parties have stipulated to four continuances. The court approved the first three (3) stipulations for continuance, which the court took as Ex-Parte Motions for Continuance and the respective orders can be found on the

docket. Dckts. 129, 133, 137.

On March 12, 2020, almost six months since this Motion was first filed, the parties again stipulated to continue the hearing. Dckt. 140. This time the continuance was denied and the court issued an Order to Show Cause. Dckt. 142.

The Order to Show Cause Why the Motion Should Not Be Dismissed Without Prejudice or in the Alternative, Set for Evidentiary Hearing, will be heard in conjunction with this Motion. Counsel will have the opportunity to explain to the court what has been done to prosecute or defend this Contested Matter.

At the hearing, Debtors' Counsel and Respondent's Counsel **xxxxx**

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 Contempt for Violation of the Permanent Injunction Against the Collection of a Discharged Debt has been filed by Debtors David Tafolla Aguilar and Esperanza Aguilar ("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 **xxxxx**.

FINAL RULINGS

14. **19-28002-A-7** **VAISHALI AUSTIN** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
CAS-1 **Seth Hanson** **2-24-20 [14]**

EXETER FINANCE, LLC VS.

Final Ruling: No appearance at the March 26, 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 February 24, 2020. By the court's calculation, 31 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.

Exeter Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Nissan Altima Hybrid Sedan 4D, VIN ending in 7937 ("Vehicle"). The moving party has provided the Declaration of Nancy Wafer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Vaishali Austin ("Debtor").

Movant provides evidence that there are 27.323 pre-petition payments in default, with a pre-petition arrearage of $13,506.75. Declaration, Dckt. 16.

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

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,506.75 (Declaration, Dckt. 16), while the value of the Vehicle is determined to be $3,300.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the Kelly Blue Book Valuation Report.

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

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

11 U.S.C. § 362(d)(2)

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Exeter Finance, 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 2011 Nissan Altima Hybrid Sedan 4D, VIN ending in 7937 ("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.

15. **18-25811-A-7** **JLM ENERGY, INC.** **MOTION FOR COMPENSATION FOR**
DNL-4 **Stephen Reynolds** **BACHECKI, CROM & CO., LLP, ACCOUNTANT(S)**
2-11-20 [151]

Final Ruling: No appearance at the March 26, 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2020 By the court's calculation, 44 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.

Bachecki, Crom & Co.., LLP, the Accountant ("Applicant") for Eric J. Nims, 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 October 28, 2019, through January 17, 2020. The order of the court approving employment of Applicant was entered on November 9, 2019. Dckt. 139. Applicant requests fees in the amount of $4,284.00 and costs in the amount of $68.85.

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 cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by 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 consulting with Trustee on: sales and settlements agreements, transfers and payments, and tax filing issues; reviewing and analyzing financial information; and preparing tax returns. 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.

Tax and Forensic Services: Applicant spent 11.90 hours in this category. Applicant consulted with the Trustee and Trustee's Counsel regarding implications of the sale and settlement agreement with Alliance, transfers and payments made to insiders, and tax filing issues; obtained and review IRS transcripts; analyzed monthly operating reports for tax filing information; prepared the estate's final Federal and California S Corporation income tax returns; and assisted in the preparation of the instant fee application.

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**
Jay D. Crom	1.7	$525.00	$892.50
Jay D. Crom	0.1	$535.00	$53.50
Virginia Huan-Lau	4.3	$370.00	$1,591.00
Paula Law	0.1	$370.00	$37.00
Jason Tang	5.7	$300.00	$1,710.00
	0	$0.00	$0.00
Total Fees for Period of Application			$4,284.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $68.85 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies		$17.20
Pacer		$20.50
Postage		$11.15
FTB Order		$20.00
Total Costs Requested in Application		$68.85

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $4,284.00 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 $68.85 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	$4,284.00
Costs and Expenses	$68.85

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 Bachecki, Crom, & Co., LLP ("Applicant"), Accountant for Eric J. Nims, 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 Bachecki, Crom, & Co., LLP is allowed the

following fees and expenses as a professional of the Estate:

Bachecki, Crom, & Co., LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $4,284.00
Expenses in the amount of $68.85,

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

16.	**19-23519-A-7** **BLF-7**	**MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA** **Seth Hanson**	**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **2-19-20 [123]**

Final Ruling: No appearance at the March 26, 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, creditors, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 36 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 of the Bakken Law Firm, 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 August 13, 2019, through March 26, 2020. The order of the court approving employment of Applicant was entered on September 2, 2019. Dckt. 39. Applicant requests fees in the amount of $4,830.00 and costs in the amount of $170.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by 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 proving general case administration and strategies on how to handle property of the estate and assisted Trustee in investigating pre-petition transfers; reviewing and responding to creditors' objection to exemptions; negotiating a stipulation for distribution of proceeds; and negotiating a settlement between debtors and creditors and preparing the motion to approve compromise. The Estate has $121,230.17 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 6.2 hours in this category. Applicant prepared the fee agreement, employment applicant and the instant fee application; anticipates attending the hearing on the fee application by telephone; and prepared and filed ex-parte motions and stipulation to extend deadlines to object to exemptions and to file a complaint objecting to Debtors' discharge. Applicant did not bill for any of this time.

Investigation of Pre-petition Transfers to Creditors Chan: Applicant spent 1.3 hours in this category. Applicant investigated a pre-petition transfer which included reviewing bank statements, closing statements in connection with Debtors' refinance of real property; and discussed the pre-petition transfer with Trustee, Debtors' counsel, and Creditors' counsel. Applicant did not bill for any of this time.

Objection to Exemptions: Applicant spent 4.3 hours in this category. Applicant reviewed and Creditors' objection to exemptions; prepared and filed a response to the court on the stipulation reached

between the parties regarding the sale of real property and the subsequent distribution of the net proceed of the sale; appeared by telephone at the hearing and continued hearing; and appeared in person at the final hearing on the objection. Applicant did not bill for any of this time.

Settlement with Debtors and Motion to Approve Compromise: Applicant spent 11.7 hours in this category. Applicant communicated with Debtors and Creditors Chan regarding the proposed sale and sale proceeds; prepared stipulation regarding distribution of net proceeds of sale of real property; prepared the corresponding motion to approve the stipulation; appeared by telephone at the hearing and continued hearing; and appeared in person at the final hearing on the motion. Applicant did not bill for any of this time.

Settlement with Creditors Chan and Motion to Approve Compromise: Applicant spent 32.4 hours in this category. Applicant participated in extensive negotiations with Debtors and Creditors Chan; reviewed and revised the settlement agreement; prepared and filed the motion to approve the compromise; reviewed the U.S. Trustee's Objection to the Motion to Approve Compromise and prepared a joinder to the Creditors' response; and appeared by telephone at the hearing and continued hearing; and appeared in person at the final hearing on the motion. Applicant billed only 15.2 hours at $300.00 per hour and 1.8 hours at $150.00 Applicant did not bill for 15.4 hours in connection with these tasks.

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	15.2	$300.00	$4,560.00
	1.8	$150.00	$270.00
Total Fees for Period of Application			$4,830.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $170.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$65.70
Postage		$104.30
Total Costs Requested in Application		$170.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a reduced single sum of $4,830.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $4,830.00 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 $170.00 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.

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

Fees	$4,830.00
Costs and Expenses	$170.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by 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 $4,830.00
> Expenses in the amount of $170.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

17. **18-25323-A-7** **LESLIE RAY**
DNL-7 **Thomas Amberg**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)
2-19-20 [106]

Final Ruling: No appearance at the March 26, 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 February 19, 2020. By the court's calculation, 36 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.

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Alan S. Fukushima, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 30, 2018, through February 13, 2020. The order of the court approving employment of Applicant was entered on November 27, 2018. Dckt. 34. Applicant requests fees in the amount of $10,317.50 and costs in the amount of $62.10.

APPLICABLE LAW

Reasonable Fees

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

services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by 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 general case administration, analyzing and recovering assets for the estate, and negotiating a settlement for the benefit of the estate. The Estate has $87,937.52 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.

Case Administration: Applicant spent 11.10 hours in this category. Applicant reviewed Debtor's petition and schedules; prepared employment applications; prepared special counsel's employment application; communicated with Trustee; prepared special counsel's fee application; and prepared the instant final fee application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 8.60 hours in this category. Applicant assisted Trustee in investigating the estate's assets; and communicated and advised Trustee regarding the estate's interest in the assets of the estate.

Settlement Negotiations: Applicant spent 8.40 hours in this category. Applicant assisted Trustee with the negotiations of the settlement related to the Illinois probate court matter; prepared Trustee's motion to approve the settlement; and appeared at the hearing for the settlement's approval.

Claims Administration and Objections Applicant spent 4.10 hours in this category. Applicant assisted Trustee in investigating claims against estate assets and communicated with Trustee regarding the claims.

Significant Motions and Other Contested Matters: Applicant spent 1.40 hours in this category. Applicant prepared Trustee's application to issue discovery related to the probate proceeding; communicated with Trustee regarding discovery and probate proceeding; and assisted Trustee with the employment of special counsel for Illinois probate proceedings.

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**
J. Russell Cunningham	13.0	$425.00	$5,525.00

J. Luke Hendrix	0.40	$325.00	$130.00
Nicholas L. Kohlmeyer	2.20	$200.00	$440.00
	2.90	$225.00	$652.50
	9.80	$275.00	$2,695.00
Benjamin C. Tagert	0.10	$100.00	$10.00
	1.80	$150.00	$270.00
	3.40	$175.00	$595.00
Total Fees for Period of Application			$10,317.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $62.10 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.10	$20.80
Postage		$38.30
Parking		$3.00
		$0.00
Total Costs Requested in Application		$62.10

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $10,371.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $62.10are 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	$10,317.50
Costs and Expenses	$62.10

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 Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for Alan S. Fukushima, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:
>
> Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $10,317.50
> Expenses in the amount of $62.10,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

18. **20-20232-A-7** **DANIELLE HUMMER** **MOTION TO COMPEL ABANDONMENT**
Walter Dahl **2-26-20 [12]**

Final Ruling: No appearance at the March 26, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

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

The Motion filed by Danielle Loren Hummer ("Debtor") requests the court to order Eric J. Nims ("the Chapter 7 Trustee") to abandon property commonly known as 8903 Cliffside Lane, Fair Oaks, California ("Property"). The Property is encumbered by the lien of Celink, securing a claim of $139,608.90. The Declaration of T. Patton Biddle has been filed in support of the Motion and values the Property at $280,000.00.

The Chapter 7 Trustee has no opposition to the motion. Trustee's March 10, 2020 Docket Entry Statement.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter

7 Trustee to abandon the property.

ISSUANCE OF A COURT-DRAFTED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Danielle Loren Hummer ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 8903 Cliffside Lane, Fair Oaks, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Eric J. Nims ("Trustee") to Danielle Loren Hummer by this order, with no further act of the Trustee required.

19. **20-20749-A-7** **JERRY/SHARON WILSON** **MOTION FOR RELIEF FROM**
MET-1 **Mark Wolff** **AUTOMATIC STAY**
2-26-20 [11]

BANK OF THE WEST VS.

Final Ruling: No appearance at the March 26, 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 February 26, 2020. By the court's calculation, 29 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.

Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2005 Excursion 38U Motor Home, VIN ending in 6090 ("Vehicle"). The moving party has provided the Declaration of Aimee Nanon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jerry Ray Wilson and Sharon Ann Wilson ("Debtor").

Movant argues Debtor has not made post-petition payments. Declaration, Dckt. 13. Movant also argues that there are three (3) pre-petition payments in default. *Id*.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $64,855.16 (Declaration, Dckt. 13), while the value of the Vehicle is determined to be $25,000.00, as stated in Schedules B and D filed by Debtor.

According to their Statement of Intention, Debtors intend to surrender the Vehicle. Dckt. 1.

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

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

11 U.S.C. § 362(d)(2)

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Bank of the West ("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 2005 Excursion 38U Motor Home, VIN ending in 6090 ("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. **19-27062-A-7** **ROSA BELLA COCHONGCO** **MOTION TO AVOID LIEN OF**
RHM-1 **Robert McConnell** **CITIBANK, N.A.**
15 to 17 **1-22-20 [14]**

Final Ruling: No appearance at the March 26, 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 22, 2020. By the court's calculation, 64 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 CitiBank NA ("Creditor") against property of the debtor, Rosa Bella Cochongco ("Debtor") commonly known as 253 Voyager Lane, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,184.85. Exhibit 1, Dckt. 17. An abstract of judgment was recorded with Solano County on May 29, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $410,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $350,622.37 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 Rosa Bella Cochongco ("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 CitiBank NA, California Superior Court for Solano County Case No. FCM127492, recorded on May 29, 2012, Document No. 201200051446, with the Solano County Recorder, against the real property commonly known as 253 Voyager Lane, Vallejo, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

21. **19-27062-A-7** **ROSA BELLA COCHONGCO** **MOTION TO AVOID LIEN OF AMERICAN EXPRESS NATIONAL BANK**
RHM-2 **Robert McConnell** **1-22-20 [20]**

Final Ruling: No appearance at the March 26, 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 22, 2020. By the court's calculation, 64 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 American Express National Bank ("Creditor") against property of the debtor, Rosa Bella Cochongco ("Debtor") commonly known as 253 Voyager Lane, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,636.27. Exhibit 1, Dckt. 23. An abstract of judgment was recorded with Solano County on November 28, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $410,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $350,622.37 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 Rosa Bella Cochongco ("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 American Express National Bank, California Superior Court for Solano County Case No. FCM161070, recorded on November 28, 2018, Document No. 201800080039, with the Solano County Recorder, against the real property commonly known as 253 Voyager Lane, Vallejo, 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. **19-27062-A-7** **ROSA BELLA COCHONGCO** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.**
RHM-3 **Robert McConnell** **1-22-20 [26]**

Final Ruling: No appearance at the March 26, 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 22, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank USA N.A. ("Creditor") against property of the debtor, Rosa Bella Cochongco ("Debtor") commonly known as 253 Voyager Lane, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,418.85. Exhibit 1, Dckt. 29. An abstract of judgment was recorded with Solano County on October 9, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $410,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $350,622.37 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 Rosa Bella Cochongco ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank USA N.A., California Superior Court for Solano County Case No. FCM164728, recorded on October 9, 2019, Document No. 201900071409, with the Solano County Recorder, against the real property commonly known as 253 Voyager Lane, Vallejo, 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. **19-24964-E-7** **JAMES ELLENBERGER** **MOTION TO COMPEL**
LBG-1 **Lucas Garcia** **ABANDONMENT**
3-12-20 [72]

Final Ruling: No appearance at the March 26, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on March 12, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The court continues the hearing. The Trustee's Report of the First Meeting of Creditors conducted on March 15, 2020, states that neither the Debtors nor their counsel appeared at the First Meeting. In light of the restricted access to the courthouse, the court continues this hearing to insure that all will have the opportunity to arrange for a telephonic appearance at the continued hearing. Nothing in the Motion indicates any prejudice in setting this matter for final hearing.

The hearing on the Motion to Compel Abandonment is continued to 10:30 a.m. on April 9, 2020, for final hearing.

Opposition, if any, shall be filed and served on or before April 2, 2020.

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

The Motion filed by James Sheridan Ellenberger("Debtor") requests the court to order Kimberly J. Husted ("the Chapter 7 Trustee") to abandon property commonly known as 4255 Meadow Glen Road, Auburn, California ("Property"). The Property is stated to be encumbered by the liens of A&A Ready Mix Concrete, Sunbelt Rentals, Citadel Servicing Corp, and Placer County Tax Collector securing claims in the aggregate amount of $528,070.00. The Declaration of James Sheridan Ellenberger has been filed in support of the Motion and values the Property at $525,000.00.

The court finds that the debt secured by the Property exceeds the value of the Property and

that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by James Sheridan Ellenberger ("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 hearing on the Motion to Compel Abandonment is continued to 10:30 a.m. on April 9, 2020, for final hearing. Opposition, if any, shall be filed and served on or before April 2, 2020.
>
> As required by District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall (which is waiving the fee for the use of its serve by *pro se* (not represented by an attorney) parties. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

24. **19-22566-E-11 AF-7** **JUANITO COPERO**
Arasto Farsad

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FARSAD LAW OFFICE, P.C. FOR NANCY WENG, DEBTORS ATTORNEY(S)
2-18-20 [99]

Final Ruling: No appearance at the March 26, 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. By the court's calculation, 37 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.

Farsad Law Office, the Attorney ("Applicant") for Juanito W. Copero, Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 25, 2019, through February 13, 2020. The order of the court approving employment of Applicant was entered on June 13, 2019. Dckt. 46. Applicant requests fees in the amount of $27,300.00 and costs in the amount of $67.00.

APPLICABLE LAW

Reasonable Fees

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

the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by 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 provided general case administration; prepared for and attended Debtor's 341 meeting; analyzed Debtor's claims and assets; prepared and reviewed and reviewed monthly operating reports and financial documents; prepared applications to employ professionals; drafted Chapter 11 Plan; and drafted fee applications . 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 12.8 hours in this category. Applicant attended Chapter 11 status conference hearings and drafted related statements; responded to U.S. Trustee's requests for information; and drafted amendments to Debtor's schedule.

Debtor Interview and Sec. 341 Meeting: Applicant spent 11.5 hours in this category. Applicant prepared documents as requested by the U.S. Trustee's office; prepared and attended Debtor's interview; and prepared, attended and submitted documents for the Sec. 341 meeting.

Claims and Asset Analysis: Applicant spent 9 hours in this category. Applicant review and prepared financial work up of Debtor's assets and properties; reviewed creditors' correspondence; reviewed and analyzed proofs of claim' filed objections to claims and counterclaims against creditors; and negotiated with mortgage holders and taxing authorities.

Taxes, Accounting, and Monthly Operating Reports: Applicant spent 7 hours in this category. Applicant prepared and reviewed monthly operating reports and other financial documents; and reviewed tax returns in preparation for the Chapter 11 Plan of Reorganizations.

Retention of Professionals: Applicant spent 6 hours in this category. Applicant prepared application to employ professional on behalf of the Chapter 11 estate.

Chapter 11 Plan and Disclosure Statements: Applicant spent 31.6 hours in this category. Applicant prepared and analyzed documents needed for the drafting of Debtor's Disclosure Statement and Plan of Reorganization; and reviewed taxing authorities claims in order to prepare the Disclosure Statement and Plan.

Fee Application: Applicant spent 2 hours in this category. Applicant prepared the application of fees for the court's approval.

Client Communications: Applicant communicated and attended meetings with Debtor related to Debtor's finances and the Chapter 11 Plan. This also included preparing the Debtor for the Initial Interview and the Section 341 Meeting. All of the phone calls, meetings, etc. under this category were waived by Applicant.

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**
Nancy Weng	50.00	$350.00	$17,500.00
Arasto Farsad	29.9	$350.00	$10,465.00
	0	$0.00	$0.00
Total Fees for Period of Application			$27,965.00

In reviewing the motion and the accompanying billing statements, there seems to be a calculation error. Applicant is requesting $27,367.00 in fees for a total of 75.9 hours. While stating 75.9 hours, when one does the math, $27,367.00 divided by $350.00 an hours equals 79 hours (rounding up). Thus, it appears that the reference to 75.9 hours is a clerical error. It also appears that there may be a rounding error occurred when the dollar amount was computed.

For the above fees, the Application identifies there being 79.9 hours multiplied by the hourly rate of $350.00 an hour time 79.9 hours equals $27,965.00, which is the amount of attorney's fees the court allows. If Applicant desires to waive any portion of the allowed fees, Applicant is free to so do. [FN. 1]

FN. 1. The court notes that Applicant has been very careful in not only in preparing this fee application, but in providing the services. Applicant explains that the two attorneys have not billed for their joint meeting. Also, Applicant has waive the fees for client meetings.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $67.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Service of the Plan, Orders and Runner Fees		$67.00
		$0.00
Total Costs Requested in Application		$67.00

Applicant does not provide the court with a detail of the costs. Such detail (copies, service, postage, and the like) is normally required. In light of the modest costs of $67.00 for this Chapter 11 case, including confirmation of the plan, the court approves them in this case. Applicant has demonstrated an appreciation for the reasonable charging of fees and expenses. The court is confident that Applicant will include such detail in future applications.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $27,965.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Final and Final Costs in the amount of $67.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$27,965.00
Costs and Expenses	$67.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Farsad Law Office ("Applicant"), Attorney for Juanito W. Copero, Debtor in Possession, ("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 Farsad Law Office is allowed the following fees

and expenses as a professional of the Estate:

Farsad Law Office, Professional employed by Debtor in Possession

Fees in the amount of $27,965.00
Expenses in the amount of $67.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

IT IS FURTHER ORDERED that Farsad Law Office is authorized to apply the $12,000.00 being held in its operational account for purposes of this fee application, and Juanito W. Copero, the Plan Administrator, is authorized to pay Applicant the remaining amounts of the allowed fees and costs, after application of the $12,000.00 retainer, in a manner consistent with the order of distribution under the confirmed Plan.

25. **20-20376-A-7** **ALLEN HASSAN** **MOTION FOR RELIEF FROM**
ALG-1 **Pro Se** **AUTOMATIC STAY**
2-19-20 [19]

WILMINGTON SAVINGS FUND SOCIETY, FSB VS.

Final Ruling: No appearance at the March 26, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 36 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.

Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2929 El Camino Avenue, Sacramento, California ("Property"). The moving party has provided the Declaration of Arnold L. Graff to introduce evidence as a basis for Movant's contention that Allen Hassan ("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. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on February 9, 2017. 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 and received a judgment for possession, with a Writ of Possession having been issued by that court on December 16, 2019. Exhibit 6, Dckt. 22.

CHAPTER 7 TRUSTEE'S NON-OPPOSITION

Sheri L. Carello ("the Chapter 7 Trustee") has no opposition to the Motion. Trustee's March 11, 2020 Docket Entry Statement. [FN. 1]

FN. 1. Debtor commenced this Chapter 7 case on January 23, 2020. Absent the disruption to the U.S. Trustee conducting First Meetings of Creditors due the shelter in place and restricted access to the courthouse caused by the coronavirus outbreak, the deadline for filing objections to confirmation would have expired April 20, 2020, and the Chapter 7 Debtor receiving his discharge and the automatic stay as to the Debtor terminating by operation of law as provided in 11 U.S.C. § 362(c). This modification of the stay is consistent with the reasonable expectations of a Chapter 7 debtor.

DISCUSSION

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership, and the Judgment and Writ of Possession. 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).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this

case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A ("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 2929 El Camino Avenue, Sacramento, California.

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.

IT IS FURTHER ORDERED that the request for binding prospective injunctive relief is denied without prejudice.

No other or additional relief is granted.

26. **17-20689-A-7** **MONUMENT SECURITY, INC.** **MOTION FOR ADMINISTRATIVE EXPENSES**
DNL-26 **Matthew Eason**
2-12-20 [795]

Final Ruling: No appearance at the March 26, 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 February 12, 2020. By the court's calculation, 43 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.

The Chapter 7 Trustee, J. Michael Hopper ("Movant") as Trustee for the bankruptcy estate of Monument Security, Inc. 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 for the estate's 2020 California corporate tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate The accountant prepared the estate's income tax return and has estimated the estate California corporate tax liability due to the Franchise Tax Board for the year 2020 is $800.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant

providing for the 2020 California corporate tax liability was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by the Chapter 7 Trustee, 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 the 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).

27. **19-22996-E-7 DNL-7** **ACACIA CREMATION AND BURIAL SOCIETY, INC. Reno Fernandez** **MOTION TO EMPLOY BACHECKI, CROM & CO. LLP AS ACCOUNTANT(S) 2-4-20 [68]**

Final Ruling: No appearance at the March 26, 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 February 4, 2020. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

J. Michael Hopper ("Trustee") seeks to employ Bachecki, Crom, & Co., LLP ("Accountant") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Accountant to prepare state and federal; income tax returns and provide tax-related advice.

Trustee argues that Accountant's appointment and retention is necessary to prepare and file income tax return that are necessary for the proper administration of the case.

Jay D. Crom, accountant and Partner of Bachecki, Crom & Co., LLP, testifies that he Facts of Representation. Jay D. Crom testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Accountant, considering the declaration demonstrating that Accountant does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Jay D. Crom as Accountant for the Chapter 7 Estate on the terms and conditions set forth in the Flat Fee Agreement for Accounting Services filed as Exhibit A, Dckt.71. Approval of the flat fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by J. Michael Hopper ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Jay D. Crom as Accountant for Trustee on the terms and conditions as set forth in the Flat Fee Agreement for Accounting Services filed as Exhibit A, Dckt.71.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by accountant in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

28. **15-27697-A-7** **ROMEO/SONIA GAPASIN** **MOTION FOR RELIEF FROM**
EMM-1 **Charles Hastings** **AUTOMATIC STAY**
2-14-20 [90]

CIT BANK, N.A. VS.

Final Ruling: No appearance at the March 26, 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 February 14, 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 granted.

CIT Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Romeo Corbillon Gapasin and Sonia Carolino Gapasin's ("Debtor") real property commonly known as 2988 Appling Cir., Stockton, California ("Property"). Movant has provided the Declaration of Kristina Aldridge 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 ten (10) post-petition payments. Declaration, Dckt. 93.

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 $73,351.28 (Declaration, Dckt. 93), while the value of the Property is determined to be $180,000.00, as stated in Schedules B and D filed by Debtor.

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

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

11 U.S.C. § 362(d)(2)

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

Prior Discharge

Debtor was granted a discharge in this case on March 1, 2016. Dckt. 17. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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

Request for 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.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*,

128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 CIT Bank, N.A. ("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 2988 Appling Cir., Stockton, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Romeo Corbillon Gapasin and Sonia Carolino Gapasin ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot, the stay having been terminated pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.

29. **18-27699-E-7 DBJ-6** | **WALTER ZWALD / CYNTHIA RAITT-ZWALD** **Douglas Jacobs** | **MOTION TO AVOID LIEN OF DSD FINANCIAL INC.** **2-24-20 [126]**

Final Ruling: No appearance at the March 26, 2020 hearing is required.

Walter Andrew Zwald, Jr. and Cynthia Ann Raitt-Zwald ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Avoid Lien of DSD Financial Inc. was dismissed without prejudice, and the matter is removed from the calendar.**

30. **20-20707-A-7 MJR-2** | **JESSE FOSTER** **Pro Se** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **3-4-20 [21]**

OAKLAND ZEN CENTER VS.

Final Ruling: No appearance at the March 26, 2020 Hearing is required.

Local Rule 9014-1(f)(2) Motion—Final Hearing Set for April 9, 2020.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 4, 2020. By the court's calculation, 22 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.

The court continued this matter for final hearing at 10:30 a.m. on April 23, 2020.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on April 23, 2020.

Oakland Zen Center ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 23700 Morgan Valley Road, Lower Lake, California ("Property").

Movant has provided the Declaration of Andre Ross to introduce evidence as a basis for Movant's contention that Jesse James Foster ("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 Lake and received a judgment for possession, with a Writ of Possession having been issued by that court on January 15, 2020. Exhibit 3, Dckt. 23.

The Motion and supporting documents recount the re-issuance of the Writ of Possession on February 18, 2020. Exhibit 3, Dckt. 23. Movant asserts that it was unaware of the February 7, 2020 commencement of this Bankruptcy Case until February 21, 2020, when the February 19, 2020 Notice of Stay pursuant to this Bankruptcy Case was served on counsel for Movant.

Movant requests that the court annul the automatic stay as it applies to any acts that occurred prior to having notice of the bankruptcy case.

Movant also requests that the court confirm that the stay in this bankruptcy case terminated, in its entirety, for all parties, purposes, and properties, thirty days after this case was filed as provided in 11 U.S.C. § 362(c)(3).

DEBTOR'S OPPOSITION

Original Opposition (Dckt. 29)

Debtor asserts that the stay should not be lifted because Section 343 will show Debtor is a good tenant and that Movant's unlawful detainer is of a retaliatory nature due to related cases against Movant. Further, Debtor states he has equity and interest in the shell of Oakland Zen Center. Further alleging that Yoshi's Restaurant did not list 23700 Morgan Valley Road in their bankruptcy because "they are a fake non-profit corporation posing as a non-profit corporation to exhort money as an illegal cult and bankrupt corporation aka Yoshi's SF."

As to Debtor's Opposition, Debtor fails to present any evidence regarding his interest, if any, in the property. A Motion for Relief is not the proceeding to argue an issue of whether Debtor is a "good tenant." Additionally, Debtor alleges that he has equity and interest in the "shell" of Oakland Zen Center but again no evidence is presented by Debtor regarding said equity. Finally, Debtor makes a reference to a restaurant that is not the Movant in this Motion.

Amended Opposition

Debtor filed an Amended Response on March 16, 2020. Dckt. 29. For the Amended Response, Debtor uses a form document. This appears to be the response form used in the Central District of California Bankruptcy Court. Bankr. Cent. Dist. Form F 4001-1.RFS.RESPONSE. For this pro se Debtor, the use of the form has helped the Debtor in presenting the opposition to the court (though the court would question the use of such form would be appropriate for an attorney admitted to practice in the Eastern District of California).

Debtor first checks the box on the Response, asserting that all necessary parties for this Motion for Relief From the Stay were not served. Response, ¶ 3(a)(1); Dckt. 38. Debtor is the only

debtor in this Chapter 7 case. The Certificate of Service documents service on the Debtor and the Chapter 7 Trustee, as well as on various other creditors in this case. Dckt. 26.

The record shows that all required parties in this Chapter 7 case, the *pro se* Debtor and the Chapter 7 Trustee have been served.

In the Amended Response, Debtor has stated that he disputes the allegations and checks the following boxes on the Response Form:

> (3) [x] More payments have been made to Movant than the Motion accounts for. True and correct copies of canceled checks proving the payments that have been made are attached as Exhibit _____ .
> . . .
> (8) [x] Movant's description of the status of the unlawful detainer proceeding is not accurate.
>
> (9) [x] Respondent denies that this bankruptcy case was filed in bad faith.
>
> (10) [x] The Debtor will be prejudiced if the Nonbankruptcy Action is allowed to continue the nonbankruptcy forum.
>
> (11) [x] Other (specify):
>
> > Moviant [sic] breached oral agreements. Debtor does equity in work and donations since 1985. Moviant [sic] is retailiating [sic] RTO, and Guardianship(s), and divorce/ Trust where money was stolen from debtor.

Response, ¶ 3; *Id.*

In his Response, Debtor continues, stating that in the declaration filed with the Response Debtor shows that:

> (3) [x] The Property is fully provided for in the chapter 13 plan and all postpetition plan payments [x] are current, or [ ] will be cured by the hearing date on this motion.
>
> (4) [x] The Debtor has equity in the Property in the amount of $ _____.
> . . .
> (7) [x] The motion should be denied because (specify):
> There are several adversary lawsuits and debtor has unfairly enriched the moviant [sic] and has to hire lawyers for numerous harrasment [sic] suits and matters in state court. Moviants [sic] motives are fraudulent.

Response ¶ 4; *Id.*

The court does not find a declaration filed by Debtor, either separately or attached to the Response. Attached to the Response are the following documents:

A. Case Cover Sheet for Lake County Superior Court Case NO. CV 420687 ("State Court Action").

B. Complaint in State Court Action which has a filed date of March 20, 2020, in which Debtor, Jesse J. Foster is the Plaintiff and the named defendants are Oakland Zen Center and Eri Takahashi. The Complaint seeks recovery of $189,000.00.

C. Notice of Vacate the Property, dated July 16, 2019.

D. Gmail email thread of discussions between eritaka@tenpyozan.org, Kojin An Zen, and Debtor.

E. Undated 30 Day Notice of Termination of Occupancy/Alleged Tenancy dated

F. Notice of November 19, 2019 Court Hearing and partly granted request for a temporary restraining order the State Court Action.

G. January 30, 2020 dated Order staying writ of execution in the Oakland Zen Center v. Jesse Foster et al Lake Count Superior Court Unlawful Detainer Action ("UD Action").

H. Original Response to Motion filed by Debtor.

I. Gmail from Mark Ranft, identified as an attorney with whom Jesse Foster (the Debtor) and Rana Mineri have consulted.

J. Proof of Service of the Summons and Complaint in the State Court Action.

DISCUSSION

In considering the Motion and Response opposing the Motion, the court first notes that this is a Chapter 7 liquidation, not a Chapter 13 reorganization.

This Chapter 7 case was filed on February 7, 2020. The First Meeting of Creditors was scheduled for March 20, 2020. The restricted access to the courthouse (District Court General Order 612) has necessitated the postponement of all First Meeting of Creditors.

Request for Continuance

On March 20, 2020, Debtor filed a request to have the hearing continued due to the shelter in place recommendation, now directive, due to the COVID-19 virus. Dckt. 39.

Attached to the Request for a Continuance is an email between Debtor and Jacob Faircloth, who is identified as an attorney with the Law Office of Steven Olson. *Id.* at 4. Mr. Faircloth states that due to having to take over the cases for Mr. Olson, he cannot "completely represent a new client."

With the shelter in place directives, the federal courts are able to afford parties to appear telephonically. The court continues the hearing to allow Debtor to make the arrangements to appear

telephonically at the continued hearing.

The court, having been presented with a complete set of documents by the Parties, has reviewed them and sets forth its analysis so that both Parties can be so informed for the continued final hearing of issues they need to address.

Discussion of Motion and Response

Movant has provided a properly authenticated copy of the Writ of Possession. However, this writ was issued on February 18, 2020, after this Bankruptcy Case was filed and while the automatic stay was undisputedly in effect, the case having been filed on February 7, 2020. As well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); *(In re Schwartz)*,954 F.2d 569, 571 (9th Cir. 1992).

However, Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, 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.*

In *re Fjeldsted*, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annual the stay: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

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

<u>*Nat'l Envtl. Waste Corp* Factors</u>

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

Based on the evidence presented, Movant was not aware of this bankruptcy filing and the existence of the automatic stay in at the time it requested the re-issue of the Writ of Possession.

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

The evidence as it stands shows that Movant would be prejudiced if the stay is not annulled. Movant had already obtained the Judgment prior to the commencement of the case. It was unfortunately dismissed by error. But the State Court Action had already decided in favor of Movant.

Under the *In re Fjelsted* factors, the Panel looked at refining and providing further guidance

to the court as to factors that may apply. Relevant factors here include:

A. Whether creditors knew of the stay but nonetheless too action, and thus compounding the problem;

As explained above, Movant was unaware of the bankruptcy. Though the bankruptcy was filed on February 7, 2020, Debtor did not file a Notice of Stay in the Superior Court until February 19, 2020, and it appears that Debtor did not serve State Court Action counsel until February 21, 2020. Movant had sought re-issuance of the Judgment on February 18, 2020, a day before Debtor filed the Notice and two days before counsel was made aware of the bankruptcy.

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

Movant has moved within less than two weeks of learning of the bankruptcy case to seek this relief annulling the stay.

C. 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.

D. 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. Debtor was afforded the opportunity to present his 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.

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's re-issuance of the Writ of Possession on February 18, 2020.

Next, the court considers the assertion that the stay in this Bankruptcy Case has terminated in its entirety as provided in 11 U.S.C. § 362(c)(3)(A). Debtor filed an ex parte Motion to Extend the Stay pursuant to 11 U.S.C. § 362(c)(3)(B). Dckt. 17. The ex parte Motion was not served on anyone. The Clerk of the Court issued a Notice to the Debtor that he needed to set the Motion for hearing. Such was not set for hearing and the court has not issued an order extending the stay, as it applies to the Debtor, as provided in 11 U.S.C. § 362(c)(3)(B).

Further, this court's analysis of 11 U.S.C. § 362(c)(3)(A) is that the stay terminated as to Debtor as of March 8, 2020, thirty days after the filing of the instant case. As to what remains of the bankruptcy estate within the subject Property, the court turns to Trustee and provides for Trustee to file a response or opposition at the date prescribed in the order.

Finally, Movant also seeks relief under 11 U.S.C. § 362(j), where a party may seek an order confirming the automatic termination of the stay. This relief is not applicable here as the court found that

the stay indeed existed under 11 U.S.C. § 362(c)(3) but terminated thirty days after the petition was filed since Debtor did not extend the automatic stay beyond that time.

Bankruptcy Relief From Stay is a "Summary Proceeding"

In opposing the Motion, Debtor asserts may grounds going to the underlying substantive dispute with Movant in the State Court Action. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). Hamilton, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

The Debtor's fight with Movant is over that dispute, not merely Debtor continuing in possession of the Property. In choosing to file this Chapter 7 case, there is no plan for restructuring Debtor's finances. On Schedule I Debtor lists having income of $742 a month, which includes $300 a month in purported wages from Movant. Dckt. 16 at 28-29.

Debtor having chosen to file this Chapter 7 case, the various claims, rights and interests in the State Court Action are now property of the Bankruptcy Estate in this case (11 U.S.C. § 541(a)) under the control of the Chapter 7 Trustee. This being a Motion filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), no written opposition was required for the March 26, 2020 hearing.

With respect to whether Movant can evict Debtor from the Property, such matter is properly determined in the State Court. It is not part of any reorganization or restructuring in this case. While Debtor purports to having filed the State Court Action on March 15, 2020, that was after Debtor commenced this Bankruptcy Case. It appears that the claims which are asserted in the State Court Action are property of this Bankruptcy Estate.

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 Oakland Zen Center ("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 hearing on this Motion for Relief From the Automatic Stay is continued to 10:30 a.m. on April 23, 2020, to allow all parties and counsel to arrange for making telephonic appearances.
>
> **IT IS FURTHER ORDERED** that a response or opposition of the Chapter 7 Trustee, if any, to his Motion shall be filed and served on or before April 14, 2020. Debtor has filed and served his opposition in the form of the Original Response and the Amended Response.
>
> As required by District Court General Order 612, no persons are

permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall (which is waiving the fee for the use of its serve by *pro se* (not represented by an attorney) parties. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

31.	**20-20716-E-7** **SLE-1**	**AMANDA GARCIA** **Steele Lanphier**	**MOTION TO DISMISS DUPLICATE CASE AND/OR MOTION TO SEAL, MOTION TO EXPUNGE** **2-26-20 [11]**

Final Ruling: No appearance at the March 26, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2020. By the court's calculation, 29 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). 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 respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss Duplicate Case is granted, and Case No. 20-20716 is dismissed.

Chapter 7 Debtor, Amanda Lee Garcia ("Debtor"), seeks dismissal of the instant case on the grounds that this case is a duplicate case that was accidentally filed by Debtor's Counsel.

Debtor also requests that the case filed by mistake be either sealed from public record or expunged entirely as she does not want Case No. 20-20716 to affect her credit.

Trustee filed a statement of non-opposition. Trustee's March 2, 2020 Docket Entry Statement.

DISCUSSION

On February 7, 2020, Debtor filed a voluntary Chapter 7 petition, case number 20-20712. On the same day, February 7th, Debtor's counsel inadvertently filed a duplicate case, case number 20-20716.

A look at the petition and other documents filed on both cases reflect that they are in fact identical cases.

Thus, the motion is granted, and Case Number 20-20716 is dismissed.

Sealing of File

Debtor further requests that the court seal the instant case from the public record or expunge it entirely. Debtor's Counsel by mistake filed a duplicate case. From a review of the filings, it is clear that this second filing is simple "human error" occurring when using semi-automated computer systems.

Expungement of a bankruptcy filing is "an extraordinary remedy." *In re Buppelmann*, 269 B.R. 341, 342 (Bankr. M.D. Pa. 2001). As explained in *In re T.H.*:

> In a bankruptcy case, the purpose of expungement is to protect the legal rights of the debtor, and the remedy is available only in certain extraordinary circumstances, such as when a debtor did not authorize the filing of a bankruptcy purportedly made on her behalf. See, e.g., *In re Joyce*, 399 B.R. 382, 386 n.2 (Bankr. D. Del. 2009) ("Expungement [in a bankruptcy case] is directed toward the public's notification of bankruptcy filings . . . , essentially rectifying via purging a fraudulent or otherwise incorrect filing."); *In re Storay*, 364 B.R. 194, 196-97 (Bankr. D.S.C. 2006) (expunging a bankruptcy filing of joint debtors who signed a blank petition but did not review or authorize the filing of the completed petition); *In re Brock*, 2004 Bankr. LEXIS 2536, at *7-8 (expunging, under the authority of 11 U.S.C. §§ 105(a) and 107(b)(2) and Federal Rule of Bankruptcy Procedure 9018, the bankruptcy records of joint debtors who did not authorize the filing of a bankruptcy petition).

In re T.H., 529 B.R. 112, 134-35 (Bankr. E.D. Va. 2015).

In order for this error to not affect Debtor, the court finds cause to expunge the case from the public record. Thus, this request 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 Dismiss the Chapter 7 case filed by Chapter 7 Debtor,

Amanda Lee Garcia ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and Bankruptcy Case Number 20-20716 is dismissed as being an erroneous duplicate filing for Debtor.

IT IS FURTHER ORDERED that Case Number 20-20716 is further expunged, it being filed due to clerical error and determined to be of no legal force or effect.

IT IS FURTHER ORDERED that the Clerk of the Court is to restrict public access to any documents filed in this case, except for the Expungement Order, in which Debtor will be referenced to by her initials A. L. G., only, which order will remain on the case docket accessible to the public.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to remove all references to the Debtor, A. L. G., from the case docket and any court records for this case.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to close this case.