UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

April 28, 2016 at 10:30 a.m.

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1. 15-90502-E-7 ANNA STARR
PGM-1 Peter G. Macaluso

MOTION TO VACATE DISCHARGE OF DEBTOR AND/OR MOTION TO CONVERT CASE TO CHAPTER 13
3-21-16 [38]

DISCHARGED: 9/28/15

Tentative Ruling: The Motion to Vacate Discharge of Debtor and Motion to Convert Case to Chapter 13 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on February 29, 2016. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

The Motion to Vacate Discharge of Debtor and Motion to Convert Case to Chapter 13 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Vacate Discharge of Debtor is denied, with the Motion to Covnert denied without prejudice.

Anna Starr ("Debtor") filed the instant Motion to Vacate Discharge and Covert Case from Chapter 7 to Chapter 13 on March 21, 2016. Dckt. 38. The

Debtor states that the motion is brought pursuant to 11 U.S.C. § 706(c).

The Debtor asserts that the instant case was filed on May 21, 2015 in an attempt to keep her home and car. After filing the Chapter 7, the Debtor received an Objection to assets and two Adversary Proceedings concerning the Debtor's community interest in both the family residence and 1959 Corvette were partially non-exempt.

The Debtor asserts that after reviewing the Debtor's budget, there is approximately $375.00 per month, plus a $5,000.00 lump sum, in disposable income available to initially fund a 5.12% plan, given the $212,000.00 in unsecured claims, attorney fees, and any administrative fees owed to the Chapter 7 Trustee.

The Debtor states she has a steady income and is able to fund a Chapter 13 Plan, as it is projected that the funds from the newly arising assistance by the estranged husband , "and/or mother-in-law whom both have an interest and are the target of the Trustee's adversary proceedings, and thus will be sufficient to fund the Plan at 5.12%.

Combined Requests for Relief

Though the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018, which allow a person to join multiple claims for relief in one complaint, are not incorporated into bankruptcy court contested matter practice by Federal Rule of Bankruptcy Procedure 9014-1(c), Debtor has combined in one motion a request to (1) vacate the Chapter 7 discharge and (2) convert the case to one under Chapter 13. Dckt. 38. Though the court could strike the second requested relief, the court has considered in light of how this case has proceeded to date. It may be that the mash-up of these two different claims for relief has resulted in Debtor failing to state proper grounds for either.

TRUSTEE'S OBJECTION

Irma Edmonds, the Chapter 7 Trustee, filed an objection to the instant Motion on April 13, 2016. Dckt. 48. The Trustee objects on the basis that the Debtor's proposed plan under Chapter 13 is not feasible and fails the liquidation test. Additionally, the Trustee asserts that the Motion is not brought in good faith.

CREDITOR'S OPPOSITION

Cynthia Nightingale Peart and Daymon Nightingale ("Creditor") filed the instant Opposition on April 14, 2016. Dckt. 54. The Creditor states that they join the Trustee's opposition.

DEBTOR'S REPLY

The Debtor filed a reply to the opposition on April 21, 2016. Dckt. 56. The Debtor state that the Debtor originally listed "(debtor's 50% community property interest)" as having a value of "$180,000.00", with a secured claim of "$233,479", utilizing the exemption under California Code of Civil Procedure § 704.730 in the amount of $63,261.00. Dckt. 1.

The Debtor's Continued Meeting of Creditors was concluding on September 14, 2015. On September 28, 2015, the Debtor received a Chapter 7 discharge. On January 21, 2016, Adversary Proceeding No. 16-09003 was filed against William Starr and Debtor.

On February 10, 2016, Adversary Proceeding No. 16-09006 was filed against William Starr, Debtor, and Marlene Starr.

On March 21, 2016, the Debtor substituted counsel who then filed the instant Motion, a Chapter 13 plan, amended Schedules I and J, Disclosure of Attorney Compensation, amended statistical summary of schedules/assets and liabilities, Schedules A, B, C, and Statement of Financial Affairs. Dckts. 43-46.

As to the liquidation analysis, the Debtor concurs that there is a total of $67,442.00 in non-exempt equity. Less the basis Chapter 7 fee structure of $7,872.10 and assuming the two Adversary Proceedings prepared resulting in approximately 20 hours at $350.00 per hour is $7,000.00.

Based on the Debtor's math, the Debtor asserts that after deducting the Trustee's fees, there is $53,570.00 of liquidated funds to disburse.

As to the feasibility, the Debtor admits that the plan is contingent on the assistance of William Starr. The Debtor asserts that she has $37.00 per month is disposable income that can be contributed for 60 months, netting $22,500.00. William Starr is allegedly willing to contribute $9,283.00, to buy the estate's interest in the vehicle, which is intended to be contributed by William Starr for the benefit of the estate and to avoid the cost of litigation for both he and his mother in monthly payments of $450.00, totaling $27,000.00.

The Debtor argues that the amended plan, incorporating the liquidation analysis and Chapter 7 administrative fees, is confirmable and feasible would read "[$825 x 60] + $9,283".

The Debtor asserts that there are no "badges" of bad faith. The Debtor rather asserts that Debtor's prior counsel made the conclusion that upon separation former community property assets somehow are no longer part of the liquidation analysis, need not be fully disclosed, and not to be protected or considered prior to the filing of a Chapter 7 case.

The Debtor concludes by stating that, absent permission being granted to convert this case, the Debtor must prepare for the sale of the family home. The Debtor argues that the amount needed to make the estate whole and avoid further damage to the family outweighs the need for an immediate liquidation, given the appreciate value of the residence.

APPLICABLE LAW

11 U.S.C. § 706(a) and (c) state:

> (a) The debtor may convert a case under this chapter to a case under Chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert case under this subsection is unenforceable.

> (c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion.

In regards to the Motion to Vacate the Discharge, the applicable law, 11 U.S.C. § 727, states:

> (d) On request of the **trustee**, a **creditor**, or the **United States trustee**, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if–. . .
>
> **(e)** The **trustee**, a **creditor**, or the **United States trustee** may request a revocation of a discharge-. . .

11 U.S.C. § 727 (emphasis added).

As the Supreme Court has held, when resolving a dispute over the meaning of a statute, the analysis begins with the language of the statute. Where the statutory language is plain, the inquiry ends and the sole function of the court is to enforce the statute according to its terms. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). Section 727(d) allows a trustee, a creditor, or the United States Trustee to ask the court to revoke a discharge. In order to obtain a revocation of a discharge, the complaining party must satisfy the conditions set out in § 727(d). Section 727(d) does not authorize a debtor to bring a motion to revoke a discharge. "The unequivocal language of the section limits its applicability to trustees and creditors; a debtor may not seek revocation of his discharge under Code § 727(d)." *In re Markovich*, 207 B.R. 909, 911 (B.A.P. 9th Cir. 1997).

DISCUSSION

The Debtor facially fails to provide legal basis for the relief sought. The Debtor herself is attempting to revoke the discharge pursuant to 11 U.S.C. § 727. However, as discussed supra, the only parties permitted to bring such a motion are either trustee, a creditor, of the U.S. Trustee. In none of the relevant sections concerning the revocation of discharge does the Bankruptcy Code permit the Debtor herself from requesting such.

Before the court could even get to whether the conversion of the case from a Chapter 7 to a Chapter 13, the Debtor has not provided any legal authority entitling the Debtor to request the revocation of her discharge. The Supreme Court as well as the Ninth Circuit has clarified that "[t]he unequivocal language of the section limits its applicability to trustees and creditors; a debtor may not seek revocation of his discharge under Code § 727(d)." In re Markovich, 207 B.R. 909, 911 (B.A.P. 9th Cir. 1997). No exceptions are allowed nor has the Debtor informed the court of any.

Collier on Bankruptcy, Sixteenth Edition, ¶ 727.17[2] (emphasis added), concurs in this statutory construction, stating:

> "Section 727(d) requires the court to revoke a discharge granted under section 727(a) on request of the trustee, a creditor 1 or the United States trustee and after notice and a hearing 2 if the listed grounds for revocation are

established. **The debtor does not have standing to seek revocation of a discharge.**"

Additionally, Debtor does not direct the court to any of the statutory grounds for revoking the statutory discharge.

The plain language of the text prohibits the Debtor from seeking the very relief sought in the instant Motion. At best, the Motion asserts that after the case was filed (with the assistance of counsel, but not her current counsel) and Debtor received the benefit of the discharge, when the Chapter 7 Trustee began administering the property of the bankruptcy estate, the Debtor did not want to accept that part of the Chapter 7 bankruptcy equation.

Debtor obtained her discharge on September 28, 2015. The Trustee, after investigating the undisclosed assets, brought the actions to recover the property of the estate on January 22, 2016. Adv. Pros. 16-9003 and 16-9006. There is no, revoke the discharge because the Debtor wants to prevent the Trustee from administering theretofore undisclosed property of the bankruptcy estate.

In looking at the Amended Schedule I filed by Debtor, while listing income from a new job and showing two child dependents on Schedule J, does not list any spousal or child support being provided by her separated husband. Dckt. 44. On Amended Schedule J Debtor does not list any housing expense, for a family of three lists ($250) for food and housekeeping supplies and $0.00 for health insurance, so as to show having Net Monthly Income of $375.00 a month to fund a Plan. See what proposed plan would be if Debtor could revoke discharge, Dckt. 43. If the ruling turned on whether the Debtor put forward a facially feasible plan, such a determination would be in serious doubt.

As reflected in the Response filed by Debtor, the Plan cannot be funded by Debtor, but is dependant on her separated husband purchasing the estate's interest in the Corvette and an additional $450.00 a month in payments. That is not provided for in the plan that was filed. Rather, it is now argued that there will be an amended plan.

Presumably, Debtor presented the court with the best grounds, and possible plan, when the present motion was filed. Only after the Trustee filed an opposition did the separated husband and mother-in-law appear to say, "oh, there will be another plan which will pay more for creditors." If Debtor really intended to propose a plan which, in good faith, provided creditors for at least as much as they will get through the Chapter 7 case, then it would not have been the $375.00 a month plan (which is questionable whether Debtor could actually pay that).

Additionally, Debtor's projection of litigation expenses for the Chapter 7 Trustee appear to be overstated. In fact, Debtor and her to-be-ex-husband control those expenses. First, the to-be-ex-husband is purported to be read to buy the estate's interest in the Corvette for $9,283.00. That can be quickly done and the on-going litigation expenses drop to $0.00. With respect to the house, the to-be-ex-husband can make the determination of how much he wants to spend for his attorney to "punish" the Chapter 7 estate by causing it to incur legal fees.

From the evidence presented, the Debtor only became amenable to

restructuring through a Chapter 13 case only after the Trustee was hot on the trail of tracking down undisclosed assets. The Debtor put forward a plan which did not provide for paying creditor claims the same that they would receive through a Chapter 7, but a discounted amount. Debtor, in Response to the Opposition, admits that she cannot fund a plan, but now it will be funded by her to-be-ex-husband and mother in law. But that plan is premised on the to-be-ex-husband and mother-in-law litigating adversary proceedings solely to create the appearance of phantom legal expenses for the estate.

The conduct of reaping the benefits of the Chapter 7 case, obtaining her discharge, flipping strategies to get the Chapter 7 Trustee hot on the trail of assets out of the case, proposing a plan which would not provide creditors with the same as they would received through a Chapter 7 liquidation, putting forward a plan based on what does not to be a facially feasible list of expenses on Schedule J and not providing for any support income from the to-be-ex-husband for their two children and spousal support, and demonstrating that the purported litigation expenses used to justify decreasing the liquidation value are phantom expenses, do not support a finding that Debtor is seeking to convert the case in good faith, but rather as part of a bad faith delay strategy. See *Marrama v. Citizens Bank*, 549 U.S. 365 (2007).

Thus, Debtor has not shown that the request to convert is in good faith.

Therefore, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate Discharge of Debtor and Motion to Convert Case to Chapter 13 filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied, with the denial of the request to convert the case to one under Chapter 13 being denied without prejudice.

2. 11-94410-E-7 SAWTANTRA/ARUNA CHOPRA
14-9033 RMY-1
ARTERBURN ET AL V. CHOPRA

CONTINUED MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT AGAINST MID VALLEY SERVICES, INC.
6-4-15 [19]

CONTINUED: 2/4/16

Final Ruling: No appearance at the April 26, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The hearing on the Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. is continued to 10:30 a.m. on June 16, 2016. NO FURTHER CONTINUANCES WILL BE GRANTED.

Aruna Chopra ("Defendant-Debtor") filed the instant Motion for Leave to file Third Party Complaint Against MID Valley Services, Inc. on June 6, 2015. Dckt. 19.

The Defendant-Debtor seeks leave from the court to file a third party complaint against Mid Valley Services, Inc. alleging the following causes of action: (1) implied indemnity; (2) equitable indemnity; (3) contribution; and (4) declaratory relief. The Defendant-Debtor states that these claims are based upon the Defendant-Debtor's contentions that the acts and omissions of MID Valley Services, Inc. were a superseding cause of any purported damages suffered by Plaintiffs.

STIPULATION

On April 25, 2016, (three days before this hearing), the Parties filed their sixth stipulation to continue this hearing. Dckt. 62. In it, the Parties represent (and certify to the court) that:

> "3. This is the sixth request for the requested relief. This requested extension is not being sought for purposed of delay.

> Rather, while the **Parties have executed the Settlement Agreement and Mutual Release** ("Settlement Agreement"), they are in the process of finalizing the conditions for the effectiveness of the Settlement Agreement...The Parties believe that **with additional time they can finalize the conditions for effectiveness of the Settlement Agreement.**"

Motion, Dckt. 62.

On January 27, 2016, the Parties filed their fifth stipulation to continue the hearing. Dckt. 56. In the fifth stipulation, the Parties represented (and certified to the court) that:

> "3. This is the fifth request for the requested relief. This requested extension is not being sought for purposed of delay. Rather, the **Parties are still in the process of negotiating and documenting a settlement** and have exchanged drafts of a settlement agreement...The Parties believe that **with additional time they can finalize the conditions for effectiveness of the Settlement Agreement.**"

Motion, Dckt. 56 (emphasis added).

On December 14, 2015, the Parties filed their fourth stipulation to continue the hearing. Dckt. 51. In the fourth stipulation, the Parties represented (and certified to the court) that:

> "3. This is the fourth request for the requested relief. This requested extension is not being sought for purposed of delay. Rather, **the Parties are in the process of negotiating and documenting a settlement**...The Parties believe that **with additional time they can finalize the terms of a settlement agreement.**"

Motion, Dckt. 51 (emphasis added).

It appears that the Parties, if they can settle the disputes, will settle the disputes by the June 16, 2016, final continued hearing date. That will be 185 days since the December 14, 2015 Motion to Continue based upon the parties advising the court that they were documenting a settlement and finalizing the terms. If not settled, then it appears that the Parties will need to have their disputes resolved by the court.

STIPULATION

On June 24, 2015, the Plaintiffs and Defendant-Debtor filed an *ex parte* Application to Approve Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 34. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on August 20, 2015.

The court approved the stipulation on June 25, 2015, approving the requested continuance in light of the parties negotiating the underlying causes

of action. Therefore, the instant Motion was continued to 10:00 a.m. on August 20, 2015.

STIPULATION

On August 14, 2015, the parties filed an ex-parte Application to Approve Second Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 39. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on October 22, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on October 22, 2015.

STIPULATION

On October 15, 2015, the parties filed an ex-parte Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 44. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on December 17, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on December 17, 2015.

STIPULATION

On December 14, 2015, the parties filed an ex-parte Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 51. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on February 4, 2016.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on February 4, 2016.

STIPULATION

On April 26, 2016, the parties filed an ex-parte Application to Approve Sixth Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 62. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:30 a.m. on April 28, 2016.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:30 a.m. on April. 28, 2016. Dckt. 59.

STIPULATION

On January 27, 2016, the parties filed an ex-parte Application to Approve

Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 56. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:30 a.m. on June 16, 2016.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:30 a.m. on June 16, 2016.

3. 15-90811-E-7 ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS
16-9002 FARRAR V. MASSELLA ET AL

MOTION TO DISMISS COUNTERCLAIM BY JOHNNY MASSELLA AND MARY MASSELLA
3-18-16 [18]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on March 18, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Counterclaim by Johnny Massella and Mary Massella is granted, and the Counterclaim is dismissed without prejudice.

Gary Farrar, the Chapter 7 Trustee and Plaintiff, filed the instant Motion to Dismiss Defendants Johnny Massella's and Mary Massella's Counterclaim on March 18, 2016. Dckt. 18.

The Trustee argues that pursuant to Fed. R. Civ. P. 12(b)(6) and (7), the court should dismiss Defendant and Counterclaimant Johnny Massella's and Defendant and Counterclaimant Mary Massella's counterclaim in favor of the Trustee.

The Trustee argues that in their Answer, Defendants Massella allege possession of a promissory note and deed of trust on real property known as Lot 23 (the "Property").

Indian Village Estates LLC, a California LLC previously owned the Property.

In 2013, Gold Strike Heights Homeowners Association initiated the nonjudicial foreclosure process against Indian Village Estates LLC. On or about September 30, 2014, Gold Strike Heights Homeowners Association purchased the Property at public auction which is reflected in the Trustee's Deed Upon Sale dated January 12, 2015. Gold Strike Homeowners Association is the current owner of the Property. The Defendant's Deed of Trust lists the owner as Indian Village, LLC not Indian Village Estates, LLC. Defendants request declaratory relief in the form of an order stating: (1) Gold Strike Heights Homeowners Association and/or its estate lack any interest in the Property; and/or (2) reforming the deeds in question.

TRUSTEE'S POINTS AND AUTHORITIES

The Trustee also filed a Memorandum of Points and Authorities in conjunction with the Motion. Dckt. 20. The Trustee asserts that the Defendants are seeking to reform a deed of trust that Gold Strike Heights Homeowners Association is not a party to. As such, the Trustee cannot reform the deed as requested. The Defendant conceded to this part, recognizing in their answer that the Defendant's recorded Deed of Trust listed the owner of the property as "Indian Village, LLC" and not "Indian Village Estates, LLC." The Trustee argues that the relief sought cannot be provided by the Trustee and that the Trustee lacks the capacity to be sued in the manner of Defendants' request.

The Trustee asserts that the Defendants seek declaratory relief reforming a deed of trust of which Gold Strike Heights Homeowners and the Trust by extension are not a party. Any reformation of that deed of trust requires the presence of the parties to that deed. Indian Village, LLC and/or Indian Village Estates, LLC, is not a party to the action and complete relief cannot be awarded in that party's absence.

DEFENDANT'S RESPONSE

Defendants Johnny Massella and Mary Massella, Trustee and Robinson Enterprise Inc. Employee Profit Sharing Plan filed a response on April 14, 2016. Dckt. 32.

The Defendant asserts that the issue is whether the Trustee had constructive notice of the Robinson and Massella deeds of trust under state law. The Defendants have pled constructive or inquiry notice as affirmative defenses along with alleging title was taken by Debtor through a wrongful foreclosure and other defenses. If the Trustee is found to have had constructive and/or inquiry notice of the Deeds of Trust, then the reformation action may follow. Indian Village Estates LLC is in privity with Massella and Robinson and acknowledges the Deeds of Trust and underlying debt. The Defendants assert that Indian Village Estates LLC along with Gold Strike Heights Homeowners Association and other claimants had actual and constructive notice of the Deeds of Trust.

Defendants understand the relevant initial inquiry is whether the Trustee had constrictive and/or inquiry notice of the Deeds of Trust. The Trustee recognizes that Indian Village Estates LLC is not a necessary party as to the determination of whether or not the Trustee had actual and/or constructive notice of the Massella and Robinson Deeds of Trust as the Trustee did not name Indian Village Estates LLC as a party in their adversary action.

The Defendant states that they have no objection to the reformation counterclaim being bifurcated, or dismissed to be raised when and if the court finds the Trustee had constructive and/or inquiry notice of the Massella and Robinson Deeds of Trust.

TRUSTEE'S REPLY

The Trustee filed a reply on April 21, 2016. Dckt. 38. The Trustee states that the Motion seeks to dismiss Defendants and Counterclaimants, not bifurcation.

The Trustee states that the Defendants note in their response that they have no objection to the dismissal of the counterclaim. Therefore, the Trustee requests that the court dismiss Defendants' counterclaim for failure to state a claim upon which relief can be granted and for failure to join a necessary and indispensable party.

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 129* S. Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to

relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

Fed. R. Civ. P. 12(b)(7) states that a Motion to Dismiss can be brought for "failure to join a party under Rule 19." Fed. R. Civ. P. 19, as incorporated by Fed. R. Bankr. P. 7019, states:

> (a) Persons Required to Be Joined if Feasible.
>
> (1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (I) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

DISCUSSION

First, the court reviews the Counterclaim of the Defendants. Dckt. 11. The Defendants assert the following in their counterclaim entitled Reformation of the Massella Deed of Trust":

> 60. In February 2008, Indian Village Estates, LLC and Counter Claimants entered into a loan agreement whereby Indian Village Estates, LLC would borrow the sum of thirty-five thousand dollars ($35,000) from the Counter Claimants secured by a deed of trust on Lot 23 located in the Gold Strike Heights Subdivision in Calaveras County.
>
> 61. On February 11, 2008, a deed of trust was recorded with the Calaveras County Recorder in which the Trustor was improperly described as Indian Village, LLC instead of as

> Indian Village, Estates, LLC, the actual owner of the property being secured.
>
> 62. At all times the mutual intent of the parties to this loan transaction and security arrangement was that Indian Village Estates, LLC would receive a loan from the Massellas for $35,000 that would be secured by a deed of trust on Lot 23.
>
> 63. It was a mutual mistake by the parties that the owner of the property listed on the deed of trust was described as Indian Village, LLC instead of being described as Indian Village, Estates, LLC.
>
> 64. This mutual mistake was not discovered by the parties to this loan transaction until after the Debtor in this bankruptcy filed its petition on 2015 and counsel for the Chapter 7 Trustee announced his intention to avoid the deed of trust on the basis that a mistake had been made in describing the Trustor as Indian Village, LLC instead of Indian Village, Estates, LLC.
>
> 65. Under California law, the parties to this 2008 loan transaction are entitled to have the deed of trust securing Lot 23 reformed by this Court to express the actual intent of the parties, that is the Trustor is described as Indian Village, Estates, LLC.

Dckt. 11.

> The relief requested by the Defendants is as follows:
>
> 66. Counter Claimants requests a ruling and declaration the pled facts support findings that the Debtor had no equitable interest in the property on the date of petition and/or the property did not become property of the estate and/or the trustee is denied section 544 status and the deeds are reformed. Assuming arguendo, the deed of trust is avoided, a declaration is sought that the bankruptcy estate has no equitable interest in the property as senior liens come before any interest that could be claimed by the Chapter 7 Trustee on behalf of the estate.

Dckt. 11.

Reviewing the cross-claim, the Motion, and the responses, the court concurs with the Trustee that the Defendants have failed to state a claim against the Debtor or Trustee and that the Defendant failed to name an indispensable party. The Defendants concur with this conclusion as well, as indicated in the Defendants' reply.

The relief sought by the Defendants explicitly is for the reformation of the Deed of Trust between the Defendants and Indian Village, Estates, LLC. Indian Village, Estates, LLC is not named as a party in the instant case. The relief sought from the Defendants in the counter-claim does not involved the Debtor, Gold Strike Heights Homeowners Association, nor the Trustee. Rather,

the Defendants admit that the instant counterclaim does not involve the named parties and that Indian Village, Estates, LLC is an indispensable party to the declaratory relief sought by the Defendant. Namely, Fed. R. Civ. P. 19(a)(1)(B) explicitly requires that a party be joined when,

> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (I) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Here, Indian Village, Estates, LLC is an indispensable party for purposes of reformation of the deed of trust. Without the party being named, there is no claim stated in the counterclaim that provides for a basis of relief against the Debtor and Trustee and the Defendants failed to name an indispensable party.

Therefore, the Motion is granted and the counterclaim filed by Defendant Johnny Massella and Mary Massella against Gold Strike Heights Homeowners Association (“Debtor”) and Trustee is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Counterclaim by Johnny Massella and Mary Massella filed by 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 is granted and the counterclaim filed by Defendant Johnny Massella and Mary Massella against Gold Strike Heights Homeowners Association (“Debtor”) and Trustee is dismissed without prejudice.

4. 15-90811-E-7 ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS
16-9002 FARRAR V. MASSELLA ET AL

MOTION TO DISMISS COUNTERCLAIM BY ROBINSON ENTERPRISES, INC. EMPLOYEE PROFIT SHARING PLAN
3-18-16 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on March 18, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Counterclaim by Robinson Enterprises Inc. and Employee Profit Sharing Plan is granted and the Counterclaim is dismissed without prejudice.

Gary Farrar, the Chapter 7 Trustee and Plaintiff, filed the instant Motion to Dismiss Defendant Robinson Enterprises Inc. Employee Profit Sharing Plan's Counterclaim on March 18, 2016. Dckt. 24.

The Trustee argues that pursuant to Fed. R. Civ. P. 12(b)(6) and (7), the court should dismiss Defendant and Counterclaimant Johnny Massella's and Defendant and Counterclaimant Mary Massella's counterclaim in favor of the Trustee.

The Trustee argues that in their Answer, Defendants Massellas allege possession of a promissory note and deed of trust on real property known as Lot 23 (the "Property").

Indian Village Estates LLC, a California LLC previously owned the Property.

In 2013, Gold Strike Heights Homeowners Association initiated the nonjudicial foreclosure process against Indian Village Estates LLC. On or about September 30, 2014, Gold Strike Heights Homeowners Association purchased the Property at public auction which is reflected in the Trustee's Deed Upon Sale dated January 12, 2015. Gold Strike Homeowners Association is the current owner of the Property. The Defendant's Deed of Trust lists the owner as Indian Village, LLC not Indian Village Estates, LLC. Defendants request declaratory relief in the form of an order stating: (1) Gold Strike Heights Homeowners Association and/or its estate lack any interest in the Property; and/or (2) reforming the deeds in question.

TRUSTEE'S POINTS AND AUTHORITIES

The Trustee also filed a Memorandum of Points and Authorities in conjunction with the Motion. Dckt. 26. The Trustee asserts that the Defendants are seeking to reform a deed of trust that Gold Strike Heights Homeowners Association is not a party to. As such, the Trustee cannot reform the deed as requested. The Defendant conceded to this part, recognizing in their answer that the Defendant's recorded Deed of Trust listed the owner of the property as "Indian Village, LLC" and not "Indian Village Estates, LLC." The Trustee argues that the relief sought cannot be provided by the Trustee and that the Trustee lacks the capacity to be sued in the manner of Defendants' request.

The Trustee asserts that the Defendant seek declaratory relief reforming a deed of trust of which Gold Strike Heights Homeowners and the Trustee by extension are not a party. Any reformation of that deed of trust requires the presence of the parties to that deed. Indian Village, LLC and/or Indian Village Estates, LLC, is not a party to the action and complete relief cannot be awarded in that party's absence.

DEFENDANT'S RESPONSE

Defendant Robinson Enterprise Inc. Employee Profit Sharing Plan filed a response on April 14, 2016. Dckt. 34.

The Defendant asserts that the issue is whether the Trustee had constructive notice of the Robinson and Massella deeds of trust under state law. The Defendants have pled constructive or inquiry notice as affirmative defenses along with alleging title was taken by Debtor through a wrongful foreclosure and other defenses. If the Trustee is found to have had constructive and/or inquiry notice of the Deeds of Trust, then the reformation action may follow. Indian Village Estates LLC is in privity with Massella and Robinson and acknowledges the Deeds of Trust and underlying debt. The Defendants assert that Indian Village Estates LLC along with Gold Strike Heights Homeowners Association and other claimants had actual and constructive notice of the Deeds of Trust.

Defendants understand the relevant initial inquiry is whether the

Trustee had constrictive and/or inquiry notice of the Deeds of Trust. The Trustee recognizes that Indian Village Estates LLC is not a necessary party as to the determination of whether or not the Trustee had actual and/or constructive notice of the Massella and Robinson Deeds of Trust as the Trustee did not name Indian Village Estates LLC as a party in their adversary action.

The Defendant states that they have no objection to the reformation counterclaim being bifurcated, or dismissed to be raised when and if the court finds the Trustee had constructive and/or inquiry notice of the Massella and Robinson Deeds of Trust.

TRUSTEE'S REPLY

The Trustee filed a reply on April 21, 2016. Dckt. 36. The Trustee states that the Motion seeks to dismiss Defendants and Counterclaimants, not bifurcation.

The Trustee states that the Defendants note in their response that they have no objection to the dismissal of the counterclaim. Therefore, the Trustee requests that the court dismiss Defendants' counterclaim for failure to state a claim upon which relief can be granted and for failure to join a necessary and indispensable party.

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 129* S. Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation

of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

Fed. R. Civ. P. 12(b)(7) states that a Motion to Dismiss can be brought for "failure to join a party under Rule 19." Fed. R. Civ. P. 19, as incorporated by Fed. R. Bankr. P. 7019, states:

> (a) Persons Required to Be Joined if Feasible.
>
> (1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (I) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

DISCUSSION

First, the court reviews the Counterclaim of the Defendants. Dckt. 11. The Defendants assert the following in their counterclaim entitled Reformation of the Massella Deed of Trust":

> 60. In February 2008, Indian Village Estates, LLC and Counter Claimants entered into a loan agreement whereby Indian Village Estates, LLC would borrow the sum of thirty-five thousand dollars ($35,000) from the Counter Claimants secured by a deed of trust on Lot 23 located in the Gold Strike Heights Subdivision in Calaveras County.
>
> 61. On February 11, 2008, a deed of trust was recorded with the Calaveras County Recorder in which the Trustor was improperly described as Indian Village, LLC instead of as Indian Village, Estates, LLC, the actual owner of the property

being secured.

62. At all times the mutual intent of the parties to this loan transaction and security arrangement was that Indian Village Estates, LLC would receive a loan from the Massellas for $35,000 that would be secured by a deed of trust on Lot 23.

63. It was a mutual mistake by the parties that the owner of the property listed on the deed of trust was described as Indian Village, LLC instead of being described as Indian Village, Estates, LLC.

64. This mutual mistake was not discovered by the parties to this loan transaction until after the Debtor in this bankruptcy filed its petition on 2015 and counsel for the Chapter 7 Trustee announced his intention to avoid the deed of trust on the basis that a mistake had been made in describing the Trustor as Indian Village, LLC instead of Indian Village, Estates, LLC.

65. Under California law, the parties to this 2008 loan transaction are entitled to have the deed of trust securing Lot 23 reformed by this Court to express the actual intent of the parties, that is the Trustor is described as Indian Village, Estates, LLC.

Dckt. 11.

The relief requested by the Defendants is as follows:

66. Counter Claimants requests a ruling and declaration the pled facts support findings that the Debtor had no equitable interest in the property on the date of petition and/or the property did not become property of the estate and/or the trustee is denied section 544 status and the deeds are reformed. Assuming arguendo, the deed of trust is avoided, a declaration is sought that the bankruptcy estate has no equitable interest in the property as senior liens come before any interest that could be claimed by the Chapter 7 Trustee on behalf of the estate.

Dckt. 11.

Reviewing the cross-claim, the Motion, and the responses, the court concurs with the Trustee that the Defendants have failed to state a claim against the Debtor or Trustee and that the Defendant failed to name an indispensable party. The Defendants concur with this conclusion as well, as indicated in the Defendants' reply.

The relief sought by the Defendants explicitly is for the reformation of the Deed of Trust between the Defendant and Indian Village, Estates, LLC. Indian Village, Estates, LLC is not named as a party in the instant case. The relief sought from the Defendants in the counter-claim does not involved the Debtor, Gold Strike Heights Homeowners Association, nor the Trustee. Rather, the Defendants admit that the instant counterclaim does not involve the named

parties and that Indian Village, Estates, LLC is an indispensable party to the declaratory relief sought by the Defendant. Namely, Fed. R. Civ. P. 19(a)(1)(B) explicitly requires that a party be joined when,

> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (I) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Here, Indian Village, Estates, LLC is an indispensable party for purposes of reformation of the deed of trust. Without the party being named, there is no claim stated in the counterclaim that provides for a basis of relief against the Debtor and Trustee and the Defendants failed to name an indispensable party.

Therefore, the Motion is granted and the counterclaim filed by Defendant Robinson Enterprises, Inc. Employee Profit Sharing Plan against Gold Strike Heights Homeowners Association (“Debtor”) and Trustee is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Counterclaim by Johnny Massella and Mary Massella filed by 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 is granted and the counterclaim filed by Defendant Robinson Enterprises, Inc. Employee Profit Sharing Plan against Gold Strike Heights Homeowners Association (“Debtor”) and Trustee is dismissed without prejudice.

5.	**13-91315-E-7** **WFH-29**	**APPLEGATE JOHNSTON, INC.** **George C. Hollister**	**MOTION TO EMPLOY CAPITOL DIGITAL/CALIFORENSICS AS ELECTRONIC DATA EXPERT** **4-14-16 [616]**

COUNSEL FOR THE TRUSTEE SHALL PROVIDE THE COURT WITH DOCUMENTATION OF THE ACTUAL NAMES OF THE ENTITIES AND PERSONS TO BE ENGAGED BY THE TRUSTEE

THE COURT CANNOT IDENTIFY AN ENTITY AUTHORIZED TO DO BUSINESS IN CALIFORNIA NAMED

"PROFESSIONAL CAPITOL DIGITAL/CALIFORENSICS"

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

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Employ is XXXXX, and the Trustee is authorized pursuant to 11 U.S.C. § 327 to employ XXXXXXX.

Chapter 7 Trustee, Michael D. McGranahan, seeks to employ Professional Capitol Digital/Californsics and Donald E. Vilfer as electronic data expert, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Professional to assist the Trustee in evaluating Debtor's hard drive, retrieving electronic information from the hard drive as necessary for ongoing litigation and potential claim objections, and formatting such information as appropriate. Mr. Vilfer may also be asked to provide expert testimony as needed in the current preference adversary proceeding and in potential claim objections related to authentication and admission of electronic evidence.

In reviewing the Motion, the court was unable to identify an entity named "Professional Capitol Digital/Californsics" when checking the California Secretary of State website for corporations and limited liability companies. http://kepler.sos.ca.gov/. The résumé of Donald Vilfer states that he is the founder and now Director of "Digital Forensics" for "Firm." Exhibit A, Dckt. 619. It does not name a company. Exhibit B is a Fee Schedule, with the name at the top of the page stated as "Californsics." *Id.* Going to the webpage at the bottom of the Fee Schedule, it takes the court to a website which states, "Californsics is now a part of Capitol Digital." http://www.californsics.com/. It further states that "Californsics has merged with Capitol Digital...."

At the hearing, Counsel for the Trustee provided the court with xxxxxxxxxx. This allows the court to correctly identify the entity(ies) doing business with the Trustee and who will be authorized to be paid for the services provided.

REVIEW OF MOTION

The Trustee argues that Professional's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present preference and potential claim objection adversary proceedings.

Donald E. Vilfer, the founder and director of ~~Capitol Digital/Californsics~~, filed a Declaration in support. Dckt. 618. Vilfer testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, 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.

The terms of the employment are for the Trustee to be billed on an hourly basis, with the rate dependent on the nature of the services. See the "FEE SCHEDULE-GOVERNMENT;" Exhibit B, Dckt. 619. The court does not approve in advance any hourly rate or charge, not knowing the nature of such services to be billed. In fact, the Trustee in the Motion admits to not knowing the breadth and scope of the search. See, Dckt. 616, pg. 3, line 11. However, this does not preclude the hiring of a professional, which appears necessary for the Trustee to determine the scope of the necessary work (much like a trustee engaging the services of an attorney or an accountant).

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Professional 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 ~~Capitol Digital/Califorensics~~, and Donald Vilfer as electronic data experts for the Chapter 7 estate, with the Trustee to be billed for such services, and any fees, costs, and expenses subject to approval by the court pursuant to 11 U.S.C. § 330 and § 331.

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 the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ ~~Capitol Digital/Califorensics~~, and Donald Vilfer as electronic data experts for the Chapter 7 estate, with the Trustee to be billed for such services, and any fees, costs, and expenses subject to approval by the court pursuant to 11 U.S.C. § 330 and § 331.

6. 11-93523-E-7 JOSEPH MIRANDA
CJY-2 Christian J. Younger

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
3-25-16 [18]

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Ford Motor Credit Company, LLC, Ford Credit, parties requesting special notice, and Office of the United States Trustee on March 25, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Ford Motor Credit Company, LLC ("Creditor") against property of Joseph Manipon Miranda ("Debtor") commonly known as 1154 Fox River Way, Ceres, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $16,091.39. An abstract of judgment was recorded with **Stanislaus** County on July 8, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $180,000.00 as of the date of the petition. The unavoidable consensual liens total $524,943.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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 this judicial lien impairs the 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 the Debtor(s) 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 Ford Motor Credit Company, LLC, California Superior Court for Stanislaus County Case No. 649272, recorded on July 8, 2010, Document No. 2010-0059280-00 with the Stanislaus County Recorder, against the real property commonly known as 1154 Fox River Way, Ceres, 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.

7. 16-90233-E-7 GURPINDER SANGHERA — MOTION TO COMPEL ABANDONMENT
CJY-1 Christian J. Younger — 3-21-16 [6]

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(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 Gurpinder Singh Sanghera ("Debtor") requests the court to order the Trustee to abandon property commonly known as "First Impressions Barber Shop" ("business name"), 12 barber chairs, 12 mirrors, 12 barber stations, 5 waiting chairs, 1 couch, 2 televisions, and 2X-Box consoles (the "Property"). There are no secured claims against the Property listed in Debtor's Schedule D. The Declaration of Gurpinder Singh Sanghera has been filed in support of the motion and values the Property to be $10,000.00. Debtor is claiming exemptions of $10,000.00 against the property under Cal. Civ. Proc. Code § 703.140(b)(5) and (b)(6).

The court finds that the debt secured by the Property exceeds the sum of the value of the Property and exemptions claimed, and that there are negative financial consequences to the Estate retaining the Property. The

court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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 Abandon Property filed by Gurpinder Singh Sanghera ("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 that the Property identified as:
>
> 1. "First Impressions Barber Shop" ("business name"),
> 2. 12 barber chairs,
> 3. 12 mirrors,
> 4. 12 barber stations,
> 5. 5 waiting chairs,
> 6. 1 couch,
> 7. 2 televisions, and
> 8. 2X-Box consoles
>
> and listed on Schedule B by Debtor is abandoned to Gurpinder Singh Sanghera by this order, with no further act of the Trustee required.

8. 16-90139-E-7 AJAVA SYSTEMS, INC.
CDH-4 David C. Johnston

MOTION TO DESIGNATE PRITHVI RAJ CHAUHAN AS THE INDIVIDUAL RESPONSIBLE TO PERFORM ACTS REQUIRED OF THE DEBTOR
4-14-16 [60]

Tentative Ruling: The Motion to Designate Prithvi Raj Chauhan as the Individual Responsible to Perform Acts Required of the Debtor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Prithvi Chauhan, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Designate Prithvi Raj Chauhan as the Individual Responsible to Perform Acts Required of the Debtor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Designate Prithvi Raj Chauhan as the Individual Responsible to Perform Acts Required of the Debtor is granted.

Schreiber Foods, Inc., Agri-Dairy Products, Inc., and Ball Metal Food Container, LLC ("Creditors") filed this instant motion on April 14, 2016 in order to ensure that a representative of Ajava Systems, Inc. Dba World Grocer ("Debtor") perform all acts required of the Debtor and, if necessary, to compel

attendance of a natural person at the meeting of creditors and further examinations. Creditors claim Prithvi Raj Chauhan is the owner and manager of Debtor and should be designated as the individual responsible to perform acts on behalf of the Debtor.

Creditors provide the declaration of Anthony Miller as evidence of Prithvi Raj Chauhan standing as owner of Debtor. Dckt. 62. Also Creditors provide an evidence in the form of a lease agreement, authenticated by the Miller Declaration, which lists Prithvi Raj Chauhan as owner and manager of Ajava Systems, Inc. Dba World Grocer. Dckt. 64.

In accordance with Rule 9001 of the Federal Rules of Bankruptcy Procedure, "if the debtor is a corporation, 'debtor' includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control." Fed. R. Bankr.P. 9001(5)(A). This rule permits this court to designate an individual as the person in control of a corporation. This rule contemplates that any party "in control" of the Debtor in question can be designated to testify on behalf of a corporate Debtor. Normally, the person in control of a corporation where there is only one shareholder is the sole shareholder, especially in the case of small corporations. *In re Northwest Associates, Inc.,* 245 B.R. 183 (Bankr. E.D.N.Y.1999).

The court finds that Prithvi Raj Chauhan operated in a manner consistent with that of the controlling member and owner of Ajava Systems, Inc. and, therefore, pursuant to Rule 9001 of the Federal Rules of Bankruptcy Procedure, the court designates Prithvi Raj Chauhan as the individual responsible to perform acts required of the Debtor.
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 Designate Prithvi Raj Chauhan as the Individual Responsible to Perform Acts Required of the Debtor filed by Petitioning Creditor(s) 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 Prithvi Raj Chauhan is designated as the individual responsible to perform acts required of the Debtor, Ajava Systems, Inc. Dba World Grocer.

9. 15-90953-E-7 RACHEL MARMOL **MOTION TO SELL**
Pro Se **4-5-16 [56]**

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Exhibits were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 5, 2016. By the court's calculation, 23 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is denied, without prejudice to the right of the Chapter 7 Trustee to sell property of the bankruptcy estate.

A Motion For an Order Directing Trustee to Sell Real Property Pursuant to Terms of an Escrow was filed by Rachel Marmol, the Debtor ("Debtor"). Dckt. 56. In the Motion Debtor states the following grounds with particularity (as required by Fed. R. Bank. P. 9013) for the relief requested:

A. Debtor voluntarily commenced her bankruptcy base on October 6, 2015.

B. Debtor has determined that **it is in the Debtor's best interest** to sell the real property commonly known as 1133 S. Minaret Ave, Turlock California (the "Real Property").

C. Debtor has solicited a cash offer to buy the Real Property.

D. Debtor has had the Real Property in escrow since July 31, 2015.

E. The Buyers, Rui and Jaime Esteves, have tendered a cash offer to purchase the Real Property for $135,000.00.

F. The $135,000.00 sales price will be enough to pay the liens and encumbrances on the Real Property, as well as the costs of sale.

G. Debtor believes that the $135,000.00 is the best price for the Real Property in light of the current market conditions.

H. Debtor has claimed an exemption of $20,285.00 in the Real Property, and believes that the net "proceeds to be paid Debtor" would be $35,260.38.

I. Debtor will pay over to the court any amounts from the sale received by Debtor in excess of $20,285.00.

J. Debtor files as exhibits the following documents in support of the Motion:

1. Exhibit A.....Legal Description
2. Exhibit B.....Escrow Instructions and Documents
3. Exhibit C.....Estimated Closing Statement
4. Exhibit D.....Schedule C

K. Debtor, upon completing the sale of property of the bankruptcy estate will provide the Trustee and counsel for the Trustee with a copy of the escrow statement.

L. Therefore, Debtor wants the court to authorize Debtor to sell this property of the bankruptcy estate.

Motion, Dckt. 56.

Debtor provides her declaration in support of this Motion. Dckt. 58. In it, she provides testimony that conflicts with the Motion. First, she states that the estimated net proceeds to pay Debtor would be $17,630.19, for which Debtor has claimed an exemption of $20,285.00. While the Motion states that there is net money for the bankruptcy estate above the exemption, Debtor's testimony says that no monies is paid to the bankruptcy estate.

Debtor testifies that the property has been in "escrow" with a "cash buyer" since July 31, 2015, but offers no testimony as to why and how a "cash buyer" did not promptly close escrow in August 2015.

Debtor provides no testimony as to the active marketing of the property or how this "cash buyer" was obtained. Debtor (nor Buyers) provide any testimony as to their relationship to Debtor. Buyers do not provide any testimony as to why they have allowed what is purported to be a cash escrow to lie stale for nine months.

Debtor testifies that the property is vacant, Debtor not residing there, and she has received several calls from neighbors that people are in the house at night.

Exhibit B is a copy of the California Association of Realtors form Residential Purchase Agreement and Joint Escrow Instructions. The real estate Agent for both the Buyer and Seller is listed as Home Smart PV and Associates. The real estate agent is listed to be "Eddie Marmol."

The basic terms of the Purchase Agreement are:

A. Rul and Jaime Esteves Purchaser;

B. Date Contract Prepared, July 31, 2015;

C. Purchase Price $135,000.00;

D. Escrow **shall** close on or before August 17, 2015;

E. Deposit of $1,000.00 to be delivered by August 3, 2015;

F. All cash purchase price;

G. No contingencies;

H. Time is of the essence in the performance of this contract;

I. Contract provides that if seller decides not to sell, the $1,000.00 deposit shall be returned to Buyers.

Exhibit B, Dckt. 59.

Exhibit C is identified as the "Seller's Closing Statement." The information on this documents includes:

A. Closing date is September 30, 2015 (well after the contractually required date);

B. Balance due Seller is $35,260.39; and

C. Real estate commission of $8,100.00 (6%).

Exhibit C, *Id.*

The court has also reviewed the Schedules filed by Debtor and her statements under penalty of perjury on the Schedules. On Schedule A, filed on October 6, 2015, Debtor lists the Real Property, but states that she has only an "equitable interest" in that property. Dckt. 1 at 7. On Schedule B, Debtor does not list any contract to sell or any rights pursuant to any such contract on Schedule B. Dckt. 15 at 3-5. On Schedule C, Debtor asserted on exemption in the Real Property. *Id.* at 6.

On Schedule D, Debtor lists the Real Property as being subject to the claim of Ocwen Loan Services, for a debt that is a community debt for with Debtor is a co-debtor. *Id.* at 7. On Schedule G, Debtor states under penalty

of perjury that she has no executory contracts. *Id.* at 15. On Schedule H she lists Juan Aguilar (who is identified on the Statement of Financial Affairs, Question 16, as her spouse) as a co-debtor on the Ocwen claim. The co-debtor's address is shown as the Real Property.

On January 5, 2016, the court entered an order authorizing the Trustee to hire a real estate broker to market the Real Property. Order, Dckt. 38. On January 15, 2016, Debtor filed Amended Schedules B and C. Dckt. 40. On Amended Schedule B Debtor provides a more detailed description of her normal personal effects, but does not list any contract to sell the Real Property or any rights against anyone relating to a sale of the Real Property. *Id.* at 2-5. Amended Schedule C now lists exemptions in various assets, including the Real Property. *Id.* at 6.

Debtor also filed an Amended Schedule D, in which she states that the Ocwen loan claim is "wife'" debt, she is a co-debtor, it is unliquidated, and the claim is only in the amount of $22,944.93 (which is the same amount of the exemption claimed on Amended Schedule C). By this statement, Debtor is representing that there is an equity of $111,000.00 in the Real Property for the bankruptcy estate. *Id.* at 7.

STANDING TO SELL PROPERTY OF THE BANKRUPTCY ESTATE

For all federal court proceedings, when a person seeks relief from the court, that person must show: (1) that they have standing and (2) that there is a case or controversy between real parties in interest. U.S. Const. Article III, Section 2; *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006); Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997); and *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993).

When Debtor elected to file bankruptcy, all of her property, including the Real Property was transferred by operation of law into the bankruptcy estate. 11 U.S.C. § 541(a). While the Debtor may claim an exemption in that property, such exemption is a right to the monetary amount of the exemption, not to the property itself. Schwab v. Reilly, 560 U.S. 770 (2010).

The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative, *Id*. In determining whether the plaintiff has the requisite standing and the court has jurisdiction, the court may consider extrinsic evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 9th Cir. 1987).

In a Chapter 7 it is the Chapter 7 Trustee who is vested with the right to control, manage, sell, and administer property of the bankruptcy estate. 11 U.S.C. § 704. It is not the role of the Chapter 7 debtor to continue in the control, management, sale, or administration of the property of the bankruptcy estate.

The Debtor is not a party in interest with any right to sell the Real Property. Debtor does not have standing to obtain an order from this court to take the place of the Trustee and sell property of the estate because the

Debtor has determined that it is "in the Debtor's best interest." The Trustee, as the fiduciary of the bankruptcy estate, acts in the best interests of the bankruptcy estate.

The Debtor, having elected to file Chapter 7 and cede all rights and control of the Real Property to the bankruptcy estate and Trustee is not left without some remedies. One would be, if Debtor believed that there was no recoverable interest for the bankruptcy estate, for Debtor to seek abandonment of the Real Property pursuant to 11 U.S.C. § 554. Debtor has not sought such relief.

TRUSTEE'S OPPOSITION

Michael McGranahan, the Chapter 7 Trustee, filed an opposition to the instant Motion on April 13, 2016. Dckt. 62.

First, the Trustee argues that the Debtor provided improper notice and service. The Debtor inappropriately served the instant Motion as a Local Bankr. R. 9014-1(f)(1) motion, which requires a minimum of 28-days notice. Here, the Debtor only provided 23 days.

Next, the Trustee states that the Trustee previously advised the Debtor, Debtor's husband and realtor, and broker that the Trustee was not accepting the proposed offer and that the Trustee would be employing his own broker. The Debtor does not disclose this in the Motion nor notes that the Trustee requested that the multiple listing for the Property by Messrs, Priest and Marmol be taken down to afford the Trustee's appointed broker, Bob Brazeal of PMZ, the opportunity to market and list the property.

The Trustee asserts that he has exercised his business judgment to determine that the property could be listed at a higher amount. The Trustee states that the Property only recently come into the bankruptcy as community property by virtue of the completion of the Trustee's Adversary Proceeding No. 15-09067.

The realtor used by the Debtor is the Debtor's former spouse and not a disinterested person, namely because he would derive a commission from the sale of the Property.

The Trustee, in support, filed the Declaration of Mr. Brazeal, who testifies that he valued the Property at approximately $179,950.00 and that the offer presented by the Debtor is in the low range. Dckt. 64.

MR. BRAZEAL'S SUPPLEMENTAL DECLARATION

Mr. Brazeal filed a supplemental declaration on April 19, 2016. Dckt. 67. Mr. Brazael testifies that since the last declaration, he has secured two offers on the Property, $175,500 and $180,000 respectively.

DISCUSSION

First, the Trustee is correct in that the Debtor failed to properly notice the Motion. The Notice of Hearing indicates that the Debtor is moving pursuant to Local Bankr. R. 9014-1(f)(1) which requires a minimum of 28-days notice and for written opposition to be filed 14-days prior to the hearing.

However, the Debtor only provided 23 days notice. Additionally, the Proof of Service indicates that only the exhibits were served and not all the pleadings. Facially, the Debtor failed to meet the minimum notice requirement. On this ground, the Motion is denied.

Furthermore, the Debtor does not provide any legal basis for the authorization to "force" the Trustee to sell the property based on an offer received by the Debtor. 11 U.S.C. § 363(b) explicitly provides the trustee the power to sell property following notice and hearing. The instant case being a Chapter 7 case, the Trustee is the fiduciary of the estate. Here, the Debtor does not have the authority to "strong arm" the Trustee into accepting the terms of a sale that facially is well-below what the Trustee's broker appraised the Property at. This is further evidenced by the fact that Mr. Brazeal has been able to acquire two offers since the time of the Motion, both of which are $40,000.00 greater than the offer presented by the Debtor.

The court also notes that the existence of this "cash buyer" appears to be very suspect. If such a cash buyer existed, then the cash buyer would have promptly closed escrow. The Buyer did not.

Missing from the Motion and evidence is what have been done to market the Real Property in a commercially reasonable manner by the Debtor and Mr. Marmol (the Trustee's real estate agent indicating that it is the Debtor's husband, but on Schedule I Debtor listing her non-filing spouse as working for Aramark Uniform Services and listing another name on the Statement of Financial Affairs as her husband - Juan Agulilar; Dckt. 15 at 28) as the real estate agent.

Based on the evidence before the court and the failure of the Debtor to properly serve and notice the instant Motion, the court determines that the proposed sale is not in the best interest of the Estate. The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Rachel Marmol the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied. The denial is without prejudice to the rights of the bankruptcy trustee to sell, manage, control, or otherwise administer property of the bankruptcy estate.

10. 15-90358-E-11 LAWRENCE/JUDITH SOUZA
MHK-10 David M. Meegan

MOTION TO SELL FREE AND CLEAR OF LIENS
3-30-16 [261]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 87 West Canal Drive, Turlock, California

The proposed purchaser of the Property is Turlock Pentecost Association and/or Assignee and the terms of the sale are:

1. Purchase Price of $135,000.00.

2. $5,000.00 earnest-money deposit

3. Short sale

4. Sold “as-is”

5. The sale is subject to approval from existing lien holders and the Internal Revenue Service as a “short sale” with amounts to be paid specifically as estimated below.

6. The Movant are to pay the real-estate sales commission in an amount consisting of 6% of the sale price, or $7,950.00.

The Movant additionally requests that, if the Movant is authorized to sell the Property and inasmuch as the gross sale price will be insufficient to satisfy full the obligations secured by all liens against the Property, the Movant states that they intend to seek the consent of all lien holders to the sale. While the full amount of the first lien will be paid, the Movant states that they have obtained or will obtain the consent of inferior lien holders to reconvey their respective liens despite the lack of full payment on their relevant claims, and thus the sale would reduce inferior lien affecting other real properties of the estate, so as to create equity in such properties (which are being marketed for sale).

The Movant states that the following liens are recorded against the Property:

Lien Holder	Approximate Due	Notes
Provident Central Credit Union	$67,684.83	Deed of Trust recorded December 16, 2002
The Money Brokers, as agent for beneficiaries that are assignees of the Curtis Family 1994 Trust Established May 27, 1994	$295,291.06	Deed of Trust recorded August 25, 2010. Other real property collateral
Internal Revenue Service	$206,873.96	Notice of Tax Lien recorded April 26, 2011. Other real property collateral
Internal Revenue Service	$37,612.31	Notice of Tax Lien; recorded March 26, 2012. Other real property collateral

The Movant states that the Deed of Trust taken by the Curtis Family Trust describes several real properties in addition to the Property, and the deed of trust also encumbers certain real properties owned by Souza Properties, Inc. The tax liens extend to all real properties owned by the Movant, which are located in Stanislaus County, California.

The Movant proposes to not pay anything to the Internal Revenue Service from sale escrow, despite its tax liens, as the market value of the Property does not create any equity in favor of the Internal Revenue Service liens and

because the senior lien holders have not consented to the payment to the Internal Revenue Service from escrow. The Movant requested consent from the Internal Revenue Service but none has been given to date.

The Movant proposes that the amount of $4,412.00 be disbursed to the Franchise Tax Board, as an estimated tax payment to be withheld under state law.

The amount to be paid to Provident of approximately $72,000.00 will be the full amount owed, and the remaining sale proceeds after payment of costs (approximately $46,294.00) is to be paid to The Money Brokers on account of the second deed of trust. The Money Broker has agreed or will agree to accept the amount remaining after payment of the costs and the Provident deed of trust, to be and funds received are to be used to reduce the corresponding obligation owed by the Movant's and Souza Properties, Inc.

The Movant proposes the following disbursements of funds:

Payee	Purpose	Approximate Amount
First American Title Company	Notary Fee	%50.00
First American Title Company	Escrow Fee	$507.50
First American Title Company	CA Withhold Assistance Fee	$45.00
First American Title Company	ALTA Owners Title Ins.	$332.50
Stanislaus County	Documentary Transfer Tax	$145.75
Disclosure Source	Natural Hazard Disclosure	$89.00
Franchise Tax Board	CA income tax withholding	$4,412.00
Stanislaus County	Tax Installment	$674.56
Keller Williams Realty & Century 21 M&M Assocs	Brokers' Commission (shared as agreed)	$7,950.00
Provident	Loan Claim	$72,000.00
The Money Broker	Loan Claim	$46,293.69
Internal Revenue Service	Tax Lien	$0.00

The Movant also requests the authorize to pay the real estate sales commission to Keller Williams in an amount consisting of 6% of the sale price ($7,950.00) which is to be shared with the broker for the buyer, Century 21 M&M

and Associates. The Movant requests that the court approve the payment of the sales commission pursuant to 11 U.S.C. § 330.

DECLARATION OF THE MONEY BROKERS, INC.

George Eckert, vice president of The money Brokers, Inc., filed a declaration in support of the Motion on April 5, 2016. Dckt. 268. Mr. Eckert states that The Money Brokers is the servicing agent for a number of individuals and entities that were assigned the Deed of Trust recorded August 25, 2010 as Instrument No. 2010-75257 in the official records of Stanislaus County, in favor of the Curtis Family 1994 Trust established May 27, 1994.

Mr. Eckert states that, as the servicing agent for the beneficiaries, the Money Brokers support the Motion.

DISCUSSION

To date, the Internal Revenue Service has not filed a declaration in support of the Motion nor agreement to the proposed disbursement table.

The proposed sale of the Movant is for a short sale.

The instant case is more complex than the more standard cases, especially in light of the Movant sharing interest in the Property with Souza Properties, Inc. and the extent of the tax and consensual liens.

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

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

The court is not making a determination or ordering that the sale close and go to escrow. Rather, the court is authorizing the Movant to execute the sale, if all the conditions are met. The court is not ordering that the Internal Revenue Service or any other junior secured creditor accept the terms of the sale and the proposed distribution. To date, the Internal Revenue Service has not submitted or consented to the sale. The Movant states that they are currently working with the Internal Revenue Service to obtain its consent.

The proposed terms of the sale allows for the Movant to pay off the senior lienholder of the Property while disbursing other funds to pay for necessary costs and expenses of the sale.

The court determines that the terms of the sale are reasonable and beneficial to the estate.

The court does note that it is curious as to what the estate is doing with the fact that the creditor is being paid to the extent that the asset of the instant individual case to pay the debts in which the corporation is personably liable. The Movant does not discuss how the creditor should martial the payment between the Movant and the corporation.

Furthermore, the Movant requests the court authorize the payment of costs, expenses, and taxes. The court authorizes the following to be paid from escrow:

Payee	Purpose	Approximate Amount
First American Title Company	Notary Fee	$50.00
First American Title Company	Escrow Fee	$507.50
First American Title Company	CA Withhold Assistance Fee	$45.00
First American Title Company	ALTA Owners Title Ins.	$332.50
Stanislaus County	Documentary Transfer Tax	$145.75
Disclosure Source	Natural Hazard Disclosure	$89.00
Franchise Tax Board	CA income tax withholding	$4,412.00
Stanislaus County	Tax Installment	$674.56
Keller Williams Realty & Century 21 M&M Assocs	Brokers' Commission (shared as agreed)	$7,950.00
Internal Revenue Service	Tax Lien	$0.00

The Movant notes that these are estimated amounts and may change depending on the final closing costs and escrow analysis. The court finds that the proposed distribution is in the best interests of all the party. The court authorizes the proposed distribution, granting the Movant a variance of 10% in any individual line item expense.

Lastly, the Movant requests that the court authorize the payment of Keller Williams Realty & Century 21 M&M Associates a 6% broker's commission in the amount of $7,950.00. In light of the foregoing, the court finds the broker's commission reasonable and authorizes the Movant to pay the commission.

The Movant also requests that the court authorize the payment of specific dollar amount on three secured claims. This Motion does not seek the sale free and clear of any liens, but Movant will have to obtain lien releases through escrow. The Money Broker has filed a declaration is support of the Motion, but no creditors have expressly consented to payment of specific amounts from the sales proceeds.

The court will not "order" specific payments to creditors for their secured claims as part of this Motion to sell property pursuant to 11 U.S.C.

§ 363(b)(1) absent the express consent to the receipt of such amount from the proceeds by that Creditor.

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 Lawrence James Souza and Judith Louise Souza the Debtor in Possession 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 Lawrence James Souza and Judith Louise Souza, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Turlock Pentecost Association and/or Assignee or nominee ("Buyer"), the Property commonly known as 87 West Canal Drive, Turlock, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $132,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 264, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, and states taxes consisting of the following:

Payee	Purpose	Approximate Amount
First American Title Company	Notary Fee	$50.00
First American Title Company	Escrow Fee	$507.50
First American Title Company	CA Withhold Assistance Fee	$45.00
First American Title Company	ALTA Owners Title Ins.	$332.50
Stanislaus County	Documentary Transfer Tax	$145.75
Disclosure Source	Natural Hazard Disclosure	$89.00
Franchise Tax Board	CA income tax withholding	$4,412.00
Stanislaus County	Tax Installment	$674.56

Keller Williams Realty & Century 21 M&M Assocs	Brokers' Commission (shared as agreed)	$7,950.00
Internal Revenue Service	Tax Lien	$0.00

The court authorizes the proposed distribution, granting the Movant a variance of 10% in any individual line item expense.

3. The Debtor in Possession is authorized to pay claims secured by liens against the Property directly from escrow.

4. Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

5. The Debtor in Possession be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Debtor's in Possession broker, Keller Williams Realty and Century 21 M&M Associates.

11. 14-91565-E-7 RICHARD SINCLAIR
HSM-6 Pro Se

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
3-24-16 [425]

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is granted.

Gary Farrar, the Chapter 7 Trustee, ("Trustee") filed the instant Motion for Extension of Time to File an Objection to Debtor's Discharge March 24, 2016. Dckt. 425.

The Trustee states that on November 24, 2014, Richard Sinclair ("Debtor") filed a voluntary petition under Chapter 11. Case No. 14-91565.

On December 18, 2015, the court issued an order granting the Motion to Convert filed by the U.S. Trustee, converting the case to one under Chapter 7. Dckt. 32.

The Trustee states that the deadline for filing a complaint objecting to discharge is not later than 60 days after the first set of meeting of creditors under 11 U.S.C. § 341(a), which translates to a deadline of March 25, 2016.

The Motion requests that the deadline to object to the Debtor's discharge be extended to June 23, 2016.

It is argued by the Trustee argues that cause exists for the extension because the Trustee has only recently concluded the Meeting of Creditors on March 3, 2016 Debtor had previously refused to attend do to alleged medical condition. The Trustee has obtained counsel and is investigating Debtor's interest in assets. The Trustee states that the instant case has been factually, procedurally, and legally complex. The Trustee has sought to investigate the Debtor's financial affairs through informal communications with the Debtor, and through independent research. The Trustee asserts that a majority of the information has been received from third parties.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

The instant Motion was filed on March 24, 2016, one day prior to the expiration of the deadline to object to the discharge of the Debtor.

The court finds that in the interest of the Trustee to complete its investigation, namely continuing to gather all necessary financial information from the Debtor, including information from third parties, is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted and the deadline for the Trustee to object to Debtor's discharge is extended to June 23, 2016.

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 Motion for Extension of Time to File an Objection to Debtor's Claims of Exemptions filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to June 23, 2016.

12. 16-90268-E-7 CJY-1 — ERNESTO PEREZ IRIBE AND ELENA SOLTERO ROBLES — Christian J. Younger — MOTION TO AVOID LIEN OF VALLEY FIRST CREDIT UNION — 3-28-16 [5]

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Valley First Credit Union, and Office of the United States Trustee on March 28, 2016. By the court's calculation, 31 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Valley First Credit Union ("Creditor") against property of Ernesto Perez Iribe and Elena Soltero Robles ("Debtor") commonly known as 1817 Cielito Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,507.57 An abstract of judgment was recorded with **Stanislaus** County on October 19, 2015, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $186,000.00 as of the date of the petition. The unavoidable consensual liens total $95,864.07 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

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 this judicial lien impairs the 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 the Debtor(s) 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 Valley First Credit Union, California Superior Court for Stanislaus County Case No. 2009378, recorded on October 19, 2015, Document No. 2015-0082567-00 with the Stanislaus County Recorder, against the real property commonly known as 1817 Cielito Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13.	**07-90770-E-7 CWS-5**	**BELLA VISTA BY PARAMONT, LLC Michael S. Warda**	**MOTION TO DISMISS CASE AND/OR MOTION TO REVEST PROPERTY IN ROSS F. CARROLL, INC. 3-10-16 [61]**

Tentative Ruling: The Motion to Dismiss 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 10, 2016. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss the Chapter 7 Bankruptcy Case and Motion to Revest Property in Ross F. Carroll, Inc. is denied without prejudice.

This Motion to Dismiss the Chapter 7 bankruptcy case of Bella Vista By Paramont, LLC ("Debtor") and Motion to Revest Property in Ross F. Carroll, Inc. has been filed by Gary Farrar, the Chapter 7 Trustee.

The Trustee states that the instant case was filed on July 30, 2007. There is one unsecured claim filed by Ross F. Carroll Inc. in the amount of $645,853.73. During the multiple examinations of the Debtor's principal, John C. Williams, Debtor's accountants, Baudler and Flanders, and Debtor's attorney Michael S. Warda. The Trustee states that during the examination of Mr. Warda, it became apparent that certain documents had not been produced to the Trustee - most notably, a check made payable to Debtor in the amount of $100,000.00 that had not been produced.

It was not until after multiple informal attempts that the Trustee filed a Motion to Compel the Production of the documents requested by the Trustee. It was not until after the Motion that the Debtor produced the requested documents.

On September 29, 2008, the Trustee caused the removal of a state court action to bankruptcy court (Adversary Proceeding No. 07-90770) which had been filed by the Debtor against Creditor Carroll claiming breach of contract, fraud, and negligence. Debtor claimed the litigation had significant value. Creditor Carroll believed that the action to have nuisance value and offered to purchase the litigation rights from the estate. Creditor Carroll offered $5,000.00 for the rights, and the Trustee agreed to offer subject to overbids and court approval. At the hearing, there were no overbidders and the court approved the sale. Creditor Carroll paid the estate $5,000.00 pursuant to the agreement.

On December 9, 2008, the Trustee filed an adversary proceeding against Warda & Yonano, JC Williams Company, Inc., JCW-Cypress Home Group, LP., and John C. Williams individually. After a bench trial on April 26, 2010, judgment was entered in favor of the Trustee and against Defendant Warda & Yonano in the amount of $100,000.00.

Warda & Yonano appealed the trial court decision to the Ninth Circuit Bankruptcy Appellate Panel. The Panel reversed the judgment of the trial court on March 11, 2011.

The Trustee appealed the BAP decision to the Ninth Circuit. The Ninth Circuit reversed and remanded in part by its decision filed on December 11, 2013.

Upon remand, the trial court issued a corrected judgment against Warda & Yonano on June 11, 2014, more than $100,000.00. By further order of the trial court, an amended corrected judgment after remand was filed on September 16, 2014 in the amount of $60,395.17.

The judgment against Wards & Yonano has limited value to creditors of the estate. In fact, the Trustee states he has repeatedly sought to sell the judgment to Carroll but Creditor Carroll has indicated that it will not make an offer. If the only creditor in the case is unwilling to offer any amount for the judgment, there is a sense of futility in pursuing collection.

The Trustee also argues that the professional fees and costs are now far in excess of the amounts due on the judgment. The case is administratively insolvent.

The Trustee states that Warda & Yonano dissolved in 2011, making collection efforts significant, difficult, and likely fruitless.

The difficulties of administrative insolvency are further complicated by the need for the estate to file taxes for the past nine years. The Franchise Tax Board requires a minimum of $800.00 per year. Over nine years, that totals $7,200.00. That does not include the expense of an accountant to prepare the returns.

While the estate currently holds $4,540.22, the amount is insufficient to pay professionals and insufficient to pay the taxes. These funds came from Creditor Carroll and should be revested in Creditor Carroll pursuant to 11 U.S.C. § 349.

The Trustee requests that the case be dismissed pursuant to 11 U.S.C. § 707(a) and the Trustee be authorized to revest funds on hand in the amount of $4,540.33 to Ross F. Carroll, Inc.

RULING

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

Cause exists to dismiss this case pursuant to 11 U.S.C. § 707(a). The Trustee has outlined the extensive case history, dating all the way back to the filing of the Chapter 7 case in 2007. Since that time, the Trustee has prosecuted the case in good faith and attempted to gather as much liquid assets as available for the benefit of the estate. However, as described by the Trustee, there is only one unsecured creditor – Ross F. Carroll, Inc. The Trustee has attempted to work with Creditor Carroll to purchase the rights of judgment against Warda & Yonano, but such attempts have been for not.

The estate is administratively insolvent, which is not surprising given how long the instant Chapter 7 case has been pending. The Trustee testifies that the only assets on hand of the Trustee cannot be sold and the $4,540.33 should be revested to Creditor Carroll.

As to the request to revest the funds on hand in the amount of $4,540.33, the court does not understand why the monies would not be used to pay the administrative expenses in this case rather than being "refunded" to a creditor. As the court understands the Trustee's testimony is that this is part of the $5,000.00 paid to the estate by Carroll to purchase property of the estate.

Secondly, the court entered judgment against Warda & Yonano, LLP originally in May 2010. As of that time, Warda & Yonano, LLP and its partners were aware of a substantial liability to the bankruptcy estate. While it was litigated on appeal up to and back from the Ninth Circuit Court of Appeals, the law firm and its partners were aware of the pending liability.

While stating that the Trustee cannot afford further legal fees and that Carroll will not pay anything for the law suit, the Trustee does not address another possible alternative - assigning the judgment to a third-party, contingent fee collection agency. While paying a significant contingent fee percentage of something that may be recovered may seem like a lot, even a partial recovery is better than 100% of nothing.

The court is not convinced by what has been presented that the Trustee cannot administer: (1) the cash on hand to pay some administrative expenses and (2) has shown that the $60,395.17 judgement for recover of the fraudulent conveyances made to the Warda & Yonano, LLP law firm is not recoverable. Also, while stating that Warda & Yonano, LLP was dissolved, the Trustee does not state when that occurred, how the dissolution was handled, and how the dissolving partners properly provided for claims of creditors before distributing assets to the partners.

For the court to grant the Motion, the court would have to blindly allow the Trustee to give away monies of the estate and assume that an experienced, hard bitting, contingent fee collection agency would also find that a $60,000.00 judgment against a heretofore financially successful law firm was not collectable - without any evidence of such consideration having been pursued.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case and Motion to Revest Property in Ross F. Carroll, Inc. filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss and Motion to Revest Property is denied without prejudice.

14. 12-90380-E-7 TOG-5 | **PRASIT/SOMTAWIL PROMSAWASDI** | **MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.**
Thomas O. Gillis | **4-13-16 [50]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 28, 2016 hearing is required.

The Debtor having filed a Withdrawal of the Motion to Avoid Lien, 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 was dismissed without prejudice, and the matter is removed from the calendar.**

15. 12-91080-E-7 ANN SKINNER-COLTRIN **CONTINUED MOTION FOR VIOLATION**
LDD-3 Linda D. Deos **OF AUTOMATIC STAY**
2-11-16 [39]

CONTINUED: 3/17/16

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice on February 11, 2016. By the court's calculation, 76 days' notice was provided. 28 days' notice is required.

The Motion for Damages for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Damages for Violation of the Automatic Stay is denied without prejudice.

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Ann Michelle Skinner-Coltrin ("Movant"). The Claims are asserted against William Andrew Coltrin("Respondent").

The Movant asserts that the Respondent initiated a judicial proceeding against Movant in February 2012 to determine the division of property in which the Movant held a legal interest.

The Movant filed the instant bankruptcy case on May 2, 2012.

The Movant states that a judgment determining the division of property of the estate was entered against the Movant on May 3, 2012 in favor of the Respondent. San Joaquin County Superior Court, Case No. FL3533119.

The Movant asserts that because the judgment determined the division of property of the estate the judgment is void by operation of law pursuant to 11 U.S.C. § 362(a)(3).

RESPONDENT'S OPPOSITION

The Respondent filed a Declaration in opposition of the instant Motion on April 14, 2016. Dckt. 49. The Respondent states that him and the Movant were married on April 15, 1988 through 2007, when the Movant filed for a dissolution in the San Joaquin County Superior Court Case. Case No. FL353319.

The Respondent states that on March 19, 2008, a Judgment of Dissolution of marriage, status only, was entered. Thereafter, on November 9, 2011, a separate Judgment on Reserved Issues was entered which included the division of all of the community property. The judgement was made pursuant to the parties' open stipulation in court.

Once the property division was entered, the only remaining issue to be formalized was the allocation of debt between the parties. The Respondent states that he had previously submitted to the court that he was entitled to be repaid $164,823.50 for payments he made on behalf of the community. At the hearing on November 9, 2011, the Respondent alleges that the Movant and her counsel stipulated in open court that this sum was correct, subject to the Respondent providing documentation of payment of these debts. Shortly thereafter, the Respondent state he provided all the documentation.

The Respondent states that on February 27, 2012, the Respondent filed a motion seeking a formal order or judgment regarding the reimbursement claim. The hearing on the motion was held on April 17, 2012. Prior to that hearing, the Movant was provided all of the Respondent's documents and analysis for reimbursement. At the hearing, the Movant states that the Movant and her counsel stipulated that she owed Respondent $164,823.50. The Respondent asserts that at the hearing, the Movant did not inform the court or the Respondent that she filed her petition the day before.

On May 3, 2012, the formal order was entered by the court after being approved as to form by the Movant's attorney.

The Respondent asserts that neither at the hearing on April 17, 2012 nor the order after the hearing entered on May 4, 2012 involved the issue of division of community property. Instead, the Respondent states that the motion and order dealt with the issue of the debt the Movant owed the Respondent for payment of community obligations.

The Respondent states that after having learned of the Movant's bankruptcy case, the Respondent commenced an adversary proceeding against Movant to determine that the debt owed to Respondent was non-dischargeable pursuant to 11 U.S.C. § 523. According to the Respondent, the Movant did not raise any affirmative defense, nor did she claim that the entry of the judgment for allocation of debt was a violation of the automatic stay.

The Adversary Proceeding went to trial on January 24, 2014. On January 24, 2014, the court issued a judgment in favor of the Respondent finding that the $164,823.50 was non-dischargaeble.

In January 2012, the Respondent alleges that the Movant filed a motion in the dissolution action seeking to set aside the order entered on May 3, 2012, whereby the Movant was obligated to pay the sum of $164,823.50. The motion was denied.

MOVANT'S REPLY

The Movant filed a reply on April 21, 2016. Dckt. 54. The Movant states that there is no dispute that the state court issued an order pertaining to the Movant after the instant bankruptcy case was filed and that Respondent did not seek relief from the automatic stay.

The Movant asserts that the disagreement is whether the Respondent's pursuit of that state court order violated the automatic stay – an issue that the Movant asserts was not addressed in the non-dischargeable adversary proceeding.

The Movant states that the automatic stay was violated because the act of issuing the order was a judicial proceeding against the Movant and her estate.

The Movant further argues that the Respondent's argument that the division of property had been completed before Movant filed her bankruptcy case is incorrect because it was not until the court issued its final order approving any such division, as evidenced by the order being issued the day after the filing as alleged by the Movant.

Lastly, the Movant asserts that because the order approving the division of property did not get issued till after the Movant filed bankruptcy, the property was property of Movant's estate and protected by the automatic stay. The Movant argues that the issuance of that order violated the automatic stay.

The Movant requests that the court: (1) void the order entered by San Joaquin Superior Court on May 3, 2012; (2) reimburse Movant her court related expenses and attorneys' fees.

LEGAL STANDARD

A request for an order of contempt by the Debtor, United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory

basis for recovery of damages by an individual debtor is limited to wilful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946, (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

REVIEW OF MOTION AND OPPOSITION

Grounds Asserted in the Motion

In asserting this claim pursuant to 11 U.S.C. § 362(k), Movant states with particularity (Fed. R. Bankr. P. 9013) the following grounds and relief:

A. "Debtor, Ann Michelle Skinner-Clotrin, by and through her counsel of record, pursuant to Federal Rule of Bankruptcy Procedure 9014 hereby moves the court for an Order stating that the Judgment entered on May 3, 2012, Case No. FL355319, in San Joaquin County Superior Court against Debtor was void, and for an award of damages and attorney's fees and costs against defendant, William Andre Coltrin for violation of the automatic stay pursuant to 11 U.S.C. § 362(k)(1).

B. The First Amended Motion should be granted because:

1. William Andrew Coltrin initiated judicial proceedings against Debtor in February 2012 to determine the division of

property in which Debtor held a legal interest;

2. Debtor filed for Chapter 7 bankruptcy protection on May 2, 2012;

3. A judgment determining the division of property of the estate was entered against Debtor on May 3, 2012, Case No. FL353319, in San Joaquin County Superior Court in favor of Debtor's ex-husband, Mr. Coltrin.

4. Because the Judgment determined the division of property of the estate the Judgment is void by operation of law pursuant to 11 U.S.C. § 362(a)(3).

C. This Motion is based on the Notice of Motion, Memorandum of Points and Authorities, the Declaration of Linda Deos and Exhibits A, B, and C filed concurrently herewith, the petition and schedules filed previously with the Court, and upon such oral and documentary evidence as may be presented by the parties at the hearing."

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that, based on the legal conclusion drawn by the Movant, the Respondent violated the automatic stay. This is not sufficient.

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

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff

(or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

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

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

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

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

> has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

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

Therefore, the court will not mine through the 4 years worth of pleadings, including an adversary proceeding that concluded after a trial and final judgment, to compile the relevant grounds to justify the relief sought. The Motion is denied without prejudice.

Consideration of "Grounds" in Other Pleadings

Even assuming, arguendo, that the Movant properly stated with particularity the grounds for the relief sought, the Movant still fails.

The instant bankruptcy case was filed April 16, 2012. The State Court Order at issue here was entered on May 3, 2012, which stated:

> Pursuant to the terms of the Judgment on Reserved Issues entered by this Court on November 9, 2011, the Court reserved jurisdiction to allocate the community debt of the parties. The Court having heard this matter enters an order that the Petitioner shall be allocated the sum of $164,823.50 as and for her one-half portion of the community obligations paid by the Respondent.

Dckt. 43, Exhibit 2.

On July 18, 2012, the Respondent filed an Adversary Proceeding seeking a determination that the $164,823.50 be non-dischargeable pursuant to 11 U.S.C. § 523(a)(15). The bankruptcy court conducted a trial on January 24, 2014. The court issued a judgment the same day, which stated the following:

> The Trial in this Adversary Proceeding was conducted on January 24, 2014. The court's Findings of Fact and Conclusions of Law are stated on the record pursuant to Federal Rule of Civil Procedure 52(a)(2) and Federal Rule of Bankruptcy Procedure 7052. Upon review of the Judgement for Dissolution, filed November 9, 2011, and Findings and Order After Hearing, filed May 3, 2012, in California Superior

Court, County of San Joaquin Case No. FL 353319 (Exhibits 2, 4); arguments of counsel, and good cause appearing,

IT IS ORDERED, ADJUDGED, AND DECREED that the obligation of Ann Michelle Skinner-Coltrin, the Defendant-Debtor, to pay $164,823.50 as awarded and ordered to be paid in the May 3, 2012 filed Order (a copy of which is attached to the Judgment as Addendum A) of the California Superior Court, County of San Joaquin in Case No. FL 353319, any interest on the amount awarded in that Order as provided by California law, and any attorneys' fees and costs relating solely to the enforcement of the monetary award in said Order expressly granted Plaintiff by the California Superior Court in Case No. FL 353319 are nondischargeable pursuant to 11 U.S.C. § 523(a)(15). This judgment determines that no attorneys' fees are awarded Plaintiff for or in this Adversary Proceeding.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if the California Superior Court in Case No. FL 353319 modifies the award in the May 3, 2012 Order, either party may by post-judgment motion request that this judgment may be amended to reflect the amended amount ordered by the California Superior Court which is nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

No monetary award is made by this court in this judgment for the nondischargeable debt or determination of said amount, other than the maximum amount nondischargeble pursuant to 11 U.S.C. § 523(a)(15) is the $164,823.50, plus the interest and attorneys' fees as stated above.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no claim for attorneys' fees having been stated in the Complaint, Plaintiff's oral request at the conclusion of trial for attorneys' fees is denied, with no attorneys' fees being awarded Plaintiff in this Adversary Proceeding. Fed. R. Bank. P. 7008(b). A costs bill (which shall not include any attorneys' fees), if any, shall be filed and served on or before February 7, 2014. The costs allowed shall be enforced as part of this judgment.

Adv. Proceeding No. 12-09020, Dckt. 52.

Now, over two years after the court made a final determination that the obligation is non-dischargeable, the Movant seeks to have the underlying order determined to have been void.

The Movant now argues that the court, in the Adversary Proceeding, did not make a determination as to the existence or validity of the alleged void order. Rather, the Movant is asserting that the order issued by the state court on May 3, 2016 is void because it was issued after the filing and deals with the “separation of community property.” As such, the Movant is arguing that the determination made by the state court as to the determination that the Movant

owes to Respondent "$164,823.50 as and for her one-half portion of the community obligations."

The state court order does not discuss property or division of assets. Though alleged to deal with "separation of community property," the State Court Order does nothing to determine any issues with respect to any property of the bankruptcy estate. Rather, the order deals with the pre-petition community obligations and the Movant's share of such obligations paid by Respondent.

Movant, coming in years after the court having conducted an adversary proceeding based on the State Court Order presented to the court by Movant and Respondent, other issues arise for the court. One relates to equitable doctrines, such as equitable and judicial estoppel which focus on the conduct of the parties. *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.),* 283 B.R. 549, 565 (B.A.P. 9th Cir. 2002). Courts have found that "a valid claim for equitable estoppel requires: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it." *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584, 187 P.3d 934, 943 (2008)(citing 13 WITKIN, SUMMARY OF CAL. LAW (10TH ED. 2005) EQUITY, § 191, pp. 527-528.).

Since estoppel is an equitable doctrine, it should be applied "where justice and fair play require it." *United States v. Ruby Co.*, 588 F.2d 697, 703 (9th Cir. 1978). Reviewing the representations made by the Movant throughout both the bankruptcy case and the Adversary Proceeding, the legal doctrine of judicial estoppel rears its head. This court has relied upon the parties having present there being the State Court Order and has conducted an adversary proceeding based on that order. Now, Movant seeks to contend that the court's time and effort, as well as the time and money of the parties, was a waste of time.

In context of this over-four-year-old case, the Movant has not once raised the issue of whether the state court order issued on May 3, 2012 violated the automatic stay. The Adversary Proceeding itself dealt with the obligation and whether that obligation is non-dischargeable. While it appears that the Movant was in pro se, the Movant had multiple times to raise this concern or Motion – the Movant chose not to.

The Movant received her discharge July 30, 2012. Dckt. 21. A final decree closing the case and discharging the Trustee was filed on February 14, 2014. Dckt. 23.

It was not until November 3, 2015, after the Movant hired and retained Linda Deos as her new counsel, that the Movant attempts to re-open the case to pursue the instant Motion for Violation of the Automatic Stay. Dckt. 25. Much similar to the instant Motion, the Motion to Reopen does not provide any further specifics as to the grounds that the state court order is void.

It appears that the court, if so inclined when presented with a proper motion (or *sua sponte* as stated in the second sentence of 11 U.S.C. § 105(a)), could possibly annul the stay pursuant to 11 U.S.C. § 362(d)(1) "for cause" based on the fact that: (1) the Movant's case was filed four years; (2) the Adversary Proceeding dealt directly with the non-dischargeability of the

Respondent's judgment as to the Movant's "community obligation"; (3) the Movant received a discharge and the case was closed on July 30, 2012; (4) the Movant, two years following the closing and discharge of the case, now seeks an order determining that an order entered the day after the instant petition was filed is void; and (5) due to the reliance of the court, the Respondent, and the other parties in interest. Additionally, in considering the issue to annul, the court would consider what prejudice, if any, there would be to Movant. What has been presented to the court is that the State Court Order was merely the computation of the amounts which were owed by Movant based upon the prior rulings of the State Court.

The State Court Order expressly provides:

A. Pursuant to the Stipulated Judgment, the State Court retained jurisdiction regarding **apportionment of community obligations.**

B. The court allocates $164,823.50 for Movant to pay **as her one-half portion of the community obligations paid by Respondent.**

Movant's Exhibit A, Dckt. 43 at 8. Other than stating that the order, at this late date, after litigating an adversary proceeding based on the order, should be declared void by the bankruptcy court, Movant fails to identify anything that the State Court judge would do other than mechanically add up expenses paid by Respondent.

The court denies the Motion without prejudice. If in this dissolution battle Movant believes that the automatic stay applies and Respondent should file a motion to annul the stay, the court does not want to prejudice Movant's right to assert a violation of the stay if: (1) the court determines that the stay should not be annulled or (2) if the stay, if not annulled, applied to the State Court proceeding for apportioning the community debt to Movant. As pleaded by Movant, the present Motion merely asserts that the order allocating liability for community debt is actually an order dividing property of the bankruptcy estate. The arguments and evidence presented do not support such a determination.

The court continues this further because this Motion has the stench of what many consider the uncivil nature of family law "civil" litigation in state court. When such potential "uncivil" family law litigation may appear to be transported to this federal court, one is reminded of the War of the Roses, a 1998 Moving directed by Danny DeVito which stars Michael Douglas, Kathleen Turner, and Danny DeVito. The storyline for the movie relates to the unrelenting campaign spouses wage against the other in a divorce battle over who will be victorious in retaining their home, and successfully punishing the other. One description of the plot line is,

> "In an effort to win the house, Oliver offers his wife a considerable sum of cash in exchange for the house, but Barbara still refuses to settle. Realizing that his client is in a no-win situation, Gavin advises Oliver to leave Barbara and start a new life for himself. In return, Oliver fires Gavin and takes matters into his own hands. At this point, Oliver and Barbara begin spiting and humiliating each other in every way possible, even in front of friends and potential

> business clients. Both begin destroying the house furnishings; the stove, furniture, Staffordshire ornaments, and plates. Another fight results in a battle where Barbara nearly kills Oliver by using her monster truck to ram Oliver's antique automobile. In addition, Oliver accidentally runs over Barbara's cat in the driveway with his car. When Barbara finds out, she retaliates by trapping him inside his in-house sauna, where he nearly succumbs to heatstroke and dehydration."

Www.Wikipedia.org and www.imbd.com. Such battles and potential uncivil civil practice are not permitted to be transported to federal court. The court will give Movant the benefit of the doubt in denying the Motion without prejudice, this time.

For Respondent, while the court is directed to 11 U.S.C. § 362(b)(2)(A)(iv) as a basis for contending that the automatic stay would not apply to an allocation of community liability, the authorities cited are not conclusive for the court. No authority is provided other than the statutory provision stating that the stay does not apply to proceedings for "dissolution of a marriage," except for proceedings to determine a division of property of the estate. On the one-hand, it could be contended that such an order is effective an order "determining the amount of a bankruptcy claim," which is a core proceeding in the federal court. 28 U.S.C. § 157(b)(2)(B). On the other hand, such community obligations could be viewed as debts owed by the Debtor to a third-party and the order is merely a recognition that Respondent is surrogated to the rights of those creditors. If the later, then the State Court proceeding would not determine the claim, but merely the "creditor" who may assert that claim, which would then be subject to objections as appropriate. The court will not write on the existing clean slate in this case on this issue.

Therefore, in light of the foregoing, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Damages for Violation of the Automatic Stay by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

16. 14-90780-E-7 ADJ-3 | **RITU/ELISHA RAJ** | **Pro Se** | **MOTION FOR COMPENSATION FOR F5IVE REALTY SOLUTIONS, LLC, OTHER PROFESSIONAL(S) 3-23-16 [91]**

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's (*pro se*), and Office of the United States Trustee on March 23, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

F5ive Realty Solutions, LLC, the Asset Locator ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The order of the court approving employment of Applicant was entered on May 2, 2015, Dckt. 52. Applicant requests fees, inclusive of costs, in the amount of $18,570.62.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including discovery of information necessary for asset recovery. The estate has $74,282.48 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in researching and providing information necessary for the recovery of unclaimed government funds. Debtor's Property was sold through default sale by the Stanislaus Tax Collector on November 13, 2014. The recovery of unclaimed governmental funds stemming from this sale resulted in $74,282.48 in funds generated for the estate.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client to be reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Percentage Fees of $18,570.62 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Trustee from the available funds of the Estate in a manner consistent with the order of distribution in the Chapter 7 case.

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

Fees $18,570.62

pursuant to this Application as Final Percentage Fees 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 F5ive Realty Solutions, LLC ("Applicant"), Asset Locator for the 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 F5ive Realty Solutions, LLC is allowed the following fees and expenses as a professional of the Estate:

F5ive Realty Solutions, LLC, Professional Employed by Trustee

Fees, inclusive of costs, in the amount of $18,570.62

The Fees and Costs pursuant to this Applicant are approved as final percentage fees pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

17. 14-90780-E-7 RITU/ELISHA RAJ
ADJ-4 Pro se

MOTION FOR COMPENSATION FOR ATHERTON & ASSOCIATES, LLP, ACCOUNTANT(S)
4-6-16 [98]

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

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's (*pro se*), and Office of the United States Trustee on April 6, 2016. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing **----------**.

The Motion for Allowance of Professional Fees is granted.

Atheron & Associates, LLP, the Accountant ("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.

The period for which the fees are requested is for the period January 26, 2016 through February 13, 2016. The order of the court approving employment of Applicant was entered on February 25, 2016, Dckt. 90. Applicant requests fees in the amount of $1,081.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work

in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including tax planning, tax preparation, general correspondence, and this fee application. The estate has $74,282.48 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES 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 0.9 hours in this category. Applicant assisted Client by engaging in correspondence regarding taxes, as well as filing this fee application.

Tax Planning: Applicant spent 1.5 hours in this category. Applicant performed an income tax analysis on the sale of Debtor’s real property.

Tax Preparation: Applicant spent 2.3 hours in this category. Applicant prepared state and federal income tax returns for Debtor.

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**
Maria Stokman, CPA, Partner with Accountant	4.7	$230.00	$1,081.00

Total Fees For Period of Application	$1,081.00

FEES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $1,081.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,081.00

pursuant to this Application as final fees 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 Atherton & Associates, LLP ("Applicant"), Accountant for the 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 Atherton & Associates, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Atherton & Associates, LLP, Professional Employed by Trustee
>
> Fees in the amount of $ $1,081.00,
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

18. 15-90982-E-7 RICHARD LEFFLER **MOTION TO AVOID LIEN OF**
CJY-2 Christian J. Younger **RESURGENCE FINANCIAL, LLC**
3-23-16 [25]

DISCHARGED: 2/16/16

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Resurgence Financial, LLC, and Office of the United States Trustee on March 23, 2016. By the court's calculation, 36 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Resurgence Financial, LLC ("Creditor") against property of Richard John Leffler("Debtor") commonly known as 3003 Grand Oak Court, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $39,801.08. An abstract of judgment was recorded with Stanislaus County on October 5, 2007, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $360,000.00 as of the date of the petition. The unavoidable consensual liens total $371,995.57 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100.00 on Schedule C.

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 this judicial lien impairs the 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 the Debtor(s) 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 Resurgence Financial, LLC, California Superior Court for Stanislaus County Case No. 382064, recorded on October 5, 2007, Document No. 2007-0124859-00 with the Stanislaus County Recorder, against the real property commonly known as 3003 Grand Oak Court, Turlock, 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.

19. 15-90982-E-7 RICHARD LEFFLER **MOTION TO AVOID LIEN OF COLLECT**
CJY-3 Christian J. Younger **ACCESS, LLC**
3-23-16 [31]

DISCHARGED: 2/16/16

Final Ruling: No appearance at the April 28, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Collection Access, LLC, and Office of the United States Trustee on March 23, 2016. By the court's calculation, 36 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collect Access, LLC ("Creditor") against property of Richard John Leffler("Debtor") commonly known as 3003 Grand Oak Court, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $39,801.08. An abstract of judgment was recorded with **Stanislaus** County on August 23, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $360,000.00 as of the date of the petition. The unavoidable consensual liens total $371,995.57 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $100.00 on Schedule C.

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 this judicial lien impairs the 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 the Debtor(s) 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 Collect Access, LLC, California Superior Court for Stanislaus County Case No. 382064, recorded on August 23, 2013, Document No. 2013-0072533-00 with the Stanislaus County Recorder, against the real property commonly known as 3003 Grand Oak Court, Turlock, 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.

20. 16-90186-E-7 JOSE/MARIA ROJAS
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-22-16 [17]

DEBTOR DISMISSED:
03/28/2016
JOINT DEBTOR DISMISSED:
03/28/2016

Final Ruling: No appearance at the April 28, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jose J. Rojas and Maria Carmen Rojas ("Debtor"), and Trustee, on March 22, 2016. The court computes that 37 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($335.00 due on March 8, 2016).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on March 28, 2016 (Dckt. 22), the Order to Show Cause is discharged as moot, with no sanctions ordered. The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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

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

21. 15-90852-E-7 BERNARD/SANDRA LEIGHTON
ALF-2 Ashley R. Amerio

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
O.S.T.
4-18-16 [35]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. By the court's calculation, 10 days' notice was provided.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Ford Motor Credit Company, LLC ("Creditor") against property of Bernard Xavier Leighton and Sandra Fail Leighton ("Debtor") commonly known as 1601 Vivian Road, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,943.00. An abstract of judgment was recorded with Stanislaus County on August 17, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $307,231.00 as of the date of the petition. The unavoidable consensual liens total $229,075.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C.

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 this judicial lien impairs the 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 the Debtor(s) 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 Ford Motor Credit Company, LLC, California Superior Court for Stanislaus County Case No. 674316, recorded on August 17 2012, Document No. 2012-0073561-00 with the Stanislaus County Recorder, against the real property commonly known as 1601 Vivian Road, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

22. 15-90852-E-7 ALF-3 | **BERNARD/SANDRA LEIGHTON** Ashley R. Amerio | **MOTION TO AVOID LIEN OF VALLEY PACIFIC PETROLEUM SERVICES, INC. O.S.T. 4-18-16 [40]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on April 18, 2016. By the court's calculation, 10 days' notice was provided.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Valley Pacific Petroleum Services, Inc. ("Creditor") against property of Bernard Xavier Leighton and Sandra Fail Leighton ("Debtor") commonly known as 1601 Vivian Road, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,756.96. An abstract of judgment was recorded with Stanislaus County on June 9, 2015, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $307,231.00 as of the date of the petition. The unavoidable consensual liens total $229,075.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C.

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 this judicial lien impairs the 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 the Debtor(s) 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 Valley Pacific Petroleum Services, Inc., California Superior Court for Stanislaus County Case No. 2009765, recorded on June 9, 2015, Document No. 2015-0044179-00 with the Stanislaus County Recorder, against the real property commonly known as 1601 Vivian Road, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.