UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 5, 2016 at 10:30 a.m.

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1. 12-28312-E-7 MARIANNE GULLINGSRUD **MOTION TO SELL**
HSM-2 **4-1-16 [72]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2016. By the court's calculation, 34 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 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 203 Los Osos Court, Roseville, California

B. 3749 Bolivar Avenue, North Highlands, California

C. Estate's interest in post-conversion rents collected by the Debtor in connection with the Bolivar Property.

The proposed purchaser of the Property is Marianne Gullingsrud ("Debtor") and the terms of the sale are:

1. Debtor shall pay Trustee $21,500.00 to the estate for the estate's interest in the Property. (The Purchase Price has already been tendered).

2. The estate's interest is sold "as is", "where is", without any warranty or representation by the Trustee or the estate, including without limitation, any warranty or representation as to the condition thereof, or the existence or lack of any liens or encumbrances thereon or interest therein. The Property shall be subject to any and all liens and encumbrances thereon, known or unknown.

3. The Debtor shall be responsible for any and all sales, transfer, use or other taxes, and all license, registration, or other fees due or incurred in connection with the sale and transfer of the estate's interest in the Property from the estate to the debtor.

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 Trustee asserts that she has determined that the Debtor's Chapter 13 valuations of the Property was reasonable and that this information was factored in constructing the instant sale. The Trustee states that the Bolivar Property has been researched and analyzed by the Trustee. The Trustee concluded that based on the communications with brokers and appraisers, that the Boliver Property is on the lower end of the price range because of the location of the Property. The Trustee states that the Bolivar Property is scheduled as having encumbrances in the amount of $103,000.00, which leaves no equity for the estate.

As to the Los Osos Property, the Trustee states that following her research, she determined that the property's value is approximately $448,814.00 at the time of conversion. The Trustee notes that, while there may be equity in the Property, it was accrued almost entirely during the Chapter 13 phase of the instant case, which limits the estate's equity position in the Los Osos Property. Additionally, the Trustee highlights that the total encumbrances on the Los Osos Property is $287,585.26. After deducting the Debtor's exemption of the property, there is no scheduled equity for the estate.

Lastly, as to the rents, the Debtor has represented that most of the

rents collected each month (approximately $1,095 per month) are used for debt service and expenses associated with the Bolivar Property. Based on the Trustee's own investigation, she has determined that the approximate net per month for the Debtor is $235.00. In light of the nominal amount, the Trustee has concluded that the Agreement and Purchase Price of the Property accounts for these rents and are fair and reasonable.

Therefore, as discussed supra, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kimberly Husted, 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 Kimberly Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Marianne Gullingsrud or nominee ("Buyer"), the Property commonly known as:
>
> A. 203 Los Osos Court, Roseville, California
>
> B. 3749 Bolivar Avenue, North Highlands, California
>
> C. Estate's interest in post-conversion rents collected by the Debtor in connection with the Bolivar Property.
>
> ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $21,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 76, and as further provided in this Order.
>
> 2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

2. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-28

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH REX MOORE ELECTRICAL CONTRACTORS & ENGINEERS AND REX MOORE GROUP, INC.
4-12-16 [611]

Tentative Ruling: The Motion for Approval of Compromise 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 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. By the court's calculation, 23 days' notice was provided.

The Motion for Approval of Compromise 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 for Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Rex Moore Electrical Contractors & Engineers and Rex Moore Group, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-9023 which seeks to avoid and recover pre-petition transfers of the Debtor to Defendant in the amount of $126,000.00

pursuant to 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 614):

A. Trustee and Settlor agree to resolve the litigation and all disputes between them, except the excluded items, for the sum of $73,750.00.

B. Within ten days of the execution of this agreement, Settlor will cause to be delivered to the Trustee a check in the amount of $73,750.00 in full and complete settlement of the claim in the litigation.

C. The Settlor shall have the right to file an amended proof of claim asserting an additional claim pursuant to § 502(h) in the amount of the settlement amount.

D. Upon receipt of the settlement check, the Trustee will promptly file a motion with the court for approval of the compromise.

E. Within five calendar days of the Trustee's receipt of the settlement amount, the Trustee shall dismiss the Adversary Proceeding with prejudice, with the parties bearing their own attorney's fees and costs.

F. The parties jointly and severally release from any and all claims, demands, express or implied contract rights, actions, causes of action, charges, debts, demands, damages, costs, attorneys' fees and/or expenses of any kind, nature and character, at law or in equity, accrued or inchoate, arising under any federal, state, or any other law, whether known and/or unknown, filed or otherwise, sounding in tort, contract, or otherwise, including, but not limited to foreseen or unforeseen, disclosed or undisclosed, anticipated or unanticipated, and expected or unexpected claims, damages, losses, costs, expenses and liabilities and the consequences thereof which either party now has or may hereafter acquire for any reason whatsoever, arising out, connected with or incidental to, or in any way related to the litigation up to and including the effective date of this agreement.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the Settlement Movant shall recover $73,750.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $126,000.00, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $73,750.00 without further cost or expense and is 59% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts the Settlor is asserting the ordinary course of business defense of 11 U.S.C. § 547. The Trustee argues that while the Settlor has the burden of proof, the Trustee notes that there is a risk inherent in any litigation. In analyzing the risk, the Trustee argues that the recovery of 59% of the amount demanded without the need for further litigation makes the factor weigh in favor of the settlement.

Difficulties in Collection

The Trustee does not believe there are any impediments to collection of any judgment obtained against the Settlor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor and document production requests will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase

or prosecute the property, claims, or interests of the estate to present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The proposed settlement allows for the Trustee and the estate to recover $73,750.00, 59%, of the claim asserts without the need of litigation. In light of the possible defense of the Settlor, the nature of the claim, and the terms of the settlement, the settlement and recovery of the estate is in the best interest of all parties. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Rex Moore Electrical Contractors & Engineers and Rex Moore Group, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 614).

3. 16-20852-E-11 DNL-1 MATHIOPOULOS 3M FAMILY LIMITED PARTNERSHIP

CONTINUED MOTION TO USE CASH COLLATERAL
2-25-16 [13]

Tentative Ruling: The Motion for Authority to Use Cash Collateral 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-in-Possession, creditors and Office of the United States Trustee on February 25, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Authority to Use Cash Collateral 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 Authority to Use Cash Collateral is granted.

Mathiopoulos 3M Family Limited Partnership ("Debtor-in-Possession") filed the Motion for Authority to Use Cash Collateral on April 21, 2016. Dckt. 40.

PRIOR MOTION FOR AUTHORITY TO USE CASH COLLATERAL

Mathiopoulos 3M Family Limited Partnership ("Debtor-in-Possession") filed the first Motion for Authority to Use Cash Collateral on February 25, 2016. Dckt. 13.

BACKGROUND

The Debtor-in-Possession owns real property identified as 3105, 3111, 3119, 3125, 3127, 3129, 3133, 3137, 3141, and 3145 Penryn Road, Penryn, California ("Property"). The Property consists of a business center with approximately 30,700 square feet of rentable building space, with tenants that the Debtor-in-Possession rents out to commercial tenants.

The Debtor-in-Possession states that Wells Fargo Bank, N.A. ("Creditor") asserts a first deed of trust and assignment of rents against the Property to secure a promissory note with a balance of approximately $2,900,000.00.

Debtor-in-Possession argues that it is vital and necessary for the continued operation of the business to use cash collateral to pay necessary preserve the Property, including property taxes, business expenses, and Property upkeep.

Debtor-in-Possession anticipates that by using the cash collateral it will generate post-petition accounts receivable and/or accumulated cash sufficient to provide adequate protection to the secured creditors.

The Debtor-in-Possession offers a portion of the accounts receivable and accumulated cash it will generate post petition as replacement collateral to the Creditor, to the extent that the Creditor's collateral is diminished from the Debtor-in-Possession's use of cash collateral. The replacement liens on post-petition accounts receivable and cash shall be of the same scope, in the same priority, and subject to the same infirmities and defenses as existed pre-petition.

Debtor-in-Possession requests the court authorize the use of rents generated from the Property to pay the business expenses through May 31, 2016, and any other related payments necessary to preserve the Property through May 31, 2016, and any other related payments necessary to preserve the Property through May 31, 2016 in an amount not to exceed $3,000.00, as well as the April 2016 taxes in the amount of $21,113.93, which is due April 10, 2016.

STIPULATION

On February 25, 2016, the Debtor-in-Possession and the Creditor filed a Stipulation for use of cash collateral and adequate protection payments. Dckt. 17. The Stipulation provides for the following:

1. Creditor consents to Debtor-in-Possession's use of the rents from the Property to pay the expenses through May 31, 2016, and any other related payments necessary to preserve the Property through May 31, 2016 in an amount not to exceed $3,000.00.

2. Creditor consents to Debtor-in-Possession's use of the rents from the Property to pay the April 2016 property taxes.

3. Debtor-in-Possession shall provide adequate protection payments to Creditor in the form of monthly interest payments at the nondefault contract rate under Creditor's promissory note ($13,193.11), beginning March 15, 2016 and continuing thereafter on the 15th day of each month through May 2016.

4. Creditor's lien against the Property and security interest in the rents from the Property which Debtor-in-Possession held, had an interest or had the rights to as of the February 12, 2016 are referred to collectively herein as the "Pre-Petition Collateral."

5. Creditor's pre-petition lien and security interests, if any, in the Pre-Petition Collateral will remain duly perfected, enforceable, unavoidable and effective as of the Petition Date without delivery, filing or recordation of any financing statements, instruments or other documents after the petition date.

6. Creditor is hereby granted, effective as of the petition date, a valid, duly perfected and unavoidable lien against and security interest ("Post-Petition Lien") in all rents which Debtor-in-Possession has or in the future holds, has an interest in or has any rights to. The Post-Petition Replacement Lien shall only be valid if Creditor has an allowed secured claim and only granted to secure Creditor's claims against Debtor-in-Possession's estate in an amount equal to any post-petition diminution in the value of the Pre-Petition Collateral, and will be subordinated to the compensation and expense reimbursement (excluding professional fees) allowed to any trustee appointed in the case. The Replacement Liens shall be in addition to all claims, security interest, liens and rights existing in favor of Creditor, and automatically valid, duly perfected, enforceable, unavoidable and effective as of the petition date, without execution, delivery, filing or recordation of any financing statements, instruments or other documents; and no filing or recordation or other act in accordance with any applicable local, state, federal or common law rules or regulations shall be necessary to create or to perfect such lien and security interest. Notwithstanding any of the foregoing, the Replacement Liens do not include any liens on claims for relief arising under the Bankruptcy Code (11 U.S.C.) §§ 506(c), 544, 545, 547, 548, and 549.

7. Debtor-in-Possession shall prepare or obtain and furnish to Creditor the following on or before the following dates:

   a. On or before March 18, 2016,

      i. A current rent roll for the Property;

      ii. Copy of all leases and modification to said leases of current tenants of the Property; and

      iii. Debtor-in-Possession's 2014 tax return.

   b. On or before the fifteenth of each month, starting April 15, 2016, a copy of the current rent roll for the Property or a statement it has not changed from the precious one provided and copies of the leases of any new tenants and modification to any current leases of

the Property that have not already been provided to Creditor.

c. On or before fifteen days after it is completed, a copy of the 2015 tax return.

8. Upon ten business days written notice from Creditor, Debtor-in-Possession shall make the Property available for one or more physical inspections of the Property, so that Creditor may conduct and complete inspections including but not limited to appraisals and environmental reviews.

9. Creditor does not consent to any surcharge of its interest in the Property, Pre-Petition Collateral or Post-Petition Collateral under 11 U.S.C. § 506(c), and neither the negotiation nor the execution, approval or implementation of this Agreement is or may be deemed to be consent to such surcharge. Further, Debtor-in-Possession waives any right to seek a surcharge of Creditor's interests in the Property, Pre-Petition Collateral or Post-Petition Property under 11 U.S.C. § 506(c), provided this waiver is only effective during the period in which Debtor-in-Possession is authorized to use cash collateral.

10. Neither the treatment of Creditor under this Agreement and/or Creditor's acceptance of any of the payments pursuant to this Agreement violates any of the commonly labeled "one-form-of-action" or "anti-deficiency" rules, including, but not limited to, those set forth in Sections 726, 580a, 580b, and 580d of the California Code of Civil Procedure, nor does it affect any rights of Creditor to proceed with its pending foreclosure action for the remaining amounts owing should Creditor's foreclosure no longer be stayed in the future pursuant to the bankruptcy.

11. Termination Events. Debtor-in-Possession's right to use the cash collateral will automatically cease and terminate on the earliest occurrence of any of the following "Termination Events":

a. On June 1, 2016;

b. The date on which the order approving this Agreement is reversed, revoked, stayed or rescinded;

c. The entry of any order granting Creditor or any other creditor relief from the automatic stay with regard to any of the Property or rents;

d. The date on which Debtor-in-Possession shall grant or file an application or motion with the court for approval of any security interest in or lien on the assets of Debtor-in-Possession or Debtor-in-Possession's estate senior to Creditor's security interest or liens other than the security interest and

liens created in favor of Creditor by the order approving this agreement;

e. The date on which Debtor-in-Possession files any objection to the validity, amount, allocability, unavoidability, perfection or priority of Creditor's pre-petition, security interest or liens as set forth herein;

f. Entry of an order confirming any Chapter 11 plan in this bankruptcy case;

g. Entry of an order converting this case, for any reason, to a case under a different Chapter of the Bankruptcy Code;

h. Entry of an order appointing a trustee or examiner in the within Chapter 11 case;

i. Entry of an order dismissing the Chapter 11 case; and

j. The service by Debtor-in-Possession of a motion or notice of a motion to

i. Convert this Chapter 11 case, for any reason, to a case under a different Chapter of the Bankruptcy Code;

ii. To appoint a trustee or examiner in this Chapter 11 case or

iii. To dismiss this Chapter 11 case.

12. Debtor-in-Possession's right to use the cash collateral will also automatically cease and terminate on the occurrence of any of the following. "Additional Termination Events" if Debtor-in-Possession does not cure the specified default within 10 business days after Creditor provides written notice of such default to Debtor-in-Possession's counsel and the Creditor's committee (or the twenty largest unsecured creditors if no committee has been formed):

a. Debtor-in-Possession's breach of any provision of this Agreement (other than those covered in the preceding paragraph);

b. Debtor-in-Possession's breach of any provision of the loan documents that does not conflict with this Agreement or the Bankruptcy Code and Rules, or

c. Debtor-in-Possession's failure to comply with any requirement of the Bankruptcy Code or Rules.

13. Notwithstanding that a Termination Event has occurred or will occur, Debtor-in-Possession and Creditor can, without further

order of the court, extend the effect of this Agreement to any date they both agree to in writing in an agreement filed with the court. Such specified date will then be treated as the Expiration Date, and all the terms of this Agreement will apply accordingly.

Dckt. 17.

MARCH 10, 2016 HEARING

After the hearing, the court issued the following order:

The Motion for Authority to Use Cash Collateral filed by Debtor-in-Possession pursuant to the terms of the Stipulation with Wells Fargo Bank, N.A. ("Creditor') having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Use Cash Collateral is granted, pursuant to this order, for the period March 1, 2016 through May 31, 2016, that the cash collateral may be used through May 31, 2016, to pay the following expenses, granting the Debtor-in-Possession a variance of ten percent in any individual line item expense as long as the total amount used does not exceed the total amount allowed:

EXPENSE	**AMOUNT**
Adequate Protection Payment to Wells Fargo	$13,193.11 per month
Property Insurance	$1,045.41 per month
Pacific Gas and Electric	$200.00 per month (approximate)
Recology Auburn (garbage)	$400.00 per month (approximate)
Telephone for business	$150.00 per month (approximate)
Pest control	$123.60 per month (approximate)
Telephone for Fire and Security	$120.00 per month (approximate)

Life Insurance Policies (4)	$617.82 per month
Property Maintenance, Landscaping, Parking Lot Cleaning	$704.00 per month
Misc (fuel, office supplies, equipment repair, postage, advertisement, etc.)	$500.00 per month (approximate)

EXPENSE	**AMOUNT**
Placer County Water Agency	$1,000.00 due February 2016 and $1,000.00 due April 2016 (approximate amount due every two months)
Sewer	$2,275.00 due March 2016 (due every three months)
Stanley Security for Fire Alarm	$101.13 due March 2016 (due every three months)

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition rents in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim, which replacement lien is perfected by the issuance of this order, no further act of creditors required.

IT IS FURTHER ORDERED Debtor-in-Possession waives any right to seek a surcharge of Creditor's interests in the Property, Pre-Petition Collateral or Post-Petition Property under 11 U.S.C. § 506(c), only for the expenses which are authorized to be paid with the cash collateral during the period in which Debtor-in-Possession is authorized to use cash collateral by this order.

IT IS FURTHER ORDERED that if Creditor asserts that an event for the "automatic" termination of the use of cash collateral has occurred, Creditor shall file an ex parte motion for order terminating use of cash collateral and supporting pleadings (evidence of the event of termination) and lodge with the court a proposed order termination the use of cash collateral. Creditor shall immediately serve (electronically and by First Class Mail) the ex parte motion and supporting pleadings and provide telephonic notice to counsel for the Debtor in Possession and the U.S. Trustee. If the Debtor in Possession disputes the event of termination, counsel for Debtor in Possession shall notify the court and

counsel for Creditor. The court may, upon review the ex parte motion set an emergency hearing *sua sponte* or may rule on the ex parte motion without hearing.

IT IS FURTHER ORDERED the hearing on the Motion is continued to 10:30 a.m. on May 5, 2015, to consider a supplemental to the Motion to extend the authorization to use cash collateral. On or before April 21, 2016, the Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the May 5, 2016 hearing. Any opposition to the requested use of cash collateral shall be filed and served on or before April 28, 2016.

Dckt. 29.

INSTANT MOTION

The Debtor-in-Possession states that it estimates that the regularly reoccurring expenses will be incurred during the period of June 1, 2016 and July 31, 2016.

Debtor-in-Possession estimates the following expenses that will be incurred during the period of June 1, 2016 and July 31, 2016. The Debtor-in-Possession indicates that while the expenses are identical, there have been some increases in the anticipated amount.

EXPENSE	**AMOUNT**
Property Insurance	$1,045.41 per month
Pacific Gas and Electric	$300.00 per month (approximate)
Recology Auburn (garbage)	$500.00 per month (approximate)
Telephone for business	$200.00 per month (approximate)
Pest control	$123.60 per month (approximate)
Telephone for Fire and Security	$120.00 per month (approximate)
Life Insurance Policies (4)	$675.00 per month

Property Maintenance, Landscaping, Parking Lot Cleaning	$704.00 per month
Misc (fuel, office supplies, equipment repair, postage, advertisement, etc.)	$1,500.00 per month (approximate)
	_____
Total Cash Collateral Request	$5,168.01

Debtor-in-Possession also provides for proposed use for cash collateral as to non-monthly expenses:

EXPENSE	**AMOUNT**
Placer County Water Agency	$1,500.00 due June 2016(approximate amount due every two months)
Sewer	$2,275.00 due June 2016 (due every three months)
Stanley Security for Fire Alarm	$101.13 due June 2016 (due every three months)
	_____
Total Cash Collateral Request	$3,876.13 through July 31, 2016

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a Debtor-in-Possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a Debtor-in-Possession, the Debtor-in-Possession can use, sell, or sell property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--
>
> (A) such sale or such lease is consistent with such

policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee or Debtor-in-Possession may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

In the instant case, the Debtor-in-Possession is seeking authorization of the court to use cash collateral to pay necessary expenses to avoid immediate and irreparable harm to the estate and Property.

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtors-in-Possession have the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Here, the Debtor-in-Possession and Creditor have filed a stipulation in which the Creditor consents to the Debtor-in-Possession's use of cash collateral. The adequate protection payment proposed is $13,193.11, beginning March 14, 2016, and continuing thereafter on the 15th day of each month through May 2016. The court finds that the adequate protection payment is sufficient given the facts of the instant case.

The court authorizes the use of cash collateral, pursuant to the order of the court, for the period May 5, 2016 through July 31, 2016, including the required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by the Debtor in Possession. All surplus Cash Collateral from the Property shall

be held in a cash collateral account and separately accounted for by the Debtor in Possession.

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 Authority to Use Cash Collateral filed by Debtor-in-Possession pursuant to the terms of the Stipulation with Wells Fargo Bank, N.A. ("Creditor') having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Use Cash Collateral is granted, pursuant to this order, for the period May 5, 2016 through July 31, 2016, that the cash collateral may be used through July 31, 2016, to pay the following expenses, granting the Debtor-in-Possession a variance of ten percent in any individual line item expense as long as the total amount used does not exceed the total amount allowed:

EXPENSE	**AMOUNT**
Property Insurance	$1,045.41 per month
Pacific Gas and Electric	$300.00 per month (approximate)
Recology Auburn (garbage)	$500.00 per month (approximate)
Telephone for business	$200.00 per month (approximate)
Pest control	$123.60 per month (approximate)
Telephone for Fire and Security	$120.00 per month (approximate)
Life Insurance Policies (4)	$675.00 per month
Property Maintenance, Landscaping, Parking Lot Cleaning	$704.00 per month

Misc (fuel, office supplies, equipment repair, postage, advertisement, etc.)	$1,500.00 per month (approximate)

EXPENSE	**AMOUNT**
Placer County Water Agency	$1,500.00 due June 2016(approximate amount due every two months)
Sewer	$2,275.00 due June 2016 (due every three months)
Stanley Security for Fire Alarm	$101.13 due June 2016 (due every three months)

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition rents in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim, which replacement lien is perfected by the issuance of this order, no further act of creditors required.

IT IS FURTHER ORDERED Debtor-in-Possession waives any right to seek a surcharge of Creditor's interests in the Property, Pre-Petition Collateral or Post-Petition Property under 11 U.S.C. § 506(c), only for the expenses which are authorized to be paid with the cash collateral during the period in which Debtor-in-Possession is authorized to use cash collateral by this order.

IT IS FURTHER ORDERED that if Creditor asserts that an event for the "automatic" termination of the use of cash collateral has occurred, Creditor shall file an ex parte motion for order terminating use of cash collateral and supporting pleadings (evidence of the event of termination) and lodge with the court a proposed order termination the use of cash collateral. Creditor shall immediately serve (electronically and by First Class Mail) the ex parte motion and supporting pleadings and provide telephonic notice to counsel for the Debtor in Possession and the U.S. Trustee. If the Debtor in Possession disputes the event of termination, counsel for Debtor in Possession shall notify the court and counsel for Creditor. The court may, upon review the ex parte motion set an emergency hearing *sua sponte* or may rule on the ex parte motion without hearing.

IT IS FURTHER ORDERED the hearing on the Motion is continued to 10:30 a.m. on July 21, 2015, to consider a supplemental to the Motion to extend the authorization to use cash collateral. On or before July 7, 2016, the Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the July 21, 2016 hearing. Any opposition to the requested use of cash collateral shall be filed and served on or before July 14, 2016.

4. 12-36884-E-7 JENNY PETTENGILL **STATUS CONFERENCE RE: VOLUNTARY PETITION**
9-19-12 [1]

Debtor's Atty: Richard A. Hall

Notes:
Set by order dated 3/14/16 [Dckt 241]; Order resetting status conference filed 3/17/16 [Dckt 242]; Debtor, Debtor's counsel, Chapter 7 Trustee, and Chapter 7 Trustee's counsel to appear in person.

[HLC-5] Chapter 7 Trustee's Motion to Employ Special Litigation Counsel filed 4/7/16 [Dckt 245], set for hearing 5/5/16 at 10:30 a.m.

[HLC-6] Chapter 7 Trustee's Motion for Permissive Abstention or, Alternatively, Relief from the Automatic Stay to Proceed with State Court Litigation filed 4/7/16 [Dckt 249], set for hearing 5/5/16 at 10:30 a.m.

[HLC-6] Status Conference Statement and Response to Trustee's Motion for Relief from Stay filed 4/28/16 [Dckt 256]

Trustee's Status Conference Statement filed 4/28/16 [Dckt 258]

MAY 5, 2015 STATUS CONFERENCE

The court set a Chapter 7 Status Conference in this case. Order, Dckt. 241. The court reviewed the proceedings in this Chapter 7 case and that the Chapter 7 Trustee has been active in trying to sell shoreline residential real property located on North Shore Lake Tahoe since February 2014. Though the Chapter 7 Trustee and Corrigan Finance stipulated in February 2014 to litigate their disputes in this court, neither party has actively prosecuted their respective asserted rights.

Chapter 7 Trustee Status Report, Dckt. 258. The Trustee reports that Since the last hearing in this case in March 2014, the Trustee has decided that he now wants to litigate the estate's rights in the Placer County family law court as part of the Debtor and her ex-husbands long pending, multi-year dissolution proceeding. Other than telling the court that he now, years into the bankruptcy case, wants to litigate in state court and not proceed as he stipulated, gives the court no reason for the bankruptcy Trustee subjecting himself and the estate's rights to the "civil" family law process in which Debtor and her ex-husband have been entangled.

Corrigan Finance filed its own Status Conference Report. Dckt. 256. Corrigan Finance states that it wants to litigate the rights and interests with the Trustee, but that the Trustee has failed to prosecute such actions. Corrigan Finance does not offer an explanation as to why it has not picked up the cudgel and advanced its rights in this court as stipulated.

At the Status conference xxxxxxxxxxxxxxxxxxxxxxxxx.

5. 12-36884-E-7 JENNY PETTENGILL
HLC-5

MOTION TO EMPLOY NINA SALARNO AS SPECIAL COUNSEL
4-7-16 [245]

No Tentative Ruling: The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

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

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Employ is xxxxxxxxxxx.

Chapter 7 Trustee, John Roberts, seeks to employ Special Litigation Counsel Nina Salarno, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in the representation of the estate's interest in the divorce action pending in state court.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present divorce action. The Trustee states that Ms. Salarno has represented the Debtor in the divorce action only.

Ms. Salarno testifies that she has only represented the Debtor in the divorce proceeding and has not represented any other party in connection with the Debtor. Ms. Salarno declares that she holds no claims against Debtor or

Captain Enterprises, LLC at this time. Ms. Salarno states that Captain Enterprises, LLC advanced the fees and costs incurred in the divorce action, although Ms. Salarno only represented the Debtor. Ms. Salarno testifies she 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, outside of the representation of the Debtor in the divorce action.

The Trustee's Motion requesting the following relief:

> WHEREFORE, Trustee prays that his employment of Salarno as set forth herein be approved as follows:
>
> i. As counsel for the Trustee pursuant to 11 U.S.C. § § 330 and 503(b)(2) in the Pettengill case, and
>
> ii. As an administrative expense claimant in the Lazoutkine case on account of professional services rendered by an attorney for valuable services rendered in that estate pursuant to 11 U.S.C. § 503(B)(4) [sic];
>
> iii. At the rate of $400 per hour, to be offset against a $25,000 retainer (the "Retainer") which will be advanced and supplemented by Jenny Pettengill from her personal, exempt funds which are not property of her bankruptcy estate;
>
> iv. With the caveats that:
>
> 1. Salarno may not take any instruction from Ms. Pettengill as that instruction may relate to the contemplated litigation, and
>
> 2. Ms. Pettengill shall be subrogated to Salarno's position as an administrative priority expense creditor to the extent Salarno's fees and costs have already been allowed by this Court and advanced by Pettengill from personal, exempt funds which are not property of her bankruptcy estate.

Dckt. 245.

APPLICABLE LAW

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 327 also provides for special provisions if the attorney whose employment being sought previously represented the Debtor:

> (d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.
>
> (e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

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.

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–. . .
>
> > (3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by--
> >
> > > (A) a creditor that files a petition under section 303 of this title;
> > >
> > > (B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;
> > >
> > > (C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;
> > >
> > > (D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;
> > >
> > > (E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or
> > >
> > > (F) a member of a committee appointed under

> section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;
>
> (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

DISCUSSION

The Trustee does not attach the employment agreement for the court and other parties in interest to review, but provides a summary of terms in the Motion. The Motion gives substantial background as to the factually and legally intensive nature of the case. However, most of what is discussed goes to the protracted "civil" dissolution fight between Debtor and ex-spouse, but not on the issue of whether the property was community property or owned by Corrigan Finance.

The Trustee first instructs that Salarno will be approved as counsel pursuant to 11 U.S.C. § 330 and § 503(b)(2). First, 11 U.S.C. § 330 is not a provision for authorizing to employ a professional, but only provides the basis for allowing compensation to a professional previously authorized to be employed. It appears that the Trustee references this section to indicate that whatever fees Salarno will ultimately be paid must first be approved by the court. The Motion then directs the court to 11 U.S.C. § 503(b)(2) and (4), which state that fees allowed pursuant to 11 U.S.C. § 330 are an administrative expense.

Next, Debtor will provide a $25,000.00 retainer for Salarno, and that Salarno be authorized to draw on the retainer without any approval of fees pursuant to 11 U.S.C. § 331 for interim fees.

Third, that any administrative expense of Debtor will be subordinated to Salarno's administrative expense.

Fourth, the court must lift the automatic stay and the Trustee prosecute the determination of what is property of the estate in the family law court. (Where the court notes that Debtor and Salarno have labored since 2011.)

Fifth, the court pre-approves an hourly rate of $400.00 for Salarno.

Sixth, Salarno be granted an administrative expense in priority over all other administrative expenses from the proceeds of any property which is determined to be property of the bankruptcy estate through litigation in which Salarno represents the Trustee. However, the Trustee offers no legal basis for the court rewriting the administrative priority expenses for Salarno.

In "selling" the court on authorizing the employment, the Trustee argues that because of the "complexity" of the litigation (to determine whether

the property is property of the bankruptcy estate and the bankruptcy estate is administratively insolvent, the Trustee has not been successful in engaging any other attorney to represent the Trustee on a contingent fee basis.

The Trustee and proposed counsel for Trustee shall address at the hearing the great complexity of this litigation to determine the estate's interest in this property. In some respects, this litigation can be as "simple" as a post-judgment enforcement action by a debt collector who has obtained a judgment against only one spouse. The collector seeks to enforce the judgment against property for which title is held only in the name of the non-debtor spouse and the post-judgment proceedings are limited to determine whether the property is actually community property. There are none of the other dissolution, support, contempt, protective order, income disparity, sanction disputes which pervade State Court family law dissolution actions.

While many of the above mandatory employment terms stated to the court are within employment pursuant to 11 U.S.C. § 327, the Trustee has not provided the court with a basis for entering an order mandating that the ownership rights and interests of the estate will be litigated in the family law court, in conflict with the prior order of this court.

The Motion also does not address why litigation of the estate's rights and interests in the property are more efficiently and cost effectively litigated in the family law proceedings with all of the other dissolution issues rather than in this court – as previously stipulated by the Trustee.

Additionally, while making the statement that the Trustee could not engage another attorney, the court has not been provided with a summary of the efforts of the Trustee, and whether the Trustee dictated that any such representation must be in the State Court Family Law division rather than this court.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxx.**

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 **xxxxxxxxxxxxx**.

6. 12-36884-E-7 JENNY PETTENGILL
HLC-6

MOTION FOR PERMISSIVE ABSTENTION AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY
4-7-16 [249]

JOHN R. ROBERTS, TRUSTEE VS.

No Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

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

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 for Relief From the Automatic Stay is XXXXXXXXXXX.

Chapter 7 Trustee, John Roberts ("Movant") seeks multiple relief in the Motion presented to the court. Dckt. 249. First, the title to the Motion states the Trustee is seeking the court issue an order permissively abstaining from certain proceedings. This relief is sought pursuant to 28 U.S.C. § 1334(c)(1). The Motion then seeks other relief from the automatic stay or permissive abstention with respect to the real property commonly known as 1590 N. Lake Blvd. Tahoe City, California (the "Property"), requesting relief pursuant to 11 U.S.C. § 362(d)(1). Movant has provided the Declaration of John Roberts to introduce evidence upon which he prays for an order lifting the automatic stay to permit Trustee to litigate the Estate Property Claims stayed in the Divorce Action.

CORRIGAN OPPOSITION

Corrigan Finance ("Corrigan")filed an untimely opposition on April 28, 2016. Corrigan holds record title of the Property and previously moved for an order confirming the automatic stay did not apply to the Property on the grounds that it was not property of the estate. Subsequently, Trustee opposed the motion and eventually Corrigan and Trustee entered into a stipulation in which Corrigan consented to have any claim involving the Property to be heard and decided by this court. Corrigan claims that Trustee's instant motion is an attempt to circumvent this court's order that ordered all claims regarding the Property to be heard in this court. Corrigan claims granting the motion would delay and further prejudice its rights to the Property.

REVIEW OF MOTION AND GROUNDS STATED IN MOTION WITH PARTICULARITY THAT TRUSTEE ASSERTS AS GROUNDS FOR RELIEF

The court's consider of the present Motion beings with the basic pleading requirements imposed by the United States Supreme Court in the Federal Rules of Bankruptcy Procedure.

The Motion states the following grounds with particularity, as required by Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. The Estate Property Claims include an alleged community property interest in a residence located at 1560 N. Lake Boulevard in Tahoe City, California referenced in response to item #13 of Jenny Pettengill's Schedule "B" (Personal Property - Amended) [as listed in Motion. Dckt. 249].

B. Trustee has determined that the relief requested is in the best interest of creditors. Any complicated jurisdictional questions what may have arisen solely in connection with a trial before an Article I bankruptcy judge would be sidestepped in State Court. The Divorce Action has been pending since before either of the bankruptcy cases were filed and so interests of comity would be furthered by keeping the litigation in that venue. Also, the Placer County Superior Court is familiar not only with litigants Pettengill and Lazoutkine, but also with the case and its factual underpinnings, having tried the bifurcated support issues already as discussed above. Finally, Nina Salarno, the attorney who already has successfully represented Pettengill against Lazoutkine in the Divorce Action as to non-estate claims, has agreed to represent the Trustee in the Divorce Action and to litigate on a contingent fee basis the remaining "estate property claims" referenced in the Order re Consolidation, thereby assuring prompt prosecution, if not resolution.

C. Trustee understands that notwithstanding the outcome of this Motion or the Divorce Action, the bankruptcy Court retains exclusive jurisdiction over the enforcement of any resulting judgement, including any (1) settlement or (2) sale, and/or

(3) other disposition of estate property, including distributions to professionals retained by the Trustee.

D. WHEREFORE, Trustee prays for an order lifting the automatic stay to permit Trustee to litigate the Estate Property Claims heretofore stayed in the Divorce Action, which claims pertain to the existence and collection of estate property, subject only to the bankruptcy court's retention of jurisdiction over the enforcement of any judgment rendered in the Divorce Action, including jurisdiction over any proposed settlement, sale, or other disposition of estate property recovered in such Action.

The Motion for Permissive Abstention or Relief from the Automatic Stay itself fails to state "grounds" upon which the court could grant the relief. Rather, it dictates to the court the Trustee's findings and determinations, and requests that the court issue the order which the Trustee has determined he wants in this case.

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."

Anticipating the Trustee's argument, that the grounds are really set forth in the twelve page Points and Authorities, woven withing the extensive citations, quotations, arguments, conjecture and speculation. Dckt. 252. Therefore, the court only needs to read the Points and Authorities, divine what grounds the court thinks that the Trustee wants to state as grounds to win the Motion, state those grounds for the Trustee, and then grant the Motion for the Trustee. This misconstrues the relationship of the court and parties. The court does not re-draft pleadings and advance possible grounds for parties. Additionally, this ignores the plain and simple Local Bankruptcy Rules in this District which require the motion to be a separate pleading from the point and authorities, which are separate pleadings from each declaration and the exhibits (which exhibits may be combined into one common exhibit document). L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents.

Though the court could deny the Motion without prejudice at this point, in light of the long history of this case, the multi-year administration of this Chapter 7 case by the Trustee, the prior litigation, and the potential valuable property of the estate at issue, the court has read the other pleadings and addresses the merits of the Motion later in this Ruling.

Improper Combining of Claims For Relief

The court next considers that the Trustee requests relief for multiple claims in this one Motion. The Motion seeks two different types of relief:

> 1) That the court enter an order granting a permissive abstention regarding the Property.
>
> 2)That the court enter an order granting relief from the automatic stay regarding the Property.

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

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in

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

The Debtors have improperly attempted to join a motion for permissive abstention with a motion for relief from automatic stay. This is improper. Each motion must assert one claim against the other party. The Trustee appears to be asking for the court to give the Trustee "carte blanche" in the method and means in which to prosecute the claims. The Trustee, rather than stating specifically in the Motion and requesting a single form of relief, the Trustee asks for two forms of relief, and then only requests one in the prayer. These conflicting requests without a coherent argument makes in impossible to grant any of the relief requested.

The court does not engage in a differential application of the rules so that attorneys are left guessing when rules are enforced and when the court "let's them get away with it."

Again, the court could deny this Motion without prejudice. However, due to the long, sometimes torturous path of this Chapter 7 case to date, the court waives this basic defect to address the merits of the Motion.

Grounds of Motion as Stated By Trustee

Proper Exercise of Federal Court Jurisdiction

The Motion makes vague reference to potential "complicated jurisdictional questions" which could arise from a bankruptcy judge making a determination of whether property is, as defined by 11 U.S.C. § 541 and arising under the Bankruptcy Code, property of the bankruptcy estate. The court cannot identify what "complicated jurisdictional questions" could arise with the federal court exercising federal court jurisdiction to make ruling concerning property of the bankruptcy estate.

It is possible that, rather than jurisdictional, the Trustee is concerned about whether an Article I appointed bankruptcy judge may exercise federal judicial power in an adversary proceeding to quiet title on the issue of whether, as a matter of federal law, the property at issue is property of the bankruptcy estate as arising under the Bankruptcy Code. That is not a federal jurisdiction issue, but merely one of which judicial officer of the district court enters the final orders and judgment.

The Trustee further contends that since the divorce action has been long pending in state court, it is better for the Trustee to venture into that action (which appears to be stale and not prosecuted for years) rather than into either the bankruptcy court or district court which is not burdened with the general jurisdictional matters of the state court judges.

The Trustee contends that the State "Superior Court" is familiar with the Debtor and her ex-husband, and therefore is a superior forum. The Trustee does not identify for the court who the family law trial judge is, and whether he or she has actually litigated matters relating to this property of the estate (as asserted by the Trustee and Debtor). It is not uncommon in state court for judges to draw a "tour of duty" in the family law division, cycling out when that tour comes to an end.

Interestingly, the only issue at dispute is whether property at issue is community property, and therefore as a matter of federal law property of the bankruptcy estate, or property of Corrigan. The bankruptcy judge will not be asked on to determine the dissolution rights of the Debtor and her ex-husband or their ongoing support obligations, only the narrow issue of whether the property at issue was community property or Corrigan's property.

The Trustee also states that he will engage Debtor's state law counsel to represent the Trustee in that litigation. The selection of such counsel is the Trustee's choice, and there is logic to that decision. However, the Trustee provides the court with no clear facts or logic as to why, on this issue, such counsel cannot try that matter in federal court.

Corrigan directs the court to the more than two-year old order in this case resolving Corrigan's attempts to drag the bankruptcy Trustee into state court, which the Trustee fought. The Trustee then reached an agreement, which was memorized in the Stipulation and order thereon. In addition to the court ordering a procedure so that the Trustee could have control over the Tahoe Property and that the full rights and powers of the Trustee arising under the Bankruptcy Code could be given full force and effect, the court, as **Stipulated by the Parties**, further ordered,

> "13. Pettengill's claims against Corrigan and any other claims reasonably related to property of the bankruptcy estates of either Pettengill or Stanislav Lazutkine ("Lazutkine"), (collectively, the "Estate Property Claims") shall be heard by this Court.
> ...
> 16. The Parties may use information and documents discovered by Corrigan, Pettengill and/or Lazutkine in connection with the aforesaid Dissolution Proceedings or in either of the debtors' pending bankruptcy cases, in prosecuting and defending the Estate Property Claims in this Court or the Personal Claims in the Dissolution Proceedings in the Family Court. All objections as to the use of the information and documents are preserved."

Order, p. 4:3-5; Dckt. 185.

To the extent that there could be a bona fide dispute as to whether a determination of whether property is property of the bankruptcy estate, as arising under 11 U.S.C. § 541, is a core matter for which the bankruptcy judge issues the orders and final judgment, by their Stipulation the Trustee and Corrigan stipulated to the bankruptcy judge issuing such orders and final judgment. *Wellness International Network, Ltd. v. Sharif*, ___ U.S. ___, 135 S. Ct. 1932 (2015); *Executive Benefits Insurance Agency v. Arkison*,

134 S. Ct. 2165 (2014); *Stern v. Stern v. Marshall*, 562 U.S. 462, 86 S. Ct. 467, 15 L. Ed. 2d 391 (2013), and *Langenkamp v. Culp*, 498 U.S. 42 (1990); and *Katchen v. Landy*, 382 U.S. 323 (1966).

Contrary to what is argued now, as stated in the court's Civil Minutes from the February 6, 2014 hearing on the Motion to approve the Trustee-Corrigan Stipulation, the Chapter 7 Trustee affirmatively wanted to avail himself of the federal court jurisdiction and the bankruptcy court to litigate the estate's rights and interests against Corrigan. Civil Minutes, Dckt. 186.

The Response of the Trustee to Debtor's opposition to the Settlement is very clear, with the Trustee stating,

> "Contrary to Pettengill's contention that her "scheduled claim of ownership in Corrigan has not yet been resolved and is at issue in the family law case" (Opposition, 2:12-13) (which is emblematic of her improper prosecution of the family law proceedings after the conversion of the within case and the appointment of a trustee), all of Pettengill's non-exempt assets and claims belong to the estate. **The Stipulation provides for the Trustee to litigate issues regarding property of the estate in this Court.**"

Reply, p. 2:8.5-13.5; Dckt. 173.

The court in the prior order has stated that the determination of the rights and interest in the disputed property **Shall** be determined in this bankruptcy court. The Trustee and Corrigan stipulated that the rights and interests in the disputed property **Shall** be determined in this bankruptcy court. Now, the Trustee seeks to have this court abstain, or abdicate, its responsibility and leave the parties to whatever may happen in state court because now, two years later, the Trustee thinks that he wants to litigate in State Court.

The Trustee does not seek to have this court vacate its prior order. The Trustee does not seek to have this court formally invalidate the Stipulation upon which the Order was issued.

Trustee Belief That State Law Issues Predominate and Federal Law Issues Are Secondary

In the Points and Authorities the Trustee directs the court to the Ninth Circuit ruling in *In re Tucson Estate, Inc.*, 912 F.2d 1160 (9th Cir. 1990), for the proposition that if there is an imminent state court trial on state law issues, the federal court should abstain. Trustee further contends that since it is state law which determines the ownership of the property, whether community property or the property is owned by Corrigan Finance, then there are no federal issues or federal concerns with respect to the litigation.

These arguments miss the mark by a wide margin. There is a federal question, the application of 11 U.S.C. § 541 which automatically makes all

property of the Debtor, including all community property in which Debtor has an interest, property of the bankruptcy estate. When structuring the interplay of federal and state law, Congress has very carefully considered property issues and state law domestic dissolution matters.

Federal Court Jurisdiction For Bankruptcy Cases
Arising Under, Arising In, and Related To Matters

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to, abstain from hearing matters though federal court jurisdiction under § 1334 may exist. *See* 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c)(1),

> (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. *See Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *affrm. Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

"[A]bstention implicates the question of whether the bankruptcy court should exercise jurisdiction, not whether the court has jurisdiction... The act of abstaining presumes that proper jurisdiction otherwise exists." *Krasnoff v. Marchack (In re Gen. Carriers Corp.)*, 258 B.R. 181, 189-90 (B.A.P. 9th Cir. 2001) (citation omitted). The Ninth Circuit has identified the following factors in deciding whether to abstain from a Title 11 proceeding:

> (1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of the applicable law; (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6)the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

> (7) the substance rather than form of an asserted "core" proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of [the bankruptcy court's] docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and (12) the presence in the proceeding of nondebtor parties.

In re Jones, 410 B.R. 632, 640-41 (Bankr. D. Idaho 2009)(citing *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir.1990) (quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex.1987)). Rule 5011 of the Federal Rules of Bankruptcy Procedure requires a request for the exercise of discretionary abstention to be brought by motion. See Fed. R. Bankr. P. 5011(b).

One of the principal areas of law in which the Supreme Court has directed that the lower courts carefully consider the exercise of federal court jurisdiction arises with respect to domestic relation (family law) matters. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 12 (2004).

> "Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, see, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 432-434, 80 L. Ed. 2d 421, 104 S. Ct. 1879 (1984), in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts."

Id. at 13.

Congress has addressed this in the bankruptcy context by carefully excepting the "family law" issues which are not, absent extraordinarily circumstances, will not be the subject of federal judicial proceedings. In 11 U.S.C. § 362(b)(2) the personal, state concern, family law issues which are excepted from the automatic stay. Conspicuously absent from this exception are issues in determining what is property of the bankruptcy estate.

Congress has gone even further in making it clear that determinations of what is property of the bankruptcy estate is a "federal issue" is found in the establishment of federal court jurisdiction for bankruptcy cases, and matters arising under the Bankruptcy Code, arising in bankruptcy cases, and related to bankruptcy cases. In 28 U.S.C. § 1334(e) Congress provides,

> "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction–
>
> (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327."

In determining whether a federal judge should abstain from a determination of what is property of the bankruptcy estate, significant weight must be given to Congress' grant of exclusive jurisdiction first to the federal court.

Utilizing the *In re Tucson Estates* multi-factor analysis, the court finds:

(1) The effect or lack thereof on the efficient administration of the estate if a Court recommends abstention	This Chapter 7 case, in which the Trustee is to collect and reduce to money property of the estate as expeditiously as possible [(11 U.S.C. § 704(a)(1)] has been pending for more than two years, without prosecution of the estate's rights (whatever they may be) in the property. The Motion does not allege (nor is it stated in the points and authorities) why a State Court family law trial can be conducted more efficiently than a trial in this court. The Motion does not allege that any trial is set or that there is a guaranteed trial date (as opposed to merely trial setting date in the future). The court notes that in the bankruptcy courts in this Division, once the parties have diligently completed discovery, a firm trial date can be set within three months.
(2) The extent to which state law issues predominate over bankruptcy issues	The Trustee argues that since a determination of whether the property is property of the estate turns on application of state law, then there are no federal issues and only state law issues. This is not accurate and misses the point. If the mere fact that state law must be determined for abstention to be proper, then a federal judge would abstain for almost ever objection to a claim, as the vast majority of claims filed in bankruptcy cases are based on state law.

(3) The difficulty or unsettled nature of the applicable law	Trustee offers no contention that a determination of whether the property is community property or owned by Corrigan Finance presents any difficult or unsettled state law. To the contrary, this issue is one that can commonly arise is simple debt collection litigation. When creditor obtains a judgment against one spouse but not the other, and property is owned by the non-debtor spouse, the court addresses the issue in post-judgment proceedings. There is no “complex” family law litigation or determination of the extensive rights and duties of one spouse to the other arising under California martial law. It is a simple determination of real property ownership.

(4) The presence of a related proceeding commenced in state court or other nonbankruptcy court	The Trustee points to the family law litigation which has been pending since 2011 as the related proceeding that Trustee asserts is the preferred, more efficient forum than the federal court. However, no explanation is given as to how, in 2016, five years later, that state court litigation is dragging on. Further, why, after six years, the state court could swiftly and promptly adjudicate the simple issue of title to the property. The information provided in the Points and Authorities and the declaration of Salarno (Dckt. 255) indicates that the State Court proceeding might not be one in which the narrow and limited issue of who owns the property can be promptly and swiftly determined. The State Court proceedings have included contempt proceeding for Debtor's ex-husband failing to comply with orders of the court. However, no litigation is stated as pending for a determination of the issue of ownership of the property. It appears that dragging the simple issue of ownership of the property into the state court proceedings involving all of the 11 U.S.C. § 362(b)(2) issues and contempt proceedings, may well lead to confusion about why and how the ownership interests and rights might be determined. The State Court judge might be mislead into believing that the "ownership" of the property, as that term is used in 11 U.S.C. § 541, is determined after the State Court judge divides the property so as to equalize assets, liabilities, sanctions, and the "equities" of the dissolution.

(5) The jurisdictional basis, if any, other than 28 U.S.C. § 1334	There is no other basis than arising under 11 U.S.C. § 1334, including the exclusive grant of federal court jurisdiction arising under 11 U.S.C. § 1334(e). Additionally, the Trustee and Corrigan Finance has expressly consented in writing, and as embodied in the order of this court, to a determination of those issues by the bankruptcy judge. There is not an issue of whether such matters must be determined by an actual Article III judge of the District Court rather than an Article I bankruptcy judge. Even if such an issue existed, the Federal Rules of Bankruptcy Procedure and Local District Court Rules provide for an efficient and promptly process by which the trial is conducted, proposed findings of fact and conclusions of law are made by the bankruptcy judge, and then de novo review is made by the District Court judge, who would then enter a final judgment on non-core matters (if consent had not been given for the bankruptcy judge entering the final judgment on a non-core matter).
(6) The degree of relatedness or remoteness of the proceeding to the main bankruptcy case	A prompt determination is at the core of the Trustee's ability to expeditiously administering this bankruptcy estate. It is not a mere peripheral issue, but holds up the entire bankruptcy case.
(7) The substance rather than form of an asserted "core" proceeding	The Trustee and Corrigan Finance have consented, to the extent that determination of property of the bankruptcy estate is not a core matter, to the bankruptcy judge making all orders and the final judgment determining whether the property is property of the estate.
(8) The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court	The application of state law to determine the application of 11 U.S.C. § 541(a) cannot be severed.
(9) The burden of [the bankruptcy court's] docket	There is no "burden" on the bankruptcy court's docket. Determination of property of the bankruptcy estate is one of the core functions of a bankruptcy judge.

(10) The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties	The Trustee and Corrigan Finance have already stipulated to the litigation taking place in the bankruptcy court. If the Trustee and Trustee's counsel were not well know for their integrity and professionalism, one might think that seeking to have the court abstain was an attempt to forum shop or welsh on the Stipulation.
(11) The existence of a right to a jury trial	As of this time, no party has indicated that they want a jury trial. The court cannot identify any litigation commenced in this court by the Trustee or Corrigan Finance seeking to assert their respective rights in the Property.
(12) The presence in the proceeding of nondebtor parties	The only non-debtor, non-trustee party would be Corrigan Finance, which has consented to the ownership rights being determined in the bankruptcy court.

May 5, 2016 Hearing

Based on the pleadings filed, no good grounds have been shown to modify the stay. No good grounds have been shown to vacate the order issued pursuant to the stipulation of the Trustee. No good grounds have been shown for this court to abstain (abdicate) from properly exercising federal jurisdiction to determine the issue of whether property is property of the bankruptcy estate. However, the court also considers the arguments of counsel at the scheduled hearing.

At the May 5, 2016 hearing, the Trustee explained **xxxxxxxxxxxxxxxx.**

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 Permissive Abstention and/or Relief from Automatic Stay having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Permissive Abstention and/or Relief from Automatic Stay is **xxxxxxxx**.

7. 14-29284-E-7 CHARLES MILLS
DNL-20

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CHARLES FREDELL MILLS AND LAURA MILLS
4-14-16 [379]

Tentative Ruling: The Motion for Approval of Compromise 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 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, creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

The Motion for Approval of Compromise 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 Approval of Compromise is granted.

Kimberly Husted, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Charles Mills ("Debtor") and Laura Mills ("Debtor's Sister") (collectively known as "Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising as to the Debtor's claimed exemptions, the selling of the Pinehurst Property, and household furnishings.

Among the assets of the estate are the following:

1. Real Property known as 9285 Pinehurst Drive, Roseville, California ("Pinehurst Property")

2. Various sports memorabilia, including sports jerseys, football helmets, and autographed sports equipment, more particularly described in Debtor's amended Schedule B, filed December 10, 2014 (collectively known as "Memorabilia"

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 382):

A. The Trustee's Objection to Exemptions against the Pinehurst Property, the memorabilia, the Slot Machine, and the Juke Box shall be sustained. The Debtor waives any and all claims of exemption available under any applicable law against the Pinehurst Property, the Memorabilia, the Slot Machine, the Juke Box, and the Art (collectively known as "Personal Property")

B. The Debtor waives any and all claims against the Personal Property and any sale proceeds resulting from the Trustee's sale of the Personal Property, except to the extent such sale proceeds are included in any surplus distribution available to the Debtor under 11 U.S.C. § 726(a)(6). The Debtor shall turn over the Personal Property to the Trustee within 15 calendar days of entry of Bankruptcy Court order approving the settlement.

C. The Debtor waives any and all claims against the Pinehurst Property and any sale proceeds resulting from the Trustee's sale of the Pinehurst Property, except to the extent such sale proceeds are included in any surplus distribution available to the Debtor under 11 U.S.C. § 726(a)(6). The Debtor shall be allowed to reside at the Pinehurst Property, rent free, on condition that:

1. All fixtures, lighting/chandeliers, drapes, window coverings, and built in shelving remain at the Pinehurst Property for the benefit of the bankruptcy estate (the Debtor shall be allowed to remove and retain the refrigerator)

2. The Debtor voluntarily vacates the Pinehurst Property, the earlier of close of escrow on the Trustee's sale of the Pinehurst Property or on June 30, 2016; and

3. The Debtor cooperates with the Trustee's efforts to market and sell the Pinehurst Property, including making the Pinehurst Property available for showings upon at least 24 hours notice, making the Pinehurst Property available for open houses upon at least 7

calendar days' notice, and executing any necessary escrow documents in conjunction with the Trustee's sale of the Pinehurst Property.

D. Effective upon entry of the bankruptcy court order approving the settlement, the Debtor's turnover of the Personal Property to the Trustee as required under the settlement, and the Debtor's vacating of the Pinehurst Property as required under the settlement, the estate's interest in the Wedding Ring and the Larry Way Property shall be deemed abandoned to the Debtor pursuant to 11 U.S.C. § 554. The Trustee shall cooperate in executing any documentation reasonably necessary to confirm abandonment of the Wedding Ring and the Larry Way Property.

E. The Trustee, on the one hand, and the Debtor and Debtor's Sister, on the other hand, exchange mutual releases with respect to the Exemption Objection, the Pinehurst Property, the Larry Way Property, the Personal Property, and any funds received by Trustee or the Debtor from the Trustee's sale of Rua Esperanza. Debtor's Sister expressly waives any administrative claims she has asserted or could assert against the bankruptcy estate, including any administrative claims arising from any post-petition mortgage payments or expenses incurred with respect to the Larry Way Property.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

The Trustee asserts that this factor weighs in favor of settlement. While the Trustee is confident in her position, the ultimate result of litigation is unknown. The Trustee's objection under the agreement will be sustained and the estate will be in a position to administer the Pinehurst Property and the Personal Property. With respect to the Larry Way Property, the Trustee understands that if the Trustee were to succeed on the exemption objection, the Debtor may switch his exemptions to the Larry Way and other litigation interest. The terms of the settlement allows for the reasonable and fair selling of assets and interests.

Difficulties in Collection

The Trustee asserts that this factor weighs in favor of settlement because the estate could be burden by the additional delay and expenses the estate would have to incur in obtaining access and possession of the Pinehurst Property and the Personal Property.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor, Settlor's relatives, and document production requests of third parties will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

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

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

The court notes that this case has had its fair share of contentious matters, ranging from conversion to objection to exemptions. In light of the extra ordinary facts of the case, the terms of the settlement agreement provide for the sound administration of the estate's property in a manner that expeditiously and fairly provides for the Trustee, the Debtor, and the

estate. In the Trustee's judgment, while she recognizes that there may be equity in the Larry Way Property, she determined that the terms of the agreement, in the aggregate, provides more benefit to the estate than would be litigating each individual matter. The settlement agreement includes provisions in order to ensure the Debtor's cooperation with the selling of the estate's property.

The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Kimberly Husted, Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Charles Mills and Laura Mills ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 382.

8. 16-22282-E-7 GEORGE UPTON **MOTION TO IMPOSE AUTOMATIC STAY**
O.S.T.
4-27-16 [25]

Tentative Ruling: The Motion to Impose Automatic Stay 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 Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 2, 2016. By the court's calculation, 3 days' notice was provided

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

The court determines that no automatic stay has gone into effect with the filing of this bankruptcy case pursuant to 11 U.S.C. § 362(c)(4)(A).

George Dallas Upton, III, Debtor, commended this bankruptcy case on April 12, 2016. On April 25, 2016, Debtor filed a Motion seeking a determination that the automatic stay is in effect in this bankruptcy case. Because the Debtor is prosecuting this case in pro se, the court is

conducting a more detailed review of the issues presented and legal principals involved so that Debtor may be well prepared at the hearing. The Motion alleged in pertinent part:

A. "I, George Dallas Upton III, and requesting this hearing to make sure that the Automatic Stay, 11USC 362(a) is in effect."

B. "There was a judgment that was entered against me, in Superior Court, on April 17, 2016."

C. "The attorney, in the above case, was notified of the filing of the BK petition, but continued to still go forward with the hearing."

D. "1 am making sure that the automatic stay is in effect in regards to this BK case."

Motion, Dckt. 25.

Debtor also filed an *ex parte* Motion to Shorten Time so that a hearing could be conducted on the above Motion. The *ex parte* Motion to Shorten Time alleges in pertinent part:

A. "This motion is to be made on the basis that there was another bk case that was filed but was dismissed due to the paperwork being received at the office one day late."

B. "I just want to make sure that the Automatic Stay is in effect for my case."

C. "Attached to this application is a copy of the motion for Automatic Stay, which can be filed and servced [sic] upon the creditors immediately upon the granting of this order."

Ex parte Motion, Dckt. 29.

In the *ex parte* Motion to Shorten Time, Debtor references having filed at least one prior bankruptcy case.

PRIOR BANKRUPTCY FILINGS BY DEBTOR

A review of the court's files discloses the prior bankruptcy cases filed by Debtor which have been pending and dismissed, and one Chapter 7 case which is still pending, in the one-year period prior to April 12, 2016:

Chapter 7 Case No. 16-21004	Filed.....February 23, 2016 Dismissed.....March 7, 2016
Chapter 7 Case No. 15-26355	Filed.....August 11, 2015 Dismissed.....Pending

Chapter 7 Case No. 15-90083	Filed.....January 30, 2015 Dismissed.....June 10, 2015

Thus, in the one-year period preceding the April 12, 2016 filing of this case, Debtor has had two cases which were pending and dismissed.

Pending Chapter 7 Case

Debtor and Debtor's assets are already the subject to a pending Chapter 7 case. Bankr. E.D. Cal. 15-26355. The court in that case (the Hon. Christopher D. Jaime) denied without prejudice a motion by Debtor to extend the automatic stay in that case. 15-26355, Dckt. 25. That motion was denied without prejudice due to "insufficient and inappropriate service." *Id.* Federal Rule of Bankruptcy Procedure 1015(a) provides that the court may consolidate two different bankruptcy cases pending for the same debtor in the District. For the case to which this case may be consolidated, the court has denied extending the stay.

Prior Cases Filed and Dismissed Within One-Year Period Prior to April 12, 2016 Filing of Current Case

Debtor has had two bankruptcy cases which were pending and dismissed within the one-year period prior to the commencement of the current case: Prior Chapter 7 Case No. 15-90083, Dismissed on June 10, 2015; and Prior Chapter 7 Case No. 16-21004, dismissed March 7, 2016. The prior cases being dismissed within the one-year period prior to the filing of this case brings into play the statutory provisions of 11 U.S.C. § 362(c)(4)(A), which provides:

> (c) Except as provided in subsections (d), (e), (f), and (h) [not applicable to subparagraph (c)(4)] of this section–
>
> (4) (A) (I) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [not applicable to the current case filing], the stay under subsection (a) shall not go into effect upon the filing of the later case;....

Thus, it appears that there is no automatic stay which has, or can, go into effect in the current case.

Debtor is not left without possible relief, as 11 U.S.C. § 362(c)(4)(B) provides that the court may impose a stay, if the Debtor, **by clear and convincing evidence**, can rebut the statutory presumption that the filing of the current case, in light of the prior pending and dismissed cases, is in bad faith. 11 U.S.C. § 362(c)(4)(D). Debtor has not requested that the court impose a stay.

No evidence has been presented to the court with the present Motion. Debtor does not even allege as to why the court should find that this fourth

filed Chapter 7 case can be filed in good faith.

In reviewing the Docket for Case no. 15-26355, the court notes Debtor filed a Motion to Extend Automatic Stay in that case. 15-26355, Dckt. 20. A statement (not a declaration under penalty of perjury) is attached to the motion in which Debtor asserts:

A. Debtor lives with his son and fiancé in Stockton, California.

B. Debtor wants to extend the automatic stay until January 16, 2016.

C. Debtor wants to extend the automatic stay until January 16, 2016, to allow them to move to a new house. Debtor references there being a pending unlawful detainer.

D. Debtor states that due to the holidays (motion filed on December 28, 2016), moving has been difficult.

Motion to Extend Automatic Stay; *Id.* at 2-3.

Related Bankruptcy Filings

Debtor is not a stranger to the court, having filed multiple earlier cases. The earliest is 13-27216, which was filed on May 28, 2013 and dismissed on September 5, 2013. In that case, the court discussed that Debtor's cases were related to multiple prior bankruptcy filings by April Dawn Gianelli, Debtor's significant other at the time. 13-27216; Civil Minutes, Dckt. 76. The court's files show that Ms. Gianelli has filed ten cases since 2005, which consists of:

A. One cases in 2013:

1. Chapter 7 No. 13-23345

a. Filed.....March 13, 2013

b. Dismissed.....August 7, 2013

B. Two cases in 2012:

1. Chapter 7 No. 12-37035

a. Filed.....September 21, 2012

b. Dismissed.....January 8, 2013

2. Chapter 7 No. 12-27743

a. Filed.....April 23, 2012

b. Dismissed.....September 12, 2012

C. Two cases in 2011:

1. Chapter 13 No. 11-36909

a. Filed.....July 8, 2011

b. Dismissed.....September 16, 2011

2. Chapter 13 No. 11-21143

a. Filed.....January 14, 2011

b. Dismissed.....April 1, 2011

D. Two Cases in 2010:

1. Chapter 7 No. 10-39164

a. Filed.....July 21, 2010

b. Dismissed.....January 7, 2011

2. Chapter 13 No. 10-26720

a. Filed.....March 18, 2010

b. Dismissed.....July 14, 2010

E. One Case in 2009:

1. Chapter 13 No. 09-32653

a. Filed.....June 19, 2009

b. Dismissed.....February 17, 2010

F. One Case in 2005:

1. Chapter 7 No. 05-39406

a. Filed.....October 14, 2005

b. Discharge Entered.....March 2, 2006

In connection with Ms. Gianelli's bankruptcy case 13-23345, the U.S. Trustee filed an Adversary Proceeding seeking an injunction barring her further bankruptcy filings. Adv. Proc. 13-2090. Judgment was granted the U.S. Trustee against the Debtor in that Adversary Proceeding. The conduct of Ms. Gianelli in filing bankruptcy cases in the name of this Debtor is reviewed by the court in its Order to Show Cause, and May 31, 2013 Civil Minutes. 13-27216, Dckts. 18 and 37.

DISCUSSION

Due to Debtor's repeated filing and failure to prosecute the bankruptcy cases in the one-year period preceding the filing of this case, no automatic stay went into effect with the filing of this case. 11 U.S.C. § 362(c)(4)(A).

Giving the Debtor, prosecuting this case in pro se, the benefit of the Debtor, the court reviews the allegations, files in this case, and files in Debtor's prior cases to determine if there could be clear and convincing evidence that the current case has been filed in good faith.

The records in Debtor's bankruptcy cases show, by clear and convincing evidence, that Debtor did not file this bankruptcy case in good faith. Debtor has failed to rebut the statutory presumption arising under 11 U.S.C. § 362(c)(4)(D).

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

1. Why was the previous plan filed?

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

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

As the court discussed supra, the Debtor is no stranger to the bankruptcy courts. The Debtor, at this moment, has two pending bankruptcies in this district.

Pursuant to 11 U.S.C. § 362(c)(4), the automatic stay never went into effect upon the filing. The Debtor's Motion does not rebut the presumption of bad faith. In fact, the Debtor's Motion fails to allege any factual basis for the court or any other party in interest to determine whether the imposition of the automatic stay is proper. The Debtor does not include any declaration explaining the change in circumstances to justify that the instant case will be prosecuted in good faith and is viable when there have been multiple failed attempts by the Debtor.

11 U.S.C. § 362(c)(4)(A) enacted by Congress which provides that under the specified circumstances, "the stay under subsection (a) shall not go into effect...." Congress did not limit that provision to the stay as it applies to the Debtor. The automatic stay, in its entirely, did not go into effect.

Nothing provided for by the Debtor has sufficiently rebutted the presumption of bad faith with clear and convincing evidence. Rather, the Debtor has merely filed a Motion with the court, requesting that the automatic stay be "confirmed to be in effect," but does not disclose the Debtor's prior case history nor the fact that the Debtor has a second pending case in this District. Debtor provides no argument as to how the filing of this bankruptcy case, while a prior Chapter 7 case is pending, has been filed in good faith and for any bona fide reason permitted under the Bankruptcy Code.

The court determines that no automatic stay has gone into effect with the filing of this case. Further, the court denies a request, to the

extent believed by Debtor to be stated in the Motion, to impose an automatic stay, Debtor having failed to rebut the presumption of bad faith. 11 U.S.C. § 362(c)(4)(D).

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 request for Determination of Automatic Stay in this Case and any request to impose the automatic stay to the extent implicitly implied in the Motion filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court determines that no automatic stay went into effect upon the filing of this case. 11 U.S.C. § 362(c)(4)(A).
>
> **IT IS FURTHER ORDERED** that the court denies a request, to the extent believed by Debtor to be implicitly implied in the Motion, to impose an automatic stay, Debtor having failed to rebut the presumption of bad faith. 11 U.S.C. § 362(c)(4)(D).