



**The Motion to Compel Abandonment is granted.**

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

The Motion filed by Jeanne Ann Russell (“Debtor”) requests the court to order Susan K. Smith (“the Chapter 7 Trustee”) to abandon property identified as Debtor’s business, Energy 4 Life, a sole proprietorship and business assets of Energy 4 Life, including:

<b>Asset</b>	<b>Value / Exemption</b>
Massage Table, Lamps, Artwork, Pillows, Small Tables, Massage Oils	\$400.00 / C.C.P. §703.140(b)(5)

(“Property”). The Declaration of Jeanne Ann Russell has been filed in support of the Motion and values the Property at \$400.00. Dckt. 12.

The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

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

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

The Motion to Compel Abandonment filed by Jeanne Ann Russell (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as:

Energy 4 Life, a sole proprietorship
Massage Table, Lamps, Artwork, Pillows, Small Tables, Massage Oils

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Susan K. Smith (“Trustee”) to Jeanne Ann Russell by this order, with no further act of the Trustee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

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**The hearing on the Motion to Dismiss is continued to 10:30 a.m. on June 25, 2020, to afford Debtor the opportunity to attend the continued meeting on June 10, 2020.**

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Manuel M. Valim and Norma Cecilia Valim ("Debtors") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on June 10, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 18, 2020. Dckt. 21. Debtor's Counsel asserts that his office was closed due to the "stay at home" order and the continued hearing date for the meeting of creditors was overlooked by his office. *Id.*, ¶ 2. Debtor requests the motion be denied and the debtor and counsel will be available at the continued meeting of creditors. *Id.*, ¶ 3.

## DISCUSSION

The First Meeting of Creditors has been continued to June 10, 2020. The court continues the hearing on this Motion to afford the Debtor the opportunity to appear at the continued meeting, and provide additional time to address any issues that may arise without requiring an appearance at the June 11, 2020 hearing.

As provided in General Order 20-02 (Amended April 16, 2020),

2. For bankruptcy cases with a Continued Initial 341 Meeting, the following **deadlines** set under the Federal Rules of Bankruptcy Procedure are **extended to 60 days after the date the Continued Initial 341 meeting**, whether it is the first announced continued date or an announced subsequent continued date, **is actually first conducted with the debtor(s) present:**<sup>1</sup>

...

b. The deadline under Rule 1017(e) for the United States Trustee to file a motion to dismiss for abuse.

c. The deadline under Rule 4004(a) for the filing of objections to the debtor's discharge under 11 U.S.C. § 727.

d. The deadline under Rule 4007(c) for filing complaints to determine the dischargeability of certain debts under 11 U.S.C. § 523(c). . . .

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

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

The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Susan K. Smith ("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 hearing on the Motion to Dismiss is continued to 10:30 a.m. on June 25, 2020.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Motion to Dismiss is continued to 10:30 a.m. on June 25, 2020, to afford Debtor the opportunity to attend the continued meeting on June 10, 2020.**

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Oscar Fernando Perez Garcia ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on June 10, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 18, 2020. Dckt. 17. Debtor's Counsel asserts that his

office was closed due to the “stay at home” order and the continued hearing date for the meeting of creditors was overlooked by his office. *Id.*, ¶ 2. Debtor requests the motion be denied and the debtor and counsel will be available at the continued meeting of creditors. *Id.*, ¶ 3.

## DISCUSSION

The First Meeting of Creditors has been continued to June 10, 2020. The court continues the hearing on this Motion to afford the Debtor the opportunity to appear at the continued meeting, and provide additional time to address any issues that may arise without requiring an appearance at the June 11, 2020 hearing.

As provided in General Order 20-02 (Amended April 16, 2020),

2. For bankruptcy cases with a Continued Initial 341 Meeting, the following **deadlines** set under the Federal Rules of Bankruptcy Procedure are **extended to 60 days after the date the Continued Initial 341 meeting**, whether it is the first announced continued date or an announced subsequent continued date, **is actually first conducted with the debtor(s) present:**<sup>1</sup>

...

b. The deadline under Rule 1017(e) for the United States Trustee to file a motion to dismiss for abuse.

c. The deadline under Rule 4004(a) for the filing of objections to the debtor’s discharge under 11 U.S.C. § 727.

d. The deadline under Rule 4007(c) for filing complaints to determine the dischargeability of certain debts under 11 U.S.C. § 523(c). . . .

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

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

The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Susan K. Smith (“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 hearing on the Motion to Dismiss is continued to 10:30 a.m. on June 25, 2020.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 2, 2020. By the court’s calculation, 38 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Extend Deadline to File Reaffirmation Agreement is **XXXXX**.**

Gina Willis (“Debtor”) filed this Motion on March 2, 2020. Dckt. 19. In her Motion, Debtor requests an extension of the deadline to file Reaffirmation Agreements of twenty-one (21) days for creditors American Honda Finance and JP Morgan Chase Bank.

Debtor argues both agreements were executed by her and her counsel and were mailed to the addresses on the Agreements. Debtor further argues American Honda Finance and JP Morgan Chase Bank failed to file the Agreements but will execute new ones upon the extension of the deadline.

## DISCUSSION

11 U.S.C. § 524 provides in part that a Debtor may file a reaffirmation agreement any time before the granting of the discharge. *See* 11 U.S.C. § 524(c)(1). Here, Debtor has already been granted a discharge. Debtor’s discharge was granted on January 10, 2020. Debtor’s Motion documents that there is no Reaffirmation Agreement made prior to the discharge. In order for Debtor to file said reaffirmation

agreements, Debtor would have to file a request to vacate the discharge, and then file the agreements.

Moreover, according to Debtor's Motion the deadline to submit Reaffirmation Agreements was January 6, 2020. Debtor filed the instant motion on March 2, 2020, almost two months after the deadline had expired. A deadline once expired cannot be extended.

While Debtor's Motion states with particularity factual reasons why the Reaffirmation Agreement were not timely filed, no legal authorities are provided for the court to resurrect an expired time period for the filing of reaffirmation agreements.

Debtor cites to Federal Rule of Bankruptcy Procedure 4008 which states the deadline for filing of reaffirmation agreements that has been imposed by the U.S. Supreme Court in enacting that Rule. Fed. R. Bankr. 4008(a). The Rule continues, allowing the bankruptcy court to "enlarge" the time to file a reaffirmation agreement. *Id.*

While allowing the court to "enlarge" the deadline for filing, it does not vitiate the statutory requirements placed by Congress in 11 U.S.C. § 524(c)(1) that the reaffirmation agreement "[o]nly if - (1) such agreement was made before the granting of the discharge under section 727, 1141, 1192, 1228, or 1328 of this title . . . ." Debtor having received a discharge on January 1, 2020 and the two Reaffirmation Agreements being fully executed at an unknown date for the American Honda lease (American Honda not dating when they agreed to the reaffirmation), and May 22, 2020 for the JP Morgan Chase Bank obligation secured by Debtor's residence. Thus, it appears that no matter what filing deadline magic the court may manufacture, the statutory deadline imposed by Congress is the challenge.

It appears that the solution to Debtor's dilemma is for the court to vacate the discharge order in this case, authorize the filing of Reaffirmation Agreements at any time prior to June 1, 2020, and then have the Clerk of the Court re-enter a discharge for the Debtor after June 1, 2020.

At the hearing **XXXXXXXXXX**

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

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

~~The Motion to Extend Deadline to File Reaffirmation Agreement having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is **xxxxxxx**.~~



HONDA LEASE TRUST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 21, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

**The Motion for Relief from the Automatic Stay is **granted**.**

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Honda Civic, VIN ending in 8517 ("Vehicle"). The moving party has provided the Declaration of Adrian Lopez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Christina Carmen Jaramillo ("Debtor"). Debtor is the Lessee of the Vehicle.

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$670.76 in post-petition payments past due. Declaration, Dckt. 21. Movant also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of \$1,341.52. *Id.*

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

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$18,261.57 (Declaration, Dckt. 21), while the value of the Vehicle is determined to be \$15,000.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report. The NADA Report showing clean retail value for \$15,900.00. Exhibit 3, Dckt. 22.

According to Movant, Debtor voluntarily surrendered the Vehicle on April 30, 2020 as per her Statement of Intention. Declaration, ¶ 7, Dckt. 21. *See also* Dckt. 7.

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

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

### **11 U.S.C. § 362(d)(2)**

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

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

## **Request for Waiver of Fourteen-Day Stay of Enforcement**

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Honda Lease Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Honda Civic, VIN ending in 98517 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 20, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Sugar Workers Union No. 1 ("Creditor") against property of the debtor, Gurdial Singh Pegany ("Debtor") commonly known as 1402 Humbolt Dr., Suisun City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,200.35 Exhibit 1, Dckt. 46. An abstract of judgment was recorded with Solano County on November 12, 1997, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$317,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$201,803.66 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$120,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gurdial Singh Pegany (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of California and Hawaiian Sugar Company and Sugar Workers Union No. 1, United States District Court Northern District of California, Case No. C-96-2516, recorded on November 12, 1997, Document No. 1997-00076973, with the Solano County Recorder, against the real property commonly known as 1402 Humbolt Drive, Suisun City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 20, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Capital One Bank USA N.A. ("Creditor") against property of the debtor, Gurdial Singh Pegany ("Debtor") commonly known as 1402 Humbolt Drive, Suisun City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$17,890.14. Exhibit 1, Dckt. 51. An abstract of judgment was recorded with Solano County on January 3, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$317,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$201,803.66 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$120,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption

of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gurdial Singh Pegany (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Capital One Bank USA N.A., California Superior Court for Solano County Case No. FCM161047, recorded on January 3, 2019, Document No. 201900000346, with the Solano County Recorder, against the real property commonly known as 1402 Humbolt Drive, Suisun City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. [20-21743-A-7](#)  
[HSM-4](#)

PATH LABS, LLC, A  
DELAWARE LIMITED  
Eric Schwab

**MOTION TO EMPLOY TRANZON  
ASSET STRATEGIES AS  
AUCTIONEER(S)  
AND/OR MOTION TO SELL  
5-14-20 [58]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Employ is granted.**

**The Motion to Sell property of the estate by auction is granted.**

Kimberly J. Husted ("Trustee") seeks to employ Tranzon Asset Strategies ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to liquidate and sell the estate's interest in the assets by auction.

Trustee argues that Auctioneer's appointment and retention is necessary to sell the estate's interest in the office equipment, supplies, home furniture, and vehicles listed in detail in Exhibit 1 of the Auction Agreement ("Assets"). Dckt. 63. Under the Agreement, Auctioneer is to advertise and conduct an online auction. In exchange, the estate is responsible for sale-related expenses, which are estimated to be \$11,475.00.

The Trustee will pay a commission of 10% on all sales to the Auctioneer, and the Auctioneer will be entitled to charge an additional buyer's premium of 10%. The Trustee will also pay a



commission of 10% for any successful pre-auction sales for the vehicles listed in Exhibit 1.

In substance, the Auctioneer's compensation, both the commission paid by the Trustee and the payment made directly by the buyer (which necessary comes from the amount that a buyer would otherwise bid to purchase the property) is estimated to be approximately \$10,000.00 to \$15,000.00, not including expenses. Such may be appropriate for an auction sales proceeds of approximately \$90,000 to \$135,000.00.

Tiffany Cook, a Vice President of Tranzon Asset Strategies, testifies that Auctioneer has been retained by Trustee under the terms of Auctioneer's Agreement to sell the Assets. Dckt. 60. Tiffany Cook testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Tranzon Asset Strategies as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 63. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

### **Trustee's Request for Authority to Conduct Auction**

The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property assets contained in Exhibit 1 of the Auction Agreement ("Assets").

Trustee proposes the sale be made via online auction with Tranzon Asset Strategies as the Auctioneer. Trustee states that the Assets are not encumbered and proceeds, net of selling of costs, will inure to the estate.

### **Creditor's Objection**

The creditor, Lucent Pathology Partners, Inc. ("Creditor") filed a limited Objection to the Trustee's Motion to Employ and Motion to Sell on June 4, 2020. Dckt. 70. Creditor believes that

Exhibit 1 does not identify all of the Debtor's assets as Debtor's Schedules had not been filed as of the filing date of Creditor's Objection. Debtor filed Schedules on June 5, 2020. Dckt. 73.

Furthermore, Creditor is interested in purchasing certain discrete items listed in Exhibit 1 and other potential assets of the Debtor not identified in Exhibit 1 (collectively, the "Items"). Creditor proposes allowing it, and potentially other third parties, the ability to purchase Items as a group through the Trustee as opposed to individually through the online auction.

## **DISCUSSION**

The Motion seeks to sell all of the assets of the bankruptcy estate (what had been the assets of this limited liability company debtor) by auction. Creditor advises the court that the Debtor has not filed Schedules and believes that more assets exist.

Creditor states that some of the assets that appear to be undisclosed it seeks to purchase, but the Opposition does not disclose the purported undisclosed assets that are property of the bankruptcy estate. Creditor then suggests that the undisclosed assets that it does not disclose should be added to the list of what the Trustee is authorized to sell.

On June 6, 2020, the Debtor filed its Schedules A/B. Dckt. 73. Schedule A/B lists pages and pages of office equipment, office furniture, six vehicles, and nonspecific claims for "software yet to be trademarked." The court does not know what "new" assets have been disclosed on the list of property to be sold identified on the six page Exhibit 1 to the Auction Agreement filed with the Motion (Dckt. 63).

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property is not encumbered, and proceeds will inure to the estate after accounting for selling costs.

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 and Motion to Sell filed by Kimberly J. Husted ("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 Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) the property of the Estate identified as the assets contained in Exhibit 1 of the Auction Agreement filed as Exhibit A, Dckt. 63.

**IT IS FURTHER ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Tranzon Asset Strategies as Auctioneer for

Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 63.

**IT IS FURTHER ORDERED** that compensation in the amount of 10% of the gross sales proceeds and a 10% commission for any successful pre-auction sales for the vehicles listed in Exhibit 1 to be paid by the Trustee are authorized. Additionally, the Auctioneer may collect an additional 10% “buyer’s premium” directly from the buyers, of which the Auctioneer may retain the 10% Buyer’s premium on the first \$150,000 of aggregate gross sales proceeds, with all amount in excess thereof paid to the bankruptcy trustee. This is without prejudice to the auctioneer seeking payment of all or a portion of the Buyer’s premium paid on the aggregate sale proceeds in excess of \$150,000.00.

The above percentage fees are subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Establish Notice and Administrative Procedures is granted.**

Chapter 7 Trustee, Geoffrey Richards (“Trustee”) as trustee for the bankruptcy estate of Kenneth Lee Steers and Lielanie Oliva Steers (“Debtor”), requests an order establishing notice and administrative procedures such that notice of those proceedings described in Federal Rule of Bankruptcy Procedure (“Rule”) 2002(a)(2), (3), and (6), shall be limited pursuant to a limited service list (“Limited Service List / List”) to be established by the Trustee.

**DISCUSSION**

Trustee argues that the Limited Service List is necessary due to the particular facts in this case. According to Trustee, there are approximately 900 to 1,000 pages of creditors, with approximately 3,000 mailable parties entitled to notice of many proceedings in the Debtor’s case. Providing all pleadings and other papers filed in Debtor’s case has created a large economic and administrative burden on the estate. Trustee seeks to establish notice and administrative procedures to alleviate the burden on the estate.

## Proposed Notice and Administrative Procedures

Trustee proposes the following:

- A. The Trustee seeks to have a Limited Service List in this Case consisting of:
- (1) Office of the United States Trustee, Region 17,
  - (2) Trustee,
  - (3) Trustee's Counsel,
  - (4) Debtor,
  - (5) Debtor's Counsel,
  - (6) Creditors with secured claims listed on any preliminary title reports in the Trustee's possession for real property assets of the estate, and on UCC-1 Financing Statements naming the Debtors, on file with the California Secretary of State,
  - (7) Persons who have formally appeared and requested service pursuant to Rule 2002,
  - (8) Persons and entities who have filed proofs of claims, and
  - (9) the Internal Revenue Service, the United States Attorney, California Attorney General's Office, corresponding state agencies, and other governmental agencies to the extent required by the Rules and the Local Rules.
- B. Additionally, any person may request to be included in the Limited Service List by filing a request for notice with the court, either by electronic filing or by submitting a paper copy, and serving a copy on counsel for the Trustee.
- C. Trustee will update the Limited Service List on a monthly basis during this case, to include persons or entities who have made a written request to be included on the Limited Service List. Trustee will file with the court a notice of the update Limited Service List in the event there is a change to the List.
- D. The Limited Service List will clearly identify interested parties and their counsel who participate in the court's ECF system.
- E. Any person giving notice to the Limited Service List must serve, (1) all persons or entities listed on the most recent List, (2) all persons and entities who have filed request to be on the List, and (3) any creditor or person or entity whose interests are likely to be affected directly by the matter of which notice is being given.

- F. Serving party must file with the court an affidavit or certificate of service and an attached list of persons or entities served not more than 3 days after the date service is made. The affidavit or certificate may state all persons or entities on the List were served, at the addresses and email addresses on the list, in lieu of identifying each person and entity on the List, in which case, it shall indicate the date of the Limited Service List used. The affidavit or certificate must include all other persons and entities served and the addresses or e-mail addresses at which they were served.
- G. The matters as to which notice may be limited under the procedure proposed herein are those for which notice is required under Rule 2002(a)(2), (3), (6) and Rule 2016-2:

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

(a) Twenty-one-day notices to parties in interest. Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

...

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

...

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000; . . . .

Rule 2016-2. Compensation of Chapter 7 Trustees

(a) Every application for compensation of a Chapter 7 trustee in the categories set forth in paragraph (b) shall be presented by motion noticed and set for hearing pursuant to LBR 9014-1. . . .

(b) Categories. The procedure specified in paragraph (a) shall be followed for requests that satisfy any of the following criteria:

- 1) Fee requests seeking \$10,000.00, or more;
- 2) Cases in which the trustee seeks fees exceeding the amount

remaining to pay unsecured priority and general unsecured claims;

3) Cases in which there is a “carve out” for the estate or a “short sale”;

4) Cases where the trustee has operated the business of the debtor; or

5) Cases in which the court specifically orders such a fee application.

H. For purposes of serving this Motion, Trustee notes there are ten (10) UCC-1 Financing or Continuation Statements (or Employment Development Department Tax Lien Notices) naming the Debtor that do not name the purportedly secured parties, and are not scheduled as secured creditors on Debtor’s Schedule D. Trustee proposes to serve this Motion and all other related motions set for hearing on June 11, 2020 on the addresses for the agents, as listed on the Financing Statements, with a copy of the Financing Statement attached to the proof of service.

I. Within ten (10) business days following entry of the court’s order granting this Motion, the Trustee will file with the court the initial Limited Service List.

The Trustee’s authority for this relief is stated to be Federal Rule of Bankruptcy Procedure 2004(m), which provides:

(m) Orders designating matter of notices. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

As discussed in 9 Collier on Bankruptcy, Sixteenth Edition, ¶ 2002.14, this includes specifying the persons to whom the notices are to be provided.

This limitation on “notice” as required under Federal Rule of Bankruptcy Procedure 2002(a)(2), (3), and (6) does not alter the “service” requirements for the Trustee or any party in interest against whom relief is sought.

Based on the evidence before the court, the court determines that the proposed terms for notice and administrative procedures are necessary. A review of the Claims already filed in this case, which was filed on December 4, 2019, lists 44 Proofs of Claim. Further, a review of the Creditors listed in this case can be estimated at over 3,000 creditors from all corners of the world, and that postage alone is expected to cost approximately \$1,500.00 per mailing. Thus, the court finds that the proposed terms will alleviate the burden on the estate and are thus in the best interest of the Estate.

At the hearing, **XXXXXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Abandon is granted.**

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

The Motion filed by Geoffrey Richards (“the Chapter 7 Trustee”) requests that the court authorize him to abandon property identified as:

Quantity	Asset	Value
Bedroom 1		
1	Full size mattress and bedframe	\$100.00
1	Rocking chair	\$10.00



2	Night stand	\$10.00
2	Non-working lamps	\$5.00
1	Dresser	\$20.00
1	Small-size dresser	\$20.00
1	Fan	\$10.00
1	Wall mirror	\$10.00
Bedroom 2		
1	Twin bunk bed with beddings	\$35.00
1	Desk with drawers	\$15.00
1	Chair	\$10.00
Bedroom 3		
1	Twin size trundle	\$40.00
1	Lamp	\$10.00
1	Night stand	\$20.00
1	Plastic shelves with 6 shelves	\$5.00
Living Room		
2	Couches	\$20.00
2	Chairs	\$20.00
2	Rest foot/ottoman	\$10.00
1	Bear decorated glass coffee table	\$50.00
1	40 inch flat screen t.v.	\$50.00
1	Rug	\$5.00
1	Mini bar console	\$25.00
Kitchen		
1	4-seat round dining table, turns in to game card table	\$300.00
3	Bar chairs	\$30.00
2	Rugs	\$10.00
Garage		

1	Miscellaneous hand tools, maintenance tools, and supplies	\$100.00
Laundry Room		
	Washer	\$50.00
	Dryer	\$50.00
Outside		
1	Propane generator	\$2,000.00
1	Tuff shed storage building	\$500.00

(“Property”). The Declaration of Geoffrey Richards has been filed in support of the Motion and provides testimony that the value of the Property is \$3,535.00. *See* Dckt. 92.

The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Geoffrey Richards (“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 Abandon Property is granted, and the Property identified as:

Full size mattress and bedframe
Rocking chair
Night stand
Non-working lamps
Dresser
Small-size dresser
Fan
Wall mirror
Twin bunk bed with beddings
Desk with drawers

Chair
Twin size trundle
Lamp
Night stand
Plastic shelves with 6 shelves
Couches
Chairs
Rest foot/ottoman
Bear decorated glass coffee table
40 inch flat screen t.v.
Rug
Mini bar console
4-seat round dining table, turns in to game card table
Bar chairs
Rugs
Miscellaneous hand tools, maintenance tools, and supplies
Washer
Dryer
Propane generator
Tuff shed storage building

is abandoned to Kenneth Lee Steers and Lielanie Oliva Steers by this order, with no further act of the Chapter 7 Trustee required.

11. [19-27507-A-7](#) **KENNETH/LIELANIE STEERS** **MOTION TO EMPLOY TRANZON**  
[HSM-5](#) **Walter Dahl** **ASSET STRATEGIES AS**  
**AUCTIONEER(S)**  
**AND/OR MOTION TO SELL**  
**5-21-20 [93]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 21, 2020. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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**The Motion to Employ is granted.**

**The Motion to Sell is granted.**

Geoffrey Richards (“Trustee”) seeks to employ Tranzon Asset Strategies (“Auctioneer”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to liquidate and sell the estate’s interest in the assets by auction.

Trustee argues that Auctioneer’s appointment and retention is necessary to sell the estate’s interest in the real property and personal property assets identified as:

A. Real Property

Property Address / APN	County	State	Zip Code	Acres
<b>Shaffer Property</b>				
025-020-007-000	Modoc County	CA	96108	160
025-020-012-000	Modoc County	CA	96108	160
025-020-016-000	Modoc County	CA	96108	2.6
The Shaffer Property includes a manufactured home with an address of 6340 County Road 133C, New Pine Creek, California.				
<b>Perry Property</b>				
025-020-023-000	Modoc County	CA	96108	216.2
025-020-025-000	Modoc County	CA	96108	36.6
025-020-026-000	Modoc County	CA	96108	74.4

B. Personal Property

Description	VIN / ID Number
2007 Arctic Cat Snowmobile	4UF07SNW07T106275
2007 Arctic Cat Snowmobile	4UF07SNW37T106397
2016 Dodge Ram Pickup	1C6RR7JM1GS316830
2012 Lund Boat	LBBJC017A212
2012 Shore Boat Trailer (under Lund boat)	1MDA5AP14CA495735
2014 Pro Line 20 Express Boat	PLCAB004H314
2016 Karavan Trailer	5KTBS2422FF532005
2008 Flat Deck Equipment Trailer	4JUBF18278N031790
Echo 14' Utility Trailer, VIN	5PSBA141071000543
2008 Kawasaki Teryx LE 750 Off Road Vehicle W/Snow Tracks, Model KRF750C	

(collectively, "Assets"). Dckt. 99. Under the Agreement, Auctioneer is to advertise, conduct an auction, and prepare all necessary paperwork to transfer title. In exchange, the estate is responsible for sale-related expenses, which are estimated to be \$8,100.00.

The Trustee will pay a commission of 10% on all sales of Personal Property to Auctioneer, and Auctioneer will be entitled to charge an additional buyer's premium of 10% on all sales of Personal Property. Additionally, Auctioneer will be entitled to charge a buyer's premium of 10% on all sales of Real Property, and authorized to offer a commission of 3% of the high bid to a cooperating buyer's broker to be paid through escrow. Lastly, Trustee asserts that a 10% buyer's premium on all sales of Real Property is appropriate given that the Schaffer Property is a very remote, rural property, and Trustee regards the sale of the Schaffer Property and Perry Property as akin to a vacant land sale.

Tiffany Cook, a Vice President of Tranzon Asset Strategies, testifies that Auctioneer has been retained by Trustee under the terms of Auctioneer's Agreement to sell the Assets. Dckt. 95. Tiffany Cook testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Tranzon Asset Strategies as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 99. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

**Trustee's Request for Authority to Conduct Auction**

The Bankruptcy Code permits Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Trustee proposes to sell the Assets identified in Schedule A of the Auction Agreement:

A. Real Property

Property Address / APN	County	State	Zip Code	Acres
<b>Shaffer Property</b>				
025-020-007-000	Modoc County	CA	96108	160
025-020-012-000	Modoc County	CA	96108	160

025-020-016-000	Modoc County	CA	96108	2.6
The Shaffer Property includes a manufactured home with an address of 6340 County Road 133C, New Pine Creek, California.				
<b>Perry Property</b>				
025-020-023-000	Modoc County	CA	96108	216.2
025-020-025-000	Modoc County	CA	96108	36.6
025-020-026-000	Modoc County	CA	96108	74.4

B. Personal Property

Description	VIN / ID Number
2007 Arctic Cat Snowmobile	4UF07SNW07T106275
2007 Arctic Cat Snowmobile	4UF07SNW37T106397
2016 Dodge Ram Pickup	1C6RR7JM1GS316830
2012 Lund Boat	LBBJC017A212
2012 Shore Boat Trailer (under Lund boat)	1MDA5AP14CA495735
2014 Pro Line 20 Express Boat	PLCAB004H314
2016 Karavan Trailer	5KTBS2422FF532005
2008 Flat Deck Equipment Trailer	4JUBF18278N031790
Echo 14' Utility Trailer, VIN	5PSBA141071000543
2008 Kawasaki Teryx LE 750 Off Road Vehicle W/Snow Tracks, Model KRF750C	

Trustee proposes the sale be made via online auction with Tranzon Asset Strategies as the Auctioneer. Trustee states that conducting the sale of assets in this proposed manner will keep administrative expenses to a minimum and allow Trustee to administer the Assets in the most cost-effective manner.

Terms of Sale of Assets

- A. Assets to be sold “as-is,” “where is,” without representation or warranties, express or implied, with respect to such Assets, subject to all liens and encumbrances except those satisfied through the sale or of which the sale is authorized to be free and clear, and except easements, rights of way, covenants, conditions and restrictions of record.
- B. Promptly following the completion of the sales and collection of sale revenues, Tranzon will turn over the gross auction proceeds to the Estate, with the exception of the buyer’s

premiums and sales taxes collected from buyers.

- C. Tranzon shall file with the court a statement of the Assets sold, the name of purchasers, and the price received for the Assets, as required by Federal Rule of Bankruptcy Procedure 6004(f).
- D. Upon conclusion of the auction, escrow through a third-party escrow company will be opened, and Trustee will promptly deposit all documents and instruments necessary to transfer legal title to the buyer.
- E. As it pertains to the real property, Trustee has sole and absolute discretion to accept; the high bidder only becomes the purchaser upon confirmation and acceptance by Trustee and the court.
- F. Trustee reserves the right to accept and decline any and all bids for real property. Trustee will have up to ten business days to accept or decline the high bid.

#### Status of Liens

- A. Personal Property: All Personal Property Assets where the Trustee has obtained a title document are unencumbered and have no liens. However, several of the Personal Property Assets are missing title instruments, which Auctioneer is attempting to research further or obtain duplicates. If the Trustee determines that lienholders are listed on any duplicate title documents, those items of the Personal Property Assets will be removed from the auction.

EDD Lien 1 and EDD Lien 2, as defined below, may have previously encumbered the Personal Property Assets, but have been resolved per Trustee's confirmation.

- B. Real Property: The Real Property Assets are encumbered by the monetary liens described below. For the delinquent property taxes for the Perry Property and Schaffer Property, Modoc County has filed Proof of Claim 4-2, in the secured amount of \$26,627.52 for real property taxes owing through February 29, 2020.

#### 1. Perry Property

- i. Delinquent real property taxes for the three (3) parcels comprising the Perry Property, plus pro-rated amount of any current real property taxes due at closing.
- ii. A Notice of State Tax Lien filed on August 9, 2019, with the California Secretary of State by the State of California Employment Development Department ("EDD"), as Document No. 80774120002, setting for a lien for taxes in the amount of \$31,324.91 ("EDD Lien 1"). Trustee has confirmed via counsel with EDD that it has been paid.
- iii. A Notice of State Tax Lien filed on August 9, 2019, with the California Secretary of State by the State of California EDD, as



Document No. 807751200002, setting for a lien for taxes in the amount of \$131,667.42 (“EDD Lien 2”). Trustee has confirmed via counsel with EDD that it has been paid.

2. Shaffer Property

- i. Delinquent real property taxes for the three (3) parcels comprising the Schaffer Property, plus pro-rated amount of any current real property taxes due at closing.
- ii. Deed of Trust and Assignment of Rents to secure an indebtedness of \$500,000.00 (“Shaffer Note”), dated February 14, 2007, recorded February 20, 2007, (instrument) 2007-0000834-00, Modoc County Official Records, with the beneficial interest currently held by Gary A. Shaffer and Marilyn K. Shaffer, Trustees of The Shaffer Family Trust (“Shaffers”). Per their discussion with Trustee, Shaffers assert that approximately \$456,827.74 was owed on the Shaffer Note as of December 31, 2019, and approximately \$483,602.68 was owed as of May 15, 2020.
- iii. EDD Lien 1, solved as stated under the Perry Property above.
- iii. EDD Lien 2, solved as stated under the Perry Property above.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow for quick disposition of the Assets, the nature of the Assets make it more likely for them to be sold during the summer, and avoid further expenses.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because it will allow Trustee to materially advance the resolution of the Assets and avoid further expenses.

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

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

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

The Motion to Employ and Motion to Sell filed by the Chapter 7 Trustee, Geoffrey Richards (“Trustee ”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) the property of the Estate identified as the assets contained in Schedule A of the Auction Agreement.

**IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Tranzon Asset Strategies as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 99.

**IT IS FURTHER ORDERED** that compensation in the amount of 10% of all sales of Personal Property to be paid by the Trustee are authorized. Additionally, the Auctioneer may collect an additional 10% “buyer’s premium” directly from the buyers on all sales of Personal Property and Real Property. The Auctioneer shall retain the 10% buyer’s premium paid on the first \$XXXXXX of aggregate amount of gross sale proceeds, and the buyer’s premium paid on the aggregate amount of sale proceeds in excess of \$XXXXXX shall be disbursed to the Trustee. This is without prejudice to Auctioneer by further motion seeking to be paid all or a portion of the amount of the buyer’s premium paid to the Trustee.

The above percentage fees are subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

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

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

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

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

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

Douglas M. Whatley, the Chapter 7 Trustee, ("Movant") makes two requests for the court: (1) authorize the settlement of a products liability claim that is property of the bankruptcy estate in this case and (2) authorize payment of the attorneys representing Colleen Claire Schendel ("Debtor") in the class action products liability case, for whom the court has granted authorization to be employed as special counsel for the Trustee. The products liability claim was not disclosed by the Debtor on her schedules and is property of the bankruptcy case.

The claims of the bankruptcy estate, in which Debtor has claimed an exemption, are a products liability claim concerning a medical device implanted in Debtor. Moreover, Trustee seeks authorization to pay the special counsel engaged to prosecute the personal injury/product liability claims. The court approved the application for employment of special counsel on April 21, 2020. See Dckt. 34.

The settlement of the claims, subject to approval by these court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement

Agreement filed as Exhibit C in support of the Motion, Dckt. 39):

- A. The Trustee on behalf of the bankruptcy estate and the Debtor, her spouse, children, and/or heirs, executors and all others claiming under her agree to settle and fully release and discharge the released party from any and all claims, demands, and causes of action.
- B. The consideration received by the Trustee and Debtor represents a complete satisfaction of the claims of the bankruptcy estate and of the Debtor and Debtor will not file any causes of action against the released party in connection with the incident being settled.
- C. In exchange for the full release of claims, the released party will pay a lump sum of \$280,000. (Exhibit E, Dckt. 39).
- D. A Court-ordered MDL assessment of 5% (\$14,000) will be paid out from the proceeds of the settlement.
- E. After attorneys' fees of \$106,400.00, costs of \$7,425.77, and a special master fee of \$377.19, Trustee anticipates the estate will have \$101,797.04 for claims after assessing Debtor's exemption of \$50,000.
- F. Debtor will retain responsibility for bills, costs, and liens arising from the implanted product and all bills, costs, and liens will be paid from the proceeds of the settlement as provided under the applicable Bankruptcy Law, and Debtor shall cooperate to satisfy Governmental Authority Third-Party Payor/Provider liens.
- G. The Debtor will indemnify the released party against any and all claims that can be brought arising from Settlor's claim.
- H. The Debtor, and the Trustee as necessary, will file a request to dismiss the lawsuit with prejudice in favor of the released parties.
- I. Each party shall bear their own attorney's fees and costs.
- J. Released party shall not be deemed as admitting liability.
- K. The agreement and the Master Settlement Agreement (MSA) contain the entire agreement and are contractual.
- L. The parties agree any matters related to the history, background, negotiations, or any discussion of the settlement are to be kept confidential.
- M. Massachusetts law will govern the settlement.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

### **Probability of Success**

It is not practicable for Debtor or Trustee to proceed in the suit against the medical device manufacturer on their own. Many other parties are similarly situated. It is in the best interests of the creditors and Debtor to accept the settlement.

### **Difficulties in Collection**

The funds are immediately distributable to the estate once the settlement is approved.

### **Expense, Inconvenience, and Delay of Continued Litigation**

The estate can immediately receive funds by accepting the settlement versus the Debtor litigating the matter on her own.

### **Paramount Interest of Creditors**

Accepting the settlement is in best interest of the creditors because there is no guarantee they will fare better pursuing the case and may in fact end up with a less favorable outcome.

### **Consideration of Additional Offers**

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

of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the funds from the settlement can be immediately distributed to the estate once approved, and creditors will have the most favorable outcome from the acceptance of the settlement rather than litigating the case further. Dckt. 35. Additionally, Debtor will receive payment of the portion that she has claimed as exempt.

The Motion is granted.

### **Contingency Fee: Litigation Requested**

Movant computes the fees for the services provided as a percentage of the monies recovered for the bankruptcy estate. Movant represented the estate's interest in litigation to prosecute the estate's interest in certain product liability claims related to a 2009 medical device implant, for which Debtor agreed to a contingent fee of 40% of the gross amount after payment of expenses. Through the approval of this motion to employ Counsel, the court approves the contingent fee. Net monies (exclusive of these requested fees and costs) in the amount of \$266,000 was recovered for the bankruptcy estate.

As originally agreed to by the Debtor, the terms for the division of the contingency fee is as follows: 40% contingency fee agreement, amounting to \$106,400 (40% of \$266,000) to be split 50.0% to Aylstock, et al., 25.0% to Chaffin Law Firm, and 25.0% to Pulaski Law Firm, plus recovery of expenses in the amount of \$7,425.77 and a Special Master fee of \$377.19.

### **Contingency Fee: Litigation Allowed**

The court finds that the fees computed on a percentage basis recovery for the estate are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. Upon approval of the settlement and recovery of the monies for the estate, the court will allow Final Fees of \$106,400 and Expenses of \$7,425.77 pursuant to 11 U.S.C. § 330 for these services provided to Trustee by Counsel, subject to the provisions of 11 U.S.C. § 328.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court authorizes Movant to pay Aylstock, et. al, Chaffin Law Firm, and Pulaski Law Firm for their services to the bankruptcy estate. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Approve Compromise filed by Douglas M. Whatley, the

Chapter 7 Trustee , (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between the Trustee, Debtor, and other settling parties as identified in the Settlement Agreement 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 C in support of the Motion (Dckt. 39).

**IT IS FURTHER ORDERED** that Aylstock, et. al, Chaffin Law Firm, and Pulaski Law Firm, special counsel for the Trustee, are allowed the fees and expenses as a professional of the Estate in the following manner:

Aylstock, et. al, Professional employed by Debtor

Fees in the amount of \$53,200.00;

Chaffin Law Firm, Professional employed by Debtor

Fees in the amount of \$26,600.00,

Pulaski Law Firm, Professional employed by Debtor

Fees in the amount of \$26,600.00, and

Expenses of \$3,308.97 disbursed to Aylstock, et. al.

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

13. [20-20972-E-11](#) **ROBERT/SHERRY MCLEAN**  
[RLC-5](#) **Stephen Reynolds**

**MOTION TO SELL FREE AND CLEAR  
OF LIENS AND/OR MOTION FOR  
COMPENSATION FOR COLDWELL  
BANKER KAPPEL GATEWAY REALTY,  
BROKER(S) O.S.T.  
5-13-20 [55]**

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2020. By the court's calculation, 29 days' notice was provided. The court set the hearing for June 11, 2020. Dckt. 59.

The Motion to Sell Property and for Compensation of Broker was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion to Sell Property and for Compensation of Broker is granted.**

The Bankruptcy Code permits Robert Kelly McLean and Sherry Annette McLean, the Chapter 11 Debtors in Possession, ("Debtors in Possession") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Debtors in Possession propose to sell the real property commonly known as 3243 Congressional Circle, Fairfield, California ("Property").

The proposed purchasers of the Property are Vincent Maestri and Julia Maestri, and the terms of the sale are (the full terms of the sale are listed in the Purchase Agreement, Addenda, and the Representative Capacity Signature Disclosure. Exhibit 1, Dckt. 57) :

- A. The sale price is \$790,000 and buyers will make an initial \$20,000 dollar deposit.



- B. Offer and closing date subject to court approval.
- C. The court authorized Pam H Sigel of Coldwell Banker Kappel Gateway (Seller's Broker) to be employed by seller as a broker on May 8, 2020 (Dckt. 51). Movants seek approval to pay a five percent sales commission fee to be split between Seller's Broker receiving 2.5% and Thomas Pope of Pope Real Estate, Inc. (Buyer's Broker) receiving 2.5%.
- D. The kitchen refrigerator, stoves, and other refrigerators are included in the sale, except for the garage refrigerator.
- E. Buyers and sellers do not agree to arbitration.
- F. Buyer will pay the escrow fee, owner's title insurance policy, and an upgraded one-year home warranty plan from Fidelity Home Warranty Plan, the HOA transfer fee.
- G. Seller shall pay for a natural hazard zone disclosure report, smoke alarm and carbon monoxide device installation and water heater bracing if required by law, and county transfer tax.
- H. The liens held by PennyMac and Umpqua Bank will be paid in full from the proceeds of the sale.

### **Proposed Overbidding Procedures**

In the event of overbidding, Debtors in Possession propose the following: the overbidder is required to provide \$20,000 in certified funds and the minimum overbid is \$10,000 greater than the purchase price (at least \$800,000).

### **Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of the lien of Thomas Swain ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee [debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Debtors in Possession have established non-bankruptcy law permits the sale of the property because the liens of creditors PennyMac and Umpqua Bank will be paid in full from the proceeds of the sale.

PennyMac Loan Services, LLC filed a limited objection to the sale on May 7, 2020. Dckt. 48. PennyMac objected on the grounds that the Subchapter V Chapter 11 Plan violates the anti-modification provision (11 U.S.C. § 11235(b)(5)), is not fair and equitable per § 1191(b), infeasible per § 1191(c)(3)(A), and fails to provide sufficient remedies if the Debtors in Possession are unable to sell the property as proposed. *Id.* Debtors in Possession subsequently filed a reply stating the attorney for Debtors in Possession had productive discussions with PennyMac Loan Services LLC and anticipates the drafting of a mutually agreeable order approving the sale. Dckt. 61.

PennyMac Loan Services, LLC filed a conditional response supporting an order to approve the sale on May 28, 2020. Dckt. 65. PennyMac consents to the sale provided they are paid in full from the proceeds of the sale and requests attorney for Debtors in Possession incorporate proposed language into the order to provide for disclosures and a mechanism to resolve disputes between PennyMac and the Debtors in Possession. *See* Dckt. 65, 5: 4-26.

As it pertains to the Swain third priority lien, it is asserted to be avoidable as a preference or fraudulent conveyance as provided in 11 U.S. C. §§ 547 and § 548, and it impairs Debtors' homestead exemption.

It is further asserted that Swain is an insider, with the recording of an abstract of judgment on September 26, 2019. The Debtors in Possession commenced an Adversary Proceeding seeking to avoid the transfer by the recording of the abstract of judgment. Adv. Pro. 20-2097. This bankruptcy case was filed on February 23, 2020 - more than 90 days after the recording the abstract of judgment but less than one year. *See* 11 U.S.C. § 547(b)(4).

As to being an “insider,” the basis for such is not identified in the Motion now before the court. In the Complaint, the basis for asserting that Swain is an insider is stated as:

7. Defendant Thomas Swain owns 49% of KTS Professional Services dba ServPro of Fairfield. Plaintiffs own 51% of KTS Professional Services dba ServPro of Fairfield. Defendant worked in and participated as an owner in KTS Professional Services.

8. Defendant Thomas Swain is an insider as contemplated by 11 USC 101-31.

The term “insider” is defined in 11 U.S.C. § 101(31) to provide that the term “insider” includes (but is not limited to) for an individual:

(31) The term “insider” includes—

(A) if the debtor is an individual—

- (i) relative of the debtor or of a general partner of the debtor;
- (ii) partnership in which the debtor is a general partner;
- (iii) general partner of the debtor; or
- (iv) corporation of which the debtor is a director, officer, or person in control;

The Complaint states that Swain is the minority shareholder in a business in which the Debtors were, and now the bankruptcy estate is, the majority shareholder. It is unclear how the Debtors in Possession assert that Swain is an insider.

With respect to asserting that there has been a fraudulent conveyance (the 11 U.S.C. § 548 relief), the Complaint alleges:

21. The Judgement, Amended Judgement, Abstract of Judgment, UCC-1 and Order for Examination described in paragraphs 9 through 12 amounts to a transfer of property of Plaintiff inasmuch as the acts benefit Defendant to the detriment of creditors. Specifically, the liquidation of Defendant's claim is not objectionable, the transformation from unsecured to secured claim status is objectionable and avoidable.

20-2097; Complaint ¶ 1, Dckt. 1. The paragraphs 9 through 12 reference above describe Swain: (1) obtaining a judgment, (2) obtaining an abstract of judgment, (3) filing a UCC-1, and (4) obtaining an Order of Debtor examination for the judgment. It is unclear what *bona fide* basis exists for asserting that a creditor obtaining a judgment and then enforcing that judgment is a "fraudulent conveyance."

The final ground is that the sale may be made free and clear because Debtors in Possession assert that the lien impairs the Debtors' homestead exemption. It is unclear which "only if" ground specified by Congress in 11 U.S.C. § 363(f) is satisfied by this assertion.

It may be that Swain's secured claim may be valued pursuant to 11 U.S.C. § 506(a). It may be that Swain's lien may be avoided pursuant to 11 U.S.C. § 522(f).

At the hearing **XXXXXXXXXX**

#### **Assertion that "Silence is Consent"**

Debtors in Possession also assert that the failure to oppose the sale and free is deemed "consent," without regard to the legal merits of the requested relief pursuant to 11 U.S.C. § 362(f). Debtors in Possession trot out some bankruptcy court cases from the 1980's and 1990's for that proposition. The Debtors in Possession offer no Circuit Court of Appeal authority for such proposition.

The Supreme Court (relatively) recently addressed the concept of "if I ask the court and they

do not oppose, then they must have ‘consented’ and the court can grant me the relief even though I have not shown that I am entitled to it” in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010). In discussing the granting of relief pursuant to 11 U.S.C. § 1325(a), the Supreme Court noted that such required the court to determine that the statutory requirements were satisfied when it states, “the court shall confirm a plan if – [then stating the requirements].”

Here, the sale free and clear powers granted to the court are stated in 11 U.S.C. § 363(f) (emphasis added) by Congress to be exercised as follows:

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

...

(2) such entity consents; . . .

As opposed to 11 U.S.C. § 1325(a) which has a “mere” “if” condition, here Congress amplified it with the qualifier “only.” There must be a finding that the creditor consented - not merely that the creditor has allowed his default to be taken. Moving back to *Espinosa*, the Supreme Court has made it clear that merely because party can get a default entered does not mean that the federal court blindly gives the party whatever they have, in their wildest fantasy have asked for from the court.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because both PennyMac and Umpqua Bank will be paid in full from the proceeds of the sale.

With respect to the interests of Swain **XXXXXXXXXX**

Debtors in Possession have estimated that a 5 percent broker’s commission from the sale of the Property will equal approximately \$39,500. The commission will be split evenly between Seller’s Broker receiving 2.5% (approx. \$19,750) and Buyer’s Broker receiving 2.5% (approx. \$19,750). As part of the sale in the best interest of the Estate, the court permits Debtors in Possession to pay the broker an amount not more than 5 percent commission.

Therefore, **XXXXXXXXXX**

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

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

The Motion to Sell Property filed by Robert Kelly McLean and Sherry Annette McLean, Chapter 11 Debtors in Possession, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Robert Kelly McLean and Sherry Annette McLean, Chapter 11 Debtors in Possession, are authorized to sell pursuant to 11 U.S.C. § 363(b) and 362(f) to Vincent Maestri and Julia Maestri (“Buyer”), the Property commonly known as 3243 Congressional Circle, Fairfield, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$790,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 57, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- ~~C. The Property is sold free and clear of the lien of Thomas Swain, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The Debtor in Possession shall hold the sale proceeds, after payment of the closing costs, other secured claims, and amount provided in this order, pending further order of the court.~~
- D. The Chapter 11 Debtors in Possession are authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 11 Debtors in Possession are authorized to pay a real estate broker’s commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. 2.5 % shall be paid to Chapter 11 Debtors in Possession’s broker Pam H Sigel of Coldwell Banker Kappel Gateway and 2.5% shall be paid to Buyer’s Broker Thomas Pope of Pope Real Estate, Inc.

14. [19-27269-A-7](#)  
[PLC-1](#)

MARIA ESPITIA RAMIREZ  
Gabriel Lieberman

MOTION FOR SANCTIONS FOR  
VIOLATION OF THE AUTOMATIC  
STAY AND/OR MOTION FOR  
SANCTIONS FOR  
VIOLATION OF THE DISCHARGE  
INJUNCTION  
4-2-20 [16]

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

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

**Below is the court's tentative ruling.**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

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

**The Motion for Sanctions for Violation of the Automatic Stay is granted, with the court awarding \$1,000.00 in emotional distress damages, \$2,800.00 in attorney's fees, \$25.00 in costs, and \$1,750.00 in punitive damages.**

The present Motion for Sanctions for Violation of the Discharge Injunction provided by 11 U.S.C. § 524(a)(2) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Maria Guadalupe Espitia Ramirez (“Movant”). The claims are asserted against Daniel L. Clinciu (“Respondent”).

## REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

- A. Movant’s bankruptcy case commenced in November 2019, and rented property from Respondent at 7331 Dave Street, Sacramento, CA 95828.
- B. Respondent claims that Movant damaged his property while renting it, and filed a Small Claims case in August 2019, obtaining a money judgment as a result in the amount of \$4,936.31.
- C. Respondent filed an Adversary Proceeding on February 13, 2020, but failed to file an appropriate complaint and failed to pay the filing fee.
- D. The court ordered that Respondent pay the fee in full, and file an appropriate complaint on or before March 5, 2020.
- E. On February 24, 2020, Debtor received a discharge, and on February 26, 2020 notified Respondent of said discharge.
- F. Respondent filed a Motion to Extend Time on March 5, 2020 in the Adversary Proceedings, which the court granted.
- G. On March 17, 2020 Respondent caused a Wage Garnishment to be served through the Sacramento County Sheriff. On March 26, 2020 he filed another Motion to Extend Time, which the court again granted.
- H. On March 30, 2020 Movant received notice that her wages were being garnished by Respondent. She brings this motion to stop Respondent’s blatant violation of the discharge order.

Debtor filed a Memorandum of Points and Authorities in support of the Motion. Dckt. 16. Movant has also provided the Declaration of Maria Guadalupe Espitia Ramirez in support of the Motion. Dckt. 19. The Declaration states that upon receiving an email indicating the Wage Garnishment, Movant felt “sick to [her] stomach and anxious.” *Id.* ¶ 4. When she downloaded the documents a few days later, she emailed them to her attorney. *Id.* The days in between she was “anxious all weekend” and felt “physically ill.” *Id.* ¶ 5. Movant is “really upset that he can get away with abusing the system like this.” *Id.* ¶ 7. Further, she is concerned that she will be unable to afford her rent with the Wage Garnishment in place. *Id.* ¶ 6.

Movant has provided two properly authenticated exhibits in support of the Motion. Dckt. 18. The first is the Earnings Withholding Order (Wage Garnishment), indicating that the Sacramento County

Sheriff's Office would begin collecting within 10 days of Wells Fargo (Movant's employer) receiving the order. This Order was issued by the Sacramento County Superior Court for the total amount of \$4,936.31.

The second Exhibit is an electronic "screenshot" of Movant's payroll mobile application, showing April 4, 2020, as the start date of the garnishment. Movant's employer is to withhold 25% of Movant's weekly wages until the total amount of \$4,936.31 is paid.

## LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

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

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.



## Relevant Bankruptcy Code Sections

Section 523 of 11 U.S. Code covers exceptions to discharge, namely:

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

...

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

11 U.S.C. § 523(a).

Section 524 is the Code section that provides the basic protections of the bankruptcy discharge, regardless of the chapter in which the discharge is obtained. Specifically,

Section 524(a)(2) provides that a discharge granted a debtor under section 727, 944, 1141, 1228 or 1328 operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, including telephone calls, letters and personal contacts, to collect, recover or offset any discharged debt as a personal liability of the debtor, whether or not discharge of the particular debt has been waived by the debtor. Subsections 524(a)(3) and (b) establish the effect of the discharge injunction on community property.

4 Collier on Bankruptcy P 524.01 (16th 2019).

### Enforcement of the Discharge Injunction

Civil contempt, imposed under the court's section 105 powers, is the normal sanction for violations of the discharge injunction. A proceeding to enforce the discharge injunction is

a core proceeding under section 157(b)(2)(O) of title 28, and courts should readily reopen a closed bankruptcy case to ensure that the essential purposes of the discharge are not undermined. Often, a major issue in such a proceeding is whether the debt is one that was discharged, a question that sometimes turns on whether it was a prepetition claim as defined by section 101.

4 Collier on Bankruptcy P 524.02 (16th 2019)

In *Taggart v. Lorenzen*, the Supreme Court held that the standard for finding contempt of the discharge injunction is the same as for other injunctions—a finding that there was no fair ground for believing that the conduct did not violate the injunction. The Court rejected the holding of the Court of Appeals for the Ninth Circuit that a party with a good faith subjective belief that it was not violating the injunction could not be held in contempt. The Court described its standard as an objective standard generally based on a reasonable belief about whether conduct was permitted:

This standard is generally an objective one. We have explained before that a party’s subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable. As we said in *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 69 S. Ct. 497, 93 L. Ed. 599 (1949), “[t]he absence of wilfulness does not relieve from civil contempt.” *Id.*, at 191, 69 S. Ct. 497, 93 L. Ed. 599.

We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith. See *Chambers v. NASCO, Inc.*, 501 U. S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Thus, in *McComb*, we explained that a party’s “record of continuing and persistent violations” and “persistent contumacy” justified placing “the burden of any uncertainty in the decree ... on [the] shoulders” of the party who violated the court order. 336 U. S., at 192–193, 69 S. Ct. 497, 93 L. Ed. 599. On the flip side of the coin, a party’s good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction.

*Taggart v. Lorenzen*, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (2019).

### **Actual Damages**

The basic measure of damages for violation of the automatic stay is the amount of economic loss the debtor has suffered as the proximate result of the defendant’s violation. The court takes into account the fair market value of the property that was disposed of in violation of the automatic stay.<sup>1</sup>

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<sup>1</sup> *In re Kaufman*, 315 B.R. 858, 866 (N.D. Cal. 2004).

Actual damages for violation of the automatic stay include emotional distress damages.<sup>2</sup> For a debtor to state a claim for emotional distress damages, the individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between the significant harm and the violation of the automatic stay.<sup>3</sup> Medical evidence of emotional distress is not required; the testimony of family members, friends, and co-workers is sufficient to establish an emotional distress claim.<sup>4</sup> In some cases no corroborating evidence is required. An example cited in *Dawson* is where the egregious conduct was the creditor pretending to hold a gun to the debtor's head.<sup>5</sup> Additionally, the court in *Dawson* stated that even when the conduct was not egregious, the court could award emotional distress damages where the circumstances make it obvious that a reasonable person would suffer emotional harm, such as the emotional distress of having to cancel a child's birthday party because the debtor's checking account was frozen.<sup>6</sup>

Congress has also provided that the "actual damages" for an individual debtor seeking to redress a violation of the automatic stay "shall" include "costs and attorneys' fees." 11 U.S.C. § 362(k)(1). The costs and attorneys' fees include those incurred in the individual debtor in having to prosecute the action to recover the damages caused by the violation of the stay even after the violation has been abated, but the violating party fails to pay the then existing damages (as with the violation now before the court).<sup>7</sup>

### **Punitive Damages**

In addition to actual damages, 11 U.S.C. § 362(k)(1) permits the recovery of punitive damages "in appropriate circumstances." The Ninth Circuit has cautioned that punitive damages are only appropriate if there has been some showing of "reckless or callous disregard for the law or rights of others."<sup>8</sup> The bankruptcy court is given considerable discretion in granting or denying punitive damages

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<sup>2</sup> *Dawson v. Wash. Mut. Bank (In re Dawson)*, 390 F.2d 1139, 1148 (9th Cir. 2004).

<sup>3</sup> *Id.* at 1149.

<sup>4</sup> *Id.*, citing *Varela v. Ocasio (In re Ocasio)*, 272 B.R. 815, 821-22 (B.A.P. 1st Cir. 2002) (holding that testimony of debtor's wife was sufficient to support an award of medical damages without medical testimony).

<sup>5</sup> *Dawson*, 390 F.2d at 1149 (citing *Wagner v. Ivory (In re Wagner)*, 74 B.R. 898, 905 (Bankr. E.D. Pa. 1987)).

<sup>6</sup> *Id.* (citing *United States v. Flynn (In re Flynn)*, 185 B.R. 89, 93 (S.D. Ga. 1995) (\$5,000.00 award of emotional distress damages because 'it is clear that the appellee suffered emotional damages' when she was forced to cancel her son's birthday party because her checking account was frozen)); *see also Sternberg*, 595 F.3d at 943.

<sup>7</sup> *America's Servicing Company v. Schwartz-Tallard (In re Schwartz Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). This even includes the right to attorneys' fees for having to defend an award of damages pursuant to 11 U.S.C. § 362(k) on appeal. *Id.*

<sup>8</sup> *Bloom*, 875 F.2d at 228.

under 362(k).<sup>9</sup> Punitive damages are properly awarded to punish unlawful conduct and deter its repetition.<sup>10</sup>

A debtor entitled to actual damages does not automatically qualify under § 362(k)(1) to recover punitive damages. The court must decide whether the circumstances of each case warrant punitive damages.<sup>11</sup> When considering an award for damages, the court considers the gravity of the offense and sets the amount of punitive damages to assure that they will both punish and deter.<sup>12</sup> A creditor's good faith or lack thereof is relevant to sanctions under § 362(k)(1).<sup>13</sup> In determining the appropriate amount of punitive damages, the court usually considers the following factors: (1) the nature of the defendants' acts; (2) the amount of compensatory damages awarded; and (3) the wealth of the defendants.<sup>14</sup>

In evaluating the "nature" of the Defendant's acts, the court considers the purpose of the automatic stay and the role it serves in the bankruptcy process. The automatic stay, as stated by Congress, is a fundamental protection given the debtor and creditors.<sup>15</sup> Violations of the automatic stay

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<sup>9</sup> *Id.*

<sup>10</sup> See *Cooper Indus. v. Leatherman Tool Group*, 532 U.S. 424, 432 (2001); *BMW of N. Am. v. Gore*, 517 U.S. 559, 568 (1996);

<sup>11</sup> *Henry v. Assocs. Home Equity Servs. (In re Henry)*, 266 B.R. 457, 481-83 (Bankr. C.D. Cal. 2001).

<sup>12</sup> *Id.*

<sup>13</sup> See *Walls v. Wells Fargo Bank (In re Walls)*, 262 B.R. 519, 529 (Bankr. E.D. Cal. 2001).

<sup>14</sup> *Bauer v. NE Neb. Fed. Credit Union (In re Bauer)* No. EC-09-1281, 2010 Bankr. LEXIS 5096, (B.A.P. 9th Cir. Apr. 8, 2010).

<sup>15</sup> H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) pp. 340-344:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

are not something with which a creditor may trifle. Even when a violation occurs, the creditor can purge the improper conduct and avoid more significant damages by correcting the violation.

The court also considers the proportionality of the punitive damages to the compensatory damages awarded to the Plaintiff-Debtors. The rule in both the Ninth Circuit and in California is that punitive damages must be proportional and be reasonably related to compensatory damages.<sup>16</sup> However, there is no fixed ratio or formula for determining the proper proportion between the two.<sup>17</sup> In a 2004 decision, *State Farm Mutual Auto Insurance Company v. Campbell*, 538 U.S. 408 (2004), the Supreme Court discussed the Constitutional reasonableness requirement in determining the amount of punitive damages. While not setting a maximum ratio between punitive damages and compensatory damages, the Supreme Court stated that punitive damage awards that are a single digit multiple of the compensatory damages are more likely to withstand constitutional scrutiny.<sup>18</sup> The Court in *State Farm* cited to its earlier holding in *BMW of North America v. Gore*<sup>19</sup> that a punitive damage award (that in *Gore* was 500 times the compensatory damages) in excess of four times the compensatory damages might be close to the line of constitutional impropriety.

## DISCUSSION

Debtor's Motion states with particularity the grounds for a claim that both the automatic stay and the discharge injunction have been violated by Respondent. The time line of events can be summarized as follows:

- a. Debtor rented real property commonly known as 7331 Dave Street Sacramento, California from Respondent prior to the commencement of this bankruptcy case.
- b. The rental of the Property terminated prior to the commencement of this bankruptcy case.
- c. Respondent asserted that the had a claim for damages to the Property caused during Debtor's occupancy of the Property prior to the commencement of this bankruptcy case.
- d. Respondent commenced an action in the Superior Court for the County of Sacramento Small Claims Division on August 1, 2019.
- e. Respondent obtained a money judgment in the amount of \$4,936.31 in the Small Claims action on September 6, 2019.

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<sup>16</sup> *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1162-63 (9th Cir. 1987).

<sup>17</sup> *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1024-25 (9th Cir. 1985).

<sup>18</sup> *Cooper Industries v. Leatherman Tool Group*, 532 U.S. at 425.

<sup>19</sup> 517 U.S. at 582.

- f. Debtor commenced this Chapter 7 bankruptcy case on November 22, 2019.
- i. Respondent is listed on the Verification of Master Address List filed by the Debtor. Dckt. 3. The address on the Master Address List for Respondent is the same address as given to the court by Respondent for the Adversary Proceeding he commenced against Debtor (detail information provided below).
- g. On February 13, 2020, Respondent filed a Complaint commencing Adversary Proceeding 20-20145 against the Debtor.
- i. The Complaint states:
- (1) Debtor filed her Chapter 7 bankruptcy case on November 25, 2019. 20-2015; Complaint ¶ 1; 20-2015; Dckt. 1.
  - (2) Respondent is a creditor of Debtor. *Id.*; ¶ 2.
  - (3) Respondent states that pre-petition acts upon which his claim is based against the Debtor. *Id.*; ¶¶ 6, 7, 8, 9, 12, 13, 17.
  - (4) The obligation for the pre-petition claim should be nondischargeable as being willful and malicious conduct which injured the property of Respondent. *Id.*; ¶¶ 21, 22.
  - (5) Respondent “supplemented” the basis for his pre-petition claim and why it should be nondischargeable in a pleading filed on February 14, 2020. *Id.*; Supplement to Complaint, Dckt. 7.
- ii. After multiple extensions of time to pay the filing for a nondischargeability complaint, the Adversary Proceeding was dismissed on May 12, 202.
- h. On February 24, 2020, Debtor was granted her discharge in this bankruptcy case.
- i. Though the discharge was granted on February 24, 2020, Respondent’s Adversary Proceeding asserting that the debt was nondischargeable was not dismissed until May 12, 2020. Though the discharge was not effective as to the claim that was the subject to the Adversary Proceeding until that Adversary Proceeding was dismissed, the automatic stay was in full force and effect. (The Motion clearly requests relief for violation of the automatic stay for the events identified, but at times discusses a “discharge order.”)
- i. On March 17, 2020, Respondent obtained and served through the Sacramento County Sheriff a wage garnishment in enforcing the pre-petition judgment against Debtor’s post-petition wages.

- j. On March 30, 2020, Debtor was given notice that her wages were being garnished pursuant to the pre-petition judgment obtained by Respondent in the Small Claims Court.
- k. On April 2, 2020, Debtor commended this Contested Matter.

## **Actual Damages**

### Emotional Distress

In the Motion, Debtor first seeks recover of emotional damages in the amount of \$5,000.00. Debtor's testimony (Declaration, Dckt. 19) includes feeling ill, anxious, and fearful of her ability to pay her expenses due to the post-petition enforcement of the pre-petition obligation in violation of the automatic stay. The Declaration also appears to testify that some of Debtor's emotional distress relates to Respondent having filed the Complaint for nondischargeability and obtaining extensions of time to pay the filing fee. For a debtor, the angst over a creditor filing a complaint for the nondischargeability of a debt is part of price of filing bankruptcy. If the complaint is improper, relief may be sought in the adversary proceeding, but not as part of a stay violation, as filing such a complaint seeking relief from the automatic stay pursuant to 11 U.S.C. § 523(a)(6) is not a violation of the automatic stay.

In addition to her testimony, Debtor provides as Exhibit 1 (Dckt. 18) a copy of the Earnings Withholding Order issues in Respondent's Small Claims Action, 19SC003197, which is dated May 17, 2020 - well after the November 22, 2019 filing of the bankruptcy case by Debtor and clearly well after Respondent documented having actual knowledge of this bankruptcy case, the February 13, 2020 filing of the Complaint to have the judgment obligation determined nondischargeable.

While having to deal with a complaint for nondischargeability of debt, a debtor does not have to suffer the dual anxiety of a creditor pursuing collection activities that are stayed pursuant to 11 U.S.C. § 362(a). Respondent knew of the bankruptcy case. Respondent was actively (or attempting to) litigate in this case by prosecuting his nondischargeability action - which in and of itself demonstrates an appreciation of the fact that bankruptcy results in a change of the debtor-creditor relationship and ability to exercise rights.

The court, based on the evidence presented, determines that the emotional distress caused by the violation of the stay equates to \$1,000.00 in actual damages.

### Attorney's Fees

In 11 U.S.C. § 362(k) Congress provides for an individual debtor who has suffered a violation of the automatic stay to recover, as part of the debtor's actual damages (not merely a prevailing party recovery of fees and costs) attorney's fees and costs.

While referenced in the Motion, no amount of attorney's fees are stated as actual damages. No evidence has been provided in support of the Motion as to attorney's fees as of the hearing date. Possibly Debtor believed that attorney's fees would only be permitted as prevailing party fees pursuant to Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, 9014.

At this juncture, the court could bifurcate the adjudication of this issue and have further hearings based on supplemental pleadings filed by Debtor and Debtor’s counsel. That will necessarily increase the amount of attorney’s fees and costs. This appears to be a fairly straightforward case, clearly presented by Debtor’s counsel. While in violation of the Stay, Respondent’s conduct was contained to one act.

From a review of the pleadings and the Declaration of Debtor, the court computes the reasonable amount of attorney’s fees to be included as actual damages to be as follows. These are based on experienced bankruptcy counsel having an hourly billing rate of \$400 and being able to effectively do such work as an attorney with such a billing rate.

Task	Hours	Billing Rate	Fees
Meeting With Client and Initial Review	1.5	\$400.00	\$600.00
Drafting Motion, Declaration, Points and Authorities, Notice of Hearing	3	\$400.00	\$1,200.00
Review File for Responsive Pleadings	.5	\$400.00	\$200.00
Preparation for Hearing	1	\$400.00	\$400.00
Attendance at Hearing	1	\$400.00	\$400.00
			=====
			\$2,800.00

Based on the evidence presented, the court grants \$2,800.00 in legal fees. For costs, considering photocopying at \$0.10 a page, postage, and miscellaneous expenses, the court allows an additional \$25.00 for costs.

**Counsel for the Debtor confirmed on the record not only that the above fees and costs are reasonable but that they do not exceed the actual amount which he has billed for this Contested Matter.**

Fees in the amount of \$2,800.00 are reasonable and represent necessary services to address Respondent’s violation of the stay. Awarding them as part of this proceeding, rather than requiring another proceeding, will help limit the amount that Respondent will be obligated to pay.

**Punitive Damages**

The Motion requests punitive damages against the violator in the amount of \$4,936.31, the full amount of the wage garnishment. As discussed above, the purpose of punitive damages is to deter, both by the person committing the acts and other similarly situated persons from violating the stay (committing the improper act).



Here, Respondent clearly knew of the bankruptcy case. He knew that it effected his creditor relationship with Debtor as shown by his commencing a legally sophisticated nondischargeability adversary proceeding. While Debtor having good counsel who was proactive in addressing the violation that helped mitigate the actual damages, that does not give Respondent a pass on punitive damages.

At best for Respondent, his conduct was reckless or callous disregard for the law or rights of Debtor, and appears to be intentional.

The court is not presented with financial information about Respondent. In the Adversary Proceeding he “pleads poverty” and the great financial loss to him caused by Debtor. 2020-2015; Complaint Cover Page, p. 1, Dckt. 1. That does not free him from the punitive damages, though the court considers it in determining the proper amount of punitive damages.

The court determines that \$1,750 in punitive damages is proper. Respondent violated the stay knowing of the bankruptcy case. The actual damages (emotional distress and attorney’s fees) are \$3,550, so the punitive damages are “just” one-half of the actual damages. However, \$1,750.00 is not an insignificant amount, and for this Respondent and others like him in this situation, it is sufficient to deter future conduct and “punish” him for violating the automatic stay.

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 Sanctions for Violation of the Automatic Stay by Maria Guadalupe Espitia Ramirez, Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted.

**IT IS FURTHER ORDERED** that the court finds that Daniel L. Clinciu has willfully violated the automatic stay provisions of 11 U.S.C. § 362(a).

**IT IS FURTHER ORDERED** that Movant is awarded and shall recover from Daniel L. Clinciu \$5,575.00 in damages. These damages consist of \$1,000.00 in emotional distress damages, \$2,800.00 in attorney’s fees, and \$25.00 in actual damages as provided in 11 U.S.C. § 362(k), and \$1,750.00 in punitive damages.

This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

# FINAL RULINGS

15. [20-20506-A-7](#)      **DARYL CHANG**      **MOTION TO DISMISS CASE**  
[UST-1](#)                      **Pro Se**                      **4-20-20 [40]**

**DEBTOR DISMISSED: 5/11/20**

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Dismiss Case having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed by prior order of the court.

AMERICAN HONDA FINANCE  
CORPORATION VS.

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 11, 2020. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

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

**The Motion for Relief from the Automatic Stay is granted.**

American Honda Finance Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Accord, VIN ending in 2318 (“Vehicle”). The moving party has provided the Declaration of Ken Towns to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Harrison Earl Shrader (“Debtor”).

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$1,128.90 in post-petition payments past due. Declaration, Dckt. 18.

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

**DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the

debt secured by this asset is determined to be \$20,959.72 (Declaration, Dckt. 18). Debtor values the Vehicle at \$15,557.00, as stated in Schedules B and D filed by Debtor, while the NADA Valuation Report submitted by Movant states the value of the Vehicle at \$15,150.00.

Movant has possession of the Vehicle, which Debtor voluntarily surrendered on April 27, 2020. Dckt. 18.

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

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

### **11 U.S.C. § 362(d)(2)**

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

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

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by American Honda Finance Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Honda Accord, VIN ending in 2318 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

17. [20-20632-A-7](#) **ALICIA GUZMAN**  
[UST-1](#) **Mark Hannon**

**MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR  
MOTION TO EXTEND TIME TO FILE A  
MOTION TO DISMISS CASE UNDER  
SEC. 707(B)  
5-4-20 [13]**

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and creditors on May 5, 2020. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Extend Deadline to File a Complaint Objecting to Discharge is granted.**

Tracy Hope Davis, the United States Trustee, (“Movant”) moves to extend the deadline to file a complaint objecting to Alicia Chavarrias Guzman’s (“Debtor”) discharge because Debtor has failed to provide information that would reconcile the discrepancies regarding Debtor’s social security identification card as of the date of filing this Motion that were discovered at the meeting of creditors when Debtor provided the Chapter 7 Trustee (“Trustee”) with a social security number different from what was written on the voluntary petition and related filings. Dckt. 15. Debtor's Attorney later informed Trustee that Debtor does not have a social security identification card number. *Id.*

The deadline for filing a complaint objecting to discharge was May 4, 2020. Dckt. 13. The Motion requests that the deadline to object to Debtor’s discharge be extended to August 31, 2020.

The court may, on motion and after a noticed hearing, extend the time for objecting to the

entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on May 4, 2020, on the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to August 31, 2020.

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

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by Tracy Hope Davis, the United States Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the deadline for Movant to object to Alicia Chavarrias Guzman's ("Debtor") discharge is extended to August 31, 2020.

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 24, 2020. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Citibank (“Creditor”) against property of the debtors, Donald Eugene Lang and Melonie Marie Lang (“Debtors”) commonly known as 6005 Woodglade Avenue, Citrus Heights, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,321.94. Exhibit D, Dckt. 24. An abstract of judgment was recorded with Sacramento County on October 10, 2019, that encumbers the Property. *Id.*

A second judgment was entered against Debtor in favor of Creditor in the amount of \$3,519.95. Exhibit E, Dckt. 24. An abstract of judgment was recorded with Sacramento County on November 7, 2019 that further encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$299,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$292,191.00 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 27. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of



\$23,000.00 on Amended Schedule C. Dckt. 27.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Donald Eugean Lang and Melonie Marie Lang ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank, California Superior Court for Sacramento County Case No. 34-2019-00257339, recorded on October 10, 2019, Document No. 201910100892, with the Sacramento County Recorder, against the real property commonly known as 6005 Woodglade Avenue, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**IT IS FURTHER ORDERED** that the judgment lien of Citibank, California Superior Court for Sacramento County Case No. 34-2019-00259513, recorded on November 7, 2019, Document No. 201911070708, with the Sacramento County Recorder, against the real property commonly known as 6005 Woodglade Avenue, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 14, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of the debtor, Kenneth Michael Ventura and Mary Jo Ventura ("Debtors") commonly known as 1804 Portello Way, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,523.65. Exhibit A, Dckt. 35. An abstract of judgment was recorded with Placer County on June 11, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$360,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$286,021.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of \$73,979.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Kenneth Michael Ventura and Mary Jo Ventura (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for Placer County Case No. MCV35353, recorded on June 11, 2012, Document No. 2012-0051682-00, with the Placer County Recorder, against the real property commonly known as 1804 Portello Way, Lincoln, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 14, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Asset Acceptance, LLC ("Creditor") against property of the debtors, Kenneth Michael Ventura and Mary Jo Ventura ("Debtor") commonly known as 1804 Portello Way, Lincoln, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,159.05 Exhibit B, Dckt. 40. An abstract of judgment was recorded with Placer County on January 16, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$360,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$286,021.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of \$73,979.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Kenneth Michael Ventura and Mary Jo Ventura (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Asset Acceptance, LLC, California Superior Court for Placer County Case No. MCV0052283, recorded on January 16, 2013, Document No. 2013-0004896-00, with the Placer County Recorder, against the real property commonly known as 1804 Portello Way, Lincoln, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor and parties requesting special notice on May 7, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against property of the debtor, Steven Lloyd Blankenship ("Debtor") identified as \$599.22, in garnished funds held in custody by the Los Angeles County Sheriff ("Property").

Debtor's Declaration in support of the motion states that the amount held by the Los Angeles Sheriff as of March 12, 2020 is \$599.22. Dckt. 40, ¶ 11. Debtor argues that the amount may have increased as he was due to be paid by his employer on March 13, 2020, the day after this case was filed. *Id.*, ¶ 12.

A Wage Garnishment Order was entered against Debtor in favor of Creditor in the amount of \$36,756.23 on March 9, 2019. Exhibit 3, Dckt. 40.

Pursuant to Debtor's Schedule A, the subject personal property has an approximate value of \$451.72 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$36,756.23 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Steven Lloyd Blankenship ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of GCFS, Inc., California Superior Court for San Mateo County Case No. CLJ507042, against the personal property identified as \$599.22 in garnished funds held in custody by the Los Angeles County Sheriff, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the June 11, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2020. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Compel Abandonment is granted.**

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

The Motion filed by Dorsie Jane Lake (“Debtor”) requests the court to order Sheri L. Carello (“the Chapter 7 Trustee”) to abandon property commonly known as 5368 Otter Pond Way, Rancho Cordova, California (“Property”). The Property is encumbered by the lien of Pennymac Loan Services, securing a claim of \$280,792.00. Debtor has claimed an exemption in the amount of \$175,000.00 pursuant to California Code of Civil Procedure § 704.730(a)(3). Dckt. 1. The Declaration of Dorsie Jane Lake has been filed in support of the Motion and values the Property at \$430,000.00. Dckt. 23.

The Chapter 7 Trustee has no opposition to the relief requested. Trustee’s May 13, 2020 Docket Entry Statement.

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



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

### **CHAMBERS PREPARED ORDER**

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

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

The Motion to Compel Abandonment filed by Dorsie Jane Lake (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 5368 Otter Pond Way, Rancho Cordova, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Sheri L. Carello (“Trustee”) to Dorsie Jane Lake by this order, with no further act of the Trustee required.

WELLS FARGO BANK, N.A. VS.

**Final Ruling: No appearance at the June 11, 2020 Hearing is required.**

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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Chapter 7 Trustee, on April 30, 2020. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

**The Motion for Relief from the Automatic Stay is granted.**

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Milagros Gonzaga Sawyer’s (“Debtor”) real property commonly known as 13450 Windsong Drive, Gulfport, Mississippi (“Property”). The grounds stated with particularity in the Motion include:

- A. Movant’s claim is secured by the Property.
- B. The Value of the Property is \$100,294.00, using the valuation stated by Debtor on Schedule A/B.
- C. Movant computes its secured claim to be (\$108,805.85), and asserts that there is no equity in the property for the Debtor or the bankruptcy estate.
- D. Additionally, Debtor’s Statement of Intention is to surrender this property.
- E. That there being no equity in the property and this being a Chapter 7 case, the Property is not necessary for any effective reorganization.
- F. Movant is not receiving any payments. Additionally, when the costs of sale of the Property after foreclosure are considered (without taking into account the costs of

foreclosure, insurance, maintenance, and security to Movant prior to being able to make a post-foreclosure sale), the claim is significant undersecured.

- G. Movant asserts the right to relief from the automatic stay pursuant to both 11 U.S.C. § 362(d)(1), for cause, and § 362(d)(2).

Movant has provided the Declaration of Tameka Green, a Vice President employed by Movant, in support of the Motion. Dckt. 16. Ms. Green identifies the deed of trust upon which Movant asserts its lien (Exhibit 1) and the promissory note upon which the claim is based (Exhibit 2). Ms. Green testifies as to the amount of the obligation, the delinquent amounts due, and the defaults.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$108,805.85 (Dckts. 14, 16), while the value of the Property is determined to be \$100,294.00, as stated in Schedules A/B and D filed by Debtor.

### 11 U.S.C. § 362(d)(1)

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

Movant makes passing reference to seeking relief under 11 U.S.C. § 362(d)(1). “Secured Creditor is not receiving regular monthly payments, and is unfairly delayed from proceeding with the foreclosure of the subject Property.” Motion, p. 2:21-22. Additionally, that Movant’s claim exceeds the value of the Property and that Movant has resale costs and expenses post-foreclosure. Though Movant does not expressly state what grounds upon which the 11 U.S.C. § 362(d)(1) relief is based, the court will “connect the dots” for this Motion (only this Motion) and infer that Movant intended to state those grounds for the § 362(d)(1) relief.

### 11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C.

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

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

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 13450 Windsong Drive, Gulfport, Mississippi (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the fourteen-day stay of



## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$22,779.51 (Declaration, Dckt. 16), while the value of the Property is determined to be \$12,000.00, as stated in Schedules B and D filed by Debtor.

The Debtor's Statement of Intention provides for the surrender of the Property. Dckt. 1.

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

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

### **11 U.S.C. § 362(d)(2)**

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

Relief pursuant to 11 U.S.C. § 362(d)(2) is granted.

### **Waiver of the Fourteen Day Stay of Enforcement Imposed by the U.S. Supreme Court in Federal Rule of Bankruptcy Procedure 4001(a)(3)**

While stating in the Motion grounds for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2), no reference is made with respect to the fourteen day stay imposed by Federal Rule of Bankruptcy Procedure 4001(a)(3). However, buried in the prayer for relief is a request that the fourteen day stay be waived.

With no grounds being asserted as a basis for this additional relief placed stated with particularity in the Motion, the granting of such relief in which this court sets aside the stay created by the Supreme Court is not proper.

At the hearing **XXXXXXXXXX**

### **Request for Attorneys' Fees**

In the prayer Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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

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

The Motion for Relief from the Automatic Stay filed by Truist Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under its Note and/or Open-End Mortgage and any other beneficiary or trustee, and their respective agents and successors under its Note and/or Open-End Mortgage that is recorded against the real property commonly known as 414 Newton Drive, Newton Falls, Ohio ("Property") to secure an obligation to exercise any and all rights arising under its Note and/or Open-End Mortgage, and applicable nonbankruptcy law to consummate foreclosure proceedings on the property and the right to proceed in unlawful detainer, and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.