UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 13, 2019 at 10:00 a.m.

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1. **19-20037-E-7** **MARTINE PEREZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
APN-1 **Mohammad Mokkarram** **5-16-19 [39]**

GLOBAL LENDING SERVICES LLC
VS.

Final Ruling: No appearance at the June 13, 2019 hearing is required.

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

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

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

Global Lending Services, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Nissan Versa, VIN ending in 2244 ("Vehicle"). The moving party has provided the Declaration of Shaquetta Rabb to introduce evidence to authenticate the documents upon

which it bases the claim and the obligation owed by Martine Pascual Perez ("Debtor").

The Rabb Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $1,291.85 in post-petition payments past due.

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 $17,369.00, as stated in the Rabb Declaration, while the value of the Vehicle is determined to be $12,975.00, as stated in the NADA Valuation Report, which is slightly lower than the value stated by Debtor on Schedule A/B.

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.

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).

Debtor was granted a discharge in this case on June 5, 2019. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant,

and its agents, representatives and successors, and all other creditors having lien rights against the 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.

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 Global Lending Services, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Nissan Versa, VIN ending in 2244 ("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 to the extent the Motion seeks relief from the automatic stay as to Martine Pascual Perez ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.
>
> No other or additional relief is granted.

2. **17-22347-E-11 MET-2** **UNITED CHARTER LLC** **Jeffrey Goodrich** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **5-16-19 [391]**

EAST WEST BANK VS.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Creditor East West Bank ("EWB" or "Movant") seeks relief from the automatic stay with respect to Debtor in Possession, United Charter LLC's (" ΔIP") real property located in Stockton, California, and identified as (1) 1904, 1908, 1912, 1916, 1920, 1928, 1936 Weber Avenue ("Parcel 1 Through 7"); 1881 E. Market Street (Parcel 11, B1 thru B15); 1617 (Parcel 12, A thru D), 1555 (Parcel 14 thru 16); 1531 (Parcel 17), 1523 E. Main Street (Parcel 18) (collectively, the "Property").

Movant has provided the Declaration of L. Kurth Demoss to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Dckt. 393. The Demoss Declaration presents testimony that there is a $783,312.79 arrearage on Movant's claim, with $338,655.87 as an advance for taxes. *Id.*, ¶ 7.

At filing Movant's claim was $4,522,031.36, which claim has grown to $5,214,465.67 as of April 30, 2019 due to interest and fees. *Id.,* ¶ 9. The total post-petition payments received from ΔIP in this case have been $262,035.66. *Id.,* ¶ 16.

The Demoss Declaration testifies that ΔIP's monthly expenses are $9,678.00, and monthly payments owing on the two claims secured by the Property would be $39,406.91 and $7,772.81 at 7.5 percent interest (the prime rate plus a 2 percent adjustment). *Id.*, ¶ 32.

Demoss testifies further that in his experience, banks typically lend at maximum 65 percent of the "as-is" value of the property securing such a loan. *Id.,* ¶ 35. Thus, assuming a value of $7.2 million, Demoss states the maximum loan would be near $4,680,000.00. *Id*., ¶ 35.

ΔIP recently informed Movant it seeks to sell the Property by the end of the summer. *Id.*, ¶ 46.

In the Motion, Movant states with particularity (FED. R. BANKR. P. 9013) the legal contention that there is cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because of its legal conclusion that the claim is not adequately protected. Dckt. 391. Movant also argues relief should be granted pursuant to 11 U.S.C. § 362(d)(2) because there is no equity in the Property and the Property is not necessary for an effective reorganization. Movant also states it is seeking relief from the 14 day stay pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3).

The Motion fails to state grounds upon which relief may be granted, but instead instructs the attorney to read, analyze, and assemble for Movant the grounds from the "Notice of Hearing, this Motion, the Memorandum of Points and Authorities, the Declaration of L. Kurth DeMoss, the Exhibits to the Motion, and the pleadings on file herein, the records and files in this action, and upon such further oral and documentary evidence as may be presented." Though not permitted, Movant appeals to have issued itself authorization to slip in more evidence at the hearing.

In addition to exempting itself from Federal Rule of Bankruptcy Procedure that requires the grounds to be stated with particularity, Movant also exempts itself from Federal Rule of Bankruptcy Procedure 9013 and the pleading requirements of Local Bankruptcy Rules 9004-1, 9004-2, and 9014-1. These require that the motion, notice, points and authorities, each declaration and the exhibits (which may be combined into one exhibit document) be filed as separate pleadings (except in limited circumstances in which the motion and points and authorities may be combined into one document).

In its Memorandum of Points and Authorities lies the actual grounds forming the basis for relief. Those grounds are as follows:

1. ΔIP's equity position is eroding and has nearly disappeared, and EWB is not receiving adequate protection payments. Memorandum of Points and Authorities, Dckt. 395. at p. 6:22-25.

2. ΔIP has paid only $262,035.66 post-petition, with EWB's claim increasing significantly since the filing of this case on April 7, 2017. *Id*. at p. 7:1-18.

3. The Property is encumbered by liens totaling $6,256,704.72. *Id*. at p. 8:3. ΔIP asserted the Property's value was only $5,330,000.00; while creditor Wayne Bier asserts the value is $7.2 million, the ΔIP's valuation is likely the correct value. *Id*. at p. 8:4-9.

4. In the event the Property is valued at $7.2 million, ΔIP will not be able to confirm a Plan as the DIP simply cannot afford to pay the all of the secured claims and its regular operating expenses. *Id*. at p. 8:18-19.

5. The Property is not necessary for an effective reorganization because the timing and facts of the case are such that a successful reorganization of the DIP within a reasonable time is impossible. Doubts as to reorganization include the following:

   i. This case has been pending for more than 2 years without a confirmed plan.

   ii. A confirmable plan is likely months off as the Property would need to be valued first.

   iii. ΔIP has inadequate capital to continue operations, demonstrated by ΔIP's failure to make regular post-petition and adequate protection payments, as well as ΔIP's history of not paying taxes.

   iv. ΔIP's sole source of income is rents. While projected rents for March 2019 were $58,922.00, the actual rents were only $35,000.00–ΔIP has not explained this discrepancy. Additionally, there have been issues with pending leases, uncollected rent, and expiring leases.

   v. A recent fire at the Property may have affected the Property value.

   vi. Errors and misinformation in monthly operating reports and elsewhere indicate mismanagement, and there are no funds to pay a new property manager.

   vii. Due to deferred maintenance and tenant turnover, it is likely that even if a plan is confirmed it will not be successful. *Id.*, at p. 8:21-13:27.

6. Waiver of the 14 day stay is warranted because ΔIP has no equity, is not reorganizing (as evident by the lack of plan), and is not paying any Cash Collateral payments. A new Notice of sale would allow 20 to 30 days before foreclosure for an appeal to be filed. *Id.*, at p. 14:2-5.

The relief requested in the Memorandum mirrors that in the Motion, except an additional request for attorney's fees and costs is dropped in to the Memorandum. *Id.,* at p. 14:18-20.

DEFAULT BY DEBTOR IN POSSESSION

The ΔIP has not filed any opposition to the Motion. The court enters the default of the ΔIP. The ΔIP appears to have capitulated to the relief sought, abdicating to have other parties in interest, who do not have standing to assert and defend the rights and interests of the bankruptcy estate, to argue their non-estate rights and interests.

OPPOSITION OF CREDITOR
WAYNE BIER

Creditor Wayne Bier holding a secured claim ("Bier") filed an Opposition on May 30, 2019. Dckt. 406. Bier asserts the Property has a value range of $7,230,000.00 - $7,730,000.00 as of an October 2018 appraisal. Bier argues the appraisal obtained by ΔIP valuing the Property at $5,330,000.00 was based on the value as of July 27, 2018, notwithstanding ΔIP's scheduled value of $7,855,018.99.

Bier does not explain how or why the court should find an appraisal, which is relied upon by Movant, obtained by the ΔIP and used in a motion to value the secured claim of Bier is not more credible and realistic than the value stuck in the schedules by the principal of the Debtor. $5,330.000.00 Appraisal Declaration, Dckt. 285.

Bier argues further a plan which re-writes the East West Bank obligation to term it out over time at an appropriate interest rate, amortized at an affordable monthly payment, and provide monthly payments to Bier could be confirmed in this case.

RAYMOND ZHANG EQUITY INTEREST HOLDER
OPPOSITION

Raymond Zhang ("Zhang") has filed his personal Opposition, as an equity interest holder in the Debtor, on May 30, 2019. Dckt. 408. Mr. Zhang is also the responsible representative of the ΔIP, with the responsibilities of acting to make sure that the ΔIP fulfill its fiduciary duties in this Chapter 11 case (there having been no trustee appointed or requested to be appointed in this case).

Zhang eschews the $5,330,000 value that he, as the responsible representative of the ΔIP, has advanced (for which the Federal Rule of Bankruptcy Procedure 9011 certificates are made, for the ΔIP as the accurate value of the Property in seeking to set the value of Bier's secured claim at less than the full amount of the obligation. The Motion to Value, Dckt. 283, was filed on September 27, 2018, a mere eight months before the filing of the present Motion for Relief From the Stay. The ΔIP has not wavered from opposing Bier's $7,000,000.00 valuation of the Property.

Zhang, but not the ΔIP, argues further there is equity in the Property, which Property is necessary for this Chapter 11. Zhang, but not the ΔIP, argues that at the current rental rates, the ΔIP should be able to propose a plan that re-amortizes the EWB and Bier obligations at an appropriate interest rate with repayment in a reasonable period of time, and provide regular monthly payments on the claims while the property is marketed and sold to provide for the full payment of the claims in a relatively short period of time.

Conflicting Statements and Positions
Asserted in Court

As noted above, the ΔIP has steered clear of asserting opposition to the Motion. It may well be that the ΔIP and Zhang have concocted a scheme for the ΔIP to continue to assert a value of $5,330,000 for the ΔIP's battles with Bier, but have Zhang "personally" state, while wearing his equity holder hat, that the property is worth substantially more than Zhang, when wearing his hat as the responsible representative of the ΔIP, certifies to the court is the actual value of the Property.

Or, it may be that Zhang is admitting that he knowingly provided an inaccurate value in seeking to value the Bier claim at a lower amount than the full amount of the claim. Or it may be for Zhang that the more "convenient truth" when opposing the motion for relief is to, "personally, not as a representative of the ΔIP as the fiduciary of the bankruptcy estate," adopt the higher value asserted by Bier and disputed by the ΔIP.

APPLICABLE LAW

Standing

In adjudicating issues in federal court a party must have standing. As stated in the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti* (*In re Johnson*), 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

A basic principal of American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent.' (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.' (Citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

Though neither party has identified the issue of standing, the court may raise it *sua sponte*, Rule 12(h)(3), Federal Rules of Civil Procedure. A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997). The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993). The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative, *Id.* In determining whether the plaintiff has the requisite standing and the court has jurisdiction, the court may consider extrinsic evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 9th Cir. 1987).

The Ninth Circuit Court of Appeals addressed the issue of Constitutional standing and the self-imposed judicial restrain of prudential standing (whether the person asserting standing was within the "zone of interests") in *Motor Vehicle Casualty Co. V. Thorpe Insulation Company* (*In re Thorpe*

Insulation Company), 671 F.3d 980 (9th Cir. 2012).

This followed the United States Supreme Court discussing the judicial restrain concept in *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 11-12 (2004). "Prudential standing" is an additional judicial "self-restraint" by which a court, which otherwise has standing, chooses to not hear the matter because of the generalized interests which do not directly relate to the person seeking to utilize the federal courts to address his or her grievance. By its very nature, a request for the court to exercise "self restraint" and not hear a matter based on prudential standing admits that Article III case in controversy Constitutional standing and federal court jurisdiction exists. One of the principal areas in which federal courts have determined it prudent to not exercise jurisdiction has been in the realm of domestic relations, giving strong deference to state law. *Id.*, p. 12. In an earlier decision, *Warth v. Seldin*, 422 U.S. 490, 501 (1975), discussed the concept of prudential standing to be one in which the claims being asserted as personal to the plaintiff rests on legal rights of others.

Parties to the Contested Matter

The Motion for Relief From the Automatic Stay seeks relief of the automatic stay as it applies to property of the bankruptcy estate to allow Movant to foreclose on its collateral, which collateral is property of the bankruptcy estate. Motion, Dckt 391. In a Chapter 11 case when a trustee has not been appointed, it is the debtor in possession that shall have the powers of and perform all functions and duties of a bankruptcy trustee. 11 U.S.C. § 1107(a). Here, it is the ΔIP who is responsible for, and the obligation to, exercise the powers of a trustee to defend, to the extent a *bona fide* opposition exists, challenges to the rights and interests of the bankruptcy estate, which includes a creditor seeking relief from the stay to foreclose.

Neither Bier nor Zhang have sought to intervene in this contested matter as required by Federal Rule of Civil Procedure 24 and Federal Rule of Bankruptcy Procedure 7024 (which Federal Rule of Bankruptcy Procedure 9014 does not make automatically applicable in contested matters and for which relief must be requested).

While it is questionable whether Bier and Zhang are mere officious intermeddlers in the affairs of the ΔIP or would be allowed to intervene if they sought such relief, the court has considered their arguments notwithstanding the ΔIP having defaulted in this contested matter.

Cause Grounds for Relief From the Stay

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 existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

As to 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).

DISCUSSION

EWB argues the Property is encumbered by liens totaling $6,256,704.72 which exceed the $5,330,000.00 value of the Property. Bier and Zhang (now individually as the equity interest holder, conflicting what he asserts as the responsible representative of the ΔIP) assert the Property has a value range of $7,230,000.00 - $7,730,000.00.

	EWB Value Analysis (based on value asserted by the ΔIP)	Bier and Zhang (individually) Analysis
Asserted Value	$5,330,000.00	$7,230,000.00
EWB Secured Claim	($5,214,465.67)	($5,214,465.67)
Bier Claim ,for which Bier has received payments of $185,843.92 which must be applied to this obligation. (The issue of post-petition interest has not been determined due to the ΔIP asserting that the value of the Property is only $5,330,000 and that Bier is not entitled to any interest because his claim is undersecured.)	($1,042,239.05)	($1,042,239.05)
Asserted Value in Excess of Liens	($926,704.72)	$973,295.28

Based on the ΔIP's appraisal information, EWB's secured claim all but exhausts the value of

the property, there is no equity for the bankruptcy estate, and Bier is left out in the economic cold.

Bier and Zhang, who switches to Bier's value for this Motion, assert that not only is Bier fully secured, but there is almost another million dollars in equity for the bankruptcy estate (not taking into costs of sale). This is a $2,000,000 swing in value from that asserted by the ΔIP, and Zhang as the responsible representative just eight months ago - a 35.6% increase in value from that previously asserted (subject to the Fed. R. Bankr. P. 9011 certifications) by the ΔIP and Zhang as the responsible representative.

Bier then continues to argue that because there is a $2,000,000 equity cushion for EWB, it should not worry and Bier "believes" that the ΔIP can advance a Chapter 11 plan within a "reasonable period of time." Opposition, Dckt. 406.

The court has conducted a long, protracted evidentiary hearing on the ΔIP's Objection to Bier's claim in this case. The ΔIP asserted that Bier's claim should have been only ($580,000) or less. Bier asserted that it should be ($2,148,541.75) or more. The court determined the claim to be ($1,042.239.05), for which there are $185,843.92 in post-petition payments that must be applied to said obligation.

Clearly, both Bier and Zhang, as the responsible representative of the ΔIP, have been challenged when it has come to economic calculations.

For the Evidentiary Hearing, the court made very pointed comments about the credibility of both Bier and Zhang based upon the evidence presented - concluding that both where challenged when it came to giving credible, accurate testimony under penalty of perjury. Additionally, evidence was presented concerning Bier and the ΔIP's pre-petition counsel, Mr. Hu, intentionally creating a document they knew contained false information so Bier could use it to obtain a visa, based on the false information, from a foreign government.

Zhang, as the equity interest holder, contends that this Property is necessary for an "effective" reorganization. Opposition, Dckt. 408. Without it, Zhang, as the equity interest holder, states that "without [the property] there is no hope of reorganization." *Id.* at p. 3:8-9.

Zhang, as the equity interest holder, argues that the ΔIP should be able to confirm a plan of reorganization within a "reasonable time." But no "reasonable time" period is stated.

With respect to Bier, he repeatedly testified as to his disdain for Zhang and Zhang's inability to properly run the property of the Estate prior to the bankruptcy case being filed. Further, though presented with multiple opportunities to foreclose, he never did, instead electing to let Zhang run the show.

If Bier is correct and the Property is worth more than $7,230,000.00, then he could foreclose (obtaining relief from the stay at the same time as EWB), pay off EWB from a quick sale, and then pocket all of the remaining proceeds from a sale, which amount would be well in excess of his claim as determined by the court. Assuming Bier is correct and he actually believes that the property is worth more, say $7,500,000.00, then his upside to brining this multi-year, no Chapter 11 plan case to a conclusion would be computed as follows:

Bier Asserted Value	$7,500,000.00
Estimated Costs of Sale at 5%	($375,000.00)
EWB Secured Claim (estimated higher due to delay in foreclosing and Bier selling the property)	($5,500,000.00)
Net Sales Proceeds for Bier	$1,625,000.00
Post-Petition Payments Received by Bier to be Applied to his Claim	$185,843.92
Economic Recovery for Bier Based on His ($1,042,239.05) Secured Claim	$1,810,843.92

If truly confident that the Property is worth more than $7,230,000.00, then Bier could foreclose and turn a quick $768,604.87 profit (an additional 74% more than he is actually owed). This 74% additional profit over his claim is without taking into account all of the rent revenues collected during the period in which the foreclosure is completed and the Property quickly sold.

The fact that Bier chooses not to foreclose but just delay EWB further puts into question whether he truly believes that such higher value exists. Given his clear disdain for Zhang and his repeated testimony in the evidentiary hearing that Zhang could not properly manage the Property, it would make little sense to leave such a "valuable" asset for Bier in the hands of someone Bier is convinced cannot manage it.

When Bier and Zhang, individually as an equity interest holder, assert that the ΔIP can quickly and reasonably confirm a Chapter 11 Plan, they ignore the history in this case. The Debtor commenced this case on April 7, 2017. From that day through the June 13, 2019 hearing on this Motion, Zhang has been in control as the responsible representative of the ΔIP. Zhang, as the responsible representative, and the ΔIP have had two years, two months, and thirteen days to confirm a plan in this case. No plan has been confirmed.

The ΔIP filed a Chapter 11 Plan on February 22, 2018. Dckt. 166. Then on May 3, 2018, ΔIP filed the First Amended Plan and the Amended Disclosure Statement. Dckts. 232, 234. The court's order approving the Disclosure Statement was filed on May 10, 2018, Dckt. 237, and the confirmation hearing was set for July 19, 2019. *Id.*

The Confirmation Hearing was continued to August 30, 2018, with Bier opposing confirmation. Order, Dckt. 254. As noted in the Civil Minutes for the July 19, 2018 hearing, the ΔIP failed to file a declaration providing evidentiary support for confirmation of the First Amended Plan. Civil Minutes, Dckt. 255 at 2.

In a ΔIP Status Report filed on August 27, 2018, the ΔIP stated that the dispute with Bier continued and "regardless of the outcome of those negotiations, the ΔIP is not currently prepared to

present evidence in support of confirmation." Status Report, p. 1:21-24; Dckt. 269.

The confirmation of the proposed First Amended Plan was denied. Civil Minutes, Dckt. 273. In the Civil Minutes, the court's finding include:

> DENIAL OF CONFIRMATION
>
> At the hearing, Debtor in Possession advised the court that it was not prepared to proceed with confirmation of this plan. As noted by the court, two weeks earlier Debtor in Possession represented that it anticipated confirmation and that the denial of appointment of special counsel was not of significant concern because the "plan administrator" could just hire counsel to assert the rights and interests of the estate. See Civil Minutes, Dckt. 267. Confirmation having been denied, the Debtor in Possession will need to proceed with promptly obtaining authorization of special counsel to protect the rights and interests of the bankruptcy estate.

Id. at 5. Though professing to be diligently prosecuting a plan in this case, when the day of the confirmation hearing came, the ΔIP folded its tent and walked away from its Chapter 11 plan.

In the ten months that have passed since the ΔIP walked away from its Chapter 11 plan, no new plan has been presented. There is no evidence presented that the ΔIP can, and would, diligently prosecute a plan in this case.

Failure of Bier to Propose a Plan

With no confidence in Zhang as the responsible representative of the ΔIP, Bier had a very cost effective option to foreclosing if he questioned the asserted $2,000,000.00+ in value asserted to exists above the EWB secured claim. He could have proposed a Chapter 11 plan, garnered the support of EWB, had a plan administrator appointed, the Property sold by the plan administrator, and EWB paid, Bier paid in full, and the excess money to go to the other creditors.

But Bier has chosen to do nothing. No creditor's plan has been advanced by him.

Default of ΔIP

It is significant that the fiduciary responsible for the bankruptcy estate, the ΔIP who stands in the shoes of and exercises the powers of a trustee, offers no opposition to the Motion for Relief From the Stay. The ΔIP indicates that it cannot proceed with a Chapter 11 plan. It also appears that the ΔIP has concluded that there is no value for the bankruptcy estate after paying EWB and Bier and has chosen to cut off further efforts by the ΔIP, as the fiduciary to the bankruptcy estate, to prolong the bankruptcy suffering.

Cause for Relief From the Stay

EWB has established that cause exists for relief from the stay. The ΔIP has provided the evidence that EWB is under secured and the continued delays while Zhang and Bier want to continue to gamble are at EWB's risk, not Zhang or Bier's. Even if some value exists in excess of Bier's secured

claim, the ΔIP and Zhang, as the responsible representative of the ΔIP, have demonstrated that after more than two years in bankruptcy they are incapable of obtaining confirmation of, or even trying to prosecute, a Chapter 11 plan.

This bankruptcy case has aged out from a good faith attempt to reorganize the business affairs of the Debtor that are now assets of the bankruptcy estate, and has become a vehicle to hinder and delay, for no bankruptcy purpose, EWB from foreclosing on an obligation that the ΔIP and Debtor cannot pay and one that Bier appears to be unwilling to pay, even if to do so would (if his asserted value of the Property were to be believed) yield him almost double of what he is owed.

As discussed in Collier on Bankruptcy, "cause" for relief from the stay is broader than merely arguing over whether there is adequate protection for the delay.

> [a] General Examples of Cause
>
> Use of the word "cause" suggests an intention that the bases for relief from the stay should be broader than merely lack of adequate protection. Thus, relief might be granted when the court finds that the debtor commenced the case in bad faith. And relief also may be granted when necessary to permit litigation to be concluded in another forum, particularly if the nonbankruptcy suit involves multiple parties or is ready for trial. Relief may also be granted to permit an embezzlement victim to pursue the embezzled property in the debtor's hands. Actions that are only remotely related to the case under title 11 or which involve the rights of third parties often will be permitted to proceed in another forum.

3 Collier on Bankruptcy P 362.07 (16th 2019).

To the extent that the ΔIP was attempting in good faith to prosecute this case and a Chapter 11 plan, it and its responsible representative, Zhang, would have done so. To the extent that Bier believes that the property has significant value, he could have diligently prosecuted a creditor's plan, had the property sold, with both EWB and Bier paid in full (if the Property is actually worth what Bier asserts). No creditor's plan was advanced by Bier.

One could speculate that if the Property is really worth as much as Bier asserts, then he might make the financial decision to sit pat, let EWB get relief from the stay (which is then granted as to all creditors having a lien on the property so they can act to protect their interests), make a deal with EWB to get the property sold, foreclose and then recover almost double of what he is owed. Bier does not attempt to do that, but instead merely argue that EWB should be delayed further, now more than two years into this case, premised upon some unexplained, inchoate plan concept, that may be proposed by the ΔIP, who does not oppose this Motion, sometime in the future (the two-plus years of this case not being enough for the diligent prosecution of a plan).

There is no good faith prosecution of this case by the ΔIP. There is no attempt by any creditors to prosecute a plan in this case. The case appears to continue to exist to further the wheeling and dealing of Bier and Zhang, personally as an equity holder, and not for any proper purpose under the Bankruptcy Code.

To the extent that value exists in excess of the two secured claims, it does not overcome the

cause by the lack of good faith prosecution of a plan in this case. It does not overcome the ΔIP electing to not oppose the Motion, which indicates that the ΔIP knows there is no good faith prosecution of this case. It does not overcome the lack of good faith of a response that merely says, there will be some plan, at some time, with some terms, that may be filed in the case. It does not overcome the Zhang flipping on the value of the Property, when eight months ago he, subject to the Federal Rule of Bankruptcy Procedure 9011 certifications, as the responsible represented/asserted/admitted for the ΔIP that the Property has a value of only $5,330,000.00, but now as an equity holder contracts that by stating that he personally believes that the value is in excess of $7,000,000.00.

The ΔIP has had every opportunity to prosecute this case. No creditor sought the appointment of a trustee. No creditor filed a competing plan. No creditor has hounded the ΔIP and presented the ΔIP and ΔIP's experienced bankruptcy counsel from filing, prosecuting, and confirming a plan.

Cause exists to terminate the automatic stay. The court shall issue its order vacating the automatic stay to allow East West Bank , 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 (1) 1904, 1908, 1912, 1916, 1920, 1928, 1936 Weber Avenue ("Parcel 1 Through 7"); 1881 E. Market Street (Parcel 11, B1 thru B15); 1617 (Parcel 12, A thru D), 1555 (Parcel 14 thru 16); 1531 (Parcel 17), 1523 E. Main Street (Parcel 18) (collectively, the "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.

The court does not rule on the lack of equity grounds, that being at issue with conflicting evidence.

Request for Attorneys' Fees

In the Memorandum of Points and Authorities, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. 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.

The Supreme Court has amended Federal Rule of Bankruptcy Procedure 7008 deleting the requirement that a request for attorney's fees be pleaded as a claim in the complaint/motion. Now, attorney's fees and costs are requested by a post-judgment/order motion and costs bill as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054, 9014.

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 in the **Motion**, 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 Creditor East West Bank ("EWB" or "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 East West Bank , 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 (1) 1904, 1908, 1912, 1916, 1920, 1928, 1936 Weber Avenue ("Parcel 1 Through 7"); 1881 E. Market Street (Parcel 11, B1 thru B15); 1617 (Parcel 12, A thru D), 1555 (Parcel 14 thru 16); 1531 (Parcel 17), 1523 E. Main Street (Parcel 18) (collectively, the "Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.
>
> No other or additional relief is granted.

3.	**17-22347-E-11** **JJG-12**	**UNITED CHARTER LLC** **Jeffrey Goodrich** **9-27-18 [283]**	**CONTINUED MOTION TO VALUE COLLATERAL OF WAYNE BIER**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. No Certificate of service has been provided to evidence when notice was served, and who notice was served upon. However, the creditor whose claim is the subject of this Motion filed an Opposition on October 11, 2018. Dckt. 293. Therefore, notice was likely provided. The Notice of Hearing was filed September 27, 2018. Dckt. 284. Presuming notice was actually provided that day, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Wayne Bier ("Creditor") is XXXXXXXXXXX.

The Motion to Value filed by United Charter LLC ("Debtor in Possession" or "ΔIP") to value the secured claim of Wayne Bier ("Creditor") was filed on September 27, 2018. Motion, Dckt. 283. The Declaration of John Hillas, MAI SRA, is filed in support of the Motion. Declaration, Dckt. 285. An exhibit cover sheet has been filed with the Motion, which states that one exhibit, "Appraisal Report of Valbridge Property Advisors dated August 31, 2018" is provided as Exhibit A. Dckt. 286. No Exhibit A is attached to the cover sheet. The Declaration of Mr. Hillis states that he is the "appraiser responsible for directing and supervising the preparation of . . . [the] appraisal report. . . ." Declaration ¶ 2, Dckt. 285.

Debtor in Possession is the owner of the subject real property located in Stockton, California ("Property"). In the Motion, the Debtor in Possession identifies the real property as "a 17+ acre industrial warehouse property located in Stockton, California. Motion, p. 2:3-5; Dckt. 283. By this description, it appears that there is one 17+ acre parcel of property that secures the claim.

The Motion offers no identification of the 17+ acre parcel, but instead merely instructs the court and parties in interest are to review Proof of Claim No. 4 with any questions about the claim that is

the subject of this Motion. *Id.* at 2:5.

When one reviews Proof of Claim, No. 4, a Deed of Trust is attached which identifies the real property subject to the encumbrance. The Deed of Trust provides the legal descriptions and Assessor Parcel Numbers for at least twenty (20) different parcels with different APNs. Proof of Claim No. 4, p. 16-16. The court is unsure why the Debtor in Possession could not state these parcel numbers and clearly identify the property subject to the Deed of Trust when stating with particularity the grounds upon which the relief is based and the relief requested (as required in Fed. R. Bankr. P. 9013).

Debtor (who is now serving as the ΔIP) valued the Property at $7,855,018.99. Schedule A/B, Dckt. 12. Some time thereafter, Creditor East West Bank ("EWB") holding a senior mortgage filed a motion seeking relief from automatic stay. Dckt. 80. EWB filed as a supporting Exhibit an appraisal asserting the value of the Property is $5,330,000.00. Dckts. 87-94. Debtor in Possession now seeks to use that appraisal to support the current Motion. Debtor in Possession does not explain why its prior valuation, declared in its Schedules under penalty of perjury, was high by more than $2 million.

Debtor in Possession filed the Declaration of John Hillas, the Appraiser who drafted the appraisal report. Dckt. 285. The Hillas Declaration provides no detail other than Hillas created the report and can testify as to the value of the Property being $5,330,000. As stated, *supra*, Debtor in Possession also sought to file as an Exhibit the appraisal report, but the report itself is not included in the filing. *See* Dckt. 286.

Proof of Claim

Creditor filed Proof of Claim, No. 4, on June 25, 2018. Creditor asserts a claim in the amount of $1,999,215.36 secured by Debtor in Possession's real property valued at $7,855,018.99. The Proof of Claim notes Creditor's valuation relies on Debtor in Possession's Schedules.

RESPONSE OF CREDITOR
EAST WEST BANK

EWB filed a Declaration in Response to the Motion on October 10, 2018. Dckt. 287. The Declaration Furth Demoss states the amount of the EWB's claim as of September 30, 2018 is $5,006,168.66.

CREDITOR'S OPPOSITION

Creditor filed an "Objection" To Debtor's Motion on October 11, 2018, which the court interprets to be an opposition. Dckt. 293. Creditor requests that the Court value the Property at $7,230,000 ("as-is" market value) or $7,730,000 (prospective market value).

Creditor states its appraisal report reviews all collateral properties (each within Stockton, California), including:

> (1) industrial park buildings at 1881 E. Market Street valued individually at $4,860,00,
>
> (2) industrial park buildings at 1531, 1555, & 1617 E. Main Street valued

individually at $2,250,000,

(3) vacant industrial lots at 1531 & 1555 E. Main Street valued individually at $330,000,

(4) vacant industrial lots at 1904 to 1936 E. Weber Avenue valued individually at $170,000, and

(5) two residential-zoned lots at 1914 & 1918 E. Myrtle Street valued individually at $120,000.

Creditor notes that its claim was also secured by a San Francisco property which was foreclosed in 2010.

Creditor requests an evidentiary hearing to determine the value of the Property, noting that it does not consent to the use of affidavits in accordance with Federal Rules of Civil Procedure 43(c).

JUNE 4, 2019 HEARING

At the June 4, 2019 hearing the court continued the hearing on the Motion to June 13, 2019 to allow it to be heard alongside the Motion For Relief. Civil Minutes, Dckt. 418.

APPLICABLE LAW

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

DISCUSSION

The valuation advanced by Debtor in Possession is more than a slight drop from its original value. Furthermore, Debtor in Possession (due to apparent clerical error) has not provided the court with any actual appraisal report.

~~As provided in Federal Rule of Bankruptcy Procedure 9017, evidence for adversary proceeding and evidentiary hearings will be presented in the manner as provided in Federal Rule of Civil Procedure 43. Unless agreed by the parties to be done by written statement only, it is presented by live testimony, utilizing the direct testimony statement procedure provided in Local Bankruptcy Rule 9017-1.~~

~~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 Value Collateral and Secured Claim filed by United Charter LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the hearing on this Motion is continued for evidentiary hearing. The court sets the following schedule for an evidentiary hearing on the Motion to Value:~~

~~A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.~~

~~B. On or before **xxxx, 2018**, the Parties shall each file with the court and serve on the other parties the list of witnesses they will present in their respective cases in chief (not including rebuttal witnesses).~~

~~C. Movant, shall lodge with the court and serve its Direct Testimony Statements and Exhibits on or before **xxxx, 2018**.~~

~~D. Respondent, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before **xxxx, 2018**.~~

~~E. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before **xxxx, 2018**.~~

~~F. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before **xxxx, 2018**.~~

~~G. The Evidentiary Hearing shall be conducted at **xx:xx x.m. on xxxx, 2018**.~~