**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**August 10, 2015 at 10:00 a.m.**

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1. 15-23700-A-12 JOE/MARIA PIMENTEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
KK-1 — 6-19-15 [25]
DEERE & COMPANY VS.

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Deere & Company, seeks relief from the automatic stay with respect to a John Deere 7330 tractor.

The motion will be granted as the debtors have indicated in their chapter 12 plan, filed on May 11, 2015, that they are surrendering the movant's collateral. Docket 7 at 3. They have classified the movant's claim as a class 3 claim, calling for satisfaction of the claim by surrender of the subject tractor. This is is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The movant has produced evidence that the tractor has a value of $51,000, whereas the movant's claim totals approximately $49,232. Docket 27 at 3.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying

motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's tractor is being used by the debtors without compensation and is depreciating in value.

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| 2. | 15-25213-A-11 | BLU COMPANIES, INCORPORATED | STATUS CONFERENCE 6-29-15 [1] |

**Tentative Ruling:** None.

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| 3. | 15-25213-A-11 ET-1 | BLU COMPANIES, INCORPORATED | MOTION TO EMPLOY ATTORNEY 7-13-15 [8] |

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor requests authority to employ Eason & Tambornini as bankruptcy counsel for the estate. The movant's compensation will be based on an hourly fee arrangement. The movant will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about rights and obligations; representing the debtor at hearings; negotiating with creditors; assisting with the preparation and prosecution of motions, reports, statements, and chapter 11 plan, as necessary to the administration of the

estate; and addressing post-confirmation issues.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation (hourly rate) are reasonable. This does not mean that the court is approving as reasonable the hourly rates disclosed in the motion. The movant is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

4. 13-23517-A-7 TRACY GATEWAY, L.L.C. MOTION TO
15-2065 HCS-4 APPROVE COMPENSATION OF TRUSTEE'S
FUKUSHIMA V. APOLLO EQUITY, L.L.C. ATTORNEY
6-24-15 [23]

**Final Ruling**: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the defendant and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Dana Suntag, counsel for Alan Fukushima, the plaintiff in this proceeding and the chapter 7 trustee in the underlying chapter 7 case, asks the court to award $16,720 in attorney's fees arising from the breach of the agreement between the plaintiff and the defendant for the defendant's purchase of a real property for $7.3 million.

Local District Court Rule 292 is specifically incorporated into this court's local rules. While this court's local rules do not mention Rule 292, they refer to District Rule 54-292, the predecessor of Rule 292.

LBR 1001-1(c) provides that:

"The FRBP and these Local Rules govern procedure in all bankruptcy cases and bankruptcy proceedings in the Eastern District of California. The following Local Rules of Practice of the United States District Court for the Eastern District of California apply in all bankruptcy cases and proceedings: . . . 293 (Awards of Attorneys' Fees)."

District Rule 293 provides that:

"***(a) Time for Application.*** *Motions for awards of attorneys' fees to prevailing parties pursuant to statute shall be filed not later than twenty-eight (28) days after entry of final judgment. Such motions are governed by L.R. 230 for notice, opposition, reply, and decision. See also Fed. R. Civ. P. 54(d), 58.*

"***(b) Matters to be Shown.*** *All motions for awards of attorneys' fees pursuant to statute shall, at a minimum, include an affidavit showing:*

"*(1) that the moving party was a prevailing party, in whole or in part, in the subject action, and, if the party prevailed only in part, the specific basis on which the moving party claims to be a prevailing party;*

"*(2) that the moving party is eligible to receive an award of attorneys' fees, and the basis of such eligibility;*

"*(3) the amount of attorneys' fees sought;*

"*(4) the information pertaining to each of the criteria set forth in (c); and*

"*(5) such other matters as are required under the statute under which the fee award is claimed.*

"***(c) Criteria for Award.*** *In fixing an award of attorneys' fees in those actions in which such an award is appropriate, the Court will consider the following criteria:*

"*(1) the time and labor required of the attorney(s);*

"*(2) the novelty and difficulty of the questions presented;*

"*(3) the skill required to perform the legal service properly;*

"*(4) the preclusion of other employment by the attorney(s) because of the acceptance of the action;*

"*(5) the customary fee charged in matters of the type involved;*

"*(6) whether the fee contracted between the attorney and the client is fixed or contingent;*

"*(7) any time limitations imposed by the client or the circumstances;*

"*(8) the amount of money, or the value of the rights involved, and the results obtained;*

"*(9) the experience, reputation, and ability of the attorney(s);*

"*(10) the 'undesirability' of the action;*

"*(11) the nature and length of the professional relationship between the attorney and the client;*

"*(12) awards in similar actions; and*

"*(13) such other matters as the Court may deem appropriate under the circumstances.*"

The court entered a default judgment in favor of the plaintiff on May 28, 2015, awarding $328,500 in damages to the plaintiff for the defendant's breach of the agreement. This motion is timely as it was filed on June 24, 2015, 27 days after entry of the jugdment.

The agreement provides that "In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 31A." Docket 27 at 8, ¶ 26.

Paragraph 31A of the agreement has been crossed out. Docket 27 at 9.

The requested attorney's fees include the following services: working on closing escrow with the escrow company, the buyer and the secured creditor; multiple communications with the buyer, especially after the sales balance failed to fund; granting extensions to the buyer for the funding; communicating with the secured creditor and attending a hearing for the appointment of a receiver; requesting the escrow company to release the nonrefundable deposit; attempting to obtain the defendant's signature for release of the deposit; preparing, filing and prosecuting the instant adversary proceeding; preparing and filing a bill of costs and the instant compensation motion.

The court is satisfied that District Rule 293(c) has been satisfied. The movant charged hourly rate of $90, 225 and $325. The court also concludes that the compensation is for actual and necessary services rendered in connection with the sales and purchase agreement. The court will award the requested attorney's fees. The motion will be granted.

5. 15-25626-A-11 GERT/LAURALEE JENSEN — MOTION TO TRANSFER CASE
PHL-1 — 7-23-15 [23]

**Final Ruling**: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

This motion will be granted and the case will be transferred to Department D, before The Honorable Robert Bardwil, given the litigation of related bankruptcy cases before Judge Bardwil in the recent past (two chapter 11 cases filed by Skandia Family Center, Inc., one on September 9, 2010 and the other on November 1, 2014). The debtor in this case owns 98% of Skandia Family Center, Inc.

6. 15-25626-A-11 GERT/LAURALEE JENSEN — MOTION FOR RELIEF FROM TURNOVER
PHL-2 — 7-23-15 [28]

**Final Ruling**: As this case has been transferred to Department D, the court will continue the hearing on this motion to August 12, 2015 at 10:00 a.m., to be heard before The Honorable Robert Bardwil in Courtroom 34.

7. 15-24727-A-11 RCK CONSERVATION CO-OP, L.L.C. — STATUS CONFERENCE
6-11-15 [1]

**Tentative Ruling**: None.

8. 15-24727-A-11 RCK CONSERVATION CO-OP, — MOTION FOR

**Tentative Ruling:** The motion will be dismissed.

Secured creditors Teresea Jones and Charles Hawley seek an order confirming that there is no automatic stay in this case in light of 11 U.S.C. § 362(n)(1). The debtor opposes the motion, contending that the stay is in effect as the debtor satisfies 11 U.S.C. § 362(n)(2)(B).

There is no automatic stay in this case. 11 U.S.C. § 362(n) provides:

"(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor--

"(A) is a debtor in a small business case pending at the time the petition is filed;

"(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

"(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

"(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

"(2) Paragraph (1) does not apply--

"(A) to an involuntary case involving no collusion by the debtor with creditors; or

"(B) to the filing of a petition if--

"(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

"(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time."

As the debtor was not a debtor 'in a small business case pending at the time the [instant] petition [was] filed,' was not 'a debtor in a small business case in which a plan was confirmed,' and is not a debtor 'that has acquired substantially all of the assets or business of a small business debtor,' subsections 362(n)(1)(A), (C) and (D) do not apply.

Subsection 362(n)(1)(B) applies, however, given that the debtor is a small business debtor in this case and was a small business in the prior bankruptcy case, which was dismissed on the same day this case was filed, June 11, 2015. The 'small business debtor' box has been checked on page one of the voluntary

petition for each of the two cases. Docket 1 at 1; Case No. 14-27083, Docket 104 at 2. And, the June 11, 2015 dismissal order in the prior case was a final order. Accordingly, section 362(a) is not in effect in this case. 11 U.S.C. § 362(n)(1).

As this is not an involuntary case, the exception of section 362(n)(2)(A) is inapplicable. Section 362(n)(2)(B) is also inapplicable because the dismissal of the prior case was wholly within the debtor's control. The case was dismissed due to mismanagement of the debtor in possession. The loss of estate property during the case was totally within the debtor's control. It was a member of the debtor - Mr. Green, who had access to the debtor's DIP account, that misappropriated funds belonging to the bankruptcy estate. Also, it was Mr. Major who gave Mr. Green access to the DIP account. As such, there is no automatic stay in this case and an order permitting use of cash collateral would be meaningless.

The court rejects the arguments advanced in the debtor's opposition. The opposition is not supported by any evidence, establishing the factual assertions in it. For instance, there is no declaration in support of the opposition.

Further, even if the court were to accept the debtor's factual assertions about the applicability of section 362(n)(2)(B), they are unpersuasive. The debtor's argument that it was surprised and compelled to file this case on June 11, 2015, the same day the prior case was dismissed, due to a foreclosure sale set for June 12, makes no sense.

The debtor filed this case only because the court dismissed the prior case. If the debtor had not mismanaged property of the estate in the prior case, the prior case would not have been dismissed, the foreclosure sale date would not have been a problem, and the debtor would not have had to file this case.

In other words, the continuing pendency of the prior case was wholly within the debtor's control as the prior case was dismissed due to the debtor's mismanagement of estate assets.

More, the foreclosure sale could not have been a surprise to the debtor because the opposition does not deny that the debtor received notice of the sale. If anything, the debtor was surprised that its mismanagement of the prior estate was uncovered in time to result in dismissal of that case on June 11. As the debtor was mismanaging its assets in the prior case, it should have been foreseeable that the prior case was to be dismissed, thus making the filing of this case quite foreseeable.

Furthermore, given the debtor's mismanagement of the estate in the prior case, given the loss of the leases in the prior case, given the suspicious circumstances under which the debtor obtained leases in the prior case, and given that the member who mismanaged the debtor in the prior case, David Major, is the debtor's managing member in this case, the court is not convinced that it is more likely than not that a feasible plan will be confirmed within a reasonable time. Docket 83; Case No. 14-27083, Docket 190.

As section 362(n)(2)(B) is inapplicable, the stay of section 362(a) is not in effect in this case. 11 U.S.C. § 362(n)(1).

Nothing in section 362(n), however, permits the court to issue an order confirming the automatic stay's absence. 11 U.S.C. § 362(j) authorizes the

court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(n) is applicable and it does not provide for the issuance of an order confirming the absence of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(n), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

9. 12-35330-A-12 BETTE SPAICH — MOTION FOR ENTRY OF DISCHARGE
BS-16 — 5-6-15 [234]

**Tentative Ruling:** The motion will be granted.

The hearing on this motion was filed on June 9, 2015, in order for the debtor to supplement the record. The debtor filed an amended declaration in support of the motion. Docket 242.

The debtor is asking the court to enter her chapter 12 discharge.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title."

This case was filed on August 22, 2012. The court confirmed the debtor's chapter 12 plan on November 6, 2013. Docket 208. The court also approved a modification to the debtor's plan on August 5, 2014. Docket 222.

The trustee's amended final report and account, filed on April 16, 2015, was approved on June 10, 2015. Dockets 231 & 240.

The debtor does not have any domestic support obligations. The debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket 54 at 1. No objection has been filed to that certificate and the time to file an objection has expired.

The IRS claim in class 1 was withdrawn. The Standard Holdings / John Roth claim in class 5 was resolved by compromise approved by the court. Under the compromise, the promissory note was cancelled and the deed of trust on the

property at issue was reconveyed. The three class 7 unsecured claims were also withdrawn. Payments on Nationstar's class 3 mortgage claim are current and the debtor will continue to pay that claim beyond the plan term.

Finally, by service of the amended declaration in support of the motion (Docket 243), the debtor has given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable, and that there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind specified in section 522(q)(1)(B). No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1228(f).

10. 15-20034-A-11 ET-7 — C & N LANDSCAPE MAINTENANCE, INC. — MOTION TO APPROVE DISCLOSURE STATEMENT 4-17-15 [42]

**Final Ruling:** This motion has been voluntarily dismissed by the moving party. Docket 68.

11. 13-34541-A-11 CAH-24 VS. MOHBOOB BOZORGZAD — 6056 SYCAMORE TERRACE L.L.C. — MOTION TO VALUE COLLATERAL 7-9-15 [305]

**Tentative Ruling:** The motion will be denied.

The debtor moves for an order valuing its real property in Pleasanton, California, in an effort to strip off a junior deed of trust held by Mohboob Bozorgzad, the former spouse of the debtor's managing member.

However, the motion will be denied because the debtor has a pending adversary proceeding seeking to avoid the subject deed. The court cannot strip off the secured claim of Ms. Bozorgzad under 11 U.S.C. § 506(a)(1) if she has no interest in the property, *i.e.*, her interest in the property is to be avoided. See Adv. Proc. No. 15-2070.

12. 13-21454-A-11 CAH-36 — TRAINING TOWARD SELF RELIANCE, A CALIFORNIA — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY 7-11-15 [361]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor's counsel, C. Anthony Hughes, has filed a first and final motion for

approval of compensation. The requested compensation consists of $71,751.50 in fees and $89.57 in expenses, for a total of $71,841.07. This motion covers the period from February 2, 2013 through May 28, 2015. The court approved the movant's employment as the chapter 11 debtor's attorney on February 12, 2013. In performing services, the movant charged hourly rates of $150, $250 and $335.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) analyzing estate asset issues, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing and reviewing pleadings and documents, such as motions and reports, (5) attending court hearings, (6) preparing, filing and prosecuting various motions (such as valuation and cash collateral), (7) addressing automatic stay issues, (8) responding to a motion to dismiss or convert, (9) assisting the debtor in the preparation of operating reports, (10) preparing plan and disclosure statement, (11) communicating with various parties about plan confirmation, (12) reviewing and analyzing proofs of claim, (13) communicating with the debtor about various issues, and (14) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

13. 15-21575-A-11 BR ENTERPRISES, A CALIFORNIA PARTNERSHIP — MOTION TO APPROVE DISCLOSURE STATEMENT 6-26-15 [111]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor asks for approval of its disclosure statement filed on June 26, 2015. Docket 111. Secured creditors Redding Bank of Commerce and Joe and Lavone Curto, as trustees of the Curto Family Trust, oppose the motion. The debtor has filed a reply.

The disclosure statement will not be approved because it does not have adequate information and the detail necessary that will permit creditors to make an informed decision regarding the plan. See 11 U.S.C. § 1125(a).

The statement has the following deficiencies:

(1) Given its length, 32 pages, the disclosure statement should have a table of contents.

(2) The "effective date" definition in the disclosure statement does not take into account the eventuality of an appeal of the order confirming the plan.

(3) The disclosure statement should provide more background on the debtor's pre-petition financial and business history, such as profits, losses, sales, types of business operations, for at least two years prior to filing.

(4) The disclosure statement should include a narrative at least on the post-petition history of marketing of the assets it intends to sell or have their encumbrances refinanced under the plan.

(5) The disclosure statement should also include a short narrative unequivocally stating which assets the debtor intends to market for sale to fund the plan. The secured creditors are entitled to know whether their collateral will be actually marketed or the debtor is merely buying more time to refinance.

(6) The disclosure statement should include information about the maintenance and condition of the Curtos' collateral. As that collateral appears to be unoccupied for much of the year, it is reasonable that the debtor disclose information about its maintenance and condition.

(7) The disclosure statement should state what effect, if any, a debtor's unsuccessful challenge to Redding Bank of Commerce's claim 8 would have on plan confirmation and payment of the bank's claims. The disclosure statement should identify how the plan will change, if at all, in the event claim 8 is allowed as filed.

(8) The disclosure statement should identify who is living on all of the debtor's real properties, who is using any of the debtor's property (both real and personal), to what extent such properties are used, what is the debtor's relationship with such persons (is it an arms-length transaction), and what compensation, if any, the debtor is receiving as consideration in return.

According to the debtor, all claims are impaired except for the Tehama County property taxes, the contingent claim of the Shasta Enterprises bankruptcy estate, and the equity holders.

(9) The disclosure statement should disclose what portion of the debtor's monthly expenses are attributed to actual business operations, *i.e.*, real property sales and what are the reasons behind the debtor's remaining monthly expenses.

This is important as the debtor appears to have substantial recurring expenses, yet it is not clear that all expenses are reasonable and necessary for the administration of the plan.

(10) The disclosure statement should provide at least the debtor's opinion of value for all property, both real and personal.

The disclosure statement seems to doubt that there may be sufficient equity to pay all creditors in full, based solely on the depreciated book value of the personal property assets and assessed tax value of the real property assets. The disclosure statement states that there only "appears to be sufficient equity to pay all creditors in full." Docket 111 at 25.

Assessed tax values are often far from actual fair market values.

(11) The disclosure statement should identify a deadline for the filing of objections to proofs of claim. The court has seen no such deadline in the disclosure statement.

(12) In general, if the plan does not provide for a filed proof of claim, the disclosure statement should state that the debtor will be filing an objection to that claim and it should disclose treatment of the claim, in the event the objection is unsuccessful.

(13) The disclosure statement should unequivocally state whether the K-1 tax

reserve will be held or transferred by the debtor for the payment of taxes owed by its partners.

As to the remainder of the objections, the court will not address any plan confirmation objections at this time. Such objections will be addressed at the time of plan confirmation.

The court also agrees with the debtor concerning the absolute priority rule. The rule implicates the payment of unsecured claims. See 11 U.S.C. § 1129(b)(2)(B)(ii). The objecting creditors are not unsecured creditors; they are secured.

Further, the court will not conflate the plan confirmation process with the claim objection process. As mentioned above, if the plan does not provide for a filed proof of claim, the plan and disclosure statement should anticipate a claim objection and should provide for treatment of the claim, in the event the objection is unsuccessful.

The court is satisfied with the stated assumptions of the operating budget attached to the disclosure statement. This is a liquidating plan and the debtor has stated that it "will continue to market and sell (or endeavor to refinance) so much of the Real Estate as is necessary to fund the Plan during the Plan Term." Docket 111 at 15.

And, the court sees no need for further information or investigation by the debtor on the avoidance claims, as the plan is paying all creditors in full and there appears to be sufficient equity in other assets to pay all creditors in full, in the event of a chapter 7 liquidation. The avoidance claims have been disclosed in the statement of financial affairs.

The court has not authorized any discovery in connection with this motion.

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| 14. | 15-21575-A-11<br>HLC-11 | BR ENTERPRISES, A CALIFORNIA PARTNERSHIP | MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY<br>7-13-15 [116] |

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Hollister Law Corporation, counsel for the debtor in possession, has filed a first interim motion for approval of compensation. The requested compensation consists of $49,805 in fees and $1,291.71 in expenses, for a total of $51,096.71. This motion covers the period from February 27, 2015 through June 30, 2015. The court approved the movant's employment as the chapter 11 debtor's attorney on April 29, 2015. In performing services, the movant charged an hourly rate of $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) analyzing estate asset issues, such as valuation, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing and reviewing pleadings and documents, such as motions and reports, (5) attending court hearings, (6) preparing, filing and prosecuting sales motions, (7) monitoring the related Shasta Enterprises bankruptcy case, (8) analyzing proofs of claim, (9) defending a stay relief motion, (10) preparing plan and disclosure statement, (11) reviewing and analyzing proofs of claim, (12) communicating with the debtor about various issues, and (13) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

15. 14-24088-A-13 HUGO/ALICIA CERVANTES — STATUS CONFERENCE
14-2222 — 7-30-14 [1]
LOPEZ ET AL V. CERVANTES ET AL.,

**Final Ruling:** Given the unavailability of the defendants' counsel for the August 10 hearing date, the court will continue the hearing on this status conference to August 24, 2015 at 10:00 a.m.

16. 14-24088-A-13 HUGO/ALICIA CERVANTES — MOTION TO
14-2222 — COMPEL AND FOR NEW DATE TO
LOPEZ ET AL V. CERVANTES ET AL — COMPLETE DISCOVERY
6-30-15 [62]

**Final Ruling:** Given the unavailability of the defendants' counsel for the August 10 hearing date, the court will continue the hearing on this motion to August 24, 2015 at 10:00 a.m. The record on this motion has closed. The court will not permit further filings in connection with this motion.

17. 14-29194-A-11 CALIKOTA PROPERTIES, L.L.C. — MOTION FOR
DBJ-2 — RELIEF FROM AUTOMATIC STAY
PETTYGROVE FUND, L.L.C. VS. — 6-15-15 [102]

**Tentative Ruling:** The motion will be granted.

The movant, Pettygrove Fund, L.L.C., seeks relief from the automatic stay as to a commercial real property in Chico, California.

The debtor opposes the motion, contending that the evidence of value with the motion is inadmissible and that, based on the debtor's valuation of $575,000 there is over $90,000 in equity in the property.

The court disagrees with the debtor. The movant claims that the property has a value of $395,000, whereas the lien against the property totals approximately $481,875. The movant's lien is the only lien against the property. The property is also subject to at least approximately $14,268 in property taxes and approximately $4,327 in POA (appears to be property management fees). Docket 35.

The movant's $395,000 valuation is supported by admissible evidence, namely a broker's price opinion, attached as Exhibit D to Docket 106, which opinion is authenticated by a declaration of the preparer, Brian Hood, which the movant had filed in connection with its prior stay relief motion. Docket 90.

The court is satisfied with Mr. Hood's qualifications to render an expert opinion about the value of the property. He is a certified real estate broker and works as such in the general area where the property is located. Docket 90. He routinely values and markets commercial properties in Northern California, including Butte County, where the property is located. Id.

Given the expert valuation proffered by the movant, the court rejects the debtor's $575,000 valuation. Thus, the property has no equity.

11 U.S.C. § 362(g) provides that:

"In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues."

In other words, the moving creditor has the burden of persuasion as to the value of and lack of equity in the property while the debtors have the burden of persuasion as to necessity to an effective reorganization. United Sav. Ass'n of Texas v. Timbers of Inwwod Forest Assocs., Ltd., 484 U.S. 365, 375 (1988). The standard in a chapter 11 proceeding is a showing that "the property is essential for an effective reorganization that is in prospect." This means, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." Timbers at 376.

Although the property has no equity, the debtor has not come forward with evidence establishing necessity to an effective reorganization of the property.

The opposition is not supported by any evidence, such as a declaration establishing the factual assertions in it.

More, this case has been pending since September 12, 2015. Even if the court were to accept the debtor's factual assertions in the opposition as admissible evidence, the debtor's statements indicate there is no possibility - much less reasonable possibility - of a successful reorganization within a reasonable time. The debtor states that its principals are occupying some of the property to conduct their own separate and independent business from the debtor. But, as their business has not been doing well financially, they have been unable to pay rent to the debtor, thus the debtor's inability to make payments to the movant.

In other words, while the property may be necessary for the operation of another business - owned by the debtor's principals - it is not necessary for the debtor's reorganization, as the debtor is receiving no rent from its tenant(s).

Moreover, the admission that the debtor's tenants are unable to pay rent to the debtor indicates that the debtor has no reasonable possibility of a successful

reorganization within a reasonable time.

This case has been pending for nearly one year now without any headway to feasible plan confirmation. Although the debtor's prior counsel filed a plan on December 11, 2014, that plan never reached a plan confirmation hearing. Disagreements over that plan and administration of the estate also led the debtor's prior counsel to substitute out of the case. Dockets 96 & 100. As mentioned before, the case was filed on September 12, 2014. And, the debtor has made no payments to the movant since December 2013.

The debtor also has not filed operating reports for March, April, May and June 2015, which is indicative of the debtor either not generating income from anywhere, the debtor not wanting to report income it is generating, and/or the debtor misusing generated income.

In any event, the foregoing is also cause for the granting of relief from stay.

The court also notes that this is a single asset real estate case (Docket 32) and that the debtor has not met the requirements of 11 U.S.C. § 362(d)(3)(A) or (B). Eleven months into this case, the debtor still has not filed a plan "that has a reasonable possibility of being confirmed within a reasonable time" and has commenced no monthly payments to the movant, whatsoever.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1), (2) and/or (3) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of that property following sale. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.