

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

September 22, 2015 at 1:30 p.m.

1. 15-25615-E-13 ANA HENRIQUEZ CONTINUED MOTION FOR RELIEF
SPS-1 Timothy McCandless FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
8-4-15 [[21](#)]

LINDEN RIVER FINANCIAL, LLC
VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 4, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

Opposition was presented at the hearing, asserting that the foreclosure sale was conducted in violation of the automatic stay in Debtor's prior case.

The Motion for Relief From the Automatic Stay is granted.

Linden River Financial, LLC, its assignees and/or successors ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1018 Gateway Drive, Vallejo, California (the "Property"). The moving party has provided the Declaration of Warren Blesofsky to introduce evidence as a basis for Movant's contention that Ana V. Henriquez ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a non-judicial foreclosure sale on April 23, 2015. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano. and received a judgment for possession, with a Writ of Possession having been issued by that court on July 9, 2015. Exhibit 6, Dckt. 26.

AUGUST 18, 2015 HEARING

At the hearing and in light of the opposition, the court set a final hearing on the Motion for Relief From the Automatic Stay for 1:30 p.m. on September 22, 2015. Dckt. 39. The court ordered that opposition to the Motion shall be filed and served on or before August 28, 2015, and Replies, if any, filed and served on or before September 4, 2015.

MOVANT'S SUPPLEMENTAL STATEMENT

The Movant filed a supplemental document on September 4, 2015. Dckt. 48. The Movant states that the Debtor failed to file any objection in connection with the instant Motion by the August 28, 2015 deadline.

The Movant notes that the Debtor did file a request to dismiss the Debtor's case on August 31, 2015. Dckt. 46.

The Movant concludes by stating that due to the dismissal request, the Motion may be moot.

DISCUSSION

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and the Judgment. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by 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 as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

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11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The court finds it curious that, instead of filing an opposition to the instant Motion as ordered by the court, the Debtor filed a request to dismiss the case pursuant to 11 U.S.C. § 1307(b). The court construes this as a means to avoid an 11 U.S.C. § 362(d)(4) determination so that the Debtor could file another bankruptcy case, possibly further delaying the Movant the opportunity to act upon its rights. The court has refrained from dismissing this case until after the present Contested Matter could be adjudicated. Though the court would retain post-dismissal jurisdiction, delaying the dismissal precludes creating the false impression that the dismissal of the case caused the property to be revested in the Debtor or that the court did not have jurisdiction over the property or the Debtor.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by the filing of multiple bankruptcy cases.

The court shall issue an order terminating and vacating the automatic stay to allow Linden River Financial, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

CHAMBERS PREPARED ORDER

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

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

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Linden River Financial, LLC, its assignees and/or successors and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1018 Gateway Drive, Vallejo, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

IT IS FURTHER ORDERED that the Movant party having established that the value of the Property subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

2. [13-22337-E-13](#) COLLIN/CINDY MILLER
JHW-1 Scott J. Sagaria

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-21-15 [[64](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

Collin Paul Troester Miller and Cindy Marie Miller ("Debtor") commenced this bankruptcy case on February 22, 2013. Dckt. 1. Americredit Financial Services, Inc. dba GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Ford Explorer, VIN ending in 1752 (the "Vehicle"). The moving party has provided the Declaration of Mandy Youngblood to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Youngblood Declaration provides testimony that the Vehicle was involved in a collision on July 31, 2015. The Vehicle was declared a total loss by Debtor's insurer, Mercury Insurance Co. Debtor's claim number with Mercury Insurance Co. is CAP00010289. Movant claims to be the named loss payee and seeks to recover the insurance proceeds for \$5,527.04. Dckt. 64.

Debtor filed a non-opposition on August 25, 2015. Dckt. 71.

TRUSTEE'S RESPONSE

David Cusick, as Chapter 13 Trustee, filed a response on September 4, 2015 which does not oppose the instant motion. Dckt. 72. Trustee declares that \$5,739.68 has been disbursed to Movant, \$4,781.29 toward the principal and \$958.39 in interest. Dckt. 73. Claimant's Proof of Claim 4-1 shows an initial secured claim of \$10,308.33, with 21% fixed annual interest. Thus, Trustee does not oppose the instant motion to the amount identical to the what Debtor owes on Movant's secured claim, for a total of \$5,527.04.

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 \$5,527.04, as stated in the Youngblood Declaration, while the value of the lost Vehicle is determined to be \$0.00, as stated in Movant's and Trustee's declarations.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Americredit Financial Services, Inc. dba GM Financial, 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.

Given the complete loss of the Vehicle, Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Americredit Financial Services, Inc. dba GM Financial ("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, having lien rights against the Vehicle, under its

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security agreement, loan documents granting it a lien in the asset identified as a 2006 Ford Explorer, VIN ending in 1752 ("Vehicle") obtaining possession of an applying \$5,527.04 of the insurance proceeds paid or to be paid for damage done to said Vehicle.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived.

No other or additional relief is granted.

3. [14-23385-E-13](#) MICHELE WILLIAMS MOTION FOR RELIEF FROM
JHW-1 Peter G. Macaluso AUTOMATIC STAY
8-21-15 [[99](#)]

LAND ROVER CAPITAL
GROUP VS.

Final Ruling: No appearance at the September 22, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. 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 continued for a final hearing to 3:00 p.m. on October 6, 2015, to be heard in conjunction with Debtor's Motion to Confirm Plan.

Michele Angelique Williams ("Debtor") commenced this bankruptcy case on April 1, 2014. Dckt. 1. Land Rover Capital Group ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Landrover RS Sport, VIN ending in 7984 (the "Vehicle"). The moving party has provided the Declarations of Tina Gritte and Jennifer Wang to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant filed the instant Motion for Relief on August 21, 2015. Dckt. 99. Movant asserts that Debtor is delinquent under the confirmed plan. Dckt. 99, ¶ 6. The Wang Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of \$7,510.00 in post-petition payments past due. Movant requests that this court terminate the automatic stay so Movant may pursue its claim under nonbankruptcy law. Movant also requests this court to waive the 14-day stay.

TRUSTEE'S RESPONSE

David Cusick, as Chapter 13 Trustee, filed a response on September 8,

2015. Dckt. 107. Trustee asserts that Debtor is delinquent \$7,975.00 under the confirmed plan in payments to Movant. However, under the proposed third modified plan, Debtor is current.

DEBTOR'S OPPOSITION

Debtor filed an opposition on September 8, 2015. Dckt. 110. Debtor asserts that the Debtor filed a modified plan and Motion to Confirm for October 6, 2015. A review of the court's docket shows the modified plan and Motion to Confirm were both filed August 21, 2015. Dckt. 93, 97. Debtor also asserts that Creditor received a payment on August 31, 2015, and that Debtor's proposed modified plan creditor will receive monthly payments of \$250 per month. Dckt. 110. Debtor requests that the court continue the motion until the hearing scheduled October 6, 2015 to decide the Motion to Confirm.

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 \$36,256.65, as stated in the Gritte Declaration, while the value of the Vehicle is determined to be \$12,000.00, as stated in Schedules B and D filed by Debtor.

This court will continue to 1:30 p.m. on October 6, 2015 to be heard in conjunction with the Motion to Confirm. Debtor is making efforts to modify the plan so that all creditors are paid to the extent permitted by a plan. Further, Movant's interests are sufficiently protected in the interim as the third proposed modified plan allocates monthly payments of \$250.00 per month to Movant. While Debtor is \$7,975.00 delinquent under the confirmed plan, Trustee asserts the Debtor has made payments in conformity with the third proposed modified plan. Dckt. 107.

In light of the above, the court continues the hearing to 1:30 p.m. on October 6, 2015.

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 Land Rover Capital Group ("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 Motion for Relief from Automatic Stay is continued for a final hearing at 3:00 p.m. on October 6, 2015 to be heard in conjunction with the Motion to Confirm.

4. [11-44232-E-13](#) SANDRA TODD
RHS-1 Peter Macaluso

ORDER FOR COUNSEL OF RECORD FOR
DEBTOR TO APPEAR
9-14-15 [[76](#)]

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Sandra Todd ("Debtor"), Peter Macaluso, C. Anthony Hughes, Chapter 13 Trustee, and the Office of the U.S. Trustee on September 16, 2015. The court computes that 6 days' notice has been provided.

The court's decision is to ~~xxxxxx~~ the Order for Counsel of Record for Debtor to Appear.

On September 11, 2015, the court issued an Order for Counsel of Record for Debtor to Appear. Dckt. 76.

The Order stated the following:

IT IS ORDERED that C. Anthony Hughes shall appear at 1:30 p.m. on September 22, 2015, in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, no telephonic appearance permitted, and address for the court the following:

1. What C. Anthony Hughes is doing to adequately represent his clients in Chapter 13 bankruptcy cases for which he is attorney of record pending any order allowing the substitution of another attorney and the withdrawal of Mr. Hughes from such case in the United States Bankruptcy Court for the Eastern District of California.
2. In light of there being in excess of 800 cases in which C. Anthony Hughes seeks to withdraw as the attorney of record, the factors which he believes the court should consider in concluding that transferring all of the more than 800 cases to one solo practitioner attorney will fulfill Mr. Hughes' fiduciary duties to his clients.
3. In light of there being only 22 consents of clients being provided for 185 purported substitutions of Mr. Macaluso for Mr. Hughes in

all of the cases, why the court does not conclude 800 substitutions to one attorney exceeds the ability of that attorney to provide adequate representation as required by state and federal law.

All response may be presented orally at the hearing.

BACKGROUND

On October 10, 2011, Sandra Todd ("Debtor") commenced the above captioned Chapter 13 Bankruptcy Case. C. Anthony Hughes is the attorney of record for Debtor. Another attorney, Peter Macaluso, has attempted to appear as counsel for Debtor in this bankruptcy case. No substitution of attorney with signed consent of the client has been filed in this case, no order approving the substitution of Peter Macaluso has been issued by the court, nor has the court authorized C. Anthony Hughes to withdraw as counsel for Debtor in this case. The court has been advised that Peter Macaluso intends to substitute in and replace C. Anthony Hughes in all of Mr. Hughes' Chapter 13 cases, which are projected to be in excess of 800 open cases.

On or about August 8, 2015, Peter Macaluso lodged with the court 185 proposed orders, each of which substituted Peter Macaluso in as counsel for the debtors in each of the 185 cases in place of C. Anthony Hughes. In this case, the purported substitution is filed as Docket Entry No. 71. Debtor did not sign the substitution and no consent to the substitution by Debtor has been filed. The Substitution is signed only by Peter Macaluso and C. Anthony Hughes, and states that only after the court orders the substitution will Debtor be notified. *Id.* Substitution, ¶ 6.

The Local Bankruptcy Rules for the Eastern District of California address the appearance, scope of representation, and withdrawal of attorneys in this court (L.B.R. 2017-1), in addition to the attorneys' obligation as members of the California State Bar. An attorney of record may substitute another attorney, and thereby withdraw from representation of a party, only when (1) the substitution is signed by the client and (2) approved by order of the court. L.B.R. 2017-1(h). Compliance with the court's rule is also required by Rule 3-700, the California Rules of Professional Conduct promulgated by the California State Bar and approved by the California Supreme Court.

On September 8, 2015, the court reviewed the docket for each of the 185 orders lodged with this court. Of those, in the 30 days which had expired since the non-consented to substitutions had been filed, consents had been filed in only 22 of the cases. This represents just twelve percent (12%) of the purported substitutions that had been pending for a month.

Though still attorney of record, C. Anthony Hughes has not responded to contested matters filed in these cases, such as the Chapter 13 Trustee's motion to dismiss the bankruptcy cases. He has not appeared, as the attorney of record, on the behalf of debtors in these Chapter 13 cases. This is not consistent with his obligations to Debtor. See Rule 3-110, California Rules of Professional Conduct.

In this case, C. Anthony Hughes did not file an opposition or appear

at the September 9, 2015 hearing on the Chapter 13 Trustee's Motion to Dismiss this case. The court continued the hearing to afford Debtor the opportunity to obtain new counsel and have that attorney substituted in as Debtor's attorney of record in this case.

DISCUSSION

The court's review of the files for the remaining 163 cases in which orders to substitute counsel were submitted, but no consent of the client obtained, none reflect any consents having been filed since the September 9, 2015 dismissal calendar.

At the hearing, -----

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

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

The Order to Appear filed by the court 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 Order is xxxx.

5. 10-51955-E-13 ALESIA THOMAS
RHS-1 C. Anthony Hughes

ORDER FOR COUNSEL OF RECORD FOR
DEBTOR TO APPEAR
9-15-15 [[96](#)]

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Alesia Thomas ("Debtor"), Peter Macaluso, C. Anthony Hughes, Chapter 13 Trustee, and the Office of the U.S. Trustee on September 17, 2015. The court computes that 5 days' notice has been provided.

The court's decision is to ~~XXXXXX~~ the Order for Counsel of Record for Debtor to Appear.

On September 11, 2015, the court issued an Order for Counsel of Record for Debtor to Appear. Dckt. 96.

The Order stated the following:

IT IS ORDERED that C. Anthony Hughes shall appear at **1:30 p.m. on September 22, 2015**, in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, no telephonic appearance permitted, and address for the court the following:

1. What C. Anthony Hughes is doing to adequately represent his clients in Chapter 13 bankruptcy cases for which he is attorney of record pending any order allowing the substitution of another attorney and the withdrawal of Mr. Hughes from such case in the United States Bankruptcy Court for the Eastern District of California.
2. In light of there being in excess of 800 cases in which C. Anthony Hughes seeks to withdraw as the attorney of record, the factors which he believes the court should consider in concluding that transferring all of the more than 800 cases to one solo practitioner attorney will fulfill Mr. Hughes' fiduciary duties to his clients.
3. In light of there being only 22 consents of clients being provided for 185 purported substitutions of Mr. Macaluso for Mr. Hughes in all of the cases, why the court does not conclude 800 substitutions to one

attorney exceeds the ability of that attorney to provide adequate representation as required by state and federal law.

All response may be presented orally at the hearing.

BACKGROUND

On October 10, 2011, Alesia Thomas ("Debtor") commenced the above-captioned Chapter 13 Bankruptcy Case. C. Anthony Hughes is the attorney of record for Debtor. Another attorney, Peter Macaluso, has attempted to appear as counsel for Debtor in this bankruptcy case. No substitution of attorney with signed consent of the client has been filed in this case, no order approving the substitution of Peter Macaluso has been issued by the court, nor has the court authorized C. Anthony Hughes to withdraw as counsel for Debtor in this case. The court has been advised that Peter Macaluso intends to substitute in and replace C. Anthony Hughes in all of Mr. Hughes' Chapter 13 cases, which are projected to be in excess of 800 open cases.

On or about August 8, 2015, Peter Macaluso lodged with the court 185 proposed orders, each of which substituted Peter Macaluso in as counsel for the debtors in each of the 185 cases in place of C. Anthony Hughes. In this case, the purported substitution is filed as Docket Entry No. 86. Debtor did not sign the substitution and no consent to the substitution by Debtor had been filed. The Substitution is signed only by Peter Macaluso and C. Anthony Hughes, and states that only after the court orders the substitution will Debtor be notified. *Id.* Substitution, ¶ 6.

The Local Bankruptcy Rules for the Eastern District of California address the appearance, scope of representation, and withdrawal of attorneys in this court (L.B.R. 2017-1), in addition to the attorneys' obligation as members of the California State Bar. An attorney of record may substitute another attorney, and thereby withdraw from representation of a party, only when (1) the substitution is signed by the client and (2) approved by order of the court. L.B.R. 2017-1(h). Compliance with the court's rule is also required by Rule 3-700, the California Rules of Professional Conduct promulgated by the California State Bar and approved by the California Supreme Court.

On September 8, 2015, the court reviewed the docket for each of the 185 orders lodged with this court. Of those, in the 30 days which had expired since the non-consented to substitutions had been filed, consents had been filed in only 22 of the cases. This represents just twelve percent (12%) of the purported substitutions that had been pending for a month.

Though still attorney of record, C. Anthony Hughes has not responded to contested matters filed in these cases, such as the Chapter 13 Trustee's motion to dismiss the bankruptcy cases. He has not appeared, as the attorney of record, on the behalf of debtors in these Chapter 13 cases. This is not consistent with his obligations to Debtor. See Rule 3-110, California Rules of Professional Conduct.

In this case, C. Anthony Hughes did not file an opposition or appear at the September 9, 2015 hearing on the Chapter 13 Trustee's Motion to Dismiss this case. The court continued the hearing to afford Debtor the opportunity

to obtain new counsel and have that attorney substituted in as Debtor's attorney of record in this case.

DISCUSSION

The court's review of the files for the remaining 163 cases in which orders to substitute counsel were submitted, but no consent of the client obtained, none reflect any consents having been filed since the September 9, 2015 dismissal calendar.

At the hearing, -----

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

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

The Order to Appear filed by the court 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 Order is xxxx.