UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 10, 2016, at 10:00 a.m.

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1. **16-90840-E-7** **CINDY GREENER** **MOTION FOR RELIEF FROM**
APN-1 **Scott Mitchell** **AUTOMATIC STAY**
10-3-16 [10]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the November 10, 2016 hearing is required.

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

Correct 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 October 3, 2016. By the court's calculation, 38 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 (14) 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.

Cindy Greener ("Debtor") commenced this bankruptcy case on September 14, 2016. Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as 2010 Chevrolet Equinox, VIN ending in 1792 ("Vehicle"). The moving party has provided the Declaration of Jennifer Woessner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Dckt. 12.

The Jennifer Woessner Declaration provides testimony that Debtor has not made one (1) post-petition payments, with a total of $489.78 in post-petition payments past due. The Declaration also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of $2,326.93.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Exhibit C, Dckt. 13. 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).

A review of the docket shows that Debtor has not listed the Vehicle or the secured debt on her Schedules. Debtor has not claimed an interest in the Vehicle on Schedule B, and she has not claimed an exemption for it on Schedule C. On Schedule E/F, Debtor listed Wells Fargo Dealer Services three times for accounts opened in November 2004, November 2009, and August 2013, respectively. For all three claims, Debtor listed that the type of nonpriority unsecured claim is for an "Automobile" and did not provide any further identifying information. For the first two claims, Debtor listed $0.00 as the amount of the claims. For the third and latest claim, Debtor listed $17,399.00.

Movant attached a copy of a Retail Payment Contract for the Vehicle that was signed by Debtor on August 10, 2013, and that established a total sales price of $35,264.16. Exhibit A, Dckt. 12. Judging by the similarity of the dates listed on the Retail Payment Contract and Debtor's Schedule E/F, the claims may be the same, but Debtor has not sufficiently established the claim such that the court could consider $17,399.00 as the amount in question for the instant Motion.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $18,655.52, as stated in the Jennifer Woessner Declaration, while the retail value of the Vehicle is determined to be $13,150.00, as stated in the Jennifer Woessner Declaration and the NADA Valuation Report.

DISCUSSION

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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. As noted by another bankruptcy judge, such (unsupported by any grounds or legal authority),

> "request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is."

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Wells Fargo and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Wells Fargo and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a per se violation of the automatic stay.

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 Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("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 2010 Chevrolet Equinox ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause.

No other or additional relief is granted.

2. **09-94269-E-7** **SUSHIL/SUSEA PRASAD** **CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD AND FERNANDEZ FOR IAIN A. MACDONALD, TRUSTEE'S ATTORNEY(S)**
MF-4 **James Pitner** **9-29-16 [158]**

Final Ruling: No appearance at the November 10, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Compensation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court continued this matter to November 10, 2016 for final hearing. No opposition was filed. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Compensation is granted.

Macdonald Fernandez, LLP, the Attorneys ("Applicant") for Stephen C. Ferlmann the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 1, 2014, through September 22, 2016. The order of the court approving employment of Applicant was entered on November 17, 2014. Dckt. 137. Applicant requests fees in the amount of $80,000.00 and costs in the amount of $3,020.96.

OCTOBER 20, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on November 10, 2016. Dckt. 165.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958.

According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 3.4 hours in this category. Applicant assisted Client with examining the Debtor's affairs and prosecuting all necessary legal action; retained professionals; and prepared the fee application.

Avoidable Transfers: Applicant spent 138.9 hours in this category. Applicant drafted pleadings; conducted discovery; defeated a motion to withdraw reference; analyzed a summary judgment motion; negotiated and drafted settlements; and analyzed issues related to the discharge of the Chapter 13 Trustee.

Other Adversary Proceedings and Contested Matters: Applicant spent 1.7 hours in this category. Applicant advised the Trustee with respect to claims the Estate may hold against the Singh Chapter 7 estate and vise-versa..

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Iain Macdonald	144	$350.00	$50,400.00
Reno Fernandez	4.20	$350.00	$1,470.00
Matthew Olsen	40.30	$250.00	$10,075.00

Roxanne Bahadurji	266.30	$250.00	$66,575.00
Total Fees For Period of Application			$128,520.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,020.96 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Filing Fees		$350.00
Photocopying	$0.20 FN.1.	$1,368.60
Deposition Transcripts		$671.25
Messenger, External Copies		$111.25
Telephonic Appearances		$227.60
Mileage, Toll, Parking		$119.76
Postage		$172.50
Total Costs Requested in Application		$3,020.96

FN.1. The court normally limits photocopy expenses to $0.10 per page, unless evidence of an actual higher cost is presented. In light of the fee reduction by Applicant, the court treats the fees and costs as a lump-sum amount and will not pick at this expense item—in this case.

FEES AND COSTS & EXPENSES ALLOWED

The court begins with the analysis of the services provided and task billing breakout provided by Applicant. The legal issues necessitating the work provided by Applicant relate to an undisclosed asset—Debtor's rights to a class action claim against their investment broker, Meyer Wilson Co., LPA ("MWLPA"), and Transamerica Financial Advisors, Inc. ("Transamerica"). The claim was for $278,000 that was invested through the investment broker and Transamerica. It turned out that the investment was part of a Ponzi scheme being run by the investor broker. MWLPA were the attorneys representing the claimants, including the Debtor, in the class action. Debtor, after the commencement of this bankruptcy case, settled their claims for $105,000.00, of which $60,000.00 was received by Debtor, and MWLPA was

paid $40,000.00 for legal fees and $2,700.00 for costs advanced. An additional $500 was paid to an unidentified bankruptcy counsel.

Applicant, as counsel for the Trustee, commenced an Adversary Proceeding on May 29, 2015. Adv. Proc. No. 15-09018. An Amended Complaint was filed on June 19, 2015. 15-09018; Dckt. 7. MWLPA filed its Answer and a Counter-Claim for Declaratory Relief on July 31, 2014. *Id.*; Dckt. 14. The Trustee sought, and was granted, leave to file a Second Amended Complaint, which Complaint was filed on October 2, 2015. *Id.*; Dckt. 44. The ground for seeking such leave was that the Trustee had determined that he sought to add a claim for professional liability against MWLPA, asserting that the estate's claim had a value of at least $210,000.00, not the $105,000.00 settlement amount. *Id.*; Motion, Dckt. 19.

Answers were timely filed by Debtor, MWLPA, and Transamerica to the Second Amended Complaint; and Answers were filed to the counter and cross claims.

On October 22, 2015, MWLPA filed a motion in the District Court to withdraw the reference for this Adversary Proceeding, citing the non-bankruptcy substantive law relating to the Trustee's claims and MWLPA's request for a jury trial. *Id.*; Motion, Dckt. 58. The Motion to Withdraw the Reference was denied by the District Court. E.D. Cal. No. 15-cv-2229; Order, Dckt. 8. The District Court rejected MWLPA's arguments that withdrawal of the reference was mandatory. Further, the request for permissive withdrawal of the reference was denied, the District Court concluding that most of the claims were core proceedings, and any which were not core could be the subject of proposed findings and conclusions by the bankruptcy judge (11 U.S.C. § 157(c)(1)) and the demanded jury trial on the professional liability claim could be conducted in the District Court after all core proceedings, and findings related thereto, were concluded by the bankruptcy judge.

On January 26, 2016, approximately one month after the responses to the Second Amended Complaint was filed, the Trustee filed Motion to Compel and Motion for Sanctions against MWLPA. 15-09018; Motion, Dckt. 80. The request related to responses to interrogatories issued by the Trustee. The court reviewed the Motion and Opposition at the February 25, 2016 hearing. *Id.*; Civil Minutes, Dckt. 111. In addressing the prosecution of the Adversary Proceeding, the court stated:

> "After reviewing the papers in connection with the instant Motion, it is clear to the court that the professional discourse between some counsel and parties in this Adversary Proceeding has broken down. While parties and their counsel may elect to so engage in such conduct, it does not come without a cost. (Whether it be sanctions, monies expended unproductively for attorneys' fees, or the ultimate fees which attorneys may be paid by their clients.)
>
> The Parties are to meet and confer concerning the supplemental responses and further proposed responses by Defendant Attorneys. On or before March 31, 2016, the Parties will file supplemental pleadings advising the court of the issues resolved, additional proposals for responses by Defendant Attorneys, and replies to such additional proposed responses."

Id.; Civil Minutes pp. 13–14.

At the continued hearing on April 7, 2016, the Parties reported that they believed the discovery could be completed, resolving part of the Motion. But that the Trustee continued to assert the right to recovery attorneys' fees and costs relating to the Motion. *Id.*; Civil Minutes, Dckt. 126. The court continued the hearing to allow the parties to complete the discovery and address the demand for attorneys' fees.

In April 2016, the Parties filed an *Ex Parte* Motion to approve a stipulation agreeing to the confidentiality of some of the information produced, demonstrating a new-found professional cooperation in the discovery process. *Id.*; Motion, Dckt. 131.

Then, on June 1, 2016, the Trustee filed a Motion for Leave to File a Third Amended Complaint. *Id.*; Motion, Dckt. 143. The Trustee sought to further amend the complaint to drop the claims against Debtor, a settlement having been reached, and to increase the claim against MWLPA and Transamerica to the full $276,200 (rather than the $210,000 in the Second Amended Complaint). The court granted the Motion. *Id.*; Order, Dckt. 153 (as stipulated by the Parties at the June 7, 2016 Status Conference).

The court granted, pursuant to the stipulation of the Parties, the Trustee's Motion for Sanctions, with MWLPA agreeing to pay $4,000.00 for the legal fees relating to the Motion to Compel and issues related thereto. *Id.*; Order, Dckt. 159.

As discussed at the Status Conference, the Parties then requested on June 10, 2016, that the court refer this Adversary Proceeding for Judicial Mediation. *Id.*; *Ex Parte* Motion, Dckt. 161. The court so ordered, with the Judicial Mediation being assigned to the Hon. Christopher M. Klein.

Through the Judicial Mediation, the Parties settled all disputes in the Adversary Proceeding, with the Trustee recovering $110,000.00. Previously the Trustee settled his claims against the Debtor for the money received, obtaining payment of $26,000.00, for a $136,000.00 total recovery for the estate. The Trustee has also received the $4,000.00 for the attorneys' fees relating to the discovery disputed as stipulated by the parties.

Task Billing Analysis Review

In considering the fee application for $80,000.00, the court considers some of the major task billing areas.

I. Case Administration

The total billing for this is 1.10 hours and fees totaling $345.00.

II. Avoidable Transfer Litigation

A. Total

1. Hours.....87.4

2. Fees.....$23,980.00

B. Intake

1. Fees.....$2,340.00

C. Conferences

1. Fees.....$3,220.00

D. Research Avoidable Transfer Claim and Defenses

1. Fees.....$6,515.00

E. Pleadings

1. Total

a. Hours.....87.4

b. Fees.....$23,980.00

2. Original Complaint.....$2,225.00

3. First Amended Complaint.....$3,355.00

4. Second Amended Complaint.....$725.00

5. Third Amended Complaint $930.00

III. Discovery and Dispute

A. Total Hours and Fees

1. Hours.....174

2. Fees.....$48,830.00

B. Motion to Compel and Sanctions

1. Fees.....$9,410.00

IV. Withdrawal of the Reference Motion

A. Total Hours and Fees

1. Hours.....31.20

2. Fees.....$8,510.00

B. Charges

1. Drafting.....$2,850.00

2. Research and Review.....$3,450.00

V. Motion for Summary Judgment (Not Filed)

A. Total Hours and Fees

1. Hours.....30.30

2. Fees.....$9,265.00

VI. Settlement With Debtor

A. Total Hours and Fees

1. Hours.....27.80

2. Fees.....$7,200.00

VII. Settlement With MWLPA and Transamerica

A. Total Hours and Fees

1. Hours.....54.90

2. Fees.....$16,685.00

B. Mediation Related Charges

1. Fees.....$11,165 ($350 of fees under Miscellaneous)

VIII. Miscellaneous

A. Total Hours and Fees

1. Hours.....33.80

2. Fees.....$9,690.00

While $80,000.00 has been requested in fees, the actual total dollars billed was $128,520.00, for which 454.80 hours have been billed. The billings and hour rates are:

Iain A. Macdonald, at $350.00 an hour.....144.00 hours (Cal State Bar License 1972)
Reno Fernandez, at $350.00 an hour..... 4.20 hours (Cal State Bar License 2007)
Matt J. Olson, at $250.00 an hour..... 40.30 hours (Cal State Bar License 2009)
Roxanne Bahadurji, at $250.00 an hour.....266.30 hours (Cal State Bar License 2013)

Applicant seeks to be paid a single sum of $83,020.96 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of $83,020.96 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

DETERMINATION OF REASONABLE FEES

The court considers the actual, reasonable, and necessary fees to be awarded counsel for the Trustee. As an initial point, the court has no doubt that what is stated on the time records, all $128,520.00 of time was billed to this file. However, because it was billed, does not make it (or 62.5% of that amount) what was reasonable and necessary.

The court does not expect trustee or debtor in possession counsel to work for less than fair compensation or have to "guarantee" a minimum return to creditors. Such would put that professional, and the trustee or debtor in possession, at a tactical disadvantage to an opponent who might be inclined to aggressively (ab)use the judicial process, as well as artificially not properly compensating the professional.

On the other hand, representing a trustee (who is not spending his or her own money) is not a license to expend time (whether due to the attorney's availability or as part of a learning exercise for a new attorney) without regard to its necessary, focused application to the law, facts, and good litigation strategy.

The Trustee recovered $136,000.00 from the litigation over this property of the estate. (The $4,000.00 of attorneys' fees for the discovery dispute can be applied to the $9,410.00 fees relating to it and does not reflect recovery of the pre-petition asset of the estate.) The $76,000.00 in fees (after application of the $4,000.00 discovery fees) represents 56% of the gross recovery by the Trustee.

The court notes that this has been a contentious litigation between the Trustee and MWLPA—with neither having sole blame and neither being the sole victim. For the first year of this case, it appears that each played into the other's weaknesses. MWLPA did avail itself of many arguments and procedural turns in this Adversary Proceeding. While MWLPA has the right to seek a withdrawal of the reference, the District Court ruling made it clear that may of the grounds asserted were not supported by the law and that most of the issues presented were core proceedings for which the bankruptcy judge issues the final orders and judgment.

The Trustee should not feel too confident with his position, as every good "defense counsel" needs the counterbalancing "plaintiff counsel" to engage in the insurance defense litigation Kabouki. The

Trustee's "plaintiff's aggressiveness" created the symmetry in the first part of this case that led to multiple amended complaints, discovery disputes, motion to compel, and motion to withdraw the reference.

That being said, the respective attorneys were able to get their clients focused on the actual value and cost of the litigation. For all of them, the longer they fought, the more each "lost" in light of there being a significant but modest value of the asset somewhere between $100,000.00 and $200,000.00, with a settlement value of $110,000.00 already having been sounded by Debtor when Debtor purported to settle rights of the bankruptcy estate in the undisclosed claims.

Commonly, a contingent fee of 35% prior to trial and a 40% or 45% fee through trial would not be unusual for this type of litigation. A trustee might opt for an hourly rate, figuring that the actual paid-for services would come in less, with the attorney knowing that he or she would recover the value of the reasonable and necessary services even if the value of the asset came in lower than reasonably anticipated (hoped). Here, the hourly fee is 56% of the gross recovery.

The Trustee projects that this recovery, after payment of administrative expenses will generate an unsecured claims dividend of close to 50% (which may go higher if the Trustee collects an anticipated $10,000.00 recovery from the investment broker's bankruptcy case). Even with these significant legal fees, there is a significant return for creditors holding general unsecured claims.

Applicant has considered and self-regulated the fees, requesting approval of the $80,000.00, rather than the fully billed amount and then "negotiated down with the court." Part of this is perceived to be based on the experience, knowledge, and reputation of those attorneys and their understanding that the bankruptcy process has to work for everyone, not merely the trustee and professionals. The court will adventure a bit further, theorizing that such experienced counsel also foresaw that the court would likely reduce some of the conference and "educational experience" fees that appear to have been billed by the lesser-experienced attorneys.

The court also concludes that this higher percentage of the monies recovered than one would anticipate is the result of the defense strategy advanced by some of the Defendants (and clearly not all defendants). It appears only after all parties understood how (and that they are) the Federal Rules of Civil Procedure are applied in the bankruptcy court and that the majority of issues would be determined in the bankruptcy court (which could get this matter promptly to trial) were they willing to appreciate their respective counsel's suggestions of the economics of this litigation. For Defendants, the cost of achieving an incremental delay greatly outweighed the value of such delay.

In the end, the attorneys and their clients brought focus to the litigation and have concluded the matter in what appears to be a mutually economically successful manner.

The court determines that the requested fees of $80,000.00 and costs of $3,020.96 are reasonable, and relate to necessary legal services provided to the Trustee, for which Applicant has exercised proper billing judgment.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$80,000.00
Costs and Expenses	$3,020.96

pursuant to this Application in this case.

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 Allowance of Fees and Expenses filed by Macdonald Fernandez, LLP, ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Macdonald Fernandez, LLP, is allowed the following fees and expenses as a professional of the Estate:
>
> Macdonald Fernandez, LLP, Professional Employed by Trustee
>
> Fees in the amount of $80,000.00
> Expenses in the amount of $3,020.96,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

3. **16-90884-E-7** **KIMBERLY BLAND** **MOTION FOR RELIEF FROM**
VVF-1 **Seth Hanson** **AUTOMATIC STAY**
10-20-16 [10]

HONDA LEASE TRUST VS.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 20, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

Kimberly Bland ("Debtor") commenced this bankruptcy case on September 27, 2016. Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Honda Civic, VIN ending in 3098 ("Vehicle"). The moving party has provided the Declaration of Gloria Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Gloria Williams Declaration provides testimony that Debtor has not made one post-petition payments, with a total of $407.58 in post-petition payments past due. The Declaration also provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of $815.16.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Exhibit 3, Dckt. 13. 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).

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 $17,536.73, as stated in the Gloria Williams Declaration, while the value of the Vehicle is determined to be $10,950.00, as stated in Schedules B and D filed by Debtor.

DISCUSSION

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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-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 Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Honda Civic ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.