

Furthermore, on the California Secretary of State's website, Wells Fargo Dealer Services, Inc. appears to be "merged out." Wells Fargo Dealer Services website states "Wells Fargo Dealer Services is a division of Wells Fargo Bank, N.A. Member FDIC and Equal Credit Opportunity Lender." FN.1. Therefore, service to this creditor must be pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

FN.1. <http://www.wellsfargodealerservices.com/>

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

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

The Motion to Redeem Personal Property filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

2. [12-41713](#)-E-11 **MARVIN/ARNELLE BROWN** **MOTION TO VALUE COLLATERAL OF**
RLC-1 **Stephen M. Reynolds** **WELLS FARGO BANK, N.A.**
10-23-13 [87]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditor, all creditors and Office of the United States Trustee on October 23, 2013. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to deny the Motion to Value Collateral without prejudice. 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:

SERVICE

Marvin and Arnelle Brown, Debtors-in-Possession, seek to value the secured claim of Wells Fargo Bank, N.A. However, only 27 days notice was provided to the parties. Pursuant to Local Bankruptcy Rule 9014-1(f)(1), 28 day's notice is required. This is sufficient to deny the motion.

DECLARATION

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2000 Daybreak Court, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$350,000.00 as of the petition filing date. However, the declaration offered by the Movant states that it is under penalty of perjury and that the statements are "true and correct to the best of my knowledge." Dckt. 89. This could be read two ways. The first is that "whatever I have said is true, to the extent that I have any knowledge about what I am talking about, but I really don't have any knowledge and am only parroting what my attorney has written in this declaration." The second interpretation is that "I am telling you the truth to the best of my ability to testify in this proceeding."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief.

OPPOSITION

Wells Fargo Bank, N.A., as Trustee for the holders of Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2005-J, objects to Debtor's Motion and seeks to continue the hearing in order to present its own evidence of value. Creditor also states that it is the first priority lien on the Debtor's principal residence and therefore cannot be modified pursuant to 11 U.S.C. § 1123(b)(5).

DISCUSSION

Based on the procedural defects set forth above, the court denies the motion without prejudice. This will allow Wells Fargo Bank, N.A. time to obtain evidence of value of the subject property and confer with the Debtors-in-Possession.

Further, the Motion is substantively defective - the Debtors failing to provide competent, personal knowledge evidence. For more than two and one-half years this court has addressed the sufficiency of declarations. In light of the simple and basic steps which are required for a competent declaration, the court interprets the Debtors' "weasel language" to be that the Debtors have no personal knowledge and cannot, for the present Motion, present competent, personal knowledge testimony. Fed. R. Evid. 602, personal knowledge requirement,

The Motion is denied without prejudice.

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 Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

3. [12-39515](#)-E-11 WATSON COMPANIES, INC.
JHK-1 W. Steven Shumway

MOTION TO APPROVE STIPULATION
FOR RELIEF FROM THE AUTOMATIC
STAY AND/OR MOTION TO APPROVE
STIPULATION FOR ANNULMENT OF
THE AUTOMATIC STAY
10-15-13 [[158](#)]

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, list of 20 largest unsecured creditors, and Office of the United States Trustee on October 15, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve Stipulation for Relief from the Automatic Stay was properly 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). 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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Stipulation for Relief from the Automatic Stay is granted. No appearance required.

Creditor Ford Motor Credit Company, LLC ("Movant") moves the court for an order approving the stipulation for relief from automatic stay and annulment of the automatic stay with the Watson Companies, Inc., Debtor-in-Possession, with respect to certain vehicles. The Motion is filed pursuant to Federal Rule of Bankruptcy Procedure 4001(d)(1). Movant states it and Debtor-in-Possession agreed to stipulate to relief for the automatic stay with respect to six of the seven vehicles that have been surrendered.

Movant's previous counsel of record filed six Stipulated Orders Granting Relief from Automatic Stay in which Movant and Debtor-in-Possession stipulated to terminate the automatic stay as to the six vehicles. The stipulated orders were not approved by the court and no proper motion was filed under Federal Rule of Bankruptcy Procedure 4001(d) seeking the issuance of an order approving the Stipulated Orders. The court issued an Order to Show Cause on June 21, 2013, after a review of these stipulated orders. The court discharged the Order to Show Cause on August 29, 2013, after reviewing Movant and Movant's previous counsel's supplemental responses.

Movant and Debtor-in-Possession have entered into a stipulation so that the automatic stay may be annulled retroactively to validate the sale of the five (5) surrendered vehicles which were sold as a result of Movant's previous counsel's erroneous notification to Movant that the automatic stay had been terminated as to said vehicles, described as follows:

Movant and Debtor-in-Possession have not agreed to stipulate to relief from the automatic stay with respect to all seven vehicles that were surrendered to Movant, including the following:

Vehicle	VIN#	Surrendered on:
2006 Ford F450	IFDXW46P26ED92270	02/19/2013
2007 Ford F450	IFDXW46P27EB32176	02/21/2013
2007 Ford F150	1FTPX14567NA41882	02/19/2013
2007 Ford F450	1FDXW46P77EB28690	04/16/2013
2008 Ford F150	IFTRF12268KB71281	02/19/2013
2007 Ford F150	1FTRF12207KA96110	02/19/2013
2007 Ford F450	1FDXW46P97EB28691	02/19/2013

In addition, Movant and Debtor-in-Possession have agreed to annul the stay automatic stay with respect to the five surrendered vehicles that were sold, including the following:

Vehicle	VIN#	Sold on:
2007 Ford F150	1FTPX14567NA41882	06/25/2013
2007 Ford F450	1FDXW46P77EB28690	06/25/2013
2008 Ford F150	1FTRF12268KJB71281	06/25/2013
2007 Ford F150	1FTRF12207KA96110	06/25/2013
2007 Ford F450	1FDXW46P97EB28691	07/09/2013

Debtor-in-Possession also agrees to waive the 14-day stay provided by the Bankruptcy Rule 4001(a)(3).

DISCUSSION

Federal Rule of Bankruptcy Procedure 4001(d) specifies how a creditor obtains approval of a stipulation and order for relief from the automatic stay to be, in pertinent part,

(d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.

(1) Motion; Service.

(A) Motion. A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

(I) an agreement to provide adequate protection;

(ii) an agreement to prohibit or condition the use, sale, or lease of property;

(iii) an agreement to modify or terminate the stay provided for in §362;

(iv) an agreement to use cash collateral; or

(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property....

(B) Contents. The Motion shall consist of... a concise statement of the relief requested...that lists, or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement...

(C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs....

(3) Disposition; Hearing. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

Here, the Motion satisfies the requirements of the Federal Rule of Bankruptcy Procedure 4001(d)(1)-(3). The Motion describes the material provisions of the stipulation in detail in the Motion and provides a copy of the stipulation agreement. Dckt. 161.

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

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

The Motion to Approve Stipulation filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the Stipulation of the Parties (Dckt. 161), and good cause appearing,

IT IS ORDERED that pursuant to the Stipulation of the Parties, Dckt. 161, the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Creditor Ford Motor Credit Company, LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the assets identified as,

Vehicle	VIN#	Surrendered on:
2006 Ford F450	IFDXW46P26ED92270	02/19/2013
2007 Ford F450	IFDXW46P27EB32176	02/21/2013
2007 Ford F150	1FTPX14567NA41882	02/19/2013
2007 Ford F450	1FDXW46P77EB28690	04/16/2013
2008 Ford F150	1FTRF12268KB71281	02/19/2013
2007 Ford F150	1FTRF12207KA96110	02/19/2013
2007 Ford F450	1FDXW46P97EB28691	02/19/2013

, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the automatic stay is annulled effective as of June 25, 2013, as to Creditor Ford Motor Credit Company, LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the assets, for the sale of five (5) surrendered vehicles identified as,

Vehicle	VIN#	Sold on:
2007 Ford F150	1FTPX14567NA41882	06/25/2013
2007 Ford F450	1FDXW46P77EB28690	06/25/2013
2008 Ford F150	1FTRF12268KJB71281	06/25/2013
2007 Ford F150	1FTRF12207KA96110	06/25/2013
2007 Ford F450	1FDXW46P97EB28691	07/09/2013

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.

November 19, 2013 at 10:30 a.m.

4. [11-27845-E-11](#) IVAN/MARETTA LEE MOTION TO EXTEND AUTOMATIC STAY
REW-20 Raymond E. Willis AND/OR MOTION FOR INJUNCTIVE
RELIEF
10-16-13 [[325](#)]

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 Sacramento County Tax Collector and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Extend 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 Motion to Extend Automatic Stay is continued to 1:30 p.m. on December 4, 2013. 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:

Ivan and Maretta Lee, the Plan Administrators under the confirmed Chapter 11 Plan move for "extension" of the automatic stay and an injunction against the County of Sacramento from selling their residence located at 8678 Butterbrickle Court, Elk Grove, California in violation of the Confirmed Chapter 11 Plan. In the Motion, Dckt. 324, the Plan Administrators state with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based.

- A. Plan Administrators seek to have the court enjoin Sacramento County from selling the 8678 Butterbrickle Court Property.
- B. The Debtors in Possession (predecessor in interest to the Debtors and Plan Administrators) entered into a Stipulation for the payment of the County's claim on the following terms:
 1. Commencing the month after the effective date and continuing for 60 months thereafter, the Debtors shall pay through the Chapter 11 Plan \$252.00 a month, which amortizes payment of the County's claim in full with 18% interest.
 2. The terms of the Stipulation were incorporated into the Chapter 11 Plan. The Chapter 11 Plan was confirmed by an order of the court filed on May 4, 2013. Dckt. 283.

- a. The Effective Date of the Plan is defined in the Chapter 11 Plan as follows: "'Effective Date' means the date the Plan is confirmed by the court." Chapter 11 Plan, attached as Exhibit A to the order confirming the Plan.
- b. The Chapter 11 Plan, Article 4, Paragraph 2f provide the following treatment for the Sacramento County secured claim.

"2f. Sacramento County Tax Collector, 8678 Butterbrickle Ct., Sacramento, CA Debtor will pay the entire amount contractually due by making all post-confirmation payments, and by paying all pre-confirmation arrears at 18% interest in monthly payments of \$252.00/month. Payments shall commence on the 1st day of the month following the month which is the Effective Date of the Plan and continuing for 60 months thereafter."
- c. The effective date of the Plan being May 4, 2013, the month following the effective date is June 2013.
3. Having been confirmed, the Chapter 11 Plan is the bonding contract modifying the debt owed to the County.
4. The County issued a Notice of Delinquent Prior Year Secured Taxes, dated August 23, 2013, stating that it intended to sell the 8678 Butterbrickle Property. Exhibit 1, Dckt. 329.
5. The County has scheduled a sale of the 8678 Butterbrickle Property for February 24, 2013.
6. Sacramento County has demanded payment in full of the \$16,510.60 pre-petition claim which is provided for in the Plan.
7. The Debtors commended making the \$252.00 a month payments to the County in October 2013. For the "arrearage" in plan payments, the Debtors state that they will now make an additional payment of \$100.00 a month.
8. It is alleged that the County has asserted that if there is not an "active" bankruptcy case, the "statute" requires that the property be sold by the County.
9. The County asserts that since the Plan has been confirmed and the Plan (Administratively) closed, it is

not bound by the terms of the confirmed Chapter 11 Plan.

10. The Debtors believe that the "most equitable" action is for the "automatic stay" to be extended if the case is "closed."

The Points and Authorities filed by the Plan Administrators, Dckt. 328, provides the following to the court,

- a. The automatic stay can be "extended" post-confirmation if the case is administratively closed, citing to *In re Mendez*, 464 B.R. 463 (Bankr. C.D. Mass 2011).
- b. Authorities that confirmation of a Plan becomes a "binding contract" between the Debtors and Creditors.
- c. Authorities supporting the asserting that an injunction should be issued to prevent County from violating the Chapter 11 Plan.

The Plan Administrators have filed several exhibits in support of the Motion. Exhibit 3 is the letter from Sacramento County responding to the Plan Administrators' counsel asserting that the County's threat to sell the Butterbrickle Property is in violation of the confirmed Chapter 11 Plan. Exhibits, Dckt. 329.

The County's letter, Exhibit 3, states in pertinent part,

- A. "Pursuant to Revenue and Taxation Code at 12:01 a.m. on July I all tax-defaulted property that is five years or more delinquent (three years or more in the case of a nuisance abatement lien) will become subject to the power to sell unless the property taxes are redeemed, or an installment plan of redemption is initiated."
- B. "The installment plan of redemption refers to installment plans described in Revenue and Taxation Code Article 2, code sections 4216 through 4226. Properties become subject to the power to sell, regardless of the confirmed bankruptcy plan or the bankruptcy stay."
- C. "Code Section 3692 [California Revenue and Tax Code] governs time limitations when property must be offered for sale. The code states, 'The tax collector shall attempt to sell tax-defaulted property as provided in this chapter within four years of the time that the property becomes subject to sale for nonpayment of taxes unless by other provision of law the property is not subject to sale.' When property is included in an active bankruptcy case, in compliance with the stay, it will not be offered for tax sale."
- D. "Although a property may be included in a confirmed bankruptcy plan, if the bankruptcy case is no longer active,

then the property is no longer protected by the bankruptcy stay."

- E. "Sacramento County will accept the payments as described in the confirmed bankruptcy plan; however, if the property is not in an active bankruptcy case the statute requires the property to be offered for sale within four years of becoming subject to sale."
- F. "The referenced property is statutorily required to be offered for sale before June 30, 2016."
- G. "Because bankruptcy case number 11-27845-E-11 filed March 30, 2011, and closed January 4, 2013, was re-opened on September 17, 2013, it is in an active case and the property will not be offered at tax sale."

This letter appears to manifest a fundamental misunderstanding of the effect of confirmation of a Chapter 11 Plan, the administrative closing of a Chapter 11 case while a confirmed plan is being confirmed, the final closing of a Chapter 11 case for the entry of a final decree, the dismissal of a Chapter 11 case when a debtor or trustee cannot prosecute the case, and the supremacy clause of the United States Constitution, Article VI, Paragraph 2, which provides,

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

This applies even to a State's exercise of the "police power." *Morris v. Jones*, 329 U.S. 545 (1947), reh den 330 U.S. 854 (1947) ("We have no doubt that it may do so except as such procedure collides with the federal Constitution or an Act of Congress. See *Broderick v. Rosner*, 294 U.S. 629. But where there is such a collision, the action of a State under its police power must give way by virtue of the Supremacy Clause. Article VI, Clause 2.")

Though the County of Sacramento appears to manifest a fundamental misunderstanding of Chapter 11 bankruptcy cases and the Bankruptcy Code as enacted by Congress pursuant to Article 1, Section 8, Clause 4, a review of the Motion discloses several problems which preclude granting the relief requested pursuant to this Motion.

First, the then Debtors-in-Possession confirmed their Chapter 11 plan in this case on May 4, 2013. Dckt. 283. With respect to the Butterbrickle Property and any post-confirmation stay or injunction, the confirmed Chapter 11 Plan includes the following provisions [emphasis added].

- d. "Discharge Injunction. Except as specifically provided in the Plan to the contrary, the satisfaction, **release and discharge**

set forth in this Article shall also operate as an injunction prohibiting and enjoining the commencement or continuation of any action, the employment of process or any act to collect, recover from or offset any Claim against or Interest in the Debtor by any Entity." Plan Article 9, ¶B.

- e. "Plan Creates New Obligations. The **obligations to creditors that Debtor undertakes in the confirmed Plan replace those obligations to creditors that existed prior to the effective Date of the Plan.** Debtor's obligations under the **confirmed Plan constitute binding contractual promises** that, if not satisfied through performance of the Plan, create a basis for an action for breach of contract under California law. To the extent that a creditor retains a lien under the Plan, that creditor retains all rights provided by such lien under applicable non-Bankruptcy law. Plan Article 13, ¶B.
- f. "Vesting. **On the Effective Date, all property of the estates shall vest in the Reorganized Debtor** pursuant to Section 1141 (b) of the Bankruptcy Code, provided that the vesting of said property shall be without prejudice and shall not act as a bar to a post confirmation motion to convert this case to one under Chapter 7 of Title 11 by the United States Trustee or any other party in interest on any appropriate grounds, and upon the granting of such motion the Plan shall terminate and the Chapter 7 estate shall consist of all remaining property of the Chapter 11 estate not already administered. Such remaining property shall be administered by the Chapter 7 Trustee as prescribed in Chapter 7 of the Bankruptcy Code. The Reorganized Debtor reserves the right to oppose any such motion." Plan Article 14, ¶ D.
- g. "Final Decree. **After the estate is fully administered, the Reorganized Debtor shall file an Application for a Final Decree,** and shall serve the Application on the United States Trustee. The form of the proposed order granting the Application shall be approved by the United States Trustee prior to the submission of the Order to the Court, and **the approval of the United States Trustee shall be a condition precedent to the entering of the Final Decree closing the case.**" Article 14, ¶E.
- h. "Jurisdiction. **Until the Reorganization Case is closed,** the Bankruptcy Court and the District Court, to the extent required under the Bankruptcy Code, shall retain the fullest and most extensive jurisdiction that is permissible, including that necessary to ensure that the purposes and intent of the Plan are carried out. Except as otherwise provided in the Plan, the **Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Interests in the Debtor,** to approve sales of assets and to adjudicate and enforce any actions, and all other causes of

action which may exist on behalf of the Debtor. Nothing contained herein shall prevent the Debtor from taking such action as may be necessary in the enforcement of any action, or other cause of action which the Debtor has or may have." Plan Article 15, ¶B.

- i. "Specific Purposes. In addition to the foregoing, the **Bankruptcy Court shall retain jurisdiction** for the following specific purposes after Confirmation of the Plan:

...

4. **to enforce and interpret the terms and conditions of the Plan;**

5. **to enter such orders or judgments**, including, but not limited to, **injunctions (I) as are necessary to enforce the title, rights and powers of the Debtor** and (ii) as are necessary to enable holders of Claims to their rights against any Entity that may be liable therefore pursuant to applicable law or otherwise, including, but not limited to, court orders;

6. **to hear and determine any motions or contested matters involving taxes**, tax refunds, tax attributes, tax benefits and similar or related matters with respect to the Debtor arising on or prior to the Effective Date, arising on account of transactions contemplated by the Plan, or relating to the period of administration of the Reorganization Case;..

Article 15, ¶¶ B, D.

The automatic stay is itself "automatically terminated" upon specific events as provided in 11 U.S.C. § 362(c). These include:

"(c) Except as provided in subsections (d), (e), (f), and (h) of this section-

(1) the stay of an act against property of the estate under subsection (a) of **this section continues until such property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of-

(A) the time the case is closed;
(B) the time the case is dismissed; or
(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied."

11 U.S.C. § 362(c) [emphasis added].

Congress has provided limited circumstances in which the court may "reimpose" or "impose" the "automatic stay." The concept of the court having to "impose" or "reimpose" is antithetical to it being an "automatic" stay. The court may extend the automatic stay in a second bankruptcy case filed within a year of the dismissal of a prior case pursuant to 11 U.S.C. § 362(c)(2)(B). Additionally, the court may "impose" the "automatic stay" pursuant to 11 U.S.C. § 362(c)(3)(B) in a bankruptcy case filed within one year of the dismissal of two or more prior bankruptcy cases. Neither of these provisions apply to the post-confirmation requested pursuant to the present Motion.

If the Plan Administrators believe that injunctive relief is proper (an order prohibiting Sacramento County from enforcing its lien rights) then it must request such relief from this court through an Adversary Proceeding. Federal Rule of Bankruptcy Procedure 7001(7).

Continued Hearing to Conduct Confirmation Status Conference

Though the relief requested cannot be granted though the procedure used and form requested (reinstate automatic stay), significant issues have been raised. While the County of Sacramento may believe that it is acting in good faith, violations of the Plan and violating the confirmation order can have serious (and expensive) consequences. Believing that all parties are attempting to act in good faith, the court continues the hearing to conduct a post-confirmation status conference. The court orders that the Sacramento County Counsel appear, though such counsel with knowledge of bankruptcy as the County Counsel deems appropriate, to advise the court of the basis for Sacramento County asserting that the confirmed Chapter 11 Plan and Confirmation Order of this court are without force and effect.

The continued hearing and post-confirmation status conference shall be conducted at 1:30 p.m. on December 4, 2013.

Therefore, the motion is denied without prejudice.

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

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

The Motion to Extend Automatic Stay filed by Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 1:30 p.m. on December 4, 2013, for the court to conduct a Post-Confirmation Status Conference.

IT IS FURTHER ORDERED that the Sacramento County shall have counsel, who is knowledgeable in Chapter 11 bankruptcy law, appear for the court to address the post-confirmation plan issues, the administrative closing of a Chapter 11 case, and the contentions of Sacramento County

that it is not bound by the terms of the confirmed Chapter 11 Plan and order confirming said Plan. The issues include those as stated by the Sacramento County Tax Collector in the October 8, 2013 letter to counsel for the Plan Administrators and revested Debtors in this case. A copy of the letter is appended to this Order as Exhibit A for the convenience of the parties.

The Clerk of the Court shall serve a copy of this Order and the Civil Minutes of the November 19, 2013 hearing on John F. Whisenhunt, Sacramento County Counsel, and Bradley J. Hudson, Sacramento County Executive Officer.

5. 13-20051-E-11 TYRONE BARBER MOTION TO CONVERT CASE FROM
UST-2 Cory A. Birnberg CHAPTER 11 TO CHAPTER 7 OR
MOTION TO DISMISS CASE
10-18-13 [[126](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 18, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Convert or Dismiss 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 court's tentative decision is to grant the Motion to Convert or Dismiss and Covert the case to one under Chapter 7. 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 United State Trustee seeks to dismiss or convert the bankruptcy case because Debtor-in-Possession, a small business debtor, has failed to file a plan and disclosure statement by the 300th day post-petition as required by 11 U.S.C. § 1121(e)(2). Pursuant to Section 1121(e)(3), Debtor-in-Possession has waited too long to extend that deadline. Additionally, Debtor-in-Possession's monthly operating reports have not been timely filed and appear inaccurate.

DEBTOR'S OPPOSITION

Debtor-in-Possession contends that the case is no longer a small business case, as the claims exceed the \$2,343,300.00 maximum allowed under the Code. Debtor-in-Possession filed a Motion for relief from the small business case designation, set for December 12, 2013. Debtor-in-Possession also contends that Creditors would see no recovery. Debtor-in-Possession also states he has met with the U.S. Trustee's office to better the operating reports. Debtor-in-Possession states that the reports have been late but that the information was from the Philippines which created a delay.

At a hearing in this case on November 13, 2013, counsel for the Debtor-in-Possession advised the court that due to significant adverse economic events (including the devastation of the estate's real property assets in the Philippines), the case should be converted to one under Chapter 7. Rather than filing his own separate motion, the Debtor in Possession no longer opposed the U.S. Trustee's Motion to Convert.

TRUSTEE'S RESPONSE

The Trustee argues the recently added Internal Revenue Service claim is not a liquidated debt as it is not readily determinable. The Trustee states that a simple hearing would not determine the claim, and most of the claim is not even assessed. The claim identifies \$642,804.74 is "unassessed" and an additional \$604,022.00 as "pending examination."

Trustee states that in Debtor-in-Possession's objection to the IRS claim, Debtor asserts that he "is not justly and truly indebted to said claimant, said claim was paid by the debtor, in whole in or part, and the claim is based upon the allegation that Debtor did not file its returns for 941 and 1120 taxes for certain periods and such tax is assessed upon estimates. Debtor affirmatively asserts it has filed such returns and paid the tax." Somewhat consistent with his objection, Debtor asserts only \$187,000 is owed to IRS in his Amended Schedule E, filed January 17, 2013. Dckt. 35.

DISCUSSION

A Chapter 11 case may only be dismissed or converted for cause. 11 U.S.C. § 1112(b)(1). The Bankruptcy Code provides a list of causes, which are sufficient to support dismissal or conversion. *Id.* at § 1112(b)(4). Generally, such lists are viewed as illustrative rather than exhaustive; the court should "consider other factors as they arise, and use its equitable powers to reach the appropriate result in individual cases." *Pioneer Liquidating Corp. V. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (citation omitted).

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor. 11 U.S.C. §101(51C). The term "small business debtor" means a person engaged in commercial or business activities that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition in an amount not more than \$2,343,300. 11 U.S.C. §101(51D).

The court raised similar issues in the Order to Show Cause, heard on November 13, 2013. The court continued the hearing to December 17, 2013.

The Order to Show Cause was issued not only because of the non-appearance at the Status Conference, but because of the Debtor in Possession's failure to prosecute the case. As noted by the court, the activity in this case consisted of merely the employment of professionals and the filing of fee applications.

Following the Order to Show Cause, the U.S. Trustee filed a Motion to Dismiss the Chapter 11 Case. Dckt. 126. In addition to the Debtor in Possession not having met the timely plan requirements for a small business case, the U.S. Trustee also raised the grounds that the Monthly Operating Reports were not timely filed and appeared to be inaccurate. The inaccuracies identified by the U.S. Trustee in connection with the motion to dismiss are that the cash balance amounts and fund on hand amounts on several of the Monthly Operating Report are not consistent.

The court was also concerned that this case, having been filed on December 20, 2012, little had been accomplished other than employing professionals and the filing of fee applications. The Order to Show Cause appears not only to have spawned a motion to dismiss by the U.S. Trustee, but several fee applications, disclosure statement, and Chapter 11 plan from the Debtor in Possession.

The first fee application seeks the payment of \$3,360 in fees to Renato Pepengco, as the accountant-bookkeeper for the Debtor in Possession. Application, Dckt. 131. This is for the 2010 Federal and California tax returns, the Philippine Property tax return, and 2012 W-2s and 1099s. The second fee application is for John Guthrie, the Debtor's family law counsel who is seeking to enforce a support order. The Debtor in Possession seeks an interim fee award and authorization to pay counsel \$10,000.00.

The proposed Chapter 11 Plan, Dckt. 140, provides for payment of claim in the following manner and amounts:

Class of Claims Creditor	Amount Provided in Plan	Treatment of Claim
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Class 1, Internal Revenue Service Secured Claim	Unstated	Subject to Objection of Debtor
Class 2, Franchise Tax Board Secured Claim	Unstated	Unimpaired, to be paid over 5 years, from later of effective date or when claim is allowed by final, non-appealable order
Class 3 Ford Motor Credit Secured Claim	Unstated	Paid in full within 60 days of later of effective date or when order allowing claim is a final, non-appealable order
Class 4 All Priority Claims (Excluding administrative expense claims and priority tax claims)	Unstated	Paid in full over five years from the later of the effective date or when order allowing claim is a final, non-appealable order
Class 5 General Unsecured Claims	Unstated	Paid 20% of value (scheduled amount) over five years.
Class 6 Equity		Property and Business Remains the Debtor's

The Plan fails to provide any specifics by which the Debtor would be bound to perform. No specific amounts to be paid as claims are provided for, no interest rate, no amortization, and no monthly payment amounts. The Plan is a recitation of the legal requirements of the Bankruptcy Code with no financial substance.

For the general unsecured claims, the Plan fails to provide for the payment of claims as filed and allowed, but merely that the Debtor will pay 20% of the claims as the Debtor scheduled them. The proofs of claim are deemed a nullity by the Debtor in Possession.

A glaring omission in the Plan is for the tax priority claims. The Class four priority claims expressly exclude tax claims. The proposed Plan includes a note, stating that under 11 U.S.C. § 1129(a)(9)(D) a secured priority tax claim must be paid in the same manner as a unsecured priority tax claim. However, that does not make an unsecured priority tax claim a secured claim. See 11 U.S.C. § 506(a) for definition of secured claim, limiting it to the value of the collateral securing the claim.

The Plan provides that the Debtor will fund the plan with only \$1,500 a month. Over the 60 months of the plan that totals \$90,000.00. The plan further states that "The remaining amounts owing will be funded from the operations of the Debtor." No specific amounts are required to be funded and no timing is provided for the "remaining amounts" which would have to be funded.

To put the non-specific funding in context, just from the proofs of claim filed, the Debtor will have to generate from "operations" an additional \$2,144,584 for the secured and priority tax claims.

The Disclosure Statement states that the plan is being proposed in a small business bankruptcy case. The financial information provided with the Disclosure Statement is only the most recent monthly operating report.

In describing the claims, the Disclosure Statement projects that there will be \$43,000 in administrative expenses (showing only \$15,000 in professional fees). Though not so provided in the Plan, the Disclosure Statement describes the payment of a \$9,659 priority claim to the California Employment Development Department and a \$2,662 priority claim to the California Franchise Tax Board. No treatment of the Internal Revenue Service priority claim is provided, with the Disclosure Statement providing only that the amount is "TBD" (to be determined). The priority claim treatment listed in the Disclosure Statement is not the treatment which is provided for in the Plan.

For the secured claim of the Internal Revenue Service, the Disclosure Statement "discloses" that the treatment is generically going to be payment over five years, for whatever amount it needs to be. No provision is made for either the Internal Revenue Service secured claim or the Franchise Tax Board secured claim for any specific amount or interest to be paid.

For Class 5 general unsecured, the Disclosure Statement discloses that the Debtor will only pay trade debt and then pay only the debt as he has listed it on Schedule F. The Plan does not say that Class 5 is limited only to "trade debt" and that all other unsecured claims are ignored.

The financial information provided as part of the Disclosure Statement is only a monthly operating report. The Debtor in Possession offers no good faith financial projections or a pro forma by which an informed decision on whether a creditor though voting for or against the plan. Looking at the September 2013 Monthly Operating Report attached to the Disclosure Statement, several financial issues bubble to the surface.

A.	Cash Receipts Since December 2012.....	\$1,934,131
B.	Disbursements Since December 2012.....	(\$1,804,742)
C.	Increase(Decrease) in Cash Since December 2012.....	\$ 129,389
D.	Cash Balance, September 30, 2013.....	\$ 129,389
E.	Bank Account Balances	
	1. Bank of the West, 4784.....	\$7,676.45
	2. Bank of the West, 4839.....	\$ 156.46
	3. Bank of the West, 3711.....	\$ 0.37

The detail provided to the Monthly Operating Report for September 2013 does not show where the \$129,389 cash balance is located.

The Monthly Operating Report also discloses unpaid post-petition liabilities of \$100,655 (current to 30-days), \$34,378 (over 30-days, non-tax obligations), and \$45,800 for accrued professional fees. These total \$180,834.00 in unpaid post-petition liabilities, which exceed the paper

"cash balance" shown on the Monthly Operating Report. The Monthly Operating Report also lists a "Work in Process" asset with a value of \$477,536.

Based on the foregoing, cause exists to dismiss or convert the case.

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

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

The Motion to Dismiss or Convert filed by the U.S. Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is converted to on under Chapter 7.

6. [13-24254-E-7](#) **RUSS TRANSMISSION INC** **MOTION TO SELL**
HSM-7 **Gary F. Zilaff** **10-29-13 [91]**

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 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 2013. By the court's calculation, 21 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Sell Property. 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 Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b).

Here, the Trustee proposes to sell the real property commonly known as 5334 Leiser Road, City of Knights Landing, California, APN 34-020-020. The sales price is \$360,000.00 and the named buyer is Faith Archuleta. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 94. Trustee has proposed terms for overbidding, if required.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to sell property filed by 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 Susan Didriksen, the Chapter 7 Trustee ("Trustee"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Faith Archuleta or nominee ("Buyer"), the real property commonly known as 5334 Leiser Road, City of Knights Landing, California, APN 34-020-020, on the following terms:

1. The Real Property shall be sold to Buyer for \$360,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 94.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount of six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%)

commission shall be paid to the Trustee's broker Lori Bluett, Bluett & Associates.

IT IS ORDERED that the provisions of Federal Rule of Bankruptcy Procedure 6004(h) are waived.

7. [13-24254-E-7](#) **RUSS TRANSMISSION INC** **MOTION TO SELL**
HSM-8 **Gary F. Zilaff** **10-29-13 [95]**

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 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 2013. By the court's calculation, 21 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Sell Property. 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 Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b).

Here, the Trustee proposes to sell the real property commonly known as 6801 Elvas Avenue, Sacramento, California, APN 008-0391-011. The sales price is \$950,000.00 and the named buyer is George Sugarman. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 98. Trustee has proposed terms for overbidding, if required.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Sell

Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to sell property filed by 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 Susan Didriksen, the Chapter 7 Trustee ("Trustee"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to George Sugarman or nominee ("Buyer"), the real property commonly known as 6801 Elvas Avenue, Sacramento, California, APN 008-0391-011, on the following terms:

1. The Real Property shall be sold to Buyer for \$950,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 98.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount of six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's broker Lori Bluett, Bluett & Associates.

IT IS ORDERED that the provisions of Federal Rule of Bankruptcy Procedure 6004(h) are waived.

8. [11-47181](#)-E-7 ARTHURO AGUILAR
RJE-1 Scott A. CoBen

MOTION TO REOPEN CHAPTER 7
BANKRUPTCY CASE AND/OR MOTION
TO DETERMINE CLAIM IS EXCEPTED
FROM DISCHARGE
10-9-13 [[85](#)]

CASE CLOSED 5/10/13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Chapter 7 Trustee, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Reopen Chapter 7 Bankruptcy Case 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 court's tentative decision is to grant the Motion to Reopen Chapter 7 Bankruptcy Case, with no further relief ordered. 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:

Creditor David Scott moves for an order reopening the bankruptcy for the limited purpose to determine that his claim is exempt from discharge. Creditor also moves for an order determining that his claim is excepted from discharge.

However, the court notes several issues.

First, the motion seeks to have the court reopen the Chapter 7 bankruptcy case and determine the claim is exempt from discharge. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join a motion to compromise with a motion for compensation.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising

rights of the estate - proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice. The Motion is denied for this independent ground.

Additionally, Local Bankruptcy Rule 5010-1 requires that a motion to reopen a case shall contain a statement of the grounds for reopening the case, but **shall not** contain a request for any other relief. Local Bankr. R. 5010-1(b)(emphasis added). Further, requests for any relief other than reopening, shall be made in separate motions or adversary proceedings. Local Bankr. R. 5010-1(c).

Second, Creditor has not complied with Federal Rule of Bankruptcy Procedure 9013, as he has failed to state with particularity the grounds upon which relief is sought.

Third, pursuant to Federal Rule of Bankruptcy Procedure 7001, a proceeding to determine the dischargeability of a debt requires an adversary proceeding. Creditor seeks an order under 11 U.S.C. § 523(a)(3) that his claim is exempted from discharge. The procedure for determining the dischargeability of debt is governed by Rule 4007, which also provides that the proceeding must be initiated by complaint and therefore subject to the adversary proceeding rules in Part VII. Creditor has not complied with Federal Rules of Bankruptcy Procedure 4007 and 7001.

However, the court will grant the request to reopen the bankruptcy case for the limited purpose of Creditor David Scott to pursue proper relief. The court notes that Debtor has filed an opposition relating to the merits of the underlying dispute and will be prepared to answer if and when Creditor seeks proper relief.

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 to Reopen Bankruptcy filed by 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 Motion to Reopen Chapter 7 Case is granted.

No other or additional relief is granted by the court.