UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

January 25, 2024 at 10:30 a.m.

The Chapter 12 Status Conference scheduled for 2:00 p.m. on January 25, 2024, shall be conducted at 10:30 a.m. in conjunction with the hearing on the Motion to Confirm the Chapter 12 Plan, listed here as item 6.

1.	**23-90438-E-7** **NF-1**	**PAMELA MORGAN** **Pro Se**	**CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS** **11-2-23 [19]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 4, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is xxxx.

January 25, 2024 Hearing

The Chapter 7 Trustee, Nikki B. Farris ("Trustee") filed her report at the 341 Meeting on January 10, 2024. The Trustee reports that Debtor appeared and the 341 Meeting has been continued to February 15, 2024.

At the hearing, **xxxxxxxxxx**

REVIEW OF THE MOTION

Trustee seeks dismissal of the case on the grounds that Pamela Sue Morgan ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 8:00 a.m. on December 21, 2023. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 20, 2023. Dckt. 23. Debtor informs the court of her maladies, including struggling financially on her own and suffering from many medical issues. She informs the court she did not attend the meeting of creditors because she did not understand the notice of the meeting or the meeting itself.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing, Debtor appeared and expressed her intention to fulfill her obligations and prosecute this Chapter 7 Case.

The hearing is continued to afford Debtor the opportunity to attend the continued First Meeting of Creditors and prosecute 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 to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("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 to Dismiss is **xxxx**.

2. 22-90160-E-11 DDM-27	**EAGLE LEDGE FOUNDATION, INC. Kathleen DiSanto**	**CONTINUED MOTION FOR AN ORDER APPROVING AMENDED MOTION/APPLICATION FOR AN ORDER APPROVING AMENDED DISCLOSURE STATEMENT 11-1-23 [301]**
ITEMS 2-4		

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, 20 largest creditors, parties requesting special notice, attorneys of record who have appeared in the bankruptcy case, and Office of the United States Trustee on November 1, 2023. By the court's calculation, 36 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition). Eagle Ledge Foundation, Inc. ("Debtor in Possession") is six days sort of the required notice. Failure to comply with the Federal Rules of Bankruptcy and the Local Bankruptcy Rules is grounds to deny the Motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

The Motion to Approve Amended Disclosure Statement is xxxx.

January 25, 2024 Hearing

A review of the Docket on January 18, 2024 reveals that Debtor in Possession sent Notices of Rule 2004 Examination Duces Tecum to both TMI Trust Company (Docket 338) and Goldstar Trust Company (Docket 339) requesting "the last known mailing address, email address, and phone number for each Certificate Holder whose account was maintained with Goldstar [or TMI] as of the Petition Date." Counsel for Debtor in Possession, Dennis Miller, filed a Declaration with the court on January 19, 2024, explaining that TMI and Goldstar complied with the Rule 2004 document demand, providing Debtor in Possession with the addresses of certificate holders. Decl. Docket 349 ¶ 4. Mr. Miller testifies that Debtor

in Possession served all creditors and parties in interest, including certificate holders, notice of the continued hearing, the Amended Disclosure statement, and related documents (Dockets 347, 348, 301-307). Decl. Docket 349 ¶ 6.

Debtor in Possession also submitted the Declaration of Brandon M. Lisinki, Vice President of Argent Institutional Trust Company, formerly known as TMI. Decl., Docket 351. Toward the end of 2023, TMI merged with Argent and changed its name to Argent with the Secretary of State of Florida. Mr. Lisinki informs the court that he has not made distributions to certificate holders since Debtor in Possession filed the petition. *Id.* at ¶ 3. He also testifies that he has "received between five and ten inquiries from certificate holders asking for information on the Debtor," and that he has informed them of their rights to object and that they should speak with Debtor in Possession's counsel. *Id.* at ¶ 5.

Service of the proposed Disclosure Statement and this January 25, 2024 Hearing was served on the Certificate Holders on January 17, 2024. Cert. of Serv.; Dckt. 348. This was one week before the continued hearing.

Reviewing the Amended Disclosure Statement (Dckt. 303), the court notes the following. First it provides very detailed information in a relatively readable way (or as readable as can be in a complex Chapter 11 case). Second, it describes the issue with respect to the either unenforceable or unperfected security interests.

Third, there is a chart of the Debtor's assets that are in this Bankruptcy Case. These assets are stated to have a combined estimated value of approximately $2.3 MM. It also provides creditors of the liabilities, computed as of the filing of bankruptcy, $4.05 MM. *Id.*; Art. III, ¶ A, p. 11-12; and ¶ C, p. 13. Fourth, the Plan provides a breakdown of the classes of claims and expenses, and their treatment. *Id.*; Art. IV, ¶ B, p. 14 - 17.

Fifth, the Plan provides an explanation of how the Plan will be implemented, the winding down of the business, and liquidating assets when appropriate. *Id.*; Art. IV, ¶ C, p.17. The Plan provides a liquidation analysis. *Id.*; Art. VIII, ¶ B, p. 26-27. Sixth, it provides an summary of the confirmation process and who is entitled to vote. *Id.*; Art. VII, ¶ A and ¶ B, p. 23-25.

The U.S. Trustee's objection to confirmation is first based on their being proper notice to creditors (not merely a third party distribution entity and then for them to "serve" the creditors), and that the Plan does not address the quarterly fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6).

The Debtor in Possession responded to the quarterly fee issue by stating that such quarterly fees are included in the Plan budget, which is attached to the proposed Amended Plan. Additionally, as described above the Debtor in Possession has prepared an Amended Mailing Matrix (which needs to be filed) and used it to serve the creditors for the January 25, 2024 hearing.

With respect to the U.S. Trustee Objection, **xxxxxxxxxx**

Adequacy of Notice to Certificate Holders

If one looks at the number of days that the Certificate Holders were served before the Disclosure Statement hearing, seven days would be a very short time. However, this hearing has been continued, the Amended Disclosure Statement has been subject to the review and objections by the U.S. Trustee (who filed

the only objection) and Certificate Holders who have filed proofs of claim and are represented by counsel in this case.

From the court's review, and it appears those of the U.S. Trustee and counsel for some of the Certificate Holders, there are not substantial, informational deficiencies to the Amended Disclosure Statement. Rather, it will come down to the "simple" decision for the Certificate Holder's decision of whether they concluded that the orderly liquidation of the business is something that they want to vote for or against.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Review of the Amended Disclosure Statement

Case filed: May 18, 2022, Dckt. 1.

Background: Debtor in Possession is a California not-for-profit religious corporation. Debtor in Possession launched a loan fund focused on serving small local churches. Debtor in Possession issued bond certificates to individuals who made contributions. Certificate holders are the largest class of creditors in this case, accounting for almost all the debt now owed. Debtor in Possession initiated this bankruptcy case as a result of foreclosure proceedings and an inability to generate sufficient cash flow. On September 15, 2022, Debtor in Possession filed an initial Plan and Disclosure Statement. Dckts. 138, 140. This court denied approving the original Plan and Disclosure statement by Order on October 31, 2022. Dckt. 166. The creditors and their claims and classification are as follows:

Creditor/Class	**Treatment**	
Unclassified: Ordinary Course Administrative Claims	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote.	
Unclassified: Professional Compensation and Expense Reimbursement	**Claim Amount**	$205,000.00 (estimated)
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date.	
Unclassified: United States Trustee Fees	**Claim Amount**	$0.00
	Impairment	Unimpaired

	Not entitled to vote. Debtor in Possession is, and will continue to be, current on U.S. Trustee's fees.	
Unclassified: Priority Tax Claims	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date or in regular installment payments over a period not exceeding five years from the Petition Date.	
Class 1: Priority Claims	**Claim Amount**	$0.00
	Impairment	Unimpaired
	Not entitled to vote. Paid in full on the Effective Date. The scheduled priority claims of Chester Reid and Thomas Fontana were paid and satisfied pursuant to the Final Order Granting Debtor's Emergency Motion for Authority to Pay Affiliate Officers' Salaries, Compensation, and Benefits (Dckt. 99).	
Class 2: General Unsecured Claims	**Claim Amount**	$4,125,251.27
	Impairment	Impaired
	Entitled to vote. Pro Rata distributions of $350,000.00 on the Effective Date, followed by annual distributions of Available Cash to commence on April 1, 2025 and continue for four consecutive years. Final distribution of all remaining Cash shall be made April 1, 2028, and distributed Pro Rata as soon practicable thereafter.	

Plan, Dckt. 305 p. 2-3.

Assets:

- Cash on hand, as of September 30, 2023: $674,369.57
- Mortgage Loan Assets: $335,000.00
- TMI Bond Portfolio: $529,701.62
- Real Estate Assets: $750,000.00
- 100% of Membership interests of Urban Ministry Properties, LLC: $0.00
- Internet Domain Name: $0.00

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__Y__Anticipated future of Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__Y__Listing of the scheduled claims

__Y__Liquidation analysis

__Y__Identity of the accountant and process used

__Y__Future management of Debtor

__Y__The Plan is attached

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS / REPLY

Tracy Hope Davis, the United States Trustee ("US Trustee"), objects to confirmation of this Amended Disclosure Statement on the following grounds:

1. Notice of the confirmation hearing is not properly provided for here. Debtor in Possession plans to only send the Amended Disclosure statement to certificate holders with an available address. Certificate holders without an available address will be served through TMI or Goldstar. However, Fed. R. Bankr. P. 2002(b) affirmatively requires notice by mail to creditors of the confirmation hearing and the deadline to object. Accordingly, the DIP should be required to provide Certificate Holders with direct notice of the confirmation hearing and the deadline to object to confirmation.

2. The Amended Disclosure Statement does not provide adequate information about the payment of quarterly fees. Fees assessed pursuant to 28 U.S.C. § 1930(a)(6) are not synonymous with administrative expenses allowed pursuant to 11 U.S.C. § 503(b), and so fees pursuant to 28 U.S.C. § 1930(a)(6) are not subject to an allowance procedure under 11 U.S.C. § 503(b). The Amended Plan appears to improperly group fees into the definition of "Administrative Claim," which would violate 28 U.S.C. § 1930(a)(6).

Dckt. 315.

Debtor in Possession filed a Reply to US Trustee's Objections on November 29, 2023. Dckt. 325. Debtor in Possession argues:

1. Notice of the confirmation hearing is sufficient in this case because, throughout the course of its operations, Debtor in Possession has delivered funds to Goldstar who delivers those funds to certificate holders. Therefore, Debtor in Possession has met its obligation under Fed. R. Bankr. P. 2002 by delivering notice to Goldstar who will then send that notice to the certificate holders.

2. Debtor in Possession does not have addresses for the certificate holders whose accounts are managed by Goldstar because Goldstar was the entity making the certificate purchases and only provided the account owner's name for purposes of identifying and tracing the account.

3. Debtor in Possession intends to comply with paying professional fees as required by 28 U.S.C. § 1930(a)(6).

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

> Regarding sufficient notice, the Federal Rules of Bankruptcy Procedure provides:
>
> Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under §1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9, or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

FED. R. BANKR. P. 2002(b). Generally, notice must be provided for by mail; however, notice may be provided for by other means, such as publication, if notice by mail is impracticable. FED. R. BANKR. P. 2002(l) ("The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.").

Congress' 1983 advisory committee note to R. 2002 provides the following general situations where notice by publication may be advisable:

1. the debtor has disappeared;
2. the debtor's records have been destroyed, together with the names and addresses of creditors; or
3. the number of nominal creditors is large, and the assets are insufficient to defray the costs of mailing notices.

9 COLLIER ON BANKRUPTCY ¶ 2002.13. The Supreme Court has weighed in on this issue, holding, "[n]otice by publication is a poor and sometimes a hopeless substitute for actual service of notice. Its justification is difficult at best. But when the names, interests and addresses of persons are unknown, plain necessity may cause a resort to publication." *City of New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293, 296 (1953).

The court in *In re Purdue Pharma L.P.* was tasked with the issue of giving proper notice to millions of individuals whose addresses were not and could not be known by the Debtor. *In re Purdue Pharma L.P.*, 633 B.R. 53 (S.D. N.Y. Bankr. 2021). In that case, service to each individual address by mail was impracticable because it was impossible to know each individual that was eligible to appear and contest the confirmation hearing. However, the court found notice was proper because the Debtor implemented a noticing scheme that reached 98% of the general American public. *Id.* at 59 (holding notice was sufficient by publishing notice via TV, radio, billboards, outreach groups, and other various publications). Therefore, notice may be achieved by means other than mail if mailing notice would be impracticable.

DISCUSSION

US Trustee Objection re Fees

Concerning US Trustee's objection regarding fees, the Debtor in Possession does not dispute that professional fees should be paid pursuant to U.S.C. § 1930(a)(6). Debtor in Possession suggests that the Amended Plan and Disclosure Statement provide for exactly that.

U.S. Trustee Objection re Notice on Certificate Holder Creditors

US Trustee's objection that notice is not sufficient by sending notice to Goldstar on behalf of certain certificate holders raises interesting questions of law. The court's research indicates that notice can be sufficiently achieved by means other than by mail, so long as the Debtor in Possession can show that notice by mail would be impracticable.

Debtor in Possession argues that it has no knowledge or any way of discovering certain certificate holders' mailing addresses because those certificate holders have dealt with Goldstar. According to Debtor in Possession, Goldstar made the certificate purchases on behalf of the certificate holders, and all certificate distributions have been sent to Goldstar who sends the money to the individual certificate holders. Reply, Dckt. 325 ¶ 7.

The Debtor in Possession does not assert that Goldstar refuses to provide the required address information or that Goldstar is outside of the jurisdiction of a United States Federal Court that it would be free from sanctions (not only the "mere" corrective sanction power of a Bankruptcy Judge, but also the corrective and punitive sanction power of an Article III United States District Court judge).

The Debtor in Possession argues that based on a bankruptcy court decision from the Northern District of New York, sending notices required under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure to an address where the Debtor mailed checks to some creditors is sufficient. No other legal authority is provided. No review of any of the Federal Rules with respect to this service requirement or citation to any federal law or procedures treatises (such as Collier on Bankruptcy or Moore's Federal Practice - Civil) is provided by the Debtor in Possession .

Federal Rule of Bankruptcy Procedure provides with respect to notices of proposed disclosure statements and plan confirmations:

> Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee
>
> **(b) Twenty-eight-day notices to parties in interest**. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

Fed. R. Bankr. P. 2002(b).

The term "Creditor," to whom the required disclosure statement and confirmation notice must be given is defined by Congress in 11 U.S.C. § 101(10) to be:

> (10) The term "creditor" means—
>
> > (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
> >
> > (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(I) of this title; or
> >
> > (C) entity that has a community claim.

This does not state that a "creditor" is a mail drop to which the debtor sent mail.

Reviewing the Proofs of Claim that have been filed in this case, out of the more than ($4,000,000) in certificate holder debt, proofs of claim totaling less than ($416,000) [only about 10% of the unsecured claims as computed by Debtor) have been filed. This would indicate that there may be a wholesale defect in how the Debtor in Possession has been sending out notices, given that an experienced bankruptcy practitioner in these type of loan cases knows that the claims come flying in by the thousands if the lender creditors have actual knowledge of the bankruptcy case.

Information re Unperfected Liens of Certificate Holders

In reviewing the proposed Amended Disclosure Statement, it discloses that the Debtor in Possession has now taken a turn in its belief that the certificate holders had secured claims, and instead now asserts that they have unsecured claims. The court notes that for the proofs of claims filed, none have been filed as secured claims.

The explanation of the legal principles upon which the Debtor in Possession advises certificate creditors that they hold unsecured claims includes (with the court's comments show in [courier font]):

> Prior to an uncured Event of Default, the Certificate Holders had no security interest, or at best, had an unperfected security interest held by the Collateral Agent for their benefit. As noted above, both the Prospectus and the Security Agreement stated ELF [the Debtor who was borrowing the money from the Certificate Holders] was granting a security interest to the Collateral Agent. However, the Prospectus was not signed by ELF. Under Florida law, one element to establishing an enforceable security agreement is that the debtor signed it. *In re Michelle's Hallmark Cards & Gifts, Inc.*, 219 B.R. 316, 319 (Bankr. M.D. Fla. 1998). The Security Agreement provides that Florida law applies. [Question: if the security agreement contract is not signed, then how do the terms bind the parties?] Appendix, Security Agreement, section 11.05. Since ELF did not sign the Prospectus, it could not create an enforceable security agreement. The Security Agreement also fails to qualify as an enforceable security interest. Under Florida law, one element to create an enforceable security agreement is that the collateral is identified. The Security Agreement defines the "Collateral" as "[t]he property as described on Exhibit B, whether now existing or hereafter acquired." Exhibit B was never completed and, thus, no enforceable security agreement exists. *In re Hintze*, 525 B.R. 780, 785 (Bankr. N.D. Fla. 2015).
>
> In the event the Bankruptcy Court finds to the contrary, any security interest granted to the Certificate Holders was unperfected. No UCC-1 financing statement was filed in California or Florida. There was not a deposit account control agreement in place, thus, all cash held by ELF at filing was unencumbered by any security interest. The UCC-1 filing was also necessary to perfect the security interest in the bonds. The loans were not assigned to the Collateral Agent. All of ELF's Collateral at filing was unencumbered.
>
> In an excess of caution, C3 Servants was scheduled as a secured creditor but with no debt owed. C3 Servants did not file a proof of claim. As noted above, C3 Servants did not obtain an enforceable security interest, and if it did, it was unperfected.

Proposed Amd. Disc. Stmt., p. 8:17 - 9:4.

The court notes that the Debtor in Possession just cites to a couple of Florida Bankruptcy Court decisions and no Florida appellate or Supreme Court decisions interpreting Florida law. When cite checking the *Michelle's Hallmark* decision, there are other bankruptcy court decisions rejecting portions of the legal rationale in that decision.

The information provided to the Certificate Holder creditors is that even if the Court should conclude that a security interest was granted by the Debtor, it was not perfected, thus such unperfected security interest could not exist. The court notes that Congress expressly provides in 11 U.S.C. § 544 that the bankruptcy trustee, or the Debtor in Possession as the fiduciary exercising the powers of a trustee, may avoid an unperfected lien, not that such lien does not exist. Then, when avoided, that lien is preserved for

the benefit of the Bankruptcy Estate. See 11 U.S.C. § 551. Given the nature of claims stated by the Debtor in this case, such preservation of the lien may be of little consequence. However, it appears that the law as represented by the Debtor in Possession is inaccurate.

December 7, 2023 Hearing

At the hearing, the court addressed the issues of proper service further. Additionally, the court addressed concerns with respect to the issue of the Debtor not having executed the security agreements it had promised to the various Certificate Holders. The court also expressed further concern when it was disclosed that the current law firm the Debtor is not the same law firm (different attorney) that represented the Debtor in obtaining the monies from Certificate Holders and represented the Debtor through the period in which Debtor failed to execute the security agreements. Additionally, a shareholder attorney of the Debtor and now Debtor in Possession's law firm was the purported independent fiduciary who would hold the notes, receive and disburse payments to be made by the Debtor to Certificate Holders, and then advise Certificate Holders if there were defaults or issues for which the Certificate Holders would want to take action.

The court expressed concern over the Debtor in Possession and counsel for the Debtor in Possession (both having fiduciary duties to the Bankruptcy Estate) seeking to have the court, for practical reasons, just allow for service on Goldstar (the entity who was to receive payments and disbursement them to the Certificate Holders) of notice for approval of the disclosure statement and then confirmation of a plan. The court addressed the need for compliance with the basic due process and the Federal Rule of Bankruptcy Procedure and have persons whose rights are being effective being given actual notice and the ability to participate in the federal court proceedings.

The court addressed further concern regarding Goldstar's purported refusal to provide the actual addresses for the Certificate Holders so that they could properly be severed. The court noted that in addition to the possibility that Goldstar was merely being obstinate, if could be that the purported Certificate Holders do not exist and that there is a scheme afoot to steal monies from the bankruptcy estate.

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 Approval of the Disclosure Statement filed by Eagle Ledge Foundation, Inc. ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Amended Disclosure Statement is **xxxx**.

3.	**22-90160-E-11** **UST-1**	**EAGLE LEDGE FOUNDATION, INC.** **Kathleen DiSanto**	**CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **7-25-23 [241]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice on July 25, 2023. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is xxxx.

January 25, 2024 Hearing

A review of the Docket on January 18, 2024 reveals that no new docents have been filed with the court regarding this Motion. At the hearing, **xxxxxxxxxx**

REVIEW OF THE MOTION

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Eagle Ledge Foundation, Inc. ("Debtor") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor's failure to expeditiously prosecute the case.

B. Debtor's failure to provide insurance information reasonably requested by Movant.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 24, 2023. Dckt. 250. Debtor states that:

1. Debtor's failure to expeditiously prosecute the case is excusable because the delay is due to circumstances outside of Debtor's control, such as Debtor's inability to gain possession and control over its real property. Furthermore, once Debtor was able to gain possession and control over its property, it was forced to spend time curing the state of disrepair.

2. Debtor complied with Movant's requests regarding proof of insurance, showing that Debtor had Worker's Compensation and General Liability coverage at all relevant times.

U.S. TRUSTEE'S RESPONSE

U.S. Trustee filed a Response on August 28, 2023. Dckt. 257. U.S. Trustee states and reiterates that:

1. Regardless of any proffered excuses, Debtor has inexcusably failed to expeditiously prosecute its case.

2. Debtor has obtained professional liability insurance coverage through May 25, 2024. Debtor has also obtained property insurance; however, the named insured is TMI Trust Company, not Debtor.

3. Debtor's general liability insurance is only limited to claims arising at the Indiana Avenue Property, and again, the named insured is TMI Trust Company.

APPLICABLE LAW

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).

DISCUSSION

Delay of Confirmation

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's disclosure statement and prior plan on October 31, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1112(b)(1). 7 Collier on Bankruptcy ¶ 1112.04 (16th ed. 2023).

At the hearing, the parties agreed to a continuance to 10:30 a.m. on September 28, 2023, to afford the Debtor in Possession and creditors to move forward with the prosecution of this Case.

Failure to Provide Proof of Insurance

Furthermore, because the record shows that insurance has not been properly maintained on the property, the court finds dismissal to be appropriate. 11 U.S.C. § 1112(b)(4)(C) and (H).

At the hearing the U.S. Trustee reported that evidence of insurance has been provided, and this appears to address this point.

The hearing is continued to allow the Debtor in Possession and creditors to work further on the prosecution of this Case.

SEPTEMBER 28, 2023 HEARING

At the hearing, the Parties agreed to continue the hearing on the Motion to Dismiss or Convert to 2:00 p.m. on January 25, 2024.

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 to Convert the Chapter 11 case filed by Tracy Hope Davis, 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 to Dismiss or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is **xxxx**.

4. 22-90160-E-11 CAE-1 | **EAGLE LEDGE FOUNDATION, INC.** | **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-18-22 [1]**

Debtor's Atty: Kathleen DiSanto

Notes:
Continued from 9/28/23

Operating Reports filed: 10/16/23; 11/14/23; 12/13/23; 1/9/24

[DDM-25] Second Interim Application for Allowance and Payment of Interim Compensation and Expenses by Lubin Olson & Niewiadomski as Counsel for Debtor-In-Possession file 10/25/23 [Dckt 286]; Order granting filed 12/11/23 [Dckt 331]

[DDM-26] First Interim Application for Allowance and Payment of Interim Compensation and Expenses by Bush Ross, P.A. as Counsel for Debtor-in-Possession filed 10/31/23 [Dckt 294]; Order granting filed 12/11/23 [Dckt 332]

[DDM-27] Debtor in Possession's Motion for an Order (I) Approving Amended Disclosure Statement, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling a Confirmation Hearing, and (IV) Establishing Notice and Objection Procedures for Confirmation of Amended Plan of Reorganization and Related Deadlines filed 11/1/23 [Dckt 301]; Order continuing to 1/25/24 [Dckt 334]

[DDM-5] Fifth Interim Order Granting Motion for Interim and Final Orders Authorizing the Use of Cash Collateral, Granting Replacement Liens, Providing Adequate Protection, and Approving DIP Budget and Setting Hearing filed 1/11/24 [Dckt 345]; further hearing set for 3/28/24 at 10:30 a.m.

The Status Conference is xxxxxxx

JANUARY 25, 2024 CONTINUED STATUS CONFERENCE

On January 17, 2023, Counsel for the Debtor in Possession; Dennis Miller, Esq.; filed his Declaration (Dckt. 349) updating the court and Parties in Interest about service being provided to the Certificate Holders for which Goldstar Trust Company ("Goldstar") or TMI Trust Company ("TMI") were providing services to the Certificate Holders. Using Rule 2004 discovery procedures, the Debtor in Possession has now obtained the address lists from both Goldstar and TMI for their respective Certificate Holders.

Debtor in Possession's counsel has generated an Amended Master Mailing List, a copy of which is filed as Exhibit 1, which is attached to the Declaration and not filed as a separate exhibit document. L.B.R. 9004-2 (c)(1).

As of the court January 22, 2024 review of the Docket, the Amended Master Mailing List had not yet been filed with the court.

Debtor in Possession also filed the Declaration of Brandon M. Lisinki, Vice President of Argent Institutional Trust Company, formerly known as TMI. Decl., Docket 351. Toward the end of 2023, TMI merged with Argent and changed its name to Argent with the Secretary of State of Florida. Mr. Lisinki informs the court that he has not made distributions to certificate holders since Debtor in Possession filed the petition. *Id.* at ¶ 3. He also testifies that he has "received between five and ten inquiries from certificate holders asking for information on the Debtor," and that he has informed them of their rights to object and that they should speak with Debtor in Possession's counsel. *Id.* at ¶ 5.

At the Status Conference, **xxxxxxx**

5.	**22-90296-E-11** **LNH-1**	**PROVIDENT CARE, INC.** **David Johnston**	**MOTION FOR COMPENSATION FOR LISA HOLDER, CHAPTER 11 TRUSTEE(S)** **1-4-24 [139]**

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.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, equity security holders (notice of hearing only), persons who have filed a Request for Notice, creditors that have filed claims, creditors holding allowed secured claims, creditors holding allowed priority unsecured claims, creditors holding leases or executory contracts that have been assumed, and Office of the United States Trustee on January 4, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Trustee Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 Allowance of Trustee Fees is granted.

Lisa Holder, the Chapter 11 Subchapter V Trustee, ("Applicant") in the Estate of Provident Care, Inc. Bankruptcy Case, makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 30, 2022, through January 31, 2024.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —
>
> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a trustee under Chapter 11, "the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors. . ." 11 U.S.C. § 330(a)(3). Such factors include:

> (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.

Id. Chapter 11 Subchapter V Trustees may also be awarded "reimbursement for actual, necessary expenses. 11 U.S.C. § 330(a)(1). Unlike Trustees under Chapter 7 or Chapter 11, a Chapter 11 Subchapter V Trustee is not subject to limits on recovering fees based on moneys recovered or turned over under 11 U.S.C. § 326(a).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound*

Plywood), 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include analyzing Debtor in Possession's Petition, Schedules, and Statement of Financial Affairs; communicating with the U.S. Trustee regarding the case; analyzing documents received from Debtor in Possession and Debtor in Possession's attorney for the initial Debtor in Possession interview and the meeting of creditors; discussing the case with Debtor in Possession's attorney and participating creditors; attending Chapter 11 status conferences; analyzing motions filed by Debtor in Possession and interested parties, and attending those hearings; coordinating plan preparation with Debtor in Possession and creditors; working with Debtor in Possession to file a Plan and make plan payments; preparing this fee Application. Decl., Docket 141 ¶ 12. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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 6.7 hours in this category. Applicant prepared documents required by the U.S. Trustee for my appointment, communicated with the U.S. Trustee, analyzed documents filed with the bankruptcy court during the case, communicated with Debtor in Possession's counsel and interested parties, and attended status conferences.

Relief from Stay Proceedings: Applicant spent .2 hours in this category. Applicant reviewed the motion for relief from stay and analyzed the pre-hearing disposition and order.

Initial Debtor in Possession Interview and Meeting of Creditors: Applicant spent 6.7 hours in this category. Applicant analyzed initial Debtor in Possession interview documents, and participated in the Initial Debtor in Possession interview, and participated in the meeting of creditors.

Fee/Employment Applications: Applicant spent 3.2 hours in this category. Applicant prepared her own fee Application as well as analyzed Debtor in Possession's attorney's employment application.

Claims Administration and Objection: Applicant spent 9.9 hours in this category. Applicant analyzed proofs of claim and contacted creditors about claims; in particular, Applicant assisted in resolving the Comfort / Miller proofs of claim controversy, where the claims were late-filed.

Plan of Reorganization: Applicant spent 4.5 hours in this category. Applicant worked with Debtor in Possession and parties in interest on plan terms, analyzed Debtor in Possession's Plan of Reorganization, worked with parties toward confirmation, discussed creditor objections to plan confirmation, worked with Debtor in Possession to make first payments, and confirmed payments made and plan substantially consummated.

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**
Lisa Holder, Attorney, Chapter 11 Subchapter V Trustee	31.2	$300.00	$9,360.00
Total Fees for Period of Application			$9,360.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $226.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	----------	$15.55
Copying	$0.20 per page	$26.60

Court Call Appearance	----------	$184.35
Total Costs Requested in Application		$226.50

The court does not allow the Court Call appearance fee as a reimbursable cost. Applicant informs the court that a detailed breakdown of costs can be found at Exhibit A, page 4. Docket 139 ¶ 10. However, the court notes no such detailed breakdown of costs is included in the attached Exhibits.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $9,360.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of $42.15 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan. The court does not authorize Court Call appearance fees in the amount of $184.35 as a reimbursable cost.

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

Fees	$9,360.00
Costs and Expenses	$42.15

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 Lisa Holder, the Chapter 11 Subchapter V Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Lisa Holder is allowed the following fees and expenses as trustee of the Estate:
>
> Lisa Holder, the Chapter 11 Subchapter V Trustee

Fees in the amount of $9,360.00
Expenses in the amount of $42.15,

IT IS FURTHER ORDERED that the Court Call appearance costs of $184.35 are not allowed by the court.

IT IS FURTHER ORDERED that the Debtor in Possession 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 11 case under the confirmed Plan.

6. 23-21899-E-12 WF-7 | **JAKOB/GLADYS WESTSTEYN** | **CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN**
Daniel Egan | **8-17-23 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, Chapter 12 Trustee, creditors, and Office of the United States Trustee on August 17, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Second Amended Plan, filed as Docket 159, is granted.

Jakob Weststeyn and Gladys Weststeyn ("Debtor in Possession") filed their Motion to Confirm Plan on August 17, 2023. Docket 67. The following parties all launched Oppositions to the initial Motion: David Burchard, the Chapter 12 Trustee ("Chapter 12 Trustee") (Docket 85); creditor Fifth Third Bank, N.A. ("Fifth Third") (Docket 79); creditors GEH Farms and Greg Hawes ("Hawes Creditors") (Docket 87); and creditor Ta Energy XXXIV, LLC, a wholly owned subsidiary of TRITEC Americas, LLC ("TA Energy") (Docket 90).

At the September 21, 2023 Hearing on this initial Motion, counsel for Debtor in Possession reported that it appears that three of the four objections have been resolved, with only some outstanding push-back from Chapter 12 Trustee remaining as to the bankruptcy estate's interest in the Weststeyn 2015 Irrevocable Real Property Trust ("2015 Trust"). Minutes, Docket 110 p. 15. This court continued the Motion to November 29, 2023, to let the parties continue to resolve issues.

At the November 29, 2023 Hearing, Debtor in Possession advised the court of filing its First Amended Plan, which seemed to resolve almost all remaining issues. Minutes, Docket 150 p. 2. Only the Hawes Creditors' Opposition remained by then. The court set deadlines and issued the following Order after the November 29, 2023 Hearing:

> 1. The Notice of Hearing and Amended Plan shall be filed and served on or before December 6, 2023.
>
> 2. Oppositions to the proposed Amended Plan shall be filed and served on or before January 5, 2024.
>
> 3. Replies to Opposition and Evidence in support of confirmation shall be filed and served on or before January 18, 2024
>
> By Separate Order the Court has extended the confirmation deadline to March 1, 2024.

Order, Docket 159.

In accordance with the court's Order, Debtor in Possession filed and served its Second Amended Plan on December 6, 2023. Second Am. Plan, Docket 159. No creditors or parties in interest filed Oppositions in response, leading this court to believe all outstanding issues have been fully resolved.

Summary of the Second Amended Plan Filed on December 6, 2023 (Docket 159)

The court provides the following summary of significant terms of the proposed Second Amended Plan. This summary is clearly not a complete statement of all terms of the proposed Second Amended Plan. The Second Amended Plan provides as follows:

1. Class 1 Claims are claims entitled to treatment as administrative claims. Class 1 claims are claims arising after Debtor filed for relief under Chapter 12 and shall be paid in full. These claims include professional fees, postpetition tax claims, postpetition ordinary course claims, and postpetition borrowing claims. Second Am. Plan, Docket 159 p. 2:13-28–3:1-16.

2. Class 2 Claims are claims secured. Class 2 provides:

a. Except as set forth in this Plan, holders of secured claims shall retain all rights set forth in their notes, judgments, liens, and security documents.

b. Secured Claimants shall be allowed to exercise all rights and remedies available to them under the law except as modified by the Plan and operative provisions of the Bankruptcy Code.

c. Except as set forth in this Plan, Secured Claims will not accrue interest after the date of confirmation of the Plan.

d. All fees, penalties or late charges provided in the security documents shall be allowed concerning post confirmation defaults in the same percentage as the fee, penalty or charge was assessable prepetition.

e. Each secured creditor shall be required to release its security interests or liens after its secured claim has been paid in full.

Class 2 claimants include the California Franchise Tax Board, Farm Credit Services of America, PCA, d/b/a/ AgDirect, BMO Harris Bank, N.A., and Fifth Third Bank, N.A. California Franchise Tax Board, despite being listed in Class 2, will actually have its claim placed in Class 4 as a general unsecured claim pursuant to a stipulation between the creditor and Debtor in Possession. The rest of the secured creditors will either have their collateral surrendered to them, or their claim paid at 8.25% interest through the life of the Plan. *Id.* at p. 3:18-28–:1-5.

3. Class 3 Claims are allowed unsecured priority claims not otherwise described in the Plan. These claims are estimated at $0. *Id.* at p. 7:7-21.

4. Class 4 Claims are general unsecured claims and are treated as follows:

a. Class 4 claims shall not accrue interest during the pendency of the bankruptcy case. After Class 1.1 and Class 3 claims are paid in full by the Chapter 12 Trustee, Class 4 claimants shall be paid the remainder of the funds paid by, or on behalf of, the Debtors to the Chapter 12 Trustee for distribution in this case. Such funds include, but are not necessarily limited to, funds paid pursuant to Section 4.02 and 4.03. Chapter 12 Trustee shall be authorized to make interim distributions to Class 4 claimants if, in the reasonable discretion of Chapter 12 Trustee, sufficient funds exist in reserve to pay all anticipated Class 1 claims and the Class 2.1 claim. *Id.* at p. 7:23-28–8:1-8.

5. To fund the Plan, Debtor in Possession will continue to operate its hay and forage growing operations. *Id.* at p. 9:15-16.

6. Debtor in Possession proposes the following pay schedule to the Chapter 12 Trustee:

   a. On or before the Effective Date, Debtor will make a payment of $10,000.

   b. On or before June 30, 2024, Debtor shall make a payment of the greater of (i) their Net Disposable Farm Income, calculated for the period commencing on June 1, 2023 and ending on December 31, 2023, or (ii) $100,000.

   c. On or before January 31, 2025 Debtor shall make a payment of the greater of (i) their Net Disposable Farm Income, calculated for the period commencing on January 1, 2024 and ending on December 31, 2024, or (ii) $100,000.

   d. On or before January 31, 2026 Debtor shall make a payment of the greater of (i) their Net Disposable Income calculated for the period commencing on January 1, 2025 and ending on December 31, 2025, or (ii) $100,000.

   e. On or before February 28, 2027, Debtor shall make a payment of the greater of (i) their Net Disposable Income calculated for the period commencing on January 1, 2026 and ending on the third anniversary of the Effective Date, or (ii) the Final Plan Payment to Chapter 12 Trustee. *Id.* at p. 9:25-28–10:1-11.

7. Net Disposable Farm Income is defined as: the net income remaining after (i) payment of actual farming expenses, (ii) repayment of postpetition borrowing, (iii) retention of a reserve reasonably sufficient to pay future farming expenses for the subsequent year, (iv) retention of a reserve reasonably necessary to pay federal and state income taxes on Debtor's postpetition income, and (v) payment of a monthly salary to Debtor of $7,500. *Id.* at p. 10:12-16.

8. The Final Plan Payment means the amount of $577,000.00 less the amount of payments previously made by Debtor to Chapter 12 Trustee during this bankruptcy case. Debtor reserves the right to prepay their obligations under this Plan and to obtain a discharge prior to the expiration of the Plan by making one or more payments to the Chapter 12 Trustee aggregating $577,000.00. *Id.* at p. 10:21-25; 11:1-5.

APPLICABLE LAW

As an initial matter, the debtor in a Chapter 12 case must also be an eligible debtor, pursuant to 11 U.S.C. § 109(f), which states "[o]nly a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title." The term "family farmer with regular annual income" is defined in 11 U.S.C. § 101(19) as a "family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title." The term "family farmer" is defined under 11 U.S.C. § 101(18) as an:

> individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $10,000,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—
>
> (i)the taxable year preceding; or
>
> (ii)each of the 2d and 3d taxable years preceding;
>
> the taxable year in which the case concerning such individual or such individual and spouse was filed. . .

Once a debtor is deemed eligible to file under Chapter 12, to file and confirm a Chapter 12 Plan, the Bankruptcy Code provides:

> (a)Except as provided in subsection (b), the court shall confirm a plan if—
>
> (1)the plan complies with the provisions of this chapter and with the other applicable provisions of this title;
>
> (2)any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
>
> (3)the plan has been proposed in good faith and not by any means forbidden by law;
>
> (4)the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
>
> (5)with respect to each allowed secured claim provided for by the plan—
>
> (A)the holder of such claim has accepted the plan;

(B)

(i)the plan provides that the holder of such claim retain the lien securing such claim; and

(ii)the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C)the debtor surrenders the property securing such claim to such holder;

(6)the debtor will be able to make all payments under the plan and to comply with the plan; and

(7)the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). The contents of a Chapter 12 plan are governed by 11 U.S.C. § 1222(a)(1), and must be satisfied pursuant to 11 U.S.C. § 1225(a)(1). 11 U.S.C. § 1222(a)(1) states:

(a)The plan shall—

(1)provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2)provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless the holder of a particular claim agrees to a different treatment of that claim;

(3)if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment;

(4)notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due

under the plan will be applied to make payments under the plan; and

(5)subject to section 1232, provide for the treatment of any claim by a governmental unit of a kind described in section 1232(a).

A debtor bears the burden of showing that a proposed plan complies with the confirmation requirements of 11 U.S.C. § 1225. *In re Perez*, 30 F,3d 1209, 1220 at n. 5 (9th Cir. 1994) ("The burden of proposing a plan that satisfies the requirements of the Code always falls on the party proposing it, but it falls particularly heavily on the debtor-in-possession or trustee since they stand in a fiduciary relationship to the estate's creditors.").

DISCUSSION

Here, the court finds that the Debtor in Possession is an eligible debtor under Chapter 12. No party in interest has contested this fact and the court finds it clear from the evidence that Debtor in Possession fulfills the definitions of "family farmer" and "family farmer with regular income" as prescribed by 11 U.S.C. §§ 109(f), 101(18) &(19).

The court further finds that the Second Amended Plan complies with 11 U.S.C. §§ 1225 & 1222. Upon review of the proposed Second Amended Chapter 12 Plan, the evidence in the form of the declarations of Debtor in Possession and the arguments of counsel relating thereto, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1225:

A. The Plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;

B. Any fee, charge, or amount required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;

C. The Plan has been proposed in good faith and not by any means forbidden by law;

D. The value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date;

E. With respect to each allowed secured claim provided for by the Plan—

1. The holder of such claim has accepted the Plan;

2.

a. Plan provides that the holder of such claim retain the lien securing such claim; and

b. The value, as of the effective date of the Plan, of property to be distributed by the Trustee or Debtor under the Plan on account of such claim is not less than the allowed amount of such claim; or

3. Debtor surrenders the property securing such claim to such holder;

F. Debtor will be able to make all payments under the Plan and will be able to comply with the Plan; and

G. Debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if Debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation, which, in this case, is $0.

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan–

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended–

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

However, the court set the deadline to file any Oppositions to this Plan for January 5, 2024, and none were filed, leading the court to believe this is an entirely consensual Plan.

At the hearing, **xxxxxxxxxx**

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 to Confirm the Chapter 12 Plan filed by Jakob Weststeyn and Gladys Weststeyn ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 12 Plan filed on December 6, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, attach to it the plan confirmed and related documents stating amendments or supplemental information, and transmit the proposed order to David Burchard ("Chapter 12 Trustee") for approval as to form, and if so approved, the Chapter 12 Trustee will submit the proposed order to the court.

7.	24-90017-E-7 BSH-2	**WENDY DEULUS** **Brian Haddix**	**MOTION TO COMPEL ABANDONMENT** **O.S.T.** **1-22-24 [14]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on January 22, 2024. By the court's calculation, 3 days' notice was provided. The court set the hearing for January 25, 2024. Order, Dckt. 13.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 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 to Compel Abandonment is xxxxxxx .

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Wendy Deulus ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon property in Debtor's fitness studio WFitness located at 447 S. Parallel Ave, Ripon, CA, and related fitness equipment ("Property"). Decl., Docket 16 ¶ 3. The Property is encumbered by the lien of U.S. Small Business Administration, securing a claim of $139,000. The Declaration of Debtor has been filed in support of the Motion and values the Property at $7,366. *Id.* at ¶ 6. Debtor also plans to claim all of the Property exempt under the tools of the trade exemption, pursuant to Cal. Code Civ. P. § 704.060. Mtn, Docket 14 p. 2:26-27.

The Debtor's combined, one document Motion and Points and Authorities [not filed as separate documents as required by L.B.R. 9004-2(c)(1)] focuses on the assets having a small value that is grossly less

than the claim secured by them. The Motion and Points and Authorities does not address what communications have been undertaken and whether the Trustee is aware of this Motion being filed and set on a very, very expedited hearing basis.

Debtor commenced this Bankruptcy Case on January 20, 2024, and immediately requested an expedited hearing on the Motion to Abandon.

11 U.S.C. § 554(b) authorizes the court to order a trustee to abandon property of the estate, it is only after "notice and hearing." Though 11 U.S.C. § 102(1) gives the judge discretion to determine the notice is "such notice as is appropriate in the particular circumstances."

While on the face of the facts as set out by Debtor, Due Process requires that sufficient notice and time to object be afforded the Trustee, as well as other parties in interest. The court has set the hearing on this Motion on two days notice to afford the Debtor and the Trustee a forum to address this matter if they concur with the requested relief.

At the hearing **xxxxxxx**

FINAL RULINGS

8.	**23-90382-E-7** **ELS-1**	**MICHELLE EBERTOWSKI** **Eric Seyvertsen**	**MOTION TO AVOID LIEN OF CITIBANK, N.A.** **11-29-23 [17]**

Final Ruling: No appearance at the January 25, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on November 29, 2023. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of the debtor, Michelle Ebertowski ("Debtor") commonly known as 967 Souza Street, Turlock, California 95380 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,453.96. Exhibit A, Dckt. 20. An abstract of judgment was recorded with Stanislaus County on April 5, 2023 that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $437,100 as of the petition date. Dckt. 1 p. 10. The unavoidable consensual liens that total $183,527 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* at p. 18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $253,573 on Schedule C. *Id.* at p. 16.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An 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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Michelle Ebertowski ("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 judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. cv-22-004782, recorded on April 5, 2023, with the Stanislaus County Recorder, against the real property commonly known as 967 Souza Street, Turlock, California 95380, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. 15-90084-E-7 CARLOS/CELIA PULIDO MOTION TO AVOID LIEN OF
TMO-1 Mark O'Toole AMERICAN EXPRESS BANK, FSB
12-20-23 [41]

Final Ruling: No appearance at the January 25, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on December 20, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Bank, FSB. ("Creditor") against property of the debtor, Carlos Pulido and Celia Garibay De Pulido ("Debtor") commonly known as 10652 Oak Creek Court, Jamestown, California 95327 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,986.41. Exhibit A, Dckt. 45. An abstract of judgment was recorded with Tuolumne County on November 20, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $350,650.33 as of the petition date. Dckt. 1 p. 12. The unavoidable consensual liens that total $378,899.33 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* at p. 17.

Debtor argues they have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(3) in the amount of $100,000 on Schedule C. Motion, Docket 41 ¶ 4. However, the court's review of the initial petition (Docket 1) and subsequently amended Schedule C (Docket 18) reveals that Debtor claimed 0$ exempt in the Property. Am. Sched. C, Docket 18, p. 5.

In the Motion it is stated that Debtor exempted the Property (claimed an exemption in), with Debtor's exemption being $100,000. Amended Schedule C; Dckt. 18 at p. 5. However, when Debtor claimed an exemption, Debtor claimed an exemption of $0.00.

Having claimed an exemption of $0.00, it is unclear how the judgement lien impairs something in which no amount has been claimed exempt.

On Schedule D, Debtor lists Chase as having a Mortgage on the Property securing a ($308,537.87) debt, Specialized Loan Servicing having a Second Mortgage on the Property securing a ($67,437.98) debt, and The Tuolumne County Tax Collector having a property tax lien securing ($2,923.48) in unpaid taxes. Dckt. 1 at 17. Debtor valuing the Property at $350,000, these three claims senior in priority exhaust all of the value before getting to Creditor's December 2014 perfected judgment lien.

It appears that Debtor made a clerical error in claiming a $0.00 exemption in the Property rather than the $100,000 exemption. In some cases debtors grossly undervalue their properties, and if the trustee should determine a higher value and move to sell the property and pay from the proceeds that debtor's exemption of $0.00, such a debtor may be hard pressed to seek to change the prior exemption.

In light of there being no opposition to the Motion or challenge to the Debtor seeking to avoid the lien, the court does not delve into this issue *sua sponte*. However, Debtor may want to filed an Amended Schedule C to protect their exemption rights in the event the Chapter 7 Trustee may at a later time before this case is closed that the value of the Property has risen sufficient to move ahead with the sale.

Notwithstanding Debtor not claiming an exemption in the Property, after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien as the unavoidable consensual liens are greater than the value of the Property. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An 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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Carlos Pulido and Celia Garibay De Pulido ("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 judgment lien of American Express Bank, FSB., California Superior Court for Stanislaus County Case No. CVL58992, recorded on November 20, 2014, Document No. 2014-012788, with the Tuolumne County Recorder, against the real property commonly known as 10652 Oak Creek Court, Jamestown, California 95327, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.