

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

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: March 5, 2024

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

March 5, 2024 at 1:00 p.m.

1. [23-90502](#)-B-13 LYNNE ERNST MOTION TO DISMISS CASE
[KLG-2](#) Arete Kostopoulos 1-17-24 [[45](#)]

DEBTOR DISMISSED: 02/21/24

THE COURT ENTERED AN ORDER ON FEBRUARY 21, 2024, DISMISSING CASE AND REMOVING THIS MATTER FROM HEARING SCHEDULED FOR MARCH 5, 2024. *SEE* DKT. 51.

Final Ruling

No appearance at the March 5, 2024, hearing is required.

2. [23-90607](#)-B-13 KRISTOPHER COOPER
[LGT](#)-1 David C. Johnston
- OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG,
CHAPTER 13 TRUSTEE
2-8-24 [[30](#)]

CONTINUED TO 3/12/24 AT 1:00 P.M. AT THE MODESTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 3/06/24.

Final Ruling

No appearance at the March 5, 2024, hearing is required. The court will issue an
order.

3. [23-90608](#)-B-13 MICHELLE/ERIC SILVA OBJECTION TO CONFIRMATION OF
[LGT-1](#) Peter G. Macaluso PLAN BY LILIAN G. TSANG,
Thru #5 CHAPTER 13 TRUSTEE
2-8-24 [[30](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm plan.

Feasibility depends on the granting of motions to value collateral of Exeter Finance, LLC and Ally Financial Inc. Those motions to value were granted at Items 4 and 5, PGM-1 and PGM-2, respectively.

The plan filed December 21, 2023, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

4. [23-90608](#)-B-13 MICHELLE/ERIC SILVA MOTION TO VALUE COLLATERAL OF
[PGM-1](#) Peter G. Macaluso EXETER FINANCE, LLC
2-1-24 [[19](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Exeter Finance, LLC at \$6,000.00.

Debtors move to value the secured claim of Exeter Finance, LLC ("Creditor"). Debtors are the owners of a 2010 Chevy Silverado ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$6,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 12-1 filed by Exeter Finance LLC is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on February 22, 2020, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,577.72. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$6,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [23-90608](#)-B-13 MICHELLE/ERIC SILVA MOTION TO VALUE COLLATERAL OF
[PGM-2](#) Peter G. Macaluso ALLY FINANCIAL INC.
2-1-24 [[24](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Ally Financial Inc. at \$11,000.00.

Debtors move to value the secured claim of Ally Financial Inc. ("Creditor"). Debtors are the owners of a 2016 Dodge Charger ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$11,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 11-1 filed by Ally Bank is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on September 20, 2019, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,002.59. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$11,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

6. [23-90032](#)-B-13 RACHELLE LUPEKHA
[CRG-3](#) Carl R. Gustafson

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LINCOLN LAW FOR
CARL R GUSTAFSON, DEBTORS
ATTORNEY(S)
1-29-24 [[50](#)]

Final Ruling

Introduction

Before the court is an *Application for Additional Attorney's Fees* filed by Carl R. Gustafson ("Counsel") as the attorney of record for Chapter 13 debtor Rachelle Edith Lupekha ("Debtor"). The application requests additional compensation in the amount of \$8,695.50 which includes the following: **(i)** attorney's fees in the amount of \$6,885.00 (15.30 hours x \$450.00/hr.); **(ii)** paralegal fees in the amount of \$1,757.50 (9.50 hours x \$185.00/hr); and **(iii)** expenses in the amount of \$53.00.

The court has reviewed the application and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Oral argument is not necessary and will not assist in the decision-making process. See Local Bankr. R. 1001-1(f), 9014-1(h). For the reasons explained below, paralegal fees and expenses will be allowed in the amount requested. However, attorney's fees will be reduced.

The court's decision is to **conditionally approve in part and deny in part the application for additional compensation and continue the hearing to March 12, 2024, at 1:00 p.m.**

Discussion

Counsel has elected to receive compensation in this Chapter 13 case pursuant to Local Bankr. R. 2016-1(b) that requires a fee application and court approval under 11 U.S.C. § 330 rather than pursuant to Local Bankr. R. 2016-1(c), which provides for a flat-rate "no-look" fee without the need for court approval and a fee application.¹

Counsel states that he contracted with the Debtor for attorney's fees at an hourly rate of \$525.00 and paralegal fees at an hourly rate of \$215.00. Counsel acknowledges that his hourly rate of \$525.00 has previously been determined by this court to be unreasonable and has been reduced as such. For that reason, Counsel voluntarily reduced his hourly rate for purposes of the current fee application from \$525.00 to \$450.00.

Counsel states that his reduced hourly rate of \$450.00 includes a 20% increase to a previously-approved hourly rate in this case of \$375.00. Counsel bases the 20% increase on the board certification enhancement to the "no-look" fee permitted for opt-in attorneys under Local Bankr. R. 2016-1(c)(1)(C).² Counsel recognizes that the 20%

¹Receipt of compensation pursuant to a § 330 fee application under Local Bankr. R. 2016-1(b) is typically referred as an "opt-out" election whereas receipt of the "no-look" fee under Local Bankr. R. 2016-1(c) is typically referred to as an "opt-in" election. See Local Bankr. R. 2016-1(a). The court will use these terms for purposes of clarity.

²Local Bankr. R. 2016-1(c)(1)(C) states as follows:
Attorneys who are board certified in bankruptcy law by the State Bar of California Board of Legal Specialization or by the American Board of Certification on the date of the petition may increase the fee to which they would be entitled under subdivision (c)(1), or any later increased fee thereunder, by 20%. Not later than 28 days after filing the petition, any attorney contending entitlement to the fee enhancement under this provision shall file

enhancement directly applies only to the "no-look" fee and only to board certified opt-in attorneys. Nevertheless, as a board certified opt-out attorney, Counsel asserts that he, too, is entitled to the same 20% enhancement to his hourly rate by analogy to Local Bankr. R. 2016-1(c)(1)(C). Counsel raises a valid but probably unnecessary point because § 330(a)(3)(E), applicable to requests for compensation by opt-out Chapter 13 debtors' attorneys through § 330(a)(4)(B), already allows the court to consider board certification as a factor in the context of fee applications filed under § 330.

In any event, the result in this case is the same regardless of whether the 20% hourly-rate enhancement is sought by analogy to Local Bankr. R. 2016-1(c)(1)(C) or under § 330(a)(3)(E)/§ 330(a)(4)(B). That is, under the facts and circumstances of this case, the enhanced hourly rate is unreasonable.

As an initial matter, the 20% board certification enhancement allowed under Local Bankr. R. 2016-1(c)(1)(C) increases the "no-look" fee and not opt-in attorneys' hourly rates. Indeed, hourly rates are largely irrelevant in the context of a "no-look" fee and, to the extent they are relevant, they are presumed to be reasonable. *In re Villaverde*, 2016 WL 1179343, at *1 (Bankr. S.D. Fla. March 25, 2016) ("A no look fee is a flat fee, usually adopted within a district by local rule or guideline ... It is a presumptively reasonable fee based on local hourly rates, and the general amount of work required by a typical chapter 13 case.").

The same is not true with regard to compensation requested by opt-out attorneys, generally, or, specifically, their hourly rates. Hourly rates of opt-out attorneys do not enjoy the same presumption of reasonableness incorporated into the "no-look" fee. Rather, it is incumbent on opt-out attorneys requesting compensation under Local Bankr. R. 2016-1(b) and § 330 to demonstrate - and for the court to find - that hourly rates charged debtors are reasonable rates in the Eastern District of California bankruptcy court. See e.g., 11 U.S.C. § 330(a)(3)(B), 330(a)(4)(B); see also *In re Gire*, 107 B.R. 739, 742 (Bankr. E.D. Cal. 1989). The court sees no reason - and Counsel has offered none - why the same analysis should not apply equally when an hourly-rate enhancement is requested by opt-out attorneys. In other words, assuming board certified opt-out attorneys may increase hourly rates by 20% - by analogy to Local Bankr. R. 2016-1(c)(1)(C) or otherwise - the burden still remains with board certified opt-out attorneys to demonstrate the enhanced hourly rate is reasonable. To hold otherwise, i.e., to hold that opt-out board certified attorneys are always entitled to enhance their hourly rates by 20%, would essentially eviscerate the bankruptcy court's statutory obligation to determine reasonableness under § 330 insofar as it would effectively negate §§ 330(a)(3)(B), 330(a)(3)(E), and 330(a)(4)(B) by rendering these provisions meaningless in the context of fee applications filed under § 330. Such a conclusion would also violate Fed. R. Bankr. P. 9029 insofar as it would put the local rules at odds with § 330.

In assessing fee applications filed under § 330, reasonable hourly rates are calculated according to the prevailing market rates in the relevant legal community. *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013); *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011). Typically, the "relevant legal community" is the forum district and the local hourly rates for similar work should normally be employed. *Gonzalez*, 729 F.3d at 1205; *In re Gianulias*, 111 B.R. 867, 869-70 (E.D. Cal. 1989) (affirming bankruptcy court decision requiring Chapter 11 debtor's counsel to submit evidence of prevailing rates charged by bankruptcy attorneys in the community in order to establish a reasonable hourly rate).

The district court *Momentum Commercial Funding, LLC v. Project Storm, LLC*, 2022 WL 2817429 (E.D. Cal. July 18, 2022), adopted in full, 2022 WL 3578571 (E.D. Cal. Aug. 19, 2022), recently reviewed the hourly rates of bankruptcy attorneys who practice in the Eastern District of California and who have substantially more experience and expertise than Counsel. 2022 WL 2817429 at *9-*10. The district court noted that "[t]he cited rates for attorneys with 30-plus years in practice range from \$435 per hour to \$600 per hour." *Id.* It therefore found that a \$395.00 hourly rate requested by two attorneys

in the case before it who were similarly-situated to the bankruptcy attorneys whose rates were reviewed, one with over 40 years experience and the other with over 30 years experience, to be reasonable. *Id.* See also *Ambrose v. US Med-Equip, LLC*, 2024 WL 307843, at *15 (E.D. Cal. Jan. 26, 2024) (“In the Fresno Division of the Eastern District of California, across a variety of types of litigation, generally, attorneys with experience of twenty or more years of experience are awarded \$350.00 to \$400.00 per hour; attorneys with ten to twenty years of experience are awarded \$250.00 to \$350.00 per hour; attorneys with five to ten years of experience are awarded \$225.00 to \$300.00 per hour; and less than \$200.00 per hour for attorneys with less than five years of experience.”); *Perez v. All Ag., Inc.*, 2021 WL 3129602, at *5 & n.7 (E.D. Cal. July 23, 2021) (noting no distinction in rates between Sacramento and Fresno divisions, particularly in specialized areas of practice).

For purposes of reviewing the reasonableness of Counsel’s enhanced \$450.00 hourly rate in this case, the court takes judicial notice of the State Bar of California website which reflects Counsel’s California bar admission date is December 29, 2007. <https://apps.calbar.ca.gov/attorney/Licensee/Detail/254881> (when viewed on March 2, 2024). In this court’s view, an hourly rate of \$450.00 charged by a consumer bankruptcy attorney with just slightly over 16 years of experience, board certified or otherwise, is not a reasonable hourly rate.³ It is also inconsistent with the hourly rates of Eastern District of California bankruptcy attorneys reviewed by the district court in *Momentum Commercial*. So, at least in this case, the 20% enhancement requested by Counsel will not be applied to Counsel’s previously approved and allowed hourly rate of \$375.00 because doing so would result in an unreasonable hourly rate.⁴

Consistent with this court’s prior award of compensation to Counsel in this case, Counsel will be awarded compensation for attorney’s fees at an hourly rate of \$375.00 as a reasonable hourly rate. Reduction in Counsel’s hourly rate from \$450.00 to \$375.00 results in approved and allowed compensation as follows:

Attorney @ \$375.00/hr	15.30 hours	\$5,737.50
Paralegal @ \$185.00/hr	9.50 hours	\$1,757.50
		\$7,495.00
Expenses		\$53.00
Total Compensation Approved & Allowed		\$7,548.00

Counsel’s application for compensation is ORDERED APPROVED IN PART AND DENIED IN PART for the reasons stated in the minutes.

³The court is aware that another bankruptcy judge in this district recently approved a \$450.00 hourly rate as reasonable; however, the attorney in that case had nearly 40 years of experience. *In re Howell*, 2023 WL 3486669 (Bankr. E.D. Cal. May 14, 2023).

⁴This decision does not foreclose the possibility of an opt-out board certified attorney obtaining approval of a 20% hourly-rate enhancement by analogy to Local Bankr. R. 2016-1(c)(1)(C) or otherwise. For example, a board certified opt-out attorney who bills at \$325.00 per hour could request a 20% enhancement which would increase the attorney’s hourly rate to \$390.00. In most cases, depending on experience and expertise, that would be a reasonable hourly rate in this district. Alternatively, an attorney billing at a higher rate could request an enhancement in a lesser percentage. Neither of these circumstances are present here. The request here is for automatic application of the 20% enhancement applicable to the “no-look” fee by analogy to Local Bankr. R. 2016-1(c)(1)(C). And as noted above, that renders Counsel’s hourly rate unreasonable under § 330.

Conditional Nature of this Ruling

Any party in interest shall have until 5:00 p.m. on Friday, March 8, 2024, to file and serve a response to this ruling. See *Law Offices of David A. Boone v. Devin Derham-Burk (In re Eliapo)*, 468 F.3d 592, 601-03 (9th Cir. 2006). Any response shall be served on the Chapter 13 Trustee by facsimile or email.

If no response is timely filed and served, the application will be deemed granted in part and denied in part for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 12, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the application on March 12, 2024, at 1:00 p.m., or as soon thereafter as the court's calendar permits.

The court will issue an order.

7. [23-90336](#)-B-13 ERIC/DANIELLE CONNOLLY MOTION TO CONFIRM PLAN
[SSH-1](#) Simran Singh Hundal 1-16-24 [[47](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). 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) (B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

8. [23-90537](#)-B-13 CHERYL PORTER OBJECTION TO DEBTOR'S CLAIM OF
[LGT](#)-2 SCHIMMELFENNIG EXEMPTIONS
Gordon G. Bones 1-29-24 [[20](#)]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

The Chapter 13 Trustee objects to the Debtor's use of both C.C.P. § 704.010 et seq. and C.C.P. § 703.140 et seq. to claim assets exempt. These code sections are mutually exclusive and may not be used together.

Additionally, Debtor's Schedule C utilizes C.C.P. § 704.730 to claim exempt 3.3 acres at 14365 Las Palmas, La Grange, California. However, that code section provides an exemption for a homestead and the Las Palmas property is not Debtor's residence. Therefore, the exemption is not appropriate.

The court agrees with the objections raised by the Trustee. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the minutes.

The court will issue an order.

9. [22-90448](#)-B-13 EDWARD DE LA ROSA MOTION TO SELL
[FAT-2](#) Flor De Maria A. Tataje 2-16-24 [[35](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to sell and continue the matter to March 12, 2024, at 1:00 p.m.**

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell property described as 2528 Meadow Oak Drive, Modesto, California ("Property").

Proposed purchasers Arthur Oliva and Gabriela Oliva have agreed to purchase the Property for \$510,000.00. Debtor will turn over net proceeds of \$67,200 from the sale of the Property to the Chapter 13 Trustee, or the amount necessary to pay off the plan. Debtor states that he is selling his home because his income has decreased and he cannot afford to keep up with his monthly plan payments. Selling his property is his only option to get out of debt. Debtor believes that the sale price of \$510,000 is equivalent to the fair market value of the Property. The standard provisions allowing the Trustee to coordinate the closing of escrow will be included in the order.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 8, 2024, to file and serve an opposition or other response to the motion. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 12, 2024, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 12, 2024, at 1:00 p.m.

10. [24-90061](#)-B-13 STEPHANIE KESTLER
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
2-8-24 [[10](#)]

GILDA WITHERELL VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion for relief from automatic stay and continue the matter to March 12, 2024, at 1:00 p.m.**

Gilda Witherell ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 113 Oak Street, Modesto, California (the "Property"). The court notes that Movant failed to file her motion and supporting exhibits as separate documents as required by Local Bankr. R. 9004-2(c)(1). However, the court will overlook this procedural defect given that Movant is representing herself pro se.

Movant states that she is the landlord of the Property and that Stephanie Ramirez Kestler ("Debtor") is not a tenant in the original lease agreement. Instead, Debtor is merely an occupant.

Before the Debtor filed her Chapter 13 petition on February 5, 2024, on January 26, 2024, Movant obtained in an unlawful detainer action (i) a judgment for possession of the Property and (ii) a writ of possession. Consequently, under California law, neither the original tenant under the lease agreement nor the Debtor as an occupant of the Property had any legal or equitable interest in the Property at the commencement of the Chapter 13 case. *Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1130 (9th Cir. 2016). To the extent the automatic stay of 11 U.S.C. § 362(a) even applies, it will be terminated and vacated to allow Movant to commence and/or continue with all actions necessary to complete recovery of the Property and to remove the Debtor and all other occupants from the Property under applicable nonbankruptcy law.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, March 8, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on March 12, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on March 12, 2022, at 1:00 p.m.

11. [23-90421](#)-B-13 MARK VALENCIA
[LGT](#)-1 Gordon G. Bones

CONTINUED MOTION TO DISMISS
CASE
2-9-24 [[47](#)]

Final Ruling

This matter was continued from February 27, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 1, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 51, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 5, 2024, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

12. [23-90522](#)-B-13 PATRICIA OCHSNER
[LGT](#)-2 David C. Johnston

CONTINUED MOTION TO DISMISS
CASE
2-9-24 [[32](#)]

Final Ruling

This matter was continued from February 27, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, March 1, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 36, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on March 5, 2024, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.