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

**Honorable Ronald H. Sargis**
Chief Bankruptcy Judge
Sacramento, California

**March 5, 2019 at 1:30 p.m.**

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**1.** **17-23911-E-13** **CRAIG MASON**
**PP-1** **Lucas Garcia**

**MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ORDER DETERMINING INAPPLICABILITY OF THE AUTOMATIC STAY**
**1-29-19 [137]**

**CADLEROCK III, LLC VS.**

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

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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, Chapter 7 Trustee, and Office of the United States Trustee on January 29, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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 for Relief from the Automatic Stay is granted.**

On September 10, 2018, CadleRock III, L.L.C. ("Movant") initiated *CadleRock III, L.L.C. v. Evolution Group*, Inc., S-CV0041770, Superior Court of California, Placer County ("State Court Litigation"). In the State Court Litigation, Movant asserts claims for breach of contract, unjust enrichment, promissory estoppel, and judicial foreclosure against Evolution Group, Inc., dba Fast 50's ("Fast50"), a corporation owned by the debtor Craig Mason (the "Debtor").

The present Motion seeks relief from the automatic stay, or confirmation no stay exists, allowing Movant to pursue the State Court Litigation and enforce its rights against Fast50.

On September 9, 2003, Fast50 entered into a Demand Line of Credit Agreement and Demand Line of Credit Note (the "Agreement") in the amount of $75,000.00 with US Bank, N.A. Exhibit 1, Dckt. 139. The Agreement was secured by all the assets of Fast50. *Id*. at p. 10. The Debtor in this case was also a guarantor for the debt. *Id.* at p. 14-15. In 2016, US Bank assigned its rights under the Agreement to Movant.

Debtor lists as an asset on his Schedules A/B the company Fast50, with a stated value of $0.00. Dckt. 27. Because Debtor is alleged to be the sole owner of Fast50, and Debtor's assets are asserted to be those used in the business (all disclosed and exempted on Debtor's Schedules), Debtor argues that Fast50 is protected by the automatic stay as an asset of the Debtor. Exhibit 3, Dckt 139 at p. 74.

Movant argues the automatic stay protects only Debtor and property of the Estate, and therefore does not apply to Fast50 as a separate entity under California law. Movant asserts that the State Court Litigation pursues claims against only Fast50, and that it will only levy against assets owned by Fast50.

**TRUSTEE'S RESPONSE**

On February 19, 2019, the Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response to the Motion. Dckt. 155. Trustee notes the Debtor is current under the proposed Fifth Amended Plan (not confirmed), and has paid $111,086.70 to the Trustee to date. Trustee notes further Movant filed Proof of Claim, No. 2, asserting an unsecured claim in the amount of $61,185.01.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Motion on February 19, 2019. Dckt. 158. Debtor notes that Movant's claim against Debtor was determined to be unsecured in the amount of $61,185.01. Order, Dckt. 101. Debtor argues that because Debtor listed Fast50 on his Schedules as having a value of $0.00, that Movant should be barred from arguing the business has value to pursue in state court for seizure. Debtor characterizes the Motion as a backdoor attempt to harass Debtor.

Debtor argues further that while Movant asserts a security interest, it has yet to show Fast50 has any assets. Debtor asserts that Fast50, being wholly owned by Debtor, is like a car or a house. Debtor also argues that the Motion seeks to relitigate the assets and respective values disclosed on Debtor's Schedules, as well as the Objection To Claim.

Debtor insists the court find Fast50 to be valued at $0.00, that the Objection To Claim was properly sustained, and that the present Motion is a "showboat" or attempt to harass Debtor.

**DISCUSSION**

**Determination that No Automatic Stay Exists**

Debtor argues that as a corporation wholly owned by Debtor, with stock valued at $0.00 and no identified assets, Fast50 should be protected by the automatic stay as an asset of the Debtor.

Debtor's arguments are contrary to California law, which provides that a "corporation has a personality distinct from that of its shareholders, and that the latter neither own the corporate property nor the corporate earnings." *Miller v. McColgan*, 17 Cal. 2d 432, 436 (1941). Witkin's summary of California law on corporations is illustrative:

> (1) Legal Entity. **A corporation is a legal person or entity recognized as having an existence separate from that of its shareholders.** (Erkenbrecher v. Grant (1921) 187 C. 7, 9, 200 P. 641; Hollywood Cleaning & Pressing Co. v. Hollywood Laundry Service (1932) 217 C. 124, 129, 17 P.2d 709;Merco Const. Engineers v. Municipal Court (1978) 21 C.3d 724, 729, 147C.R. 631, 581 P.2d 636, 2Cal. Proc. (5th), Jurisdiction, § 197, citing the text; Maxwell Café v. Department of Alcoholic Beverage Control (1956) 142 C.A.2d 73, 78, 298 P.2d 64; see 18 Am.Jur.2d (2015 ed.), Corporations § 1.) **The shareholders are not the owners of corporate property, and the corporation and a shareholder are distinct parties in contracts made by each other.** (Baker Divide Mining Co. v. Maxfield (1948) 83 C.A.2d 241, 248, 188 P.2d 538; see Pacific Lumber Co. v. Superior Court (1990) 226 C.A.3d 371, 375, 276 C.R. 425, citing the text [shareholders are not owners of corporate property] ; Union Bank v. Anderson (1991) 232 C.A.3d 941, 949, 283 C.R. 823 [same] ; Gantman v. United Pac. Ins. Co. (1991) 232 C.A.3d 1560, 1566, 284 C.R. 188 [individual members of mutual benefit corporation lacked standing to maintain action on insurance policies issued to corporation] .) (For comparison of American and British corporation law, see 69 Harv. L. Rev. 1369.)

9 WITKIN SUM. CAL. LAW CORP § 1(emphasis added). Witkin also explains what Debtor's interest in Fast50 is here:

> (1) **Ownership Interest**. Shares are the units into which the proprietary interests in a corporation are divided. (Corp.C. 184.) Thus**, shares are the interest that the shareholder has in the corporation.** (See Kohl v. Lilienthal (1889) 81 C. 378, 385, 22 P. 689 [distinguishing "capital stock" from "shares of the capital stock" ] ; Cal. Civil Practice, 1 Business Litigation, § 6:1 et seq. [overview, issuance of shares] ; 18A Am.Jur.2d (2015 ed.), Corporations § 350.)

9 WITKIN SUM. CAL. LAW CORP § 135(emphasis added). While Debtor's interest in property is generally a state law determination, the provisions of the Bankruptcy Code have also been interpreted to observe the same distinction between a debtor's ownership interest in a corporation and corporate assets:

> The use of the term "individual" in the definition also makes clear that corporations, partnerships, and municipalities may not file a chapter 13 case. Although "individual" is not defined in the Code, the definition of "person" in section 101 differentiates individuals, corporations and partnerships by listing them separately.

> "Municipality" is also separately defined in section 101. However, an individual who is a partner in a partnership or the owner of a corporation may still be eligible for chapter 13, if that individual meets the requirements of section 109(e). In that case, **while the individual's interest in the partnership or corporation (which could be a 100 percent interest) would be property of the estate, the assets of the partnership or corporation itself would not be.** Similarly, although a trust is not an individual, an individual who is the trustee of a trust may file a chapter 13 case.

2 COLLIER ON BANKRUPTCY P 101.30 [3] (16th 2018)(emphasis added).

Property of Fast50 is not property of the Debtor or the Estate. Rather, Debtor's interest is solely shares of the company. Therefore, there is no stay in effect prohibiting Movant from acquiring a judgment against Fast50, or for enforcing the judgement against potential assets of Fast50, if any.

The court shall issue an order confirming there is no stay in effect as to claims against Fast50.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by CadleRock III, L.L.C. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are not in effect with respect to any claims or enforcement of any judgment against Evolution Group, Inc., dba Fast 50's ("Fast50"), including litigation in *CadleRock III, L.L.C. v. Evolution Group, Inc.*, S-CV0041770, Superior Court of California, Placer County.
>
> **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to any claims or enforcement of any judgment against the debtor Craig Mason (the "Debtor"), David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate.
>
> No other or additional relief is granted.

**2.** **17-20220-E-7** **WILLIAM/FAYE THOMAS** **CONTINUED STATUS CONFERENCE**
**18-2090** **Lucas Garcia** **RE: AMENDED COMPLAINT**
**8-29-18 [18]**

**PUTNAM V. THOMAS, JR. ET AL**

Plaintiff's Atty: Pro Se
Defendant's Atty: Lucas B. Garcia

Adv. Filed: 6/7/18
Answer: none
Amd. Cmplt Filed: 8/29/18
Answer: 1/16/19

Nature of Action:
Recovery of money/property - fraudulent transfer
Validity, priority or extent of lien or other interest in property
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeabilty - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 2/20/19

**SUMMARY OF COMPLAINT**

Robert Putnam ("Plaintiff") filed his First Amended Complaint, Dckt. 18. The court has granted a Motion to Dismiss the claim of nondischargeability under 11 U.S.C. § 523(a)(4), but denied as to the remaining relief sought pursuant to 11 U.S.C. § 523(a)(6). The First Amended Complaint alleges the following:

1. Plaintiff provided services as counsel for Defendant Debtor in a State Court Action.

2. The obligation for those services is alleged to be $118,156.92.

3. Plaintiff asserts having a lien on the proceeds of the State Court Action.

4. Defendant-Debtor, as the Chapter 13 Trustee, purported to settle the State Court Action for no recovery for the bankruptcy estate without bankruptcy court approval.

5. Defendant-Debtor, through his conduct, has attempted to rendered a valuable State Court Action, and Plaintiff's lien thereon, valueless. Defendant-Debtor also pleads with specificity four Affirmative Defenses.

**SUMMARY OF ANSWER**

William Carter, ("Defendant-Debtor") has filed an answer admitting and denying specific allegations in the Complaint. Dckt. 63.

**FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Robert Putnam, alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to Federal Rule of Bankruptcy Procedure 4007 and 7001(6), jurisdiction for determination of the nondischargeability of a debt under 11 U.S.C. § 523 exists pursuant to 28 U.S.C. § 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). In the Answer, Defendant William Carter Thomas admits the allegations of jurisdiction and core proceedings. Answer ¶ 3, Dckt. 63.

**ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. Plaintiff Robert Putnam, alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to Federal Rule of Bankruptcy Procedure 4007 and 7001(6). Jurisdiction for determination of the nondischargeability of a debt under 11 U.S.C. § 523 is exists pursuant to 28 U.S.C. § 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). In the Answer, Defendant William Carter Thomas admits the allegations of jurisdiction and core proceedings. Answer ¶ 3, Dckt. 63.

b. Initial Disclosures shall be made on or before **-----, 2019**.

c. Expert Witnesses shall be disclosed on or before **----------, 2019**, and Expert Witness Reports, if any, shall be exchanged on or before **----------, 2019**.

d. Discovery closes, including the hearing of all discovery motions, on **----------, 2019**.

e. Dispositive Motions shall be heard before **----------, 2019**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **------- p.m. on ----------, 2019**.

| | | | |
|---|---|---|---|
| **3.** | **18-90029-E-11**<br>**MF-37** | **JEFFERY ARAMBEL**<br>**Matt Olson** | **CONTINUED MOTION TO USE CASH COLLATERAL**<br>**2-12-19 [740]** |

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**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).**
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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 creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on February 14, 2019. By the court's calculation, 7 days' notice was provided. The court set the hearing for February 21, 2019. Dckt. 744.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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 Authority to Use Cash Collateral is XXXXXXXXX.**

Jeffery Edward Arambel ("Debtor in Possession") filed this Motion seeking an order approving the use of cash collateral on February 12, 2019. Dckt. 740. The Motion states During the period of September 2018 through December 2018, the Debtor in Possession received approximately $254,864 in rents for cattle grazing lands. The Debtor in Possession proposes to use the Cash Collateral to his month-to-month living expenses and maintain the farming operations consistent with budget previously approved by the Court.

**INTERIM ORDER GRANTING MOTION**
**AND CONTINUING HEARING**

On February 18, 2019, the court issued an Interim Order granting the Motion and authorizing use of cash collateral to pay expenses to prevent irreparable harm to the estate for the period of February 12, 2019 through February 28, 2019. Dckt. 748. The court authorized payment of the following expenses with a 10 percent variance:

| | |
|---|---|
| Water and Power | 4,500 |
| Insurance | 10,091 |
| Contract labor (office) | 1,000 |
| Pharmacy | 300 |
| Home Mortgage & Escrow | 6,142 |
| Food, clothing, and household | 1,350 |
| Utilities (includes water) | 1,500 |
| Transportation/gas | 400 |
| Total Cash Out Interim Period | 25,283 |

**OPPOSITION OF AMERICAN AGCREDIT**

Creditor American AgCredit, FLCA ("American Ag") filed an opposition to the Motion on February 19, 2019. Dckt. 749. American Ag notes the Motion states Debtor in Possession received $148,614.00 of American Ag's cash collateral, using $95,834.03 of the funds and holding on hand $52,779.97.

American Ag previously consented to use of its cash collateral to pay property insurance and taxes for the Zacharias Rach. However, the property taxes were not paid for December 2018. American Ag is unsure what its cash collateral proceeds were used for.

American Ag further asserts the Motion indicates Debtor in Possession received from all sources $254,864.00, and has $125,926.77 total remaining funds on hand. American Ag argues that Debtor in Possession sought to deplete the cash collateral of American Ag before other creditors because American Ag is foreclosing on its collateral.

In support of its opposition, American Ag filed the Declaration of Scott Clifton, the vice president of credit resolution for American Ag. Dckt. 750. The Clifton Declaration provides evidence that the Zacharias Ranch property was sold at a nonjudicial foreclosure sale on February 15, 2019. *Id.* at ¶ 5. American Ag's outstanding claim amounted to $6,436,128.87, and American Ag acquired the property with a credit bid of $5,084,000.00. *Id.* American Ag discovered Debtor in Possession had not paid December 2018 taxes on the property after the foreclosure sale. *Id.*

American Ag argues that the foreclosure vitiates any legitimate use of its cash collateral, and leaves American Ag without adequate protection. American Ag opposes any use of its cash collateral and demands an accounting of the $95,834.03 already expended.

**FEBRUARY 21, 2019 HEARING**

At the February 21, 2019 hearing, American Ag addressed its concern that the property taxes on the property that secured its claim were not paid in December as provided in the prior cash collateral budget, and that American Ag's cash collateral may have been diverted to other uses.

Counsel for Debtor in Possession represented to the court that after the interim use of cash

collateral, there would still be in excess of $100,000.00 of cash collateral being held by the Debtor in Possession.

**SUPPLEMENT TO OBJECTION OF AMERICAN AG**

American Ag filed a Supplement to its initial opposition on February 26, 2019. Dckt. 757. American Ag adds to its opposition that for the December 10, 2018 payment period, unpaid taxes on the Zacharais property amounted to $12,982.44. Declaration, Dckt. 758.

**ORDER RATIFYING INTERIM ORDER**

On February 26, 2019 the court issued an Order ratifying the court's Interim Order, authorizing interim use of Cash Collateral for the period February 12, 2019 through February 28, 2019. Order, Dckt. 761. The court further ordered Debtor in Possession is not authorized to use the cash collateral of American Ag; that Debtor in Possession shall not allow the balance of on hand cash collateral to be less than $100,000.00 pending further order of the court; and that a final hearing on the Motion is set for March 5, 2019 at 1:30 p.m. with oppositions filed by February 28, 2019.

**OCTOBER MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL**

On October 24, 2018, the Debtor in Possession filed its most recent motion to use cash collateral before the present Motion. Motion, Dckt. 678. At the November 20, 2018 hearing, several creditors voiced concerns over that motion. Civil Minutes, Dckt. 726.

Among the oppositions presented there was that of American Ag, who argued that the cash collateral was being commingled as to both source and proposed use (as opposed to the cash collateral being used for the preservation of the collateral it came from). American Ag raised this concern primarily because the Zacharias property was being rented as cattle grazing land, for which there is little cost and expense to the Bankruptcy Estate. Creditor West Valley Ag Services ("West Valley") later concurred in opposing the Motion on these grounds. Dckt. 687.

Debtor in Possession's argument in reply was that there was ample equity in all property to provide adequate protection. Debtor in Possession stated under penalty of perjury that the value of the Zacharias property was $10,000,000.00. Declaration, Dckt. 696. Debtor in Possession also presented a budget for October through December 2018 that proposed paying the property taxes of the properties bringing in rent monies. Exhibits B-E, Dckt. 697.

The other creditors opposing that motion, Dorothy Arnaud, individually and as co-trustee of the Margaret Filbin Trust; Helen Jackson, individually and as co-trustee of the Margaret Filbin Trust; The Margaret Filbin Trust; Garry DeWolf; and Deborah DeWolf ("Filbin Trustees") and Dan Stadler and Carolyn Dilday, successor trustees to the Stalder Trustee, Stadtler FLP, individually and as successor in interest to Cow Camp L.P. ("Stadler Trustees") complained of excessive expenses, including that Debtor

in Possession was paying for his residence (on orchard property) while also having two other residential properties that are not income generating. Civil Minutes, 726.

**MONTHLY OPERATING REPORTS**

Debtor filed Monthly Operating Reports for December 2018 and January 2019 on January 16, 2019 (Dckt. 737) and February 20, 2019, respectively. Dckt. 754. Among other projected expenses, both Reports list a forecasted expense of $18,000.00 for real property taxes. The December Report shows $17,484.00 in taxes were actually paid, and the January Report reflects $20,687.00 paid. It is not specified whether these are representations that the property taxes on the Zacharias property were paid.

**APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so

requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

As discussed above, American Ag argues that Debtor in Possession is using its cash collateral to pay expenses unrelated to the Zacharias property (which American Ag had maintained did not have significant associated expenses beyond insurance and taxes).

American Ag's concerns are well founded. First, American Ag has presented evidence showing that Debtor in Possession has not been paid December 2018 property taxes of the Zacharias property amount to $12,982.44. Declaration, Dckt. 758. This evidence is despite Monthly Operating Reports showing that some (unspecified) property taxes have been paid roughly in line with the forecasted budget. Second, and more concerning, Debtor in Possession may have continued to expend American Ag's cash collateral even after American Ag foreclosed on the collateral on February 15, 2019. Dckt. 750.

Debtor in Possession previously reassured creditors and the court that there was ample adequate protection for all rent generating properties through a significant equity cushion. However, the Zacharias property, asserted to be valued at $10,000,00.00, sold for only $5,084,000.00 on a credit bid.

The court has further concerns where it appears Debtor in Possession is using the cash collateral to pay more than one of his residences–an issue raised several times in this case. The payment of the mortgage and impounds for the residence is not insubstantial - $6,142.00 a month. The court originally, and incorrectly, believed that the residence, and the $6,142 a month payment, was for an income producing property on which the residence happened to be located.

Debtor lists the Echo Court as having a value of $997,000.00. Amended Schedule A/B, Dckt. 114 at 10. On Amended Schedule D Debtor lists Wells Fargo Bank, N.A. having a secured claim in the amount of ($762,798) for which the collateral is the Echo Court Property. No other creditors are listed as having a lien against the Echo Court property.

Proof of Claim No. 4 has been filed for Wells Fargo Bank, N.A., with an assignment to U.S. Bank, N.A., for the above claim, which is filed in the amount of ($763,332.74) consistent with Amended Schedule D. The Note attached to Proof of Claim No. 4 states that the loan was made in 2007.

Debtor commenced this case on January 17, 2018. No Chapter 11 Plan and proposed disclosure statement have been filed by the Debtor in Possession. Such was attempted through a Stipulation with one of the creditors with a secured claim to have the court approve a *de facto* plan as part of the stipulation. Civil Minutes, Dckt. 656. The court denied the motion and attempted implementation of a *de facto* plan through such a stipulation. *Id.*; Order, Dckt. 661.

Interestingly, though the Debtor in Possession was moving forward at full speed to have a plan as stipulated, after the court denied the Motion to Approve Stipulation and told the parties to proceed with

the normal plan confirmation process, Debtor in Possession took no action. At a subsequent proceeding when asked why the Debtor in Possession was not proceeding full speed ahead to get a plan as he was willing to stipulate before the court, counsel for the Debtor in Possession reported that the Debtor in Possession had decided to go with a different plan. No such different plan is being advanced by the Debtor in Possession.

It appears that in this bankruptcy case Debtor is maintaining a residence at the cost of more than $6,000 a month for his family unit of one person, while being unable to prosecute a plan. This monthly expense of more than $6,000 does not produce any income for the estate and is not shown to be an expense relating to any income being generated for the bankruptcy estate.

While the court had originally been mistaken that this monthly payment was for income producing property, such error has been corrected. Now, more than a year into this case, Debtor in Possession (at least in the present Motion) has not provided the court with an economically reasonable rationale as to why these payments for Debtor in Possession maintaining his pre-bankruptcy filing lifestyle is appropriate.

In his Declaration in support of the present Motion Debtor in Possession states that the Echo Court property is approximately 3,000 square feet in size. Declaration ¶ 10, Dckt. 742. He says that he uses one room of the house for an office and two other rooms to store files. *Id.* He further testifies that the second residential property the estate owns, 1,200 square feet on Roxanne Drive, is also used as an office and for file storage. It appears that Debtor in Possession has extensive "file storage needs" in this day and age of electronic file documents and storage. No explanation is provided for why two homes are needed for such storage or why paying more than $6,000 a month is appropriate for such file storage and multiple office "needs."

Debtor in Possession argues that maintaining the Roxanne Drive property is better for the estate than selling it and paying creditors, because it maintains an asset for the bankruptcy estate and pays rent. Debtor in Possession offers no rationale for paying more than $6,000 a month to maintain a second residence for file storage purposes.

Before the court orders further authorization for more than $6,000 a month so Debtor can retain his pre-bankruptcy residence for additional file storage and office use, the court needs more information, including:

1. A detailed description of the property;

2. Whether the secured obligation is a purchase money mortgage or a refinance with monies used to finance current revenue generating properties for the bankruptcy estate.

3. What the property is actually worth in 2019 and whether the Wells Fargo Bank, N.A./U.S. Bank, N.A. claim is under or oversecured (with a note dating back to 2007, that was a time when real estate prices were greatly inflated prior to the Great Recession of the late 2000's).

4. How retaining this property with an expense of over $6,000 a month fits into a Chapter 11 Plan

which is/will be diligently prosecuted in this case.

At the hearing, **XXXXXXXXXXX**.

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

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

The Motion to Use Case Collateral filed by Jeffery Arambel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **XXXXXXXXXXXX**.

**4.** **18-27048-E-13 JHW-1** **CHERYL JACKSON**
**Mohammad Mokarram**

**MOTION FOR RELIEF FROM AUTOMATIC STAY**
**2-1-19 [18]**

**FORD MOTOR CREDIT COMPANY, LLC VS.**

**Final Ruling:** No appearance at the March 5, 2019, hearing is required.
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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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 1, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 for Relief from the Automatic Stay is granted.**

Ford Motor Credit Company, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Focus, VIN ending in 6157 ("Vehicle"). The moving party has provided the Declaration of Kristina Mowers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Cheryl Babbette Jackson ("Debtor").

The Mowers Declaration provides testimony that Debtor missed 7 prepetition payments amounting to $2,292.78 before Movant charged off the account, leaving the entire balance of $18,226.41 due.

Debtor's Chapter 13 Plan provides for the Vehicle to be surrendered, and Movant's claim treated as a Class 3. The Plan was confirmed on February 26, 2018. Order, Dckt. 13.

**TRUSTEE'S RESPONSE**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on February 19, 2019. Dckt. 25. Trustee notes the Movant's claim is treated as a Class 3, and that the Motion may not be necessary.

**DISCUSSION**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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

and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court on the basis that the account has been charged off, the Vehicle has been surrendered, and the Vehicle is a rapidly depreciating asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Ford Motor Credit Company, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Ford Focus, VIN ending in 6157 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

| | | | |
|---|---|---|---|
| **5.** | **19-90122-E-11**<br>**MF-7** | **MIKE TAMANA FREIGHT LINES, LLC**<br>**Matthew Olson** | **MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY**<br>**3-1-19 [66] O.S.T** |

**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.

The Motion for Contempt And/Or Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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 Contempt And/Or Sanctions for Violation of the Automatic Stay is xxxxx.**

Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("ΔIP") has filed a Motion to Hold HSD Trucking, Inc. ("HSD") in Contempt for an asserted violation of the automatic stay. The Motion states with particularity (Fed. R. Bankr. P. 9013) grounds, which include the following:

A. Prior to commencement of this Chapter 11 case Mike Tamana Freight Lines, LLC, the Debtor contracted with HSD to provide trucking services for the Debtor.

B. As of the commencement of this case HSD was owed payment for pre-petition trucking services, which HSD asserts to be approximately $5,000.

C. After the commencement of this case the ΔIP, as the fiduciary of the bankruptcy estate serving in lieu of a trustee being appointed, contracted with HSD to provide trucking services to the bankruptcy estate.

D. HSD contracted with the ΔIP, the fiduciary of the bankruptcy estate, to provide trucking

services to the bankruptcy estate.

E. HSD took possession of the goods to be delivered, but after taking possession and control of the goods that HSD contracted to deliver for the bankruptcy estate, HSD failed to deliver the goods as contracted.

F. HSD advised the ΔIP that it would not deliver the goods unless the ΔIP paid HSD not only the $1,700 contract price for the services contracted to be provided to the bankruptcy estate, but the prepetition claim as well.

G. ΔIP asserts that taking possession of the goods to be delivered, refusing to deliver, and retaining possession of the goods, and demanding payment of the pre-petition claim as a condition to perform the post-petition contract and release the post-petition goods is a violation of the automatic stay for which HSD can be subject to sanctions.

H. Counsel for the ΔIP attempted to communicate that the ΔIP asserts that the conduct is in violation of the automatic stay, but such communications were not productive.

Motion, Dckt. 66.

The Declaration of Amajot Tamana ("Aman") is provided in support of the Motion. Dckt. 67. With respect to the post-petition contract between the ΔIP and HSD, Aman testifies:

> 5. On or about February 27, 2019, HSD Trucking accepted a contract from the Debtor in Possession to deliver goods for one of its customers.

Declaration ¶ 5, *Id.* His testimony continues, stating that after obtaining possession of the goods to be shipped pursuant to the post-petition contract:

> After picking up the load, HSD Trucking notified the Debtor in Possession that it would not deliver the goods unless it was paid both for the new post-petition delivery (approximately $1,700) and for its pre-petition claim (approximately $5,000).

*Id.* Aman's testimony continues, authenticating an email exchange in which the demand for payment of the pre-petition claim as a condition of performing the post-petition contract, stating:

> 7. On March 1, 2019, HSD Trucking sent an email to me in which it refusing to deliver the load until its entire claim was paid in full. A true and correct copy of that email is attached as Exhibit "C." In the email, HSD Trucking acknowledges that this case has been commenced, but nevertheless demands full payment on its claim.

*Id.* ¶ 7. He further testifies that HSD continues to fail to perform the post-petition contract, stating:

> 8. As of this filing, HSD Trucking has not delivered the goods to their destination nor returned them to the Debtor in Possession.

*Id.* ¶ 8.

Matthew Olson, Esq., counsel for the ΔIP, provides his declaration in support of the Motion. Dckt. 68. In it he testifies as to his communications with HSD concerning the asserted violation of the automatic stay. Declaration ¶ 3,4; *Id.*

Exhibit C is an email thread of communications between Aman for the ΔIP and a person identified in the email as Brenda Ochoa for HSD. Dckt. 69. A February 28, 2019 email stated to be from Brenda Ochoa for HSD to Aman for the ΔIP, which states:

> I apologize for the situation but, I have been forced in this situation I [sic] have had several companies go sideways leaving us with extensive accounts in limbo and unfortunately we can not continue to operate on benefit of the doubt. I really wish there was anything that can be done but at this point **I [sic] need the entire amount cleared prior to any new loads.** And again please remember Taran does not have the authority to override my decision. **I am the person in charge of accounting and at this point I need the entire amount.**

*Id.* at 10 (emphasis added). This demand for payment of the "entire amount" is in response to Aman stating in his email that the ΔIP can pre-pay for the post-petition services, but would be in violation with the court if the ΔIP were to pay the pre-petition claim. *Id.* at 11.

**APPLICABLE LAW**

Congress has provided in 11 U.S.C. § 362(a) for an automatic stay that goes into effect upon the commencement of the bankruptcy case. The stay exists both as to the debtor and the bankruptcy estate. These stays are summarized as follows:

| **Stay As to Debtor** | **Stay as to the Bankruptcy Estate, Trustee, and Debtor in Possession** |
|---|---|
| (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or **to recover a claim against the debtor that arose before the commencement of the case under this title**; | |

| | |
|---|---|
| (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; | (2) the enforcement, against the debtor **or against property of the estate**, of a judgment obtained before the commencement of the case under this title; |
| | (3) **any act to obtain possession of property of the estate** or of **property from the estate** or to **exercise control over property of the estate**; |
| | (4) **any act** to create, perfect, or enforce **any lien against property of the estate**; |
| (5) any act to create, perfect, or enforce **against property of the debtor** any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; | |
| (6) **any act to collect**, assess, or recover **a claim against the debtor** that arose before the commencement of the case under this title | |
| (7) the **setoff of any debt owing to the debtor** that arose before the commencement of the case under this title **against any claim against the debtor**; | |

When a creditor has notice of a bankruptcy case, it is the creditor's burden to determine the extent of the automatic stay and seek such relief as is appropriate. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶362.02; *Carter v. Buskirk (In re Carter)*, 691 F.2d 390 (8th Cir. 1982); *Hillis Motors v. Hawaii Automobile Dealers' Association (In re Hillis Motors)*, 997 F.2d 581, 586 (9th Cir. 1993) ("Where through an action an individual or entity would exercise control over property of the estate, that party must obtain advance relief from the automatic stay from the bankruptcy court. *Carroll v. Tri-Growth Centre City Ltd. (In re Carroll)*, 903 F.2d 1266, 1270-71 (9th Cir. 1990).")

The prohibition on exercising control over property of the bankruptcy estate is discussed in COLLIER IN BANKRUPTCY as follows:

> [5] Acts to Obtain Possession of Property of the Estate or Property from the Estate; § 362(a)(3)
>
> Section 362(a)(3) stays all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. The trustee or debtor in possession takes control of all property of the estate in order to maintain any going concern value and to assure an equitable distribution of the property among creditors. **This requires that no entity seek to interfere with these tasks by taking possession of or exercising control over property of the estate. It also requires that no entity grab non-estate property from the estate without the court supervision that comes**

**from a stay relief proceeding.**

This provision should be read with sections 542 and 543, which assist the trustee in obtaining possession of property of the estate that is in the possession of third parties, by requiring turnover of the property to the trustee. **The failure of an entity in possession of estate property to turn over the property to the trustee would be a violation of section 362(a)(3)** except as may otherwise be provided in section 542. And the Third Circuit has ruled that a franchisor's actions, both outside the bankruptcy court and in the bankruptcy case itself, to obtain possession of a debtor's franchise prepetition might violate the automatic stay. The better view, however, is that proper objections in the bankruptcy court do not violate the stay.

**The property protected may be property of the estate or property in the possession of the estate.** An example of the latter would be property which was leased or bailed to the debtor prior to the commencement of the case. If, however, the property in question is not property of the estate and was not in possession of the debtor at the time of the commencement of the case, section 362(a)(3) is inapplicable.

The stay applies to attempts to obtain or exercise control over both tangible and intangible property. It may even apply to a town ordinance that attempts to revoke a debtor's estoppel right to have a zoning application processed. It also protects fraudulent transfer and other causes of action that are vested in the trustee. However, some courts have held that fraudulently transferred property is not property of the bankruptcy estate, and therefore not protected by section 362(a)(3), until it is recovered.

Property of the estate includes exempt property until the property is released to the debtor. Therefore, a creditor must obtain relief from the stay before proceeding against such property

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362.03 (emphasis added).

With respect to the stay of any attempt to collect a prepetition debt. Collier on Bankruptcy explains:

[8] Acts to Collect, Assess or Recover Claims Against the Debtor; §?362(a)(6)

Section 362(a)(6) stays any act to collect, assess or recover a prepetition claim against the debtor. The wording of this provision is somewhat similar to that of section 362(a)(1) but the provision applies to any "act" whether or not that act is related to an "action" or a "proceeding." **Thus, any act taken to collect, assess or recover a prepetition claim against the debtor, whether the act is taken against the estate or against the debtor, is stayed.**

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362.03.

**Sanctions and Relief Pursuant to 11 U.S.C. § 105(a)**

Collier on bankruptcy, sixteenth edition, ¶ 362.12[2] provides a good overrule of a violation of the automatic stay being remedied as contempt, with compensatory and punitive damages available to be ordered by the court. Because the person that is the target of the alleged violation of the automatic stay is a limited liability company and the bankruptcy estate, the provisions of 11 U.S.C. § 362(k) that apply to an individual are not implicated in the present Motion. *In re Jove Eng'g, Inc. v. IRS*, 92 F.3d 1539, 1542 (9th Cir. 1996), addressing this under the predecessor provision of 11 U.S.C. § 362(h), which was renumber § 362(k) as part of subsequent amendments to 11 U.S.C. § 362.

In the Ninth Circuit, it has been determined that in addition to the inherent contempt power of a federal court, "Under § 105, Congress expressly grants court's independent statutory powers in bankruptcy proceedings to "carry out the provisions of" the Bankruptcy Code through "any order, process, or judgment that is necessary or appropriate." 11 U.S.C. § 105(a)." *Id.* at 1553. This follows well established law throughout the country. *See Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1309 (11th Cir. 1982).

The federal court is empowered to issue such orders as necessary to address the contempt, including injunctive, compensatory, and punitive damages. *In re Jove Eng'g, Inc. v. IRS*, 92 F.3d at 1554 ("Therefore, we conclude § 105(a) grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent such awards are "necessary or appropriate" to carry out the provisions of the Bankruptcy Code."). As earlier addressed by the Ninth Circuit Court of Appeals:

> "It is clear that, even though a trustee does not qualify as an "individual" for purposes of section 362(h), a trustee can recover damages in the form of costs and attorney's fees under section 105(a) as a sanction for ordinary civil contempt. *See United States v. Arkison (In re Cascade Roads, Inc.)*, 34 F.3d 756, 767 (9th Cir. 1994) (damages not otherwise available to a corporate debtor under section 362(h) for a creditor's willful violation of the automatic stay were nevertheless available under section 105(a) as a sanction for ordinary civil contempt; distinguishing In re Goodman, supra). It is equally clear that, while an award of damages under section 362(h) is mandatory, an award of damages under section 105(a) is discretionary. *Id.; In re Pace*, 159 Bankr. at 904."

*Havelock v. Taxel (In re Pace)*, 67 F.3d 187, 193 (9th Cir. 1995).

The analysis enunciated by the Ninth Circuit Court of Appeals in a subsequent decision concerning contempt proceedings for alleged violation of the automatic stay is:

> "The threshold standard for imposing a civil contempt sanction in the context of an automatic stay violation therefore dovetails with the threshold standard for awarding damages under § 362(h) [now 11 U.S.C. § 362(k)]. *Pace*, 67 F.3d at 191 (incorporating the willfulness standard of § 362(h) as explicated by *Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992)). Under both

statutes, the threshold question regarding the propriety of an award turns not on a finding of "bad faith" or subjective intent, but rather on a finding of "willfulness," where willfulness has a particularized meaning in this context:

> "[W]illful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional.

*Pace*, 67 F.3d at 191; *see also Pinkstaff*, 974 F.2d at 115; *Hardy*, 97 F.3d at 1390; cf. *Bennett*, 298 F.3d at 1069 (describing standard for imposing civil contempt sanctions under § 105(a) for violation of discharge injunction). We review the decision to impose contempt for an abuse of discretion, and underlying factual findings for clear error. *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999)."

*Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191 (9th Cir. 2003). The court in *Knupfer* restated the basic principle that for a bankruptcy judge issuance of contempt sanctions, they are civil penalties, not criminal as a Article III district court judge could award in addition to civil penalties.

> "Civil penalties must either be compensatory or designed to coerce compliance. *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1137-38 (9th Cir. 2001). . .
> . . .
> The sanctions associated with civil contempt -- that is, compensatory damages, attorney fees, and the offending creditor's compliance -- adequately meet that goal, id. at 507, rendering serious punitive sanctions unnecessary. *See also Sosne v. Reinert Duree (In re Just Brakes Corp. Sys.)*, 108 F.3d 881, 885 (8th Cir. 1997) (holding that "the power to punish" through punitive sanctions extends beyond the remedial goals of § 105(a)); *Griffith v. Oles (In re Hipp)*, 895 F.2d 1503, 1515-16 (5th Cir. 1990) (same)."

*Id.* at 1193.

**DISCUSSION**

At the hearing, **XXXXXXXXXXX**.

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 Contempt And/Or Sanctions for Violation of the Automatic Stay by Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("ΔIP") 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 xxxxx.