UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

April 9, 2020 at 10:30 a.m.

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1. **20-20018-A-7** **PETER MONEY** **TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS**
Nichola Wajda **3-12-20 [12]**

NO APPEARANCE FOR HEARING IS REQUIRED IF PARTY CONCURS WITH CONTINUANCE

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, Debtor's Attorney, creditors, and Chapter 7 Trustee on March 14, 2020. By the court's calculation, 26 days' notice was provided. 28 days' notice is required.

The Court having continued the hearing because of disruption of the First Meeting of Creditors due to the COVID-19 courthouse access restrictions, sufficient notice for the continued hearing is provided.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual

issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Dismiss and Extend the Deadline to File Objection to Discharge is continued to 10:30 a.m. on May 21, 2020.

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Peter John Money ("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 3:30 p.m. on April 17, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

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).

The court has issued General Order 20-02 extending the deadlines for commencing objections to discharge. Though issued, the court continues this hearing, including the request to extend the deadline to insure that the Trustee concurs with respect to the extension applying to the Debtor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Susan K. Smith ("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 hearing on the Motion to Dismiss and Extend the Deadline to File Objection to Discharge is continued to 10:30 a.m. on May 21, 2020.
>
> Continuing the hearing on both is necessary to afford both the Trustee and the Debtor the ability to address the Meeting of Creditors and responding to this Motion.

2. 19-27512-A-7 **DOUGLAS BLUNKALL** **MOTION FOR RELIEF FROM**
ALG-1 **Bruce Dwiggins** **AUTOMATIC STAY**
2-28-20 [13]

ARVEST CENTRAL MORTGAGE COMPANY VS.

APPEARANCE OF ARNOLD L. GRAFF ESQ.
ATTORNEY FOR MOVANT
REQUIRED FOR APRIL 9, 2020 HEARING

TELEPHONIC APPEARANCE ONLY

Tentative Ruling: The Motion for Relief From the Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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, and Office of the United States Trustee on February 28, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

According to Movant's Proof of Service, Debtor's Attorney, Bruce Charles Dwiggins, was not served. However, the stay has already terminated as to the Debtor, his discharge having been entered.

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 denied.

Arvest Central Mortgage Company ("Movant") seeks relief from the automatic stay with respect to Douglas Leroy Blunkall's ("Debtor") real property commonly known as 24567 Clement Avenue, Los Molinos, California ("Property"). Movant has provided the Declaration of Latoya Johnson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The grounds stated with particularity in the Motion (as required by Federal Rule of Bankruptcy Procedure 9013) are:

> Arvest Central Mortgage Company, its successors and Assigns ("Movant") hereby moves this Court pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) for an order terminating the automatic stay of 11 U.S.C. § 362(a) as it applies to Movant and the real property located at 24567 Clement Ave, Los Molinos, CA 96055.
> ("Property") so that Movant may commence and/or continue all acts necessary under applicable non-bankruptcy law to enforce its rights and remedies against the Property. This Motion is based on this Motion for Relief from Stay, the Notice of Motion for Relief from the Automatic Stay, the Memorandum of Points and Authorities in Support of the Motion for Relief from the Automatic Stay and the Declaration in Support of the Motion for Relief from the Automatic Stay filed concurrently herewith, the complete files and records in this action, the oral argument of counsel, if any, and such other and further evidence as the Court might deem proper.
>
> This Motion is made on the grounds that Movant has not received timely or consistent payments, that Movant is not adequately protected by a cushion of equity and/or payments, that the Property has no equity.

In considering these grounds stated with particularity, Movant's counsel's law firm has regularly appeared in this court for a number of years. Counsel's firm well knows that the court applies and requires the attorneys to comply with the Federal Rule of Bankruptcy Procedure and Federal Rule of Civil Procedure enacted by the United States Supreme Court. The court does not allow some attorneys to ignore the Rules and get favored treatment. Though knowing this, the court has not only the present Motion, but recalls the firm attempting to avoid the Rules in other recent unrelated cases.

For the above, the "grounds" stated with "particularity" consist of Movant's counsel's:

- Statement that Movant has not received some unstated payments;

- Statement that the unstated payments were not received for some unstated period of time;

- That based on some unstated value and unstated amount of debt, the "Property" has no equity.

Movant then directs the court to read the Motion, the Points and Authorities, the Declaration, the "complete" file in this case (which includes every document, pleading, and docket entry, all "records"), and whatever else the court deems proper; the court to assemble, organize, and then present it for the Movant. Apparently, Movant does not know what grounds exist, and it seeks to have the federal court subsidize its legal expense.

Movant argues Debtor has not made two (2) post-petition payments, with a total of $2,488.14 in post-petition payments past due. Declaration, Dckt. 15. Movant also provides evidence that there are 16 pre-petition payments in default, with a pre-petition arrearage of $19,659.82. *Id*.

CHAPTER 7 TRUSTEE'S NON-OPPOSITION

Nikki B. Farris ("the Chapter 7 Trustee") filed a statement of no opposition. Trustee's March 6, 2020 Docket Entry Statement.

DISCUSSION

From the grounds stated with particularity in the Motion, Movant documents that no grounds exist to grant the relief requested. If such grounds existed, Movant's counsel's experienced law firm would have stated such grounds in the Motion.

Pleading Requirement Under the Federal Rules of Bankruptcy Procedure (Which are taken From the Federal Rules of Civil Procedure)

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states summary legal conclusions and findings, and then instructs the court and parties in interest to mine other pleadings and assemble for Movant the required grounds. That is not sufficient or proper under the Federal Rules of Bankruptcy Procedure or Federal Rules of Civil Procedure (Fed. R. Civ. 7(b)).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The Twombly pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P.

7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plan statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also In re White, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds

therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Attorneys regularly and easily comply with the rules and provide the court with a motion that states with particularity the grounds and with particularity the relief requested. This is required by Fed. R. Bankr. P. 9013 and Fed. R. Civ. P. 7(b). These attorneys have knowledge and legal skill equal to or less than then attorneys at Movant's counsel's law firm.

This court has noted that attorneys who get tripped up by the application of the rules (rather than the judge giving up and doing the attorney's work to sift from the arguments, conjecture, speculation, citations, and quotations in the points and authorities, the declarations, and exhibits to state the grounds for the attorney) are often wedded to a practice built around treating motions as a mere perfunctory procedural document.

Not pleading with particularity the grounds in the motion can also be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations." [FN. 1]

FN. 1. In looking at all of the filings in this Bankruptcy Case, the court notes a Points and Authorities filed by Movant in support of this Motion. Dckt. 17. For the first two pages of this four page (counsel's form set up to exhaust the entire first page with the caption and the entire two pages are a prayer for "relief" being requested) Memorandum providing to the court the statutes, cases, and legal analysis, Movant's counsel has a section titled "Statement of Facts." On its face stating the "Fact" is not stating legal points, authorities, and analysis/arguments. A review of this half of the "Points and Authorities" discloses that it actually states "grounds," with "particularity," that are the basis for the "relief" being requested.

The Court Does Not Grant Indulgences From the Federal Rules for "Favored Attorneys" or "Favored Parties"

As this court has previously noted, there are no "favored attorneys" who do not have to follow the Rules because the court thinks they otherwise do a good job. The same is true for parties. Such harkens back to the provincial days when there was the group of "good old boys" (in those days the attorneys being "the guys," and there not being women attorneys showing up in court) in the local clique

that were to get the business. If someone came from the outside world, there were a series of unwritten local rules, known only by the "good old boys" by word of mouth to make the outsider's life miserable.

Those days have long passed, with there being the nationwide Federal Rules of Civil Procedure and Bankruptcy Procedure which judges are told to apply, and published, written down, easy to find Local Bankruptcy Rules that, at least in this District, apply in all Departments (there not being special judge local rules that differ from the Bankruptcy Local Rules in this District).

That has not prevented some lawyers and law firms to seek such indulgences, and have the court create special "rules" that allow those attorneys to have their own procedure, different from what is specified in the Federal Rules of Civil Procedure ad Federal Rules of Bankruptcy Procedure. [FN. 2]

FN. 2. The Local Bankruptcy Rules require that the motion be a separate pleading from the points and authorities, which are separate from each declaration, that are separate from the exhibits (which can be combined into one exhibit documents). L.B.R. 9004-1(d), 9014(d)(3). This was necessitated by the court being deluged with form motions, running hundreds of pages in length in which the motion, grounds, citations, quotations, legal arguments and exhibits were combined into one electronically filed document.

The Local Bankruptcy Rules recognize that there can be a simple motion, in which the grounds can be stated with particularity and several standard statutory or case references can be stated in one simple document, which shall not exceed six pages in length (including the caption page). L.B.R. 9014-2(d)(4).

Movant having established that it cannot state any grounds with particularity, the Motion is denied. [FN. 3.]

FN. 3, It appears that notwithstanding Movant having documented that no grounds exist for the relief requested, the bankruptcy estate should terminate soon as to the bankruptcy estate. Debtor having received his discharge and the Trustee having reported this as a No Distribution Case, it should soon be closed and the Property abandoned from the estate. 11 U.S.C. §§ 349, 362(c).

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 Arvest Central Mortgage Company ("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 for Relief From the Automatic Stay is denied.

3. **15-27697-A-7** **ROMEO/SONIA GAPASIN** **MOTION TO ABANDON**
SSA-6 **Charles Hastings** **3-16-20 [97]**

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2020. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Abandon is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 Irma Edmonds ("the Chapter 7 Trustee") requests that the court authorize her to abandon property commonly known as 2988 Appling Cir., Stockton, California ("Property"). The Property is encumbered by the liens of CIT Bank, N.A., securing claims of a first deed in the amount of $173,602.03 and a second deed in the amount of $73,351.28. The Declaration of Irma Edmonds has been filed in support of the Motion and provides testimony that the value of the Property is $180,000.00.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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 Abandon Property filed by Irma Edmonds ("the Chapter 7 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 Compel Abandonment is granted, and the Property identified as 2988 Appling Cir., Stockton, California is abandoned to Romeo Corbillon Gapasin and Sonia Carolino Gapasin by this order, with no further act of the Chapter 7 Trustee required.

4. **20-21449-A-7** **TINA HERNANDEZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
VVF-1 **Pro Se** **3-25-20 [12]**

HONDA LEASE TRUST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 25, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 for Relief from the Automatic Stay is granted.

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Civic, VIN ending in 3825 ("Vehicle"), which debt arises from an automobile lease agreement. The moving party has provided the Declaration of Brandon Carpenter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Tina Maria Hernandez ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $224.01 in post-petition payments past due. Declaration, Dckt. 14. Movant also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of $448.02. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,327.85 (Declaration, Dckt. 14), while the value of the Vehicle is determined to be $10,000.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the NADA Valuation Report.

According to Movant's properly authenticated Certificate of Title (Exhibit 1) and Vehicle Lease Agreement (Exhibit 2), the Lease is under both Debtor's name and Lilyana A. Armaz. Dckt. 15. Debtor's Schedule A/B lists the Vehicle with following "other information: Daughter is primary on the loan and makes all payments." Dckt. 1, at 13.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Here, the Debtor's and estate's interest are those as lessee. To the extent that Debtor or the estate have an option to purchase the vehicle, the obligation owing on it for the lease, with taking into account the purchase obligation, exceeds the value of the vehicle.

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.

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 Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Honda Civic ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

5. **20-21367-A-7** **AKS BURGERIM, INC.** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
DL-1 **Michael Johnson** **3-20-20 [8]**

MARKETPLACE AT TOWN CENTER, L.P. VS.

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

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

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

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 March 20, 2020. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 for Relief from the Automatic Stay is granted.

Marketplace at Town Center, L.P. ("Movant") seeks relief from the automatic stay to allow *Marketplace at Town Center, L.P. v. S&H Rivercity, LLC, et al.* (the "State Court Litigation") to be concluded. The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013), as paraphrased by the court, include (identified by the paragraph number in the Motion where the ground is stated):

> 3. Movant is the owner of a shopping center in El Dorado Hills, California commonly known as MarketPlace At Town Center ("the Shopping Center").
>
> 4. Debtor's predecessor in interest, S&H Rivercity, LLC leased a portion of the Shopping Center commonly described as 4540 Post Street, Suite 290, El Dorado Hills, CA 95762 ("the Premises").
>
> 5. Debtor took over the Premises, and assumed (September 9, 2019 assumption agreement) the obligations of tenant under the Lease.

6. Prior to the commencement of Debtor's bankruptcy case, the Lease was terminated and Debtor's rights to occupy the Premises ceased.

7. On or about February 12, 2020, Movant issued to Debtor a Three-Day Notice to Pay or Quit by reason of Debtor's default under the Lease, which included Movant's election to declare the Lease forfeited if the defaults were not timely cured.

8. Debtor failed to cure the defaults under the Lease.

9. On or about February 28, 2020, Movant filed in the El Dorado County Superior Court an unlawful detainer lawsuit against Debtor to terminate the Lease and recover possession of the Premises.

10. The Lease was terminated prior to the commencement of this bankruptcy case.

11. The terminated Lease may not be assumed pursuant to Bankruptcy Code Section 365(a).

12. The estate has no equity in the Lease or the Premises, and because this is a Chapter 7 liquidation case, neither can be necessary for an effective reorganization.

13. 11 U.S.C. § 362(d)(1) cause exists to grant to Movant relief from the automatic stay of Section 362(a) of the Code so that Movant may continue to: (1) prosecute the pending unlawful detainer action, (2) obtain judgment for possession, recover possession of the Premises, and enforce the writ of possession against Debtor and the estate.

14. 11 U.S.C. § 362(d)(2) grounds exist for relief from the stay because neither Debtor nor the estate has any equity in the Lease or the Premises, for which the lease terminated pre-petition.

Motion, Dckt. 8.

Evidence Presented in Support of the Motion

Movant has provided the court with a one-hundred and seven page exhibit, which is identified as a "Complaint - Unlawful Detainer." Dckt. 10. The one exhibit is so long because it has attached to it a Shopping Center Lease Agreement, Notice to Pay or Surrender, and certificate of service for such document. No declaration is provided to authenticate this document.

No declaration is provided in support of the Motion, neither by the attorney in the unlawful detainer action (who could authenticate the Complaint and Notice to Pay or Quit) or a representative of Movant (who could testify as to the breach and termination).

Movant argues that as the lease was terminated prior to the commencement of this

bankruptcy case and may not be assumed pursuant to § 365(a), the estate has no equity in the lease, and the premises are not necessary for an effective organization, good cause exists to grant the relief so that Movant may continue to prosecute the pending unlawful detainer action in the El Dorado County Superior Court through the entry of judgment, recover possession of the premises and enforce its anticipated writ of possession against Debtor and the estate. Motion, Dckt. 8.

TRUSTEE'S STATEMENT OF NON-OPPOSITION

Trustee filed a Non-Opposition on March 23, 2020. Trustee's March 23, 2020 Docket Entry Statement.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on April 5, 2020. Dckt. 18. Debtor asserts that Debtor does not oppose Movant's motion so that Movant may continue its pending unlawful detainer action in El Dorado County to recover possession of the premises at 4540 Post Street, Suite 290, El Dorado Hills, California.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Though Motion states with great particularity the grounds for relief, such is not supported by a properly authenticated evidentiary foundation. However, both the Debtor and the Trustee have "joined in" requesting that the relief be granted. The court recognizes that a bankruptcy trustee may want to have such retail rental space quickly back in the hands of the lessor.

The court finds that the nature of the State Court Litigation warrants relief from the stay for cause. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow

Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, J. Michael Hooper ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Marketplace at Town Center, L.P. ("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 automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to AKS Burgerim, Inc. ("Debtor") to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Marketplace at Town Center, L.P. v. S&H Rivercity, LLC, et al.*, obtain final judgment therein, and obtain possession of the portion of the MarketPlace At Town Center commonly described as 4540 Post Street, Suite 290, El Dorado Hills, CA 95762
>
> **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, J. Michael Hooper ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.
>
> No other or additional relief is granted.

6. **20-21415-A-7** **DARNELL CARD**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-24-20 [14]

Final Ruling: No appearance at the April 9, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on March 26, 2020. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to tender fees or an application to pay fees in installments with bankruptcy petition.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on March 30, 2020 (Dckt. 18), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 Order to Show Cause 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 Order to Show Cause is discharged as moot, and no sanctions are ordered.

7. **20-20284-A-7** **KEVIN BALDWIN**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-19-20 [32]

Final Ruling: No appearance at the April 9, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on March 21, 2020. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on March 19, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

8. **20-20175-E-11** **HERBERT MILLER** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
8 thru 9 **Judson Henry** **3-18-20 [58]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on March 20, 2020. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $430.00 due on March 18, 2020.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $430.00.

On April 1, 2020, the Debtor in Possession filed a Response. Dckt. 61. The Debtor in Possession requests that the installment payment schedule be extended in light of the Debtor's source of income, being employed with Windsor Diamonds, being grossly impacted by the COVID-19 restrictions. Debtor provides his declaration in support of this request. Dckt. 62.

Though not mentioned in the Response or Declaration, when the court saw the reference to "Windsor Diamonds," a memory of repeated prior filed bankruptcy cases was triggered.

Chapter 11 Bankruptcy Case No. 19-23392 was filed by Debtor on May 29, 2019 and dismissed on July 15, 2019. That case was dismissed due to Debtor's failure to pay the filings fees in that case. 19-23392; Civil Minutes and Order, Dckts. 33, 35, respectively. Debtor was represented by a different attorney

Chapter 13 bankruptcy Case No. 18-26373 was filed on October 9, 2018, and dismissed on November 7, 2018. Debtor was represented in the Chapter 13 case by the same counsel as in the current Chapter 11 case. That case was dismissed due to the failure of Debtor to file the required documents, as well as the information provided by Debtor showing that he was not eligible for relief under Chapter 13.

Review of Financial Information
Provided Under Penalty of Perjury

On Schedule I filed by Debtor, he states under penalty of perjury that his occupation is a "real property owner and manager, being self-employed." Dckt. 22 at 32-33. His monthly net income from

this self-employment is $1,500.00. Debtor further states under penalty of perjury that his only other income is $1,400 a month in Social Security benefits. *Id.* Debtor states that his total gross monthly income is $2,900.00.

Schedule I includes the following information concerning anticipated changes in income:

> By March 15, 2020, Debtor will have additional monthly income of between $6,000 and $10,000 per month, as an independent jewelry contractor, working for Windsor Diamonds, of Folsom, CA.

Id. at 33.

On Schedule J, Debtor states under penalty of perjury that his expenses are only ($1,510) a month. *Id.* at 34-35. For this, Debtor states under penalty of perjury that he has:

> (1) no rent or mortgage expense;
>
> (2) no homeowner's or renter's insurance;
>
> (3) no home upkeep expenses;
>
> (4) only $300 for food and housekeeping supplies (which, after allowing $50 a month for housekeeping supplies, is $2.77 for food per meal in a 30 day month);
>
> (5) $0.00 for clothing and laundry;
>
> (6) $250 for transportation (gas, registration, repairs, maintenance of a 2017 Honda Accord and a 2018 Nissan Pathfinder);
>
> (7) $0.00 vehicle insurance for the 2017 Honda Accord and the 2018 Nissan Pathfinder; and
>
> (8) $0.00 for self-employment and income taxes; $0.00 for car payments.

These amounts do not appear to be facially reasonable or credible statements under penalty of perjury.

On the Statement of Financial Affairs, Debtor states under penalty of perjury that his gross income has been:

> 2020 (1 month)
> .....$1,500 from business
> .....$1,400 Social Security
>
> 2019
> .....$0.00 from business
> .....$14,000 Social Security (stated in 3/2019)
>
> 2018

.....$0.00 from business
..... No Social Security

Statement of Financial Affairs Questions 4, 5; *Id.* at 39.

In looking back at Schedule I filed by Debtor in Case No. 18-26373 on October 24, 2018, the court notes that Debtor states under penalty of perjury that his self-employed "salary" was $10,000 a month. 18-26373; Dckt. 14 at 21-22.

On the Statement of Financial Affairs, filed on October 23, 2018, in Case No. 18-26373, Debtor states under penalty of perjury that his income from employment or operation of business is $100,000 (not specifying the amounts for the current and two prior years, indicating that it is $100,000 for each of those years). 18-26373; Statement of Financial Affairs Question 1, Dckt. 13 at 15. This stands in stark contrast to Debtor stating under penalty of perjury in this case that his 2018 income from business or wages was $0.00.

An amended Statement of Financial Affairs was filed March 19, 2019 in Case No. 18-26373, in which he then stated under penalty of perjury that his income from wages or business were: $4,500 in 2018, $17,500 in 2017, and $17,500 in 2016. *Id.*, Statement of Financial Affairs Question 4; Dckt. 58 at 2.

In looking back at Debtor's prior statements under penalty of perjury, the court notes the following concerning Debtor's jewelry income from his Declaration more than a year ago in Case No. 18-26373:

> 8. As of today's date, I have a real property, commonly described as 18414 NE 391st Street, Amboy, WA 98601 on the market and listed on the MLS. I own a 75% interest in this property and am informed and believe it has approximately $300,000 equity, such that even after costs, I reasonably anticipate to realized approximately $200,000 this spring or summer. **I am furthermore in the start-up phase of a jewelry business, which specifically will purchase raw jadeite and smooth and polish it for resale. At present, we have the purchase of a $1,000,000 batch of raw jadeite (to be funded by an investor).** I have an extensive background and experience as a custom jeweler, and based on this **I reasonably anticipate realizing from $5,000,000 to $100,000,000, over time, upon sale of cut and polished and then appraised stones**. We anticipate marketing cut and polished stones at either Sotheby's or Christie's. Based upon both of the above, I am very confident that in all likelihood I will be able to propose and confirm a feasible chapter 11 plan that lawfully provides for all of my creditors, and then I will be fully able to fully perform upon my plan all the way to its completion.

18-26373; Declaration ¶ 8, Dckt. 49 (emphasis added). As shown by the Statement of Financial Affairs in this case, there was $0.00 in income from such jewelry business.

At the hearing on the Order to Show Cause **xxxxxxxxxx**

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

9. **20-20175-E-11 JHH-1** **HERBERT MILLER** **Judson Henry** **MOTION TO EMPLOY JUDSON H HENRY AS ATTORNEY(S)** **3-2-20 [40]**

Tentative Ruling: The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 Creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2020. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is xxxxx.

Herbert Edward Miller ("Debtor in Possession") seeks to employ Judson H. Henry ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to give Debtor legal advice, represent him, prepare legal papers, and perform other necessary legal services.

Debtor in Possession argues that Counsel's appointment and retention is necessary to represent Debtor in court proceedings as Counsel has considerable experience in Chapter 11 cases. The Terms of Employment subject to court's approval are detailed in the Motion and Counsel's Declaration as follows:

1. Counsel will undertake the representation of Debtor in this Chapter 11 case for a fee that will be calculated at $250.00 per hour. The Firm shall maintain detailed time records of all services rendered. The attorney will make periodic applications for interim compensation that is consistent with the foregoing.

2. Counsel will not share and has not agreed to share any compensation, and Counsel shall not do the same. Counsel has not received and will not receive any lien or other interest property of the Debtor or a third party to secure the payment of his fees and costs, and shall not do the same.

3. Counsel has been paid no amount [$0.00] for pre-petition services and/or as a retainer.

Judson H. Henry, a Sole Practitioner of Law Office of Judson H. Henry, testifies that he will give Debtor legal advice with respect to his powers and duties in continued operation of his businesses and management of his properties; prepare and submit on behalf of Debtor necessary legal papers; represent Debtor at the meeting of creditors and court hearings; and perform all other legal services for Debtor which may be necessary. Judson H. Henry testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

~~Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Judson H. Henry as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Motion. Approval of the hourly rate based compensation is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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 Employ filed by Herbert Edward Miller (" 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 Employ is granted, and Debtor in Possession is authorized to employ Judson H. Henry as Counsel for Debtor in Possession on the terms and conditions as set forth in the Motion and Declaration as follows:

1. Counsel will undertake the representation of Debtor in this Chapter 11 case. The Firm shall maintain detailed time records of all services rendered. The attorney will make periodic applications for interim compensation that is consistent with the foregoing.

2. Counsel will not share and has not agreed to share any compensation, and Counsel shall not do the same. Counsel has not received and will not receive any lien or other interest property of the Debtor or a third party to secure the payment of his fees and costs, and shall not do the same.

3. Counsel has been paid no amount [$0.00] for pre-petition services and/or as a retainer.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

10. **19-24641-A-7** **S P E DRYWALL, INC** **MOTION FOR ADMINISTRATIVE EXPENSES**
HSM-2 **Bruce Dwiggins** **3-17-20 [39]**

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2020. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 for Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Michael P. Dacquisto ("Movant") requests payment of administrative expenses in the amount of $1,600.00 and up to an additional $200.00 as needed for interest and penalties, incurred by the estate for the period of 2019 and 2020, for tax obligations due to the California Franchise Tax Board.

DISCUSSION

Movant argues the administrative tax obligations of the estate of the Debtor to the Franchise Tax Board are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate. The accountant prepared the estate's income tax return and has estimated the estate's California Limited Liability Company Fee due to the Franchise Tax Board for the year 2019 is $800.00 and for year 2020 is $800.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant

providing for the payment of tax obligations for 2019 and 2020 for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $1,600.00 and up to an additional $200.00 as needed for penalties and interest.

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 Allowance of Administrative Expense filed by Michael P. Dacquisto ("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 Chapter 7 Trustee is authorized to pay California Franchise Tax Board $1,600.00, and up to $200.00 in interest and penalties, as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

11. **19-23452-A-7** **CIAO RESTAURANTS, LLC** **MOTION FOR ADMINISTRATIVE EXPENSES**
KJH-2 **Gabriel Liberman** **3-10-20 [127]**

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 for Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Kimberly Husted ("Movant") requests payment of administrative expenses in the amount of $800.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Franchise Tax Board for the estate's 2020 California corporate tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate. The accountant has estimated state income taxes for the tax year ended December 31, 2019 totaling $800.00 are due and payable to the Franchise Tax Board by April 15, 2020.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the 2019 California income taxes for tax year ending December 31, 2019 for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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 Allowance of Administrative Expense filed by Kimberly Husted ("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 Chapter 7 Trustee is authorized to pay the Franchise Tax Board $800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

12. **19-20391-A-7** **B & G DELIVERY SYSTEM, INC.,** **MOTION FOR ADMINISTRATIVE EXPENSES**
KJH-2 **Walter Dahl** **3-10-20 [64]**

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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 for Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Kimberly Husted ("Movant") requests payment of administrative expenses in the amount of $800.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Franchise Tax Board for the estate's 2020 California corporate tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate. The accountant has estimated state income taxes for the tax year ended December 31, 2019 totaling $800.00 are due and payable to the Franchise Tax Board by April 15, 2020.

Movant having demonstrated that the expenses were necessary, the court finds that Movant

providing for the 2019 California income taxes for tax year ending December 31, 2019 for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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 Allowance of Administrative Expense filed by the Chapter 7 Trustee, Kimberly Husted ("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 Chapter 7 Trustee is authorized to pay Franchise Tax Board $800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

13. **19-27931-A-7** **TAMARA SMITH** **MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)**
UST-1 **Pro Se** **2-27-20 [15]**

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 Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Denial of Discharge is granted.

Tracy Hope Davis, the United States Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on February 27, 2020. Dckt. 15.

Objector argues that Tamara D. Smith ("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on November 23, 2015. Northern District of California (Oakland) Case No. 15-43576. Debtor received a discharge on March 8, 2016. Northern District of California (Oakland) Case No. 15-43576.

The instant case was filed under Chapter 7 on December 27, 2019.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 8, 2016, which is less than eight years preceding the date of the filing of the instant case. Northern District of California (Oakland) Case No. 15-43576. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a

discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 19-27931), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by Tracy Hope Davis, the United States 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 Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 19-27931, the case shall be closed without the entry of a discharge.

14. **15-29541-E-12 MHM-1** | **TIMOTHY WILSON** **Mark Wolff** | **CONTINUED MOTION TO DISMISS CASE** **1-17-20 [148]**

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on January 17, 2020. By the court's calculation, 48 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 filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Court has continued to April 23, 2020, at 10:30 a.m. the hearing on this Motion for a Status Report
(which may be provided in writing) and consideration of the relief requested in light of the efforts of the Debtor/Plan Administrator in addressing the defaults,

and

to 10:00 a.m. on June 25, 2020 for final hearing. Civil Minutes, Dckt. 155

Debtor's Motion to Confirm Plan

On April 7, 2020, Debtor filed a Motion to Confirm a Modified Chapter 12 Plan. Dckt. 156. The Motion has been set for hearing on May 21, 2020 at 10:30 a.m.

The Chapter 12 Trustee, Michael H. Meyer ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Timothy Wilson ("Debtor"), has caused unreasonable delay that is prejudicial to creditors. [11 U.S.C. § 1208(c)(1)]

2. Debtor is in material default with respect to the terms of a confirmed plan. [11 U.S.C. § 1208(c)(6)]

TRUSTEE'S DECLARATION

In support of the Motion, Trustee filed a Declaration, Dckt. 150, stating:

1. This Motion is sought on grounds of unreasonable delay pursuant to 11 U.S.C. § 1208(c)(1) and 11 U.S.C. § 1208(c)(6), material default with respect to the terms of a confirmed plan.

2. As of January 17, 2020 Debtor is delinquent in the sum of $40,600.00, not including the $4,300.00 payment which will be due February 25, 2020.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 11, 2020. Dckt. 152.

A. Debtor asserts he has completed four (4) years of his five (5) year Chapter 12 Plan.

B. Debtor's Plan provides for an annual lump sum payment in the amount of $36,000.00, this payment stems from his timber harvest in December each year. Debtor has not paid the lump sum payment due in December 2019.

C. Debtor currently has receivables in excess of $40,000.00 resulting from the timber harvest but he has been unable to collect this receivable because the buyer has not been able to complete their job due to weather. This job may not be completed until the rainy season has subsided, Debtor speculates this will be on or around April or May.

D. Debtor has continued to make regular monthly payments due under his Plan.

E. Debtor is currently working to modify his Plan to push the lump sum payment to a later date. Debtor is also considering selling real property in the spring or summer and has communicated with a real estate agent to make the lump sum payment.

F. Further, Debtor provides another possible solution with him making the lump sum payment in December 2020 after the timber harvest.

G. Debtor requests te court give him additional time to make the lump sum payment. Debtor is working on modifying the Chapter 12 Plan. But two uncertainties prevent him from doing so: (1) timing as to the sale of the property and (2) whether he will be able to collect the receivables owed to him.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v.*

Continental Casualty Co., 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

A. "Unreasonable delay by the debtor that is prejudicial to creditors."

B. "Material default by the debtor with respect to the terms of a confirmed plan...*as fully set forth in the declaration of Michael H. Meyer*." (Emphasis added).

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that his Declaration is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The rules do not provide for a declaration to serve as the "motion" to state the grounds with particularity upon which the relief is requested. The declaration provides the evidence in support of the grounds as stated with particularity in the motion.

The Debtor/Plan Administrator agreed to proceed with the current objection in light of the monetary default, which Debtor/Plan Administrator states he is taking action to address.

Continuance for Further Action and Review

At the hearing, the Debtor/Plan Administrator recognized the defaults and stated several potential remedies, including amendment of the plan. The Debtor/Plan Administrator requested a continuance to allow for time to undertake such remedies.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 12 case filed by The Chapter 12 Trustee, Michael Meyer ("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 hearing on the Motion is:
>
> (1) **continued to 10:30 a.m. on April 23, 2020, for a Status Conference** concerning the Debtor/Plan Administrator's actions to address the defaults, and consideration of the Motion if Debtor/Plan Administrator has failed to take action; for which the Parties may file a joint status report and request that the court remove the Status Conference from the calendar based on the written report; and
>
> (2) continued to 10:00 a.m. on June 25, 2020 for final hearing.

15. **20-20972-E-11 RLC-2** | **ROBERT/SHERRY MCLEAN** **Stephen Reynolds** | **MOTION TO SELL FREE AND CLEAR OF LIENS** **3-11-20 [16]**

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, Chapter 11 Trustee, creditors, and Office of the United States Trustee on March 11, 2020. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing **xxxxxxxxxx**

The Motion to Sell Property has not 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 Sell Property is xxxxxxxxxx .

The Bankruptcy Code permits Robert Kelly McLean and Sherry McLean, Debtors in Possession, ("Debtors in Possession" or "Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 3625-4912 Central Way, Fairfield, California APN 044-080-040, 044-080-410, 044-080-420 ("Property").

The proposed purchaser of the Property is Ricky Vij, and the summarized terms of the sale are (the complete terms of the Purchase and Sale Agreement can be found as Exhibit 1, Dckt. 19):

A. Buyer shall pay $600,000.00 for the Property.

B. The closing date is set for March 17, 2020.

C. Buyer to give a deposit of $50,000.00.

D. The Seller assigns and agrees to pay Broker 6% of the gross sale price as a commission.

Overbidding Procedures

Debtors in Possession requests the following overbidding procedures:

1. In the event of an overbid, overbidder is required to provide $50,000 in certified funds (an amount equal to the deposit provided by Buyer), and

2. That the minimum overbid be in the amount of$10,000.00 over the proposed purchase price.

SALE FREE AND CLEAR OF LIENS

The Motion seeks to sell the Property free and clear of the lien of Data Sales Company of California ("Creditor").

Movant computes the distribution of the sales proceeds as follows:

Contract Gross Sales Price	$600,000
Costs of Sale	non stated
Solano County Tax Lien	($44,324)
Umpqua Bank, 1st Deed of Trust	($440,000)
Data Sales Company	($140,000)
	==========
Projected Net Sales Proceeds	($24,324)

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

There are two liens according to Debtors: one from Umpqua Bank and another one from Data Sales Company of California. Creditor Data Sales Company of California filed an opposition to the sale of the Property free and clear of liens on March 17, 2020. Dckt. 25. As the holder of a second priority deed of trust against the subject Property, Creditor does not object to the approval of sale of the Property. Creditor objects to the sale free and clear of liens and seeks payment directly out of escrow upon closing of the sale.

After Creditor objected this particular term of the sale, Debtors in Possession filed a Response on April 2, 2020. Dckt. 31. Movant represents that they intend to pay Creditor's claim out of escrow. Adding that parties should be aware that property taxes are larger than anticipated and that Creditor will need to consent to a reduction of its claim to allow for a consensual sale. Discussions with Creditor regarding this information have been initiated by Movant.

Thus, having to wait for the consent of Creditor, the sale is not free and clear of liens. That Debtors anticipate consent is not evidence that there is actual consent. Moreover, in the Motion, interestingly, Debtors point out that "failure for any lien-holder to object to the proposed sale after **receiving proper notice** should be deemed to constitute their consent" to the sale as free and clear of their lien. (Emphasis added). As shown above, proper notice did not take place. Thus, consent for Umpqua Bank will not be assumed.

DISCUSSION

The court has not authorized the employment of a real estate professional to assist the Movant in the marketing of this property. While the Movant, as the fiduciary to the bankruptcy estate, exercises sound business making judgment, there is nothing in the record showing that an attempt was made to market this property in a commercially reasonable manner. The Motion only alleges:

> Here the debtor exposed the Real Property to market and before filing the current case and obtained a cash offer from an unrelated third-party.

Motion, p. 3:17-18; Dckt. 16.

In his Declaration, Debtor Robert McLean states that the commercial property was listed with a Jon Schultz of CRBRE in July 2019. Mr. Schultz marketed the property.

Then, on January 16, 2020, Debtor, pre-petition, accepted an offer to sell the Property for $600,00.00, to be received upon close.

Neither the Motion nor the Declaration say who else is getting paid in connection with this proposed sale. The Movant offers no analysis computing the net sales proceeds.

In the Purchase and Sale Agreement, in the blurry font, there is a provision to pay a six percent (6%) commission to the "Broker." Exhibit A, ¶ 15. John Schultz is identified as the real estate

agent who is representing both the selling Debtor in Possession and the buyer. This 6% takes an additional $36,000 out of the sale proceeds. If the court uses an estimate of two percent (2%) as Movant's costs of sale, this takes another $12,000 out of the sales proceedings.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Debtors to pay the first and second deed over the Property in full.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell 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 to allow for an immediate closing of the sale.

The only ground given for this court setting aside the fourteen day stay of enforcement imposed by the United States Supreme Court in Federal Rule of Bankruptcy Procedure 6004(h) is:

> The Purchaser originally planned on a closing date of March 17, 2020. Accordingly, Debtors (but possibly not the Debtors in Possession exercising the trustee's power of sale) request a waiver of Federal Rule of Bankruptcy Procedure 6604(h) to allow for an immediate closing.

Motion, ¶ 4; Dckt. 16.

Movant has not 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 6004(h), and this part of the requested relief is not granted.

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 Sell Property filed by Robert Kelly McLean and Sherry McLean, Debtors in Possession, ("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 Robert Kelly McLean and Sherry McLean, Debtors in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Ricky Vij or nominee ("Buyer"), the Property commonly known as 3625-4912 Central Way, Fairfield, California APN 044-080-040, 044-080-410, 044-080-420, ("Property"), on the following terms:~~

A. The Property shall be sold to Buyer for $600,000.00, on the terms and conditions set forth in the Purchase Agreement, Dckt. 19, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. Within fourteen days of the close of escrow, the Chapter 11 Debtor shall provide the Subchapter V Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Debtor in Possession directly from escrow.

16. **19-24886-A-7** **STACIE FENDERSON** **MOTION TO SELL**
BLF-4 **Brian Coggins** **3-19-20 [42]**

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Sell Property is granted.

The Bankruptcy Code permits Kimberly Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property commonly known as three horses named Fianna, Fury, and Galaxy ("Property").

The proposed purchaser of the Property is James Ross ("Buyer"), and the terms of the sale are:

A. Buyer shall pay the purchase amount of $9,000 by delivering a cashier's check made payable to "Kimberly J. Husted, Chapter 7 Trustee, *In re Fenderson*"

B. Buyer is aware of the health conditions of the three horses, sale is under "as is" condition.

C. Agreement is subject to court's approval.

D. No broker has been employed for this sale who may be entitled to any

commission, fee, or other compensation.

E. Buyer to pay for any costs and feed incurred in connection with the transactions described in this Agreement.

F. Parties exchange general releases of liability.

G. Trustee makes no representations as to taxes and other assessments.

H. Buyer will not close transaction until he has the opportunity to inspect, and has in fact, inspected the Property.

I. Each party shall bear its own attorney's fees and costs in connection with the Agreement.

J. In case of a successful overbid by a third party, Buyer is entitled to a breakup fee from the bankruptcy estate as reimbursement of the expenses incurred by Buyer in an amount of the greater of $1,500.00 or 10% of the purchase price in excess of the Purchase Amount.

Overbidding Procedures

Trustee does not oppose overbidding at the hearing on terms that are agreeable to the court.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because liquidating the estate's interest in the Property will provide $9,000.00 to the estate, with net proceeds to the estate of $7,500.00 after paying Debtor's exemption of $1,500.00 from the sale proceeds.

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 Sell Property filed by Kimberly Husted, the Chapter 7 Trustee, ("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 Kimberly Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to James Ross or nominee ("Buyer"), the Property commonly known as three horses named Fianna, Fury, and Galaxy ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $9,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 45, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

17. 19-23226-A-7 DEO-1 | FEELING GROOVY AT EAGLE CREEK RANCH LLC Stephen Brown | MOTION FOR RELIEF FROM AUTOMATIC STAY 3-11-20 [27]

REPROP INVESTMENTS, INC. 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.

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 March 11, 2020. By the court's calculation, 29 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 xxxxx.

ReProp Investments, Inc. ("Movant") seeks relief from the automatic stay with respect to Feeling Groovy at Eagle Creek Ranch LLC's ("Debtor") real property commonly known as 1600 Eagle Creek Loop, Trinity Center, California ("Property"). Movant has provided the Declaration of Allen Hoy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant also presents the Declaration of David M. Tidwell to present evidence related to the

appraisal conducted in relation to the Property. Dckt. 30. The Appraiser Declaration is accompanied by: Exhibit A detailing Appraiser's qualifications, education, and experience and Exhibit B in support of the Declaration is the 38-page Appraisal report for the Property. (According to this Appraisal, the Property is valued at $1,245,000.00.)

Movant argues Debtor has not made nine (9) post-petition payments, with a total of $235,820.47 in post-petition payments past due. Declaration, Dckt. 31. Movant also provides evidence that there are seven (7) pre-petition payments in default, with a pre-petition arrearage of $394,926.35. *Id*.

DEBTOR'S OPPOSITION

The Chapter 7 Debtor filed an Opposition asserting that there is enough equity to adequately protect the Movant. Debtor estimates on Amended Schedule A/B that the Property has a value of $1,600,000. Dckt. 46. Debtor continues, stating that it has four separate appraisals, with a September 2019 stating a value of $2,500,000. *Id.*

Debtor then asserts that granting relief will frustrate the efforts of the Chapter 7 Trustee and Debtor to "settle claims."

Debtor also states that it is filing objections to claims of Movant. On March 26, 2020, Debtor filed an Objection to Claim No. 4 filed by Movant. Objection, Dckt. 37. The ten page objection asserts various grounds for why Movant can have no claim.

Debtor has also filed an objection to Proof of Claim No. 5 filed by the Trustee of Movant's Profit Sharing Plan. Dckt. 41. This Objection asserts various grounds, including usury, fraud, and California Business and Professional § 17200.

What Debtor has not explained is its standing to file such claims objections. If there is not a surplus estate, then Debtor does not have standing to object to Creditor's claim. As addressed in Collier on Bankruptcy, Sixteenth Edition, 502.02[c],

> "[c] Objection by Debtor The debtor may be a party in interest with standing to object to a proof of claim. [FN.17 - discussing that objecting debtor must have a pecuniary interest in outcome, such as when there is a surplus estate] Particularly in chapter 12 and chapter 13 cases, the success of the debtor's plan may depend upon the debtor's being able to argue successfully that the debt asserted as a priority claim or a secured claim, which must often be paid in full, is excessive or invalid. Typically, the trustee in such cases does not view it as his or her role to object to particular claims except, perhaps, if they have been tardily filed.
>
> **In a chapter 7 case, or a chapter 11 case in which the debtor is not in possession, the debtor usually has no pecuniary interest that would justify objecting to a claim unless there could be a surplus after all claims are paid**. An individual debtor, however, in such a case may sometimes have an interest in objecting to particular claims. For example, the debtor may wish to object to an excessive dischargeable claim whose holder would receive distributions that otherwise would be made to the holder of a nondischargeable claim. To the extent

> that a nondischargeable claim is satisfied in some measure by a distribution, it is in the debtor's interest to maximize the distribution, thereby relieving the debtor from some or all of the claim of that creditor which would survive the bankruptcy case. The debtor also has an interest if there is any chance that a disallowance will yield a solvent estate that would provide a return to the debtor. The same reasoning applies to equity holders of the debtor. Thus, a debtor may be afforded standing, in certain instances, to object to claims."

The standing to object to a claim goes to the fundamental limits on the exercise of federal judicial power set forth in the U.S. Constitution Article III, Section 2. The federal courts are not a forum for academic arguments not affecting the rights of such person or one in which that person is attempting to litigate the rights of others who are not before the court (with limited exceptions to this rule, such as class action and other special representative proceedings authorized by Congress). Standing must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771. (9th Cir. 2006)

One of the first things that a law student learns about American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent.' (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.' (Citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

The issue of standing is so fundamental that it may be raised *sua sponte* by the court. Fed. R. Civ. P. 12(h)(3)[1]. A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997). The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993). The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative, *Id*. In determining whether the plaintiff has the requisite standing and the court has jurisdiction, the court may consider extrinsic evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 9th Cir. 1987).

The requirement of standing has been addressed in the Ninth Circuit as discussed by the court

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[1] As made applicable to this Adversary Proceeding by Rule 7012, Federal Rules of Bankruptcy Procedure.

in *In re Lona*, 393 BR 1, 3-4 (Bkcy. N.D. Cal. 2008):

> "Bankruptcy Code § 502 provides that a 'claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.' The term 'party in interest' is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an 'aggrieved person' who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983) (citations omitted); *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 388 (2nd Cir. 1997).
>
> Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and therefore, is not an 'aggrieved person.' There are two recognized exceptions to this general rule: a chapter 7 debtor will have standing where (1) disallowance of a claim will produce a surplus for the debtor; or (2) where a claim will not be discharged. *In re Willard*, 240 B.R. 664, 668 (Bankr. D. Conn. 1999) (citing In re Toms, 229 B.R. 646, 650-51 (Bankr. E.D. Pa. 1999)); see also, *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953) (debtor was a 'person aggrieved' with standing to challenge disallowance of tax claim where, if tax claim was not paid in bankruptcy, debtor would remain liable for such claim post-discharge)."

See also *Cheng v. K&S Diversified Invs., Inc. (In re Cheng)*, 208 B.R. 448, 454 (B.A.P. 9th Cir. 2004), aff'd mem., 160 Fed. Appx. 644 (9th Cir. 2005), stating:

> "Ordinarily, the trustee or some party in interest, other than the debtor, prosecutes claim objections. A debtor, in its individual capacity, lacks standing to object unless it demonstrates that it would be "injured in fact" by the allowance of the claim. *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551, 134 L. Ed. 2d 758, 116 S. Ct. 1529 (1996); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1108-09 (9th Cir. 2003), *Dellamarggio v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 2004 WL 361094 at *5 (Bankr. E.D. Cal. 2004); 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy P 502.02[2][c] (15th ed. rev. 2003) ('Collier')."

NONOPPOSITION BY CHAPTER 7 TRUSTEE

On April 7, 2020, a week after the Objections to Claims were filed by Debtor, the Chapter 7 Trustee filed her Statement of Non-Opposition to the Motion for Relief From the Stay. April 7, 2020 Docket Entry Report.

MOVANT'S REPLY

Movant filed an Opposition on April 2, 2020. Dckt. 54. Movant addresses valuation issues and the substance of the Objections to Claims. For purposes of this Motion for Relief, the court will not address the merits of the Objections to Claims.

Movant also filed an Objection to Debtor's Declaration. Dckt. 51.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $1,268,809.54 (Declaration, Dckt. 31), while the value of the Property is determined to be $1,600.000.00, as stated in Schedules B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

11 U.S.C. § 362(d)(2): Grant Relief for Lack of Equity and Not Necessary For Effective Reorganization

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No.

CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). Hamilton, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

Nor does the court adjudicate the fraud/usury/B&P 17200 and other claims that Debtor seeks to assert against Movant. The Trustee has chosen not to take up that cudgel. Debtor can make a deal with the Trustee to acquire those rights and take the battle against Movant to State Court.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay

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

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

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

No other or additional relief is granted by the court.

The court shall issue 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 ReProp Investment, Inc. ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1600 Eagle Creek Loop, Trinity County, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

18. **19-26964-A-7** **LYNN HARRINGTON** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
DB-1 **Peter Macaluso** **3-12-20 [39]**

EL DORADO COUNTY 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.

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 March 12, 2020. By the court's calculation, 28 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, and the court further determines that the automatic stay does not apply to the proceedings to conclude the entry of the final judgment and post-judgment proceedings such as the award of attorney's fees and costs.

El Dorado County ("Movant") seeks relief from the automatic stay to allow *Lynn D. Harrington v. El Dorado County* (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Andrew T. Caulfield to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Lynn Dee Harrington ("Debtor").

Movant asserts that the State Court had issued its tentative ruling to sanction the Debtor, but that those proceedings, and the entry of a final sanction order has been interrupted by the filing of this Chpater7 case. The grounds stated with particularity (Fed. R. Bankr. P. 9013) include:

A. Debtor filed an action in State Court against Movant, which included tort claims and claims for inverse condemnation.

B. The State Court conducted a trial on the issue of whether Debtor had presented a

tort claim to the County, which was asserted to be a pre-requisite to commencing a tort claim action against a governmental entity.

C. At the conclusion of a two day jury trial, the jury returned a verdict on June 4, 2019, which was not appealed, that Debtor did not serve a tort claim as required on Movant.

D. Movant then filed a motion for attorney's fees seeking $121,837.59 in attorney's fees and $11,637.85 in costs. While given the reference as being a "sanctions motion," it is stated to be requested pursuant to California Code of Civil Procedure § 1038, which provides for granting defense costs in an action under the Government Claims Act if the person bringing the action did not do so in good faith and with reasonable cause.

E. Movant seeks relief so that the State Court can complete the related proceedings flowing from the trial to finalize the adjudication of the matter that has been tried in State Court.

F. Movant also notes that based on Ninth Circuit law, since this was an action by the Debtor against the County, the awarding of attorney's fees and costs relating to the Debtor's action against Movant would not violate the stay.

DEBTOR'S OPPOSITION

Two Oppositions to the Motion were filed - one by attorney Karen Pine and one by Attorney Peter Macaluso. Dckts. 48, 50. Debtor can be represented by one or the other, but not both.

The court summarizes the arguments as follows. Peter Macaluso, Debtor's bankruptcy counsel, argues:

A. Debtor was granted a discharge on March 2, 2020.

B. Movant filed a Non-Dischargeability Complaint on February 18, 2020.

C. This is an asset case.

D. Movant seeks to "increase the claim" to the detriment of other creditors. Further, to have the State Court conclude those proceedings, which may determine issues for purposes of the nondischargebility action.

E. Debtor then uses terms like, "civil contempt," "debtor did not return to the fray," and there is no "conversion."

F. While Movant may achieve judicial economy by having the State Court conclude the post-judgment proceedings, such would not be advantageous for Debtor.

In the other Opposition, attorney Karen Pine states Debtor's Opposition to the Motion for Relief from the Stay to include:

A. Debtor's only "unexempt" asset, which is property of the bankruptcy estate under the control of the bankruptcy trustee, is an inverse condemnation action against Movant.

B. Therefore, Debtor requests that the court retain jurisdiction over any "counterclaims" that Movant has against Debtor.

CREDITOR'S REPLY

Creditor filed a Reply on April 2, 2020. Dckt. 52. Creditor's reply is an Omnibus response to Debtor's Oppositions, and asserts that it is proper to allow the State Court to conclude any remaining post-judgment matters for the trial that was conducted, which consists of entering the order on the post-judgment motion for attorney's fees and costs.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, the only relief sought is for the State Court to conclude the pending ruling on the post-judgment motion for attorney's fees and costs (however it is phrased).

As Movant points out, this is not in an action by Movant against Debtor, but is the conclusion of the tort claim asserted by Debtor against Movant. It is well established in the Ninth Circuit law that a non-bankruptcy court concluding an action by the Debtor against someone is not an act or action against the Debtor for purposes of the automatic stay. As discussed by the Ninth Circuit in *Parker v. Bain (In re Parker)* 63 F.3d 1131, 1138 (9th Cir. 1995):

> The appeal from the dismissal of Parker's claim for breach of fiduciary duty and declaratory relief against Bank of America, however, is not stayed. Parker originally brought this claim at the same time he filed a counterclaim against the Plan. It is a claim by, not against, the debtor, and its successful prosecution would "inure to the benefit of the bankruptcy estate." *Carley Capital Group v.* [**17]

> *Fireman's Fund Insurance Co.*, 281 U.S. App. D.C. 293, 889 F.2d 1126, 1127 (D.C. Cir. 1989) (per curiam) (quoting *St. Croix*, 682 F.2d at 448). 11Link to the text of the note We therefore hold that Parker's appeal from the dismissal of his claim against Bank of America is not stayed and proceed to discuss the merits of that aspect of this appeal.

See also, In re Way, 229 B.R. 11, 13 (9t h Cir. B.A.P. 1998); *In re Merrick*, 175 B.R. 333 (9th Cir. B.A.P. 1994).

To the extent that the stay could apply, relief is proper. The State Court needs to conclude the post-judgment proceedings relating to the trial actually conducted for the tort claim that Debtor prosecuted against Movant. This necessarily includes the determination what, if any, attorney's fees and costs are properly recoverable. That court sat through the trial, observed the conduct of the parties, and is the best situated to expeditiously and economically make that determination.

Debtor's request to start all over, with a judge who knows nothing about what was done at trial, have the Movant and Debtor go through the cost and expense of reconstructing the trial, and throw out not only the State Court judge's knowledge of the State Court trial but the post-judgment proceedings for which the State Court judge has conducted all proceedings and has issued the tentative ruling, would result in not only a colossal waste of judicial resources, but cause the Debtor to incur substantially greater attorney's fees to those attorneys she would have to pay to retry what has already been done in state court.

The Motion is granted and the automatic stay is modified, to the extent that the stay even applies to the tort action proceedings, to conclude all post-judgment motions, including the award of attorney's fees and costs, and enter a final judgment and order thereon.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Geoffrey Richards ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 El Dorado County ("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:
>
> (1)the automatic stay provisions of 11 U.S.C. § 362(a) do not apply to that portion of the claims and proceedings in *Lynn D.*

Harrington v. El Dorado County that relate to the tort claim asserted by Debtor Lynn D. Harrington against Movant for the tort claim, including entry of the final judgment there in and post-judgment motions for attorney's fees and costs; and

(2) to the extent that the stay provisions would apply to the forgoing relating to the tort claim proceedings prosecuted by Debtor against Movant, the stay is modified to allow for entry of final judgment and all post-judgment motions for costs and attorney's fees as stated in paragraph (1) above.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Geoffrey Richards ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

19. 19-25812-A-7 GINA WILLIS MOTION TO EXTEND TIME
BB-1 Bonnie Baker 3-2-20 [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.

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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 2, 2020. By the court's calculation, 38 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File Reaffirmation Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Extend Deadline to File Reaffirmation Agreement is ~~denied.~~

Gina Willis ("Debtor") filed this Motion on March 2, 2020. Dckt. 19. In her Motion, Debtor requests an extension of the deadline to file Reaffirmation Agreements of twenty-one (21) days for creditors American Honda Finance and JP Morgan Chase Bank.

Debtor argues both agreements were executed by her and her counsel and were mailed to the addresses on the Agreements. Debtor further argues American Honda Finance and JP Morgan Chase Bank failed to file the Agreements but will execute new ones upon the extension of the deadline.

DISCUSSION

11 U.S.C. § 524 provides in part that a Debtor may file a reaffirmation agreement any time before the granting of the discharge. *See* 11 U.S.C. § 524(c)(1). Here, Debtor has already been granted a discharge. Debtor's discharge was granted on January 10, 2020. Debtor's Motion documents that there is no Reaffirmation Agreement made prior to the discharge. In order for Debtor to file said reaffirmation agreements, Debtor would have to file a request to vacate the discharge, and then file the agreements.

Moreover, according to Debtor's Motion the deadline to submit Reaffirmation Agreements was January 6, 2020. Debtor filed the instant motion on March 2, 2020, almost two months after the

deadline had expired. A deadline once expired cannot be extended.

However, **xxxxxxxxxx**

Since one of the reaffirmation agreements mentioned is for real property, the court points Debtor to 11 U.S.C. § 524(c)(6)(B), which states that the court approval provisions for reaffirmation do not apply to a consumer debt secured by real property. Therefore, the court would not issue an order approving such an agreement.

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 Extend Deadline to File Reaffirmation Agreement filed by Gina Willis ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.
>
> **IT IS ORDERED** that the Motion is ~~denied~~.

20. **19-22038-A-7** **GREGORY/MICHELLE STITT** **MOTION TO AMEND ORDER**
BLF-5 **Charles Hasstings** **APPROVING SALE**
3-26-20 [80]

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 27, 2020. By the court's calculation, 13 days' notice was provided. Dckt. 88.

The court granted Movant's Application for Order Shortening the amount of notice for hearing and setting the hearing date of April 9, 2020 on March 27, 2020. Dckt. 87.

The Motion for Authorization to Amend Court Approved Sale of Real Property 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 for Authorization to Amend Court Approved Sale of Real Property is granted.

Chapter 7 Trustee, Michael D. McGranahan requests authorization to amend the agreement pursuant to which the court granted Trustee's motion to sell real property located at 4575 N. Lake Blvd., Carnelian Bay, California. The Motion to Sell Property was heard on March 5, 2020 and an Order granting the motion was filed on March 11, 2010.

The Amended Agreement terms are follows:

A. The purchase price is $850,000.00. With an initial non-refundable deposit of $85,000.00. The First Loan is $700,000.00. With the balance of purchase price $65,000.00 cash.

B. Seller to pay for a natural hazard zone disclosure report, including tax, environmental, and smoke alarm and carbon monoxide device installation and water heater bracing, if required by law.

C. Seller to pay the cost of compliance with any other minimum mandatory government inspections and reports and retrofit standards if required as a condition of closing escrow under any law.

D. Buyer and Seller to pay escrow fee and owner's title insurance policy 50/50.

E. Seller shall pay County transfer tax and sewer clearance. Seller shall also pay for the cost, not to exceed $630.00 of an upgraded one-year home warranty plan, issued by Old Republic Home Protection.

F. All stoves, refrigerators, and washers and dryers included in sale.

G. If the existing snow removal agreement (if any) is transferrable to Buyer, then Seller will assign that agreement to Buyer and the annual cost of that agreement will be prorated at Close of Escrow.

H. If there is propane, Seller has 7 days after Acceptance to provide Buyer with all documentation and information regarding the ownership, use and/or leasing information of the propane tank, including non-compliance or citation notices, if any.

I. Seller shall provide Buyer copies of all plans permits, certification, inspections or other documentation in their possession that are pertinent to the Property within 7 days after acceptance or as specified in the purchase Contract.

J. Seller shall remove all paint, stain, household cleaning products and other hazardous waste prior to close of escrow unless otherwise agreed in writing.

K. Snow is to be removed form all walkways, driveways and decks at close of escrow and house is to be cleaned by a professional cleaning service of Seller's choice within 5 days prior to close to escrow.

L. Seller to provide defensible space inspection from the North Tahoe Fire Protection District.

M. The sale is subject to bankruptcy court approval and subject to overbid.

N. The sale is subject to Co-Owners' right to buy the Property per Stipulation.

O. All disputes are to be resolved by the Bankruptcy Court.

P. Seller will file motion for Bankruptcy Court approval of the sale when the Buyers have removed all contingencies.

Q. Close of escrow will occur within 15 days of court's approval of the sale.

R. Seller and Buyer agree that the Kingsley Offer of January 8, 2020 , is extended to and through the date of the presentation of Seller Counteroffer dated January 21, 2020.

S. Should buyer be outbid, Seller agrees to reimburse Buyer for Home and Pest Inspection reports.

T. The Property is being sold "AS IS, WHERE IS" without any representation or warranty, express or implied of any kind by the seller.

U. Seller does not agree to Items 7.B(2)(I) and 7.B(2)(ii).

V. Addendum Credit" is removed from this contract due to the reduction in purchase price.

W. Close of escrow will occur within 7 days of the court's approval or soonest thereafter.

Overbidding Procedures

Trustee proposes the following overbidding procedures:

1. Any party overbidding must agree to purchase the property on the same terms as te proposed agreement.

2. Bidder must qualify by showing at the hearing that they have the financial ability to close the transaction according to the agreement.

3. The first overbid must be at least $865,000.00.

4. Successive bids must be in increments of at least $1,000.00

5. The successful overbidder must deliver to Trustee, by cashier's check, a deposit of $85,000.00 by the close of business on April 13, 2020. If overbidder becomes the actual purchaser, the deposit will apply to the purchase price. If overbidder defaults, the deposit will be non-refundable.

DISCUSSION

On March 11, 2020, the court entered an order granting Trustee's motion to sell the Property to Buyers Reed Kingsley and Kassia Kingsley for $950,000.00.

On March 23, 2020, Trustee a received a letter from Buyers stating that they were no longer able to purchase the Property at the previously agreed price of $950,000.00 as an unforseen consequence of the COVID-19 pandemic. Exhibit B, Dckt. 82. The Buyers explained that they had lost approximately 40% of their stock portfolio value and had been forced to shut down their family business. However, Buyers informed Trustee that they could close escrow immediately for a sale price of $800,000.00 and would waive the seller's credit of $6,000.00 for repairs.

Negotiations ensued, and Trustee was able to negotiate a purchase price of $850,000.00, removing the seller's credit of $6,000.00, and increasing the deposit to $85,000.00, which the parties agree is non-refundable in the event the Buyers cancel the sale for any reason. These new terms have been reduced to an Addendum dated March 26, 2020 that is now part of the Purchase Agreement and filed concurrently as Exhibit 1. Dckt. 82.

The Trustee seeks to have this court approve the $850,000 so the Trustee can liquidate this property of the bankruptcy estate.

Trustee asserts that due to uncertainties and unforeseeable consequences related to the current health crisis, Trustee believes that the proposed amended sale to the Buyers is the highest and best available price for the Property, and thus believes that it is in the best interest of the estate and its creditors. The proposed sale is in good faith as the property was inspected. Buyer inspected the Property prior to making an offer. Buyer has no connections to Debtors. Neither Trustee not those employed by Trustee have any relationship with the Buyer.

The Trustee projects the Estate's recovery for its 1/3 interest in the Property (for which relatives of Debtor are co-owners) would be $232,101.00. For the original sales price, the Trustee projected having $252,425 in post-tax proceeds for the estate.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed amended sale terms are in the best interest of the Estate and the Motion is granted.

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 Sell Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("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 Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Reed Kingsley and Kassia Kingsley or nominee ("Buyer"), the Property commonly known as 4575 North Lake Boulevard, Carnelian Bay, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $850,000.00, on the terms and conditions set forth in the Purchase Agreement and Addendum No. 3, Exhibits 1 and 3, Dckt. 82, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase, with one-half of the commission (3%) paid to Chris Hernandez and Brooke Hernandez, Chase International, as the real estate brokers to Chapter 7 Trustee, and one-half of the commission (3%) to Buyer's Realtor, Linda Granger, Intero Real Estate Services.

21. **19-27477-A-7** **CARMAZZI, INC., A CALIFORNIA CORP** **MOTION TO ESTABLISH NOTICE AND ADMINISTRATIVE PROCEDURES**
DNL-4 **Walter Dahl** **2-25-20 [56]**

Tentative Ruling: The Motion to Establish Notice and Administrative Procedures has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 7 Trustee, creditors, and Office of the United States Trustee on February 25, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Establish Notice and Administrative Procedures 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 Establish Notice and Administrative Procedures is xxxxx.

Chapter 7 Trustee, J. Michael Hopper ("Trustee") as trustee for the bankruptcy estate of Carmazzi, Inc. a California Corporation ("Debtor"), requests an order establishing notice and administrative procedures such that notice of those proceedings described in Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(2), (3), and (6), shall be limited pursuant to a limited service list ("Limited Service List / List") to be established by the Trustee.

DISCUSSION

Trustee argues that the Limited Service List is necessary due to the particular facts in this case. According to Trustee, there are over 600 parties entitled to notice of many proceedings in the Debtor's case. Providing all pleadings and other papers filed in Debtor's case has created a large economic and administrative burden on the estate. Trustee seeks to establish notice and administrative procedures to alleviate the burden on the estate.

Proposed Notice and Administrative Procedures

Trustee proposes the following:

A. The Trustee seeks to have a Limited Service List in this Case consisting of:

(1) Office of the United States Trustee, Region 17, (2) Trustee, (3) Trustee's Counsel, (4) Debtor, (5) Debtor's Counsel, (6) Debtor's pre-petition secured creditors, (7) Persons who have formally appeared and requested service pursuant to Rule 2002, (8) Debtor's 20 largest unsecured creditors, and (9) the Internal Revenue Service, the United States Attorney, California Attorney General's Office, corresponding state agencies, and other governmental agencies to the extend required by the Rules and the Local Rules.

B. Additionally, any person may request to be included in the Limited Service List by filing a request for notice with the court and serving a copy on counsel for the Trustee.

C. Trustee will update the Limited Service List on a monthly basis during this case, to include persons or entities who have made a written request to be included on the Limited Service List. Trustee will file with the court a notice of the update Limited Service List in the event there is a change to the List.

D. The Limited Service List will clearly identify interested parties and their counsel who participate in the court's ECF system.

E. Any person giving notice to the Limited Service List must serve, (1) all persons or entities listed on the most recent List, (2) all persons and entities who have filed request to be on the List, and (3) any creditor or person or entity whose interests are likely to be affected directly by the matter of which notice is being given.

F. Serving party must file with the court an affidavit or certificate of service and an attached list of persons or entities served not more than 3 days after the date service is made. The affidavit or certificate may state all persons or entities on the List were served, at the addresses on the list, in lieu of identifying each person and entity on the List, in which case, it shall indicate the date of the Limited Service List used. The affidavit or certificate must include all other persons and entities served and the addresses or e-mail addresses at which they were served.

G. The matters as to which notice may be limited under the procedure proposed herein are those for which notice is required under Rule 2002(a)(2), (3), (4) -

> 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
>
> > (a) Twenty-one-day notices to parties in interest. Except as provided in subdivisions (h), (i), (l), (p), and (q) 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 at least 21 days' notice by mail of:
> > . . .
> >
> > (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;
> >
> > (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;
> >
> > (4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee; . . . .

The Trustee's authority for this relief is stated to be Federal Rule of Bankruptcy Procedure 2004(m), which provides:

> (m) Orders designating matter of notices. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

As discussed in 9 Collier on Bankruptcy, Sixteenth Edition, ¶ 2002.14, this includes specifying the persons to whom the notices are to be provided.

This limitation on "notice" as required under Federal Rule of Bankruptcy Procedure 2002(a)(2), (3), and (4) does not alter the "service" requirements for the Trustee or any party in interest against whom relief is sought.

Based on the evidence before the court, the court determines that the proposed terms for notice and administrative procedures are necessary. A review of the Claims already filed in this case, which was filed on December 2, 2020, lists 256 Proofs of Claim. Further, a review of the Creditors listed in this case can be estimated at over 500 creditors from all corners of the world. Thus, the court finds that the proposed terms will alleviate the burden on the estate and are thus in the best interest of the Estate.

At the hearing, counsel for the Trustee explained how this list would be updated and maintained, stating **xxxxxxxxxx**

22. **17-22481-E-7** **WILLIAM LANDES** **MOTION FOR COMPENSATION FOR**
MPD-3 **Douglas Jacobs** **MICHAEL P. DACQUISTO, TRUSTEES ATTORNEY(S)**
22 thru 23 **2-20-20 [100]**

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Michael P. Dacquisto, the Attorney ("Applicant") for John Reger, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2017, through April 9, 2020. The order of the court approving employment of Applicant was entered on June 8, 2017. Dckt. 31. Applicant requests fees and costs in the sum of $7,250.00.

OPPOSITION

Essex Bank has filed a forty-seven page Opposition to the request for $7,250.00 in fees for Trustee's counsel in this case. The basis for the opposition is stated by the Bank as:

> For the reasons that are stated herein, and for the reasons that are stated in Essex Bank's motion [SGO-1] that is scheduled to be heard concurrently, all funds in the bankruptcy estate belong to Essex Bank as a secured creditor based on its blanket security interest and lien regarding all assets of William Landes, as was determined by the Bankruptcy Appellate Panel.

Opposition, p. 2:7-12; Dckt. 115.

The Bank's Opposition continues, accusing the Applicant and the Trustee in engaging in improper transactions in an effort to divert money from the Bank and into the Trustee's, Applicant's, and Debtor's pockets.

The Opposition then seeks an apology from Movant and asserts that Applicant should reimburse the Bank.

Instead of forty-seven pages, the Bank's Opposition can simply be stated as follows:

- Me Bank With Lien
- Bank Lien on All Assets
- Bank No Consent to Bank's Collateral Paid to Attorney

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

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 an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "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 providing general case administration, assisted Trustee with assessing and selling property of the estate, participated in an appeal of a motion to sell, and prepared motions related to employment of counsel. The Estate has $13,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant assisted Trustee by analyzing the petition, schedules, and statement of financial affairs; examined Debtor at the 341 meeting; analyzed and reviewed community property and pending state court dissolution issues; reviewed, opposed, and appeared at the court hearing on motions for relief from the stay; and dealt with U.S. Trustee concerning request of time extension to file complaint objecting to discharge, complaint objecting to discharge and storage unit inventory issues.

Asset Analysis and Recovery: Applicant communicated and dealt with auctioneer concerning valuation and a possible auction of artwork and firearms; negotiated an agreement with Debtor's non-filing spouse to purchase estate's interest in artwork and firearms; and prepared motion for approval of that agreement, including review of opposition, preparation of reply, and court appearance. Based on the lack of benefit to the estate from the BAP reversal of the order approving the sale of estate property, Applicant is not seeking payment for work relate to obtaining court approval of the sale.

Bankruptcy Appellate Panel Appeal: Applicant fully participated in the BAP appeal of the order approving the sale of Debtor's personal property described as fine art collection and firearms. Based on the lack of benefit to the estate from the BAP reversal of the order approving the sale of estate property, Applicant is not seeking payment for work on the appeal.

Employment /Fee Applications: Applicant prepared application to employ Applicant; prepared the instant Motion to approve compensation, and assisted in all other legal matters or questions that arose during administration of this case.

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**
Michael P. Dacquisto (rate for June 2017 - December 2017)	20.9	$400.00	$8,360.00

(rate for January 2018 - December 2018)	21.7	$425.00	$9,222.50
(rate for January 2019 - present)	42.3	$450.00	$19,035.00
	0	$0.00	$0.00
Total Fees for Period of Application			$36,617.50

Applicant spent 94.9 hours in this matter, which Applicant divides between 84.9 hours of work, and 10 hours of travel time.

However, in light of the finances of the Bankruptcy Estate, Applicant reduces his fee request to $7,250.00.

Costs & Expenses

Applicant incurred costs and expenses in the amount of $832.68. However, no costs are requested pursuant to this application.

FEES ALLOWED

Fees

Applicant seeks to be paid a single sum of $7,250.00 for its fees and costs incurred for Client. First and Final Fees and Costs in the amount of $7,250.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

According to the Motion, Applicant reduced his fees as follows:

> Based on the lack of benefit to the estate from the BAP reversal of the order approving sale of estate property, Dacquisto is not seeking payment for $19,417.50 for work on the appeal, for $681.98 for costs on the appeal, for $5,610.00 for work in obtaining court approval of the sale or for $104.65 for trial court costs. This reduces the compensation sought from $38,375.00 to $13,347.50 and the costs sought from $832.68 to $46.05 for a total of $13,393.55. In addition, based on the limited funds collected by the estate, $13,000.00, to allow a distribution below the administrative level and at Reger's request, by this Motion Dacquisto is requesting total compensation of $7,250.00 as payment in full for fees and costs in this matter.

Motion, at 2.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees, Costs and Expenses $7,250.00

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael P. Dacquisto ("Applicant"), Attorney for Name of Client, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael P. Dacquisto is allowed the following fees and expenses as a professional of the Estate:
>
> Michael P. Dacquisto, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $7,250.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee, which the Chapter 7 Trustee may pay from unencumbered monies of the bankruptcy estate consistent with the order of distribution provided under the Bankruptcy Code.

23. **17-22481-E-7 SGO-1** **WILLIAM LANDES** **Douglas Jacobs** **MOTION FOR COMPENSATION FOR STEPHEN G. OPPERWALL, CREDITORS ATTORNEY(S) 3-9-20 [106]**

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's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2020. By the court's calculation, 31 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 Prevailing Party Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 hearing on the Motion for Prevailing Party Fees is continued to 10:30 a.m. on xxxxx, 2020.

Due to the court's calendar and COVID-19 related "diversions," this hearing on this Motion is continued.

FINAL RULINGS

24.	**16-22725-A-7** **MPD-1**	**PETER/CATHLEEN VERBOOM** **Riley Walter**	**MOTION FOR COMPENSATION FOR MICHAEL P. DACQUISTO, CHAPTER 7 TRUSTEE(S)** **2-25-20 [270]**

Final Ruling: No appearance at the April 9, 2020 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Michael P. Dacquisto, the Chapter 7 Trustee, ("Applicant") for the Estate of Peter J. Verboom, Jr. and Cathleen Verboom ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period July 6, 2016, through April 6, 2020.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the

work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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 general investigation and administration of the chapter 7 case which included a Dairy Facility, various bank accounts, and a spa; employed counsel to assist him in asset recovery, negotiate settlements, file motions for approval, filed two adversary proceeding to recover a potential fraudulent/preferential transfer; and reviewed and analyzed with counsel claims and multiple legal issues. The Estate has $162,203.73 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant provides analysis and supporting evidence for the services provided. Trustee's compensation is calculated as follows:

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$11,612.62
3% of the balance of $0.00	$0.00
Calculated Total Compensation	**$17,362.62**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$17,362.62

Less Previously Paid	$0.00
Total First and Final Fees Requested	$17,362.62

The fees are computed on the total sales generated $310,210.35 of net monies (exclusive of these requested fees and costs.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $17,362.62 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $162,203.73 of unencumbered monies to be administered. The Chapter 7 Trustee general investigation and administration of the chapter 7 case which included a Dairy Facility, various bank accounts, and a spa; employed counsel to assist him in asset recovery, negotiate settlements, file motions for approval, filed two adversary proceeding to recover a potential fraudulent/preferential transfer; and reviewed and analyzed with counsel claims and multiple legal issues. . Applicant's efforts have resulted in a realized gross of $310,210.35 recovered for the estate. Dckt. 276.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$17,362.62
Costs and Expenses	$338.45

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 Michael P. Dacquisto, the Chapter 7 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 Michael P. Dacquisto is allowed the following fees and expenses as a professional of the Estate:
>
> Michael P. Dacquisto, the Chapter 7 Trustee

Fees in the amount of $17,362.62
Expenses in the amount of $338.45,

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

25. 15-24202-A-7 ASF-2 | **CHERYL MCNEIL** **Pro Se** | **MOTION FOR COMPENSATION FOR MICHAEL GABRIELSON, ACCOUNTANT(S) 2-19-20 [118]**

Final Ruling: No appearance at the April 9, 2020 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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Alan S. Fukushima, the Chapter 7 | 11 | 13 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 14, 2019, through February 19, 2020. The order of the court approving employment of Applicant was entered on August 24, 2019. Dckt. 72. Applicant

requests fees in the amount of $3,910.50 and costs in the amount of $103.05.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

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 preparing federal and state tax returns and provided general administrative services related to the instant fee application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Federal and State Tax Returns Preparation: Applicant spent 8.5 hours in this category. Applicant consulted with trustee and counsel regarding tax issues involving litigation settlement, treatment as wage and damage income, required withholding of personal taxes, preparation of Cloobeck document for authority to pay income taxes, and preparation of first and final 2019 federal and California estate income tax returns.

Administrative Functions: Applicant spent 1.4 hours in this category. Applicant prepared accountant declaration and related employment documents for trustee review and prepared this first and final fee application, including detailed description of tax services.

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**
Michael Gabrielson	9.9	$395.00	$3,910.50

	0	$0.00	$0.00
Total Fees for Period of Application			$3,910.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $103.05 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.20	$63.40
Postage		$39.65
		$0.00
Total Costs Requested in Application		$103.05

FEES AND COSTS & EXPENSES ALLOWED

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 $3,910.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $103.05 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $3,910.50
Costs and Expenses $103.05

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

hearing.

The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company ("Applicant"), Accountant for Alan S. Fukushima, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of $3,910.50
Expenses in the amount of $103.05,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

26. **19-27804-A-7** **OLEGARIO GOMEZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JHW-1 **Michael Hays** **3-11-20 [21]**

TD AUTO FINANCE LLC VS.

Final Ruling: No appearance at the April 9, 2020 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, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 11, 2020. By the court's calculation, 29 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.

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Dodge Journey, VIN ending in 3889 ("Vehicle"). The moving party has provided the Declarations of Gwynnae Thomas and John Eng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Olegario Gomez ("Debtor").

Movant argues Debtor has not made 1.8 post-petition payments, with a total of $719.16 in post-petition payments past due. Declaration, Dckt. 25.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17). The NADA retail sale value is $13,700. Exhibit D, Dckt. 27.

CHAPTER 7 TRUSTEE'S NON-OPPOSITION

Nikki B. Farris ("the Chapter 7 Trustee") filed a statement of no opposition. Trustee's March 23, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,771.87 (Declaration, Dckt. 25), while the value of the Vehicle is determined to be $13,700.00, as stated in NADA Report.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

The vehicle valued at $17,300.00 and the debt secured by the Vehicle being $13,771.87. Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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 TD Auto Finance 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 Dodge Journey ("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.

No other or additional relief is granted.

27. **17-22333-E-7** **THOMAS WARREN** **MOTION FOR COMPENSATION FOR**
BHS-4 **Lucas Garcia** **BARRY H. SPITZER, TRUSTEES ATTORNEY(S)**
3-3-20 [174]

Final Ruling: No appearance at the April 9, 2020 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, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2020. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Barry H. Spitzer, the Attorney ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 4, 2019, through March 3, 2020. The order of the court approving employment of Applicant was entered on October 21, 2019. Dckt. 149. Applicant requests fees in the amount of $7,589.00 and costs in the amount of $66.60.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

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 an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "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 reviewing the court file; communications regarding sale of property of the estate; assisted Trustee with the sale by preparing addendums to the listing, purchase agreement and motion to sell; and attending court hearings. The Estate has $44,069.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 19.20 hours in this category. Applicant assisted Trustee in retaining the realtor and preparing and reviewing documents for the sale of real property of the estate; investigated liens related to the property; prepared addendums to the listing of the property and purchase agreement, drafted motion to sell; and attended court hearings.

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**
Barry H. Spitzer	19.20	$395.00	$7,584.00
	0	$0.00	$0.00
Total Fees for Period of Application			$7,584.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $66.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Copies	$0.15	$43.50
Postage		$23.10
		$0.00
Total Costs Requested in Application		$66.60

FEES AND COSTS & EXPENSES ALLOWED

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 $7,589.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $66.60 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$7,584.00
Costs and Expenses	$66.60

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Barry H. Spitzer ("Applicant"), Attorney for Kimberly J. Husted, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:
>
> Barry H. Spitzer, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $7,584.00

Expenses in the amount of $66.60,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

28.	**18-22453-A-7** **KJH-3**	**ECS REFINING, INC.** **Christopher Bayley**	**MOTION FOR ADMINISTRATIVE EXPENSES** **3-10-20 [1265]**

Final Ruling: No appearance at the April 9, 2020 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, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Kimberly Husted ("Movant") requests payment of administrative expenses in the amount of $800.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Franchise Tax Board for the estate's 2020 income tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate to prepare the income tax returns. Income taxes for the

2020 calendar tax year total $800.00 and are due and payable to the Franchise Tax Board.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the 2019 California income taxes for tax year ending December 31, 2019 for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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 Allowance of Administrative Expense filed by the Chapter 7 Trustee, Kimberly Husted ("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 Chapter 7 Trustee is authorized to pay Franchise Tax Board $800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

29. **10-53472-A-7** **ESTATE OF MARK BELL** **MOTION FOR ADMINISTRATIVE EXPENSES**
GMR-2 **Len Reid Reynoso** **3-5-20 [57]**

Final Ruling: No appearance at the April 9, 2020 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, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 7, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Geoffrey Richards ("Movant") requests payment of administrative expenses in the amount of $1,200.00, resulting from income taxes incurred by the estate for the short tax year which ended February 29, 2020 that became due and owing post-petition to the Internal Revenue Service.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an accountant on behalf of the bankruptcy estate to prepare the income tax returns. Income taxes for the 2020 calendar tax year total $1,200.00 and are due and payable to the Internal Revenue Service.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the 2020 California income taxes for short tax year ending February 29, 2020 for Debtor

was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $1,200.00.

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 Allowance of Administrative Expense filed by the Chapter 7 Trustee, Geoffrey Richards ("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 Chapter 7 Trustee is authorized to pay Internal Revenue Service $1,200.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

30. 13-21767-E-7 DICK/KAREN HUIE
Steven Sanders

MOTION TO AVOID LIEN OF JONATHAN NEIL & ASSOCIATES, INC.
2-14-20 [60]

Final Ruling: No appearance at the April 9, 2020 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, Creditor, and Office of the United States Trustee on February 14, 2020. By the court's calculation, 55 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 Jonathan Neil & Associates, Inc. ("Creditor") against property of the debtor, Dick Price Huie and Karen Marie Huie ("Debtor") commonly known as 5827 Palmera Lane, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $110,371.44. Dckt. 63. An abstract of judgment was recorded with Sacramento County on October 12, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $217,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $143,676.84 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(3) in the amount of $175,000.00 on Amended Schedule C. Dckt. 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 (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Dick Price Huie and Karen Marie Huie ("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 Jonathan Neil & Associates, Inc., California Superior Court for San Joaquin County Case No. 39-2012-00279566-CU-CL-STK, recorded on October 12, 2012, Book 20121012 and Page 0681, with the Sacramento County Recorder, against the real property commonly known as 5827 Palmera Lane, Sacramento, California, 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.

31. **11-44797-E-11 GEL-2** **ALFRED/FLORENCE IYASERE Gabrial Liberman** **MOTION FOR ENTRY OF DISCHARGE 3-6-20 [160]**

Final Ruling: No appearance at the April 9, 2020 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 in Possession, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge 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 Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Alfred Osaigbovo Iyasere and Florence Iroguehi Iyasere ("Debtor in Possession"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

Debtor in Possession's Declaration (Dckt. 162) certifies that Debtor in Possession:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. has completed a financial management course and filed the certificate with the court;

D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor in Possession is entitled to a discharge.

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 Entry of Discharge filed by Alfred Osaigbovo Iyasere and Florence Iroguehi Iyasere ("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, and the court shall enter the discharge for Alfred Osaigbovo Iyasere and Florence Iroguehi Iyasereh in this case.

32. **19-24964-E-7** **JAMES ELLENBERGER** **CONTINUED FINAL HEARING RE:**
LBG-1 **Lucas Garcia** **MOTION TO COMPEL ABANDONMENT**
3-12-20 [72]

Final Ruling: No appearance at the March 26, 2020 Hearing is required.

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 Chapter 7 Trustee and Office of the United States Trustee on March 12, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

The court continues the hearing. The Trustee's Report of the First Meeting of Creditors conducted on March 15, 2020, states that neither the Debtors nor their counsel appeared at the First Meeting. In light of the restricted access to the courthouse, the court continues this hearing to insure that all will have the opportunity to arrange for a telephonic appearance at the continued hearing. Nothing in the Motion indicates any prejudice in setting this matter for final hearing.

The Motion to Compel Abandonment is granted.

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 James Sheridan Ellenberger("Debtor") requests the court to order Kimberly J. Husted ("the Chapter 7 Trustee") to abandon property commonly known as 4255 Meadow Glen Road, Auburn, California ("Property"). The Property is stated to be encumbered by the liens of A&A Ready Mix Concrete, Sunbelt Rentals, Citadel Servicing Corp, and Placer County Tax Collector securing claims in the aggregate amount of $528,070.00. The Declaration of James Sheridan Ellenberger has been filed in support of the Motion and values the Property at $525,000.00.

On March 24, 2020, the Trustee make her Docket Entry Statement of Non-Opposition to this Motion.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court

determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by James Sheridan Ellenberger ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and that the real property commonly known as 4255 Meadow Glen Road, Auburn, California is abandoned pursuant to 11 U.S.C. § 554(b) by Kimberly J. Husted, the Chapter 7 Trustee in this Case to James Sheridan Ellenberger, the Debtor, effective upon issuance of this Order, with no further act of the Trustee required.