

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**April 26, 2018, at 10:30 a.m.**

1. [17-91019-E-7](#) ANN PINEDA  
Pro Se

**TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC. 341(A)  
MEETING OF CREDITORS  
3-22-18 [24](#)**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and parties requesting special notice on March 25, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXXXXXXXXXXXXXXX.**

Michael McGranahan ("the Chapter 7 Trustee") alleges that Ann Pineda ("Debtor") did not appear at the original and continued Meeting of Creditors held pursuant to 11 U.S.C. § 341 on February 6, 2018, and March 6, 2018 (which has been continued to May 8, 2018). 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).

Alternatively, if Debtor's case is not dismissed, the Chapter 7 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 10:30 a.m. on May 8, 2018. If Debtor fails to appear at the continued Meeting of Creditors, the Chapter 7 Trustee requests that the case be dismissed without further hearing.

**April 26, 2018, at 10:30 a.m.**

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on April 9, 2018. Dckt. 37, 38. She argues that she has been treated for depression, anxiety, and compulsive behavior for the past ten years, which she alleges are reasons why she was unable to attend the Meeting of Creditors. Debtor has attached to her Opposition a one sentence letter from a doctor stating that due to her condition, she is to avoid stressful situations.

Debtor states that she sent a request to the Chapter 7 Trustee for a continuance of the March 6, 2018 First Meeting of Creditors, but she did not receive a response. The letter is undated, and the request for a continuance is based upon the medical treatment she was then receiving.

Additionally, a letter dated January 29, 2018, is attached to the Opposition requesting that the February 6, 2018 First Meeting of Creditors be continued due to the medical treatment Debtor is receiving.

Debtor claims that she was surprised when she learned about this Motion because the meeting had been continued to May 8, 2018.

## **SERVICE OF MOTION**

Section 1.1 of the U.S. Trustee Guidelines state that the Office of the U.S. Trustee requests service of all matters in Chapter 7 cases, except for proofs of claim, relief from the automatic stay, lien avoidance, reaffirmation/redemption, and discovery. The Certificate of Notice issued by the Bankruptcy Noticing Center does not explicitly list the U.S. Trustee.

At the hearing, the court addressed with the Chapter 7 Trustee the Office of the U.S. Trustee not being served. The Chapter 7 Trustee explained **XXXXXXXXXXXXXX**.

## **RULING**

Debtor commenced this bankruptcy case on December 20, 2017. She is prosecuting this case *in pro se*. A review of the court's files does not disclose any other bankruptcy cases filed by or against Debtor in this District.

This has been filed as a Chapter 7 case in which Debtor is not attempting to reorganize her finances, provide for a cure of a mortgage or vehicle arrearage, or an orderly payment of nondischargeable debt.

On Schedule A/B, Debtor lists owning one piece of real property (the "Bennett Rd Property"), which is identified as community property. Dckt. 17 at 3. The value of the Bennett Rd Property is listed at \$350,000, but Debtor states that her interest in it has a value of only \$225,000. On Schedule D, Debtor lists Mr. Cooper, FKA Nationstar having a (\$675,000) claim and Rafnel Pineda having a (\$250,000) claim, each secured by the Bennett Rd Property. *Id.* at 16–17.

## **Motion for Relief from Automatic Stay**

In reviewing the file for Debtor's case, the court notes that U.S. Bank, N.A. has filed a Motion for Relief from the Automatic Stay. Dckt. 30. The Motion for Relief alleges: (1) the Bennett Rd Property secures the Bank's claim; (2) the note evidencing the obligation is signed by Walter Pineda and Ann Pineda (Debtor); (3) the obligation on the Note is in default for the months of October 2008 through March 2018 (when the Motion for Relief was being prepared); and (4) the notice of default was filed on February 22, 2017, and the foreclosure sale is set for April 2, 2018.

## **Bankruptcy and Adversary Proceeding by Walter Pineda**

A review of the court's files reflects that Walter Pineda, listing the Bennett Rd Property as his residence, has filed recent bankruptcy cases: (1) Chapter 13 case 17-90504, filed June 16, 2017, and dismissed November 1, 2017; and (2) Chapter 7 Case 10-91936, filed May 20, 2010, discharge entered September 7, 2010, and case closed May 23, 2013.

Walter Pineda also filed Adversary Proceeding 10-09060, asserting claims titled: (1) declaratory relief (who owns the note secured by the Bennett Rd Property), (2) "foreclosure fraud," (3) "wrongful foreclosure," and (4) rescission of contract. Adversary Proceeding 10-09060, Second Amended Complaint. This court dismissed without prejudice the Second Amended Complaint, without leave to amend. *Id.*, Order, Dckt. 210. The court's decision is stated in a twenty-three-page Memorandum Opinion and Decision. *Id.*, Dckt. 208.

Mr. Pineda filed on December 20, 2011, a Notice of Appeal of the court's order dismissing the Adversary Proceeding. *Id.*, Dckt. 224. By Decision and Order filed on April 23, 2013, in BAP Appeal No. E-11-1719, the Bankruptcy Appellate Panel affirmed the order dismissing without prejudice the Second Amended Complaint. *Id.*, Dckt. 274.

A review of the files of the Ninth Circuit Court of Appeals discloses that an appeal of the BAP decision was taken to the Ninth Circuit Court of Appeals. *Pineda v. Bank of America, et al.*, 9th Cir. No. 13-60071. That appeal was dismissed by the Ninth Circuit by order filed on April 28, 2015. 13-60071; Order Dismissing Appeal, Dckt. 18-1.

## **Ruling**

Debtor's argument that she has been unable to attend multiple Meetings of the Creditors because of depression and anxiety, and the change in medical treatment, could well ring true. However, such is Debtor's assertion. The one-sentence letter from her doctor does not reflect such change in treatment but that Debtor should avoid stressful situations. Taken to its extreme, Debtor's argument is that she would never be able to attend the required Meeting of Creditors.

The court notes that this bankruptcy case filing has occurred to stop a foreclosure sale that Debtor's husband has been litigating for years. This bankruptcy was filed on the eve of the nonjudicial foreclosure sale. It appears that Debtor's husband's attempts, if any, to address his disputes in non-federal court's have been exhausted—with the rulings not in his favor.

This Chapter 7 bankruptcy case has been held in abeyance now for 120 days due to Debtor's failure/inability to attend the First Meeting of Creditors. Debtor seeks to extend that further. It may well be that Debtor's ardor to continue in this Chapter 7 case may wane in light of the pending May 17, 2018 hearing on the Motion for Relief from the Automatic Stay.

At the hearing, Debtor explained ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Cause ~~exists/does not exist to~~ dismiss this case. The Motion is ~~granted/denied, and the case is/is not dismissed~~.

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 Michael McGranahan ("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 Dismiss is ~~XXXXXXXXXXXX~~.

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

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

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Local Rule 9014-1(f)(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, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Borrow 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 Borrow is granted.**

Irma Edmonds ("the Chapter 7 Trustee") seeks authority pursuant to 11 U.S.C. §§ 364(d)(1)(A) & (B) and 541 to execute a new loan on real property commonly known as 2416 Snapdragon Court, Modesto, California ("Property"). The Chapter 7 Trustee states that because of the Estate's fractional interest in the Property, it cannot borrow on an unsecured basis.

The Chapter 7 Trustee states that the loan is in furtherance of a settlement approved by the court in Adversary Proceeding No. 17-09014. Under the terms of the loan, the first deed of trust of Wells Fargo Mortgage; the lien of the City of Modesto; the judgment lien of Springleaf Financial Services, Inc.; and the settlement claim of the Chapter 7 Trustee will be paid from the loan proceeds. Academy Mortgage Corporation will distribute \$262,400.00 in loan proceeds, to be paid back over thirty years at an annual interest rate of 4.985%.

11 U.S.C. § 364(d) states:

(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such creditor otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

Here, the Chapter 7 Trustee has established that there are numerous parties on title to the Property, and the only way to secure funding for all of them to pay the settlement proceeds from the related adversary proceeding is to acquire a new loan secured by the Property. The Estate is unable to acquire the loan on an unsecured basis.

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

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to use, sell, or lease property 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 because the adversary proceeding defendants need to secure final approval of the loan as soon as possible to avoid commitment of further “lock interest fees” or a change in the loan terms.

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 6004(h), and this part of the requested relief is granted.

The Motion is granted, and the Chapter 7 Trustee is authorized to enter into the loan agreement with Academy Mortgage Corporation on the terms embodied in the loan documents, and as further set forth in the court’s order. Exhibits 1 & 2, Dckt. 48.

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 Borrow 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 Borrow is granted, and the Chapter 7 Trustee is authorized to borrow \$262,400 from Academy Mortgage Corporation on

behalf of the Estate according to the real property loan documents filed as Exhibits 1 & 2 (Dckt. 48).

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to enter into any and all documents necessary on behalf of the Estate to effectuate the loan.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

3. [17-90826-E-7](#)      **JASON/MONIQUE SCHROER**      **CONTINUED MOTION TO AVOID LIEN**  
**BSH-2**      **Brian Haddix**      **OF PORTFOLIO RECOVERY**  
           **ASSOCIATES, LLC**  
           **3-8-18 [32]**

**Final Ruling:** No appearance at the April 26, 2018 hearing is required.  
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Local Rule 9014-1(f)(2) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on March 8, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien 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. The court set this Motion for final hearing, for which no opposition has been filed.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<b>The Motion to Avoid Judicial Lien is granted.</b>
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This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC (“Creditor”) against property of Jason Schroer and Monique Schroer (“Debtor”) commonly known as 566 E Springer Street, Turlock, California (“Property”).

## **MARCH 29, 2018 HEARING**

At the hearing, the court continued the matter to 10:30 a.m. on April 12, 2018, to allow Debtor an opportunity to file supplemental pleadings correcting the record and pleading the Motion correctly. Dckt. 52.

## **APRIL 12, 2018 HEARING**

At the hearing, counsel appeared and stated that the delay in filing supplemental pleadings was due to computer problems. The court continued the hearing to 10:30 a.m. on April 26, 2018. Dckt. 56.

## **DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,876.76. An abstract of judgment was recorded with Stanislaus County on February 22, 2017, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$312,000.00 as of the petition date. Dckt. 65. The unavoidable consensual liens that total \$332,143.34 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 15 at 17–18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 48 at 3.

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 Jason Schroer and Monique Schroer ("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 Portfolio Recovery Associates, LLC, California Superior Court for Stanislaus County Case No. 20196 10-, recorded on February 22, 2017, Document No. 2017-0012183-00, with the Stanislaus County Recorder, against the real property commonly known as 566 E Springer Street, Turlock, 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.



**Final Ruling:** No appearance at the April 26, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on March 8, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien 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. The court set the Motion for final hearing, to which no opposition has been filed.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC (“Creditor”) against property of Jason Schroer and Monique Schroer (“Debtor”) commonly known as 566 E Springer Street, Turlock, California (“Property”).

#### **MARCH 29, 2018 HEARING**

At the hearing, the court continued the matter to 10:30 a.m. on April 12, 2018, to allow Debtor an opportunity to file supplemental pleadings correcting the record and pleading the Motion correctly. Dckt. 54.

#### **APRIL 12, 2018 HEARING**

At the hearing, counsel appeared and stated that the delay in filing supplemental pleadings was due to computer problems. The court continued the hearing to 10:30 a.m. on April 26, 2018. Dckt. 57.

## **DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,145.81. An abstract of judgment was recorded with Stanislaus County on March 2, 2017, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$312,000.00 as of the petition date. Dckt. 65. The unavoidable consensual liens that total \$332,143.34 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 15 at 17–18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 48 at 3.

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 Jason Schroer and Monique Schroer ("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 Portfolio Recovery Associates, LLC, California Superior Court for Stanislaus County Case No. 2020274, recorded on March 2, 2017, Document No. 2017-0014916-00, with the Stanislaus County Recorder, against the real property commonly known as 566 E Springer Street, Turlock, 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.

**Final Ruling:** No appearance at the April 26, 2018 hearing is required.  
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Local Rule 9014-1(f)(2) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on March 8, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien 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. The court set this motion for final hearing, for which no opposition has been filed.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC (“Creditor”) against property of Jason Schroer and Monique Schroer (“Debtor”) commonly known as 566 E Springer Street, Turlock, California (“Property”).

#### **MARCH 29, 2018 HEARING**

At the hearing, the court continued the matter to 10:30 a.m. on April 12, 2018, to allow Debtor an opportunity to file supplemental pleadings correcting the record and pleading the Motion correctly. Dckt. 53.

#### **APRIL 12, 2018 HEARING**

At the hearing, counsel appeared and stated that the delay in filing supplemental pleadings was due to computer problems. The court continued the hearing to 10:30 a.m. on April 26, 2018. Dckt. 58.

## **DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,877.20. An abstract of judgment was recorded with Stanislaus County on July 26, 2017, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$312,000.00 as of the petition date. Dckt. 65. The unavoidable consensual liens that total \$332,143.34 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 15 at 17–18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 48 at 3.

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 Jason Schroer and Monique Schroer ("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 Portfolio Recovery Associates, LLC, California Superior Court for Stanislaus County Case No. 2023470, recorded on July 26, 2017, Document No. 2017-0054088-00, with the Stanislaus County Recorder, against the real property commonly known as 566 E Springer Street, Turlock, 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. 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). Creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Jeffery Arambel, Debtor in Possession, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell a portion of the Arambel Business Park comprising approximately 42.3 acres of land near the intersection of Rodgers Road and Keystone Pacific Parkway in Patterson, California (being all of APN 021-022-055 and [non-specified] portions of APNs 021-022-061 and 021-022-062) (the “Property”). FN.1.

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FN.1. The court notes that both the Motion and Purchase and Sale Agreement do not identify what “portions” of APNs 021-022-061 and 021-022-062 are to be purchased. It appears that the proposed deed, Schedule 12(a)(I) to the Purchase and Sale Agreement (Dckt. 206 at 31), states that Exhibit A to the deed (which exhibit is not provided) will “depict” the property sold. Presumably, such depiction will be consistent with the general, non-specific representation of the property sold in the Motion and the Purchase and Sale Agreement. However, very expensive, long litigation has flowed from substantially less ambiguity.

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The introduction to the Motion also makes reference to there being an “Option to purchase additional ±30.0 acres of Arambel Business Park ([non-specific] Portions of APNs 021-022-061 and 021-022-062).” Motion, Dckt. 200 at 1:23. No sales price for the additional ±30.0 acres subject to the option is stated at this part of the Motion.

The Motion states that the proposed purchaser of the Property is PDC Sacramento, LLC, and the terms of the sale are:

- A. Estimated purchase price of \$6,446,678 at \$3.50 per square foot;
- B. The final boundaries of the Property will be determined by the Final Survey, as defined by the Purchase and Sale Agreement;
- C. Deposit of \$50,000.00 paid into escrow during initial deposit;
- D. At the end of a due-diligence period, PDC Sacramento will deposit an additional \$50,000.00 for a total of \$100,000.00;
- E. A 5% broker’s commission to Cushman & Wakefield;
- F. A 5% project-management commission to Crestmont Development LLC;
- G. Sale free and clear of the liens of senior secured lien “Metlife” and substantially pay down the junior lien “Summit”;
- H. The due-diligence period shall end 120 days after entry of the court’s order approving the sale, and the sale shall close within thirty days of the ending of the due-diligence period; and
- I. Escrow fees, recording fees, transfer taxes, and other closing costs not to exceed 1.5% of the gross purchase price.

With respect to the Option, the Motion states that subject to the same terms as for the sale of the Property,

- A. PDC Sacramento will have an option through March 1, 2019, to purchase an additional approximately 30 acres on the same terms as this sale, except that the option shall only have a thirty-day due-diligence period followed by a thirty-day closing period;
- B. The optional purchase has a sales price of \$3.50 per square foot, for an estimated total sales price of \$4,573,800. The land covered by the option is immediately adjacent to the north boundary line of the Property; and

- C. PDC Sacramento must give written notice of its intent to exercise the option not later than 60 days before March 1, 2019.

From the Motion, the exact property subject to the Option is not clearly identified.

### **Lack of Option Provision in the Purchase and Sale Agreement**

The Motion states that Buyer is also to be given an “Option to purchase additional ±30.0 acres of Arambel Business Park ([non-specific] Portions of APNs 021-022-061 and 021-022-062).” However, the court’s review of the Purchase and Sale Agreement (Dckt. 206 at 3–36) indicates that there are no such option provisions in the Sale presented to the court. In attempting to locate such provision, the court physically reviewed the document, as well as converting the document to PDF readable text and conducting word searches, including for “option,” “portions” “-061” and “-062.”

At the hearing, counsel for Debtor in Possession explained **XXXXXXXXXXXXXXXXXXXXX**.

### **Sale Free and Clear**

The Motion seeks to sell the Property free and clear of the lien of Metlife and Summit. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

“(f) The trustee [or debtor in possession] 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).

For this Motion, Movant asserts that Metropolitan Life Insurance Co., SBN V Ag I LLC, and Employment Development Department (“Creditors”) are likely to consent to such a sale. This proposed sale is likely to benefit the estate by substantially paying down MetLife’s senior secured lien on the Property, if

it has not already been done with the associated sale of 107 acres of the Arambel Business Park, in which case, it will also substantially pay down Summit's junior lien. Movant argues that this will reduce the claims against other assets of Debtor, which secure the liens and claims of other creditors.

Additionally, Movant argues that the court should authorize the sale free and clear of the EDD's lien because its interest is subject to a *bona fide* dispute. The EDD did not record its lien until January 24, 2018, several days after Debtor filed its voluntary bankruptcy petition in this case. Movant asserts that this lien is void because it violated the automatic stay.

At the hearing, XXXXXXXXXXXXXXXXXXXXXXX

## **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: XXXXXXX.

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 substantially pay down Metropolitan Life Insurance Co.'s senior secured lien on the Property, if it has not already been paid off through an associated sale, in which case it will substantially pay down Summit's junior lien on the Property, thus reducing claims against Debtor's other assets that secure the liens and claims of other creditors.

Movant disclosed that both a five percent broker's commission and a five percent project-management commission are part of the sale. The court calculates that five percent of the sales price totals \$322,333.90. As part of the sale in the best interest of the Estate, the court permits Movant to pay both the broker and the project manager a five percent commission.

## **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 because "[a]ll creditors and parties-in-interest have been provided with notice and afforded an opportunity to object, and no party will be prejudiced by waiver of the applicable stays." Dckt. 200 at 8:23–25.

The asserted grounds do not demonstrate any unusual circumstances that necessitate the court overruling what the Supreme Court has established. At the April 19, 2018 hearing, the court discussed with counsel what constitutes sufficient cause to waive the fourteen-day stay—in that case finding cause because the closing date was scheduled to occur within one of the approved sales of property. The court does not typically grant relief in the form of "give us this because no one objects."

With the court's discussion from the prior hearing in mind, the court has recanvassed the pleadings in this Motion and notes that the closing date is scheduled to occur thirty days after the end of the due diligence period, which ends 120 days after entry of a court order approving the sale. That period is



outside of the fourteen-day stay window, and there does not appear to be any other cause set forth for the requested relief.

However, at the hearing Counsel for the Debtor in Possession clarified the need for waiving the fourteen-day stay of enforcement, explaining ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Movant ~~has/has-not~~ demonstrated 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/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 Jeffery Arambel (“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 Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b), (f)(2) and (f)(4) to PDC Sacramento, LLC, or its assignee (“Buyer”), the unincorporated property commonly known as a portion of the Arambel Business Park comprising approximately 42.3 acres of land near the intersection of Rodgers Road and Keystone Pacific Parkway in Patterson, California (being all of APN 021-022-055 and portions of APNs 021-022-061 and 021-022-062) (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$6,446,678.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 206, 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 in order to effectuate the sale.
- C. ~~The Property is sold free and clear of the liens of Metropolitan Life Insurance Co., SBN V Ag I LLC, and Employment Development Department, creditors asserting secured claims, pursuant to 11 U.S.C. § 363(f)(2) and (f)(4); with the liens of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.~~

- D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Debtor in Possession is authorized to pay a real estate broker's commission and a project manager's commission, each in an amount equal to five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be paid to Debtor's in Possession broker, Cushman & Wakefield, and Debtor's in Possession project manager, Crestmont Development, LLC.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) ~~is/is not~~ waived for cause.

**IT IS FURTHER ORDERED** that this Order authorizing the sale of Property pursuant to the terms and conditions of the Purchase Sale Agreement (Exhibit 1) is only for the property identified above in this Order, and the court does not authorize an option agreement for the purchase and sale of any other real or personal property.

**IT IS FURTHER ORDERED** that this court retains exclusive federal jurisdiction (28 U.S.C. § 1334(e)) over the Property to be sold, identifying the property to be sold as authorized by the Order, identifying the property to be sold in the Purchase and Sale Agreement, interpretation of the Purchase and Sale Agreement, all claims for damages from or enforcement of the Purchase and Sale Agreement, and each and every other issue, claim, defense, or right, without limitation, relating to the Purchase and Sale Agreement, performance thereof, and this Order.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. 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 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, -----.

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Jeffery Arambel, Debtor in Possession, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell 107 acres of land at the Arambel Business Park, near the intersection of Rodgers Road and Zacharias in Patterson, California (APNs 021-022-033, 021-022-034, 021-022-041, 021-022-042) (“Property”). FN.1.

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FN.1. The court notes that the Motion also references APNs 021-022-055, 021-022-061, and 021-022-062 on Page 1 of the Motion. That appears to be a mere scrivener’s error because those properties are subject to another motion to approve a sale at the April 26, 2018 hearing.

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The proposed purchaser of the Property is PDC Sacramento, LLC, (“Buyer”), or its related assignee, and the terms of the sale are:

- A. The price shall be \$3.90 per square foot for an estimated total gross price of \$18,177,588.00. However, the specific boundaries of the parcel are subject to a final survey that is being prepared and to the agreement of the parties.
- B. The sale will close within ten days after the end of the due-diligence period, currently set to end June 30, 2018. During the due-diligence period, Buyer may cancel the agreement and receive a return of deposit.
- C. All entitlements required to use the Property as a warehouse and distribution center are to be, and have been, obtained before closing.
- D. Within three days of the agreement, Buyer deposited \$100,000.00 into an escrow account, and Buyer will deposit an additional \$400,000.00 into the escrow account at the end of the due diligence period for a total of \$500,000.00. These deposits are only refundable if the agreement is properly terminated prior to the end of the due-diligence period or Movant defaults as described in Section 13 of the agreement.
- E. Real property taxes; water, sewer, and utility charges; amounts payable under agreements encumbering the Property; and annual permit or inspection fees shall be pro-rated.
- F. Each party shall pay one-half of the total cost of the title insurance policy, closing fees charged by the title company, and any escrow fees.
- G. Movant shall pay all transfer taxes, recording fees for the releases of any mortgage or other encumbrance, a broker's commission to Cushman & Wakefield of five percent of the gross purchase price, and a project-management commission to Crestmont Development, LLC of five percent of the gross purchase price.
- H. Buyer shall pay all recording fees for the deed transferring title, all survey costs, and all due diligence costs (including site inspections and environmental audits).
- I. Each party shall pay its own legal fees, accounting, and other professional fees.

The Motion seeks to sell the Property free and clear of the liens of Metropolitan Life Insurance Co., SBN V Ag I LLC, and Employment Development Department ("Creditors"). 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).

For this Motion, Movant asserts that Creditors are likely to consent to such a sale. Movant anticipates that Metropolitan Life Insurance Co.’s claim will be paid in full and that Summit’s claim will be substantially reduced. Movant also anticipates that EDD will reconvey its lien voluntarily before the hearing.

## **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: **xxxxxxxxxxxxxxxxxx**.

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 substantially pay down Metropolitan Life Insurance Co.’s senior secured lien on the Property, if it has not already been paid off through an associated sale, in which case it will substantially pay down Summit’s junior lien on the Property, thus reducing claims against Debtor’s other assets that secure the liens and claims of other creditors.

Movant disclosed that a five percent broker’s commission to Cushman & Wakefield, and a five percent project management commission to Crestmont Development, LLC are part of the sale. The court calculates that five percent of the sales price totals \$908,879.40. As part of the sale in the best interest of the Estate, the court permits Movant to pay both the broker and the project manager a five percent commission each.

## 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 because “[a]ll creditors and parties-in-interest have been provided with notice and afforded an opportunity to object, and no party will be prejudiced by waiver of the applicable stays.” Dckt. 208 at 8:14–17.

The asserted grounds do not demonstrate any unusual circumstances that necessitate the court overruling what the Supreme Court has established. At the April 19, 2018 hearing, the court discussed with counsel what constitutes sufficient cause to waive the fourteen-day stay—in that case finding cause because the closing date was scheduled to occur within one of the approved sales of property. The court does not typically grant relief in the form of “give us this because no one objects.”

With the court’s discussion from the prior hearing in mind, the court has recanvassed the pleadings in this Motion and notes that the closing date is scheduled to occur thirty days after the end of the due diligence period, which ends 120 days after entry of a court order approving the sale. That period is outside of the fourteen-day stay window, and there does not appear to be any other cause set forth for the requested relief.

However, at the hearing Counsel for the Debtor in Possession clarified the need for waiving the fourteen-day stay of enforcement, explaining ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Movant ~~has/has not~~ demonstrated 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/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 Jeffery Arambel (“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 Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to PDC Sacramento, LLC, or nominee (“Buyer”), the Property commonly known as 107 acres of land at the Arambel Business Park, near the intersection of Rodgers Road and Zacharias in Patterson, California (APNs 021-022-033, 021-022-034, 021-022-041, 21-022-042) (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$18,177,588.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 214, 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 in order to effectuate the sale.
- C. The Property is sold free and clear of the liens of Metropolitan Life Insurance Co., SBN V Ag I LLC, and Employment Development Department, Creditors asserting secured claims, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Debtor in Possession is authorized to pay a real estate broker's commission and a project manager's commission in an amount equal to five percent of the actual purchase price upon consummation of the sale. A five percent commission shall be paid each to Debtor's in Possession broker, Cushman & Wakefield, and to Debtor in Possession's project manager, Crestmont Development LLC.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) ~~is/is not~~ waived for cause.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2018. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one day's notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor in Possession 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 Motion to Dismiss is granted, and the case is dismissed.**

Wells Fargo Bank ("Movant") seeks an order dismissing this case pursuant to 11 U.S.C. § 1208(c) based upon bad faith and unreasonable delay that is prejudicial to creditors. Movant argues that no payments have been made to it during this case.

Particularly, Movant notes that Carlos Estacio and Bernadette Estacio ("Debtor in Possession") withdrew a proposed plan on November 28, 2017, and stated they hoped to propose a new plan within two weeks. Dckt. 106 at 3:14–18.5 (citing Dckt. 79). More than two months later, a plan has not been proposed according to Movant.

#### **DEBTOR IN POSSESSION'S OPPOSITION**

Debtor in Possession filed an Opposition on March 15, 2018. Dckt. 149. Debtor in Possession argues that a new plan that has been proposed eliminates the concerns raised by this Motion, that the law cited by Movant does not support the Motion, that the Motion is factually deficient, and that the notice of this Motion violates the court's Local Bankruptcy Rules.



Debtor in Possession argues that the proposed plan includes a deadline for when a sale of real property must occur, and Debtor in Possession consents to voluntary conversion of this case to Chapter 7 if such a sale does not occur within the time constraint.

Debtor in Possession also argues that Movant's claim is oversecured by one million dollars because of its first in priority lien position, secured by a deed of trust. Contrary to Movant's argument, Debtor in Possession claims that dismissing this case will cause prejudice to creditors holding unsecured claims because they are not likely to receive any funds, but the proposed plan would pay those claims fully.

Debtor in Possession argues that Movant has not set forth any factual grounds to support a finding of bad faith that would justify dismissing this case. Debtor in Possession believes that the Motion violates Federal Rule of Bankruptcy Procedure 9013 because Movant has not alleged facts to support the claims in the Motion. Arguing against a finding of undue delay, Debtor in Possession notes that at the November 30, 2017 status conference, the court stated that it was not setting a deadline for a new plan to be filed, choosing instead to allow the parties to decide when to file their respective motions. *See* Dckt. 94.

Debtor in Possession argues that there has not been an unreasonable delay that is prejudicial to creditors because adequate protection payments were offered to Movant, without response. Finally, Debtor in Possession argues that the notice for this Motion violates Local Bankruptcy Rule 9014-1(d)(3)(B)(iii) by not including certain language, but Debtor in Possession does not state what language is missing.

#### **DEBTOR IN POSSESSION'S EVIDENTIARY OBJECTION**

Debtor in Possession filed an Evidentiary Objection on March 15, 2018, based upon the Federal Rules of Evidence ("FRE"). Dckt. 150.

Debtor in Possession objects to an alleged reference in paragraph 3 of the Motion to another declaration for a separate motion for relief—the declaration of Jon Zagaris. Specifically, Debtor in Possession objects to statements in four separate paragraphs.

#### **Federal Rules of Evidence Invoked**

Federal Rule of Evidence 401 states that evidence is relevant if (1) it has any tendency to make a fact more or less probable than it would be without the evidence, and if the fact is of consequence in determining the action.

Federal Rule of Evidence 403 allows a court to exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing of issues, misleading a jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Federal Rule of Evidence 602 states that a witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony.

Federal Rule of Evidence 701 limits lay person testimony to opinions rationally based on the witness's perception, that are helpful to clearly understanding the witness's testimony or to determining a fact in issue, and not based on scientific, technical, or other specialized knowledge.

Federal Rule of Evidence 702 sets forth the rules for testimony by an expert witness. The witness must be qualified as an expert by knowledge, skill, experience, training, or education and may testify in the form of opinion if (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case.

Federal Rule of Evidence 802 states that hearsay is inadmissible unless provided for by a federal statute, the Federal Rules of Evidence, or rules prescribed by the Supreme Court.

Federal Rule of Evidence 901 states that to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Federal Rule of Evidence 902 contains fourteen categories of evidence that are self-authenticating and do not need any extrinsic evidence to be admitted.

Federal Rule of Evidence 1002 requires an original writing, recording, or photograph to be provided to prove its content.

## **Objections to Evidence**

### **Declaration of Jon Zagaris**

#### Objection No. 1

In paragraph 3 of the Zagaris declaration, Debtor in Possession objects to the statement made by the declarant that:

“I have been advised by the listing agent that the seller of the property has a dairy permit for 696 milking cows, but no milk supply contract, and that the free stalls and loafing barn on the property are in poor condition, and need repair”

on the grounds that it is hearsay to the extent that the declarant relies upon someone else's statement or writing (FRE 802), that it is not relevant (FRE 401), and that it is speculative and lacks foundation (FRE 602).

Ruling: The Zagaris declaration has not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

### Objection No. 2

In paragraph 4 of the Zagaris declaration, Debtor in Possession objects to the statement

“I have been provided by my licensed realtor salesperson with the following listing and sale information for properties in the vicinity of the property:

- (a) 5725 Erlich Road (approx. 1 miles from the property) Sold on December 29, 2017, for \$32,805 per acre; on market 52 days. 4 Homes, operational dairy (permit for over 900 head), and 2 lagoons for dairy flush and irrigation on 213.38 acres.
- (b) 2254 Eucalyptus Avenue, Patterson, CA (approx [sic] 7 miles from the property) Sold November 3, 2017, for \$27,200 per acre; on market 255 days. Operational dairy with all facilities: free stalls, hay barns, milk barn, and 2 domestic wells on 25 acres.
- (c) 6124 Hogan Road (approx [sic] 4 miles from the property) Listed for sale for 159 days at \$29,878 per acre. Formerly a dairy, now a feedlot on 167.35 acres.”

on the grounds that the statement is hearsay to the extent it relies upon someone else’s statement or writing (FRE 802), that it is not relevant (FRE 401), and that it is speculative and lacks foundation (FRE 602).

Ruling: The Zagaris declaration has not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

### Objection No. 3

In paragraph 5 of the Zagaris declaration, Debtor in Possession objects to the statement “Attached in the accompanying Exhibits, market ‘Exhibit E, Exhibit E-1, and Exhibit H,’ respectively, are true copies of the listings of each of the above-described comparative properties” on the grounds that the statement is not relevant (FRE 401) and that the supposed exhibits cannot be located, making the statement speculative and lacking in foundation (FRE 602). Debtor in Possession argues that the exhibits filed with the Khatri Brothers, LP, motion for relief are not identified the way mentioned in the statement.

Ruling: The Zagaris declaration has not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

### Objection No. 4

In paragraph 6 of the Zagaris declaration, Debtor in Possession objects to the statement “In its current state, based on the above information, I am informed and believe that the property is worth between

\$34,500 and \$35,000 per acre, and should be sold at a price between \$1,338,945 and \$1,358,350” on the ground that the statement is hearsay to the extent that the declarant is merely repeating what he has been told or what has been written but not submitted to the court (FRE 802). Debtor in Possession also objects on the grounds that Jon Zagaris is not a competent expert qualified to appraise real property, despite being a licensed real estate broker (FRE 702), that the statement is irrelevant (FRE 401), that it is speculative and lacks foundation (FRE 602), and that it is more prejudicial than probative (FRE 403).

Ruling: The Zagaris declaration has not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

### **Declaration of Jawaharlal Khatri**

#### Objection No. 5

Debtor in Possession objects to references to Exhibit “NS, pages 1-5” in the Jawaharlal Khatri declaration filed in support of the separate Khatri Brothers, LP, motion for relief. Debtor in Possession argues that the exhibit cannot be identified, that references to it are hearsay (FRE 802), and that it lacks foundation for this Motion (FRE 602).

Ruling: The Khatri declaration has not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

#### Objection No. 6

Further for the Khatri declaration, Debtor in Possession objects to the Motion’s use of the phrase “I am informed and believe that the Debtors . . .” from that declaration on the basis that it is hearsay (FRE 802). Debtor in Possession objects to statements in that declaration by Jawaharlal Khatri that Debtor in Possession has “listed the property . . . for sale at a price so high that it will likely not attract any purchase offer” on the basis that it exceeds the scope of a lay witness (FRE 701), that Jawaharlal Khatri is not a real estate expert witness competent to testify (FRE 702), that the statement is speculative and lacks foundation (FRE 602), that the statement is hearsay (FRE 802), and that the statement is not relevant (FRE 401).

Ruling: The Khatri declaration has not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

#### Objection No. 7

Debtor in Possession also objects to three exhibits filed with the Khatri Brothers, LP, motion for relief—Exhibits 1–3. For each exhibit, Debtor in Possession argues that Movant has failed to authenticate the exhibit or to identify its purpose (FRE 901).

Ruling: Movant did not file any exhibits to the Motion. The Motion, Memorandum of Points and Authorities, nor the Mains Declaration references any Exhibit 1, 2, or 3. They also do not incorporate any Exhibit 1, 2, or 3 from any other docket filing. Objection overruled.

## **Declaration of Michael Peale**

### Objection No. 8

Debtor in Possession objects to admission of an appraisal report filed as Exhibit B and referenced in the Michael Peale declaration for a separate motion for relief on the bases that it is inadmissible hearsay (FRE 802), that it has not been authenticated (FRE 902), and that it violates the best evidence rule (FRE 1002).

Ruling: The Peale declaration, and any exhibits to the Peale declaration, have not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

### Objection No. 9

Debtor in Possession objects to the admission of Exhibit C mentioned in the Peale declaration on the ground that Movant failed to authenticate it (FRE 901), that it is inadmissible hearsay (FRE 802), and that it is not relevant (FRE 402). Additionally, Debtor in Possession argues that any statement by Mr. Peale about the exhibit is inadmissible because he lacks status as an expert witness (being a banker and not a realtor) to discuss the document (FRE 701).

Ruling: The Peale declaration, and any exhibits to the Peale declaration, have not been filed or incorporated by Movant as evidence in support of the present Motion. The only declaration provided has been that of Steven B. Mains. Objection overruled.

## **Declaration of Steven Mains**

### Objection No. 10

Debtor in Possession objects to paragraph 3 of the Steven Mains Declaration stating that “In an email to the attorney for Khatri Brothers, LP, Debtors’ counsel represented that ‘Arturo [Romero, who is the father of Mrs. Estacio] is 88 and is in quite poor health. He would not be of any help learning about the Romer’s finances. While Romona Romero [his wife] appears to be in relatively good health and is mentally sharp, she is 85 years old” on the grounds that the statement is inadmissible hearsay (FRE 802) and that it is not relevant (FRE 402).

Ruling: The statement being made is attributed to Debtor in Possession’s counsel acting in that capacity. The statement is being made for a party opponent. The statement relates to parents of Debtor, not the Debtor in Possession or fiduciaries responsible for this case. The court overrules the objection in light of the prior plan being advanced as dependant upon the elderly parents leasing the property. While overruled, it may be of little moment if Debtor in Possession is actively, in good faith, pursuing a plan not dependent on elders in ill-health.

#### Objection No. 11

Debtor in Possession objects to paragraph 4 of the Mains Declaration stating:

“At the scheduled status conference on November 30, 2017, Debtors’ counsel announced his clients’ intention to sell their property at 4413 South Prairie Flower Road, Turlock . . . in lieu of leasing the Faith Home Road property. The Court then dismissed without prejudice the motions to approve the plan and to lease the Faith Home Road property. The Court scheduled a status conference for March 29, 2018. The Court also directed the Debtors to file monthly operating reports. To this end, Debtors filed a motion to employ an accountant on December 15, 2017. This motion was granted on December 17. The first operating report for October, 2017, was filed on January 16, 2018.

Debtor in Possession argues that the statement is inadmissible hearsay (FRE 802) and that it is not relevant (FRE 402).

Ruling: As to the Mains Declaration statements about what events occurred at the November 30, 2017 hearing, the objection is overruled. The statements are matters of record, reported in the court’s civil minutes, and as such, they are not hearsay. *See* Dckt. 85, 86, 94. Additionally, the statements about what the court ordered are relevant to show whether Debtor in Possession has followed the orders and is actively prosecuting this case such as to avoid the court finding cause to dismiss. Finally, as shown in the court record, Mains was present at the hearing representing his client, Wells Fargo Bank, N.A.

#### Objection No. 12

Debtor in Possession objects to paragraph 5 of the Mains Declaration stating that “On January 15, 2018, Debtors’ counsel emailed to me and the attorneys for Khatri Brothers, LP to provide a web link to a residential listing of the South Prairie Property for sale: [URL]” on the grounds that it is inadmissible hearsay (FRE 802) and is not relevant (FRE 402).

Ruling: The Mains Declaration statement that he received an e-mail from Debtor in Possession’s counsel about a property listing with an attached link in the Declaration to that listing, the objection is overruled. The objection is not hearsay because Mr. Mains is merely reporting that he received an e-mail with a link that he included in the Declaration; he is not testifying about the contents of the weblink. Additionally, to the extent that Movant has been arguing that the case should be dismissed because of undue prejudice, then a property listing by Debtor in Possession would be relevant to counter undue delay.

#### Objection No. 13

Debtor in Possession objects to paragraph 6 of the Mains Declaration stating that “According to a further email from Debtors’ counsel, by January 24, 2018, this listing had been taken down and replaced with an agricultural property listing” on the grounds that it is inadmissible hearsay (FRE 802) and is not relevant (FRE 402).

Ruling: As to the Mains Declaration statement about another e-mail from Debtor in Possession's counsel stating that the property listing had been replaced with an online listing for another property, the objection is overruled. Again, Mr. Mains is reporting that an e-mail was received; he does not actually comment on the e-mail in first-person as though asserting that a property listing had been replaced. Additionally, a property listing is relevant to the court's analysis of whether there has been undue delay that is prejudicial to creditors.

## **MARCH 29, 2018 HEARING**

At the hearing, the court continued the matter to 10:30 a.m. on April 26, 2018. Dckt. 170, 173.

## **MOVANT'S SUPPLEMENTAL MEMORANDUM**

Movant filed a Supplemental Memorandum on April 19, 2018. Dckt. 181. Movant states that he has been informed by Debtor in Possession's counsel that the principal real estate holdings have been listed for sale. Movant questions the sale efforts though because Mr. Estacio appears to be handling the sales personally.

Movant expresses concern that operating reports are not being filed and that real property taxes are accruing without being paid.

## **DISCUSSION**

Dismissal of a Chapter 12 case upon the request of a party in interest is governed by 11 U.S.C. § 1208(c). That section states that after notice and a hearing, the court may dismiss a Chapter 12 case for cause, and one of the grounds for dismissal is "unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors." 11 U.S.C. § 1208(c)(1). There must be more than a delay; it must be unreasonable. *See In re Standley*, No. 11-62373-12, 2013 Bankr. LEXIS 5137, at \*7 (Bankr. D. Mont. Dec. 6, 2013).

At the March 29, 2018 hearing on the motion to confirm a plan, the court noted that the financial picture set forth in this case does not paint an encouraging picture for operation of a business in this case. Dckt. 175. The court noted that if a plan is not able to be put together to provide for effective marketing and sale of real property based on actual values, then this case is likely to be dismissed. *Id.*

In reviewing the docket, the court notes that neither a new plan nor any proposed motions to sell real property have been introduced since the March 29, 2018 hearing. It appears that Debtor in Possession is not able or willing to present a confirmable plan to the court.

This bankruptcy case was commenced eleven months ago on May 23, 2017. The last Monthly Operating Reports were filed on March 22, 2018, for November and December 2017. They reflect little farming activity over the past year. Debtor in Possession shows having received \$17,850 in rents, \$15,444 in wages, and \$5,674 in commission income through December 2017 (first seven months of the case). For Disbursements, Debtor in Possession shows there being \$21,324 in "Draws and Distributions Paid to Owners." Dckt. 164 at 5.

Debtor in Possession has been provided more than reasonable time to prosecute this case in good faith. Debtor in Possession has taken several attempts at a plan, failing to obtain confirmation. As this court has addressed previously, Debtor in Possession first chose to take a “financially impractical” (charitably stated) approach of having Debtor in Possession’s elderly parents “lease” the farm property. Then, when Debtor in Possession “decided” to proceed with liquidating some of the properties, Carlos Estacio, III, as debtor in possession, did not engage the services of a real estate professional to market and facilitate the sale of the property to achieve the fair market value for the estate, but instead took it upon himself to “list” and “market” the property.

There has now been unreasonable delay caused in this Chapter 12 case. Debtor in Possession has not been able to confirm a plan. Debtor in Possession has not presented facially colorable attempts at moving forward with a confirmable plan. Debtor in Possession, as the fiduciary of the bankruptcy estate, has not managed the property of the estate in a manner consistent with that position. Rather, the management of this case appears to have been done for Debtor's personal benefit in delaying any action to address creditors' claims.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Wells Fargo Bank (“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 to Dismiss is granted, and the case is dismissed.

9. [17-90432](#)-E-12 CARLOS/BERNADETTE ESTACIO CONTINUED STATUS CONFERENCE RE:  
Peter Fear VOLUNTARY PETITION  
5-23-17 [1]

**The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxx.**

**APRIL 26, 2018 STATUS CONFERENCE**

At the continued Status Conference, ~~XXXXXXXXXXXXXXXXXXXX~~.



**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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 22, 2018. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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.

<p><b>The Motion to Compel Abandonment is granted.</b></p>
--

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 Jeffery Solari ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property commonly known as the sole proprietorship, Hawg Dawg, and all associated business assets:

- A. SS Table \$20.00;
- B. Meat Grinder \$25.00;
- C. Slicer \$27.50;
- D. 5 SS Racks \$20.00;
- E. 1 3 Tub SS Sink \$10.00;

- F. 2 Everest Freezers \$200.00;
- G. 1 Three Door Refrigerator \$100.00;
- H. 1 Three Door Deli Box \$100.00;
- I. 2 Two Door Deli Box \$160.00;
- J. Char Broiler \$80.00;
- K. Deep Fryer \$60.00;
- L. Stove with Oven \$200.00;
- M. Vegetable Sink \$20.00;
- N. 1 Three Door Key Box \$300.00;
- O. Bottle Cooler \$170.00;
- P. Two Hand Sticks \$15.00;
- Q. Ice Machine \$180.00;
- R. Twenty-One Bar Stools \$105.00;
- S. Five Tables \$50.00;
- T. 2 Two Top Tables \$10.00;
- U. Thirty-One Dining Chairs \$155.00;
- V. Small Wares \$200.00;
- W. Hand Equipment \$200.00;
- X. Swamp Cooler \$150.00;
- Y. Office Equipment \$100.00;
- Z. POS System \$600.00;
- AA. Inventory on Hand (Food and Paper Supplies) \$2,500.00; and
- BB. Beer and Wine License \$500.00.

("Property"). The Declaration of Jeffery Solari has been filed in support of the Motion and values the Property at \$6,257.50.

## **CHAPTER 7 TRUSTEE'S RESPONSE**

The Chapter 7 Trustee filed a Response to the Motion on April 7, 2018. Dckt. 44. The Chapter 7 Trustee does not oppose the Motion to the extent Debtor seeks an order compelling abandonment of Hawg Dawg and Hawg Dawg's assets. However, to the extent that Debtor seeks an order compelling abandonment of "all assets in his bankruptcy case," the Chapter 7 Trustee opposes Debtor's Motion as the language is too broad and fails to identify specific assets sought to be abandoned.

## **RULING**

On April 11, 2018, Debtor filed an Amended Motion that removes the opposed language of "all assets in the bankruptcy case." Dckt. 47.

The court finds that Debtor properly claimed exemptions on the sole proprietorship, Hawg Dawg, and all associated assets that are listed on Debtor's Schedule B. 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 Jeffery Solari ("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 to Compel Abandonment is granted, and the Property identified as the sole proprietorship, Hawg Dawg, and the following:

- A. SS Table \$20.00;
- B. Meat Grinder \$25.00;
- C. Slicer \$27.50;
- D. 5 SS Racks \$20.00;
- E. 1 3 Tub SS Sink \$10.00;
- F. 2 Everest Freezers \$200.00;

- G. 1 Three Door Refrigerator \$100.00;
- H. 1 Three Door Deli Box \$100.00;
- I. 2 Two Door Deli Box \$160.00;
- J. Char Broiler \$80.00;
- K. Deep Fryer \$60.00;
- L. Stove with Oven \$200.00;
- M. Vegetable Sink \$20.00;
- N. 1 Three Door Key Box \$300.00;
- O. Bottle Cooler \$170.00;
- P. Two Hand Sticks \$15.00;
- Q. Ice Machine \$180.00;
- R. Twenty-One Bar Stools \$105.00;
- S. Five Tables \$50.00;
- T. 2 Two Top Tables \$10.00;
- U. Thirty-One Dining Chairs \$155.00;
- V. Small Wares \$200.00;
- W. Hand Equipment \$200.00;
- X. Swamp Cooler \$150.00;
- Y. Office Equipment \$100.00;
- Z. POS System \$600.00;
- AA. Inventory on Hand (Food and Paper Supplies) \$2,500.00; and
- BB. Beer and Wine License \$500.00.

by Debtor is abandoned by Gary Farrar (“the Chapter 7 Trustee”) to Jeffery Solari by this order, with no further act of the Chapter 7 Trustee required.

11. [12-91791](#)-E-7      **MICHAEL/DANIELLE DUBURG**      **MOTION TO AVOID LIEN OF CAPITAL**  
**DEF-1**      **David Foyil**      **ONE BANK, (USA) N.A.**  
3-22-18 [[23](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 22, 2018. By the court’s calculation, 35 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). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Avoid Judicial Lien is denied without prejudice.</b></p>
--

This Motion requests an order avoiding the judicial lien of Capital One Bank, (USA) N.A. (“Creditor”) against property of Michael Duburg and Danielle Duburg (“Debtor”) commonly known as 2976 McClintock Court, Valley Springs, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,735.76. An abstract of judgment was recorded with Calaveras County on June 29, 2011, that encumbers the Property.

The Motion asserts that when this case was filed the Property had a value of \$156,700, based on Debtor’s opinion. That is consistent with Schedule A. Dckt. 1. The Motion then alleges that the Property is encumbered by two senior liens to Chase Bank—one to secure a claim in the amount of \$144,228.85 and a second to secure a claim to Chase in the amount of \$6,518.29. Motion ¶ 5, Dckt. 23. In Paragraph 5 of his declaration, Debtor states that the Property is encumbered by those two senior liens. Dckt. 26. That is consistent with the information on Schedule D. Dckt. 1 at 13.

The unavoidable consensual liens that total \$150,747.14 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 § 703.140(b)(1) in the amount of \$180.39 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is sufficient equity to support the judicial lien.

FMV.....	\$156,700
1st DOT Obligation.....	(\$144,228.85)
2nd DOT Obligation.....	<u>(\$ 6,518.29)</u>

Equity after Senior Lien Obligations \$5,952.86

Debtor has claimed an exemption of only \$180.39 pursuant to California Code of Civil Procedure § 703.140(b)(1). That is one of the bankruptcy-only opt out exemptions provided under California law. It is made in conjunction with California Code of Civil Procedure § 703.140(b)(5), the "wildcard" exemption of \$1,150 plus any unused amount of the \$17,425 homestead exemption. (Those are the exemption dollar amounts in effect when this case was filed in 2012.)

On Schedule C, Debtor has claimed the following wildcard exemptions pursuant to California Code of Civil Procedure § 703.140(b)(5):

Cash.....	\$ 114.00
Acct #0180.....	\$ 519.56
Account # 0233.....	\$ 126.61
Camera.....	\$ 50.00
2001 Chevy Tahoe.....	\$1,235.00
2002 Chevy Astro Van.....	\$4,715.00
2002 Suzuki Motorcycle.....	\$ 500.00

Schedule C, Dckt. 1 at 11. These wildcard exemptions total \$7,260.17, which leaves in excess of \$11,200 of unused homestead exemption under California Code of Civil Procedure § 703.140(b)(1).

However, as stated above, on Schedule A Debtor lists the Current Value of the Property at \$156,700 and the secured debt as (\$156,519.61) (including the lien now sought to be avoided), and claimed as exempt only the \$180.39 amount in excess of all the secured debt.

As claimed, the \$180.39 exemption is not impaired as it can go to Debtor, and the \$5,735.76 judgment lien obligation can be paid in full, with \$36.71 of value left over.

The avoiding of judgment liens to the extent that an exemption is impaired is pursuant to 11 U.S.C. § 522(f), which provides:

(f) (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the

extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); . . . .

The exemption, **as claimed**, is not impaired.

In addressing any amended exemptions to be claimed in this case, Debtor’s counsel reported at the hearing **XXXXXXXXXXXXXXXXXXXXX**.

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Michael Duburg and Danielle Duburg (“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 **XXXXXXXXXXXXXXXXXX**.

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

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

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Local Rule 9014-1(f)(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 April 6, 2018. By the court's calculation, 20 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. At the hearing, -----  
-----.

<p><b>The Motion to Compel Abandonment is granted.</b></p>
--

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 Bevin Machado ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property commonly known as 5643 Americh Court, Riverbank, California ("Property"). The Property is encumbered by the lien of Sun West Mortgage Company, securing a claim of \$288,000.00. Debtor's Declaration has been filed in support of the Motion and values the Property at \$382,000.00.

Schedule A/B further discusses the property valuation and states that the \$382,000.00 amount is based on a comparative property report and includes projected costs of sale. Dckt. 1. On Schedule C,



Debtor has claimed an exemption of \$100,000.00 in the Property pursuant to California Code of Civil Procedure § 704.730. *Id.*

At this point, no party has objected to Debtor's claimed exemptions, no creditor has filed a proof of claim in this case, and no party has opposed 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 Bevin Machado ("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 to Compel Abandonment is granted, and the Property identified as 5643 Americh Court, Riverbank, California and listed on Schedule A by Debtor is abandoned by Gary Farrar ("the Chapter 7 Trustee") to Bevin Machado by this order, with no further act of the Chapter 7 Trustee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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, -----.

<b>The Motion to Withdraw as Attorney is granted.</b>
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Dominique Sopko and the firm of Diemer & Wei, LLP, ("Movant"), counsel of record for Daljeet Singh Mann ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to and California Rule of Professional Conduct 3-700(C)(1)(d).
- B. It has become unreasonably difficult for Counsel to represent Debtor due to a breakdown in the attorney-client relationship and Debtor's attempt to pursue a course of action against Movant's advice.
- C. Movant has taken steps to minimize any prejudice to Debtor, and although Debtor has not requested his files from Movant, Movant shall provide a copy upon request.

## APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

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FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

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It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 3-700(C)(1)(d).

## **DISCUSSION**

As a ground for the Motion to Withdraw as Attorney, Movant states that the attorney-client relationship with Debtor has broken down. Movant states in her declaration:

Without discussing the details of such differences out of concern for attorney-client confidences, it is clear and unambiguous that the attorney-client relationship has broken down. From my communications with Debtor, it is clear that Debtor wishes to take the case in a direction contrary to the Firm's advice, and the Firm should withdraw and allow Debtor to proceed as he wishes.

Dckt. 64.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice.

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as the attempt to take action contrary to Movant's advice, is hindering Movant's ability to carry out her employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Dominique Sopko and the firm of Diemer & Wei, LLP, ("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 to Withdraw as Attorney is granted, and Dominique Sopko and the firm of Diemer & Wei, LLP, is permitted to withdraw as counsel for Daljeet Mann ("Debtor").