

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

May 2, 2019 at 10:30 a.m.

1. <u>19-90122-E-11</u> <u>FRB-1</u>	MIKE TAMANA FREIGHT LINES, LLC Matt Olson	MOTION FOR APPROVAL OF ADEQUATE PROTECTION STIPULATION WITH WELLS FARGO EQUIPMENT FINANCE, INC. 4-18-19 <u>[218]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with Wells Fargo Equipment Finance, Inc. 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>The Motion for Approval of Adequate Protection Stipulation with Wells Fargo Equipment Finance, Inc. is granted.</p>

May 2, 2019 at 10:30 a.m.

- Page 1 of 67-

The debtor in possession, Mike Tamana Freight Lines, LLC (“ ΔIP”) filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor Wells Fargo Equipment Finance, Inc. (“Creditor”), holding a claim secured by several of ΔIP’s vehicles (listed fully in the Motion (Dckt. 218)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 220. The Tamana Declaration states Creditor’s collateral here is essential to the operation of ΔIP’s business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$59,058.45. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 221) proposes the following terms:

1. Commencing on March 15, 2019, ΔIP shall pay adequate protection payments in the amount of \$59,058.45 per month to the secured creditor to adequately protect the Creditor’s interest in the collateral.
2. ΔIP grants to Creditor a replacement lien on all ΔIP’s postpetition collateral.
3. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may file a “Declaration of Default” upon which the court may grant relief from stay without further hearing. After an order for relief is entered by the court, ΔIP shall voluntarily surrender the collateral.
4. The court order approving the Stipulation shall be effective between ΔIP and Creditor notwithstanding appointment of a Chapter 11 Trustee or conversion to Chapter 7.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC (“ ΔIP”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the Adequate Protection Stipulation (Dckt. 221) is approved..

2. [19-90122-E-11](#)
[MF-12](#)

MIKE TAMANA FREIGHT
LINES, LLC
Matt Olson

MOTION TO ASSUME LEASE OR
EXECUTORY CONTRACT
4-4-19 [\[157\]](#)

Final Ruling: No appearance at the May 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, 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 4, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Assume Executory Contract is granted.
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Mike Tamana Freight Lines, LLC, as the Debtor in Possession ("ΔIP"), filed this Motion seeking approval of a Stipulation for the cure of arrearage and assumption of executory contracts pursuant to 11 U.S.C. §§ 105 and 365, and Federal Rule of Bankruptcy Procedure 6006.

ΔIP seeks to assume a Diesel Fuel Discount Master Agreement (the "Agreement") with creditor Love's Travel Stops & Country Stores, Inc. ("Creditor"). The Agreement was filed along with the Motion as Exhibit A. Dckt. 160.

The Agreement is a supply contract for diesel fuel and tires. The essential terms of the Agreement (the full terms set out in Exhibit A, Dckt. 160) are as follows:

1. The ΔIP shall purchase at least 230,000 gallons of diesel fuel per month.
2. Creditor shall sell fuel and tires to the ΔIP at a discounted rate.

3. The Agreement term is 90 days following account setup and discount activation at Love's and the applicable billing card; thereafter term continues as month-to-month.

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 159. The Tamana Declaration provides testimony that the Agreement obtains a substantial discount from prices offered by other vendors on fuel and tires, which are essential to the continued operation of the ΔIP's business. *Id.*, ¶ 4.

The Tamana Declaration further states the prepetition amount owed to Creditor is \$175,000.00, that ΔIP continues to purchase fuel and tires at a cost of \$80,000-\$100,000.00 per week, and that ΔIP has sufficient operating income to cure arrears over a period of thirteen weeks. Dckt. 159.

Cure of Arrearages & Stipulation

As discussed above, Creditor is owed a prepetition amount of \$175,000.00. *Id.*

ΔIP filed a Stipulation which provides adequate assurance of performance postpetition and assumption of the Agreement. Dckt. 161. The terms of the Stipulation are summarized by the court (with the full terms set out in Dckt. 161) as follows:

1. ΔIP shall file a motion to assume the Agreement, and after approval of that motion shall commence cure payments which shall be made in 13 weekly installments added to ΔIP's standard weekly invoice.
2. Creditor shall continue to sell fuel and tires on a weekly billing basis, with amounts owed paid within 1 day of the weekly billing.
3. Creditor shall pay the amounts owed from the discount and incentive rebate under the Agreement to ΔIP monthly, subject to those amounts being deducted from cure amounts due under the Stipulation. The first payment postpetition of the discount and any incentive rebate shall be paid by Creditor on the fifteenth day after entry of an order approving assumption of the Agreement.
4. Creditor shall not object to a plan of reorganization which incorporates the Stipulation terms provided that (1) no other terms of the plan impair, in Creditor's judgement, ΔIP's ability to perform under the plan, and (2) Creditor has been properly solicited. Creditor is not required to vote in favor of any plan.

APPLICABLE LAW

A debtor in possession, subject to the court's approval, may assume or reject any executory contract or unexpired lease. 11 U.S.C. §§ 365, 1107.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate’s prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Additionally, where the executory contracts are in default, the debtor in possession must (1) cure or provide adequate assurance of prompt cure for the default(s), (2) compensate or provide adequate assurance of prompt compensation for pecuniary loss resulting from default, and (3) provide adequate assurance of future performance under such contract or lease. 11 U.S.C. § 365(b).

DISCUSSION

Here, ΔIP has demonstrated sound business judgment reasons for assuming the Agreement, including the continuation and preservation of ΔIP’s business which is at the heart of this reorganization. The Agreement is a supply contract providing ΔIP a widely accessible source of diesel fuel and tires at a discounted rate.

The Stipulation provides adequate assurance of prompt cure of arrearages, which is required to assume the Agreement. 11 U.S.C. § 365(b)(1)(A). ΔIP has provided testimony that ΔIP’s operating income is adequate to cure arrears over a period of thirteen weeks in addition to making the weekly payments for the fuel and tires. Dckt. 159.

Based on the foregoing discussion, the Motion is granted, and ΔIP is authorized to assume the Agreement on the terms of the Stipulation.

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 Assume Executory Contracts filed by Mike Tamana Freight Lines, LLC (“ΔIP ”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Assume Executory Contract is granted, and ΔIP is authorized to assume the Diesel Fuel Discount Master Agreement filed as Exhibit A (Dckt. 160) and make cure payments on the terms of the Stipulation. Dckt. 161.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with Banc of America Leasing & Capital, LLC. 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, -----.

The Motion for Approval of Adequate Protection Stipulation with America Leasing & Capital, LLC is granted.

The debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor Banc of America Leasing & Capital, LLC ("Creditor"), holding a claim secured by several of ΔIP's trailers (listed fully in the Motion (Dckt. 198)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 200. The Tamana Declaration states Creditor's collateral here is essential to the operation of ΔIP's business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$17,060.66. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 201) proposes the following terms:

1. Commencing on February 2019, ΔIP shall pay adequate protection payments in the amount of \$17,060.66 per month to the secured creditor to adequately protect the Creditor's interest in the collateral.
2. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may apply for ex parte relief from automatic stay to enforce its rights.

DISCUSSION

The Stipulation here provides for \$17,060.66 per month to be paid by ΔIP each month, the same amount it was paying prepetition to Creditor on its claim, as an adequate protection payment. The Stipulation will allow ΔIP to retain the collateral described as a series of trailers (Motion, Dckt. 198), which are essential to ΔIP's continued business operations.

The court finds that the Stipulation terms are reasonable, and in the best interest of the creditors and Estate. Therefore, the Motion is granted and the Stipulation is approved.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Adequate Protection Stipulation is granted, and ΔIP shall make adequate protection payments to creditor Banc of America Leasing & Capital, LLC on the terms set forth in the Stipulation. Dckt. 201.

4. [19-90122-E-11](#)
[MF-16](#)

MIKE TAMANA FREIGHT
LINES, LLC
Matt Olson

MOTION FOR APPROVAL OF
ADEQUATE PROTECTION
STIPULATION WITH FIRST MIDWEST
EQUIPMENT FINANCE
4-18-19 [\[202\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with First Midwest Equipment Finance Co.. 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, -----.

The Motion for Approval of Adequate Protection Stipulation with First Midwest Equipment Finance Co. is granted.

The debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor First Midwest Equipment Finance Co. ("Creditor"), holding a claim secured by several of ΔIP's trailers (listed fully in the Motion (Dckt. 202)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 204. The Tamana Declaration states Creditor's collateral here is essential to the operation of ΔIP's business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$6,128.36. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 205) proposes the following terms:

1. Commencing on February 2019, ΔIP shall pay adequate protection payments in the amount of \$6,128.36 per month to the secured creditor to adequately protect the Creditor's interest in the collateral.
2. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may apply for ex parte relief from automatic stay to enforce its rights.

DISCUSSION

The Stipulation here provides for \$6,128.36 per month to be paid by ΔIP each month, the same amount it was paying prepetition to Creditor on its claim, as an adequate protection payment. The Stipulation will allow ΔIP to retain the collateral described as a series of trailers (Motion, Dckt. 202), which are essential to ΔIP's continued business operations.

The court finds that the Stipulation terms are reasonable, and in the best interest of the creditors and Estate. Therefore, the Motion is granted and the Stipulation is approved.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Adequate Protection Stipulation is granted, and ΔIP shall make adequate protection payments to creditor First Midwest Equipment Finance Co. on the terms set forth in the Stipulation. Dckt. 205.

5. [19-90122-E-11](#)
[MF-17](#)

MIKE TAMANA FREIGHT
LINES, LLC
Matt Olson

MOTION FOR APPROVAL OF
ADEQUATE PROTECTION
STIPULATION WITH PEOPLE'S
CAPITAL AND LEASING CORP.
4-18-19 [\[206\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with People's Capital and Leasing Corp. 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, -----.

The Motion for Approval of Adequate Protection Stipulation with People's Capital and Leasing Corp. is granted.

The debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor People's Capital and Leasing Corp. ("Creditor"), holding a claim secured by several of ΔIP's trailers (listed fully in the Motion (Dckt. 206)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 208. The Tamana Declaration states Creditor's collateral here is essential to the operation of ΔIP's business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$40,783.82. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 209) proposes the following terms:

1. ΔIP shall pay adequate protection payments in the amount of \$6,037.88 per month on or before the 14th day of each month, \$6,083.22 per month on or before the 16th day of each month, and \$28,662.72 per month on or before the 28th day of each month, commencing on March 1, 2019.
2. ΔIP may make payments by check. In the event ΔIP's check bounces or ΔIP makes untimely payment, ΔIP shall wire the funds within 1 business day and make all subsequent payments by wire transfer.
3. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may file a "Declaration of Default" upon which the court may grant relief from stay without further hearing. After an order for relief is entered by the court, ΔIP shall voluntarily surrender the collateral.
4. Events of default include entry of an order converting this case to one under another Chapter; termination, expiration, lapse, or reduction of insurance coverage without Creditor's written waiver; failure to make adequate protection payments when due; and failure to comply with the Stipulation terms without Creditor's written waiver.

DISCUSSION

The Stipulation here provides for a total monthly payment of \$40,783.82 to be paid by ΔIP, the same amount it was paying prepetition to Creditor on its claim, as an adequate protection payment. The Stipulation will allow ΔIP to retain the collateral described as a series of trailers (Motion, Dckt. 206), which are essential to ΔIP's continued business operations.

The court finds that the Stipulation terms are reasonable, and in the best interest of the creditors and Estate. Therefore, the Motion is granted and the Stipulation is approved.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Adequate Protection Stipulation is granted, and ΔIP shall make adequate protection payments to creditor

People's Capital and Leasing Corp. on the terms set forth in the Stipulation. Dckt. 209.

6. [19-90122-E-11](#) **MIKE TAMANA FREIGHT** **MOTION FOR APPROVAL OF**
[MF-18](#) **LINES, LLC** **ADEQUATE PROTECTION**
 Matt Olson **STIPULATION WITH SIGNATURE**
 FINANCIAL LLC
 4-18-19 [210]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with Signature Financial LLC 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, -----.

The Motion for Approval of Adequate Protection Stipulation with Signature Financial LLC is **granted.**

The debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor Signature Financial LLC ("Creditor"), holding a claim secured by several of ΔIP's trailers (listed fully in the Motion (Dckt. 210).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 212. The Tamana Declaration states Creditor's collateral here is essential to the operation

of ΔIP's business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$14,218.81. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 213) proposes the following terms:

1. Commencing on March 8, 2019, ΔIP shall pay adequate protection payments in the amount of \$14,218.81 per month to the secured creditor to adequately protect the Creditor's interest in the collateral until further order of the court.
2. ΔIP may cure a default within three days of the payment due date. If ΔIP fails to cure default, the Creditor may file a "Affidavit of Default" upon which the court after five days may grant relief from stay without further hearing, unless ΔIP files an objection within the five day period. After an order for relief is entered by the court, ΔIP shall voluntarily surrender the collateral.
3. Any arrearages owed to Creditor shall be address in ΔIP's Plan of Reorganization. Creditor agrees not to object to any plan of reorganization which incorporate's the Stipulation terms and cures arrearages in a reasonable tie period, provided that Creditor is properly solicited and not plan term impairs Creditor's judgment or ΔIP's ability to perform under the plan.

With respect to this third provision, the Parties have carefully drafted it to be an agreement by the Creditor not to object to confirmation if the Debtor in Possession provides the specified treatment, but retains the ability to object if other terms are proposed. As the experienced bankruptcy practitioners representing the respective Parties know, the court cannot approve confirmation terms in ad hoc motions for other relief and the debtor in possession, as the fiduciary (in the place of a Chapter 11 trustee) cannot give away confirmation rights.

DISCUSSION

The Stipulation here provides for a total monthly payment of \$14,218.81 to be paid by ΔIP, the same amount it was paying prepetition to Creditor on its claim, as an adequate protection payment. The Stipulation will allow ΔIP to retain the collateral described as a series of trailers (Motion, Dckt. 210), which are essential to ΔIP's continued business operations.

The court finds that the Stipulation terms are reasonable, and in the best interest of the creditors and Estate. Therefore, the Motion is granted and the Stipulation is approved.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC (“ΔIP”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Adequate Protection Stipulation is granted, and ΔIP shall make adequate protection payments to creditor Signature Financial LLC on the terms set forth in the Stipulation. Dckt. 213.

7. <u>19-90122-E-11</u> <u>MF-19</u>	MIKE TAMANA FREIGHT LINES, LLC Matt Olson	MOTION FOR APPROVAL OF ADEQUATE PROTECTION STIPULATION WITH TCF EQUIPMENT FINANCE 4-18-19 [214]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Approval of Adequate Protection Stipulation with TCF Equipment Finance 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>The Motion for Approval of Adequate Protection Stipulation with TCF Equipment Finance is granted.</p>

The debtor in possession, Mike Tamana Freight Lines, LLC (“ΔIP”) filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor TCF National Bank (“Creditor”), holding a claim secured by several of ΔIP’s trailers (listed fully in the Motion (Dckt. 214)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 216. The Tamana Declaration states Creditor’s collateral here is essential to the operation of ΔIP’s business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$6,128.36. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 217) proposes the following terms:

1. Commencing on February 2019, ΔIP shall pay adequate protection payments in the amount of \$16,059.64 per month to the secured creditor to adequately protect the Creditor’s interest in the collateral.
2. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may apply for ex parte relief from automatic stay to enforce its rights.

DISCUSSION

The Stipulation here provides for \$16,059.64 per month to be paid by ΔIP each month, the same amount it was paying prepetition to Creditor on its claim, as an adequate protection payment. The Stipulation will allow ΔIP to retain the collateral described as a series of trailers (Motion, Dckt. 214), which are essential to ΔIP’s continued business operations.

The court finds that the Stipulation terms are reasonable, and in the best interest of the creditors and Estate. Therefore, the Motion is granted and the Stipulation is approved.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC (“ΔIP”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Adequate Protection Stipulation is granted, and ΔIP shall make adequate protection payments to creditor TCF National Bank on the terms set forth in the Stipulation. Dckt. 217.

8. [19-90122-E-11](#)
[MF-20](#)

MIKE TAMANA FREIGHT
LINES, LLC
Matt Olson

MOTION FOR APPROVAL OF
ADEQUATE PROTECTION
STIPULATION WITH HITACHI CAPITAL
AMERICA CORP.
4-18-19 [\[222\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with Hitachi Capital America Corp. 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, -----.

The Motion for Approval of Adequate Protection Stipulation with Hitachi Capital America Corp. is granted.

The debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor Hitachi Capital America Corp. ("Creditor"), holding a claim secured by several of ΔIP's trailers (listed fully in the Motion (Dckt. 222)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 224. The Tamana Declaration states Creditor's collateral here is essential to the operation of ΔIP's business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of \$6,128.36. *Id.*, ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 225) proposes the following terms:

1. Commencing on February 2019, ΔIP shall pay adequate protection payments in the amount of \$3,817.83 per month to the secured creditor to adequately protect the Creditor's interest in the collateral.
2. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may apply for ex parte relief from automatic stay to enforce its rights.

DISCUSSION

The Stipulation here provides for \$3,817.83 per month to be paid by ΔIP each month, the same amount it was paying prepetition to Creditor on its claim, as an adequate protection payment. The Stipulation will allow ΔIP to retain the collateral described as a series of trailers (Motion, Dckt. 222), which are essential to ΔIP's continued business operations.

The court finds that the Stipulation terms are reasonable, and in the best interest of the creditors and Estate. Therefore, the Motion is granted and the Stipulation is approved.

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

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

The Motion For Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Adequate Protection Stipulation is granted, and ΔIP shall make adequate protection payments to creditor Hitachi Capital America Corp. on the terms set forth in the Stipulation. Dckt. 225.

9. [19-90122-E-11](#)
[MF-7](#)

MIKE TAMANA FREIGHT
LINES, LLC

CONTINUED MOTION FOR
CONTEMPT AND/OR MOTION FOR
SANCTIONS FOR VIOLATION OF THE
AUTOMATIC STAY
3-1-19 [66]

**NO TELEPHONIC APPEARANCES PERMITTED
FOR BRENDA OCHOA AND PARDEEP SINGH OR THEIR COUNSEL**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

The Motion for Contempt And/Or Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Contempt And/Or Sanctions for Violation of the Automatic Stay is granted and HSD Trucking, Inc. is ordered to pay sanctions of \$14,973.10 (\$3,277.00 in attorney's fees, \$46.10 in costs, and \$11,650.00 in punitive damages.)

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

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

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

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

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

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

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

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

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

Motion, Dckt. 66.

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

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

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

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

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

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

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

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

Id. ¶ 8.

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

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

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

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

MARCH 5, 2019 HEARING & ORDER CONTINUING HEARING

At the March 5, 2019 hearing on the Motion, HSD did not make an appearance. ΔIP reported that no change in circumstances occurred. Civil Minutes, Dckt. 76.

The court issued an Order continuing the hearing to March 14, 2019. Order, Dckt. 74. The court further Ordered that HSD shall file and serve responsive pleadings on or before March 13, 2019, and that Brenda Ochoa and Pardeep Singh, and each of them, shall appear in person at the March 14, 2019 hearing - **NO TELEPHONIC APPEARANCES PERMITTED.**

Additionally, the court noted for HSD that a corporation cannot appear in pro se and must be represented by counsel.

MARCH 14, 2019 HEARING & ORDER CONTINUING HEARING

At the March 14, 2019 hearing Barbara Ochoa appeared in compliance with the court’s order, but Pardeep Singh and HSD Trucking, Inc. through an attorney failed to appear. Civil Minutes, Dckt. 105. Counsel for the ΔIP and Ms. Ochoa reported that the merchandise at issue had been delivered by HSD Trucking, Inc. and that the ΔIP had paid for such services.

Ms. Ochoa stated that after speaking with her supervisor, and the supervisor's conversation with principles of the Debtor in Possession, the supervisor and Mr. Singh concluded that they did not need to comply with the court's order to appear at the hearing. The court disabused Ms. Ochoa, who said she would communicate such to her supervisor and Mr. Singh, that parties could elect not to comply with orders of the court.

The court issued an Order on March 2, 2019 (1) continuing the hearing; (2) requiring supplemental pleadings be filed by ΔIP and Barbara Ochoa/Pardeep Singh/HSD Trucking, Inc.; (3) requiring the appearance (no telephonic appearance permitted) of Barbara Ochoa, Pardeep Singh, and HSD Trucking, Inc. (represented by counsel), and each of them at the continued hearing; and (4) setting a \$2,500.00 corrective sanction for failure to appear as ordered. Order, Dckt. 113.

ΔIP'S SUPPLEMENTAL PLEADINGS

On March 29, 2019, ΔIP filed a Supplemental Statement in support of the Motion. Dckt. 138. The statement asserts that the perishable food that HSD Trucking held hostage was delivered before it expired, preventing direct harm to the Debtor in Possession or its customer.

However, ΔIP asserts further it incurred \$3,277 in attorney's fees and \$46.10 in costs as a result of having to bring this Motion after HSD Trucking Inc.'s knowing and wilful violation of the stay. ΔIP requests those costs, and a punitive sanction of \$6,600.00 (twice the underlying damages), for a total award of \$9,923.10.

In support of the Supplemental Statement ΔIP filed the Declarations of Matthew Olson (counsel for ΔIP) and Amanjot Tamana (the Responsible Individual for ΔIP). Dckts, 139, 140.

The Tamana Declaration provides testimony that the goods held by HSD Trucking were delivered March 8, 2019, and while 4 hours of ΔIP employee time was expended the only direct loss was in the form of attorney's fees and costs in bringing this Motion. Dckt. 139.

The Olson Declaration provides testimony that ΔIP's counsel expended 11.3 hours of time in addressing the violation of the automatic stay, totaling \$3,277.00 in attorney's fees, as well as \$46.10 in costs for Federal Express and telephonic court appearances. Declaration ¶ 5, Dckt. 140.

The Olson Declaration further includes a table demonstrating the itemized billing, and reflecting an attorney fee rate of \$290 per hour.

APPLICABLE LAW

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

Stay As to Debtor	Stay as to the Bankruptcy Estate, Trustee, and Debtor in Possession
--------------------------	--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding <u>against the debtor</u> that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;	
(2) the enforcement, <u>against the debtor</u> or against property of the estate, of a judgment obtained before the commencement of the case under this title;	(2) the enforcement, against the debtor or against property of the estate , of a judgment obtained before the commencement of the case under this title;
	(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
	(4) any act to create, perfect, or enforce any lien against property of the estate;
(5) <u>any act</u> to create, perfect, or enforce against property of the debtor any lien to the extent that such <u>lien secures a claim that arose before the commencement of the case</u> under this title;	
(6) any act to collect , assess, or recover a claim against the debtor that <u>arose before the commencement of the case under this title</u>	
(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title <u>against any claim against the debtor;</u>	

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

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

[5] Acts to Obtain Possession of Property of the Estate or Property from the Estate;
§ 362(a)(3)

Section 362(a)(3) stays all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise

control over property of the estate. The trustee or debtor in possession takes control of all property of the estate in order to maintain any going concern value and to assure an equitable distribution of the property among creditors. **This requires that no entity seek to interfere with these tasks by taking possession of or exercising control over property of the estate. It also requires that no entity grab non-estate property from the estate without the court supervision that comes from a stay relief proceeding.**

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

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

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

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

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

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

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

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

related to an “action” or a “proceeding.” **Thus, any act taken to collect, assess or recover a prepetition claim against the debtor, whether the act is taken against the estate or against the debtor, is stayed.**

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362.03.

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

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

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

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

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

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

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

“The threshold standard for imposing a civil contempt sanction in the context of an automatic stay violation therefore dovetails with the threshold standard for awarding damages under § 362(h) [now 11 U.S.C. § 362(k)]. *Pace*, 67 F.3d at 191

(incorporating the willfulness standard of § 362(h) as explicated by *Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992)). Under both statutes, the threshold question regarding the propriety of an award turns not on a finding of "bad faith" or subjective intent, but rather on a finding of "willfulness," where willfulness has a particularized meaning in this context:

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

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

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

"Civil penalties must either be compensatory or designed to coerce compliance. *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1137-38 (9th Cir. 2001). . .

. . .
The sanctions associated with civil contempt -- that is, compensatory damages, attorney fees, and the offending creditor's compliance -- adequately meet that goal, *id.* at 507, rendering serious punitive sanctions unnecessary. *See also Sosne v. Reinert Duree (In re Just Brakes Corp. Sys.)*, 108 F.3d 881, 885 (8th Cir. 1997) (holding that "the power to punish" through punitive sanctions extends beyond the remedial goals of § 105(a)); *Griffith v. Oles (In re Hipp)*, 895 F.2d 1503, 1515-16 (5th Cir. 1990) (same)."

Id. at 1193.

DISCUSSION

No Reply was filed by Brenda [named mistyped as "Barbara in the order) Ochoa/Pardeep Singh/HSD Trucking, Inc. (represented by counsel) as required by the March 22, 2019 Order. Dckt. 113.

The stay violation has now been remedied, with the delivery held hostage by HSD Trucking Inc. having been delivered and full payment for the delivery received by ΔIP. However, in connection with HSD Trucking, Inc.'s knowing and wilful violation of the stay ΔIP incurred \$3,277.00 in attorney's fees and \$46.10 in costs for Federal Express and telephonic court appearances. Declaration ¶ 5, Dckt. 140.

It is unfortunate that HDS Trucking, Inc. has chosen not to respond to this Motion with any supplemental pleadings. Given the clearly established law, HDS Trucking, Inc. and its attorneys necessarily

have to know that HSD Trucking, Inc. is responsible for damages arising from the violation of the automatic stay.

At the March 14, 2019 hearing, though HDS Trucking, Inc. failed to appear through counsel, Brenda Ochoa, appeared. The court had the opportunity to discuss with her the serious nature of such violation of the automatic stay, the need for HDS Trucking, Inc. to address the violations, and how HDS Trucking, Inc.'s failure to act has led to the damages being incurred by the bankruptcy estate. Further, that by acting reasonably to address these violations and damages, HDS Trucking, Inc. could likely reach an agreement that would minimize the sanctions which the court would order.

HDS Trucking, Inc.'s violation of the stay was intentional and not based on any good faith belief that the automatic stay did not apply. As shown in the correspondence thread filed as Exhibits B through D (Dckt. 69), ΔIP's counsel clearly and professionally notified HDS Trucking, Inc. of the stay violation, that sanctions would result from failure to address the violation, and made a demand to correct the violations. Letter, Exhibits D; Dckt. 69.

When contacted by the personal representative for the Debtor in Possession about not being able to pay pre-petition claims without authorization, Ms. Ochoa responded politely, but clearly, that HSD Trucking, Inc. was acting (in violation of the stay) in order to force payment on the pre-petition claim. Email, Exhibit C; *Id.* (It was in response to this email that counsel for Debtor in Possession then sent the letter, Exhibit D, clearly explaining the stay violation.)

The violation of the automatic stay, from and after the March 1, 2019 letter from counsel for the Debtor in Possession, by HSD Trucking, Inc. was willful, intentional, and without any just cause or excuse. HSD Trucking, Inc. did not have any good faith (or even bad faith or actual) belief that it was exempt from the automatic stay. Rather, HSD Trucking, Inc. intentionally plowed forward using the violation of the automatic stay to force an unlawful (as in not permitted under the Bankruptcy Code) payment, holding hostage the cargo that it was to deliver post-petition for the Debtor in Possession. ^{FN. 1}

FN. 1. Even under the analysis by the Ninth Circuit Court of Appeals in *Taggart v. Lorenzen*, 888 F.3d 438 (9th Cir. 2018), currently on appeal to the United States Supreme Court, 139 S.Ct. 782 (2019), HSD Trucking, Inc. did not have a good faith belief that the automatic stay did not apply to its conduct as of and after March 1, 2019, when it received the letter from counsel for the Debtor in Possession.

The threshold standard for imposing a civil contempt sanction in the context of an automatic stay violation therefore dovetails with the threshold standard for awarding damages under § 362(h) [now 11 U.S.C. § 362(k)]. *Pace*, 67 F.3d at 191 (incorporating the willfulness standard of § 362(h) as explicated by *Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992)). Under both statutes, the threshold question regarding the propriety of an award turns not on a finding of "bad faith" or subjective intent, but rather on a finding of "willfulness," where willfulness has a particularized meaning in this context:

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

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

ΔIP asserts it incurred \$3,277 in attorney’s fees and \$46.10 in costs as a result of having to bring this Motion after HSD Trucking Inc.’s knowing and wilful violation of the stay. ΔIP requests those costs, and a punitive sanction of \$6,600.00 (twice the underlying damages), for a total award of \$9,923.10.

The ΔIP has not sought an award of any damages to the business of the bankruptcy estate by the violation. Rather, it seeks to recover for the Bankruptcy Estate the reasonable attorney’s fees of \$3,277.00 and costs of \$46.10 that have been incurred in having to address out of pocket damages inflicted upon the Estate. These are reasonable fees, which the court notes does not include any amount for the May 1, 2019 hearing.

The court also notes that the Estate has done Ms. Ochoa a favor and has not sought sanctions from her for her personal role in violating the automatic stay.

The Debtor in Possession has also requested \$6,600.00 in punitive damages as it relates to the conduct of HSD Trucking, Inc. The rule in both the Ninth Circuit and California is that punitive damages must be proportional; they must be reasonably related to compensatory damages.^{FN. 2.} However, there is no fixed ratio or formula for determining the proper proportion between the two.^{FN.3} In determining the appropriate amount of punitive damages, the court usually considers the following factors: (1) the nature of the defendants' acts; (2) the amount of compensatory damages awarded; and (3) the wealth of the defendants.

FN. 4.

FN. 2. *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1162-63 (9th Cir. 1987)

FN.3. *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1024-25 (9th Cir. 1985).

FN. 4. *Bauer v. NE Neb. Fed. Credit Union (In re Bauer)*, No. EC-09-1281, 2010 Bankr. LEXIS 5096, (B.A.P. 9th Cir. Apr. 8, 2010).

In determining that the award of punitive damages is proper, the court first considers the purpose of the automatic stay. This, as stated by Congress, is a fundamental protection given the debtor and creditors. Experienced counsel know that violating the stay is not something to be trifled with or taken lightly. Even when a violation occurs, the creditor can purge the violation and avoid serious damages by correcting the violation.

Unfortunately, in this matter, HSD Trucking, Inc. appears to have a strategy/financial plan in which violation of the automatic stay is to be treated as a “cost of business,” possibly gambling (unwisely) that most attorneys will not assert such violations or seek the actual and punitive damage recovery.

In a 2004 decision, *State Farm Mutual Auto Insurance Company v. Campbell*, 538 U.S. 408 (2004), the Supreme Court discussed the Constitutional reasonableness requirement in determining the amount of punitive damages. While not setting a maximum ratio between punitive damages and compensatory damages, the Supreme Court notes that punitive damage awards which are single digit multiple of the compensatory damages are more likely to withstand constitutional scrutiny. The Court in *State Farm* cited to its earlier holding in *BMW of North America v. Gore* that a punitive damage award (which punitive damages awarded by the trial court in *Gore* was 500 times the compensatory damages) in excess of four times the compensatory damages might be close to the line of constitutional impropriety.

Here, the Δ IP has suggested only two times multiple for punitive damages. By the court's calculation such amount is not sufficient. Here, the gamble of HSD Trucking, Inc. is that the dollar amounts are modest enough that it can get away with stay violations. If caught and called to task, HSD Trucking, Inc. will not address its obligations, but leave the bankruptcy estate hanging, possibly believing that the modest four digit damages requested by the Debtor in Possession will just not be enforced.

Here, in light of the \$3,323.10 in damages, the appropriate amount of punitive damages is \$11,650.00 (approximately 3.5 times those damages). The court is convinced that anything less would not convince HSD Trucking, Inc. that gambling on stay violations is not worth the cost of the damages candle.

FN. 5

FN. 5. The phrase that "the game is not worth the candle" is a phrase meaning that the cost of the endeavor is not worth the possible benefit. Cambridge Advanced Learner's Dictionary & Thesaurus, Cambridge University Press.

The Motion is granted, with the court ordering HSD Trucking, Inc. to pay sanctions in the amount of \$14,973.10.

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

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

The Motion for Contempt And/Or Sanctions for Violation of the Automatic Stay by Mike Tamana Freight Lines, LLC, the Debtor in Possession, (" Δ IP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the Bankruptcy Estate in the Mike Tamana Freight Lines, LLC is awarded and HSD Trucking, Inc. is ordered to pay to the Bankruptcy Estate \$14,973.10 in sanctions for violation of the automatic stay. This obligation is immediately due and enforceable as a judgment issued by this court. Fed. R. Civ. P. 54; Fed. R. Bankr. P. 7054, 9014.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on April 17, 2019. By the court's calculation, 15 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. 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>The Motion to Avoid Judicial Lien is denied without prejudice.</p>
--

This Motion requests an order avoiding the judicial lien of Capital One Bank USA NA ("Creditor") against property of the debtors, Michael Lingg and Kyle Lingg ("Debtor"), commonly known as 6952 3rd Street, Riverbank, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$22,801.55. Exhibit A, Dckt. 34 An abstract of judgment was recorded with Stanislaus County on December 31, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$192,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$294,224.68 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1.

While there is no equity in the Property based on the consensual liens, Debtor has not claimed an exemption in the Property on Amended Schedule C. Dckt. 9. Therefore, there is no exemption to impair and the Motion is denied without prejudice.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the debtors, Michael Lingg and Kyle Lingg (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

11. [12-90645-E-7](#)
[MHK-3](#)

MICHAEL/BOBBI LINDER
Scott Mitchell

MOTION TO COMPEL TURNOVER
4-1-19 [46]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s, Debtor’s Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 1, 2019. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Compel Turnover is XXXXX.

Eric J. Nims, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover \$69,103.39 in net settlement funds of the Estate (“Settlement Funds” or “Property”).

On June 4, 2018, the court issued an Order approving compromise which authorized settlement fund trustees to distribute the anticipated amount of net settlement proceeds, \$75,339.38, to the Movant, subject to any exemption rights of the debtors, Michael Wayne Linder and Bobbi Dawn Linder (“Debtor”). Order, Dckt. 43.

Subsequently, the settlement fund trustee disbursed the entire Settlement Funds to Debtor, and not Movant. Declaration ¶ 5, Dckt. 48.

Movant concedes Debtor is entitled to \$41,549.00 of the Settlement Funds as exempt, but argues the entire amount should be turned over as property of the Estate.

No opposition has been filed to this Motion by Debtor or any other party in interest.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Michael Wayne Linder and Bobbi Dawn Linder (“Debtor”) to deliver the Settlement Funds to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

However, under 11 U.S.C. § 542(a) a debtor is not required to turnover property that is of inconsequential value or benefit to the estate.

Value to the Estate

Movant here concedes that Debtor is entitled to an exemption of \$41,549.00 in the Settlement Funds. For that portion of the funds, it would appear they are of inconsequential value or benefit to the estate, which would prevent their recover under 11 U.S.C. § 542.

The remaining Settlement Funds after deducting Debtor's exempt amount would be \$27,554.39. However, Movant has not made a request for only the partial funds.

At the hearing, xxxxxxxxxxxxxx.

Payment Made to Debtor

In the Motion reference is made to the settlement proceeds being paid from the Settlement Fund Trustee to the Debtor - not to the Trustee. The court's order approving expressly ordered "the remaining proceeds, in the anticipated amount of \$75,339.39, shall be paid to the Trustee by the Settlement Fund Trustees," Order, p. 2:5-7; Dckt. 43. While the Trustee makes reference to the Settlement Fund Trustee's error in paying the settlement proceeds to a party not authorized to receive them, the Trustee does not educate the court on what demands that have been made on the Settlement Fund Trustees for not having paid the person entitled to the monies and what action is being taken by the Settlement Fund Trustees to rectify their error.

Request for Attorney's Fees

In the prayer the Trustee requests that the order also reserves the "right of the Trustee" to seek an award of attorney's fees and costs by a separate motion. No legal basis is presented for the court to determine that the Trustee has a "right" to attorney's fees in connection with this Motion. If the Trustee does, Federal Rule of Civil Procedure 54(d) and Federal Rules of Bankruptcy Procedure 7054 and 9014 provide that such request may be made by post-judgment (an order being treated as a judgment under Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014).

The court does note that while drawn as a simple motion for turnover, the Trustee has not waived other possible claims, whether arising under contract or tort, which relate to the breach of the Settlement Agreement approved by this court or the wrongful exercise of dominion over the money that belongs to the bankruptcy estate.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2-5.

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 Compel Turnover of Property filed by Eric J. Nims, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Compel Turnover of Property is
XXXXX.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2019. By the court's calculation, 17 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, -----
-----.

The Motion to Compel Abandonment is granted.

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

The Motion filed by the debtors, Edwin Curtis Avara and Kellie Suzanne Avara ("Debtor"), requests the court to order Michael McGranahan ("the Chapter 7 Trustee") to abandon property commonly known as 733 Mann Court, Oakdale, California ("Property"). The Property is encumbered by the lien of, securing a claim of \$145,827. On Debtor's Schedule A, Debtor values the Property at \$259,000.00. Schedule A, Dckt. 1. On Schedule C, Debtor claims an exemption of \$175,000.00.

The court finds that the debt secured by and exemption claimed in 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 the debtors, Edwin Curtis Avara and Kellie Suzanne Avara (“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 733 Mann Court, Oakdale, California and listed on Schedule A by Debtor is abandoned by Michael McGranahan (“the Chapter 7 Trustee”) to Edwin Curtis Avara and Kellie Suzanne Avara by this order, with no further act of the Chapter 7 Trustee required.

13. [19-90062](#)-E-7
[VFG-1](#)

UNITED RESORTS, LLC
Michael Yi

CONTINUED POST-ORDER HEARING
RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-31-19 [\[10\]](#)

KHATRI BROTHERS VS.

**NO TELEPHONIC APPEARANCE PERMITTED FOR STEVEN ALTMAN, COUNSEL FOR
KHATRI BROTHERS, OR MICHAEL YI, COUNSEL FOR UNITED RESORTS, LLC**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 31, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Post-Order Hearing is XXXXXXXXXXXXXX.

REVIEW OF STIPULATION TO RELIEF FROM AUTOMATIC STAY

On January 31, 2019, Khatri Brothers, a General Partnership ("Khatri Brothers, GP"), filed its Motion for Relief From the Automatic Stay. Dckt. 10.

On February 20, 2019, the Parties lodged with the court a proposed order granting relief pursuant to the Motion for Relief From the Automatic Stay. The relief granted in the proposed order was stated to be:

1. The Stipulation, attached as Exhibit A, is approved in its entirety, conditioned upon the following: [the court waiving or not waiving a notice requirement for the order on the Stipulation]

The court's practice is to not sign orders which merely state, "whatever is said in the stipulation is the order of the court." With respect to the various recitals, while the Debtor and Khatri Brother, GP may agree between themselves as to certain facts and conclusions, the court has not make such findings. Then, with respect to what has been stipulated to, such may, or may not, properly be the subjection of an order on a motion for relief from the automatic stay.

As an example with respect to the automatic stay, paragraph 11. A. of the Stipulation would have the court purport to order:

A. The bankruptcy stay under 11 U.S.C. § 362 is modified to surrender possession, title, management, and control of the real and personnel [sic] property located at 1525 McHenry Avenue, Modesto, California, known as the "Budgetel Inn & Suites to lessor and owners, the Khatri Brothers nunc pro tunc effective to the date the Khatri Bros. motion for relief from stay was filed: January 31, 2019.

Stipulation, p. 3; Dckt. 35. As drafted, it may appear that the court is modifying the stay to be a "surrender" of the property, management and control at some nonspecific time in the future. Then, if such was not done, the court would hold the non-surrendering in contempt.

Further, the Stipulation states that there will be *nunc pro tunc* relief. The provisions of 11 U.S.C. § 362(d) allow for the court to annul the stay, providing retroactive relief. As the Ninth Circuit Court of Appeals has noted, *nunc pro tunc* relief is different from retroactive relief. The Ninth Circuit has stated that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations "retroactive approvals," a custom has developed, but is not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.*

Additionally, the Stipulation contains a provision which concerns the court. In Paragraph L, the Parties purport to agree and Stipulation away rights of any future bankruptcy trustees, stating:

L. This Stipulation shall be binding upon the parties hereto and upon all of their affiliates, assigns, and successors, including without limitation and also any bankruptcy trustee other than Trustee McGranahan, who may be appointed in the future.

No legal basis is given, and no legal basis exists for Khatri Brothers, GP, the Debtor, and their respective counsel to waive rights of future bankruptcy trustees. In effect, the attorneys are attempting to create a perpetual, *in rem* order that strips future third-party trustee and bankruptcy estates of their rights.

The court is surprised to see such a provision presented (some might say buried) in a Stipulation presented by two experienced attorneys appearing in federal court. Then, to have those two experienced attorneys presenting an order merely saying, "Whatever is in the Stipulation is ordered by the court" creates the appearance that the two attorneys were attempting to mislead the court into issuing an improper order.

ORDER SETTING POST-ORDER HEARING

Based on the court's discussion above, the court issued an Order requiring Steven Altman, counsel for Khatri Brothers, a General Partnership, and Michael H. Yi, counsel for United Resorts, LLC, and each of them, to appear in person at the March 14, 2019 post-order hearing - **NO TELEPHONIC APPEARANCE PERMITTED**. Order, Dckt. 37. The court further Ordered the appearing parties to address the following:

(1) The appropriateness of the proposed order lodged with the court, what such an order would have "ordered,"

(2) The legal basis for including in the order that language proposed by counsel - "The Stipulation, attached as Exhibit A, is approved in its entirety" which would make such Stipulation binding on all future bankruptcy trustees, and

(3) Whether such an order merely stating "Stipulation . . . is approved" is an order modifying and annulling the automatic stay, or is instead merely an order saying that a stipulation for an order to be issued sometime in the future modifying the automatic stay is approved and may be enforced sometime in the future by a party seeking the issuance of an order modifying the automatic stay.

Id. The court Ordered written responses by Mr. Altman, and Mr. Yi shall be filed and served on the Chapter 7 Trustee, counsel for the Chapter 7 Trustee, and the U.S. Trustee on or before March 7, 2019.

KATHRI BROTHERS GP RESPONSE

Khatri Brothers, GP filed a Response on March 1, 2019. Dckt. 40. Khatri Brothers, GP explains that the proposed order lodged with the court was intended to modify and terminate the stay and turnover property, with the stipulation providing applicable language to that point. Khatri Brothers, GP agrees the language "retroactive relief" would have been more appropriate than "nunc pro tunc."

Khatri Brothers, GP argues that based on the property not being property of the Estate, that the proposed order would become final and non-appealable. Khatri Brothers, GP argues further that the order being binding on subsequent trustees would be a natural outgrowth of the property having been abandoned.

Khatri Brothers, GP asserts the proposed order was intended to modify and annul the stay, and not merely be a comfort order to be operative at some later date.

Counsel for Khatri Brothers, GP concludes that the proposed order was drafted for the dual purpose of providing an expedited resolution and a "degree of transparency and due process." The focal point for the proposed order was to exercise management, supervision, and control over the real property assets not in the Estate.

MARCH 14, 2019 HEARING & ORDER CONTINUING HEARING

Michael H. Yi, counsel for United Resorts, LLC, did not file a written response and failed to appear at the March 14, 2019 hearing as ordered by the court.

The Response filed by Mr. Altman for the Khatri Brothers, GP provides a detailed discussion of the terms of the Stipulation, but does not address the appropriateness of the order, and the effect of an order which merely states, "Stipulation Approved." The terms of the Stipulation do not merely resolve personal disputes, but call for the court to issue orders modifying the automatic stay. The parties mere stipulation for such an order does not constitute such an order.

Failure to Comply With The Order of the Court

Michael Yi, Esq., counsel for the Debtor failed to comply with the order of this court to appear at the March 14, 2019 hearing. No response to the order to appear was filed, no request to continue the hearing due to an irreconcilable conflict (such as medical treatment, appearance at appellate oral argument, trial date). The order to appear in this court appears to have been ignored.

Mr. Yi has chosen to represent the debtor in this court. He was not forced to practice in the Eastern District of California, but reached out and voluntarily elected to practice in this court. On the Disclosure of Compensation, Mr. Yi states that he was paid \$3,000.00 to be counsel for Debtor. Dckt. 1 at 38. It appears that the only documents filed by Mr. Yi are the bankruptcy petition, schedules, statement of financial affairs, and the miscellaneous documents related thereto. Dckt. 1, consisting of 45 pages. The other document is the one page "Statement Regarding Authority to Sign and File Petition" in which Shafi Ahed, CHA, as the CEO and President of United Resorts, LLC, states that there is a corporate resolution for the debtor "corporation" to file bankruptcy. Dckt. 4. (Given that the Debtor is an limited liability company, it is unlikely that it has a president and a "corporate resolution," rather than a managing member and member resolution or authorization under the operating agreement.)

In reviewing the Docket, the court notes that the First Meeting of Creditors was conducted on March 5, 2019, with the Trustee stating "Debtor Appeared; Counsel of Record Appeared [Michael Yi is the only 'attorney of record' for Debtor]." March 7, 2019 Chapter 7 Trustee Docket Entry Report. It is also reported that the Meeting of Creditors has not been concluded, but continued to April 2, 2019.

While Mr. Yi appears in three bankruptcy cases in the Eastern District of California, a review of the PACER database for the Bankruptcy Court for the Central District of California reports that Michael H Yi, Esq., has appeared in one hundred forty-nine (149) cases in that District. Clearly Mr. Yi is familiar with the United States Bankruptcy Court as a Unit of the United States District Court, the effect of an order issued by a federal United States Bankruptcy Judge, the corrective sanction powers of a United States Bankruptcy Judge, and the corrective and punitive sanction powers of an Article III United States District Court Judge. The California State Bar reports that Mr. Yi has been practicing law since February 2011, and with eight years of practice it appears he is a seasoned attorney. ^{FN. 1}

FN. 1. <http://members.calbar.ca.gov/fal/Licensee/Detail/269025>

Continuance of Hearing

The Post-Order Hearing was continued to 10:30 am. on May 2, 2019, to afford attorney Michael Yi a second opportunity to comply with the court's order and appear at this conference before: (1) a \$5,000 corrective sanction order is entered, (2) further corrective sanction orders are considered, (3) referral of this failure to comply with orders of the court to the Chief Judge of the District Court for consideration of corrective (suspension of practice for a period to allow for continuing education) and punitive sanctions; and (4) reporting of the failure to comply with orders of this court to the California State Bar. Order, Dckt. 44.

The court further Ordered Steven Altman, Esq., counsel for Movant, and Michael H. Yi, Esq., counsel for Debtor, and each of them shall appear in person at the May 2, 2019 continued hearing with no telephonic appearance permitted. *Id.*

DISCUSSION

Corrective Sanction Power of the Court

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

May 2, 2019 Hearing

At the hearing, **XXXXXXXXXXXXXX**.

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 Post-Order Hearing having been conducted by the court, Steven Altman, Esq. appearing as ordered by the court (Order, Dckt. 37), Michael Yi, Esq., attorney for the Debtor, not appearing as ordered by the court (*Id.*), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Post-Order Hearing is **XXXXXXXXXX**.

14. [17-90494-E-7](#)
[18-9012](#)

DALJEET MANN
SSA-5

EDMONDS V. MANN ET AL

**MOTION FOR AUTHORITY TO
EXECUTE AND/OR TO REQUIRE
TURNOVER OF DEFENDANTS'
INTEREST IN BANK ACCOUNTS AND
COURT APPROVAL FOR EXECUTION
AND SALE PROCEDURES OF
DEFENDANT NINDER MANN'S REAL
PROPERTY**
4-5-19 [\[78\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant's, Debtor, and Office of the United States Trustee on April 5, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion For Authority was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion For Authority is denied without prejudice.

On April 5, 2019, the Chapter 7 Trustee, Irma Edmonds ("Judgment Creditor-Trustee") filed this "Motion For Authority To Execute And/Or To Require Turnover Of Defendants' Interest In Bank Accounts And Court Approval For Execution And Sale Procedures Of Defendant Ninder Mann's Real Property." Thus, by its title, the Judgment Creditor-Trustee is seeking and order:

1. Authorizing the Judgment Creditor-Trustee to seek turnover of property of the bankruptcy estate;
2. Authorize the Judgment Creditor-Trustee to execute the judgment on property of the Defendants. ^{FN.1.}

FN. The Defendants in this adversary proceeding are judgment debtors, the court having entered judgment for Judgment Creditor-Trustee against Defendants. The court continues to refer to these judgment debtors as “Defendants” in light of the specialized use of the word “debtor” in bankruptcy cases.

Judgment Creditor-Trustee states here the court has already awarded judgment in this Adversary Proceeding in the amount of \$436,128.742 against Ninder Mann, \$36,112.74 against Jasleen Mann, and \$4,320.22 for costs.

In going through the body of the Motion, the court summarizes the relief requested as stated in the Motion as follows:

- A. Federal Rule of Civil Procedure 64 and Federal Rule of Bankruptcy Procedure 7064 provide that the enforcement of a federal court judgment is made using the procedures and processes as provided under the applicable state law in that Federal District.
- B. Federal Rule of Civil Procedure 69 and Federal Rule of Bankruptcy Procedure 7069 provides that a money judgment is enforced by a writ of execution, utilizing the procedure provided under state law in that Federal District, subject to federal statutes.
- C. As provided in California Code of Civil Procedure § 7001.160 a judgment creditor may levy on a judgment debtor’s bank accounts.
- D. California law specifies the duration that a judgment remains enforceable, which is subject to renewal. If a writ of execution is obtained, then the sale pursuant to the writ must be completed in two years (Citing to California Code of Civil Procedure § 697.710, § 699.560).
- E. California law provides that the judgment creditor is to obtain a writ of execution from the clerk of the court.
- F. For real property, the writ of execution is to be recorded in the county in which the real property that is being executed on is located. California Code of Civil Procedure § 700.015. The judgment creditor is to provide instructions to the levying officer. California Code of Civil Procedure § 687.010.

The Motion then states that the Judgment Creditor-Trustee will subsequently be filing a further motion for authority to sell the Defendant’s residence, if appropriate. The Judgment Creditor-Trustee then has a discussion of how the law applies to the potential future attempt to sell the Debtor’s residence.

The Judgment Creditor-Trustee then concludes, stating that the relief requested in the present motion is:

A. Made out of an abundance of caution.

B. Judgment Creditor-Trustee wants the court to “allow her” to proceed with:

1. Levy and execution on personal property and for the turnover of bank account monies; and
2. Commence legal procedures and process to start execution and sale of Defendant’s residence.

With respect to the first request, levy and execution on personal property, the court is unsure of how the court controls the Judgment Creditor-Trustee and is to “authorize” her to fulfill her duties and enforce the judgment and liquidate the property of the bankruptcy estate. No authority has been given that the Judgment Creditor-Trustee is powerless to enforce the judgment she obtained without first obtaining authorization from the court. While out of an “abundance of caution” the Judgment Creditor-Trustee may want the court to be her “partner” in enforcing the judgment, the court is not in the business of administering assets of a bankruptcy case.

As to the second request, this directly conflicts with the prior statement that:

“Plaintiff, Irma Edmonds, subsequent to the present motion being adjudicated, will be submitting to the Court a further motion to the Court, for authority to sell judgment debtor Ninder Mann's residence if appropriate.

Motion, p. 6:4-6; Dckt. 78. Thus, the Judgment Creditor-Debtor has stated that only in the future, “if appropriate,” will the Judgment Creditor-Trustee begin to act to enforce the judgment against the Defendant’s residence. Therefore, there is no seeking of enforcing such rights at this time.

Additionally, there is no authority provided for the premise that the court must first authorize the Judgment Creditor-Trustee to seek to obtain authorization to enforce the judgment against the residence of the Defendant.

Judgment Creditor-Trustee seeks court approval to pursue state court remedies as to the following:

1. Execution or levy on the F&M Bank Account, number ending in 95-01, of Ninder Mann.
2. Execution or levy on the F&M Bank Account, number ending in 88-01, of Jasleen Mann.
3. Execution and Sale of the Property.

In the Motion, Judgment Creditor-Trustee provides an overview of the process in state court for each of the aforementioned relief.

APPLICABLE LAW TO EXECUTION OF JUDGMENT

The California Practice Guide: Enforcing Judgments and Debts provides the following discussion on enforcing a judgment obtained in federal court:

A federal district or bankruptcy court money judgment is enforced by writ of execution unless the court directs otherwise. [FRCP 69(a); FRBP 7069; see also *Shuffler v. Heritage Bank* (9th Cir. 1983) 720 F2d 1141, 1148; *Hilao v. Estate of Marcos* (9th Cir. 1996) 95 F3d 848, 856—FRCP 69(a) limits district court's mechanisms for enforcing money judgment to writ of execution (court had no authority to order bank to deposit contested funds into court registry); compare *In re Wallace* (9th Cir. BAP 2013) 490 BR 898, 907—contempt proceeding appropriate to enforce monetary sanctions award for party misconduct (i.e., writ of execution not required because monetary sanction for party's misconduct not “ordinary” money judgment)] But FRCP 69 only applies if there is a district (or bankruptcy) court judgment in which execution is sought; it is not available to enforce state court judgments in federal court. [*Labertew v. Langemeier* (9th Cir. 2017) 846 F3d 1028, 1033]

State [enforcement of judgments law] procedures are followed when enforcing a money judgment rendered by or registered with a federal court sitting in California, except to the extent a federal statute applies or enforcement is stayed under FRCP 62. [See 28 USC § 1963; FRCP 62, 69(a); FRBP 7069; *Paul Revere Ins. Group v. United States* (9th Cir. 2007) 500 F3d 957, 962-963—state law exempting disability income from enforcement not preempted by federal property exemption statute re enforcement of restitution judgment; *Hilao v. Estate of Marcos, supra*, 95 F3d at 853—state execution law requirements for serving notice of levy against deposit accounts not preempted, but rather supplemented, by federal rules; see also *Hendricks & Lewis PLLC v. Clinton* (9th Cir. 2014) 766 F3d 991, 996—pursuant to FRCP 69, federal district court in Washington state applied Washington law to determine what property was subject to execution in absence of applicable federal statute]

State [enforcement of judgments law] procedures also apply to “proceedings supplementary to and in aid of a judgment” unless a federal statute applies. [FRCP 69(a); see *Carnes v. Zamani*, (9th Cir. 2007) 488 F3d 1057, 1060—EJL applied to motion in federal court in California for attorney fees incurred in enforcing judgment in diversity case as supplementary proceeding where no federal statute applied]

Additionally, judgment creditors and their successors of record may proceed under FRCP 26-37 to obtain discovery in aid of the judgment and/or execution, or the court may order postjudgment discovery under its inherent power. [FRCP 69(a); *Natural Gas Pipeline Co. of America v. Energy Gathering, Inc.*, (5th Cir. 1993) 2 F3d 1397, 1408; *United States v. McWhirter* (5th Cir. 1967) 376 F2d 102, 106; compare Calif. Cent. Dist. Local Rule 69-1—motions for judgment debtor and third party examinations, as well as other postjudgment discovery, must be before assigned magistrate judge]

2. [6:1.5] Enforcement of Judgments Law (EJL)—Background:, Cal. Prac. Guide Enf. J. & Debt Ch. 6A-2(emphasis added).

DISCUSSION

This Motion is purportedly for “Authority To Execute And/Or To Require Turnover Of Defendants’ Interest In Bank Accounts And Court Approval For Execution And Sale Procedures Of Defendant Ninder Mann’s Real Property.” As discussed above, this Motion simply seeks authorization for Judgment Creditor-Trustee to pursue state court remedies. However, not identified in the Motion is any necessity or authority for this court to give such an authorization.

On December 26, 2018, the court issued an Order granting Judgment Creditor-Trustee’s Motion for Entry of Default Judgment in this Adversary Proceeding. Dckt. 53. The Order granted a money judgment in the amount of \$436,128.742 against Ninder Mann, \$36,112.74 against Jasleen Mann. *Id.*

That money judgment is enforced by writ of execution. FED. R. CIV. P. 69(a)(1). Judgment Creditor-Trustee does not here argue there is any applicable federal law providing for the execution of judgment. Therefore, California procedure on execution—the enforcement law of the state where this court is located—applies. *Id.*

The court also notes that mentioned in the Motion for Authorization for the Judgment Creditor-Trustee to try and enforce the judgment is another right and grant of a property right in the judgment. The Judgment states that in addition to the monetary award of \$36,128.74 against Defendant Ninder Mann and \$36,112.74 against Defendant Jasleen Mann:

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an equitable lien is imposed on the real property commonly known as 2520 Piazza Court, Modesto, California (“Piazza Court Property”) for \$132,935.00 of the monetary judgment granted against Ninder Mann, plus all interest thereon and costs and expenses awarded in this Judgment and recoverable pursuant thereto in the enforcement of this Judgment.

Judgment, p. 2:8-12; Dckt. 72. Thus, it appears that the Judgment Creditor-Trustee already has a lien on the property and is not dependant on creating a lien now.

With review of the present Motion, it appears, simply stated, Judgment Creditor-Trustee is seeking a 'comfort order' which would confirm that Judgment Creditor-Trustee, as a judgement creditor of the Defendants, is indeed permitted to pursue her rights and remedies at law (and in accordance with Judgment Creditor-Trustee's fiduciary duties as trustee of the Estate). However, no grounds for such an order have been stated in the Motion.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

The Motion For Authority filed by the Judgment Creditor-Trustee Irma Edmonds having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion For Authority is **denied without prejudice**.

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 29.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Authority to Use Cash Collateral is XXXXXXXXXX.

Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to use cash collateral to pay necessary expenses for the estate to continue to operate the transportation business that is included in the estate. The Debtor in Possession is continuing to operate on interim post-petition financing terms.

The Expenses to be paid with cash collateral are set forth in Exhibit C (Dckt. 23) filed in support of this Motion.

FEBRUARY 14, 2019 HEARING

At the February 14, 2019 hearing creditor Transportation Alliance Bank, Inc., holding the senior lien on the collateral, which was represented to be over encumbered, represented non-opposition to the Motion to Use Cash Collateral. Dckt. 43.

To provide for any diminution in the value of the collateral to junior lien holders by the use of cash collateral (11 U.S.C. § 506(a) secured claim), the court granted replacement liens to the creditors having liens on the cash collateral being used by the Debtor in Possession.

The court issued an Order providing the foregoing, continuing the hearing to March 28, 2019, and also requiring any opposition to the Motion be filed and served on or before March 14, 2019, and replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 47.

WELL'S FARGO'S OPPOSITION

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("Wells Fargo") filed a Limited Opposition on March 13, 2019. Dckt. 95. Wells Fargo asserts an interest certain equipment of the Debtor, including trucks and trailers, and their proceeds.

While Wells Fargo does not oppose the proposed \$100,000.00 weekly adequate protection payment, Wells Fargo argues the Motion is silent as to which creditors are to be paid, the amount of payment, and when payment will be provided.

Wells Fargo asserts that as of the filing of its Limited Opposition no payment had been received.

TCF'S OPPOSITION

Creditor TCF Equipment Finance, a division of TCF National Bank or its assigns, holding a secured claim ("TCF") filed a Limited Opposition on March 14, 2019. Dckt. 98. TCF asserts it has an interest in multiple trucks and trailers used by Debtor in the operation of its business.

While not opposing the use of its cash collateral, TCF asserts Debtor's Motion and budget fail to identify which secured creditors will be paid or the amounts of such payments. TCF argues Debtor in Possession should be required, as a form of adequate protection, to specify to whom payments will be made, the amount of the payments, and the dates that the payments will be made.

TCF asserts it has received one adequate protection payment totaling \$12,789.89.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 110. Debtor in Possession states Wells Fargo and TCF oppose the motion to the extent that the underlying agreement purports to prime their liens on certain equipment assets of the Debtor in Possession. Debtor in Possession states further it does not oppose limiting any replacement lien granted under the order approving the use of cash collateral.

MARCH 28, 2019 HEARING

At the March 28, 2019 hearing, counsel for the Debtor in Possession reported that cash collateral stipulations are being executed.

The court issued an Order on April 1, 2019, extending its Interim Order (Order, Dckt. 47) through and including April 19, 2019, and continuing the hearing on the Motion to April 4, 2019. Order, Dckt. 149.

APRIL 9, 2019 HEARING

At the April 9, 2019 hearing the court discussed the First Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession. Dckt. 155. Filed with the Declaration is Exhibit “D,” which is identified to be the amended post-petition operating budget for the estate during the 13-week period starting on February 10, 2019. The Debtor in Possession projected the following financial consequences of operating under the cash collateral budget:

Total Revenue.....\$6,805,000
Total Expenses.....(\$6,494,037)

Net Operating Income For the 13 Week Period.....\$310,963

No opposition was presented at the hearing and financing alternatives still being explored, the court issued an Interim Order extending the prior Interim Order (Dckt. 47) and continuing the hearing to May 2, 2019. Dckt. 191.

SECOND SUPPLEMENTAL

On April 26, 2019 Debtor in Possession filed the Second Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession. Dckt. 239. Filed with the Declaration is Exhibit “E,” which is identified to be the amended post-petition operating budget for the estate during the 13-week period starting on May 12, 2019. That budget provides:

<i>Week Starting On:</i>	5/12/2019	5/19/2019	5/26/2019	6/2/2019	6/9/2019	6/16/2019	6/23/2019
Income							
Revenue	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000
Brokerage Revenue	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000
Total Income	\$480,000	\$480,000	\$480,000	\$480,000	\$480,000	\$480,000	\$480,000
Expenses							
Driver Payroll	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
Payroll Taxes	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000
Benefits	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000
Workers Comp	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200
Diesel/DEF/Reefer	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000
Carrier Pay	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000
Office Payroll	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000
Office Payroll Taxes	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800
Officer Salary	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
Insurance	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200
Car	\$400	\$400	\$400	\$400	\$400	\$400	\$400
Ceres Yard	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800
Houston Yard	\$900	\$900	\$900	\$900	\$900	\$900	\$900
Unloading/ Lumpers	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500
Scales	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000

May 2, 2019 at 10:30 a.m.

Truck and Trailer Washing	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
Tolls	\$500	\$500	\$500	\$500	\$500	\$500	\$500
Gps/Elogs/Trailer Temp	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
Transflo	\$400	\$400	\$400	\$400	\$400	\$400	\$400
Recruiting	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250
Maintenance	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Safety	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500
Oregon Tax/NM Tax	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
IT Expense/Software	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Miscellaneous	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Modular Office	\$500	\$500	\$500	\$500	\$500	\$500	\$500
Utilities	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Property Taxes (Real Prop.)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Expenses	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Equip. Adq. Protection Pmts							
Allegiance Fin. Group	\$7,585	\$24,092	\$0	\$0	\$0	\$31,677	\$0
Banc of America	\$0	\$0	\$0	\$17,061	\$0	\$0	\$0
BB&T Commercial	\$0	\$0	\$0	\$26,048	\$0	\$0	\$0
Equip.							
First Midwest	\$0	\$0	\$0	\$6,128	\$0	\$0	\$0
Hitachi	\$0	\$3,818	\$0	\$0	\$0	\$3,818	\$0
Lee Financial	\$0	\$31,641	\$0	\$0	\$62,977	\$0	\$31,641
People's Capital	\$12,121	\$0	\$28,663	\$0	\$6,038	\$6,083	\$28,663
Signature Financial	\$0	\$0	\$0	\$14,219	\$0	\$0	\$0
TAB Bank	\$0	\$0	\$16,141	\$0	\$0	\$0	\$0
TCF Equipment Fin.	\$0	\$0	\$3,831	\$12,790	\$0	\$0	\$0
Volvo	\$0	\$2,457	\$12,964	\$34,114	\$0	\$0	\$15,420
Wells Fargo Equip. Fin.	\$59,058	\$0	\$0	\$0	\$59,058	\$0	\$0
Executory K Assumption							
Love's	\$13,462	\$13,462	\$13,462	\$13,462	\$13,462	\$13,462	\$13,462
Carriers	\$35,000	\$35,000	\$35,000	\$0	\$0	\$0	\$0
Debtor's Professionals*	\$0	\$0	\$0	\$100,000	\$0	\$0	\$0
Crestmark DIP Fees	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200
US Trustee Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenses	\$454,276	\$437,520	\$437,111	\$550,871	\$468,585	\$382,090	\$416,236
Net Income/(Loss)	\$25,724	\$42,480	\$42,889	-\$70,871	\$11,415	\$97,910	\$63,764
Cumulative Free Cash	\$25,724	\$68,204	\$111,094	\$40,222	\$51,637	\$149,547	\$213,311

*Subject to court approval after fee application

Week Starting On:	6/30/2019	7/7/2019	7/14/2019	7/21/2019	7/28/2019	8/4/2019	Total
Income							
Revenue	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$425,000	\$5,525,000
Brokerage Revenue	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$55,000	\$715,000
Total Income	\$480,000	\$480,000	\$480,000	\$480,000	\$480,000	\$480,000	\$6,240,000

Expenses

Driver Payroll	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000	\$1,040,000
Payroll Taxes	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000	\$169,000
Benefits	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$78,000
Workers Comp	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$119,600
Diesel/DEF/Reefer	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$1,170,000
Carrier Pay	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$585,000
Office Payroll	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000	\$208,000
Office Payroll Taxes	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$23,400
Officer Salary	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$52,000
Insurance	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$249,600
Car	\$400	\$400	\$400	\$400	\$400	\$400	\$5,200
Ceres Yard	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$23,400
Houston Yard	\$900	\$900	\$900	\$900	\$900	\$900	\$11,700
Unloading/ Lumpers	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$97,500
Scales	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$13,000
Truck and Trailer	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$15,600
Washing							
Tolls	\$500	\$500	\$500	\$500	\$500	\$500	\$6,500
Gps/Elogs/Trailer Temp	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$15,600
Transflo	\$400	\$400	\$400	\$400	\$400	\$400	\$5,200
Recruiting	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$16,250
Maintenance	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$130,000
Safety	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$19,500
Oregon Tax/NM Tax	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$52,000
IT Expense/Software	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$39,000
Miscellaneous	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$13,000
Modular Office	\$500	\$500	\$500	\$500	\$500	\$500	\$6,500
Utilities	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$13,000
Property Taxes (Real Prop.)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Expenses	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$32,500
Equip. Adq. Protection Pmts							
Allegiance Fin. Group	\$0	\$0	\$31,677	\$0	\$0	\$0	\$95,032
Banc of America	\$0	\$17,061	\$0	\$0	\$0	\$17,061	\$51,182
BB&T Commercial	\$26,048	\$0	\$0	\$0	\$26,048	\$0	\$78,145
Equip.							
First Midwest	\$6,128	\$0	\$0	\$0	\$6,128	\$0	\$18,385
Hitachi	\$0	\$0	\$3,818	\$0	\$0	\$0	\$11,453
Lee Financial	\$0	\$62,977	\$0	\$31,641	\$0	\$62,977	\$283,856
People's Capital	\$0	\$0	\$12,121	\$0	\$28,663	\$0	\$122,351
Signature Financial	\$0	\$14,219	\$0	\$0	\$0	\$14,219	\$42,656
TAB Bank	\$16,141	\$0	\$0	\$0	\$16,141	\$0	\$48,424
TCF Equipment Fin.	\$16,621	\$0	\$0	\$0	\$3,831	\$12,790	\$49,863
Volvo	\$34,114	\$0	\$0	\$2,457	\$22,834	\$24,243	\$148,603
Wells Fargo Equip. Fin.	\$0	\$0	\$59,058	\$0	\$0	\$0	\$177,175
Executory K Assumption							
Love's	\$13,462	\$13,462	\$13,462	\$13,462	\$13,462	\$0	\$161,538
Carriers	\$0	\$0	\$0	\$0	\$0	\$0	\$105,000
Debtor's Professionals*	\$0	\$0	\$0	\$0	\$0	\$100,000	\$200,000
Crestmark DIP Fees	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$3,200	\$41,600

May 2, 2019 at 10:30 a.m.

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US Trustee Fees	\$0	\$0	\$0	\$45,000	\$0	\$0	\$45,000
<i>Total Expenses</i>	<i>\$439,565</i>	<i>\$434,768</i>	<i>\$447,186</i>	<i>\$419,609</i>	<i>\$444,158</i>	<i>\$558,340</i>	<i>\$5,890,315</i>
<i>Net Income/(Loss)</i>	<i>\$40,435</i>	<i>\$45,232</i>	<i>\$32,814</i>	<i>\$60,391</i>	<i>\$35,842</i>	<i>-\$78,340</i>	<i>\$349,685</i>
Cumulative Free Cash	\$253,747	\$298,978	\$331,792	\$392,183	\$428,025	\$349,685	

*Subject to court approval after fee application

DISCUSSION

At the hearing, **xxxxxxxxxxxxxx**.

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

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

The Motion for Authority to Use Cash Collateral filed by Mike Tamana Freight Lines, LLC (“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 hearing on the Motion to Use Cash Collateral is continued to **11:00 a.m. on xxxxxxxx, 2019** .

IT IS FURTHER ORDERED that the further authorization to use cash collateral as set forth in the budget filed as Exhibit E for the period May 12, 2019 through August 10, 2019, (Dckt. 240) sought by the present Motion is authorized through and including August 10, 2019.

IT IS ORDERED that Motion to Use Cash Collateral is **xxxxxxx**.

FINAL RULINGS

16. [19-90249](#)-E-7

DEDE ALBINO
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-8-19 [[17](#)]

Final Ruling: No appearance at the May 2, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on April 10, 2019. The court computes that 22 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$335.00 due on March 20, 2019.

The Order to Show Cause is continued to May 23, 2019, at 1:30 p.m.

On April 22, 2019 the court issued an Order setting for hearing the Debtor's second Motion (Dckt. 19) for Waiver of the Chapter 7 Filing Fee. Order, Dckt. 21.

The court shall continue the hearing on the Order To Show Cause to be heard alongside the Motion For Waiver of the Filing Fee.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court shall continue the hearing on the Order To Show Cause to May 23, 2019, at 1:30 p.m. to be heard alongside the Motion For Waiver of the Filing Fee

Final Ruling: No appearance at the May 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and creditors on March 26, 2019. By the court's calculation, 37 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Compel Abandonment is granted.

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

The Motion filed by Richard Albert Vallejo and Martha Vallejo ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon several assets of the Debtor which were listed on Schedule A and claimed as exempt on Schedule C, listed as follows:

Asset	Value	Encumbrance	Equity	Exemption
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Real property commonly known as 1929 Gordon Ave, Modesto, California	\$284,000	\$129,234	\$154,766	CCP §704.730 - \$154,766
2007 Ford Fusion V6 SE w/ 190,000 Miles	\$950		\$950	CCP §704.010 - \$950
2002 Dodge Dakota Sport w/ 170,000 Miles	\$2,100		\$2,100	CCP §704.010 - \$2,100
Household Goods & Furnishings	\$2,920		\$2,920	CCP §704.020- \$2,920
Household Goods & Furnishings	\$720		\$720	CCP §704.020- \$720
Tennis Rackets, Exercise Equipment, Bicycles	\$165		\$165	CCP §704.020- \$165
Everyday Clothes	\$700		\$700	CCP §704.020- \$700
Everyday Jewelry	\$370		\$370	CCP §704.040- \$370
One Dog	\$1		\$1	CCP §704.020- \$1
F& M Bank Checking Account (19-01)	\$29.18		\$29.18	CCP §704.070- \$21.89
Wells Fargo Checking Account (3461)	\$0		\$0	N/A

401(k) Retirement Vanguard	\$13,669.64		\$13,669.64	CCP §704.115(a)(1)&(2), (b)-\$13,669.64
Term Life Insurance (thru NY Life) (\$100,000)	\$0		\$0	N/A

Motion, Dckt. 25; Schedules A and C, Dckt. 1.

On December 12, 2018, the Meeting of Creditors was concluded. The Notice of Chapter 7 Bankruptcy Case indicates the deadline to object to Debtor's claimed exemptions was 30 days later, on January 11, 2019. Dckt. 10.

On March 11, 2019, an Order of Discharge was entered. Dckt. 23.

DISCUSSION

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. Debtor claimed the property, listed, *supra*, as exempt. 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 Richard Albert Vallejo and Martha Vallejo ("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 listed on Debtor's Schedule A(Dckt. 1) and described as follows:

Real property commonly known as 1929 Gordon Ave, Modesto, California
2007 Ford Fusion V6 SE w/190,000 Miles
2002 Dodge Dakota Sport w/170,000 Miles

Household Goods & Furnishings
Household Goods & Furnishings
Tennis Rackets, Exercise Equipment, Bicycles
Everyday Clothes
Everyday Jewelry
One Dog
F& M Bank Checking Account (19-01)
Wells Fargo Checking Account (3461)
401(k) Retirement Vanguard
Term Life Insurance (thru NY Life) (\$100,000)

are abandoned by Gary Farrar (“the Chapter 7 Trustee”) to Richard Albert Vallejo and Martha Vallejo by this order, with no further act of the Chapter 7 Trustee required.

18. [18-90030](#)-E-11
[WJH-1](#)

FILBIN LAND & CATTLE
CO., INC.
Michael St. James

MOTION TO VALUE SECURED
CLAIM
3-28-19 [[458](#)]

Final Ruling: No appearance at the May 2, 2019 hearing is required.

The parties to this Contested Matter having signed and filed a Stipulation (Dckt. 481), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion To Value was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the May 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Creditor, on March 27, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Kenneth Macwinski, Jr. ("Creditor") against property of the debtor, James Vazquez and Guillermina Vazquez ("Debtor"), commonly known as 2321 Havertown Place, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,224.00. Exhibit B, Dckt. 23. An abstract of judgment was recorded with Stanislaus County on March 2, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$109,900.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$112,485.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 25. 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. 25.

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 the debtors, James Vazquez and Guillermina Vazquez ("Debtors"), 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 Kenneth Macwinski, Jr., California Superior Court for Stanislaus County Case No. 659117, recorded on March 2, 2011, Document No. 2011-0017527-00, with the Stanislaus County Recorder, against the real property commonly known as 2321 Havertown Place, Modesto, 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.

20. [18-90258-E-7](#)
[MF-2](#)

ANDREAS ABRAMSON
Iain Macdonald

**CONTINUED MOTION TO DELAY
DISCHARGE**
7-19-18 [86]

Final Ruling: No appearance at the May 2, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and

Office of the United States Trustee on July 20, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Motion to Delay Discharge 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, No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

The hearing on the Motion to Delay Discharge is continued to 10:30 a.m. on June 27, 2019

Andreas Abramson ("Debtor"), filed an Application to Extend Time for Entry of Order of Discharge on July 19, 2018. Dckt. 86. Debtor states he requires the extension in order to maintain the protections of automatic stay, as it affects the enforcement of liens against Debtor's residence. Debtor has filed a motion to avoid several liens under §522(f), which is set for hearing on August 23, 2018. *Id.*, ¶ 3. Debtor moves for entry of an order extending the time for entry of discharge for thirty 30 days pursuant to F.R.B.P. 4004(c)(2).

Federal Rule of Bankruptcy Procedure 4004(c)(2) provides:

Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

Debtor has requested a delay in the entry of an order granting discharge for 30 days so that he may resolve pending motions to avoid judicial liens. Without an extension, Debtor asserts the stay affecting enforcement of the judicial liens will be gone. Debtor has shown cause to delay the entry of discharge and the application is granted.

AUGUST 23, HEARING

At the August 23, Hearing, the court granted the Motion and extended the time for entry of discharge is pursuant to Federal Rule of Bankruptcy Procedure 4004(c)(2) to and including September 30, 2018, subject to further extension. Dckt. 189. The court continued the hearing to September 27, 2018, for further extension of the discharge date.

SEPTEMBER 27, 2018 HEARING

At the September 27, 2018 hearing the court granted the Motion and extended the time for entry of discharge is pursuant to Federal Rule of Bankruptcy Procedure 4004(c)(2) to and including January 24, 2019, subject to further extension. Dckt. 200.

DEBTOR'S STATUS REPORT

Debtor filed a Status Report on January 17, 2019. Dckt. 253. Debtor states the majority of issues in the bankruptcy case have been resolved, with only the Debtor's Motion to Avoid the Judicial Lien of Helen McAbee remaining, which is set for an Evidentiary Hearing Scheduling Conference on February 14, 2019. Debtor requests the entry of discharge be deferred until April 30, 2019.

DEBTOR'S APRIL STATUS REPORT

Debtor filed another Status Report on April 24, 2019. Dckt. 268. Debtor states the evidentiary hearing on the avoidance motion has been resolved, but a ruling is still pending. Debtor requests the time for entry of discharge be extended further to June 30, 2019.

DISCUSSION

Debtor has completed the evidentiary hearing on the avoidance motion and is awaiting a ruling. Debtor has shown cause to delay the entry of discharge and the application is granted.

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 Delay Discharge filed by Andreas Abramson ("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 hearing on the Motion to Delay Discharge is continued to **10:30 a.m. on June 27, 2019**, for further consideration.

The Clerk of the Court shall not enter the Debtor's discharge until the court has issued its ruling on this Motion.

Final Ruling: No appearance at the May 2, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 4, 2019. By the court’s calculation, 28 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The hearing on the Motion to Compel Abandonment is continued to July 18, 2019 at 10:30 a.m.</p>

The Motion filed by Michael Jennings (“Debtor”) requests the court to order Michael D. McGranahan (“the Chapter 7 Trustee”) to abandon various corporate assets identified as follows:

1. 2018 Ford F-150.
2. 2010 Toyota Prius.
3. Computer Server.
4. 2 side-chairs.
5. Printer.
6. Spectrum Energy Solutions, Inc., and its corporate assets.
7. Goodwill of the corporation Spectrum Energy Solutions, Inc. (collectively the “Property”)

Amended Notices & Ex Parte Request For Continuance

Debtor filed its Original Notice on April 4, 2019 and provided notice the same day. Dckts. 10, 13. The Original Notice sought to set the hearing on the Motion for May 2, 2019 at 10:00. The court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice set the hearing for 10:30. Dckt. 14.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for May 2, 2019 at 10:30. Dckts. 15, 16.

On April 25, 2019, a week before the hearing on the Motion, Debtor filed a Second Amended Notice seeking to set the hearing for July 18, 2019 at 10:30 a.m. Dckt. 24, 25. No grounds are stated in the Notice supporting the continuance.

The Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules do not provide for the right of the parties to *sua sponte* continue hearings by issuing amended notices. Such would allow for abuse of the court's docket.

However, the court in this instance will construe the Second Amended Notice to be an *Ex Parte* Request for Continuance. No prejudice appearing to any party in interest, the court shall issue an order continuing the hearing on the Motion to July 18, 2019 at 10:30 a.m.

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

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

The Motion to Compel Abandonment filed by Michael Jennings ("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 hearing on the Motion to Compel Abandonment is continued to July 18, 2019 at 10:30 a.m.

22. [18-90811](#)-E-7
[MF-3](#)

SHORGHEH/JAKLIN LATIFI
David Johnston

CONTINUED OBJECTION TO DEBTORS'
CLAIM OF EXEMPTIONS
2-4-19 [\[27\]](#)

Final Ruling: No appearance at the May 2, 2019 hearing is required.

The parties to this Contested Matter having signed and filed a Stipulation (Dckt. 48), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection To Debtor's Claim of Exemption was dismissed without prejudice, and the matter is removed from the calendar.**