

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**May 17, 2018, at 10:30 a.m.**

1. [17-91024-E-7](#) **DONNIE JOHN**  
**Pro Se**

**TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC. 341(A)  
MEETING OF CREDITORS  
4-4-18 [19]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and creditors on April 6, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

**The Motion to Dismiss is granted, and the case is dismissed.**

Michael McGranahan ("the Chapter 7 Trustee") alleges that Donnie John ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Alternatively, if Debtor's case is not dismissed, the Chapter 7 Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 10:30 a.m. on April 24, 2018. If Debtor fails to appear at the continued Meeting of Creditors, the Chapter 7 Trustee requests that the case be dismissed without further hearing.

**May 17, 2018, at 10:30 a.m.**

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 23, 2018. Dckt. 24. Debtor states there have been family problems in his life recently with the passing of an uncle, an aunt who had a heart attack, and the loss of a wife and sons. Debtor asks that the court allow him to appear at the Meeting of Creditors in June.

## RULING

This case was filed on December 20, 2017. The first Meeting of Creditors was set for February 6, 2018, and Debtor failed to appear. The Meeting was continued to February 20, 2018, when Debtor again failed to appear. The Meeting was continued to April 24, 2018, at which Debtor again failed to appear.

Debtor asks the court to allow him to appear at the Meeting of Creditors in June. The next Meeting of Creditors is set for May 22, 2018, however. No Meeting in June has been set yet. Debtor is essentially asking the court to allow his case to sit untouched for six months while he enjoys the protections of the Bankruptcy Code.

This Chapter 7 case has been pending for five months, with Debtor not being able to allow his first Meeting of Creditors to be conducted. The grounds stated are not facially unreasonable, but it is questionable (based on the information provided) that they so consume Debtor that he could not timely attend the previously scheduled, and continued, first Meeting of Creditors.

Looking at Debtor's Schedules, he has no real property and no personal property of any significant financial value. Dckt. 15. No creditors with secured claims are listed on Schedule D. *Id.* However, the "800 pound gorilla" creditors are the Internal Revenue Service with a \$225,000 priority claim and the California Franchise Tax Board with a \$212,473 priority claim. Schedule E/F, *Id.* The general unsecured claims are listed to be \$30,000. *Id.*

On Schedule I, Debtor lists having income of only \$1,200 per month. *Id.* No dependents are listed on Schedule J, with Debtor listing his total monthly expenses to be \$1,175. *Id.* On the Statement of Financial Affairs, Debtor lists having 2017 year-to-date income of \$14,400; 2015 (not listing for 2016) income of \$14,854; and for 2014, no income is listed. *Id.* at 34.

Due to the circumstances, this case has grown stale. A serious question exists as to how this Debtor, devoid of assets and income, has become obligated for almost \$500,000 to the federal and state income taxing agencies.

Appearance at the Meeting of Creditors is mandatory. Many deadlines run from the anticipated first Meeting date. The failure or inability to timely participate in the first Meeting works to prejudice the trustee and creditors.

Based on the information provided in the Schedules, there is no prejudice to Debtor in dismissing this case, having him "clean the slate," file a new case, and have that new case be timely prosecuted by Debtor, as well as by the trustee and creditors in that case.

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

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

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

The Motion to Dismiss the Chapter 7 case filed by Michael McGranahan (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

2.	<a href="#"><u>18-90029</u></a> -E-11 MF-14	<b>JEFFERY ARAMBEL</b> <b>Reno Fernandez</b>	<b>MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT</b> 4-19-18 <a href="#"><u>[230]</u></a>
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**Final Ruling:** No appearance at the May 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 19, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Assume Lease or 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.

<p><b>The hearing on the Motion to Assume Lease or Executory Contract is continued to 10:30 a.m. on May 31, 2018, by prior order.</b></p>
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Jeffery Arambel (“Debtor in Possession”) moves for court authorization pursuant to 11 U.S.C. § 365 to assume a listing agreement with Cushman & Wakefield U.S., Inc.

11 U.S.C. § 365(a) states that a trustee or debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” That section of the Code continues and states that “[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee [or debtor in possession] may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee [or debtor in possession] cures, or provides adequate assurance that the trustee [or debtor in possession] will promptly cure, such default.” 11 U.S.C. § 365(b)(1)(A).

On May 3, 2018, Debtor in Possession filed an *ex parte* motion to continue the hearing. Dckt. 273. The court granted that request and continued the hearing to 10:30 a.m. on May 31, 2018. Dckt. 278. Therefore, the hearing on this matter has been continued by prior order to 10:30 a.m. on May 31, 2018.

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 filed by Laurels Medical Services (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Assume is continued to 10:30 a.m. on May 31, 2018, by prior order.

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice and Office of the United States Trustee on April 19, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion to Employ is continued to 10:30 a.m. on May 31, 2018, by prior order.**

Jeffery Arambel ("Debtor in Possession") seeks to employ Cushman & Wakefield U.S. Inc. ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Broker to assist in selling property within the Arambel Business Park.

Debtor in Possession argues that Broker's appointment and retention is necessary to carry out marketing and sales negotiations in continuation of a pre-petition agreement. Debtor in Possession seeks to employ Broker with a five percent commission of the gross sales price, along with a sliding scale for leases based on the length of the leases and their types, as follows:

Lease Term	Net Lease	Gross Lease
0 to 60 months	6.00%	5.00%
61 to 120 months	3.00%	2.50%
121 to 300 months	1.50%	1.25%

Blake Rasmussen, an executive managing director and a licensed real estate agent of Broker, testifies that he will be responsible for the proposed sales of the Arambel Business Park. Blake Rasmussen testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

On May 3, 2018, Debtor in Possession filed an *ex parte* motion to continue the hearing. Dckt. 272. The court granted that request and continued the hearing to 10:30 a.m. on May 31, 2018. Dckt. 277. Therefore, the hearing on this matter has been continued by prior order to 10:30 a.m. on May 31, 2018.

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

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

The Motion to Employ filed by Jeffery Edward Arambel ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Employ is continued to 10:30 a.m. on May 31, 2018.

4.

[11-90432](#)-E-7  
NFG-1

ROBERTO/DIANE ESQUIVEL  
Nelson Gomez

MOTION TO AVOID LIEN OF COLLECT  
ACCESS, LLC  
4-9-18 [\[20\]](#)

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 11, 2018. 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

**The Motion to Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of Collect Access LLC ("Creditor") against property of Roberto Esquivel and Diane Esquivel ("Debtor") commonly known as 1420 Martha Street, Patterson, California ("Property").

Debtor alleges that a judgment was entered against Debtor in favor of Creditor in the amount of \$18,345.22, but Debtor has not provided the recorded judgment for the court's review.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$88,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$321,506.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.*

Debtor has not claimed an exemption for the Property. Schedule C, Dckt. 1 at 22. To obtain relief pursuant to 11 U.S.C. § 522(f), avoiding a judicial lien that impairs the exemption of a debtor, the debtor must necessarily claim an exemption in the asset. Here, no exemption is claimed by Debtor, and no exemption can be impaired.

Additionally, Debtor does not provide the court with a copy of the alleged recorded abstract of judgment. The court has no evidence of recording information for the alleged abstract and is prevented from issuing an order avoiding a specific judgment lien as it relates to the specific property. Under 11 U.S.C. § 522(f), the court may avoid the judgment lien only to the extent that it impairs an exemption, not “in its entirety for every property that it could have encumbered as of the date the Petition was filed.”

With no evidence of a recorded lien that impairs an exemption Debtor would be entitled to claim, and with no exemption claimed in the specific property identified in the Motion, the Motion is denied without prejudice. Given the nature of the shortcomings in the pleadings, continuing the hearing to allow Debtor to provide a “minor, overlooked point,” is not appropriate.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Roberto Esquivel and Diane Esquivel (“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.



5. [12-92049-E-7](#) [12-9032](#) ROBERT/KATHERINE  
MATTEUCCI

MOTION FOR EXAMINATION AND FOR  
PRODUCTION OF DOCUMENTS  
4-16-18 [\[70\]](#)

GRANT BISHOP MOTORS, INC. V.  
MATTEUCCI ET AL

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on May 2, 2018. By the court's calculation, 15 days' notice was provided. The court set the hearing for 10:30 a.m. on May 17, 2018. Dckt. 71.

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

<b>The Motion for Examination and for Production of Documents is <span style="color: red;">XXXXX</span>.</b>
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Grant Bishop Motors, Inc. dba Modesto European a California Corporation ("Plaintiff") filed an application for the court to order Robert Matteucci ("Defendant") to appear at the court and present documents for Plaintiff's review as part of enforcing its money judgment against Defendant.

The court entered an order for Plaintiff to appear at 10:30 a.m. on May 17, 2018, and to present information to aid Plaintiff in enforcing its money judgment against Defendant. Dckt. 71.

The documents to be produced include:

- A. Defendant's personal federal and state tax returns and all attachments for the years 2007 to 2017;

- B. Federal and state tax returns and all attachments of any business Defendant owned during 2007 to 2017;
- C. Deeds to all property Defendant currently owns, along with current mortgage balances, if any;
- D. Defendant's driver's license and Social Security card;
- E. Defendant's W-2s, 1099s, profit and loss reports, income and expense forms, commission checks, and cash deposits for 2007 to 2018;
- F. Defendant's bank statements from each and every financial institution where Defendant has done business from 2007 to 2018;
- G. A current list of Defendant's assets and debts;
- H. A list of the vehicles owned by Defendant, along with all outstanding loan balances for any financed vehicle;
- I. All shares of stock, mutual funds, or bonds owned by Defendant;
- J. All documents evidencing Defendant's retirement accounts and their balances;
- K. All corporate documents for any business owned by Defendant;
- L. Copies of fictitious business statements for all businesses owned by Defendant;
- M. All documents evidencing Defendant's current occupation(s); and
- N. All documents evidencing all income Defendant has received from employment during 2007 to 2018.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**.

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 Examination and for Productions of Documents filed by Grant Bishop Motors, Inc. dba Modesto European a California Corporation ("Plaintiff") 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 **XXXXXXXXXXXXX**.

6. [12-92049-E-7](#)      **ROBERT/KATHERINE**      **MOTION FOR EXAMINATION AND FOR**  
[12-9032](#)      **MATTEUCCI**      **PRODUCTION OF DOCUMENTS**  
           **4-16-18 [69]**

**GRANT BISHOP MOTORS, INC. V.**  
**MATTEUCCI ET AL**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on May 2, 2018. By the court’s calculation, 15 days’ notice was provided. The court set the hearing for 10:30 a.m. on May 17, 2018. Dckt. 71.

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

<b>The Motion for Examination and for Production of Documents is <b>XXXXX</b>.</b>
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Grant Bishop Motors, Inc. dba Modesto European a California Corporation (“Plaintiff”) filed an application for the court to order Katherine Matteucci (“Defendant”) to appear at the court and present documents for Plaintiff’s review as part of enforcing its money judgment against Defendant.

The court entered an order for Plaintiff to appear at 10:30 a.m. on May 17, 2018, and to present information to aid Plaintiff in enforcing its money judgment against Defendant. Dckt. 72.

The documents to be produced include:

- A. Defendant's personal federal and state tax returns and all attachments for the years 2007 to 2017;
- B. Federal and state tax returns and all attachments of any business Defendant owned during 2007 to 2017;
- C. Deeds to all property Defendant currently owns, along with current mortgage balances, if any;
- D. Defendant's driver's license and Social Security card;
- E. Defendant's W-2s, 1099s, profit and loss reports, income and expense forms, commission checks, and cash deposits for 2007 to 2018;
- F. Defendant's bank statements from each and every financial institution where Defendant has done business from 2007 to 2018;
- G. A current list of Defendant's assets and debts;
- H. A list of the vehicles owned by Defendant, along with all outstanding loan balances for any financed vehicle;
- I. All shares of stock, mutual funds, or bonds owned by Defendant;
- J. All documents evidencing Defendant's retirement accounts and their balances;
- K. All corporate documents for any business owned by Defendant;
- L. Copies of fictitious business statements for all businesses owned by Defendant;
- M. All documents evidencing Defendant's current occupation(s); and
- N. All documents evidencing all income Defendant has received from employment during 2007 to 2018.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**.

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 Examination and for Productions of Documents filed by Grant Bishop Motors, Inc. dba Modesto European a California Corporation (“Plaintiff”) 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 **XXXXXXXXXXXXXX**.

7. **02-94454-E-7**      **LUANN SELECKY**      **MOTION TO SELL FREE AND CLEAR**  
**SSA-8**      **John Kyle**      **OF LIENS**  
4-19-18 [[123](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2018. By the court’s calculation, 28 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

<b>The Motion to Sell Property is granted.</b>
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The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1037 Westmont Terrace, Modesto, California (“Property”).

The proposed purchaser of the Property is Mike Sarikakis, and the terms of the sale are:

- A. Purchase price of \$270,000.00;
- B. Property sold “as is” and “without warranty;”
- C. Buyer shall provide his own smoke detectors, carbon monoxide detectors, and water heater bracing, if necessary;
- D. Movant and buyer to split the escrow fees equally;
- E. Movant to pay for owner’s title insurance policy and upgraded one-year home warranty (not to exceed \$500), with option coverage for air conditioning;
- F. Movant to pay county transfer taxes and fees;
- G. Escrow to close within fifteen days of court approval; and
- H. Accrued property taxes and insurance owing at the time of sale to be pro-rated between the parties.

The Motion seeks to sell the Property free and clear of the lien of First Concord Mortgage, a California corporation (“Creditor”). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

“(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that he possesses records showing that the obligation on the note has been paid in full. Therefore, Movant asserts that he has a bona fide dispute with Creditor.

Movant also asserts that Stephen Goudreau holds a duly recorded deed of trust and that there is a bona fide dispute with Mr. Goudreau because Luann Selecky (“Debtor”) and the Estate hold a demand note against Mr. Goudreau that exceeds his own claim. Movant anticipates filing an adversary proceeding to resolve the dispute.

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides funding for claims in this case against by liquidating property that had previously been undisclosed by Debtor.

Movant has estimated that a six percent broker’s commission from the sale of the Property will equal approximately \$16,200.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because interest continues to accrue against the notes on the Property and because he wishes to avoid any loss on what is perceived to be a valuable sale offer.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Michael McGranahan (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(3) & (4) to Mike Sarikakis or nominee (“Buyer”), the Property commonly known as 1037 Westmont Terrace, Modesto, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$270,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 127, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Property is sold free and clear of the liens of First Concord Mortgage, a California corporation, and of Stephen Goudreau, creditors asserting secured claims, pursuant to 11 U.S.C. § 363(f)(3) & (4), with the liens of such creditors attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Bob Brazeal of Remax Executive and to Stanley Combs of Equity Mortgage & Investments.

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



**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2018. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Edward Parcaut ("Debtor") commonly known as 1309 Brady Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,214.20. An abstract of judgment was recorded with Stanislaus County on January 27, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$279,100 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,634.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.*

Debtor filed an Amended Schedule C and claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in an unspecified amount. Dckt. 134. Amended Schedule C states that the total exemptions claimed are in the amount of \$38,951.39, but only \$6,800.00 of specific exemptions are listed. Debtor may have intended to insert the difference—\$32,151.39—for the Property exemption. The Motion, however, states incorrectly that Debtor has claimed an exemption of \$100,000.00.

Additionally, Debtor filed a Spousal Waiver of Right to Claim Exemptions on April 23, 2010. Dckt. 7. That waiver states that Debtor and his non-filing spouse “waive the right to claim in any bankruptcy proceeding during the period this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under C.C.P. § 703.140(b). The waiver is dated and signed by Debtor and his non-filing spouse as of December 28, 2009.

Original Schedule C listed all of the exemptions under provisions of California Code of Civil Procedure § 703.140(b), but Amended Schedule C lists all of the exemptions under Section 704, which is in direct contravention of the waiver Debtor and his non-filing spouse filed at the beginning of this case. The same counsel has represented Debtor throughout this case. Debtor does not appear to have any claimed exemptions in this case upon filing Amended Schedule C because of the prohibition of the spousal waiver.

As expressly stated on the Spousal Waiver form, that election is one concerning “valuable legal rights.” Dckt. 7. Here, Debtor and the non-filing spouse have affirmatively elected to claim exemptions under California Code of Civil Procedure § 703.140(b). The present motion is in conflict with that affirmative election on their part.

The problem also exists that on Amended Schedule C, which uses the exemption scheme that Debtor has affirmatively stated (Dckt. 7) will not be used, no dollar amount is claimed on Amended Schedule C.

In the Motion, Debtor states with particularity (Federal Rule of Bankruptcy Procedure 9013) the grounds upon which the relief is requested, including:

- A. The Property is alleged to have a value of \$297,100.
- B. The Property is encumbered by a senior deed of trust securing an obligation owed by Debtor in the amount of (\$351,500).
- C. After application of the arithmetical formula for computing if a judgment lien impairs an exemption, there is \$0.00 to which the judgment could attach.

It appears that when the Amended Schedule C was filed there were several typographical errors. First, the stated exemption sections conflict with the election stated in the Spousal Waiver. Second, no dollar amount is written for the exemption on Schedule C.

Under the circumstances, and only under these special, unique circumstances, the court infers that Debtor is claiming an exemption in any and all value of the Property (which is \$0.00) above the senior lien, and therefore the judgment lien impairs that exemption.

To the extent that Debtor may seek to assert rights under the exemption scheme inconsistent with the Spousal Election on file (unless an amended one is filed), the court can address such issues if they arise and determine whether judicial estoppel is a basis for denying such inconsistent positions from Debtor.

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 Edward Parcaut ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 626614, recorded on January 27, 2009, Document No. 2009-0007748-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Brady Avenue, 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.

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2018. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Edward Parcaut ("Debtor") commonly known as 1309 Brady Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,187.21. An abstract of judgment was recorded with Stanislaus County on January 30, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$279,100 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,634.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.*

Debtor filed an Amended Schedule C and claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in an unspecified amount. Dckt. 134. Amended Schedule C states that the total exemptions claimed are in the amount of \$38,951.39, but only \$6,800.00 of specific exemptions are listed. Debtor may have intended to insert the difference—\$32,151.39—for the Property exemption. The Motion, however, states incorrectly that Debtor has claimed an exemption of \$100,000.00.

Additionally, Debtor filed a Spousal Waiver of Right to Claim Exemptions on April 23, 2010. Dckt. 7. That waiver states that Debtor and his non-filing spouse “waive the right to claim in any bankruptcy proceeding during the period this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under C.C.P. § 703.140(b). The waiver is dated and signed by Debtor and his non-filing spouse as of December 28, 2009.

Original Schedule C listed all of the exemptions under provisions of California Code of Civil Procedure § 703.140(b), but Amended Schedule C lists all of the exemptions under Section 704, which is in direct contravention of the waiver Debtor and his non-filing spouse filed at the beginning of this case. The same counsel has represented Debtor throughout this case. Debtor does not appear to have any claimed exemptions in this case upon filing Amended Schedule C because of the prohibition of the spousal waiver.

As expressly stated on the Spousal Waiver form, that election is one concerning “valuable legal rights.” Dckt. 7. Here, Debtor and the non-filing spouse have affirmatively elected to claim exemptions under California Code of Civil Procedure § 703.140(b). The present motion is in conflict with that affirmative election on their part.

The problem also exists that on Amended Schedule C, which uses the exemption scheme that Debtor has affirmatively stated (Dckt. 7) will not be used, no dollar amount is claimed on Amended Schedule C.

In the Motion, Debtor states with particularity (Federal Rule of Bankruptcy Procedure 9013) the grounds upon which the relief is requested, including:

- A. The Property is alleged to have a value of \$297,100.
- B. The Property is encumbered by a senior deed of trust securing an obligation owed by Debtor in the amount of (\$351,500).
- C. After application of the arithmetical formula for computing if a judgment lien impairs an exemption, there is \$0.00 to which the judgment could attach.

It appears that when the Amended Schedule C was filed there were several typographical errors. First, the stated exemption sections conflict with the election stated in the Spousal Waiver. Second, no dollar amount is written for the exemption on Schedule C.

Under the circumstances, and only under these special, unique circumstances, the court infers that Debtor is claiming an exemption in any and all value of the Property (which is \$0.00) above the senior lien, and therefore the judgment lien impairs that exemption.

To the extent that Debtor may seek to assert rights under the exemption scheme inconsistent with the Spousal Election on file (unless an amended one is filed), the court can address such issues if they arise and determine whether judicial estoppel is a basis for denying such inconsistent positions from Debtor.

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 Edward Parcaut ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 626613, recorded on January 30, 2009, Document No. 2009-0009210-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Brady Avenue, 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.

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Edward Parcaut ("Debtor") commonly known as 1309 Brady Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,606.55. An abstract of judgment was recorded with Stanislaus County on March 4, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$279,100 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,634.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.*

Debtor filed an Amended Schedule C and claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in an unspecified amount. Dckt. 134. Amended Schedule C states that the total exemptions claimed are in the amount of \$38,951.39, but only \$6,800.00 of specific exemptions are listed. Debtor may have intended to insert the difference—\$32,151.39—for the Property exemption. The Motion, however, states incorrectly that Debtor has claimed an exemption of \$100,000.00.

Additionally, Debtor filed a Spousal Waiver of Right to Claim Exemptions on April 23, 2010. Dckt. 7. That waiver states that Debtor and his non-filing spouse “waive the right to claim in any bankruptcy proceeding during the period this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under C.C.P. § 703.140(b). The waiver is dated and signed by Debtor and his non-filing spouse as of December 28, 2009.

Original Schedule C listed all of the exemptions under provisions of California Code of Civil Procedure § 703.140(b), but Amended Schedule C lists all of the exemptions under Section 704, which is in direct contravention of the waiver Debtor and his non-filing spouse filed at the beginning of this case. The same counsel has represented Debtor throughout this case. Debtor does not appear to have any claimed exemptions in this case upon filing Amended Schedule C because of the prohibition of the spousal waiver.

As expressly stated on the Spousal Waiver form, that election is one concerning “valuable legal rights.” Dckt. 7. Here, Debtor and the non-filing spouse have affirmatively elected to claim exemptions under California Code of Civil Procedure § 703.140(b). The present motion is in conflict with that affirmative election on their part.

The problem also exists that on Amended Schedule C, which uses the exemption scheme that Debtor has affirmatively stated (Dckt. 7) will not be used, no dollar amount is claimed on Amended Schedule C.

In the Motion, Debtor states with particularity (Federal Rule of Bankruptcy Procedure 9013) the grounds upon which the relief is requested, including:

- A. The Property is alleged to have a value of \$297,100.
- B. The Property is encumbered by a senior deed of trust securing an obligation owed by Debtor in the amount of (\$351,500).
- C. After application of the arithmetical formula for computing if a judgment lien impairs an exemption, there is \$0.00 to which the judgment could attach.

It appears that when the Amended Schedule C was filed there were several typographical errors. First, the stated exemption sections conflict with the election stated in the Spousal Waiver. Second, no dollar amount is written for the exemption on Schedule C.

Under the circumstances, and only under these special, unique circumstances, the court infers that Debtor is claiming an exemption in any and all value of the Property (which is \$0.00) above the senior lien, and therefore the judgment lien impairs that exemption.

To the extent that Debtor may seek to assert rights under the exemption scheme inconsistent with the Spousal Election on file (unless an amended one is filed), the court can address such issues if they arise and determine whether judicial estoppel is a basis for denying such inconsistent positions from Debtor.



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 Edward Parcaut ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 637941, recorded on March 4, 2010, Document No. 2010-0020885-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Brady Avenue, 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.

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of US Bank N.A. ND ("Creditor") against property of Edward Parcaut ("Debtor") commonly known as 1309 Brady Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,644.55. An abstract of judgment was recorded with Stanislaus County on April 1, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$279,100 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,634.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.*

Debtor filed an Amended Schedule C and claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in an unspecified amount. Dckt. 134. Amended Schedule C states that the total exemptions claimed are in the amount of \$38,951.39, but only \$6,800.00 of specific exemptions are listed. Debtor may have intended to insert the difference—\$32,151.39—for the Property exemption. The Motion, however, states incorrectly that Debtor has claimed an exemption of \$100,000.00.

Additionally, Debtor filed a Spousal Waiver of Right to Claim Exemptions on April 23, 2010. Dckt. 7. That waiver states that Debtor and his non-filing spouse “waive the right to claim in any bankruptcy proceeding during the period this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under C.C.P. § 703.140(b). The waiver is dated and signed by Debtor and his non-filing spouse as of December 28, 2009.

Original Schedule C listed all of the exemptions under provisions of California Code of Civil Procedure § 703.140(b), but Amended Schedule C lists all of the exemptions under Section 704, which is in direct contravention of the waiver Debtor and his non-filing spouse filed at the beginning of this case. The same counsel has represented Debtor throughout this case. Debtor does not appear to have any claimed exemptions in this case upon filing Amended Schedule C because of the prohibition of the spousal waiver.

As expressly stated on the Spousal Waiver form, that election is one concerning “valuable legal rights.” Dckt. 7. Here, Debtor and the non-filing spouse have affirmatively elected to claim exemptions under California Code of Civil Procedure § 703.140(b). The present motion is in conflict with that affirmative election on their part.

The problem also exists that on Amended Schedule C, which uses the exemption scheme that Debtor has affirmatively stated (Dckt. 7) will not be used, no dollar amount is claimed on Amended Schedule C.

In the Motion, Debtor states with particularity (Federal Rule of Bankruptcy Procedure 9013) the grounds upon which the relief is requested, including:

- A. The Property is alleged to have a value of \$297,100.
- B. The Property is encumbered by a senior deed of trust securing an obligation owed by Debtor in the amount of (\$351,500).
- C. After application of the arithmetical formula for computing if a judgment lien impairs an exemption, there is \$0.00 to which the judgment could attach.

It appears that when the Amended Schedule C was filed there were several typographical errors. First, the stated exemption sections conflict with the election stated in the Spousal Waiver. Second, no dollar amount is written for the exemption on Schedule C.

Under the circumstances, and only under these special, unique circumstances, the court infers that Debtor is claiming an exemption in any and all value of the Property (which is \$0.00) above the senior lien, and therefore the judgment lien impairs that exemption.

To the extent that Debtor may seek to assert rights under the exemption scheme inconsistent with the Spousal Election on file (unless an amended one is filed), the court can address such issues if they arise and determine whether judicial estoppel is a basis for denying such inconsistent positions from Debtor.

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 Edward Parcaut ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of US Bank N.A. ND, California Superior Court for Stanislaus County Case No. 645412, recorded on April 1, 2010, Document No. 2010-0029550-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Brady Avenue, 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.

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 9, 2018. By the court's calculation, 38 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><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Bank of America, N.A., against property of Edward Parcaut ("Debtor") commonly known as 1309 Brady Avenue, California ("Property"). A review of the attached judgment lien shows that the true lienholder is FIA Card Services, N.A. ("Creditor"). FN.1.

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FN.1. Although not discussed in either the Motion or the Memorandum of Points and Authorities, the Proof of Service demonstrates that Bank of America, N.A., is the successor in interest to FIA Card Services, N.A. *Compare* Dckt. 128 & 132, *with* Dckt. 133.

The Proof of Service contains attachments showing that FIA Card Services, N.A., became inactive as of October 1, 2014, with Bank of America, N.A., becoming the successor institution. Dckt. 133. The Proof of Service shows that Bank of America, N.A., was served properly.

Additionally, the abstract of judgment and recording document show that recording was requested by Elizabeth A. Bleier, Esq., and Richard E. Golden, Esq., of Bleier & Cox in Encino, California. Service was sent to that firm, providing additional support for the assumption that the correct creditor has notified of the hearing on this Motion and has chosen not to respond.

For future motions, Debtor's counsel should not assume that the court will catch such significant differences in party names and figure out that the correct party has actually been named in the motion. The court was prepared to deny this motion without prejudice until a subsequent review revealed that the Proof of Service contained information about why Bank of America, N.A., was named in the Motion instead of FIA Card Services, N.A.

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A judgment was entered against Debtor in favor of Creditor in the amount of \$3,498.88. An abstract of judgment was recorded with Stanislaus County on November 6, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$279,100 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$353,634.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.*

Debtor filed an Amended Schedule C and claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in an unspecified amount. Dckt. 134. Amended Schedule C states that the total exemptions claimed are in the amount of \$38,951.39, but only \$6,800.00 of specific exemptions are listed. Debtor may have intended to insert the difference—\$32,151.39—for the Property exemption. The Motion, however, states incorrectly that Debtor has claimed an exemption of \$100,000.00.

Additionally, Debtor filed a Spousal Waiver of Right to Claim Exemptions on April 23, 2010. Dckt. 7. That waiver states that Debtor and his non-filing spouse "waive the right to claim in any bankruptcy proceeding during the period this case is pending, the exemptions provided by the applicable exemption provisions of California Code of Civil Procedure, Chapter 4, other than those under C.C.P. § 703.140(b). The waiver is dated and signed by Debtor and his non-filing spouse as of December 28, 2009.

Original Schedule C listed all of the exemptions under provisions of California Code of Civil Procedure § 703.140(b), but Amended Schedule C lists all of the exemptions under Section 704, which is in direct contravention of the waiver Debtor and his non-filing spouse filed at the beginning of this case. The same counsel has represented Debtor throughout this case. Debtor does not appear to have any claimed exemptions in this case upon filing Amended Schedule C because of the prohibition of the spousal waiver.

As expressly stated on the Spousal Waiver form, that election is one concerning "valuable legal rights." Dckt. 7. Here, Debtor and the non-filing spouse have affirmatively elected to claim exemptions under California Code of Civil Procedure § 703.140(b). The present motion is in conflict with that affirmative election on their part.

The problem also exists that on Amended Schedule C, which uses the exemption scheme that Debtor has affirmatively stated (Dckt. 7) will not be used, no dollar amount is claimed on Amended Schedule C.

In the Motion, Debtor states with particularity (Federal Rule of Bankruptcy Procedure 9013) the grounds upon which the relief is requested, including:

- A. The Property is alleged to have a value of \$297,100.
- B. The Property is encumbered by a senior deed of trust securing an obligation owed by Debtor in the amount of (\$351,500).
- C. After application of the arithmetical formula for computing if a judgment lien impairs an exemption, there is \$0.00 to which the judgment could attach.

It appears that when the Amended Schedule C was filed there were several typographical errors. First, the stated exemption sections conflict with the election stated in the Spousal Waiver. Second, no dollar amount is written for the exemption on Schedule C.

Under the circumstances, and only under these special, unique circumstances, the court infers that Debtor is claiming an exemption in any and all value of the Property (which is \$0.00) above the senior lien, and therefore the judgment lien would impair that exemption.

To the extent that Debtor may seek to assert rights under the exemption scheme inconsistent with the Spousal Election on file (unless an amended one is filed), the court can address such issues if they arise and determine whether judicial estoppel is a basis for denying such inconsistent positions from Debtor.

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 Edward Parcaut ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of FIA Card Services, N.A. (now held by successor Bank of America, N.A.), California Superior Court for Stanislaus County Case No. 636811, recorded on November 5, 2009, Document No. 2009-0108155-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Brady Avenue, 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.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), creditors, and Chapter 7 Trustee as stated on the Certificate of Service on April 15, 2018. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$31.00 due on March 30, 2018.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$31.00.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.



**Final Ruling:** No appearance at the May 17, 2018 hearing is required.  
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Local Rule 9014-1(f)(2) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2018. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion for the initial hearing. No oppositions were stated at the hearing and none have been filed for the continued hearing.

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

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

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

#### **APRIL 26, 2018 HEARING**

At the hearing, the Chapter 7 Trustee stated that the Meeting of Creditors had not been completed yet. Dckt. 17. The court continued the hearing to 10:30 a.m. on May 17, 2018, to allow the Chapter 7 Trustee to complete his investigation in this case.

## **CHAPTER 7 TRUSTEE'S NON-OPPOSITION**

The Chapter 7 Trustee filed a Non-Opposition on May 3, 2018. Dckt. 19.

### **DISCUSSION**

Schedule A/B further discusses the property valuation and states that the \$382,000.00 amount is based on a comparative property report and includes projected costs of sale. Dckt. 1. On Schedule C, Debtor has claimed an exemption of \$100,000.00 in the Property pursuant to California Code of Civil Procedure § 704.730. *Id.*

At this point, no party has objected to Debtor's claimed exemptions, no creditor has filed a proof of claim in this case, and no party has opposed this Motion. The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

### **CHAMBERS PREPARED ORDER**

The court shall issue an Order (not a minute order) substantially in the following form holding that:

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

The Motion to Compel Abandonment filed by Bevin Machado ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 5643 Americh Court, Riverbank, California and listed on Schedule A by Debtor is abandoned by Gary Farrar ("the Chapter 7 Trustee") to Bevin Machado by this order, with no further act of the Chapter 7 Trustee required.

ACHTERBERG, JR. ET AL V.  
CREDITORS TRADE ASSOCIATION,

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on January 10, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Office of the United States Trustee has not been served. The latest United States Trustee guidelines request service of all pleadings and orders in Chapter 7 adversary proceedings.

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

<p><b>The Motion to Compel is dismissed without prejudice.</b></p>
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Robert Achterberg, Jr., and Stephanie Achterberg ("Plaintiff") requests that the court order Gary Looney, president and owner of Creditors Trade Association, Inc., dba Great Western Collection Bureau ("Defendant") to produce documents related to payment of a judgment against Defendant. Plaintiff also asks for reimbursement of fees and costs associated with Defendant failing to comply with discovery. Additionally, Plaintiff seeks imposition of monetary sanctions against Defendant for any future failures and to prohibit Defendant from introducing contrary evidence to the Motion.

#### **FEBRUARY 15, 2018 HEARING**

At the hearing, the court continued the hearing to 10:30 a.m. on March 8, 2018, because of a filing error of the court's tentative ruling. Dckt. 87.

#### **MARCH 8, 2018 HEARING**

At the hearing, the court noted that Exhibit F for time and billing charges was not filed due to an error. Dckt. 92. The court continued the hearing to 10:30 a.m. on March 29, 2018. Dckt. 94.

As to the requested financial documents, the court granted the Motion and ordered Defendant to produce the documents at 10:30 a.m. on March 29, 2018. The court ordered that failure to do so would result in a corrective sanction of \$2,500.00. *Id.*

## **FILING OF EXHIBIT F**

Plaintiff filed Exhibit F on March 12, 2018. Dckt. 95. The exhibit shows that a total of 9.0 hours was spent working on this matter. At an hourly rate of \$265.00, the total amount of attorney's fees incurred is \$2,385.00.

## **NOTICE OF COMPLIANCE AND NON-OPPOSITION**

On March 14, 2018, Defendant filed a Notice of Compliance stating that it had provided documents numbered CTA 1 through CTA 703. Dckt. 97.

On the same day, Defendant also filed a Non-Opposition to the Motion and its request for documents and \$2,385.00 in attorney's fees. Dckt. 98.

## **PLAINTIFF'S REPLY**

Plaintiff filed a Reply on March 22, 2018. Dckt. 99. Plaintiff states that what it received contained several progress sheets on accounts that Defendant supposedly attempted to collect on and bank statements from Umpqua Bank from September 2017 through February 2018. Plaintiff states that the bank statements are each two pages long, are blank on the second page, and do not show any activity since September 26, 2017, when \$500.00 was deposited. Plaintiff states that the remaining statements show a deduction of \$10.00 for a bank service charge.

Plaintiff argues that information provided shows that the bank account "is obviously not being used by Defendant." *Id.* at 2:11. Plaintiff also argues that it has not received any copies of judgments in which Defendant is the creditor, although Plaintiff also notes that Defendant has stated that documents would be produced within one to two weeks.

Plaintiff requests full compliance with the court's order.

## **MARCH 29, 2018 HEARING**

At the hearing, the parties requested that the matter be continued in light of their attempts to conclude the discovery and address the issues now in dispute. Dckt. 103. The court continued the hearing to 10:30 a.m. on May 17, 2018. Dckt. 104.

## **SUPPLEMENTAL DECLARATION**

Plaintiff's attorney filed a supplemental Declaration Re: Notice of Compliance on May 11, 2018. Dckt. 105. Plaintiff's attorney declares under penalty of perjury that e-mails have been exchanged with Douglas Provence and that it has been determined that the requested documents have been produced.

Additionally, Plaintiff's attorney states that Mr. Provence had and has agreed to turn over the incurred attorney's fees to Plaintiff.

Plaintiff's attorney states that he believes the May 17, 2018 hearing should be dropped.

## **APPLICABLE LAW**

The Federal Rules of Civil Procedure are incorporated into bankruptcy proceedings in large part. This is true with respect to the discovery provisions (whether in an adversary proceeding or contested matter). Here, Federal Rule of Civil Procedure 37 and incorporating Federal Rule of Bankruptcy Procedure 7037 are cited in the motion as the basis for the relief requested.

Federal Rule of Civil Procedure 37(a) establishes the procedure for obtaining an order from the court to compel a party to respond to discovery. When requested and the court issues such an order, the requesting party is entitled to recover the costs and expenses in prosecution of such a motion. FED. R. CIV. P. 37(a)(5).

### **“Meet and Confer” Requirement**

Federal Rule of Civil Procedure 37(a)(1) requires that the motion to compel discovery “include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action.” FN.1.

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FN.1. Both the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure are mentioned several times in the court's ruling. A Federal Rule of Civil Procedure will be referred to as “Rule,” and a Federal Rule of Bankruptcy Procedure will be referred to as “Bankruptcy Rule.”

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The certification requirement of Rule 37(a)(1) was described in *Shuffle Master, Inc. v. Progressive Games, Inc.* as comprising two elements:

[T]wo components are necessary to constitute a facially valid motion to compel. First is the actual *certification* document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the *performance*, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2) conferred or attempted to confer. Each of these two subcomponents must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

170 F.R.D. 166, 170 (D. Nev. 1996); *see also Triad Commer. Captive Co. v. Carmel (In re GTI Capital Holdings, LLC)*, No. AZ-09-1053-JuMKD, 2009 Bankr. LEXIS 4539, at \*26–27 (B.A.P. 9th Cir. Aug. 20, 2009); *Sanchez v. Wash. Mutual Bank (In re Sanchez)*, No. 06-2251-D, 2008 Bankr. LEXIS 4239, at \*2–3 (Bankr. E.D. Cal. Sept. 8, 2008). The court went further, stating that “a moving party must include more

than a cursory recitation that counsel have been ‘unable to resolve the matter.’” *Shuffle Master, Inc.*, 170 F.R.D. at 171; *see also Triad Commer. Captive Co.*, 2009 Bankr. LEXIS 4539, at \*27; *Sanchez*, 2008 Bankr. LEXIS 4239, at \*3.

Rule 37 also requires that the moving party must have conferred in good faith or attempted to confer with the opposing party regarding the discovery dispute. *Shuffle Master, Inc.*, 170 F.R.D. at 171. The court in *Shuffle Master* noted that good faith “cannot be shown merely through the perfunctory parroting of statutory language . . . to secure court intervention; rather it mandates a genuine attempt to resolve the discovery dispute through non-judicial means.” *Id.*; *see also Sanchez*, 2008 Bankr. LEXIS 4239, at \*3–4. The movant must show good faith and the party need actually attempt a meeting or conference. *Shuffle Master, Inc.*, 170 F.R.D. at 171. Courts have found that “conferment” requirement entails “two-way communication, communication which is necessary to genuinely discuss any discovery issues and to avoid judicial recourse.” *Compass Bank v. Shamgochian*, 287 F.R.D. 397, 398–99 (S.D. Tex. 2012).

The “meet and confer” requirement is not satisfied by mailing a letter from one party’s counsel to another party’s counsel. *See Leimbach v. Lane (In re Lane)*, 302 B.R. 75, 78–79 (Bankr. D. Idaho 2003). The requirement of filing “a certificate cannot be satisfied by including with the motion copies of correspondence that discuss the discovery at issue. . . . The Court is unwilling to decipher letters between counsel to conclude that the requirement has been met.” *Ross v. Citifinancial, Inc.*, 203 F.R.D. 239, 240 (S.D. Miss. 2001).

## DISCUSSION

The supplemental declaration filed by Plaintiff’s attorney indicates that the requested documents have been provided and that the attorney’s fees either have been paid or have been promised to be paid to an extent that Plaintiff is satisfied that a hearing on this Motion is no longer necessary.

Plaintiff having acknowledged that the hearing can be dropped because of Defendant’s compliance, the Motion is dismissed without prejudice.

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 filed by Robert Achterberg, Jr., and Stephanie Achterberg (“Plaintiff”) having been presented to the court, Plaintiff-Movant having filed a Supplemental Declaration stating that the documents have been provided and provision has been made for Plaintiff to recover costs and expenses, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel is dismissed without prejudice.