

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

May 20, 2021 at 10:30 a.m.

1. [21-90006-E-7](#) **JANAY VILLARREAL**
[21-9003](#)
ANDERSON V. VILLARREAL

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-27-21 [[10](#)]**

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

The Order to Show Cause was served by the Clerk of the Court on Plaintiff (*pro se*), and Defendant as stated on the Certificate of Service on April 29, 2021. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Plaintiff's failure to pay the required fees in this case: \$350.00 due on April 13, 2021.

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 subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Plaintiff: \$350.00.

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 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.

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on May 6, 2021. The court computes that 14 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: \$338.00 due on April 20, 2021.

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: \$338.00.

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 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.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 13, 2021. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Administrative Expenses is granted.
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Irma C. Edmonds ("Movant") requests payment of administrative expenses in the amount of \$823.00 in taxes, and related late fees of 5% per month for each month after March 15, 2021 until payment is made (not to exceed 25%), incurred for the year 2020, owed to the California Franchise Tax Board for Campbell Wings, Inc. ("Debtor").

DISCUSSION

Movant argues that payment of the taxes to the Franchise Tax Board is necessary and appropriate so that the Trustee can properly administer the bankruptcy estate and without this authorization the estate runs the risk of incurring fees, penalties and other fines that will impact payment to creditors.

Section 503(b)(1)(B) of the Bankruptcy Code states that "(b) after notice and a hearing, there shall be allowed administrative expenses ..., including - (1) ... (B) any tax - (I) incurred by the estate ..." Here, Movant is requesting authorization to pay the amount owed by the bankruptcy estate to the Franchise

Tax Board and related late fees which amount to 5% per month for each month after March 15, 2021, not to exceed 25% of the amount owed as an administrative expense.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing payment of taxes to the California Franchise Tax Board for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses in the amount of \$823.00 in taxes, and related late fees of 5% per month for each month after March 15, 2021 until payment is made (not to exceed 25%).

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

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

The Motion for Allowance of Administrative Expense filed by Irma C. Edmonds ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to pay \$823.00 in taxes, and related late fees of 5% per month for each month after March 15, 2021 until payment is made (not to exceed 25%) as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Joe Anthony Machado, the Chapter 12 Debtor in Possession, ("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 620 and 622 Denton Road, Hickman, California (consisting of approximately 73 acres with two homes and outbuildings) ("Property").

The proposed purchaser of the Property is Jaspreet Mann, and a summary of the terms of the sale are:

- A. Sale of the Property for the sum of \$1,560,000, to be paid in cash at the close of escrow with an initial deposit of \$50,000.
- B. Sale is stated to be completely at arms-length.
- C. Buyer to assume the following cultural costs, which will be paid directly to vendors: almond and chestnut moving, weed spraying, fertilizer, bee services, and TID electrical charges for deep well, and current crop insurance policy at COE.

- D. Buyer to pay for Domestic, Ag well and soils reports. Seller to pay for county transfer tax, city transfer tax, and smoke alarm device installation. Buyer and Seller to split 50/50 escrow fee.

Debtor in Possession notes that the court had previously granted relief from the automatic stay to permit American Farm Mortgage Company, Inc., to foreclose on the Property, with a trustee's sale scheduled to take place on April 12, 2021. However, the lender has agreed to postpone the trustee's sale for short period of time to permit this motion to move forward in anticipation that the motion will be granted and the sale of Property successfully close escrow.

Proposed Bidding Procedures

Debtor in Possession proposes the following bidding procedures:

1. The initial overbid must be for \$1,600,000 (\$40,000 more than the agreement presently before the Court);
2. Additional bids must be in increments of \$5,000;
3. Potential bidders must place with the Debtor in Possession's attorney, a cashier's check for \$50,000, payable to David C. Johnston, Attorney-Client Trust Account, at least 24 hours prior to the hearing, which will only be negotiated if a bidder is successful and which will be returned to unsuccessful bidders;
4. The overbid must be for an "all cash" sale with no contingencies except clear title and court approval and must be on the same basic terms and conditions as Exhibit B, except for appraisal, financing, and inspection contingencies. (Under the present agreement, those contingencies will have been removed by May 20, 2021, the date of the hearing.); and
5. The overbid must provide for a close of escrow no later than June 3, 2021.

Motion, at p. 3.

Debtor in Possession further states that in the event Buyer is not the final successful bidder, Buyer will be entitled to receive \$10,000 from the proceeds of sale in consideration for his efforts, which include payment of cultivation costs pending court approval, appraisal fees, and loss of use of his \$50,000 deposit for two months.

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 fully pays the three creditors holding the largest claims; it eliminates the

continuing accrual of interest on more than \$1,300,000 of debt; it generates sufficient cash to pay all expenses of sale and administrative claims; it generates some money for the Debtor's homestead exemption; and it allows the Debtor in Possession to propose a feasible plan to deal with the remaining claims.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately \$78,000.00, which will be divided evenly between seller's and buyer's brokers. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

Dropped in the prayer of the Motion, as almost an afterthought, Debtor also requests that the court "Authorize payment of the Trustee's statutory commission." The Prayer then requests that after payment of the liens, expenses of sale, and, Trustee compensation," to have the net proceeds paid into the attorney-client trust account for the Debtor in Possession's attorney.

At the hearing, **XXXXXXX**

Debtor in Possession states that the title company will remit all remaining funds (estimated to be approximately \$65,000 but in no event more than \$175,000), to the attorney-client trust account of the Debtor in Possession's attorney at the close of escrow for distribution to the Debtor for his homestead exemption and for payment of attorney's fees as allowed by the court.

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 the Property is not generating income and the interest accrual of approximately \$13,000 per month and property tax accrual of almost \$2,000 per month are eroding the Debtor's shrinking homestead exemption.

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 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 Sell Property filed by Joe Anthony Machado, the Chapter 12 Debtor, ("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 Joe Anthony Machado, the Chapter 12 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jaspreet Mann or nominee ("Buyer"), the real property commonly known as 620 and 622 Denton Road, Hickman, California (consisting of approximately 73 acres with two homes and outbuildings) ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$1,560,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 104, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 12 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 12 Debtor is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale. The five (5) percent commission shall be paid to the Chapter 12 Debtor's broker/agent, Coldwell Banker Sagerstrom / Veronica Hemphill.
- E. After payment of the above secured liens, taxes, expenses and commissions, all remaining net proceeds shall be disbursed directly from escrow to Michael Meyer, the Chapter 12 Trustee.

The Chapter 12 Trustee is authorized to immediately distribute to Debtor that portion of the net proceeds in excess of what the Chapter 12 Trustee computes his maximum allowable compensation (11 U.S.C. § 326(b)) to be in this case directly to Joe Machado, the Debtor, up to the amount of the homestead exemption claimed in the Property by Mr. Machado.

- F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 12 Debtor in Possession. Within two business days of close of escrow the Chapter 12 Debtor in Possession shall provide the Chapter 12 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 12 Trustee directly from escrow.

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

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

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 9, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 11 bankruptcy case of Mohit Singh Randhawa ("Debtor in Possession") has been filed by Bikram Saha ("Movant"), creditor who had commenced a civil legal action for contract and fraud damages against Debtor and his corporation in Sant Clara Superior Court. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Since filing of the petition, Debtor has maintained minimal business operations and the filed schedules reflect a negative monthly income of \$1,428.00.
- B. Debtor has failed to file a reorganization plan and a review of Debtor's current financial position and claims filed, show that a practical and confirmable plan is not feasible.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Debtor in Possession filed the bankruptcy case on September 23, 2020. Dckt. 1. Since then, Debtor in Possession has filed a Motion to Employ his current counsel, which was approved on October 26, 2020. Dckts. 20, 23. No other acts seem to have been taken by Debtor in Possession in prosecuting this case. The case has been open for eight (8) months and Debtor in Possession has not proposed a plan.

Debtor’s Schedule E/F, filed on October 12, 2021, lists \$1,920,165.00 in unsecured debt. Dckt. 16, at p. 15-53. A review of the Proofs of Claims filed as of May 19, 2021 shows that 17 claims have been filed totaling \$1,466,902.98, where secured claims total \$136,587.61 and priority claims total \$325,887.00. The creditor with the highest claim is Movant with an unsecured claim of \$930,000 with a basis stated as:

MONEY LOANED, COMMERCIAL VENTURES, ADDITIONALLY, DEBTOR
BREACHED THE AGREEMENT TO MAINTAIN A POLICY OF 1 MILLION

Proof of Claim 14-1, at p. 2. Attached to the proof of claim is the complaint filed by Movant in Santa Clara Superior Court against Debtor and Debtor’s corporation, Reply Logistics, Inc. The Complaint alleges breach of contract and fraud, with a request for damages in the amount of \$958,545 plus interest, attorney’s fees, costs of suit and for pre-judgment interest. Attachment, at p. 4-10.

In looking at Debtor’s Schedule I, Debtor has a combined monthly income of \$5,274.00. Dckt. 16. This income is based on Debtor’s spouse’s income. *Id.*, at 57. Debtor states under penalty of perjury that he has \$0.00 income from operating a business. *Id.* Debtor lists two teenage sons as dependents and monthly expenses in the amount of \$6,702.00. Thus, leaving Debtor with a negative monthly income in the amount of \$1,428.00. In a household of four, two of which are teenagers, the court finds that the following may not reflect actual reasonable expenses: \$200.00 in clothing, \$40.00 in personal care products and services, and \$0.00 in entertainment. *Id.*, at 59.

It seems to the court that, as Movant points out, the Debtor in Possession may not be able to propose a plan under the current financial situation where the Debtor in Possession has a negative monthly income and the expenses may not be accurate.

Debtor in Possession filed a Status Report on May 13, 2021 asserting the following:

1. Debtor and Movant have agreed to extend the time for a dischargeability complaint to be filed until after the Superior Court matter goes to judgment and the Court has approved the arrangement.
2. Until the litigation with the Creditor is resolved, a plan of reorganization is extremely premature. This Chapter 11 case is not a Subchapter V case so the fast deadline to file a plan within 90 days after the petition date does not apply.
3. Debtor intends to object to two claims, but resolution of Movant's pending motion may render the objections moot.

Dckt. 71.

Debtor in Possession does not oppose the conversion, nor does any other party in interest.

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is converted to a case under Chapter 7.

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 Convert the Chapter 11 case filed by Bikram Saha ("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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2021. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant" or "Seller") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 5119 Curtis Street, Salida, California ("Property").

The proposed purchaser of the Property is Bernardo Vega Noguez, and the terms of the sale are:

- A. Sale price of \$365,000, with the Seller providing a credit of \$7,000.00 for closing costs. Buyer will deposit an initial deposit of \$10,000 into escrow.
- B. The subject property will be sold "AS IS" and "WITHOUT WARRANTY."
- C. Buyer providing his own smoke detectors, carbon monoxide detectors, and water heater bracing, if necessary.
- D. Buyer and Seller will each pay one-half (50/50) of the standard escrow fees and costs.

- E. Seller shall pay for owner's title insurance policy, natural hazard zone disclosure report, any County transfer tax or fee, and an upgraded one-year home warranty.
- F. Any defaulted property taxes to be paid from escrow at time of closing. Any current taxes owed at time of sale will be pro-rated between the parties at time of closing.

Proposed Overbidding Procedures

Trustee proposes the following bidding procedures;

- 1. Any overbids must be in increments of \$5,000.
- 2. Any prospective bidder evidence proof of funds (in the form of a bank account statement, letter of credit, cashier's check or money order or cash) and approve the same terms and conditions of the present sale agreement and escrow instructions of the current Buyer(s) save and except at a higher sale price.
- 3. Preference is made five days in advance of the hearing but the Trustee will entertain overbid if these conditions are met at time of hearing.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of the following creditors:

- a. California Franchise Tax Board secured claim in the amount of \$30,535.57, with a principal balance owed of \$23,608.04. Of that sum the amount of \$6,636.11 is listed as penalty, which the Movant asserts is subject to subordination.
- b. United States of America a Federal Tax Lien (principal amount of \$117,438.30)
- c. California Franchise Tax Board (principal amount of \$4,432.72)

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

(f) The trustee 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 argues that the sale is proper on several grounds.

First, the subject sale price of \$365,000 is greater than the statutory liens (\$235,155.80), which liens shall attach to residual proceeds in the same nature, extent and priority as existed prior to sale, and the local real property taxes will be paid from the proceeds of sale. Therefore, the Movant argues that pursuant to 11 U.S.C. §363 (f)(3), the sale is proper.

Second, 11 U.S.C. §363 (f)(2) applies in this case where Trustee alleges that Trustee and counsel have been in communications with the taxing authorities regarding treatment of their claims and they are optimistic that a consensual resolution allowing the sale can be achieved. However, no such consent has yet been obtained.

Finally, Trustee asserts that the penalty portion of the taxing authorities liens and their status are subject to *bona fide* dispute under 11 U.S.C. §363 (f)(4). Although Trustee is aware that there is authority that does not support his contention regarding these penalties. It appears that the Trustee's actual argument on this point is that the Trustee may avoid liens for certain tax penalties, and such lien rights preserved for the benefit of the bankruptcy estate.

The Trustee further asserts that the Debtor's homestead exemption will be subordinate to the Trustee's fees and other professional fees. This may be true for proceeds relating to liens that may be avoided, but not a blanket subordination to any and all trustee and professional fees.

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 the net proceeds will assist in the administration of this case and help to pay the administrative, secured, priority and unsecured claims.

Sale free and clear of liens is permitted, based on the sales proceeds exceeding the amount of secured claims filed in this case. The following proofs of claims have been filed and additional secured claims identified by the Trustee:

Internal Revenue Service
Amended Proof of Claim 7-2.....(\$163,117.73) Secured Claim

Franchise Tax Board
Proof of Claim 5-1.....(\$ 23,608.06) Secured Claim

Franchise Tax Board
2019 Recorded Tax Lien.....(\$ 4,432.72) Secured Claim
Identified by the Trustee

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Total Secured Claims Subject to
Sale Free and Clear (\$191,158.51)

Movant has estimated that a six (6) percent broker's commission from the sale of the Property will equal approximately \$21,900.00; with Trustee's broker to receive 3% (\$10,950.00) and buyer's broker to receive 3% (\$10,950.00). As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six (6) percent commission.

The sale proceeds computation projection is made by the court as follows:

Gross Sales Price.....\$365,000.00

Reduction for Credit
Given by Seller.....(\$ 7,000.00)

Seller's Property Taxes.....(\$ 7,869.78) plus additional 18% interest

Brokers' Commissions.....(\$ 21,900.00)

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Net Sales Proceeds From Escrow.....\$328,230.22

Less Liens Attaching to Proceeds.....(\$191,158.51)

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Unencumbered Proceeds
Subject to Homestead Exemption.....\$137,072.71

Claimed Homestead Exemption.....(\$108,918.77) Schedule D, Dckt. 1 at 17.

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Surplus Value Above Liens
and Homestead Exemption For
Estate to Recover.....\$ 28,153.94

The Trustee is able to sell the Property, disburse Debtor the homestead exemption, and generate monies for the bankruptcy estate (in addition to any avoided lien rights that the Trustee could assert against any of the proceeds of the sale).

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 valid secured state and federal tax lien claims; interest continues to accrue at the statutory rate of eighteen (18%) percent per annum on the outstanding real property claim; and the prospective Buyer desires to own and occupy the property as soon as practicably possible and the Trustee wishes to avert a loss of this valuable sale offer to the estate.

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

IT IS ORDERED that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(3) to Bernardo Vega Noguez or nominee (“Buyer”), the Property commonly known as 5119 Curtis Street, Salida, California] (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$365,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 83, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the following liens:

California Franchise Tax Board
Notice of Tax Lien Recorded May 10, 2011
No. 2011-0039699
Stanislaus County Recorder

Internal Revenue Service
United States of America
Notice of Tax Lien Recorded August 25, 2011
No. 807071011

Stanislaus County Recorder

California Franchise tax Board

Notice of Tax Lien Recorded September 8, 2019

No. 382817819

Stanislaus County Recorder

pursuant to 11 U.S.C. § 363(f)(4), with such liens attaching to the proceeds of the sale in the same order, priority, validity, and extent as they existed in the Property.

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 not more than six (6) percent of the actual purchase price upon consummation of the sale, with 3% percent commission to be paid to the Chapter 7 Trustee's broker / agent, RE/MAX Executive / Bob Brazeal, and 3% percent commission to be paid to Buyer's broker / agent, Golden Equity Home Loans / Claudia Blackwood.

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

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

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case and/or Motion to Convert 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 Dismiss Case and/or Motion to Convert is granted and the case is converted to one under Chapter 7.

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Charles Collantes Macawile, Jr. ("Debtor") has been filed by creditors Scott R. Williams and Anastasie C. Martin, Trustees of The Williams Trust Dated August 19, 2014, its successors and/or assignees ("Movant"). Movant is the current payee of a Promissory Note dated September 6, 2018 in the principal amount of \$1,000,000.00 secured by a First Deed of Trust, executed and recorded in Stanislaus County and which encumbers the real property located at 5412 Kieman Avenue, Salida, California 95368 ("Property"). The total amount of Movant's claim as of the Petition Date is \$1,190,684.75.

Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. This is Debtor's second pending bankruptcy case in the last eight (8) months.
- B. In the previous case (Case No. 20-90139), filed as a Chapter 13 case, Debtor proposed paying off the loan via a refinance in nine (9) months. Movant objected to this treatment and the objection was sustained.
- C. Six days after the previous case was dismissed, Debtor filed the instant case under Chapter 11 as a Small Business Subchapter V.
- D. Pursuant to Schedule I, neither the Debtor nor his non-filing spouse earn any income. Additionally, according to Schedule J, Debtor is running a deficit of \$2,267 each month.
- E. Debtor has again proposed to refinance to pay off Movant and in the Status Report filed on July 23, 2020, Debtor asserts having obtained a loan commitment from a lender in Mexico and is negotiating an agreement to lease the Property. Moreover, Debtor received an \$1.8 Million offer to purchase the subject Property but turned it down.
- F. At the meeting of creditors, Debtor testified that he intended to sell the Property to his wife, who qualified for a loan in April 2020 and was waiting for the finance to come through.
- G. Debtor has not filed a plan and his motion to extend the deadline to file a plan was denied.
- H. At the October 1, 2020 status conference, Debtor's Counsel informed the court that Debtor's plans of financing had not materialized.
- I. Debtor has not provided evidence that there is a reasonable likelihood that a plan will be confirmed within a reasonable time.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[.]; [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

DISCUSSION

Creditor's concerns are well taken. Debtor has failed to confirm a plan. Additionally, the Debtor has no income and is acting to the detriment of creditors by, namely, having turned down an offer to sell the Property which would have allowed for his creditors to be paid.

The instant motion was filed prior to the November 18, 2020 Status Conference. At the status conference, the court addressed the same concerns Movant raises now. After reviewing the facts of the case, it was determined that Debtor in Possession be removed and Subchapter V Trustee will now market and sell the property. Civil Minutes, Dckt. 53.

The hearing has been continued at the request of Movant.

February 11, 2021 Hearing

Since the last hearing, the Subchapter V Trustee has filed a Motion to Employ a Real Estate Broker (RAC-1) and a Motion to Employ Counsel for the Subchapter V Trustee (RAC-2) on January 22, 2020. Dckts. 66, 61. Both motions were granted and the Orders were entered on January 25, 2021. See Dckts. 71, 72.

The Subchapter V Trustee also filed a Motion to Sell real property free and clear of liens (RAC-3) on January 29, 2021 and set for hearing at 10:30 a.m. on March 11, 2021. Dckt. 73.

March 11, 2021 Hearing

The Motion to Sell filed by the Subchapter V was granted.

May 20, 2021 Hearing

The Subchapter V Trustee filed a Status Report for a Status Conference set for hearing on April 29, 2021. Dckt. 106. The Status Conference was continued to July 29, 2021. However, the court summarizes Trustee's report for purposes of providing context. The Trustee details his efforts in selling property of the bankruptcy estate and provides a dark picture of Debtor's and Ms. Cruz efforts to impede Trustee's sale and administration of other property of the estate. Trustee concludes with providing of steps to be taken in order to pay the claims after the sale of the property, dismissal of this case, and that there will be a sizeable dividend to the Debtor. Trustee adds that he will provide all the documentation related to Debtor and Ms. Cruz wrongdoings to the United States Trustee for further review and action, if any.

The Subchapter V Trustee has also filed his first and final application for fees and expenses, which has been set for June 3, 2021 at 10:30 a.m. Dckt. 123. A Motion for Conditional Dismissal of this case was filed on May 13, 2021. Dckt. 134.

No other documents or pleadings have been filed by Movant.

CONVERSION OF CASE TO CHAPTER 7

In considering this Motion the court begins with the personal knowledge testimony of the Subchapter V Trustee. Declaration, Dckt. 137. The Trustee's personal knowledge testimony (Fed. R. Evid. 601, 602) consists of: (1) stating that he is the Subchapter V trustee in this case; (2) his testimony is provided in support of the Motion to Conditionally Dismiss this Case; and (3) he believes that Conditional Dismissal is proper based on whatever his attorney has put in the Motion. Other than telling the court that he is the Subchapter V trustee, he provides no factual testimony.

The Motion is full of various factual allegations, many of which are drawn from the Schedules and pleadings in this case. The Trustee was able to sell the Kiernan Avenue Property for \$2,800,000. The net sales proceeds were \$2,625,879.77. The Motion alleges various acts and actions by Debtor and his spouse that are asserted to have been done to impair the Trustee's ability to sell the Property and which may have reduced the sales value of the Property.

For claims to be administered, Iron Oak Home Loans, Inc and its principals for which it is servicing a loan, assert a claim secured by the \$2,625,879.77 in sales proceeds. Amended Proof of Claim No. 8-2 has been filed by Iron Oak Home Loans for (\$1,190,684.75). The Motion states that an updated payoff demand of (\$1,358,861.27) has been made by Iron Oak Home Loans.

The Trustee also identifies a John Grill as having a deed of trust against the Toomes Road Property, Debtor's residence. No proof of claim has been filed by Mr. Gill. The Motion states that Mr. Grill has made a payoff demand of \$101,904.94, computed through June 3, 2021. A secured claim has been filed by Stanislaus County for (\$1,749.45) (POC 10-1) for which the Toomes Road Property secures that claim.

For priority unsecured claims, the Internal Revenue Service has filed Proof of Claim 7-1 in the amount of (\$3,318.00).

For general unsecured claims, proofs of claims totaling \$13,648.27 have been filed. In the Motion a review of the Debtor's Schedule E/F discloses \$53,438.00 in listed general unsecured claims.

For administrative expenses, the Motion projects \$128,669.56.

After providing for all claims in full, the Motion computes there being \$978,395 in surplus estate monies.

The Motion seeks to have this court create a liquidation distribution scheme and then have the court address all issues arising from the court created liquidation distribution scheme. It is asserted that such a liquidation distribution scheme is superior to converting this to a Chapter 7 case (for which Congress has create as a matter of federal law a bankruptcy liquidation administration and distribution scheme) because it would avoid Chapter 7 administrative expenses.

The court declines the opportunity to follow the ruling in an unreported Texas Bankruptcy Case for creating such a scheme. This case has been fraught with alleged misconduct by Debtor and Debtor's spouse, impairment in the Subchapter V Trustee in fulfilling his obligations, and general dysfunctionality on the part of the Debtor. Rather than creating a non-statutory, specially created, liquidation administration and distribution scheme, the court selects that created from the wisdom of the legislative process - Chapter 7.

To the extent that the Subchapter V Trustee and U.S. Trustee are concerned over there being duplicative or excessive Chapter 7 trustee expenses, it may be that the U.S. Trustee appoints the Chapter V Trustee to conclude this case as the Chapter 7 trustee. Or, if a new Chapter 7 trustee is appointed, he or she can request only reasonable fees for the actual services provided (11 U.S.C. § 326(a) allowing only reasonable fees, which cannot exceed the maximum percentage fee caps).

Cause exists to convert this case to one under Chapter 7.

At the hearing xxxxxxxx

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 Dismissal or to Convert to a Chapter 7 Case filed by creditors Scott R. Williams and Anastasie C. Martin, Trustees of The Williams Trust Dated August 19, 2014, its successors and/or assignees (“Movant”) having been presented to the court, no opposition to the Motion having been filed, the court determining that conversion of this case to one under Chapter 7 is “in the best interests of creditors and the estate” [11 U.S.C. § 1112(b)(1)], and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and this case is converted to one under Chapter 7.

FINAL RULINGS

8. [20-90210-E-11](#) **JOHN YAP AND IRENE LOKE** **MOTION TO APPROVE STIPULATION**
[AP-2](#) **Arasto Farsad** **RE: ADEQUATE PROTECTION**
4-7-21 [\[200\]](#)

Final Ruling: No appearance at the May 20, 2021 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, and Office of the United States Trustee on April 7, 2021. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Approve Stipulation Re: Adequate Protection Payments 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 Approve Stipulation Re: Adequate Protection Payments is granted.

Creditor holding a secured claim, LEHMAN XS TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-10N, U.S. Bank National Association, as Trustee; Nationstar Mortgage LLC (dba Mr. Cooper) as servicer ("Creditor / Movant") requests that the court approve a stipulation with John Hst Yap and Irene Laiwah Loke ("Debtor") which provides that Debtor will provide adequate protection payments, maintain insurance coverage, remain current on property taxes and for certain acts in case of default of payments related to 7400 Chantilly Way, Hughson, California ("Property").

STIPULATION

Creditor and Debtor stipulate to an order regarding adequate protection payments to Creditor with secured claim, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 202):

- A. Debtors shall make the required contractual monthly payments to Movant, currently in the amount of \$3,133.60 commencing April 1, 2021, and continuing on the first day of each month thereafter until the Debtors' Chapter 11 Plan of Reorganization, is confirmed.
- B. Debtors must maintain insurance coverage on the Property and must remain current on all property taxes that become due post-petition with respect to the Property.
- C. In the event of any future default on any of the provisions of the Stipulation, Movant shall provide written notice via certified mail to Debtors and to Debtors' attorney of record, indicating the nature of the default. In case of failure to cure default within 30 calendar days, Movant may request the court to terminate the stay and upon order of the court, may proceed to foreclose on the Property. Parties hereby stipulate that the 14-day stay provided by Bankruptcy Rule 4001(a)(3) is waived.
- D. Debtors shall be required to tender Movant's reasonable attorneys' fees for each default letter submitted, in addition to any default amounts set forth in such letter, in order to cure the default.
- E. The acceptance by Movant of a late or partial payment shall not act as a waiver of Movant's right to proceed hereunder or remedies to that Movant would otherwise have been entitled under applicable nonbankruptcy law.
- F. These terms and conditions shall be binding only during the pendency of this bankruptcy case. If, at any time, the stay is terminated with respect to the Property by court order or by operation of law, the terms pursuant to this stipulation cease to be binding and Movant may pursue remedies under applicable non-bankruptcy law against the Property and/or against the Debtors.

DISCUSSION

Here, the stipulation requires Debtors to tender post-petition payments to Movant on a claim secured by their principal residence pending Debtors' completion of their efforts to reorganize through a Chapter 11 Plan. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 43 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on Debtor and Creditor agreeing to adequate protection payments, and when applicable, Debtor is to maintain insurance coverage and stay current in property taxes, while Debtor pursues a Chapter 11 plan.

Counsel, Debtor, and Creditor have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on.

The Motion is granted. ^{FN.1.}

FN. 1. The court appreciating the efforts of the Parties and their respective counsel in prosecuting this case and the terms of the Adequate Protection Stipulation, the court has issued a final ruling on this and not required the appearance of counsel at the scheduled hearing. While authorizing the adequate protection, the court notes the following with respect to such adequate protection agreements and relief from stay default provisions.

The court's standard procedure for issuing an order for relief from the stay after notice of a default in the adequate protection terms is to have an *ex parte* motion filed, using the same docket control number as the motion for relief or motion to approve stipulation. The *ex parte* motion is supported by evidence of the default, notice of cure, and failure to cure, and provide ten days notice to the opposing party.

If the opposing party disputes that there was a default or if a default existed that it was not timely cured (the only permitted grounds to oppose), then the opposing party must set a hearing on the *ex parte* motion for relief for the first available regular motion for relief law and motion dates that is at least fourteen days after service of the *ex parte* motion. This insures that basic Due Process is provided and a clear vehicle for an opposing party to state an opposition and not later seek to collaterally attack the order granting relief.

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 Approve Stipulation filed by Creditor holding a secured claim, LEHMAN XS TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-10N, U.S. Bank National Association, as Trustee; Nationstar Mortgage LLC (dba Mr. Cooper) as servicer ("Creditor / Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Stipulation between Creditor and John Hst Yap and Irene Laiwah Loke is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit 1 in support of the Motion (Dckt. 202).

Final Ruling: No appearance at the May 20, 2021 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, Trustee’s Attorney, creditors, and parties requesting special notice on April 2, 2021. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and to File a Motion to Dismiss Case Under Section 707(b) 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 Extend Deadline to File a Complaint Objecting to Discharge and to File a Motion to Dismiss Case Under Sec 707(b) is granted.

Tracy Hope Davis, the United States Trustee, (“Movant”) moves to extend the deadline to file a complaint objecting to Michelle A. Pimentel-Montez’s (“Debtor”) discharge under 11 U.S.C. §727 and/or a motion to dismiss under 11 U.S.C. §707(b) because Movant is investigating the veracity of the Debtors’ bankruptcy schedules and statement of financial affairs, amendments, statements made at the 341(a) Meeting of Creditors, transfers which appear to be undisclosed, and related matters concerning two 2019 loans totaling over \$1.7 million.

The deadline for filing a complaint objecting to discharge was April 2, 2021. Dckt. 44. The Motion requests that the deadline to object to Debtor’s discharge and/or to file a motion to dismiss be extended to July 2, 2021.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on April 2, 2021, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to July 2, 2021.

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

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and/or Motion to Dismiss filed by Tracy Hope Davis, the United States 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 is granted, and the deadline for Movant to object to Michelle A. Pimentel-Montez's ("Debtor") discharge and file a Motion to Dismiss is extended to July 2, 2021.