UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

May 21, 2022 at 10:30 a.m.

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1. **15-28400-E-13** **HEATHER URBAN**
DPC-2 **Lucas Garcia**

TOM AMON VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
4-6-20 [88]

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.

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Honorable Ronald H. Sargis and Marsha A. Burch on April 3, 2020. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Proof of Service for the Motion for Relief from the Automatic Stay does not document that the pleadings were properly served on the Debtor, the Chapter 13 Trustee, or the U.S. Trustee. The Chapter 13 Trustee and Debtor responding, and effectively waiving any defect in service, as discussed below, the court considers the Motion at the May 5, 2020 hearing.

The Motion for Relief from the Automatic Stay is xxxxx.

Continuance of May 5, 2020 Hearing

In the court's tentative ruling for the May 5, 2020 hearing, the court addressed a number of significant issues concerning the relief sought and the testimony provided under penalty of perjury. Unfortunately, Movant's counsel was not in attendance at the May 5, 2020 hearing.

It is necessary to address the issues concerning the relief sought, rather than merely denying the motion without prejudice, before proceeding. Addressing these issues in the context of this Motion is good cause to continue the hearing.

PRELIMINARY MATTERS

The present Motion has been filed using Docket Control No. DPC-2. That number was first used by the Chapter 13 Trustee, David P. Cusick, for a Motion to Dismiss this bankruptcy case filed on December 11, 2019. It has now been reused by the Movants, Tom and Lolita Amon, for the present Motion for Relief From the Stay.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number that was previously used by Trustee. This is not correct use of the docket control function. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

Service of Process

The moving party filed a United States Bankruptcy Court for the Central District of California Proof of Service form. Dckt. 92. Jil Gustafson has signed the Proof of Service stating under penalty of perjury that the service has been conducted as stated therein.

First, Ms. Gustafson states that the documents have been served on the judge in chambers in the manner and form required by Local Bankruptcy Rule 5005-2(d) and were served by United States Mail. Eastern District of California Local Bankruptcy Rule requires attorneys to file documents with the court electronically. L.B.R.(d)(2) provides that a request for a waiver from electronic filing may be requested by ex parte motion by an attorney. It does not provide for sending documents to a judge by U.S. Mail. [FN. 1]

FN. Local Bankruptcy Rule 5005-2(d) for the U.S. Bankruptcy Court for the Central District of California does require the filing, whether electronically or non-electronically, a copy of all documents marked "Judge's Copy" and it be served on the judge's chambers.

The Proof of Service also states that the pleadings were served on a Marsha Burch, an

attorney in Grass Valley, California. Marsha Burch is not an attorney who has appeared in this case or counsel of record for anyone in this case.

The Proof of Service does not attest to service of the pleadings on the Debtor, Debtor's Counsel, or the Chapter 13 Trustee.

Both the Chapter 13 Trustee and the Debtor have filed responses to the present motion, resolving the issue of failure of service. The court considers the Motion on its merits.

REVIEW OF THE MOTION

Tom and Lolita Amon ("Movant") seeks relief from the automatic stay to allow what they refer to as State Court Action to Enforce Settlement in the County of Nevada City (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Craig A. Diamond ("Movant's Counsel") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Heather Lynn Urban ("Debtor"). Counsel later filed the Declaration of Movant Lolita Amon to introduce evidence regarding their claims. Dckt. 103.

Movants argue that relief is needed because Debtor entered into a settlement agreement without notifying Movants that she was in bankruptcy until after Movants had done what was required of them and when they tried to enforce the settlement when she refused to perform, Debtor invoked the protection of this bankruptcy court. Declaration, Dckt. 103.

The Motion recounts a long series of events leading to the present Motion seeking relief from the automatic stay. It is necessary for the court to review this grounds stated to put the present proceeding into context.

Review of Events as Stated With Particularity in the Motion

Movants begin stating that they own residential property on 14784 Lewis Road in Nevada City, California ("Movant's Property"). They do not state when they acquired their property. The Motion states that Debtor owns the immediately adjacent property on Bourbon Hill Road in Nevada City, California ("Debtor's Property"), on which Debtor operates a daycare business.

It is stated in the Motion that in March 1989 a "Surveyor's Statement" was filed with Nevada County showing the boundaries between Movants' Property and Debtor's Property. A copy of that Statement is identified as Exhibit A to the Motion. Motion ¶ 3; Dckt. 88. [FN. 2]

FN. 2. The court cannot identify any exhibits having been filed by Movants.

The Motion continues, alleging that in August 2015, a survey was conducted of the Movants' Property and Debtor's Property by Judy Rodgers, a copy of which is provided as Exhibit B. *Id.* No declaration of Judy Rogers is provided, though after this sentence is the parenthetical "(Diamond Decl. ¶ 2)." The "Diamond Decl." is a reference to a declaration filed by Movants' counsel, which, as discussed below, is merely a cut and paste of the allegations stated in the Motion, devoid of anything

showing that Movants' counsel has personal knowledge for which he may provide testimony under penalty of perjury. Fed. R. Evid. 601, 602.

The Motion continues, stating that in 2015 Movant's predecessor in interest gave Debtor "temporary permission" for "use of her encroachments onto what is now known to be [Movants' Property]. . . ." *Id.*, ¶ 4. It is further stated that when Movants' purchased Movant's Property in August 2015, they too gave Debtor "temporary permission for use of her encroachments" on it. *Id.* Reference is made to the evidence for this allegation being Movants; counsel's declaration, into with paragraph 4 of the Motion has been cut and pasted. No testimony is provided for how Movants' Counsel has personal knowledge of the permission given five years ago.

The Motion then recounts purported conversations between Movants and Debtor in September 2015, again, the evidence of which is stated to be Movants' counsel's declaration. *Id.*, ¶ 5. No personal knowledge of counsel provided in the Declaration.

It is then alleged that in September 2017, Movants rescinded the permission for Debtor to use the "encroachment" on Movants' Property, with a letter for such rescission provided as Exhibit C. (No exhibits filed.) *Id.*, ¶ 6.

The Motion continues, alleging that Movants made numerous requests for Debtor to remove her personal property from Movants' Property (the latest being in 2018), but she has refused. Instead, Debtor has made statements to Movants that she claims an interest in Movants' Property and has a right to occupy it. *Id.*, ¶¶ 7,8.

Movants then began posting No Trespassing signs, which Debtor removed and has not returned to Movants. When Movants attempted to install water lines on Movants' Property, Debtor chased the surveyor and contractor off of Movants' Property. Debtor has threatened to have Movants arrested if they go on the portion of Movants' Property in which Debtor asserts an interest. *Id.* ¶¶ 9-11.

Debtor continues to operate her child daycare business, continuing to use a portion of Movants' Property. Debtor and persons connected with Debtor continually park their vehicles on the access road to obstruct Movants access to Movants' Property.

It was alleged that Debtor and Movants came to an agreement for Debtor to remove her personal property from Movants' Property, with that deadline missed by approximately one year. *Id.*, ¶ 17.

Ultimately a settlement was reached (no documentation of such settlement was provided with the Motion) that Debtor was to remove her personal property by midnight on November 30, 2018. *Id.*, ¶ 18. It makes reference to a hearing before a Judge *Pro Tem*, but no legal proceeding is identified. It further states that if the personal property is removed, then Debtor is to pay $1,000.00 a day until the personal property is removed. Reference is then made to Movants dismissing "their complaint" and Debtor dismissing her "cross-complaint" once the personal property has been removed.

It is stated that Movants have performed their part of the settlement, but Debtor did not until December 2019, which would be more a year after the above stated November 30, 2018 deadline.

Further, that in a court's (it is not identified which court and no copy of an order is provided

as an exhibit) order, the $1,000.00 a day penalty was determined to be an enforceable provision; thus, Movants compute that Debtor owes $331,000.00 in enforceable penalties.

It is stated that Debtor had not disclosed to Movants that she was in bankruptcy "at this point," appearing to indicate sometime in early 2020. (It appears that this part of the Motion is a cut and paste from a motion filed in another court for enforcement of the settlement agreement, and is making references to statements made in another motion but not made in this Motion.)

It is then alleged that two days before "the hearing" (not identifying what hearing) a new counsel for Debtor advised Movants that Debtor had filed bankruptcy. It is then stated that a review of the bankruptcy file indicated that a motion to dismiss the bankruptcy case had been filed, but that there were no further orders. (This too appears to be a cut and paste from some other motion, using terms to identify the Movants and Debtor different from those previously used in this Motion.) [FN. 3]

FN. 3. A review of the Docket in this case discloses that the Trustee filed a Motion to Dismiss on December 11, 2019 and the order on that Motion was filed on January 28, 2020. Dckts. 75, 85. Thus, it appears that the unidentified proceedings in another court were occurring in the January 2020, prior to the 28th day of that month.

Reply Filed by Movants

After reviewing the Debtor's Response, Movants filed a Reply on April 29, 2020. Dckt. 102. It states that Movants did not serve the pleadings on all required parties. Additionally, that Movants were not aware of the docket control numbering requirements and "inadvertently" "miss-numbered" the papers.

In reply to the objection to Movants' counsel providing testimony under penalty of perjury as to facts, the Reply states that a Declaration signed by moving party Lolita Amon has been filed. It appears that this "personal knowledge" declaration is a copy and paste of Movants' counsel's declaration, including Ms. Amon providing testimony under penalty of perjury about the 1989 "Surveyor's Statement" that was filed in 1989. Ms. Amon provides her "testimony" that Debtor has not "disclosed" that she is in bankruptcy and "testifies" to what appear to be excerpts from portions of motion(s) filed in other courts.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 20, 2020. Dckt. 94. Trustee states that Debtor is current under the confirmed plan, Movants were not listed as creditors in the original schedules or listed on the master address list (required for them to have received notice of the bankruptcy from the court and service by other parties). However, Movants are now listed in amended schedules as "contingent, unliquidated, and disputed." *Id.* ¶ 1. The Amended Schedules and Amended Master Address List were filed on March 2, 2020 - four years and five months after this bankruptcy case had been filed.

The Chapter 13 Trustee also notes that under the terms of the confirmed Chapter 13 Plan, all property of the bankruptcy estate revested in the Debtor upon the commencement of the bankruptcy case. *Id.*, ¶ 2.

DEBTOR'S RESPONSE

Debtor has filed a response, in which she first attacks the deficiency in the Proof of Service. Response, Dckt. 97. Debtor also points to the Declaration of Movants' counsel, in which he purports to testify under penalty of perjury as to a number of facts, which facts he fails to show a basis for having personal knowledge.

Debtor states that the boundary line dispute existed prior to the filing of this bankruptcy case in 2015, so it has been subject to this bankruptcy case and anything done outside of this court, or without the authorization of this court is improper.

While making the above statement, and taking a swipe at Movants' counsel, Debtor's experienced counsel offers no statement as to why this serious dispute or interest in Movants' Property, which Debtor argues pre-dates this bankruptcy case, is not included in the Schedules and Statement of Financial Affairs filed under penalty of perjury by Debtor. Or why Movants, if she was in dispute with them, were not listed on the Schedules or the Master Mailing List.

Debtor offers no declaration in response to the Motion.

DISCUSSION

This Motion presents the court with a series of pre-petition and post-petition events, transactions, and unidentified litigation intentionally prosecuted by both Movants and Debtor, one against the other.

As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*),954 F.2d 569, 571 (9th Cir. 1992). Movant's motion as drafted requests the court prospective relief, that either there is no stay for the subject liability or to provide relief from the stay. If that is the only relief granted, then whatever has happened in the past would still be void.

However, Congress also provide in 11 U.S.C. § 362 the power of the bankruptcy court to annul the automatic stay so as to render what was void to not be void. Retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside* (*In re Nat'l Envtl. Waste Corp.*), 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055.

The Motion as drafted, does not appear to seek such an annulment of the stay.

Additionally, the Trustee points the court to the confirmed Chapter 13 Plan in this case which provides for all property of the estate to revest in the Debtor. Second Modified [Amended] Plan, ¶ 5.01; Dckt. 50. If property is no longer property of the bankruptcy estate that may be of legal significance. That issue is not addressed.

State Court Litigation

Though it appears that Debtor has willingly and intentionally engaged in litigation in non-bankruptcy courts over the past several years concerning disputes about property that may have revested in the Debtor upon confirmation, what Movants appear to be seeking to accomplish (going forward to enforce agreements in unidentified non-bankruptcy court litigation) is not the relief sought in the Motion.

Additionally, it is very troubling Movants' and Movants' counsel's cavalier appearing attitude to testifying under penalty of perjury in court. Counsel's declaration and Lolita Amon's declaration contain multiple examples of making statements for which no basis of personal knowledge is given. The Motion allegations are merely cut and pasted into a "declaration" to be "testimony" under penalty of perjury. Some of the cut and pasted paragraphs are taken from what appears to be motions filed in other unidentified court. Testimony under penalty of perjury is not merely the opportunity to argue allegations that if true would "let me/my client win!"

While the court can envision different ways that a motion could be advanced by Movants and defended by Debtor, it is not the court's role to so advocate for one party or the other, or both. While it is incumbent on the court to get the law correct (notwithstanding an incorrect or non-response by a party), it must be based on the evidence properly presented to the court and within the scope of the relief requested. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Here, the court does not have sufficient evidence to issue a final order granting or denying the relief. The relief requested is inconsistent with what appears to be sought in the body of the Motion.

2. **20-20018-A-7** **PETER MONEY**
SKS-1 **Nicholas Wajda**

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS
3-12-20 [12]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Chapter 7 Trustee on March 14, 2020. By the court's calculation, 26 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted and the bankruptcy case is dismissed.

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Peter John Money ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on

April 17, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

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

Failure Debtor to Appear at Continued First Meeting

On April 18, 2020, Trustee filed a Report of No Distribution. Trustee's April 18 2020 Docket Entry Statement. Trustee states that Debtor and Debtor's Counsel did not appear at the continued Meeting of Creditors on April 17, 2020. *Id*.

The meeting was concluded and Trustee reports that there is no property or money available for distribution to creditors over and above that exempted by law, and certifying that the case has been fully administered. *Id*. Trustee also requests to be discharged from further duties. *Id*.

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 the Chapter 7 Trustee, Susan K. Smith ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

3. **20-21899-A-7** **SKYLER DAVIS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
VVF-1 **Paul Bains** **4-29-20 [15]**

HONDA LEASE TRUST VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Honda Accord, VIN ending in 6785 ("Vehicle"). The moving party has provided the Declaration of Sheba Smith to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Skyler Alan Davis ("Debtor"). Debtor is the lessee of the Vehicle.

Movant argues Debtor has not made any post-petition payments, with a total of $520.86 in post-petition payments past due. Declaration, Dckt. 18. Movant also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of $1,041.72. *Id*.

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

DEBTOR'S NON-OPPOSITION

Debtor has no opposition to the relief requested. Dckt. 23.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $24,314.04 (Declaration, Dckt. 18). Movant's NADA guide report values the vehicle at $19,200.00. Dckt. 11.

Debtor's Statement of Intention provides for the surrender of the Vehicle. Dckt. 1.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Honda Accord, VIN ending in 6785 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

4. **18-27920-A-7** **GREEN BELT CARRIERS** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WILLIAM AND DOROTHY SILVA**
MHK-12 **Stephen Reynolds**
4 thru 5
4-17-20 [108]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 17, 2020. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

In light of the substantial compliance with the notice period requirement, the court *sua sponte* reduces the required notice period to thirty-four (34) days.

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

The Motion for Approval of Compromise is granted.

Susan K. Smith, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with William Silva and Dorothy Silva, dba William Silva Trucking ("Settlor"). The claims and disputes to be resolved by the proposed settlement are an alleged preference amount where Debtor sent various payments, asserted by the Trustee to total $76,713.30, to Settlor within the 90-day period before the bankruptcy filing, and the subsequent adversary proceeding filed by Movant.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 111):

A. Settlor to pay the estate $15,000.00. Trustee to file and serve the motion after receiving $15,000 payment.

B. Parties exchange mutual general release of claims.

C. The adversary proceeding will be dismissed after the court approves the agreement.

D. Settlor agrees to waive a claim under 11 U.S.C. § 502(h) in connection with the $15,000 payment.

E. Parties to each bear their own costs and expenses, including attorneys' fees.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Trustee argues this factor weighs in favor of approving the settlement on the basis that the probability of success in the litigation is unclear, and because the $15,000.00 payment is a significant portion of the amount in controversy after new-value and ordinary-course defenses are taking into account.

Difficulties in Collection

Trustee is unlikely to encounter collection difficulties. However, Trustee has been informed that Settlor has suffered as a consequence of the COVID-19 related restrictions. Thus, this factor may weigh in favor of settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee believes that although the issues are not complex, the expense and delay of litigation would be great and costly in light of the limited resources available to the estate.

Paramount Interest of Creditors

Trustee argues the settlement is in the best interest of creditors because Settlor has agreed to waive the 11 U.S.C. § 502(h) claim, thus avoiding further expense to the estate.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it would avoid costly uncertain litigation and bring $15,000.00 to the estate to the benefit of creditors. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Susan K. Smith, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and William Silva and Dorothy Silva, dba William Silva Trucking ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 111).

5. **18-27920-A-7** **GREEN BELT CARRIERS** **MOTION FOR ADMINISTRATIVE EXPENSES**
MHK-11 **Stephen Reynolds**
4-3-20 [104]

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Susan K. Smith ("Movant") in her capacity as Trustee for the bankruptcy estate of Green Belt Carriers requests payment of administrative expenses in the amount of $1,231.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Internal Revenue Service for the estate's 2019 corporate tax liability.

DISCUSSION

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

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant employed an tax professional, Gene Gonzales, on behalf of the bankruptcy estate. The tax professional has estimated the estate's corporate tax liability due to the Internal Revenue Service for the year 2019 is $1,231.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the 2019 corporate tax liability was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the administrative expenses in the amount of $1,231.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Susan K. Smith ("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 an administrative expense in the amount of $1,231.00 of the Internal Revenue Service for 2019 tax liability is allowed, and the Chapter 7 Trustee is authorized to pay $1,231.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

6. **17-27569-E-7** **NANCY SHANDOR** **MOTION TO COMPEL**
GC-1 **Julius Cherry** **ABANDONMENT**
4-22-20 [60]

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2020. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Nancy Ann Shandor ("Debtor") requests the court to order Geoffrey Richards ("the Chapter 7 Trustee") to abandon personal property identified as wrongful termination and personal injury settlement proceeds in the amount of $37,078.00 from the case *Shandor v. Rideout* ("Property"). The Property has been exempted up to $26,677.00 by Debtor under California Code of Civil Procedure § 703.140.(b)(5). Dckt. 58. The Declaration of Nancy Ann Shandor has been filed in support of the Motion and testifies that the Property is of no consequence or burdensome to the bankruptcy estate. *Id.*

Trustee has no opposition to the relief requested. Trustee's April 23, 2020 Docket Entry Statement.

The court finds that the exemption claimed in the Property consumes most, if not all, of 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 Nancy Ann Shandor("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 wrongful termination and personal injury settlement proceeds in the amount of $37,078.00 from the case *Shandor v. Rideout* and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") to Nancy Ann Shandor by this order, with no further act of the Trustee required.

7. **18-90029-E-11 FWP-2** **JEFFERY ARAMBEL**
Matthew Olson

MOTION TO SELL FREE AND CLEAR OF LIENS O.S.T.
4-29-20 [1133]

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, Plan Administrator, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is ~~granted~~.

The Bankruptcy Code permits Focus Management Group USA, Inc, Plan Administrator, ("Movant") to sell property of the estate under the confirmed plan after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 804 - 998 Orange Avenue, Patterson, California, APN: 048003051 (18.27 acres) and APN 048003053 (17.53 acres), consisting of 35.8 acres total ("Property"). Movant provides the Declarations of Jeffrey E. Arambel and Juanita Schwartzkop in support of the motion.

An amended notice was filed on May 11, 2020, informing the parties that the agreement had been amended by the Reorganizing Debtor and the buyer extending the buyer's due diligence period to May 22, 2020. Dckt. 1151.

The proposed purchaser of the Property is Raghu Ram Katragadda, and the terms of the sale are summarized as follows (the full terms and conditions of the sale are set forth in the Purchase Agreement filed as Exhibit 1 in support of the Motion, Dckt. 1137):

A. The sale of the Property to Buyer in exchange for Buyer's payment of the purchase price in the amount of $1,432,000.00, subject to overbidding. Initial deposit of $30,000.00.

B. The sale of the Property is on an "AS-IS" basis, subject to certain environmental disclosures related to the Property as set forth in the Agreement;

C. Seller's broker to be paid a commission of 1.5 percent of the actual purchase price.

D. This is a cash transaction.

E. Agreement subject to court's approval.

F. Seller to pay for the natural hazard zone disclosure report and any private transfer fee.

G. Seller and Buyer to pay 50/50 for the following: escrow fee, owner's title insurance, county transfer tax, city transfer tax.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of Button Transportation, Inc. ("Button") on the basis that the lien is disputed or subject to be void. Plan Administrator also seeks to sell the Property free and clear of the liens of Brighthouse and Summit on the basis of consent upon the distribution of all net proceeds to Brighthouse and Summit in the order of priority and subject to the terms of the Plan. 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).

Asserted of *Bona Fide* Dispute

Movant states the Button disputed lien arises from an abstract of judgment recorded by Button in the County of Stanislaus on October 4, 2019, as Recording No.2018-0068622 (the "Button Lien"). This is stated to have been recorded after the January 17, 2018 commencement of this bankruptcy case.

No copy of the abstract of judgment has been provided showing the recording date and number information. The "evidence" of this judgment lien is the Debtor's testimony that said lien was recorded and that his counsel has sent a letter to Button requesting that the lien be released. Declaration ¶ 9; Dckt. 1135. He further testifies that he anticipates the lien being released by the time of the hearing.

The Movant also "disputes" the lien because there will be no proceeds therefrom after the payment of the two senior undisputed liens. Declaration ¶ 13; *Id.* The Motion does not address whether this secured claim has been valued pursuant to 11 U.S.C. § 506(a).

An act taken in violation of the automatic stay is void, not merely voidable.

> In fact, the automatic stay provision is so central to the functioning of the bankruptcy system that this circuit regards judgments obtained in violation of the provision as void rather than merely voidable on the motion of the debtor. See [*In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)]. Courts regularly void state court default judgments against debtors when the judgments are obtained in violation of the automatic stay provision, even where the debtor filed for bankruptcy in the midst of the state court proceedings. See, e.g., *In re Fillion*, 181 F.3d 859, 861 (7th Cir. 1999); In re Graves, 33 F.3d 242, 247 (3d Cir. 1994).

Far Out Productions, Inc. v. Oskar et al., 247 F.3d 986, 995 (9th Cir. 2001).

> Our decision today clarifies this area of the law by making clear that violations of the automatic stay are void, not voidable. See *In re Williams,* 124 Bankr. 311, 316-18 (Bankr. C.D. Cal. 1991) (recognizing that the Ninth Circuit adheres to the rule that violations of the automatic stay are void and criticizing the BAP decision in this case)...
>
> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his [or her] creditors. *It stops all collection efforts, all harassment, and all foreclosure actions.* It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

Schwartz v. United States of America (In re Schwartz),954 F.2d 569, 571 (9th Cir. 1992) (Emphasis in original).

Though not provided with a copy of the specific abstract of judgment to verify recording information (not that the court does not believe the Debtor and Movant but clerical errors in retyping long strings of numbers for recorded documents and such error could be compounded in an order when a party is trying to expeditiously close a sale)– the relief pursuant to 11 U.S.C. § 363(f)(4) is granted and the sale of the property is ordered free and clear of the judgment lien of Button pursuant to the Abstract of Judgment recorded with the Stanislaus County Recorder on October 4, 2019, Document No. 2018-0068622.

Brighthouse and Summit Liens

The Motion asserts that Brighthouse and Summit hold secured claims against the Property allowed by the Plan. The Plan Administrator is seeking the consent of Brighthouse and Summit to release their respective liens, to the extent not paid in full, on the Property. The Plan Administrator expects that Brighthouse and Summit will so consent to the sale of the Property free and clear of their liens. See 11 U.S.C. § 363(f)(2).

As of the time of preparation for the hearing, written consents had not been filed with the court. At the hearing, Movant addressed this requested relief, **xxxxxxxxxx**

Proposed Overbidding Procedures

Plan Administrator proposes the following overbidding procedures:

1. The initial overbid must be at least $25,000 higher than the $1,432,000.00 gross sale price that the estate will receive from a sale to the Buyer, and each successive bid thereafter must be at least $10,000 more than the previous highest qualified overbid or such other amounts as the Plan Administrator determines is appropriate;

2. Before being permitted to bid, any overbidder must deliver to the Plan Administrator a deposit by cashier check payable to Focus Management Group USA, Inc., Plan Administrator on behalf of the estate, in an amount equal to $150,000, and if an overbid is successful, the deposit by the successful overbidder shall be non-refundable; in addition, any person or entity seeking to overbid must identify the proposed overbidder and any principals, owners, members, or shareholders of the bidder and evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transaction(s), the adequacy of which the Plan Administrator, the Reorganizing Debtor and their advisors will determine in their sole discretion;

3. Any overbid must be on the same terms and conditions as the PSA, and any overbidder must agree to sign a purchase and PSA for the purchase of the Property in substantially the same form and terms as the PSA, except that all contingencies shall be deemed satisfied, waived, or otherwise removed and close of escrow shall occur on or June 20, 2020;

4. Approval by the Court of the second highest bid as a back-up buyer on the same terms and conditions.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the proposed sale is projected to generate substantial revenues for the benefit of secured creditors in accordance with the Plan.

Movant has estimated that a 1.5 percent broker's commission from the sale of the Property will equal approximately $21,480.00. 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 1.5 percent commission.

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 Focus Management Group USA, Inc, Plan Administrator, ("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 Focus Management Group USA, Inc, Plan Administrator is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Raghu Ram Katragadda, or nominee ("Buyer"), the Property commonly known as 804 - 998 Orange Avenue, Patterson, California, APN: 048003051 (18.27 acres) and APN 048003053 (17.53 acres), consisting of 35.8 acres total ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $1,432,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 1137, and as further provided in this Order.
>
> B. The sale proceeds through escrow of (i) any Property taxes and assessments due on the Property in the estimated amount of $40,815.53 and pro-rated current amounts, (ii) closing costs and other expenses allocated to the Reorganizing Debtor as Seller in the PSA, (iii) the broker's commission(s), (iv) U.S. Plan Administrator fees, (v) a holdback for estimated income taxes, (vii) net proceeds from the sale of the Property to Brighthouse Life Insurance Company ("Brighthouse") until its lien is paid in full, and, if any net proceeds remain, (viii) the remaining net proceeds to SBN V Ag I LLC ("Summit") subject to the allocation provisions of Section 6.6 of the Plan;
>
> C. The Property is sold free and clear of the judgment lien of Button Transportation, Inc. pursuant to the Abstract of Judgment recorded with the Stanislaus County Recorder on October 4, 2019, Document No. 2018-0068622, as provided in 11 U.S.C. § 363(f)(4), with the lien of such creditor attaching to the proceeds in the same extent, validity, and priority as it existed in the Property. ~~Plan Administrator 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 Property is sold free and clear of the Deed of Trust of Brighthouse Life Insurance Co. [**xxxxxxxxxx** recording information] and the Deed of Trust of SBN V Ag I, LLC [**xxxxxxxxxx** recording information] as provided in 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds in the same extent, validity, and priority as it existed in the Property. ~~Plan Administrator 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~~.

E. The Plan Administrator is authorized to execute any and all documents reasonably necessary to effectuate the sale.

F. Plan Administrator is authorized to pay a real estate broker's commission in an amount not more than 1.5 percent of the actual purchase price upon consummation of the sale. The 1.5 percent commission shall be paid to the Plan Administrator's broker, Braun International Real Estate.

8. **12-36350-A-7** **MICHELLE COLIAS** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BOSTON SCIENTIFIC**
DNL-3 **David Ritziner**
8 thru 9
4-7-20 [52]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Boston Scientific ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a product liability claim for physical injuries she suffered as a result of a pelvic mesh product ("Litigation Claim").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 55):

A. Resolution of the Litigation Claim for a gross settlement award of $30,000.00.

B. A 5% MDL common benefit assessment ($1,500.00), as ordered by the MDL Court to compensate court-appointed common-benefit attorneys must be paid and/or withheld by the Settlement Fund Trustee directly

from the Settlement Award prior to any disbursement of the remaining proceeds.

C. The remainder, anticipated to be in the amount of $28,500.00 inclusive of attorneys' fees and costs, may be disbursed by the Settlement Fund Trustee to the Trustee.

D. The funds received by the Trustee from the Settlement Fund Trustee shall include the amount set aside for attorney fees and costs under the settlement, and the Trustee shall be responsible for compensating Special Counsel for its fees and costs.

E. After the payment of attorney fees and costs, Trustee anticipates the remaining amount available for the bankruptcy estate will approximate $13,650.78.

F. Trustee and the Debtor must execute a release. Upon the Release becoming effective in accordance with its terms, all persons and entities, including, without limitation, the Trustee, the bankruptcy estate, the Debtor, and any person or entity claiming, or who would claim, by, through or on behalf of the Trustee, the bankruptcy estate, and/or the Debtor, shall be deemed to have released all claims and will be permanently enjoined from asserting or prosecuting any claims related to or arising form the Litigation Claim; and, the Release, and any and all documents and instruments executed by the Trustee and/or the Debtor agreeing to the release of the Litigation Claim, is and shall be valid, binding, and enforceable according to its terms.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Trustee argues this factor supports approving the settlement on the basis that given the complexity of the underlying litigation which involves multi-district litigation, thorough settlement discussions held by the parties to this case, and the understanding that Trustee's success in litigation is ultimately unknown.

Difficulties in Collection

Even if Trustee were to prevail, Trustee argues that collection of the judgment is likely to be an expensive and time-consuming effort.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee argues that if the claim were to be taken to trial, there would be costly expert testimony and fact-intensive discovery which would require substantial expenses. Thus, by approving the settlement, the costs associated with a trial would be avoidable.

Paramount Interest of Creditors

The settlement is in the best interest of creditors because it will avoid further delay in the administration of the estate and after attorney costs and expenses, the remaining amount available for distribution will approximate $13,650.78.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it will result in approximately $13,650.78 for the estate and avoid expenses of litigation and allow Trustee to efficiently administer the case to its close. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Boston Scientific ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 55).

IT IS FURTHER ORDERED that Akinmears, G.P. and Bailey Perrin Bailey, PLLC, special counsel for the Trustee, are allowed the fees and expenses as a professional of the Estate in the following manner:

Akinmears, G.P., Professional employed by Debtor

Fees in the amount of $8,835.00;

Bailey Perrin Bailey, PLLC, Professional employed by Debtor

Fees in the amount of $2,565.00, and

Expenses of $3,308.97 disbursed to **xxxxxxxxxx**

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

9. **12-36350-A-7** **MICHELLE COLIAS**
DNL-2 **David Ritzinger**

MOTION TO EMPLOY ALYSSA PARSONS AS SPECIAL COUNSEL AND/OR MOTION TO EMPLOY REBECCA TORTORICI AS SPECIAL COUNSEL
4-7-20 [45]

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Alan S. Fukushima ("Trustee") seeks to employ Akinmears, G.P. and Bailey Perrin Bailey, PLLC ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to prosecute the estate's interest in certain product liability claims related to a 2005 medical device implant and the ratification of their contingency fee agreement.

Trustee argues that Counsel's retention was necessary in order to prosecute a complex, multi-state product liability litigation related to a 2005 medical device implant pending in multiple courts and its subsequent settlement ("Litigation Claim"). Trustee informs the court that Debtor employed Counsel on or about June 7, 2013 to prosecute the Litigation Claim pursuant to a 40% contingency fee and recovery of costs. The Debtor did not schedule her interest in the Litigation Claim. On June 15, 2018, the court granted U.S. Trustee's motion to reopen the Chapter 7 case, to allow administration of the estate's interest in the Litigation Claim. Dckt. 23.

Trustee's motion for approval of a settlement of the Litigation Claim is to be heard concurrently with the present application. Dckt. 52. Under the terms of the settlement, the estate is to receive the Settlement Award of $30,000.00.

Rebecca Tortortici, an attorney of Akinmears, G.P., testifies that the firm represented Debtor in the Litigation Claim since June 7, 2013; they have an agreement with Bailey Perrin Bailey, PLLC to share the contingency fee where Akinmears is entitled to 22.5% of the total recovery less the court fees; and the firm has extensive experience litigating and settling class action claims. Rebecca Tortortici testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Alyssa Parsons, an attorney of Bailey Perrin Bailey, PLLC, testifies that the firm represented Debtor in the Litigation Claim since June 7, 2013; they have an agreement with Bailey Perrin Bailey, PLLC to share the contingency fee where Akinmears is entitled to 77.5% of the total recovery less the court fees; and the firm has extensive experience litigating and settling class action claims. Alyssa Parsons testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

DISCUSSION

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.

Retroactive Approval

Movant requests that the employment be authorized retroactively for Counsel, who was employed by the Debtor post-petition and was advocating in the name of Debtor for claims that were property of the bankruptcy estate. Through the efforts of Counsel a recovery of $30,000.00 has been obtained on the rights that are property of the bankruptcy estate.

The Movant addresses the substantial benefit to the estate by the services provided. There is no indication that Counsel was aware of the bankruptcy case or that any person (including the Debtor) was working contrary to the rights and interests of the bankruptcy estate. This is one of those cases where the underlying injury arose from a medical procedure.

The request for retroactive authorization is granted.

Contingency Fee: Litigation Requested

Applicant computes the fees for the services provided as a percentage of the monies recovered for the bankruptcy estate. Applicant represented the estate's interest in litigation to prosecute the estate's interest in certain product liability claims related to a 2005 medical device implant, for which Debtor agreed to a contingent fee of 40% of the gross amount after payment of expenses. Through the approval of this motion to employ Counsel, the court approves the contingent fee. Net monies (exclusive of these requested fees and costs) in the amount of $28,500.00 was recovered for the bankruptcy estate.

As originally agreed to by the Debtor, the terms for the division of the contingency fee is as follows: 40% contingency fee agreement, amounting to $11,400.00 (40% of $28,500.00) to be split 77.50% to BPB and 22.50% to Akinmears, plus recovery of expenses in the amount of $3,308.97.

Contingency Fee: Litigation Allowed

The court finds that the fees computed on a percentage basis recovery for the estate are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. Upon approval of the settlement and recovery of the monies for the estate, the court will allow Final Fees of $11,4010.00 and Expenses of $3,308.97 pursuant to 11 U.S.C. § 330 for these services provided to Trustee by Counsel, subject to the provisions of 11 U.S.C. § 328.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Akinmears, G.P. and Bailey Perrin Bailey, PLLC as Counsel for the bankruptcy estate. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Alan S. Fukushima ("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 Employ is granted, and Trustee is authorized to employ Akinmears, G.P. and Bailey Perrin Bailey, PLLC as Counsel for Debtor as agreed to by Debtor. The court authorizes the employment with compensation computed on a contingent fee basis 40% contingency fee agreement, to be allocated 77.50% to Bailey Perrin Bailey, PLLC and and 22.50% to Akinmears, GP, plus recovery of expenses in the amount of $3,308.97.

10. **20-21671-A-7** **THOMAS NGUYEN**
MJB-1 **Justin Kuney**

MOTION TO APPROVE STIPULATION AMONG HERITAGE BANK OF COMMERCE, CHAPTER 7 TRUSTEE AND DEBTOR RE: ABANDONMENT OF INTERESTS IN PERSONAL PROPERTY
4-28-20 [18]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 28, 2020. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Stipulation Between Heritage Bank of Commerce, Chapter 7 Trustee and Debtor is xxxxxxxxxx.

Creditor Heritage Bank of Commerce ("Movant") requests that the court approve a stipulation between Thomas James Trieu Nugyen ("Debtor"), Sheri L. Carello, in her capacity as chapter 7 trustee of the bankruptcy estate ("Trustee") which provides for Trustee's abandonment of certain personal property identified as inventory, chattel paper, accounts, equipment, general intangibles and products and produce of same ("Collateral"), which Debtor granted to Movant a security interest, so that Movant may exercise its rights and remedies with respect to the collateral.

The specific relief requested and that to be ordered is for the abandonment of specific property of the bankruptcy estate.

STIPULATION

Movant, Trustee, and Debtor stipulate to an order regarding the certain personal property serving as collateral to a loan extended by Movant, 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. 21):

A. Debtor filed for bankruptcy on March 19, 2020.

B. On October 13, 2016, Movant extended credit to Debtor pursuant to certain documents dated October 13, 2016, executed and delivered to Movant by Debtor.

C. In order to secure his repayment of the loan, Debtor granted Movant a security interest in certain personal property includes, but is not limited to, all of Debtor's inventory, chattel paper, accounts, equipment, general intangibles and products and produce of same ("Collateral").

D. On October 14, 2016, Movant perfected its first position security interest in the collateral by recording a UCC-1 Financing Statement with the California Secretary of State, assigned filing no. 167551056036.

E. Debtor has failed to pay all sums when due under the Agreement.

F. In light of the foregoing, Parties have reached the following agreements.

G. Parties have agreed that the value of the Collateral does not exceed the sums due ab d owing to Movant under the Agreement as of the petition date, such the Collateral is burdensome and/or inconsequential value and benefit to the estate.

H. Therefore, pursuant to 11 U.S.C. § 554(a), Trustee stipulates to abandon any and all interest of the estate in and to the Collateral.

DISCUSSION

Here, Trustee stipulates to the abandonment of the collateral to Movant. The Motion to Approve the Stipulation was filed and was set for hearing. A total of 23 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 a loan Debtor obtained from Movant. Debtor did not make any payments on the loan. Movant perfected its security with the California Department of State.

Unfortunately, the Stipulation describes the property to be abandoned as:

> 1. Debtor, Trustee and HBC have agreed that the value of the Collateral does not exceed the sums due and owing to HBC under the

> Agreements as of the Petition Date, such that the Collateral is burdensome and/or of inconsequential value and benefit to the Estate.

Stipulation ¶ 1; Dckt. 21. The recitals to the Stipulation merely states that the collateral is:

> [c]ertain personal property collateral ("Collateral") to HBC as secured party. The Collateral includes, but is not limited to, all of Debtor's inventory, chattel paper, accounts, equipment, general intangibles and products and produce of same.

Id. ¶ B. This description is a bit challenging. Though general descriptions are properly used in financing statements and security agreements, this could be read to say that it is "all personal property, whatever and wherever located," which includes but is not limited to every chattel paper, accounts, equipment, general intangibles and products of everything ever done by the Debtor located wherever in the world (whether or not disclosed by the Debtor or included in the security agreement).

Additionally, the Stipulation and Motion are not clear to whom the property is to be abandoned. Unless otherwise ordered by the court, these assets are abandoned back to the Debtor.

At the hearing, **xxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Stipulation filed by Creditor Heritage Bank of Commerce ("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 Movant and Thomas James Trieu Nugyen ("Debtor"), Sheri L. Carello, in her capacity as chapter 7 trustee of the bankruptcy estate ("Trustee") is granted, and the following ~~property is abandoned by the Trustee to~~ **xxxxxxxxxx** ~~:~~
>
> ~~A.~~
>
> ~~B.~~
>
> ~~C.~~
>
> ~~no further order of the court or act of the Trustee required.~~

11. **20-21577-A-7** **JENNIFER SHIELDS** **MOTION TO COMPEL**
JCK-1 **Greg Smith** **ABANDONMENT**
4-7-20 [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.

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

Sufficient Notice NOT Provided. No Proof of Service was filed for this Motion.

No Certificate of Service has been filed for the Motion and supporting pleadings. A Certificate of Service was filed on April 7, 2020, which states that only an "Amended Notice of Debtor's Motion for Abandonment Per 11 USC § 554" was mailed to the Debtor, trustee, and all creditors. Dckt. 13. The Notice does not identify the property which is to be abandoned.

At the hearing, **xxxxxxxxx**

The Motion to Compel Abandonment has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Compel Abandonment is xxxxx.

INSUFFICIENT SERVICE OF MOTION

Debtor failed to provide a proof service. Thus, the court is uncertain as to whether the relevant parties were served and thus aware of the requested relief, and whether they would seek the opportunity to be heard.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Jennifer Ann Shields ("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.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

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 Jennifer Ann Shields ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property identified as interest in Debtor's business Heavenly Village Flowers and Gifts and its assets including business supplies and equipment used in day care business and a 2018 Dodge Ram delivery van ("Property"). Debtor testifies that she fully exempted the Property pursuant to C.C.P. § 703.140.

A review of Schedule C shows that the 2018 Dodge Ram delivery van was not listed as exempted. Dckt. 1, p. 18-20.

Trustee's Report of No Distribution

Trustee has filed a Report of No Distribution. Trustee's May 14, 2020 Docket Entry Statement. Trustee states that Debtor and Debtor's Counsel appeared at the Meeting of Creditors on May 14, 2020. *Id*. The meeting was concluded and Trustee reports that there is no property or money available for distribution to creditors over and above that exempted by law, and certifying that the case has been fully administered. *Id*. Trustee also requests to be discharged from further duties. *Id*.

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 Jennifer Ann Shields ("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 interest in Debtor's business Heavenly Village Flowers and Gifts and its assets including business supplies and equipment used~~

~~in day care business and a 2018 Dodge Ram delivery van~~ and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Gary Farrar ("Trustee") to Jennifer Ann Shields by this order, with no further act of the Trustee required.

12. 18-20177-A-7 DNL-9 — DAVID BENJAMIN — David Meegan — MOTION TO SELL — 4-6-20 [113]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2020. By the court's calculation, 45 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 J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as interest in a promissory note of Watsonville Surgeon's Group, Inc. ("Property").

The proposed purchaser of the Property is Partnership Liquidity Investors V, LLC, and the terms of the sale are:

A. Buyer shall purchase the Note for $57,500.00 ("Purchase Price") payable as follows: (a) $5,000.00 initial deposit, and (b) the balance of $52,500.00 (less credit for Note payments received by the Trustee after the $5,000 deposit is received) within 10 calendar days of entry of a final

and non-appealable order of the Bankruptcy Court approving this Sale Agreement;

B. Upon the Trustee's receipt of purchase price, the Note shall be deemed assigned to the Buyer;

C. Purchase is on an "as-is" and "where is" basis, with no warranties express or implied;

D. Buyer shall not be required to assume any guarantees or indemnities, if any, given in connection with the Note;

E. Parties to bear their own attorney's fees and costs prior to the agreement. If there is litigation related to this agreement, prevailing party is entitled to recover costs related to such litigation.

Overbidding Procedures

Trustee proposes the following overbidding procedures:

1. Prior to or at the hearing on this motion, overbidder shall provide the Trustee a deposit by cashier's check in the amount of $6,000.00 ($5,000.00 + first overbid of $1,000.00) and provide proof of funds for the balance of the purchase price.

2. Any overbidding shall proceed in increments of at least $1,000.00.

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: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the estate will be provided with the immediate recovery of $57,500.00 and allow Trustee to close the case and make a distribution to creditors.

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 J. Michael Hopper, 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 J. Michael Hopper, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Partnership Liquidity

Investors V, LLC or nominee ("Buyer"), the Property identified as interest in a promissory note of Watsonville Surgeon's Group, Inc. ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $57,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 116, and as further provided in this Order.

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

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

13. **17-26125-E-7 HSM-16** | **FIRST CAPITAL RETAIL, LLC** **Gabriel Lieberman** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE WITH ACE FUNDING SOURCE LLC** **4-16-20 [594]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims], creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Ace Funding Source LLC, a New York limited liability company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the Adversary Proceeding based on Trustee's Complaint to Avoid and Recover Transfers pursuant to 11 U.S.C. §§ 547, 548, and 550 for payments made within two years before the date of filing the bankruptcy petition.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 598):

A. Settlor shall pay to Trustee, within five business days of court's approval of the Stipulation, the total sum of $5,000.00 ("Settlement Payment").

B. Settlor agrees that it has no lien or security interest on any asset of the Estate, and will terminate any existing UCC-1 Financing Statements, or amend such documents to remove the Debtor's name.

C. Settlor will have no claim or receive any distribution from this Estate.

D. Trustee will dismiss the adversary Complaint against Settlor with prejudice, within ten business days of the receipt and clearing of the Settlement Payment.

E. The Stipulation is subject to approval of the Bankruptcy Court.

F. Parties have exchanged mutual releases.

G. In the event of a default, Trustee may, in her discretion, declare a default, and seek to enforce any and all of her rights and remedies, including commencing one or more adversary proceedings against Settlor. All such remedies available to the Trustee may be exercised in any order, or simultaneously, in the Trustee's sole and absolute discretion. In the event that a default is declared by the Trustee, any collected sums in connection with the Stipulation shall be administered as assets of the Estate, and shall not be returned to the Ace.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Trustee argues that this factor is either neutral or in favor of the settlement on the basis that Trustee is getting most of the relief sought in the adversary proceeding. The estate will be receiving a $5,000 payment, where the Complaint seeks $7,448.00. Moreover, the slight difference does not amount to the administrative expenses the estate would incur if it were to litigate the Payments.

Difficulties in Collection

Trustee does not have information to determine whether collection against Settlor would be difficult. According to Trustee, the collection risk comes from the small dollar amount in controversy.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee contends that the cost and delay associated with litigating over the last dollars in dispute would exceed any potential benefit, and these risks are mitigated through settlement.

Paramount Interest of Creditors

Trustee asserts that creditors are served by this settlement because the estate will recover $5,000.00, and has an agreement with Settlor to not assert a lien over the assets or share in distribution from the estate.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the estate will receive $5,000.00 which is substantially close to the amount sought in the Complaint and eliminates further administrative expenses and costs of litigation related to the Payments. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Ace Funding Source LLC, a New York limited liability

company ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 598).

14. **19-26262-A-7** **DANE CUMMINGS** **MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13**
MOH-1 **Michael Hays** **4-27-20 [37]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on April 27, 2020. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied.

Dane Ray Cummings ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor originally filed the instant case to be relieved of his debts and to sell his home during or after his bankruptcy as the property was in foreclosure. Declaration, at p. 2. Debtor now asserts that the case should be converted because Debtor wants to retain his home and cure the mortgage arrears. *Id.*

at 9-12. Debtor wants to keep the home where he has raised his two children. Debtor is prepared to make monthly payments of $1,548.00 to make the mortgage payments, cure the $13,000 in arrears and pay attorney's fees and trustee's fees. *Id*. at 16-21.

Debtor argues that the case has remained open because the Trustee declared it an asset case as Trustee is entitled to roughly 5/6 of the Debtor's 2019 tax refund. Debtor states that he obtained a discharge on March 3, 2020.

Trustee Response

Trustee filed a Declaration in Response to the Motion on May 1, 2020. Dckt. 42. Trustee states that Debtor's schedules I and J (Dckt. 21) show a monthly income of $4,437.00, monthly expenses of $4,585.00 and net monthly income of ($148.00). *Id*., ¶ 3.

After reviewing Debtor's Schedules and confirming their accuracy at the November 20, 2019 meeting of creditors, Trustee concluded that Debtor could not fund a chapter 13 plan with his net monthly income. *Id*., ¶¶ 3, 4. On November 4, 2019, Trustee sent a letter to Debtor reminding him of the Meeting of Creditors agreement for the turnover of his federal and state 2019 tax refunds, which Debtor signed and returned to Trustee by December 9, 2019. *Id*., ¶ 5. Trustee sent a reminder of this agreement on April 21, 2020, but no response or turnover of the tax refunds has taken place. *Id*., ¶ 6.

Additionally, Trustee points out that the instant motion confirms Debtor's negative net monthly income and fails to address how the income difference of $1,696.00 per month to fund a 60 month plan is calculated or how it will be achieved. *Id*., ¶ 8.

Trustee requests that if the court finds the request is being made in good faith and allows for conversion, that the order include language ordering Debtor's 2019 tax refunds be paid into the plan; otherwise Trustee believes that by the time a plan is filed and confirmed, Debtor will have received and spent the refund.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties.

DECISION

The Chapter 7 Trustee has presented the court with evidence that Debtor cannot prosecute a Chapter 13 Plan. The court notes that Debtor waited until after Debtor had "pocketed" a discharge to now seek the conversion of this case.

The fact that Debtor has achieved his Chapter 7 discharge and has obtained the benefits he desired in filing this case does not preclude him from filing a new Chapter 13 case to cure the arrearage on his mortgage.

Debtor has chosen not to respond to the Trustee's Opposition and has not offered any evidence that Debtor has a good faith possibility of funding a Chapter 13 plan.

The Motion is denied.

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 Convert filed by Dane Ray Cummings ("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 Convert is denied.

15. **20-21743-A-7 HSM-3 15 thru 16** | **PATH LABS, LLC, A DELAWARE LIMITED** | **MOTION TO REJECT LEASE OR EXECUTORY CONTRACT O.S.T. 5-11-20 [48]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 16 days' notice was provided.

On May 11, 2020, Trustee filed an Ex Part Application for an order shorting time for notice of hearing on the Motion. Dckt. 52. The court granted the Motion to Shorten Time on May 12, 2020. Dckt. 55.

The Motion to Reject Lease or Executory Contract was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Reject Lease is granted.

Kimberly J. Husted, the Chapter 7 Trustee ("Movant"), moves to reject the debtor, Path Labs, LLC, a Delaware Limited Liability Company's ("Debtor"), lease with Harsch Investment Properties, LLC for real property commonly known as 1166 National Drive, Suite 80, Sacramento, California (the "Lease").

Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases. A review of the docket shows that Debtor has failed to file the mandatory Schedules that would reflect this lease.

APPLICABLE LAW

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

> (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

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

DISCUSSION

Trustee notes in the instant Motion that notwithstanding the limited information she has due to Debtor's lack of Schedules, the filing of this Motion is necessary so as to limit the potential adverse consequences to the Estate due to a delay in the rejection of this lease.

Movant has demonstrated several sound business judgment reasons for rejecting the Lease. As of May 11, 2020, Debtor continues to delay filing Schedules and a Statement of Financial Affairs. Declaration ¶ 4, Dckt. 50. According to Trustee, Debtor is party to this commercial lease agreement with Harsch Investment Properties, LLC. *Id.*, ¶ 5. The Lease is unexpired, with a term through 2022. *Id.*, ¶ 6,7. The monthly rent is approximately $9,000.00. *Id.*, ¶ 7. The Debtor is no longer operating. *Id.*, ¶ 9. Trustee will be seeking authorization to auction certain personal property located at the Property but does not require a lease agreement to do so. *Id.* Trustee has determined that the Lease provides no discernable benefit to the Estate and there may be potential risks such as accrued rent and other obligation under the lease. *Id.*

Harsch Investment Properties, LLC has been listed on the list of creditors filed in this case. Trustee served the Motion and Supporting Pleadings to Harsch as a creditor. Trustee served all the parties listed on the mailing list in file with the court as of May 11, 2020. (Trustee informs the court that while the filed mailing list is quite short, the informal list provided to Trustee is lengthy. Declaration, ¶ 10.) Trustee respectfully requests that the Court determine that service in the manner describe is sufficient under Rule 6006(c).

Upon review of Movant's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the nonresidential property

lease. Therefore, the Motion is granted, and Movant is authorized to reject the Lease pursuant to 11 U.S.C. § 365(a).

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 Reject Lease or Executory Contract filed by Kimberly J. Husted, the Chapter 7 Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Movant is authorized to reject the debtor, Path Labs, LLC, a Delaware Limited Liability Company's ("Debtor") lease with Harsch Investment Properties, LLC for real property commonly known as 1166 National Drive, Suite 80, Sacramento, California (the "Lease").
>
> The rejection of the above Lease is effective upon issuance of this order, no further act of the Chapter 7 Trustee required.

16.	**20-21743-A-7** **HSM-2**	**PATH LABS, LLC, A DELAWARE LIMITED** **Eric Schwab**	**MOTION TO PREVENT DISMISSAL AND SHOW CAUSE WHY THIS CASE SHOULD NOT BE DISMISSED** **5-7-20 [43]**

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 May 7, 2020. By the court's calculation, 20 days' notice was provided.

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

The Motion to Prevent Dismissal and Show Cause Why Case Should Not Be Dismissed is granted.

The Chapter 7 Trustee, Kimberly J. Husted ("Trustee"), seeks to prevent the dismissal of the case and show cause as to why the case should not be dismissed if Debtor's missing Schedules, Statement of Financial Affairs, and other documents not timely filed by May 5, 2020 on the grounds that the Trustee has determined that this is an asset case that will generate meaningful proceeds for the benefit of this estate and its creditors.

DISCUSSION

Debtor has failed to file the following required bankruptcy documents:

A. Schedule(s): A–H,

B. Statement of Financial Affairs,
C. Summary of Assets and Liabilities, and
D. Attorney's Disclosure Statement

Without Debtor submitting the required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents are not Timely Filed ("NOID") was filed March 24, 2020. Dckt. 4.

On April 6, 2020, the Debtor filed its Motion to Extend Time to File Schedules, Statements, Plan and other Necessary Documents Dckt. 12. The court approved the First Request by order dated April 6, 2020. Dckt. 18. On April 21, 2020, the Debtor filed a second request– an Ex Parte Request for Further Extension of Time to File Schedules and Statements. Dckt. 25. The court approved this second request on April 22, 2020. Dckt. 27. This second request extended the deadline to May 5, 2020. *Id*. On May 5, 2020, Debtor' filed a Status Report stating that Debtor's Counsel was continuing to assemble Debtor's voluminous missing documents and anticipated a May 6, 2020 filing. Dckt. 39. As of March 21, 2020, Debtor's Schedules, Statement of Financial Affairs, and other related documents are yet to be filed.

First, Trustee seeks to "satisfy the procedures set forth" in the Notice of Intent to Dismiss for failure to timely file bankruptcy documents that a notice of hearing on the NOID, statement of the issue, and evidence, be filed and set for hearing on May 21, 2020, at 10:30 a.m.

Trustee seeks an order preventing the dismissal of the case arguing that there is cause to prevent such dismissal on the basis that she has determined that this is an asset case that will generate proceeds that will benefit the estate and its creditors. Declaration, ¶ 10.

Moreover, Trustee further asserts that she has retained professionals and has spent considerable time in this case that should not be defeated by Debtor's lack of action in prosecution its case. *Id*., ¶ 11. Trustee contends that she has no doubt that a complete administration of this case is the only appropriate course of action after conducting inspection, visiting sites, and analyzing the assets of the case with the retained professionals. *Id*. Trustee has also advanced funds for out of pocket expenses. *Id*., ¶ 12.

DECISION

In this case, the Chapter 7 Trustee has identified that there are assets of the estate to be administered. The Debtor, having chosen to file bankruptcy, has obligations and duties that must be performed. Such performance can be the subject of this court's corrective sanction power (monetary and non-monetary) and the corrective and punitive sanction power of the Article III judges of the District Court.

The Motion is granted and the Clerk shall not dismiss this case due to the failure of the Debtor to fulfill its obligations arising under 11 U.S.C. § 521 in this case, without further order of the court.

The court continues the hearing to 10:30 a.m. on September 3, 2020, for further consideration of the prosecution of this case, the efforts made to enforce the obligations of the Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Kimberly J. Husted ("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 Prevent Dismissal is granted, and the Clerk shall not dismiss this case due to the failure of the Debtor to fulfill its obligations arising under 11 U.S.C. § 521 in this case, without further order of the court.
>
> **IT IS FURTHER ORDERED** that the hearing on the Motion is continued to 10:30 a.m. on September 3, 2020, for further consideration of the prosecution of this case, the efforts made to enforce the obligations of the Debtor.
>
> Counsel for the Trustee shall file an ex parte motion to have the September 3, 2020 hearing reset for the law and motion calendar of Judge Frederick Clement if prior to the continued hearing date Judge Clement's Chapter 7 and 11 law and motion matters are being set for hearing in his court.

17. **19-22566-E-11** **JUANITO COPERO** **MOTION FOR FINAL DECREE AND ORDER CLOSING CASE**
AF-8 **Arasto Farsad** **4-15-20 [110]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and the Office of the United States Trustee on April 15, 2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion for Final Decree and Order Closing Case is granted.

Juanito W. Copero, the Debtor in Possession, ("Movant"), filed the present Motion seeking an order for a final decree closing the case.

The Motion (Dckt. 110) states the following with particularity (FED. R. BANKR. P. 9013):

1. The court issued an Order confirming the Chapter 11 Plan on February 20, 2020.

2. A post-confirmation quarterly report is not yet due.

3. Debtor has made all payments under the Chapter 11 Plan, and is current on those payments and shall remain current on those payments. All payments called for under the confirmed Plan have been paid. Exhibit A, Dckt. 113.

4. This Application is supported by the Declaration of Juanito W. Copero.

5. Debtor has continued with the management of the property dealt with under the Plan.

6. There are no unresolved motions, contested matters, or adversary proceedings.

7. The estate has been fully administered within the meaning of 11 U.S.C. § 350(a).

8. All claims and expenses required to be paid upon plan confirmation or the Effective Date of the Plan have been paid. Debtor represents that all post-confirmation taxes have been paid.

9. Debtor requests that a Final Decree be entered and that the instant case be closed.

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk,* 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," factors the court considers include whether:

A. the plan confirmation order is final;

B. deposits required by the plan have been distributed;

C. property to be transferred under the plan has been transferred;

D. the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;

E. plan payments have commenced; and

F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open

solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

DISCUSSION

Movant argues the following factors support approval of the Motion:

1. In this case, a Plan has been confirmed.

2. Movant has assumed administration and management of the property dealt with by the Plan.

3. All motions, contested matters and adversary proceedings have been finally resolved.

4. Payments under the Plan have commenced. Debtor is current on Plan payments.

5. The Plan did not propose any property to be transferred.

6. All claims and expenses required to be paid upon confirmation of the Plan have been paid. Taxes have also been paid.

Movant's arguments are well-taken.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter a final decree and close the Chapter 11 case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Juanito W. Copero, the Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 11 case filed by the Debtor in Possession, Juanito W. Copero, is closed.

18. **10-27435-E-7** **THOMAS GASSNER** **OBJECTION TO CLAIM OF MEPCO LABEL SYSTEMS, CLAIM NUMBER 4-1**
DNL-12 **Richard Chan** **3-26-20 [227]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2020. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 4-1 of MEPCO Label Systems is xxxxxxxxxx.

Kimberly J. Husted, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of MEPCO Label Systems ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $138,686.24. Objector asserts that the alleged conduct giving rise to the claim occurred post-petition; and thus there can be no valid claim against the estate. Additionally, Objector contends that the Claims includes a priority claim of $12,850.00 wages but Debtor was an employee of Creditor; and as such Creditor is not alleged to have been owed wages.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie

validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

An Amended Proof of Claim was filed on May 7, 2020, after the instant objection was filed.. Proof of Claim 4-2. Creditor asserts an unsecured claim in the amount of $138,686.24. *Id*. ¶ 7. This amended Proof of Claim does not an assert a priority claim. *Id*. ¶ 12. The Claim includes an attachment which states the following:

Attachment
to Amended Proof of Claim (Claim 4-1)
(Original filed by MEPCO Label Systems 05/26/2017)

> This Amended Proof of Claim is based on the grounds that Debtor, prior to filing the herein Bankruptcy Case and up to and including June 2010, acting in his position as President of MEPCO Label Systems, wrongfully authorized and made payments to himself and to third parties, including to his wife Georgene Gassner (for salaries and commissions) for services not performed or wrongfully performed resulting in damages to MEPCO Label Systems, including, without limitation, costs of commissions not earned and losses on customer jobs due to intentional underbidding of projects (e.g. at below cost) in order to earn such sales commissions. See, e.g. Declaration of Jennifer Gassner on file here in (Doc # 195 in Case No. 10-27435) and Declarations of Carol L. Gassner and Jennifer Gassner and Carol L. Gassner, Doc #s 69 and 70, respectively, in Adversary proceeding #19-02038-E.

Attachment, Proof Claim 4-2, p. 4. No other document was attached to the Proof of Claim.

The instant objection was based on the original Proof of Claim which did not state an amount but included a priority claim of $12,850.00 for wages on the following basis: "breach of fiduciary "breach of fiduciary duties, interference with business/contractual relations, and salary/commissions had and rcvd." That original Proof of Claim also included a Petition to Modify the Trust filed on June 7, 2016 in the Superior Court of San Joaquin County. Objector asserting that the Petition to modify states that Debtor was an employee and alleges that in the process of departing from MEPCO, Debtor committed a series of wrongful acts. Thus, Objector argues that the claim should be disallowed because the alleged conduct giving rise to the claim occurred after the bankruptcy was filed. Moreover, t5he priority claim for wages cannot be afforded priority treatment because Debtor was an employee of MEPCO and MEPCO is not alleging to be owed any wages that it earned from Debtor.

Creditor filed an Opposition to Trustee's objection on the basis that: (1) they have corrected the mistake as to priority and the claim has been changed to unsecured; thus rendering that part of the objection moot; and (2) Trustee provides no evidence or explanation for how she arrived at the conclusion that the claim is for post-petition damages. Dckt. 232. Creditor states the Declaration of Jennifer Gassner Tracy, President to MEPCO, someone with personal knowledge of the facts underlying

the claim and supporting documentation was attached to the Proof of Claim which supports that the claim as amended is based on pre-petition acts of Debtor. *Id*. ¶ 2(b). (As stated above, no such declaration is found to be attached with Proof of Claim 4-2.)

Objector Trustee filed a Reply stating the following: (1) explaining that the amended proof of claim as to priority is the result of months of ignored requests on the part of Creditor and (2) Trustee's proof or explanation that the alleged wrongful acts occurred post-petition is based on Creditor's own positions in Adversary Proceeding No. 19-02006. Dckt. 234. As to the claim arising from post-petition acts, Trustee argues that Creditor's position in the Adversary Proceeding is that the alleged post-petition acts justify rewriting the express provisions of a trust; and therefore it would be inequitable to allow Creditor to assert inconsistent positions where Creditor now claims that the acts were committed pre-petition. *Id*. ¶ 2.

Debtor's petition was filed March 25, 2010. Dckt. 1. Creditor's own position since the case was reopened in 2017 to address Debtor's interest in the Trust is that Debtor's alleged conduct occurred post-petition. In the Adversary Proceeding, Creditor's Answer states: "Donors filed their Trust Petition based on claims and causes of action which didn't exist at the commencement or original discharge of Debtor's bankruptcy proceeding. " Case No. 19-02006, Dckt. 8, at ¶ 23:14-16. Moreover, Creditor's Motion for Summary Adjudication argues the following: "As alleged in Moving Parties' Petition to Modify Trust and Confirm Sale, on or about mid June 2010, six years before vesting could occur, Debtor left the employ of MEPCO and subsequently (i.e., post-petition) took actions in violation of the intent of the Trust and in violation of his duties and responsibilities as an officer of MEPCO and in violation of related agreements with the Gassners [. . .]." *Id*. Dckt. 54, at p. 10: 7-11.

Creditor now comes and argues that the filed claim is based on pre-petition wrongful acts while Debtor was President and before leaving the company. However, no evidence is presented as to such acts, only the one paragraph allegations attached to the amended Proof of Claim.

DECISION

The issues presented with the court continue a highly contentious, and largely unproductive battle to which the Chapter 7 Trustee has now been joined. There are pending adversary proceedings concerning Creditor's conduct after the bankruptcy case was filed to prosecute in state court a proceeding that would create the appearance that what the Trustee now asserts is property of the bankruptcy estate was not property of the bankruptcy estate. Creditor attempted to do this in the state court in "litigating" with the debtor, with full knowledge that the debtor had filed bankruptcy and not listed the asset that is the subject the dispute.

In part, the basis for the claim, the alleged improper conduct of the Debtor, is also grounds stated as warranting judicial action that would result in the asset at issue between the Creditor, and Creditor's allies, and Trustee not being property of the bankruptcy estate.

There can be no dispute that the assertion that the claim is entitled to priority as a "wage claim" is without merit. Creditor could have no basis for asserting such in the Proof of Claim.

Proof of Claim No. 4-1 is stated to be in an unknown amount and is based on "Breach of fiduciary duties, interference with business/contractual relations, and salary/commissions had and rcvd."

Attached to Proof of Claim 4-1 is a copy of the state court action filed in 2016 through which Creditor and its allies attempted to create the appearance that there was an adjudication of the undisclosed rights that were property of the bankruptcy estate such that it would appear that no such rights existed.

The state court pleading states that Debtor breached his fiduciary duties in connection with his 2010 departure (shortly after Debtor filed bankruptcy).

In response to the Objection, Creditor filed Amended Proof of Claim 4-2, deleting the priority claim. Additionally, the claim is now stated to be $138,686.24. The Attachment to Proof of Claim 4-2 discusses that the conduct occurred (at non-specified times) while Debtor was serving as Creditor's president prior to his departure in 2010.

The Objecting Creditor states that it is obvious that all of the alleged improper conduct clearly had to occur post-petition. The Bankruptcy Case was commenced March 25, 2010. Debtor's service as president for Creditor until his departure in June 2010 - two months after the bankruptcy case was filed.

The state court pleading attached to Proof of Claim 4-1 states that Debtor became the president of Creditor in 1988, which continued until his departure in June of 2010. It is not "clear" that all of the generally alleged misconduct occurred in a two month period after this case was commenced.

What is clear is that Creditor asserts a very complex claim in which it has the burden of proof. The claim filing process is not the same as filing a complaint.

It appears that the terrible, egregious, breach of fiduciary conduct that Creditor and the principals of Creditor (the Debtor's parents) overlaps with the evidence by which the principals of Creditor are seeking to "correct" their trust agreement so as to render the interests of their son as the sole beneficiary (which interests are property of the bankruptcy estate) are valueless.

It appears that this Objection should properly be consolidated with the adversary proceeding concerning the trust and the shares of stock for Creditor.

At the hearing, **xxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of MEPCO Label Systems ("Creditor"), filed in this case by Kimberly J. Husted, the Chapter 7 Trustee, ("Objector") 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 Objection to Proof of Claim Number 4-1 of Creditor is sustained and the priority status of Creditor's claim is disallowed.

IT IS FURTHER ORDERED that with respect to the non-priority claim asserted by Creditor, **xxxxxxxxxx**, and the claim is disallowed in its entirety.

19. **18-90237-E-7** **JOANN MERENDA** **MOTION FOR APPROVAL OF COMPROMISE WITH JOANN E. MERENDA, TONY LEWIS, AND TJL TRUCKING, LLC AND MOTION TO SELL**
HSM-10 **Pro Se** **4-30-20 [124]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

The Motion to Sell Real Property is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Joann E. Merenda (fka Joann E. Lewis) ("Debtor"), Tony Lewis ("Mr. Lewis"), and TJL Trucking LLC ("TJL") (collectively, the "Settlor"). The claims and

disputes to be resolved by the proposed settlement are property at issue in the Merced County dissolution action between Debtor and Mr. Lewis, specifically:

1. Real Property located at 6728 Eucalyptus Ave., Winton, CA ("Real Property");

2. Ownership of TJL and its assets and liabilities ("TJL");

3. Personal property assets including ("Lewis Retained Assets"):

   a. 2008 Ford F250,
   b. 1996 Dodge Dakota Pickup,
   c. Minneapolis Moline Tractor, and
   d. John Deere Tractor; and

4. Other personal property assets including ("Estate Retained Assets"):

   a. Car Rotisserie Machine, and
   b. Commercial refrigerator in possession of Mr. Lewis

(collectively, "Property").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 138):

A. Purchase price for the real property in the amount of $135,381.62 with the proceeds of a new mortgage loan secured by the Property, which will refinance and satisfy the current first mortgage secured by the Property, held by PNC Bank.

B. Close of sale of real property and personal property assets shall occur, and Estate will receive a collective sum of $153,581,62 within 120 days after the bankruptcy court's final order approving the Settlement Agreement, unless extended by Movant.

C. Purchase price for the Lewis Retained Assets in the amount of $18,200.00, which will be paid to the Estate through escrow in connection with the loan refinancing and real property sale.

D. Payment of $6,081.62 on the American Express Account ending in 1006 by the estate to resolve all disputes on this credit card account.

E. Transfer and relinquishing of Mr. Lewis's entire interest in TJL, which comprises of forty-eight percent (48%) to the Estate.

F. Retaining for Mr. Lewis of the following TJL assets, which are free and clear of any interests by TJL and Debtor:

(1) 1996 Western Trailer,
(2) Snap on tool box (Matco), and
(3) 2006 Dargo Trailer.

Transfer of all other TJL assets held by Mr. Lewis to TJL. Transfer of the following items if held by Mr. Lewis to TJL:

(1) 1965 Mustang K-Code,
(2) engine for 1964 Mustang,
(3) 2011 Western Trailer,
(4) 2001 Freightliner,
(5) diesel fuel tank, and
(6) water wash tank.

G. Relinquishing Mr. Lewis from any further liability of TJL following transfers described in Paragraphs 14 and 15 of the Settlement Agreement (paragraphs e-f herein), except for responsibility of the portion of the Cardgas bill.

H. The estate to retain the assets described as "Estate Retained Assets" under the Settlement Agreement summarized above.

I. Full resolution of property division issues in the dissolution of marriage between Debtor and Mr. Lewis following satisfaction of Paragraphs 10-17 of the Settlement Agreement (Paragraphs a-h herein). Express agreement by Debtor and Mr. Lewis to fulfill their respective obligations of the Settlement Agreement.

J. Waiver by Debtor of any claim of exemption for any part of the real property purchase price, Lewis Retained Assets purchase price, TJL, and Estate Retained Assets. Agreement by Debtor to extend deadline to object her discharge through the conclusion of the bankruptcy case.

K. Each party to execute any documents necessary and appropriate to carry out Settlement Agreement.

L. Settlement Agreement does not constitute or evidence any admission of any party of any liability or the truth of any of the matters addressed therein.

The terms of the sale of the Property to Mr. Lewis as stated in terms of the compromise:

A. Purchase price for the Real Property in the amount of $135,381.62.

B. Sale of Real Property as-is, where-is, and subject to any and all liens and encumbrances.

C. Closing date to occur within 120 days after entry of the bankruptcy court's final order approving the Settlement Agreement, unless extended by the Trustee in his sole and absolute discretion.

D. Purchase price for Lewis Retained Assets in the amount of $18,200.00, which will be paid to the Estate through escrow in connection with the sale of the Real Property.

E. Sale of the Real Property and Lewis Retained Assets will occur contemporaneously with the closing of the proceeds of a new mortgage loan and payment to the Estate through escrow for an aggregate sum of $153,581,62. No costs, expenses, or taxes incurred in connection with the contemporaneous purchase of the Real Property and Lewis Retained Assets will be deducted from the combined purchase prices.

Overbidding Procedures

Trustee asserts that due to the complex dynamics between the parties, title issues and the regulatory matters, it sis difficult to propose overbidding procedures ahead of time. Trustee proposes continuing the motion to sell in the case there is an overbidder in order to address the various issues that come with the sale to a person other than Mr. Lewis.

DISCUSSION

Approval of the Compromise

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Although litigation would likely be necessary to establish the estate's interest in the Real Property for marketing and sale purposes, Movant is confident that he would likely prevail in litigation. However, there is risk of loss and uncertainty in litigation and more likely to achieve a better result through this settlement..

The Settlement Agreement will also resolve two "loose ends" that are not easily evaluated under any *Woodson* factor. First, the estate will receive Mr. Lewis' equity interest in TJL, which is not included in the purchase price of the Real Property, and disputes regarding TJL assets will be resolved. Second, the dispute regarding the American Express Account ending in 1006 will be resolved.

Difficulties in Collection

Potential zoning, title, and regulatory issues complicate Movant's ability to collect through the Real Property sale. Potential litigation regarding the assets at issue and the marital dissolution also risk net recoveries for the estate.

Expense, Inconvenience, and Delay of Continued Litigation

The disputes over the assets at issue are very complex, legally, factually, and procedurally. Considerations include zoning/subdivision of each party's interest in the Real Property, Debtor's claim of a $70,000.00 investment of separate property funds in the Real Property, Movant's ability to sell the estate's interest in the real property, and potential litigation necessary to establish the estate's interest in the real property. Negotiations that resulted in this settlement have taken place for over one year, and have been very difficult. Failure to approve the agreement would result in further delay and costs.

Paramount Interest of Creditors

The Settlement Agreement serves the paramount interest of creditors because the estate will be able to generate a favorable net recovery of approximately $147,500.00 over a reasonable time period, and avoid costly expenses and delay in litigating the estate's interests in the assets at issue.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the agreement settles various disputes from family court, to bankruptcy court and to regulatory matters as they pertain to the Real Property at issue. Moreover, the settlement avoids complex litigation that would result ion additional delay and expense to the estate. Finally, the settlement will recover approximately $154,000 to the benefit of creditors. The Motion is granted.

Sale of the Property to Mr. Lewis

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the proceeds will allow for a fully solvent estate.

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 negotiations have required many months, only concluding recently; and Trustee was recently informed that Mr. Lewis is up against a deadline to close the refinancing loan to be used to effectuate the purchase of the Property. Moreover, Mr. Lewis must obtain approval of the Agreement in the dissolution action on an expedited basis.

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 Approve Compromise filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and the debtor Joann E. Merenda (fka Joann E. Lewis), Tony Lewis, and TJL Trucking LLC is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 128).
>
> **IT IS FURTHER ORDERED** that Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tony Lewis or nominee ("Buyer"), the real property commonly known as 6728 Eucalyptus Ave., Winton, CA AND personal property assets including: (a) 2008 Ford F250; (b) 1996 Dodge Dakota Pickup; (c) Minneapolis Moline Tractor; and, (d) John Deere Tractor; ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $153,581.62, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 128, and as further provided in this Order.

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

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

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

20. **20-20065-A-7** **JEFFREY FERNANDEZ** **MOTION TO DISMISS CASE**
UST-1 **Lucas Garcia** **PURSUANT TO 11 U.S.C. SECTION 707(B)**
4-7-20 [19]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and on April 7, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Pursuant to 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Pursuant to Section 707(b) is granted, and the case is dismissed.

The United States Trustee, Tracy Hope Davis ("U.S. Trustee"), seeks dismissal of this Chapter 7 case on the grounds of presumptive abuse under 11 U.S.C. §§ 707(b)(1), 707(b)(2) and/or for totality of the circumstances abuse under 707(b)(3)(B). Specifically, U.S. Trustee makes the following allegation with particularity in the Motion:

A. Debtor's case should be dismissed for presumptive abuse under 11 U.S.C. §§ 707(b)(1) and 707(b)(2), because the Debtor has monthly disposable income of not less than $1,928 ($115,680 over 60 months). Debtor has not presented any evidence of special circumstances to rebut the presumption of abuse.

B. Based on the US Trustee's independent calculations of Debtor's Schedules, debtor's disposable monthly income reported of negative (-) $872 is incorrect. Rather, U.S. Trustee's calculations place the debtor's disposable monthly income at $1,928 ($115,680 over 60 months) which is above the $12,850 set forth in 707(b)(2)(I). Memorandum, at 5:18-21.

C. Debtor has not provided evidence of special circumstances which would overcome the presumption of abuse. Debtor has not filed any documents under oath regarding expenses that would meet the special circumstances.

D. Dismissal for abuse is also warranted under 11 U.S.C. §§ 707(b)(1) and 707(b)(3)(B), because the Debtor has monthly net income after expenses of at least $7,792 ($467,520 over 60 months) resulting in a 100 percent distribution to general unsecured creditors in another chapter of bankruptcy based upon the totality of the circumstances of the Debtor's financial situation.

E. Based on the US Trustee's calculations, Debtor's monthly income is sufficient to repay 100 percent of his debt to his general unsecured creditors. *Id*. 7-8. Debtor's scheduled monthly net income was adjusted upwards from $6283 to reflect increased monthly wages from $13,901 to $25,697 and arrived at an average based on six pay statements of $25,697. *Id.* at 7-8. After computation of tax liability and adjustments reflecting mortgage payments, the net Schedule I income is $15,592, minus expenses, debtor's monthly disposable income arrives at $7,792, which amounts to the ability to pay 100 percent of his unsecured debt under another chapter, demanding dismissal of the case. *Id.*

F. Regarding other totality factors, U.S. Trustee notes debtor lives with his partner who earns $5,000 – $6,000 per month in insurance sales, and his mother who receives a modest monthly social security payment. *Id.* at 9:24-28, 10:1-3.

G. At the meeting of creditors, Debtor mentioned neither his mother or partner contribute to the expenses of housing, utilities, food and vehicles listed in the Schedule I form. *Id.* at 10:1-3. Furthermore, Debtor engaged in gambling post petition based on observations of the debtor's bank accounts and cash withdrawals ($10,197 and $5,160) respectively in purchases and ATM withdrawals at Thunder Valley Casino. *Id.* at 10:5-9. Debtor's substantial income, and post petition gambling weigh

heavily toward dismissal or conversion to another Chapter of Bankruptcy. *Id.* at 10-12.

In support of the Motion, U.S. Trustee filed a Memorandum of Points and Authorities, the Declaration of Robbin Little, and Exhibits A through F. Dckts. 21, 22, 23.

DEBTOR'S REPLY

Debtor filed a Reply on May 7, 2020 and responds that Trustee has made egregious miscalculations and plaint mistakes in the reading of financial documents. Dckt. 25. Hereinafter referred to as "Debtor's Reply."

Debtor asserts U.S. Trustee's motion misleads this court because the U.S. Trustee calculated the monthly income using an incorrect year to date system rather than examining the previous six months. Reply, 2:17-22. This erroneously includes overtime from the first half of the year that he no longer earns. *Id.* at 2. U.S. Trustee further erroneously included a performance bonus of $13,282 and divided it across five pay stubs resulting in a mistake of $5,755 being overstated regarding debtor's income. *Id.* at 3, 1-7.

Debtor further asserts U.S. Trustee made miscalculations regarding debtor's mortgage statements and reducing out debtor's mandatory 401K loan from the means test where the loan has been a customary expense in Chapter 13 cases. *Id.* at 3. The result of these errors takes the calculation of nearly $2000 and reduces it to nearly $-1000. *Id.*

Debtor applies the same errors previously explained to Trustee's arguments under 707(b)(3), finding an error of $11,000 per month in U.S. Trustee's income calculations. *Id.* at 5. In response to Trustee's mention of Debtor's post-petition gambling and domestic living situation, Debtor asserts (1) that he is receiving escalated treatment for compulsive gambling behaviors, and (2) his partner is neither a registered partner or spouse nor a tenant, and thus has no financial obligation to contribute to expenses. *Id.* at 7.

U.S. TRUSTEE'S REPLY

On May 14, 2020, the U.S. Trustee filed a Reply to Debtor's Reply (Opposition) which will be discussed below. Dckt. 29. Hereinafter referred to as "UST's Reply." In support of her Reply, U.S. Trustee filed the Supplemental Declaration of Robbin Little, Statement of Undisputed Facts, and Exhibits G and H. Dckts. 30, 31, 32.

APPLICABLE LAW

The Bankruptcy Code provides that on motion by the United States Trustee, the Court "may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with a debtor's consent, convert such a case to a case under chapter 11 or 13 under this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter." 11 U.S.C. § 707(b)(1).

In considering whether granting relief under chapter 7 would be an abuse, the court shall presume abuse exists if a debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of –

(I) 25 percent of a debtor's nonpriority unsecured claims in the case, or $8,175, whichever is greater; or

(II) $13,650.

11 U.S.C. § 707(b)(2)(A)(I).

A debtor can rebut the presumption of abuse only by demonstrating "special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(I).

Section 707(b)(3) provides that a chapter 7 case should be dismissed for abuse if (i) the petition was filed in bad faith, or (ii) the totality of the circumstances of the Debtor's financial situation demonstrate abuse.

Under the "totality of the circumstances" test, a court must evaluate the totality of the Debtor's financial situation, including the Debtor's assets, liabilities, reasonable expenses, and the Debtor's current and future income. An inquiry into the totality of a debtor's financial circumstances is a "fact-intensive determination". *Hebbring*, 463 F.3d 902, 907-908 (9th Cir. 2006). The determination of whether a debtor can repay a meaningful portion of his or her debts is the primary factor in determining abuse under the "totality of circumstances" test. *See*, e.g., *In re Price*, 353 F.3d at 1140; *In re Kelly*, 841 F.2d at 914; and *In re Gomes*, 220 B.R. 84, 88 (B.A.P. 9th Cir. 1998). Further, the finding that a debtor can pay a meaningful portion of his or her debts is, by itself, enough for a finding of abuse. *Id*. Therefore, if a debtor can pay a meaningful portion of his or her debts, then a debtor's case merits dismissal under § 707(b)(3)(B).

DISCUSSION

Here, Debtor's petition is primarily a consumer debt based case. *See* Dckt. 1. Next, the court presumes abuse exists because the court finds that Debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), (iv) to be not less than $1,928 ($115,680 over 60 months) which is greater than the amount of $13,650 per 707(b)(2).

While Debtor asserted in his opposition the U.S. Trustee made egregious errors, the U.S. Trustee correctly identifies that the six month look-back period from Debtor's filing date of January 7, 2020, and therefore correctly considered the appropriate portion of Debtor's overtime income for purposes of 707(b)(2). *See* UST's Reply, 3-4. Regarding Debtor's mortgage and 401K payments, the court finds the U.S. Trustee considered the proper contractual payment regarding the mortgage and recognizes 401K payments are not deductible from the means test. *Id.* at 6:5-13 (citing *In re Egebjerg).*

Furthermore, Debtor fails to rebut the presumption of abuse by demonstrating "special circumstances such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative" (11 U.S.C. § 707(b)(2)(B)(I)) on the basis that Debtor has failed to inform or file or provide any evidence of such circumstances as described above. *See generally* ECF Case No. 20-20065. Thus, the court assumes abuse and Debtor has failed to rebut the presumption.

In terms of the totality of the circumstances under 707(b)(3), the court finds Debtor's financial situation demonstrates abuse because the debtor can repay a meaningful portion of his debts, which is, by itself, enough for a finding of abuse. As explained by the U.S. Trustee, Debtor can repay a meaningful portion of his debts because Debtor's monthly net income after expenses of between $4,550 and $5,409 enables him to pay 60 to 70 percent to general unsecured creditors. UST's Reply, 8:10-16. Thus, the court finds abuse under the totality of the circumstances test.

Finally, in her Reply, the U.S. Trustee requested the court set an evidentiary hearing on the motion in no less than 60 days in order to conduct discovery on the basis of several facts in dispute as discussed in her Statement of Disputed Facts.

The court also looks to Schedules I and J in which Debtor provides information under penalty of perjury of his income and his expenses. On Schedule I, Debtor states he has monthly gross wage income of $13,901. Dckt 1 at 32. This does not include any overtime.

However, for his state, federal, and Social Security taxes, Debtor states he has withholding of ($6,332.00). Debtor states under penalty of perjury that his state and federal taxes, including his Social Security contribution is 45.6%. That is a huge average tax rate and does not appear to be accurate.

On Schedule J Debtor lists a partner and a mother as his dependents. From the evidence presented by the U.S. Trustee, this does not appear to be an accurate statement. Rather, each of these persons appear to be financially independent, though they are accepting financial gifts from Debtor.

In addition to a $2,950 a month mortgage payment, Debtor purports to have reasonable and necessary expenses of:

Phone and internet.....	$480 a month - this appears to include gifting phone and internet to others.
Food and Housekeeping....	$1,000 a month - this appears excessive for one person, indicating more gifts.
Vehicle Registration, Fuel and Maintenance.....	$400 a month -this appears excessive for one person, indicating more gifts.
Vehicle Insurance.....	$300 a month - this would be $3,600 a year for vehicle insurance for one person - this appears excessive for one person, indicating more gifts.
Car Payments.....	$650 a month for one vehicle and $335 a month for a second vehicle - one person paying $985 a month for two vehicles not only appears excessive, but that Debtor is gifting a vehicle to someone.
IRS and FTB Payments.....	$650 a month to the IRS and $170 to the FTB - This indicates a significant tax debt that a debtor could

> manage very cost effectively through a Chapter 13 case.

Schedule J; Dckt. 1 at 34-35.

With respect to the gifts, in Debtor's Declaration he testifies that his long time partner makes $60,000 to $70,000 a year, but they choose to not have his partner contribute to any household or housing expenses. Declaration, ¶ 3e; Dckt. 26. He further testifies that he has no reason to believe that his partner would even consider contributing to the household expenses, housing, and other things that he is now being gifted from the Debtor.

The choice to make gifts to a partner does not make such gifts a good faith expense when one's creditors are not being paid.

Debtor also testifies in his declaration to being treated for a condition which includes reckless spending. *Id.* However, such does not mean that a high income debtor cannot, as part of his treatment and recovery, provide in good faith for his creditors through a Chapter 13 plan. To the contrary, the structure of Chapter 13 may well be an important part of such rehabilitation.

Going to the Statement of Financial Affairs, Debtor states having gross income of $230,014 in 2019, and $256,987 in 2018. Statement of Financial Affairs Question 4, *Id.* at 37-38. This is even more than the $166,812.

On the Statement of Financial Affairs Debtor indicates that he has substantial extra entertainment income, listing $50,000 of gambling losses in 2019. Statement of Financial Affairs Question 15, *Id.* at 40.

At the hearing, xxxxxxxxxx

Based on the foregoing, 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 the United States Trustee, Tracy Hope Davis ("U.S. 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.

21. **15-29541-E-12 WW-13** **TIMOTHY WILSON** **Mark Wolf** **MOTION TO MODIFY CHAPTER 12 PLAN** **4-7-20 [156]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 12 Trustee, creditors, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

The Motion to Confirm the Plan 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 Confirm the Plan is xxxxx.

The debtor, Timothy C. Wilson ("Debtor") seeks confirmation of the Modified Plan because he is unable to make all of the plan payments required due to COVID-19 and the related stay at home orders. Declaration, Dckt. 158. The Modified Plan provides the following terms:

A. All missed payments through and including April 25, 2020 are hereby excused. Beginning July 1, 2020, Debtor shall pay the sum of $10,000, then beginning July 25, 2020 through December 25, 2020 Debtor shall pay $10,000 monthly. Debtor may complete this plan with a lump sum payment.

B. General unsecured creditors not listed in Class 5 or 6, and that are not secured by property belonging to the debtor, will receive no less than a one percent (1%) dividend pursuant to the plan.

Modified Plan, Dckt. 159. 11 U.S.C. § 1229 permits a debtor to modify a plan after confirmation.

CHAPTER 12 TRUSTEE'S OPPOSITION

The Chapter 12 Trustee, Michael Meyer ("Trustee"), filed an Opposition on April 16, 2020. Dckt. 164. Trustee opposes confirmation of the Plan on the basis that:

A. The Debtor ceased making payments in December 2019.

B. The Motion states that the Modified Plan merely delays payment, not reduce them. However, the Trustee computes that the Plan payments are reduced by $22,000.

C. The Modified Plan provides that creditors with unsecured claims will receive 1% dividend, which is less than the guaranteed funding of $17,027.70 for pro rata distribution. Given that here are "only" $414,634.21, then the 1% would provide only $4,146 for pro rata distribution.

D. The proposed funding by the Debtor is insufficient to pay the secured claims as provided in the current plan. (This could represent the "modification" that is necessary due to inability to make the payments under the current plan.)

E. The Debtor has chosen to use the Chapter 13 Plan form for a modified plan in this Chapter 12 case.

Looking at the proposed plan, it purports to be an Eastern District of California Form, with the form number EDC 3-080. Dckt. 158. The form is from Best Case, and has a Revised Date for the form of February 2, 2009 - Now more than 21 years ago.

A Chapter 12 bankruptcy case is not merely a farmer "Chapter 13."

The Additional Provisions in which the "real action" is disclosed is written in large, dense paragraphs. No headings are provided.

The Debtor is to make plan payments of $10,000 a month beginning in July 25, 2020 and continuing through December 25, 2020.

CREDITOR'S OPPOSITION

Janet Wright, Randy Wright, Jack Faraone ("Creditor") holding a secured claim filed an Opposition on May 2, 2020. Dckt. 168. Creditor opposes confirmation of the Plan on the basis that it does not adequately fund payment for Creditor's claim.

APPLICABLE LAW

Section 1229 permits a chapter 12 debtor to modify a plan after confirmation. 11 U.S.C. § 1229. However, as *Collier on Bankruptcy* points out,

> Although section 1229 explicitly authorizes modification of the plan, it contains no indication of the circumstances under which modification may be requested or the standards for determining whether to grant such a request other than the limitations imposed by section 1229(d). At a minimum, the party requesting modification ought to be able to show some change in circumstances from the date of the original confirmation hearing. If the debtor's net income was less than projected, and the debtor is not able to meet the debtor's payment obligations under the plan, the debtor may seek a modification to reduce the amount of the debtor's payments under the plan.

8 *Collier on Bankruptcy* P 1229.01 (16th 2020). Further sating that,

> In examining a request for modification, the court should be guided primarily by the disposable income requirement of section 1225(b). The proper amount to be paid by the debtor to unsecured creditors under that test is the debtor's net disposable income during the plan period. The court should not hesitate to approve modification of a plan to accomplish this goal.

8 *Collier on Bankruptcy* P 1229.01 (16th 2020).

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan–

> (A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;
>
> (B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or
>
> (C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended–

> (A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or
>
> (B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

DISCUSSION

On May 14, 2020, Debtor filed as Reply in which he addresses Trustee's and Creditor's concerns. Dckt. 172. Debtor reports that the lumber mills are not yet open and he cannot generate income from his lumber. Debtor states that he does not dispute the Trustee's computation of underfunding the plan, and proposes to modify the payments required by the Debtor.

At the hearing, **xxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 12 Plan filed by Timothy C. Wilson ("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 Motion to Confirm is xxxxxx.

22. **15-29541-E-12 MHM-1** **TIMOTHY WILSON** **Mark Wolf** **CONTINUED STATUS CONFERENCE RE: MOTION TO DISMISS CASE 1-17-20 [148]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on January 17, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Status Report is xxxxx.

Debtor's Motion to Confirm Plan

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

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

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

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

TRUSTEE'S DECLARATION

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

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

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

DEBTOR'S OPPOSITION

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

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

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

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

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

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

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

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

Grounds Stated in Motion

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

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

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

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

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

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

Continuance for Further Action and Review

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

FINAL RULINGS

23. 20-21515-E-7 MAHNYVANH PHOUMY
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-24-20 [30]

Final Ruling: No appearance at the May 21, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on April 26, 2020. The court computes that 25 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 April 10, 2020.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured, with payment have been made on May 15, 2020.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged and the bankruptcy case shall proceed in this court.

24.	**20-21954-A-7 JHW-1**	**FEDERICO ZARATE-PIMENTEL AND NATALY ZARATE Pro Se**	**MOTION FOR RELIEF FROM AUTOMATIC STAY 4-15-20 [9]**

TD AUTO FINANCE LLC VS.

Final Ruling: No appearance at the May 21, 2020 Hearing is required.

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 (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 15, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

TD Auto Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Chevrolet Silverado, VIN ending in 5857 ("Vehicle"). The moving party has provided the Declarations of Tania Franco and John Eng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Federico Zarate-Pimentel and Nataly D. Zarate ("Debtor").

Movant also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of $1,235.84. Declaration, Dckt. 11.

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

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's April 23, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $23,957.23 (Declaration, Dckt. 11). Debtor values the Vehicle at $15,877.00, as stated in Schedules B and D filed by Debtor. Dckt. 1. Movant's NADA Guide report values the car at $18,050.00. Dckt. 13.

Debtor's Statement of Intention provides for the surrender of the Vehicle. Dckt. 1.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise.

Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by TD Auto Finance, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Chevrolet Silverado, VIN ending in 5857 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

25. **20-21765-A-7** **KANEESHA CANTON** **MOTION FOR RELIEF FROM**
JHW-1 **Michael Benavides** **AUTOMATIC STAY**
4-3-20 [12]

AMERICREDIT FINANCIAL
SERVICES, INC. VS.

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 3, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Americredit Financial Services, Inc., dba GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chevrolet Malibu, VIN ending in 5799 ("Vehicle"). The moving party has provided the Declarations of Aaron Rangel and Adriana Arredondo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kaneesha Brieana Canton ("Debtor").

Movant also provides evidence that there are six (6) pre-petition payments in default, with a pre-petition arrearage of $2,750.521. Declaration, Dckt. 15.

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

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's April 9, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $21,111.55 (Declaration, Dckt. 15). Movant's NADA Valuation report values the Vehicle at $14,550.00. Dckt. 17.

Movant obtained possession of the Vehicle prep-petition on February 21, 2020. Declaration, Dckt. 15.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

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

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Americredit Financial Services, Inc., dba GM Financial ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Chevrolet Malibu, VIN ending in 5799 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

26. 19-23226-A-7

9 thru 10

FEELING GROOVY AT EAGLE CREEK RANCH LLC
Stephen Brown

OBJECTION TO CLAIM OF REPROP INVESTMENTS, INC., CLAIM NUMBER 4
3-26-20 [37]

Pursuant to prior order of the court, the hearing on the Objection to ReProp Investment, Inc., Claim Number 4 is continued to 10:30 a.m. on June 25, 2020. Dckt. 59. The matter is removed from the calendar.

27. 19-23226-A-7

FEELING GROOVY AT EAGLE CREEK RANCH LLC
Stephen Brown

OBJECTION TO CLAIM OF GLENN G. GOLDEN, CLAIM NUMBER 5
3-26-20 [41]

Pursuant to prior order of the court, the hearing on the Objection to Claim of Glenn G. Golden, Claim Number 5 is continued to 10:30 a.m. on June 25, 2020. Dckt. 60. The matter is removed from the calendar.

28. **14-28627-E-7 DBJ-2 28 thru 31** | **PHILIP/FRANCESCA O'REILLY** **Douglas Jacobs** | **MOTION TO AVOID LIEN OF L.A. COMMERCIAL GROUP, INC.** **4-15-20 [60]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Creditor on April 15, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of L.A. Commercial Group, Inc. ("Creditor") against property of the debtor, Philip Gerard O'Reilly and Francesca Annette O'Reilly ("Debtor") commonly known as 3296 Keefer Rd., Chico, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,811.63. Exhibit A, Dckt. 63. An abstract of judgment was recorded with Butte County on July 29, 2010, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $580,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $611,822.00as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $13,883.00 on Schedule C. Dckt. 1.

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 Philip Gerard O'Reilly and Francesca Annette O'Reilly ("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 L.A. Commercial Group, Inc., California Superior Court for Butte County Case No. 149831, recorded on July 29, 2010, Document No. 2010-0025065 with the Butte County Recorder, against the real property commonly known as 3296 Keefer Rd., Chico, 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.

29. **14-28627-E-7 DBJ-3** | **PHILIP/FRANCESCA O'REILLY** **Douglas Jacobs** | **MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC 4-15-20 [65]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Creditor on April 15, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding LLC ("Creditor") against property of the debtor, Philip Gerard O'Reilly and Francesca Annette O'Reilly ("Debtor") commonly known as 3296 Keefer Rd., Chico, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,798.42. Exhibit A, Dckt. 68. An abstract of judgment was recorded with Butte County on December 13, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $580,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $611,822.00as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $13,883.00 on Schedule C. Dckt. 1.

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 Philip Gerard O'Reilly and Francesca Annette O'Reilly ("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 Midland Funding LLC , California Superior Court for Butte County Case No. 154405, recorded on December 13, 2011, Document No. 2011-0041239, with the Butte County Recorder, against the real property commonly known as 3296 Keefer Rd., Chico, 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.

30. **14-28627-E-7 DBJ-4** | **PHILIP/FRANCESCA O'REILLY** **Douglas Jacobs** | **MOTION TO AVOID LIEN OF AMERICAN EXPRESS** **4-15-20 [70]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Creditor on April 15, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express ("Creditor") against property of the debtor, Philip Gerard O'Reilly and Francesca Annette O'Reilly ("Debtor") commonly known as 3296 Keefer Rd., Chico, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $20,350.95. Exhibit A, Dckt. 73. An abstract of judgment was recorded with Butte County on June 26, 2012, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $580,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $611,822.00as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $13,883.00 on Schedule C. Dckt. 1.

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 Philip Gerard O'Reilly and Francesca Annette O'Reilly ("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 American Express, California Superior Court for Butte County Case No. 154290, recorded on June 26, 2012, Document No. 2012-0023479, with the Butte County Recorder, against the real property commonly known as 3296 Keefer Rd., Chico, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

31. **14-28627-E-7 DBJ-5** | **PHILIP/FRANCESCA O'REILLY** **Douglas Jacobs** | **MOTION TO AVOID LIEN OF DISCOVER BANK 4-15-20 [75]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Creditor on April 15, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of the debtor, Philip Gerard O'Reilly and Francesca Annette O'Reilly ("Debtor") commonly known as 3296 Keefer Rd., Chico, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,779.77. Exhibit A, Dckt. 78. An abstract of judgment was recorded with Butte County on March 20, 2013, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $580,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $611,822.00as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $13,883.00 on Schedule C. Dckt. 1.

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 Philip Gerard O'Reilly and Francesca Annette O'Reilly ("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 Discover Bank, California Superior Court for Butte County Case No. 157854, recorded on March 20, 2013, Document No. 2013-0010746, with the Butte County Recorder, against the real property commonly known as 3296 Keefer Rd., Chico, 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.

32. **19-23228-A-7** **BARBARA DE ROOS** **MOTION TO COMPEL**
SSA-1 **Steven Altman** **ABANDONMENT**
4-17-20 [26]

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 17, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Barbara De Roos ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon property identified as:

Property	Value	Exemption
2212 Vine Avenue Escalon, CA Residence	$350,000.00	C.C.P. § 704.950 / C.C.P. § 704.010- $175,000.
2012 Ford F150	$5,000.00	C.C.P. § 704.010- $3,325.00
Household goods and furnishings	$3,300.00	C.C.P. § 704.020- $3,300.00

Electronics: TV, IPAD, cell phone	$1,500.00	C.C.P. § 704.020- $1,500.00
Clothes	$300.00	C.C.P. § 704.020- $300.00
Jewelry	$1,500.00	C.C.P. § 704.040- $1,500.00
Cash on hand	$50	C.C.P. § 704.080- $50
Checking: Bank of the West, #0396	$359.80	C.C.P. § 704.080 / C.C.P. § 704.110- $359.80
Checking: Bank of the West	$1,336.00	C.C.P. § 703.140(b)(5)- $1,336.00
IRA: Provident Trust #0099	$109,000.00	C.C.P. § 704.115(a)(1) & (2), (b)- $109,000.00
Accidental death policy thru The Hartford	$0	C.C.P. § 704.130- $0
Possible personal injury claim	$100,000	C.C.P. § 704.140- $100,000
Monthly social security	$1,619.10	C.C.P. § 704.110- $1,619.10
Funeral policy purchased in 2006 with Deegan Family Chapels	$5,500.00	C.C.P. § 704.200- $5,500.00
Merced Cemetery District cemetery plot and opening/closing of plot.	$4,505.00	C.C.P. § 704.200- $4,505.00

("Property").

The Property is secured by liens and/or exempted as listed under Debtor's Schedule C. Dckt. 13. There were no objections to Debtor's exemptions. The Declaration of Barbara De Roos has been filed in support of the Motion and confirms the values stated on Debtor's Schedules. Dckt. 29.

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 Barbara De Roos ("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

2212 Vine Avenue Escalon, CA Residence
2012 Ford F150
Household goods and furnishings
Electronics: TV, IPAD, cell phone
Clothes
Jewelry
Cash on hand
Checking: Bank of the West, #0396
Checking: Bank of the West
IRA: Provident Trust #0099
Accidental death policy thru The Hartford
Possible personal injury claim
Monthly social security
Funeral policy purchased in 2006 with Deegan Family Chapels
Merced Cemetery District cemetery plot and opening/closing of plot.

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Irma Edmonds ("Trustee") to Barbara De Roos by this order, with no further act of the Trustee required.

33. **20-22048-A-7** **JUSTIN PUCCINELLI** **MOTION TO AVOID LIEN OF A-L FINANCIAL CORPORATION**
MS-1 **Mark Shmorgon** **4-21-20 [12]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, Los Angeles County Sheriff, and Office of the United States Trustee on April 21, 2020. By the court's calculation, 30 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 A-L Financial Corporate ("Creditor") against property of the debtor, Justin Puccinelli ("Debtor") commonly known as $463.13 in garnished funds held in custody by the Los Angeles County Sheriff ("Property").

A Wage Garnishment Order was entered against Debtor in favor of Creditor in the amount of $12,378.21 on June 1, 2019. Exhibit D, Dckt. 15.

Pursuant to Debtor's Amended Schedule A, the personal property has an approximate value of $463.13 as of the petition date. Dckt. 10. The unavoidable consensual liens that total $12,378.21 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $463.13 on Amended Schedule C. Dckt. 10.

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 Justin Puccinelli ("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 A-L Financial Corporate, California Superior Court for Sacramento County Case No. 34-2017-00216175, Earnings Withholding Order dated June 1, 2019, against the personal property consisting of $463.13 in garnished funds held in custody by the Los Angeles County Sheriff, 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.

34. **20-21773-E-7 DBJ-1** **ANNE WESTERBEKE Douglas Jacobs** **MOTION TO AVOID LIEN OF CAL COAST CREDIT SERVICE, INC. 4-13-20 [10]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Creditor on April 13, 2020. 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.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Cal Coast Credit Service ("Creditor") against property of the debtor, Anne Margaret Westerbeke ("Debtor") commonly known as 3095 Johnstonville Rd., Susanville, California ("Property").

Trustee has no opposition to the relief requested. Trustee's April 19, 2020 Docket Entry Statement.

A judgment was entered against Debtor in favor of Creditor in the amount of $46,470.26. Exhibit A, Dckt. 12. An abstract of judgment was recorded with Lassen County on January 4, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $142,000.00 as of the petition date. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of $142,000.00 on Schedule C. Dckt. 1.

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 Anne Margaret Westerbeke ("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 Cal Coast Credit Service, California Superior Court for Sonoma County Case No. MCV109003, recorded on January 4, 2010, Document No. 2010-00006, with the Lassen County Recorder, against the real property commonly known as 3095 Johnstonville Rd., Susanville, 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.

35. **19-25675-A-7** **GURDIAL PEGANY** **MOTION TO AVOID LIEN OF UNIFUND CCR, LLC**
TJW-2 **Timothy Walsh** **4-13-20 [33]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 13, 2020. 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.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Unifund CCR, LLC ("Creditor") against property of the debtor, Gurdial Singh Pegany ("Debtor") commonly known as 1402 Humboldt Dr., Suisun City, Solano, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,287.16. Exhibit 1, Dckt. 35. An abstract of judgment was recorded with Solano County on January 2, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $317,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $201,803.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(3)(A) in the amount of $175,000.00 on Schedule C. Dckt. 1.

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 Gurdial Singh Pegany ("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 Unifund CCR, LLC, California Superior Court for Solano County Case No. FCM161141, recorded on January 2, 2019, Document No. 201900000145, with the Solano County Recorder, against the real property commonly known as 1402 Humboldt Dr., Suisun City, Solano, 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.

36. 20-21584-E-7 ANTRANICK HARRENTSIAN
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-4-20 [17]

Final Ruling: No appearance at the May 21, 2020 Hearing is required.

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, creditors, and parties requesting special notice and on April 25, 2020. By the court's calculation, 26 days' notice was provided. 28 days' notice is required.

In light of the court continuing the hearing and Debtor having responded, the notice is sufficient.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on June 25, 2020, to afford Debtor the opportunity to appear at the continued First Meeting of Creditors.

The Chapter 7 Trustee, Susan K. Smith("Trustee"), seeks dismissal of the case on the grounds that Antranick Jean Harrentsian ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on June 10, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 4, 2020. Dckt. 17. Debtor asserts that he did not receive the notice for the missed meeting of creditors. Opposition, p.2. They were inadvertently delivered to the wrong house. *Id*. The neighbor did not give him the mail until four days after the meeting had passed. *Id*. Once he received the letter, he began gathering his documents and emailed them to the Trustee. *Id*. See also Email, p. 3. Debtor requests the court allow him to continue his bankruptcy, and guarantees to be present at the June 10, 2020 Meeting of Creditors. *Id.*, p.2.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor argues that he did not receive the notice for the meeting of creditors in time due to delivery of his mail to the wrong residence. Debtor shows that he has already communicated with Trustee and that he is ready to prosecute this case. Debtor is aware of the next meeting of creditors and guarantees to be there.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Susan K. Smith ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 10:30 a.m. on June 25, 2020.
>
> Pursuant to General Order 20-02 the deadline for filing objections to discharge have been extended and are computed from the date of the first time the First Meeting of Creditors (whether initial or continued Meeting) at which the debtor was present.

37. **19-26085-A-7** **JACQUELINE EVERETT** **MOTION TO COMPEL**
BLG-1 **Chad Johnson** **ABANDONMENT**
4-21-20 [42]

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 22, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Jacqueline Mae Everett ("Debtor") requests the court to order Geoffrey Richards ("the Chapter 7 Trustee") to abandon property commonly known as 8333 Rasmussen Circle, Elverta, California ("Property"). The Property is encumbered by the lien of Wells Fargo, securing a claim of $209,000.00. The Declaration of Jacqueline Mae Everett has been filed in support of the Motion and values the Property at $281,624.00.

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 Jacqueline Mae Everett ("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 8333 Rasmussen Circle, Elverta, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") to Jacqueline Mae Everett by this order, with no further act of the Trustee required.

38. **19-27279-A-7 KRW-1** | **DAVID MACK AND ELIZABETH CAVAZOS** | **MOTION TO AVOID LIEN OF CACH, LLC**
Keith Wood | **3-16-20 [21]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on PRA Receivables Management, LLC, Cash, LLC, and the U.S. Trustee on April 23, 2020. By the court's calculation, 28 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 CACH, LLC ("Creditor") against property of the debtor, David Dean Mack and Elizabeth Cavazos ("Debtor") commonly known as 9704 Majestic Lane, Stockton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,901.28. Exhibit 5, Dckt. 26. An abstract of judgment was recorded with Amador County on March 31, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $320,000.00 as of the petition date. Dckt. 13. The unavoidable consensual liens that total $281,150.18 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 13. There is also an Internal Revenue Service tax lien in the amount of $65,319.95. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 24.

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 David Dean Mack and Elizabeth Cavazos ("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 CACH, LLC, California Superior Court for San Joaquin County Case No. 39-2013-00301263-CL-CL-STK, recorded on March 31, 2014, Document No. 2014-0001994-00, with the Amador County Recorder, against the real property commonly known as 9704 Majestic Lane, Stockton, 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.

39. **12-23669-E-7 ASF-3** **CYNTHIA MARAL** **Rajep Chima** **MOTION FOR COMPENSATION FOR ALAN S. FUKUSHIMA, CHAPTER 7 TRUSTEE(S)** **4-15-20 [114]**

Final Ruling: No appearance at the May 21, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Alan S. Fukushima, the Chapter 7 Trustee, ("Applicant") for the Estate of Cynthia A. Maral ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period May 21, 2019, through April 6, 2020.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include providing general case administration, participating in a 10-hour mediation that resulted in a substantial settlement for the estate, and employing special counsel and accountant to assist him with the defense of a judgment and the potential tax issues related to the settlement. The Estate has $1,279,731.07 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 46.2 hours in this category. Applicant reviewed the petition, schedules and related documents; reviewed the underlying marital dissolution, Debtor's *Marvin v. Marvin* claim; reviewed tax implications on the sale of real property and settlement agreements with accountant; examined proof of claims; prepared monthly bank reconciliations and tax returns; reviewed and filed the current tax return; and prepared the final accounting and maintained a proper bond.

Review and Settlement of *Bohannan* Appeal: Applicant spent 26.4 hours in this category. Applicant employed Special Counsel and participated in the 10-hour mediation through the Bankruptcy Dispute Resolution Program that resulted in a settlement of the parties' claims regarding the Adversary Proceeding, State Court case, and the Marvin v. Marvin appeal.

Employment of Special Counsel: Applicant spent 6.8 hours in this category. Applicant employed Special Counsel to defend the appeal of the judgment in the Debtor's Marvin vs. Marvin claim.

Employment of Accountant: Applicant spent 5.2 hours in this category. Applicant employed Accountant to assist him in determining the potential tax liabilities related to the Marvin v. Marvin settlement.

Fees

The Trustee requests fees in the amount $24,435.44 and no costs. The Application does not provide an explanation of how these fees are computed or compares them to the maximum permitted

under 11 U.S.C. § 326(a). In the Trustee's Final Report, it is stated that this is less than the maximum of $28,435.44 that would be allowable pursuant to 11 U.S.C. § 326(a). Dckt. 109 at 2.

The Trustee's Final Report states that there is $469,439.95 in payments made by the Trustee (including these requested fees). *Id.* at 8. Using that amount for computing the maximum fees that would be allowable provides the following comparison.

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $419,439.95	$20,972.00
Maximum Calculated Total Compensation	**$26,722.00**
Less Previously Paid	$0.00
Total First and Final Fees Requested	**$24,435.44**

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $24,435.44 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $1,279,731.07 of unencumbered monies to be administered. The Chapter 7 Trustee provided general case administration, participated in a 10-hour mediation that resulted in a substantial settlement for the estate, and employed special counsel and accountant to assist him with the defense of a judgment and the potential tax issues related to the settlement. Applicant's efforts have resulted in a realized gross of $1,750,000.00 recovered for the estate. Dckt. 110.

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

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

Fees $24,435.44

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

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

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

IT IS ORDERED that Alan S. Fukushima is allowed the following fees and expenses as trustee of the Estate:

Alan S. Fukushima, the Chapter 7 Trustee

Fees in the amount of $24,435.44,

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

40. **15-29890-A-7** **GRAIL SEMICONDUCTOR**
DNL-64 **Paul Pascuzzi**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)
4-16-20 [1404]

Final Ruling: No appearance at the May 21, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Official Committee of Creditors Holding General Unsecured Claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Sheri L. Carello, the Chapter 7 Trustee("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2019, through April 13, 2020. The order of the court approving the retroactive employment of Applicant was entered on February 20, 2020. Dckt. 1395. Applicant requests fees in the amount of $7,342.50 and costs in the amount of $317.25.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include assisted Trustee with moving the case towards closure, including assisting with analysis and compromise of filed claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

The Motion states that $7,342.50 in additional fees and $317.25 in additional expenses. The court has previously allowed final compensation for Applicant of $740,976.77. Order, filed June 20, 2019; Dckt. 1308. Applicant waives an additional $11,807.37 in fees and $202.08 in expenses which it states were also incurred.

On February 20, 2020, the court authorized the retroactive employment of Applicant. Dckt. 1395. This is for work relating to the Trustee achieving a settlement which reduced the claims in this case by approximately 50% and the subordination of the balance to the other general unsecured claims. Civil Minutes, Dckt. 1392; Order, Dckt. 1396.

Fees

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

Category	Hours Billed	Total
Case Administration	0.3	$127.50
Litigation/Contested Matters	1.3	$477.50
Asset Disposition	0.7	$192.50
Fee/Employment Applications	7.5	$2,437.50
Tax Issues	0.2	$85.00
Claims Administration/Objections	4.7	$1,637.50
Settlement/Non-Binding ADR	7.2	$2,385.00
TOTAL	21.9	$7,342.50

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
J. Russell Cunningham	8.80	$425.00	$3,740.00
Nicholas L. Kohlmeyer	13.10	$275.00	$3,602.50
	0	$0.00	$0.00
Total Fees for Period of Application			$7,342.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $317.25 pursuant to this application. These are for copying and postage.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $7,342.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second and Final Costs in the amount of $317.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$7,342.50
Costs and Expenses	$317.25

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

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for Sheri L. Carello, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of $7,342.50
Expenses in the amount of $317.25,

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

41. **20-22099-E-7 AB-1** | **RUSSELL PIERCE AND CANDICE MITCHELL-PIERCE** | **MOTION TO COMPEL ABANDONMENT**
August Bullock | **4-20-20 [13]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 20, 2020. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Russell Preston Pierce and Candice Nicole Mitchell-Pierce ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon property identified as interest in the debtors two businesses:

A. "California Dairy Groovers" with the following business assets listed:

1. hoses and other tools, nominal goodwill, and a thirty year old saw (The saw is owned by debtor's uncle, and is claimed exempt as a precaution.), and

B. "Russell Pierce Horseshoeing"with the following business assets listed:

1. Horseshoes and horseshoeing tools, and nominal goodwill.

("Property"). According to Debtor, no creditors hold any liens against either of these assets. Further, Debtor values the Property at $5,501.00 for the California Diary Groovers business assets, and $1,101.00 for the Russell Pierce Horseshoeing business assets.

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's May 14, 2020 Docket Entry Statement.

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 Russell Preston Pierce and Candice Nicole Mitchell-Pierce ("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 interest in the debtors two businesses:
>
> A. "California Dairy Groovers" with the following business assets listed:
>
> 1. hoses and other tools, nominal goodwill, and a thirty year old saw (The saw is owned by debtor's uncle, and is claimed exempt as a precaution.), and
>
> B "Russell Pierce Horseshoeing"with the following business assets listed:
>
> 1. Horseshoes and horseshoeing tools, and nominal goodwill.
>
> ("Property"). According to Debtor, no creditors hold any liens against either of these assets. Further, Debtor values the Property at $5,501.00 for the California Diary Groovers business assets, and $1,101.00 for the Russell Pierce Horseshoeing business assets. and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Nikki B. Farris ("Trustee") to Russell

Preston Pierce and Candice Nicole Mitchell-Pierce by this order, with no further act of the Trustee required.

42.	**20-20303-A-7** **MKM-1**	**MARIO SUAREZ** **Michael Moore**	**MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT AS TO DEBTOR** **4-14-20 [14]**

Final Ruling: No appearance at the May 21, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Waive Financial Management Course Requirement 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 Waive Financial Management Course Requirement is granted.

Debtor's counsel Michael K. Moore ("Debtor's Counsel") filed this Motion seeking to waive the requirement for the debtor, Mario Gerardo Suarez ("Debtor"), to complete the post-petition Financial Management Course. Debtor's Counsel argues this relief is warranted because Debtor passed away on February 6, 2020, after the filing of the bankruptcy petition on January 20, 2020. Additionally, Debtor's Counsel is also making a motion to waive the post-petition education requirement for entry of discharge (11 U.S.C. §§ 727(a)(11) and 1328(g)).

Federal Rule of Bankruptcy Procedure 1016 provides that the death of a debtor in a Chapter 7 case does not abate the administration of the liquidation of the bankruptcy estate, and the case shall be concluded in the same manner, so far as possible, as if the debtor had not died.

Here, the Motion is filed by Michael K. Moore, the attorney for the late Debtor, purporting to seek relief "on behalf of Mario Gerardo Suarez, the Debtor herein." Motion, p. 1:20-21; Dckt. 14.

Upon the death of a party, the successor to the decedent may be substituted in the place of the deceased party. Fed. R. Bank. P. 7025, 9014. The attorney for a decedent is not the de facto representative to seek the adjudication or rights and interests of a deceased client.

The First Meeting of Creditors was never completed and Debtor never appeared at the First Meeting. Trustee's April 15, 2020 Docket Entry Report.

APPLICABLE LAW

Section 109(h)(1) requires a debtor to complete debtor education requirement where Debtor receives credit counseling and budget analysis. In turn, Section 109(h)(4) of the Bankruptcy Code allows a waiver of said requirement under the following:

> The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.
>
> Further providing:
>
> For the purpose of this paragraph incapacity means that the debtor is impaired by reason of mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means the debtor is so physically impaired as to be unable after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C. § 109(h)(4). (*See also*: *In re Thomas* in support of the court's authority to waive the requirement to appear at the 341 Meeting. *In re Thomas*, No. 07-00097, 2008 WL 4835911 at p. 1 (Bankr. D.D.C. Nov. 6, 2008).

Courts have ruled that death qualifies as a disability for purposes of Section 109(h)(1). *In re Fogel*, 2015 U.S. Dist. LEXIS 113185 (D. Colo. Aug. 25, 2015); *In re Bouton*, 2013 Bankr. LEXIS 4231 (Bankr. S.D. Ga. Oct. 7, 2013). 6 Collier on Bankruptcy P 727.13 (16th 2020).

Upon the death of a debtor, Local Bankruptcy Rule 1016-1 ties together Federal Rule of Bankruptcy Procedure 1016 and Federal Rule of Civil Procedure 25, as incorporated into Federal Rules of Bankruptcy Procedure 7025 and 9014. First, within 60 days of death a Notice of Death is to be filed - either by attorney for the deceased debtor or the person intending to be appointed as the successor to a deceased debtor. The successor may then seek to be so appointed by this court, and other relief, including the waiver of the education requirement. See L.B.R. 1016-1(b).

No Notice of Death has been filed in this case. No relief has been sought to have a successor appointed to prosecute the rights and interests of the deceased Debtor.

At this point in time there is no real party in interest seeking relief from this court. Having a real party in interests is a fundamental Constitutional requirement for a federal court issuing judgments and orders. Standing of a person seeking relief (here, there is no person) must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006). The court may raise the issue of standing *sua sponte*, Rule 12(h)(3), Federal Rules of Civil Procedure. [FN.1] A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997). The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993).

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

There is no successor who has been substituted in place of the deceased Debtor.

The Motion is denied 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 Waive Financial Management Course Requirement as to Debtor filed by debtor's counsel, Michael K. Moore ("Debtor's Counsel") 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.

43. **18-90029-E-11** **JEFFERY ARAMBEL** **CONTINUED MOTION TO FILE CLAIM**
NAR-5 **Matthew Olson** **AFTER CLAIMS BAR DATE**
12-12-19 [1067]

Final Ruling: No appearance at the May 21, 2020 Hearing is required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2019. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to File Claim After Claims Bar Date 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 File Claim After Claims Bar Date has been continued to 10:30 a.m. on August 27, 2020, by prior Order (Dckt. 59) of the court.

MAY 13, 2020 SUPPLEMENTAL STATUS REPORT

Jeffrey Edward Arambel, Reorganizing Debtor, filed a Status Report on March 5, 2020 Dckt.1154.

A. The parties have settled upon potential BDRP mediators but scheduling has been delayed due to COVID-19. Concurrent with this report, parties filed an order to appoint the BDRP mediators.

B. To allow time for the public health situation to improve and for mediation to occur, Reorganizing Debtor requests that the scheduled hearing on the Motion be continued about 75 days, to an available date in August 2020.

C. Counsel for the Reorganizing Debtor conferred with counsel for El Che and the Plan Administrator regarding the proposed continued hearing date and understands that there is no objection to the proposed continued hearing date.

D. The Reorganizing Debtor proposes to file a status report regarding the Motion not later than seven days before the continued hearing.

On May 14, 2020, the court signed the order submitted by the parties appointing J. Russell Cunnigham as the Resolution Advocate (with George C. Hollister as an Alternate) and assigning the instant motion to the Bankruptcy Dispute Resolution Program. Dckt. 1156.

FEBRUARY 5, 2020 STATUS REPORT & EX-PARTE MOTION

Jeffrey Edward Arambel, Reorganizing Debtor, filed a Status Report on March 5, 2020 Dckt.1114.

A. Consistent with the court's directives, the parties met and conferred on March 2, 2020, to attempt to resolve both the Motion and allowance of the underlying claim in a sum certain. The parties were not able to reach an agreement at that meet and confer session, but agreed to further mediation and will request referral of the matter to the Court's Bankruptcy Dispute Resolution Program ("BDRP").

B. The parties are exchanging names of potential BDRP mediators and expect to submit a joint motion for referral of this matter to the BDRP mediator within the next 14 days.

C. To allow time for the mediation to occur, Reorganizing Debtor requests that the scheduled hearing on the Motion be continued about 60 days, to May 21, 2020. While May 14 is the regular Modesto day, counsel for the Reorganizing Debtor has a conflict that day and requests that court continued the hearing to May 21, 2020.

D Counsel for the Reorganizing Debtor conferred with counsel for El Che and the Plan Administrator regarding the proposed continued hearing date and understands that there is no objection to the proposed continued hearing date.

E. The Reorganizing Debtor proposes to file a status report regarding the Motion not later than seven days before the continued hearing.

El Che Corporation, Creditor of Jeffery Edward Arambel ("Creditor") requests that the court allow Creditor's late filed claim to be treated as timely filed. Creditor filed Proof of Claim Number 38 on December 10, 2019, substantially after the claims bar date expired in this case.

The Claim is asserted to be unsecured in the amount of $541,842.32. The deadline for filing proofs of claim in this case is May 16, 2018. Notice of Bankruptcy Filing and Deadlines, Dckt. 11.

REVIEW OF THE MOTION

Creditor asserts the following:

A. Creditor filed a lawsuit in the Stanislaus County Superior Court, case number 2021033, in July 2016 for the collection of money due to it from Jeffrey Arambel, and others, arising from services Creditor provided.

B. Creditor was represented in that litigation by the Law Offices of Brunn & Flynn, ("Brunn & Flynn / Prior Counsel").

C. The notice of this bankruptcy proceeding was apparently mailed, care of Brunn & Flynn as reflected on the Debtor's March 1, 2018 amended schedules.

D. However, Brunn & Flynn did not file a claim on behalf of Creditor.

E. Creditor never received any filings from this bankruptcy court, until Brunn & Flynn filed a notice of change of address with this court on May 31, 2018, after the claims bar date.

F. On August 1, 2018, Brunn & Flynn filed a motion to be relieved as counsel from the State Court.

G. When Creditor's new counsel communicated with Brunn and Flynn as to whether or not a claim was filed, Brunn and Flynn adopted the position that it did not represent Creditor in the bankruptcy case.

H. On July 19, 2019, the Debtor filed an Amended Proposed Plan of Reorganization.

I. The Order confirming Debtor's Plan of Reorganization was entered on September 15, 2019.

J. Creditor is informed that no other distributions have been made, and this motion as well as Creditor's Proof of Claim is filed in time to permit payment of such claim without prejudice to any other creditors, nor the Debtor.

K. Creditor employed approximately 80 to 120 employees who worked on Debtor's orchards.

L. Debtor paid Creditor with checks but the checks were returned due to insufficient funds to deposit the checks for the entire amount of $112,000, and Creditor's payroll checks bounced as a result, incurring a fee to Creditor of $2,000 for insufficient funds.

M. Creditor was forced to obtain a loan to meet its payroll obligations to compensate employees, incurring significant interest charges on such loan.

N. Debtor continued to fail to pay Creditor for its services, and Creditor was forced to retain Brunn & Flynn for the purpose of filing a civil complaint for breach of contract against Debtor.

O. After trial in the state court action commenced and the state court took the matter under submission, Creditor learned that Debtor was in bankruptcy.

P. Brunn & Flynn advised Creditor it could file a motion for relief from the automatic stay to continue with the litigation in the state court matter.

R. Brunn & Flynn demanded a significant retainer that Creditor was unable to afford in order to prepare and appear for the motion for relief.

S. Creditor was not advised that Brunn & Flynn was not filing a claim in the bankruptcy case, that a claims bar date had been set, or that Creditor was required to file a proof of claim in order to preserve its claim.

T. Creditor was eventually referred to its current counsel for the purpose of filing a Proof of Claim, and pursuing the matter in bankruptcy court.

U. In the present action, Debtor did not list Creditor's address, and failed to correctly identify Creditor in his Schedules D, E/F, G, and/or H, as required by F.R.B.P. 1007(a), as Creditor's address as reflected on the invoices mailed to Debtor was not listed.

V. The bankruptcy filings were mailed to Brunn & Flynn, who subsequently advised it did not represent Creditor in this bankruptcy matter, who stated they were not retained for such purposes, and who failed to advise Creditor that it needed to file a proof of claim or of a claims bar deadline.

W. No notice of this bankruptcy proceeding was mailed to Creditor at any time prior to the claims bar deadline, until after Brunn & Flynn filed a notice of change of address listing Creditor's address following the expiration of the deadline.

X. Thus, notice was insufficient throughout the present bankruptcy to give Creditor reasonable notice of the necessity of filing a claim, nor reasonable time to file a Proof of Claim.

Y. Moreover, Federal Rule of Bankruptcy Procedure 9006(b)(1) allows the claims bar date to be extended where the failure to timely act "was the result of excusable neglect."

Z. Creditor directs the court's attention to *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, (1993) 507 U.S. 380, explaining that a court's determination of whether the neglect is "excusable" should be an equitable one, whereby a court should "tak[e] account of all relevant circumstances surrounding the party's omission." Id. at 395.

AA. Adding that courts have found excusable neglect and determined that creditors have a right to file late claims where they have not received actual notice of the bankruptcy. See, e.g., *In re Anchor Glass Container Corp.*, (2005) 325 B.R. 892, 897.

BB. In the instant case there is no danger of prejudice to the Debtor or his bankruptcy estate in deeming the Creditor's claims as timely filed because no distributions have been made pursuant to the terms of the Chapter 11 Plan of Reorganization on file with this Court, with the exception of possible payments to professionals made pursuant to motion for compensation.

CC. Moreover, the Debtor had adequate notice of this claim, due to the extensive civil litigation in the State Court Action, and the fact that Debtor filed his bankruptcy after the commencement of the trial.

DD. The Debtor was well aware of the extent and nature of the claim well before the claim was filed.

EE. Finally, Creditor did not receive any bankruptcy filings until after Brunn & Flynn filed a notice of change of address with the bankruptcy court, at which time, Creditor was unaware that the Claims Bar Date had already passed, or that a claim needed to be filed, after it had already filed litigation in the State Court, which proceeded to trial.

FF. Creditor acted in good faith to seek bankruptcy counsel to file a Proof of Claim on his behalf once it learned of the bankruptcy case, that Brunn & Flynn did not timely file an claim and that the Claims Bar Date had passed.

In support of the Motion, Creditor filed the Declarations of Natali A. Ron and Jose Manuel Eguiluz and properly authenticated Exhibits A and B.

Declarations

Natali A. Ron is an attorney with the Law Offices of Hastings and Ron, current attorneys for Creditor. She testifies under penalty of perjury in her Declaration (identified by paragraph number of the Declaration) to the following:

2. Jose Manuel Eguiluz consulted with our firm in approximately July 2019, to discuss representation of his corporation with respect to the present bankruptcy case.

3. " I am informed and believe that the notice of this bankruptcy proceeding was mailed, care of the Law Offices of Brunn & Flynn, with respect to the creditor El Che Corporation . . . ."

4. "I am informed and believe, based on my review of court filings, that El Che Corporation filed a lawsuit in the Stanislaus County Superior Court, case number 2021033, in July 2016 for the collection of money due to it from Jeffrey Arambel, and others, arising from services El Che Corporation provided. . . ."

5. "I am informed and believe, based on my review of court filings, that Brunn & Flynn filed a motion to be relieved as counsel from the State Court."

6. "I am informed and believe that based on my review of the court docket filings, that on or about July 19, 2019, the Debtor filed an Amended Proposed Plan of Reorganization dated July 19, 2019 (hereinafter referred to as the "Proposed Plan")."

7. "I am informed and believe, based on the Court's docket in this matter, that since the date of plan confirmation, the Debtor has filed motions for compensation of certain professionals, and for payment of certain administrative expenses. I am informed and believe that no other distributions have been made."

8. Creditor retained Hastings and Ron to pursue this bankruptcy matter, and she filed a proof of claim on behalf of Creditor on December 10, 2019, while preparing this motion.

In reviewing this Declaration, in which counsel provides testimony under penalty of perjury, states by counsel cause the court significant concern. These statements under penalty of perjury and supposedly in compliance with Federal Rule of Evidence 601 and 602 (and subject to the certifications made pursuant to Fed. R. Bankr. P. 9011), counsel's testimony as to most of the above is based solely on "information and belief."

One of the fundamental principles of testifying under penalty of perjury is that the witness must testify based upon personal knowledge. Federal Rule of Evidence 602 states (emphasis added):

> A **witness may testify** to a matter **only if evidence is introduced** sufficient to **support a finding** that the **witness has personal knowledge of the matter**. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

The use of "information and belief" is not a device to testify under penalty of perjury. Here, counsel has no personal knowledge, but states that she has read and wants now to tell the court what the other documents say. In effect, counsel is wanting to tell the court what she "heard" the written words "say" when she read them. Being an attorney is not a license to provide her opinion of what she read and what she wants to tell the court she believes (especially when counsel is doing it to enhance the case she is seeking to advocate for as an officer of the court for her client). When reviewing Weinstein's Federal Evidence, § 602, the phrases "information and belief" and "informed and believe" are not used in addressing what is "personal knowledge" necessary for testifying under penalty of perjury.

Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 discuss how and when a person may use information and belief in a complaint. As discussed in 2 Moore's Federal Practice, Civil § 8.04(4):

> [4] Allegations Supporting Claims for Relief May Be Made on Information and Belief
>
> Rule 8 does not expressly permit statements supporting claims for relief to be made on information and belief (see § 8.06[5]). However, Rule 11 permits a pleader, after reasonable inquiry, to **set forth allegations** that "will **likely have evidentiary support** after a reasonable opportunity for further investigation or discovery" (see Ch. 11, Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions). Courts have read the policy underlying Rule 8, together with Rule 11, to **permit claimants to aver facts that they believe to be true, but that lack evidentiary support** at the time of pleading. Generally, however, such averments are allowed only when the facts that would support the allegations are solely within the defendant's knowledge or control.

In stating that something is on "information and belief," one necessarily is stating that they don't know it to be true, but believe, if they can conduct discovery or investigate, they can come up with some evidence, in the future, to show that it is true. [FN. 1.]

FN. 1. To the extent that counsel is informed and believes based on documents filed with the court, other court's, or other documents, counsel could have them properly authenticated, presented them as the evidence, and then counsel structure the grounds in the motion or argument in the points and authorities using that evidence. But counsel cannot "create" evidence based on her information and belief and then assert that her information and belief is the evidence upon which she is informed and believes.

Jose Manuel Eguiluz is the principal for Creditor ("Principal"). He testifies under penalty of perjury to the following:

A. From approximately 2012 through 2016, Creditor provided harvesting and pruning services for Debtor.

B. In 2016, Debtor became delinquent on payments to Creditor.

C. Invoices with a past due amount of $21,163.16 were sent to Debtor referencing the work and outlining the amounts due and terms of payment. Each invoice included Creditor's address and/or post-office box address.

D. Debtor issued a partial payment by check but it bounced due to insufficient funds and Creditor was forced to obtain a loan (for $75,000 plus interest, for a total of $108,000.00) in order to pay his employees.

E. Creditor continued borrowing in order to pay back the loans and has incurred $100,000.00 in additional interest.

F. Creditor has also incurred $2,000.00 in insufficient funds bank fees.

G. Principal hired Brunn & Flynn to file a complaint against Debtor in state court to collect past-due payments and recover damages for incurred interest.

H. Close to the date for the state court trial, Principal learned that Debtor had filed for bankruptcy.

I. Principal incurred approximately $60,000.00 in attorneys' fees and $10,000 in costs to pay an interpreter to communicate with prior counsel.

J. Invoices mailed to debtor include a provision for attorneys' fees in the event of litigation is instituted to collect on any outstanding sum of money.

K. Prior Counsel apparently did not do anything in the bankruptcy court to preserve his claim.

L. Prior Counsel discussed filing a motion for relief from the automatic stay but requested a retainer to pursue the matter but principal could not afford it.

M. Principal was not advised that he needed to file a claim with the bankruptcy court in order to preserve said claim.

N. Principal is informed that prior counsel filed a change of address with the bankruptcy court removing the firm's address and substituting to Creditor's company address.

O. Eventually, but after the claim bar date, Principal began receiving mail from the bankruptcy court regarding Debtor's bankruptcy case.

P. In July 2019, Principal contacted Hastings and Ron for the purpose of pursuing the claim in bankruptcy court, who in turn filed a Proof of Claim on December 2019.

Summary of Exhibits

Exhibit A: Invoices

Exhibit A is 70 pages worth of past due invoices for 2016 (April and May 2016), Debtor's checks for payment, and bank records regarding the checks with insufficient funds.

Exhibit B: Proof of Claim Number 38

Exhibit B is Creditor's Proof of claim filed on December 10, 2020 attaching the same invoices and checks submitted as Exhibit A.

DEBTOR'S OPPOSITION

Jeffery Edward Arambel, the Reorganized Debtor under the Confirmed Chapter 11 Plan, ("Debtor") filed an Opposition on January 23, 2020. Dckt. 1087. Debtor requests that the court disallow Creditor's claim on the basis that:

A. Creditor received proper actual notice of the claims bar date and it did not act. Its failure to file a timely claim is its own fault, and it has not shown a basis for allowance of a late-filed claim under the Bankruptcy Rules 3002 and 3003.

B. In *Lompa v. Price* (*In re Price*), 871 F.2d 97 (9th Cir. 1989), the Ninth Circuit held that notice to an attorney representing a claimant in a state-court proceeding would apprise a creditor of a bankruptcy and related deadlines. The creditor was not directly notified by the bankruptcy court of the bar date for filing dischargeability complaints under 11 U.S.C. § 523(c) because he was not listed by the debtor, and creditor's motion for extension was not made before the time had expired under Bankr. R. 4007(c). *Id.* at 98. The Bankruptcy Appellate Panel held that notice to creditor's counsel constituted notice to appellant, and that it would apprise the creditor of the pendency of the dischargeability deadline date. *Id.* The Ninth Circuit affirmed. *Id.* at 99.

C. The Ninth Circuit's earlier decision in *Lawrence Tractor Co. v. Gregory* (*In re Gregory*), 705 F.2d 1118 (9th Cir. 1983) is in accord. In *Gregory*, a creditor argued that its claim in bankruptcy should not be discharged because it had received inadequate notice of the debtor's bankruptcy plan. *Id.* at 1120. The Ninth Circuit rejected the creditor's constitutional challenge, holding that "[w]hen the holder of a large, unsecured claim [in bankruptcy] . . . receives any notice from the bankruptcy court that its debtor has initiated bankruptcy proceedings, it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril." *Id.* at 1123. Adding that "[i]f [the creditor] had made any inquiry following receipt of the notice, it would have discovered that it needed to act to protect its interest." *Id.*

D. It is undisputed that as of the Petition Date, Brunn & Flynn represented Creditor in its claim in state court; that Creditor was actively litigating the claim with Debtor when the bankruptcy case was filed; that Creditor knew of the bankruptcy case by virtue of the notice of stay filed with the Superior Court, that Brunn & Flynn was served with a copy of the Notice of Bankruptcy Case and Deadlines as required by F.R.B.P. 2002(a)(7) that Brunn & Flynn did not withdraw from the representation until after the claim bar date had passed.

E. Thus, under *Price*, notice to Brunn & Flynn constituted notice to Creditor to timely file its claim. Further, Creditor (holder of one of the 20 largest unsecured claims) was in inquiry notice after he received dozens of notices, including the Plan disallowing its claim, regarding the bankruptcy after the change of address.

F. Creditor failed to show excusable neglect.

G. The existence of excusable neglect is determined by considering the totality of the circumstances, including these factors: (1) the reason for the delay; (2) the danger of prejudice to the debtor; (3) the length of delay and its impact on judicial proceedings; and (4) whether the claimant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. Co.*, 507 U.S. 380, 395 (1993). The burden of presenting facts to establish excusable neglect is on the moving party. *Key Bar Invs., Inc. v. Cahn* (*In re Cahn*), 188 B.R. 627, 631 (B.A.P. 9th Cir. 1995); see also *In re Pac. Gas & Elec. Co.*, 311 B.R. 84, 89 (Bankr. N.D. Cal. 2004). Pioneer mandated a balancing test for determining excusable neglect, but did not assign the weight to be given to each of its nonexclusive factors in arriving at an equitable determination. *Pincay*, 389 F.3d at 860.

H. Creditor does not meet its burden in its analysis of the *Pioneer* factors. Creditor's main argument is that, because it did not receive actual notice of the bankruptcy case, its failure to file a timely claim was excusable. Motion at 5:7–6:9.

I. However, as discussed, Creditor received actual notice through its counsel in the state court proceeding. Ordinarily, a lawyer is a client's agent and, consistent with agency law, clients "are considered to have notice of all facts known to their lawyer-agent." *Ringgold Corp. v. Worrall*, 880 F.2d 1138, 1141–42 (9th Cir.1989).

J. Creditor contends that no party will be prejudice but in reality all creditor holding unsecured claims will be prejudiced by the reduction in the interim Plan payments.

K. Even assuming that Creditor did not receive notice, Creditor knew of the Claims Bar Date by June 2019 yet did not file the present Motion for

another six (6) months. Creditor has not behaved in good faith and by delaying to file his claim, Creditor has prejudiced other parties. This is not excusable neglect. Creditor fails to explain why it waited six months after the alleged discovery of the Claims Bar Date. This is inexcusable neglect and the Motion should be denied.

L. Creditor is bound by the Confirmed Plan and cannot collaterally attack the Confirmation Order.

M. Creditor ignores that the Plan confirmed controls and it is bound by the Plan, including the provision disallowing its claim as untimely. Creditor contends that the Plan provided it with notice of the Claims bar Date. Yet, did nothing to stop its confirmation on September 15, 2019.

N. Where a creditor has notice, a plan is *res judicata* to all issues that could have been raised at the time of confirmation. *Great Lakes Higher Educ. Corp. v. Pardee* (*In re Pardee*), 218 B.R. 916, 924, aff'd 193 F.3d 1083 (9th Cir.1999); see also *Lawrence Tractor Co. v. Gregory* (*In re Gregory*), 705 F.2d 1118, 1121 (9th Cir. 1983) (confirmation of an unopposed plan that provided for no payment to unsecured creditors and discharge of all debts could not be challenged post-confirmation).

O. It is undisputed that Creditor received notice of the Plan, of its disallowance of Creditor's claim and Creditor did not object to the Plan or the disallowance. Creditor failed to act and it now bound by the confirmed Plan.

P. Creditor's Proof of Claim should be disallowed in its entirety because it was not timely filed.

Q. Debtor submits his counter-motion under BLR9014-1(i) to disallow the claim filed by Creditor as untimely under 11 U.S.C. § 502(b)(9) and F.R.B.P. 3003(c)(3). Creditor's Proof of Claim was filed 573 days after the Claims Bar Date. Thus, as untimely, the claim should be disallowed in its entirety.

PLAN ADMINISTRATOR'S OPPOSITION

Focus Management Group USA, Inc., Plan Administrator, ("Plan Administrator") filed an Opposition on January 23, 2020. Dckt. 1091. Plan Administrator opposes on the basis that:

A. The Confirmed Plan expressly disallowed Creditor's claim.

B. Creditor received notice of the proposed plan that disallowed its claim in time to file a motion to allow a late-filed claim or otherwise object to disallowance of its claim prior to confirmation of the plan and did not do so.

C. Confirmation of the Plan precludes the relief requested by Creditor.

D. The Motion is an improper collateral attack on a confirmed Plan.

E. Under Ninth Circuit authority Creditor cannot relitigate the disallowance as the Plan has been confirmed. In *Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995), the Ninth Circuit held that "Once a bankruptcy plan is confirmed, it is binding on all parties and all questions that could have been raised pertaining to the plan are entitled to *res judicata* effect." Furthermore, "A final order confirming a Chapter 11 plan bars litigation of all issues that could have been raised in connection with confirmation. This res judicata effect extends to both claims that were actually litigated and claims that could have been raised in the confirmation proceedings." *In re Landmark West*, LLC, 2015 Bankr. LEXIS 4081 (Bankr. N.D. Cal. Dec. 2, 2015) (citations omitted).

F. Creditor acknowledges it contacted current counsel in July 2019. It did not object to the Plan, which expressly disallows it claim, prior to its confirmation on September 15, 2019.

G. Creditor now requests to have its claim deemed timely notwithstanding that Creditor was properly and timely served with the proposed Plan and disclosure statement, received proper and timely notice of the confirmation hearing, had sufficient time to oppose the plan and its disallowance of the claim, and did not object to the disallowance. The Motion should be denied because Creditor cannot relitigate the disallowed claim.

H. Even if confirmation of the Plan does not preclude the relief requested, Creditor has not shown excusable neglect.

I. Citing *Pioneer,* the Ninth Circuit stated that "[t]o determine whether a party's failure to meet a deadline constitutes 'excusable neglect,' courts must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Ahanchian c. Xenon Pictures, Inc.*, 624 D.3d 1253, 1261 (9th Cir. 2010)

J. The motion fails to show excusable neglect on the basis that Creditor states that current counsel was contacted in July 2019, yet nothing was done for five (5) months and allowing Creditor's claim would material impact other unsecured creditors under the Plan as it is approximately 9% of the current general unsecured claim pool.

CREDITOR'S REPLY

Creditor filed a Reply on January 30, 2020. Dckt. 1096. In its reply, Creditor addresses the delay in filing the proof of claim discussed by both Debtor and Plan Administrator in their oppositions. Creditor explains that after contacting current counsel he had to withdraw his retainer because one of his 12-year old twin daughters had been detained in Mexico. This meant that he had to send money to Mexico to support her and was forced to hire an immigration attorney. This went on for approximately 16 months, simultaneously with the present bankruptcy case. The daughter was allowed to return home with Creditor's family in August 2019, one month before the plan was confirmed.

Additionally, Creditor asserts in the Response that Creditor's Principal is unable to read or speak English. For both Declarations (Dckts. 1069 and 1097) certifications of translators are attached.

Creditor's prior counsel apparently received notice of the bankruptcy but not file a claim on its behalf nor did they advise Creditor that he needed to preserve its claim through the bankruptcy proceeding. At the same time, Creditor's company was going through financial difficulties, trying to pay his employees and his family suffering from the stress and devastation of the family separation with no definitive time frame or if his daughter would be allowed to return home.

Creditor contends that looking at the totality of the circumstances, mainly Mr. Eguiluz's personal and financial issues, there is excusable neglect and the court should allow the claim. Further arguing that there is no prejudice that warrant denial of th emotion because no interim distributions have been made and Creditor should be compensated for all the expenses Creditor has had to incur after Debtor; failed to pay for work Creditor's employees completed.

Creditor argues that the only possible prejudice would be that allowing the claim would result in Debtor's reduction of surplus dividend after the sale of sufficient property to pay the claims.

Creditor argues that his request to allow the claim is not bar by *res judicata* because under that doctrine the judgment must involve the same parties. Creditor was not represented in the bankruptcy until after the Plan was confirmed. Creditor did not participate and did not have reasonable opportunity to object. Moreover, Creditor is not challenging the Plan but requesting that its claim be allowed as timely filed so that it may be included under the general unsecured claims class.

Creditor further asserts that neither Debtor nor Plan Administrator cite any case in which a late claim should not be allowed to be filed where the confirmed plan provides for unsecured claims to be paid in full and there are millions of dollars in excess property to be distributed to the debtor as surplus.

Finally, Creditor argues that the interests of equity and justice require that the court allow the late claim based on since excusable neglect of the creditor, since there will be no prejudice to the other creditors.

APPLICABLE LAW

Rule 3003 provides for the Filings of Proofs of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases. Specifically, Rule 3003(c) states the following:

(c) Filing Proof of Claim.

> [. . .]
>
> (3) Time for Filing. The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

F.R.B.P. 3003.

As discussed in 9 Collier on Bankruptcy P 3003.03 (16th 2019), the Supreme Court has placed the Federal Rule of Bankruptcy Procedure 9006(b) excusable neglect standard as an overlay to the Rule 3003(c)(3) relief:

> Likewise, after the passage of the bar date, an extension may be granted upon a showing of cause. Although Rule 3003(c)(3) specifies that the time for filing a proof of claim may be extended for cause, the Supreme Court (in *Pioneer Inv. Servs.*] has adopted the excusable neglect standard without considering whether Rule 3003(c)(3) provides for a test different from Rule 9006(b). However, as interpreted by the Court, application of the excusable neglect standard includes consideration of factors, such as prejudice to the debtor, which some courts had previously determined to be beyond the scope of the Rule 9006(b) analysis.

9 Collier on Bankruptcy P 3003.03[b].

In *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S. Ct. 1489 (1993), affirming the Court of Appeals for the Sixth Circuit, the Supreme Court, in a five-to-four decision, ruled that a court may find that a creditor's failure to file a proof of claim by the bar date was due to excusable neglect when it has considered all of the relevant circumstances, including danger of prejudice to the debtor; the length of the delay; the reason for the delay and whether such delay was in the control of the party filing the late claim; the possible impact of the delay on the judicial proceedings; and whether the party filing the late claim acted in good faith.

DISCUSSION

The deadline for filing a proof of claim in this matter was May 16, 2018. Creditor's Proof of Claim was filed on December 10, 2019 - nineteen months later. A look at what happened between those two dates should provide some clarity.

Creditor confirms that it was aware of Debtor's bankruptcy sometime on or around March 2018, when it received notice of the bankruptcy's automatic stay on the eve of trial. *See* Eguiluz Declaration, ¶9 and Motion, ¶4. Moreover, Creditor's Principal testifies that Prior Counsel, Brunn and Flynn, informed him of the bankruptcy and that they should act by filing for relief from the automatic stay. *Id.* Creditor testifies that Brunn & Flynn requested a retainer but they did not hire them because Creditor could not afford it. *Id.* Nevertheless, this constitutes notice. Debtor was told that Debtor's bankruptcy and that actions needed to be taken.

What is not discussed is whether Prior Counsel Brunn and Flynn addressed with Creditor the simple filing of a proof of claim.

Thus, the evidence presented by Creditor is that it and its Prior Counsel had actual notice of the Bankruptcy Case. Further, that some action needed to be taken in light of the Bankruptcy Case being filed.

Then, Prior Counsel filed a change of address for Creditor in Debtor's bankruptcy case. Creditor directly received notices regarding Debtor's case following the May 31, 2018, change of address filed for Creditor by Prior Counsel. Dckt. 368. Creditor's Principal testifies that after this change of address he began to receive mail from the bankruptcy court regarding Debtor's case. Eguiluz Declaration, ¶10. Therefore, as early as May or June of 2018, Creditor had notice not only of this Bankruptcy Case, but service of motions, plans, and other pleadings. Creditor undisputedly had actual notice of this Bankruptcy Case. This constitutes actual notice of the bankruptcy case.

Looking at the post-May 31, 2018 pleadings filed and served on Creditor in this Bankruptcy Case, these pleadings include:

> Proposed Plan, Proposed Disclosure Statement and Notice of July 18, 2019 Hearing on approval of Disclosure Statement
>
> Certificate of Service filed on June 6, 2019; Dckts. 828, 829.

Notice of September 10, 2019 Hearing on Confirmation of Proposed Plan, Order Approving Disclosure Statement, Disclosure Statement, and Proposed Plan.

> Certificate of Serviced filed on July 30, 2019; Exhibit M, Dckt. 871.

The Disclosure Statement and Proposed Chapter 11 Plan served on Creditor specifically stated that the Plan disallowed Creditor's claim in its entirety for failure to timely file a claim. This Disclosure Statement and Chapter 11 Plan were received by Creditor first in June 2019, and then in August 2019 with the notice of the September 2019 confirmation hearing. Yet, Creditor did nothing for six months from first having notice of the Chapter 11 Plan and the terms disallowing its claim, and three months after the Chapter 11 Plan was confirmed.

Creditor argues that there was excusable neglect on their part. Creditor seems to shift the blame to Prior Counsel, stating that the Prior Counsel requested a retainer to represent Creditor in the Bankruptcy Case. Creditor's principal testifies that Prior Counsel "apparently did not do anything in the bankruptcy court to preserve my claim." Eguiluz Declaration, ¶9.

Creditor's Principal further testifies that Prior Counsel did not advise him that he needed to file a claim in the bankruptcy court in order to preserve his claim. *Id.* Principal also testifies that he did not know that there was a claim bar date. *Id.*

In *Pioneer*, the Court considered several factors, one of which is the reason for the delay and whether such delay was in the control of the party filing the late claim. Here, as explained above,

Creditor had notice. Creditor took at the very least six months to assert its rights after receiving actual notice of Debtor's bankruptcy. Creditor had control over this delay as it knew of the bankruptcy, contacted current counsel, but yet, the proof of claim was not failed until five months later. What the court sees is Creditor's inexcusable neglect at allowing time to pass without asserting its rights.

Creditor further asserts that its more than $500,000 claim is of small consequence to this case as this will be a surplus case. $500,000 is not a "small consequence."

Consideration of Excusable Factors

In *Pioneer Inv. Servs. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), the Supreme Court discussed some general factors used in considering in allowing the late filing of claims. These include:

(1) whether granting the delay will prejudice the debtor;

On this factor, there is a confirmed Chapter 11 Plan in this case. The terms of the Plan, for which Creditor had notice, that the asserted claim of Creditor is disallowed as a matter of the Federal Rule of Bankruptcy Procedure, stating in Footnote 2 on page 19 of the sixty-three page Plan, to which an additional seventy-three pages of exhibits are attached:

> 2 The Claim of the El Che Corporation was scheduled as disputed, the El Che Corporation did not timely file a proof of Claim, and the El Che Corporation has not yet filed a proof of Claim. Hence, the Claim is disallowed. See Fed. R. Bankr. P. 3002(a), 3003(c)(2).

Chapter 11 Plan, Dckt. 860 at 19 (in the same 10 point font as used in the plan footnote).

Debtor scheduled Creditor's claim. Debtor disputed creditor's claim. Debtor had notice sent to Creditor through the attorneys representing Debtor in the state court action. Notices and information about the bankruptcy case continued to go to Creditor's counsel until a change of address was fled. After that, Debtor continued to receive notices, motions, and pleadings, including the proposed Plan and Disclosure Statement and the approved Disclosure Statement and Plan set for confirmation, all of which include the language that Creditor's claim was disallowed as provided in the Federal Rule of Bankruptcy Procedure.

Debtor sought, litigated, and confirmed the Chapter 11 Plan. Three months after confirmation is concluded and six months after unequivocally receiving notice of the Plan and that its claim was disallowed by operation of law, Creditor comes in to assert the right to be paid more than $500,000.

In the Opposition, the Debtor states that the prejudice consists of:

> 1. All creditors with unsecured claims will have their interim payments reduced if Creditor also receives interim payments.
>
> 2. Creditor has been dilatory in prosecuting its rights, therefore such is "to the prejudice of all other parties."

Opposition, p. 7:25-27, 8:3-5; Dckt. 1087.

In the Opposition filed by Focus Management Group, USA, Inc., the Plan Administrator, the prejudice to the Debtor, Plan or other creditors is not articulated.

As to this factor, it may tip slightly in favor of the Debtor in that the time, money, and expense has gone into a Plan. Creditors moved forward with voting based on there being no claim from Creditor, it appearing that Creditor was not challenging the scheduling of the claim as disputed.

If allowed, then monies will be diverted from the Plan distribution to the claim objection litigation (presuming that the Debtor still disputes the obligation) reducing the payments to creditors, as well as ultimate surplus to Debtor at the end of the day.

(2) the length of the delay and its impact on efficient court administration;

The evidence is undisputed that Creditor acknowledges having actual knowledge of the bankruptcy case as early as March 2018 when the filing of the bankruptcy case disrupted the state court litigation. This actual knowledge was not merely to the principal of the Creditor, but Creditor's Prior Counsel prosecuting the civil action against the Debtor. The bankruptcy case was expressly discussed and the need for Creditor to take action in the case advised by Creditor's Prior Counsel. Though evidence is presented that Prior Counsel addressed the issue of the relief from the automatic stay being necessary to continue in the state court action, no mention is made of the "simple task" of such counsel completing a proof of claim form and attaching a copy of the state court complaint to be filed within the deadline for filing claims.

Creditor's Principal acknowledges that he consciously did not take action in light of the demands for fees from his Prior Counsel. Creditor's Principal also discusses serious life events which strained his finances further from the strain he states from the asserted obligation owed by Debtor.

But this does not change that twenty-one months and the confirmation of the Chapter 11 Plan floated by before Creditor took any action. During this time not only the Debtor in Possession, prior to confirmation, and the Debtor, after confirmation, were moving forward and making decisions, but other creditors were making decisions on the Plan and there not being a $500,000+ claim being asserted by Creditor.

(3) whether the delay was beyond the reasonable control of the person whose duty it was to perform;

Creditor argues that it did not have or did not want to pay the fees for counsel to represent it in the bankruptcy case. Though Creditor had actual knowledge to timely file its claim, it failed to act. It appears that Creditor did not seek out or ask its Prior Counsel to refer it to a bankruptcy attorney to see what needed to be done so its asserted right to $500,000+ did not get lost. Such was a very simple act, filing a proof of claim.

(4) whether the creditor acted in good faith;

From the evidence presented, it does not appear that Creditor acted with an evil, malevolent intent. Creditor's Principal was distracted by family events, but appears to have been able to keep the

Creditor's business running. Creditor's failure to file the proof of claim was not merely inadvertent, but done consciously disregarding the Bankruptcy Case and its asserted right to be paid more than $500,000.

and

(5) whether clients should be penalized for their counsel's mistake or neglect

On this point, Creditor did not engage counsel to represent it in the Bankruptcy Case. Creditor did not want to pay the retainer (of some unstated amount). The Motion does not assert that there was a mistake or neglect by Creditor's counsel. Presumably, such would be the Prior Counsel who advised Creditor that relief from the stay would be needed.

Ruling on Motion to File Late Claim

The court has continued the hearing to allow the Parties the opportunity to engage in settlement negotiations.

Tentative Denial Without Prejudice of Countermotion

As for Debtor's "Countermotion" to disallow the claim section of his Opposition, the court first notes that a "countermotion" must be filed as a separate matter with its own docket control number. L.B.R. 9014-1(c)(4), (i). To the extent this is a Countermotion, it needs to be filed as a separate pleading and contested matter.

However, this requested relief, disallowance of a claim, does not sound in the nature of a countermotion, but an objection to claim. Objections to claim are governed by Federal Rule of Bankruptcy Procedure 3007 and Local Bankruptcy Rule 3007-1. If such relief is necessary, it can be sought by such an objection.