UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 17, 2018, at 1:30 p.m.

1.	**17-20220-E-7** **HLG-7**	**WILLIAM/FAYE THOMAS** **Kristy Hernandez**	**CONTINUED OBJECTION TO CLAIM OF ROBERT S. PUTNAM, CLAIM NUMBER 12** **4-26-18 [99]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Not Provided. No Proof of Service was filed for this Objection to Claim. 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 not been set properly 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 Objection to Proof of Claim Number 12-1 of Robert Putnam is xxxxxxx.

William Thomas, Jr., and Faye Thomas, Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Robert Putnam ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $118,156.92. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is May 17, 2017. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

Additionally, Objector asserts that no debt is owed to Creditor for attorney services provided in state court because Creditor represented Affiliated Professional Services, Inc. ("APS"), not William Thomas, Jr., individually.

NO PROOF OF SERVICE PROVIDED

Unfortunately for Objector, no Proof of Service was filed with this Objection. The court does not have evidence that the necessary parties have been served with notice of the Objection. Nevertheless, both Creditor and David Cusick ("the Chapter 13 Trustee") have responded, indicating that the parties received notice with sufficient time to respond. Given the parties' responses, the court deems the notice provided to be sufficient.

CREDITOR'S RESPONSE AND AMENDMENT

Creditor filed a Response on May 2, 2018. Dckt. 107. Creditor argues that any proceeds recovered from the APS lawsuit would have been part of the bankruptcy estate in this case. As a result, Creditor stresses that any settlement in state court should have been approved in this court first.

Creditor "points the finger" at multiple attorneys, arguing that they colluded and committed fraud by knowing of this bankruptcy case and by choosing to settle the APS lawsuit anyway. Creditor also raises a point that he has raised before—that APS was the alter-ego of William Thomas, Jr., which would support Creditor's assertion that he has a claim in this case for legal service's provided on Objector's behalf.

Creditor does not address the untimeliness of his claim.

On May 23, 2018, Creditor filed an Amendment, removing a request that this bankruptcy case be dismissed and replacing it with a request that the Objection be overruled. Dckt. 133.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on May 17, 2018. Dckt. 130. The Chapter 13 Trustee notes that this case may be converted to Chapter 7, possibly making this matter moot. Additionally, he notes that Creditor has not complied with the local rules for a countermotion to dismiss this case.

OBJECTOR'S REPLY

Objector filed a Reply on May 29, 2018. Dckt. 145. Objector presents a handful of California cases for various propositions about an attorney not being able to collect on a contingency fee when the attorney's client does not recover funds from the lawsuit.

Objector relies upon the following cases:

A. *Kroff v. Larson*, 167 Cal. App. 3d 857, 861 (Cal. Ct. App. 1985)

1. When an attorney's lien is tied to the client's contingent recovery of money or property, the attorney cannot enforce the lien until the contingency occurs.

2. Accordingly, the lien is rendered unenforceable when the occurrence of the contingency is conclusively foreclosed.

B. *Fracasse v. Brent*, 6 Cal. 3d 784, 792 (Cal. 1972)

1. An attorney discharged by a client has a quantum meruit cause of action for the reasonable value of services rendered to the date of discharge, but such cause of action does not accrue until the occurrence of the stated contingency, *i.e.* recovery by the client either by settlement or judgment.

C. *Lemmer v. Charney*, 195 Cal. App. 4th 99, 105 (Cal. Ct. App. 2011)

1. The law does not recognize a tort cause of action for damages by an attorney for the client's decision to abandon a lawsuit because that would constrain the client to keep his lawsuit alive just for his attorney's profit, despite his own fears and desire to abandon the case.

2. A third party cannot be held liable for encouraging the client to walk away from a lawsuit.

D. *Hall v. Orloff*, 49 Cal. App. 745, 749 (Cal. Ct. App. 1920)

1. A client's lawsuit is his own. He may drop it when he will.

2. Even an express agreement to pay damages for dropping it without his lawyer's consent would be against public policy and void.

CREDITOR'S SUR-REPLY

Creditor filed a Sur-Reply on June 4, 2018. Dckt. 149. Creditor takes issue with Objector's use of *Hall* for the provision that Objector could abandon the APS lawsuit because the lawsuit was not Objector's individually, it was APS's, and therefore, it was property of the bankruptcy estate according to Creditor. Creditor also presents additional case law that a debtor's legal claims are property of the bankruptcy estate. *See, e.g.*, *Smith v. Arthur Andersen, L.L.P.*, 421 F.3d 989, 1002 (9th Cir. 2005).

JUNE 12, 2018 HEARING

At the hearing, the court noted that the Chapter 7 Trustee had been appointed only recently, and the court continued the hearing to 10:30 a.m. on June 28, 2018, to allow the Chapter 7 Trustee time to conduct an initial investigation. Dckt. 162, 167.

JUNE 28, 2018 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on July 17, 2018. Dckt. 169, 172.

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 factual basis 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).

The deadline for filing a proof of claim in this matter was May 17, 2017. Creditor's Proof of Claim was filed on May 30, 2017. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

This is not the first time that Objector has raised an objection to Creditor's claim—it is the third time. The first time was in July 2017, which was withdrawn by Objector. *See* Dckt. 78. The second time was in December 2017. Dckt. 82. At the January 30, 2018 hearing, the parties agreed to dismissal of the objection without prejudice to allow the parties to address the various issues that have been raised by Creditor over the prior year. Dckt. 91. With the filing of the present Objection, it appears that the parties have not been able to resolve their dispute.

Additionally, at the January 30, 2018 hearing, the court discussed how Creditor was not listed on the Verification of Master Address List and was not sent the Notice of Bankruptcy or a copy of the Chapter 13 plan. *Id.*

On May 24, 2018, Debtor converted this case to one under Chapter 7. Dckt. 135. Hank Spacone has been appointed as the Interim Chapter 7 Trustee. Appointment, Dckt. 136. All property of the bankruptcy estate, including 100% of the shares of stock in APS, are under the exclusive control of the Chapter 7 Trustee. Schedule B, Dckt. 1 at 15; 11 U.S.C. §§ 541, 506.

At the June 5, 2018 hearing, the court continued a hearing on a motion to approve the state court settlement in the APS lawsuit to 10:30 a.m. on June 24, 2018. The court continued the hearing to allow the newly appointed Chapter 7 Trustee time to review the matters in this case.

While a "party in interest" able to object to a claim for purposes of 11 U.S.C. § 502 includes the debtor in the case, the primary and initial right to object to a claim resides in the Chapter 7 Trustee. Congress provides in 11 U.S.C. § 704(a)(5):

> § 704. Duties of trustee
>
> (a) The trustee shall–
>
> (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper; . . . .

While a debtor is a party in interest, and may be allowed to prosecute an objection to claim, it must be shown that the debtor has "standing," that there is actually a "claim or controversy" to be adjudicated.

> [c] Objection by Debtor
>
> The debtor may be a party in interest with standing to object to a proof of claim. Particularly in chapter 12 and chapter 13 cases, the success of the debtor's plan may depend upon the debtor's being able to argue successfully that the debt asserted as a priority claim or a secured claim, which must often be paid in full, is excessive or invalid. Typically, the trustee in such cases does not view it as his or her role to object to particular claims except, perhaps, if they have been tardily filed.
>
> **In a chapter 7 case**, or a chapter 11 case in which the debtor is not in possession, **the debtor usually has no pecuniary interest that would justify objecting to a claim unless there could be a surplus after all claims are paid.** An individual debtor, however, in such a case may sometimes **have an interest in objecting to particular claims**. For example, the debtor may wish to object to an excessive dischargeable claim whose holder would **receive distributions that otherwise would be made to the holder of a nondischargeable claim**. To the extent that a nondischargeable claim is satisfied in some measure by a distribution, it is in the debtor's interest to maximize the distribution, thereby relieving the debtor from some or all of the claim of that creditor which would survive the bankruptcy case. The debtor also has an interest if there is any chance that a disallowance will yield a solvent estate that would provide a return to the debtor. The same reasoning applies to equity holders of the debtor. Thus, a debtor may be afforded standing, in certain instances, to object to claims.

4 COLLIER ON BANKRUPTCY ¶ 502.02 (Alan N. Resnick & Henry H. Sommer eds. 16th ed.).

Here, Debtor has elected to convert the case to one under Chapter 7, whereby Debtor's standing based on how the claim affected the Plan and distributions under the Plan have evaporated.

At the hearing, the Chapter 7 Trustee reported **xxxxxxxxxxxxxxxxxx**.

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 Robert Putnam ("Creditor") filed in this case by William Thomas, Jr., and Faye Thomas, Chapter 13 Debtor, ("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 12-1 of Robert Putnam is **xxxxxxxxxxxxxx**.

2.	**17-20220-E-7** **HLG-8**	**WILLIAM/FAYE THOMAS** **Kristy Hernandez**	**CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GLEN VAN DYKE** **5-4-18 [111]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on May 4, 2018. By the court's calculation, 32 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 not been properly 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 xxxxxxx.

William Thomas and Faye Thomas, Chapter 13 Debtor, ("Movant") (FN.1) requests that the court approve a settlement between Movant and Affiliated Professional Services, Inc., ("APS") on one side and Glen Allen Van Dyke, individually and doing business as Van Dyke Law Group, Salinger Van Dyke, a California general partnership, Dale Washington, Stuart Gregory, Mark G. Hildebrand, James C. Gordon, John M. Janacek, Veronica Janacek, William S. Douglas, Karen D. Douglas, Edward E. Sullivan, Robin L. Sullivan, Carol A. Martin, and Alex N. Ray ("Settlor"). The claims and disputes to be resolved by the proposed settlement arise from litigation in Superior Court in El Dorado County, entitled *Affiliated Professional Services, Inc. v. Glen Van Dyke et al.*

FN.1. In this ruling, the court refers to Debtor as "Movant" because it was Debtor who brought the Motion while serving in his fiduciary capacity over property of the bankruptcy estate and under the Plan. With the case being converted to Chapter 7, the Chapter 7 Trustee has replaced Debtor in that fiduciary capacity for property of the bankruptcy estate. Going forward, it is the Chapter 7 Trustee who succeeds to the role of "movant" for future hearings.

On May 24, 2018, Debtor converted this case to one under Chapter 7. Dckt. 135. Hank Spacone has been appointed as the Interim Chapter 7 Trustee. Appointment, Dckt. 136. All property of the bankruptcy estate, including 100% of the shares of stock in Affiliated Professional Services, Inc., are under th exclusive control of the Chapter 7 Trustee. Schedule B, Dckt. 1 at 15; 11 U.S.C. §§ 541, 506.

Review of Litigation and Claims Settled

The Motion alleges that Debtor operated Debtor's business Affiliated Professional Services, Inc. ("APS"). Motion ¶ 1, Dckt. 111. APS filed state court litigation against Glen Van Dyke and other defendants. One of the state court defendants filed a counter claim against APS and named Debtor William Thomas personally as another defendant in the cross-complaint.

The Motion further alleges that the state court action was dismissed in August 2017 based on a written settlement agreement that "the parties" executed. The settlement agreement is stated to include a non-disclosure provision. It also included non-monetary cross-dismissals of all claims asserted.

Debtor seeks in the Motion approval of the 2017 settlement. This bankruptcy case having been filed in 2017, appears that any settlement, at least as to rights, interests, and claims against Debtor or which are property of the bankruptcy, must first be approved by the bankruptcy court. 11 U.S.C. § 541; FED. R. BANKR. P. 9019.

The Motion offers no explanation of the various claims and cross claims that are the subject of the cross-releases. The Motion does not explain how the interests and rights of APS, for which the bankruptcy estate is the sole shareholder (whether Debtor was exercising the fiduciary duties over property of the bankruptcy estate or now the Chapter 7 Trustee) were given up as part of obtaining releases against APS and Debtor personally for claims that must be adjudicated in this court.

Proof of Claim No. 9 was filed by Dale Washington on May 15, 2017. The Claim is for $129,000 and is for "Services Performed." Attachment 1 is a copy of the State Court Cross-Complaint against APS and Debtor William Thomas. The allegations in the Cross-Complaint include:

A. APS is the alter ego of Thomas.

B. Thomas used APS and its assets to pay Thomas's personal expenses.

C. Thomas was hired as an expert witness by Washington.

D. Thomas did not properly bill for the services provided.

E. Many contentions concerning the conduct of Prestholt.

F. Improper use of private information by Prestholt and Thomas.

G. Cause of Action for Fraud, based on Thomas/APS's billing practices.

H. Cause of Action under California Business and Professions Code §§ 17300 et seq. based on Thomas/APS's billing practices.

I. Cause of Action for Breach of Contract against Thomas/APS.

J. Cause of Action for Civil Extortion against Thomas/APS.

Gale Van Dyke filed Proof of Claim No. 10 in the amount of $129,000, which is based on "Services Performed." Attachment 1 to Proof of Claim No. 10 is Van Dyke's Cross-Complaint against APS. It asserts three causes of Action: (1) Fraud, (2) Breach of California Business and Professions Code §§ 17200 et seq., and (3) Intentional Breach of Contract. These appear to be based on the same grounds as asserted by Washington in Proof of Claim No. 9.

Proof of Claim No. 11 was filed by Van Dyke Law Group in the amount of $155,725.93, which is based on "Services Rendered." The Proof of Claim form is not signed and is purported to be filed by Creditor's attorney. Proof of Claim No. 11, p. 3.

INSUFFICIENT NOTICE OF MOTION

Movant provided thirty-two days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(3) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Movant has provided three fewer days than the minimum.

The court continued the hearing to allow the Chapter 7 Trustee who has taken over the estate to report. That continuance resolved the insufficient notice given by Debtor as the predecessor fiduciary of the bankruptcy estate.

Movant and Settlor have resolved their litigation, 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. 115):

A. APS and Glen Allen Van Dyke shall file a notice of conditional settlement of state court action in Superior Court within five days of executing the settlement agreement;

B. Glen Allen Van Dyke and Dale Washington shall execute and file with the bankruptcy court withdrawals of their proofs of claim;

C. William Thomas shall provide written notice to the bankruptcy court that objections to the claims of Glen Allen Van Dyke and Dale Washington have been resolved;

D. APS shall provide written notice to the bankruptcy court that its motion for relief has been resolved;

E. Within five days of executing the settlement agreement, APS, Glen Allen Van Dyke, and Dale Washington shall execute requests for dismissal of the state court action in its entirety with prejudice; and

F. Movant and Settlor each grant the other a general release of claim.

CREDITOR'S OPPOSITION

Robert Putnam ("Creditor") filed an Opposition on May 14, 2018. Dckt. 123. Creditor argues that he filed a secured lien on any settlement or judgment issued in the state court action, but under the proposed settlement, he will not receive any payment on his claim.

Creditor argues that Movant has "used a property right worth hundreds of thousands of dollars to APS for his own personal benefit." *Id.* at 4. Creditor argues that all of Movant's creditors have lost an opportunity to recover against any of their claims. *Id.*

Creditor alleges that the proposed settlement "is the product of fraud and collusion warranting further investigation in that all parties to the settlement agreement knew or should have known that approval of the settlement was required by" the bankruptcy court before proceeding to dismiss the state court action. *Id.* at 5.

Creditor states that he requested to be included in settlement negotiations in state court but was deliberately excluded. Creditor argues that Movant cannot show how the settlement is fair and equitable, going so far as to argue that the factors considered by the court favor not approving the settlement.

Creditor argues that litigation would have been successful in state court, should not have been expensive, would not have involved difficulty collecting against a judgment, would not have been inconvenient to try (because Creditor offered to try the case for the parties), and does not benefit creditors in this case because the settlement involves no money.

Creditor filed an Amendment to the Opposition on May 21, 2018, to remove a request that the bankruptcy case be dismissed and replace it with a request that the Motion be denied. Dckt. 131.

MOVANT'S REPLY

Movant filed a Reply on May 29, 2018. Dckt. 141. Movant argues that APS was entitled to rely on the advice of its state court counsel at the time it decided to settle the lawsuit and that Creditor has no ground to assert that there should have been money involved because he was not the attorney of record at the time of settling.

Movant refutes allegations of collusion by arguing that "[t]here are no facts that support [Creditor's] accusations." *Id.* at 2. Instead, Movant argues that the Chapter 13 Trustee in this case was provided with detailed financial records that do not hint at hidden assets or irregularities in line with a scheme.

JUNE 5, 2018 HEARING

At the hearing, the court noted that the Chapter 7 Trustee had not expressed an opinion about the proposed settlement now that the case had been converted, and the court continued the hearing to 10:30 a.m. on June 28, 2018 for the Chapter 7 Trustee to review and report to the court. Dckt. 160.

JUNE 28, 2018 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on July 17, 2018. Dckt. 170, 173.

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 (Debtor who has now been replaced by the Chapter 7 Trustee) argues that the four factors have been met without addressing each one specifically. Instead, Movant relies upon Paragraph 11 of the Declaration of Anthony Fritz. That section of the Declaration sets forth seven grounds for why the settlement is in Movant's best interest.

First, he argues that given more than $420,000.00 in proofs of claim filed, any proceeds from the state court action would have been cannibalized, in addition to projected considerable attorney's fees for litigation. Mr. Fritz questioned whether Movant or the Chapter 13 Trustee would receive any net financial benefit from litigation.

Second, Mr. Fritz was concerned that APS would not be paid for expert services provided in a prior lawsuit given a related appellate court decision. Third, Mr. Fritz was concerned that there as no record of an agreement signed by Dale Washington to pay APS for its services.

Fourth, Mr. Fritz anticipated meritorious defenses from Glen Allen Van Dyke and Dale Washington based on his review of California precedent. Fifth, Mr. Fritz was concerned that naming Glen Allen Van Dyke's homeowner clients would expose APS and Movant to litigation for malicious prosecution, which would include a significant risk of liability.

Sixth, the state court complaint was subject to mandatory dismissal if not brought to trial by September 2017, and as of July 2017, it had not been set for trial. While Mr. Fritz had drafted a motion to extend the period in state court to set the matter for trial, he was concerned that the parties would not reach trial under the extended period that the court would set. Seventh, based on prior discussions and proposed settlements with Settlor, Mr. Fritz concluded that Settlor would not be willing to pay any amount to settle the state court action, let alone an amount large enough to pay APS's debts.

Chapter 7 Trustee's Position

At the hearing, the Chapter 7 Trustee reported **xxxxxxxxxxxxx**.

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 Approve Compromise filed by William Thomas and Faye Thomas, Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise is **xxxxxxxxxxxxxx**.

3.	**17-20220-E-7** **RSP-1**	**WILLIAM/FAYE THOMAS** **Kristy Hernandez**	**CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS** **4-19-18 [96]**

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

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

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

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that Movant will request an order at the hearing. Based upon language that there will be discussion at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, former Chapter 13 Trustee, and Office of the United States Trustee on April 19, 2018. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

The Motion to Compel 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 is xxxxxxxxxxxxxx.

Robert Putnam, a creditor with an unsecured claim, ("Movant") requests that the court order William Thomas, Jr., ("Co-Debtor") to appear at a 2004 Examination and to produce documents ten days before the examination.

DEBTOR'S OBJECTION

William Thomas, Jr., and Faye Thomas ("Debtor") filed an Objection on May 29, 2018. Dckt. 143. Debtor asserts that the Motion may become moot because of a pending motion to approve state court settlement and because of an objection to Movant's claim. Envisioning that the court will grant the motion and sustain the objection, Debtor argues that this Motion would then be an "improper harassment" by Movant. *Id.* at 3:4.

JUNE 12, 2018 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on June 26, 2018, to be heard in conjunction with related matters. Dckt. 163.

JUNE 28, 2018 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on July 17, 2018, specially set. Dckt. 171, 174.

APPLICABLE LAW

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

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

"Meet and Confer" Requirement

Federal Rule of Civil Procedure 37(a)(1) requires that the motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." FN.2.

FN.2. Both the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure are mentioned several times in the court's ruling. A Federal Rule of Civil Procedure will be referred to as "Rule," and a Federal Rule of Bankruptcy Procedure will be referred to as "Bankruptcy Rule."

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

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

170 F.R.D. 166, 170 (D. Nev. 1996); *see also Triad Commer. Captive Co. v. Carmel (In re GTI Capital Holdings, LLC)*, No. AZ-09-1053-JuMKD, 2009 Bankr. LEXIS 4539, at *26–27 (B.A.P. 9th Cir. Aug. 20, 2009); *Sanchez v. Wash. Mutual Bank (In re Sanchez)*, No. 06-2251-D, 2008 Bankr. LEXIS 4239, at *2–3 (Bankr. E.D. Cal. Sept. 8, 2008). The court went further, stating that "a moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" *Shuffle Master, Inc.*, 170 F.R.D. at 171; *see also Triad Commer. Captive Co.*, 2009 Bankr. LEXIS 4539, at *27; *Sanchez*, 2008 Bankr. LEXIS 4239, at *3.

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

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

DISCUSSION

The court first considers whether Movant has satisfied the "meet and confer" requirement of Rule 37(a). Movant does not provide any information about his attempts to meet and confer with Co-Debtor. The court's prior civil minutes related to Co-Debtor's objection to Movant's claim indicate that the parties want to discuss the dispute outside of court, but no party has provided information about how those discussions, if they happened, have proceeded.

At the hearing, **xxxxxxxxxxxxxxx**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel filed by Robert Putnam, a creditor with an unsecured claim, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel is **xxxxxxxxxxx**.

4. 17-20220-E-7 WILLIAM/FAYE THOMAS — STATUS CONFERENCE RE: VOLUNTARY PETITION
Kristy Hernandez — 1-13-17 [1]

Debtors' Atty: Kristy A. Hernandez

Notes:
Set by court order filed 7/3/18 [Dckt 168]; the Trustee is to file a short, summary Status Report on or before 7/13/18

JULY 17, 2018 STATUS CONFERENCE

Court's Order for Status Conference

This bankruptcy case was commenced on January 13, 2017, by William and Faye Thomas ("Debtors") as a Chapter 13 case. The Chapter 13 Plan was confirmed on February 28, 2017. Order, Dckt. 14. On May 24, 2018, Debtors elected to convert this case to one under Chapter 7. Notice of Conversion, Dckt. 135. When the case was converted, a Motion to Compromise rights of the bankruptcy estate and an Objection to Claim were pending, having been filed by Debtors. Motion, Dckt. 111, 99, respectively.

The case having been converted and Hank Spacone having been appointed as the Chapter 7 Trustee, the court continued the hearing on the Motion to Approve Compromise and a Motion For Examination (Dckt. 96) relating to the proposed compromise, the hearings on both motions were continued to June 28, 2018, to allow the Chapter 7 Trustee (now the real party in interest for the proposed compromise) to participate in the proceedings. With respect to the Motion to Approve Compromise, the court noted that:

> The Motion offers no explanation of the various claims and cross claims that are the subject of the cross-releases. The Motion does not explain how the interests and rights of APS, for which the bankruptcy estate is the sole shareholder (whether Debtor was exercising the fiduciary duties over property of the bankruptcy estate or now the Chapter 7 Trustee) were given up as part of obtaining releases against APS and Debtor personally for claims that must be adjudicated in this court.

Civil Minutes, Dckt. 169 at 3. One creditor, Dale Washington, asserts that APS is the alter-ego of Debtor. The proposed Settlement includes "walk-away" resolutions of the Estate-APS-Washington claims being asserted against the other.

Robert Putman, former counsel for Debtors asserting the rights being settled, asserts a claim in this case and objects to the proposed Settlement. Mr. Putman contends that there has been misconduct and misdealing in the handling of these rights of the bankruptcy estate (by the former Chapter 13 Debtors in exercising power of a trustee and a fiduciary of the Chapter 13 estate and under the Chapter 13 Plan) and that Mr. Putman should be included in any negotiations concerning these rights of the bankruptcy estate. *Id.* at 4.

As the court discusses in the Civil Minutes from the prior hearing on the Motion to Approve Compromise:

> The court continues the hearing for the Chapter 7 Trustee to review and investigate the settlement, the claims, and the conduct of the officers of the corporation in settling the rights of the corporation and obtaining releases for APS and Debtor (who was not a plaintiff in the state court action).
>
> The court notes that while Debtor and the creditors may "agree" to keep the settlement confidential, they cannot expect the court to approve a settlement blindfolded. On its face, it appears that there is significant value to the APS/Thomas claim because the settling creditors are agreeing to walk away from around $150,000 in claims. Alternatively, it may well be that there is a determination that this is a bad situation, which further litigation may make worse, with Debtor having no ability to pay any amounts. However, the court has no idea given that the settling parties say very little about the respective rights and claims to be settled.

Id. at 6.

This clearly presents the court, and now the Chapter 7 Trustee, with a more complex situation and set of potential rights than one normally sees in a Chapter 7 case.

A review of the file indicates that the Chapter 7 Trustee was not present at the June 28, 2018 hearings. Additionally, it appears that the objecting creditor (seeking to conduct the 2004 examination) had not communicated with the Chapter 7 Trustee.

5. **18-23941-E-13** **SHONA JAMES** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
PRK-1 **Pro Se** **6-29-18 [11]**

RC CONSULTING, INC. 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on June 29, 2018. By the court's calculation, 18 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 13 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.

RC Consulting, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8669 Tea Leaf Court, Sacramento, California ("Property"). The moving party has provided the Declaration of Raul Chavez to introduce evidence as a basis for Movant's contention that Shona James ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 3, 2018. Dckt. 17. The Chapter 13 Trustee states that he does not oppose the Motion regarding the rental property.

DISCUSSION

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow RC Consulting, Inc., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8669 Tea Leaf Court, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other

than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by RC Consulting, Inc., and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted RC Consulting, Inc., and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by RC Consulting, Inc., ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow RC Consulting, Inc., and its agents, representatives and

successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8669 Tea Leaf Court, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

6. 12-39954-E-13 JOHN/MICHELLE PINEDA — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 Peter Cianchetta — 6-11-18 [165]

WELLS FARGO BANK, N.A. VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 11, 2018. 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 xxxxx.

Wells Fargo Bank, N.A., ("Movant") seeks relief from the automatic stay with respect to John Pineda, Jr., and Michelle Pineda's ("Debtor") real property commonly known as 924 Gerling Court, Galt, California ("Property"). Movant has provided the Declaration of John Dowdell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Dowdell Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of $8,455.46 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on June 22, 2018. Dckt. 171. The Chapter 13 Trustee asserts that Debtor has completed plan payments and that he filed a Notice of Completed Payments on February 9, 2018, and a Notice of Final Cure Payments on February 13, 2018. The Chapter 13 Trustee state that Movant responded to the final cure notice on March 5, 2018, by stating that Debtor was current on all post-petition payments with the next payment due on February 1, 2018. *See* Response, filed March 5, 2018.

DISCHARGE OF DEBTOR

On July 13, 2018, the court entered Debtor's discharge in this case. Dckt. 179.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $362,364.05 secured by Movant's first deed of trust, as stated in the Dowdell Declaration and Schedule D. The value of the Property is determined to be $249,990.00, as stated in Schedules A and D.

This case was filed on November 13, 2012, and a Notice of Intent to Enter Chapter 13 Discharge was entered on June 25, 2018. Dckt. 176. In March, Movant certified that there was no post-petition delinquency as of February 1, 2018, but now Movant asserts that Debtor has not made any post-petition payments since February 2018.

At the hearing the parties explained the discrepancy in post-petition payments being ceased suddenly by stating to the court that **xxxxxxxxxxxxxxxx**.

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.~~

~~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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

~~No other or additional relief is granted by the court.~~

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 Relief from the Automatic Stay filed by Wells Fargo Bank, N.A., ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 924 Gerling Court, Galt, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~
>
> ~~No other or additional relief is granted.~~

7. 18-23756-E-13 SAMANTHA BURGESS
RDW-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-2-18 [17]

GREG WILKINSON 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 and Chapter 13 Trustee on July 2, 2018. By the court's calculation, 15 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 13 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Greg Wilkinson ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5682 Hillsdale Boulevard, Sacramento, California ("Property"). The moving party has provided the Declaration of Elizabeth Neeley to introduce evidence as a basis for Movant's contention that Samantha Burgess ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that he is the owner of the Property. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and received a judgment for possession, with a Writ of Possession having been issued by that court on April 30, 2018. Exhibit C, Dckt. 21.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The instant case was dismissed on July 3, 2018, for failure to timely file documents. Dckt. 24.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
>
> (2) the stay of any other act under subsection (a) of this section continues until the earliest of—
>
> > (A) the time the case is closed;
> >
> > (B) ***the time the case is dismissed***; or
> >
> > (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> (1) reinstates—
>
> > (A) any proceeding or custodianship superseded under section 543 of this title;
> >
> > (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
> >
> > (C) any lien voided under section 506(d) of this title;
>
> (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

> (3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of July 3, 2018, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on July 17, 2018.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Greg Wilkinson ("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 denied without prejudice as moot, this bankruptcy case having been dismissed on July 3, 2018 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Samantha Burgess ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 5682 Hillsdale Boulevard, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the July 3, 2018 dismissal of this bankruptcy case.