UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
Sacramento, California

August 26, 2019 at 9:00 a.m.

1.	**19-22204-A-7**	**FELIPE GARCIA-SALGADO** **Michael Benavides**	**MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE** **8-6-19 [17]**

APPEARANCES OF MICHAEL BENAVIDES AND FELIPE GARCIA-SALGADO REQUIRED FOR THE AUGUST 26, 2019 HEARING

NO TELEPHONIC APPEARANCE PERMITTED

The Motion for Fee Waiver is denied.

An Application for Waiver of Chapter 7 filing fee has been filed by Felipe Garcia-Salgado ("Debtor"). The Debtor's family unit consists of one person (Debtor). Schedule J, Dckt. 1 at 30. Debtor's gross income is $1,406 (Schedule I, Social Security). Schedule I, *Id.* at 28-29.

Though stating that he is a household of one, on the Statement of Financial Affairs Debtor states under penalty of perjury that he is married. Statement of Financial Affairs Question 1, *Id.* at 33. No income information is provided (whether $0 or a dollar amount) is shown for Debtor's Spouse on Schedule I or in response to Question 5 of the Statement of Financial Affairs. *Id.* at 34.

Conflicting with Schedule I is Debtor's statement of in response to Question 11 that he is currently operating a barbershop business. *Id.* at 38. Even though operating a business, Debtor does not show any business income in responding to Question 4 of the Statement of Financial Affairs, stating under penalty of perjury that he has **no** employment or business income. *Id.* at 33. Debtor affirmatively states that his "only" income is for Social Security in the amount of $1,406 a month. *Id.* at 34.

On the Application for Fee Waiver, though represented by counsel this form is handwritten, Debtor states that his monthly income is $16,872. Dckt. 17. He says that his spouse has "0" in income. He then, for unexplained reasons, reduces his "family" average monthly net income to $1,406. *Id.*

On May 20, 2019, a Spousal Waiver of Right to Claim Exemption was filed. Dckt. 13. Again, though represented by counsel, and having paid counsel for said representation, the fields of the form are completed in partially illegible handwriting - not something that one would expect of a party who is represented by (and has paid to be represented by) counsel.

The First Meeting of Creditors has been concluded and the Trustee has filed his report of there being no assets to be distributed in this case. Trustee's May 15, 2019 Docket Entry Report.

Debtor and Debtor's counsel have provided conflicting information concerning the Debtor's income, family unit, and ability to pay the filing fee. The court finding that it cannot conclude that Debtor meets the financial guidelines for a fee waiver given this conflicting information, upon consideration of the Debtor's income, assets, the Schedules in this case, and the additional information provided at the hearing, the court denies the application for waiver of the Chapter 7 filing fees.

The court shall not issue an order for an installment payment schedule for the Chapter 7 filing fees in light of Debtor having five months from the filing of this case to assemble the modest Chapter 7 filing fee.

2. **17-25421-A-7** **MICHAEL HAIGH** **MOTION TO EMPLOY**
HSM-2 **Jeffrey Ogilvie** **CHRISTOPHER W. WOOD AS SPECIAL COUNSEL**
7-30-19 [74]

DEBTOR DISCHARGED:
11/30/2017

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 July 30, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

The Chapter 7 Trustee, Michael P. Dacquisto("Trustee") seeks to employ Dreyer Babich Buccola Wood Campora, LLP as special counsel ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Special Counsel to prosecute possible malpractice claims held by the Estate.

The Attorney-Client Contingent Fee Contract, attached as Exhibit A, provides for a 35

percent contingent fee if the claims are settled before trial, and 40 percent if resolved after. Dckt. 79.

Christopher Wood, an attorney with Special Counsel, testifies that he . Wood testifies further he 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.

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.

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special 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 Special Counsel on the terms and conditions set forth in The Attorney-Client Contingent Fee Contract, attached as Exhibit A, Dckt. 74. 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 the Chapter 7 Trustee, Michael P. Dacquisto ("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 Dreyer Babich Buccola Wood Campora, LLP as special counsel ("Special Counsel") for Trustee on the terms and conditions as set forth in The Attorney-Client Contingent Fee Contract, attached as Exhibit A, Dckt. 74.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Special Counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

3. **19-23637-A-7** **MARK/TERRI COOK** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
Mary Anderson **7-19-19 [20]**

ROBYNN MONIZ 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, and Office of the United States Trustee on July 19, 2019. By the court's calculation, 38 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.

Robynn Moniz ("Movant") seeks relief from the automatic stay to allow a state court action in Amador County Superior Court, Case No. 17-CV-10314 (the "State Court Litigation") to be concluded. Movant explains the State Court Litigation involves claims of premises liability, negligence, and strict liability stemming from an alleged dog attack.

DEBTOR'S RESPONSE

The debtor, Mark Richard Cook and Terri Deanna Cook ("Debtor"), filed a Response on August 9, 2019. Dckt. 23. Debtor states Debtor does not oppose granting the Motion, but requests the court "approve the determination made by the trustee in the client's bankruptcy case that the debtor's are a no asset case."

DISCUSSION

Failure to File Pleadings as Separate Documents

Movant filed the Motion, Notice of Motion, and Declaration of Lourdes De Arms in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion, or for other appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Relief From Stay

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Debtor does not oppose granting the Motion. The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the state

court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, the Chapter 7 Trustee, Douglas M. Whatley ("Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

Debtor's Request For Order Confirming "No Asset Case"

Debtor, in Debtor's Response to the Motion, requests the court provide as part of its order granting the Motion that the Trustee's determination this is a "no asset case" is approved. No basis in law is given for this request. No explanation is given why this request is warranted. No explanation is given as to why or how the court issues such an order.

At the hearing, xxxxxxxxxxxxxx.

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 Robynn Moniz ("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 modified as applicable to Mark Richard Cook and Terri Deanna Cook ("Debtor") to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in a state court action in Amador County Superior Court, Case No. 17-CV-10314 .
>
> **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, the Chapter 7 Trustee, Douglas M. Whatley ("Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.
>
> No other or additional relief is granted.

4.	**19-24240-A-7** **SMR-1**	**LORNA HAYNES** **Pro Se**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **7-26-19 [17]**

DANIEL SIMAO 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.

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*), Debtor's Attorney , Chapter 7 Trustee, and Office of the United States Trustee on July 26, 2019. By the court's calculation, 31 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.

Daniel C. Simao, Linda Ann Simao, Trustees of the Simao Family Trust Dated 9/16/94, ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 92 Hermes Circle, Sacramento, California ("Property"). Movant argues the debtor, Lorna Celeste Haynes ("Debtor") does not have an ownership interest in the Property.

The Declaration of Linda Ann Simao presents testimony that Debtor is a former caregiver, and successor in interest, of the original lessee of the Property Joe Bottley. Dckt. 21. Simao testifies further that an unlawful detainer action was commenced in the Sacramento County Superior Court entitled *Daniel C. Simao, Linda Ann Simao, Trustees of the Simao Family Trust Dated 9/16/94 v. Haynes*, Sacramento County Superior Court Case No. 19UD02651 ("Unlawful Detainer Action"). Exhibit B, Dckt. 20.

The Chapter 7 Trustee, J. Michael Hopper, entered a statement of non-opposition on July 28, 2019.

DEBTOR'S OPPOSITION

Debtor filed two Notices of Opposition and two Oppositions to the Motion. Dckts. 26, 28, 31, 32. The Opposition argues there is no prejudice to Movant from allowing Debtor to remain at the Property, and further that Debtor has attempted to make the monthly rent payments, which payments have been rejected by Movant.

Debtor presents a convoluted chain of leases, people for whom caregiver services were provided, alleged future payments, and disputes as to whom the tenants were. These complex alleged facts mitigate heavily in favor of granting relief from the stay.

Debtor also states it is unclear whether she has any interest in the Property.

MOVANT'S REPLY

Movant filed a Reply on August 19, 2019. Dckt. 34. Movant argues the Debtor failed to present evidence that Movant is adequately protected, and that Debtor's allegation she may have an interest in the Property is without merit.

DISCUSSION

Movant has presented testimony that Debtor only has, at best, a possessory interest in the Property. 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). This being a Chapter 7 case, the Property 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). Additionally, cause exists for relief from stay to allow a determination in state court of the respective rights f the parties. 11 U.S.C. § 362(d)(1).

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 Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, 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 Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant 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 Daniel C. Simao, Linda Ann Simao, Trustees of the Simao Family Trust Dated 9/16/94, ("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 Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 92 Hermes Circle, 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.

5. **10-42050-A-7** **VINCENT/MALANIE SINGH**
Kenrick Young

CONTINUED STATUS CONFERENCE RE: MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $3300.00
5-10-19 [1075]

5 thru 7

JOINT DEBTOR DISCHARGED:
04/05/2012

Debtor's Atty: Kenrick Young

Notes:
Continued from 6/19/19. Claimant [*Mala Devi Aninkumar by Adams and Cohen, LLC*] to file any supplemental documents on or before 8/12/19. No supplemental documents filed as of 8/15/19.

The Status Conference is xxxxxxxxxxxxxxxxxx

6. **10-42050-A-7** **VINCENT/MALANIE SINGH**
Kenrick Young

CONTINUED STATUS CONFERENCE RE: MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $3300.00
5-10-19 [1074]

JOINT DEBTOR DISCHARGED:
04/05/2012

Debtor's Atty: Kenrick Young

Notes:
Continued from 6/21/19. Claimant [*Dilks and Knopik, LLC*] to file any supplemental documents on or before 8/12/19.

Memorandum in Support of Dilks and Knopik's Application for Unclaimed Funds; Declaration of Brian Dilks in support; Exhibits; Certificate of Service filed 7/19/19 [Dckt 1104]

The Status Conference is xxxxxxxxxxxxxxx

7. **10-42050-A-7** **VINCENT/MALANIE SINGH** **CONTINUED MOTION FOR**
GJH-26 **Kenrick Young** **COMPENSATION FOR GONZALES AND ASSOCIATES INC., ACCOUNTANT(S)**
7-10-19 [1098]

JOINT DEBTOR DISCHARGED:
04/05/2012

Final Ruling: No appearance at the August 26, 2019 hearing is required.

Local Rule 9014-1(f)(2) Motion—No 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 July 10, 2019. By the court's calculation, 21 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 court issued an Order granting the Motion allowing fees of $27,521.43 on a final basis and authorizing the payment of $9,173.00 for unpaid fees. Order, Dckt. 1111. The Matter, having been finally resolved, is removed from the calendar

This Motion for Fourth and Final Fees was filed by Michael Burkart, Chapter 7 Trustee ("Trustee"), and seeks a final allowance of fees to Gene Gonzales, of the firm Gonzales & Associates as an accountant for the Estate ("Accountant"). The requested fees are of $27,521.43 for services during the period from June 27, 2012 to June 30, 2019. The Motion also seeks authority to pay Accountant $9,173.00 for unpaid fees included in the aggregate total of allowed fees.

On July 31, 2019, a hearing was held on the Motion. Civil Minutes, Dckt. 1113. The hearing was continued to August 26, 2019.

On August 1, 2019, an Order granting the Motion was filed, allowing fees of $27,521.43 on a final basis and authorizing the payment of $9,173.00 for unpaid fees. Order, Dckt. 1111.

8. **18-26464-A-7** **TERRY HERTZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
AP-1 **Stanley Berman** **7-15-19 [51]**

BANK OF NEW YORK MELLON TRUST COMPANY, N.A. 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.

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, and Office of the United States Trustee on July 15, 2019. By the court's calculation, 42 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 xxxxx.

Bank of New York Mellon Trust Company, N.A., as Trustee for Mortgage Assets Management Series I Trust ("Movant") seeks relief from the automatic stay with respect to Terry Allen Hertz's ("Debtor") real property commonly known as 2550 Fontaine Circle, Medford, Oregon

("Property"). Movant has provided the Declaration of Justin Roland to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

APPLICABLE LAW

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).

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 Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property 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).

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 $270,516.62. Declaration, Dckt. 53.

Movant "is informed and believes," and filed an appraisal report as Exhibit 5 (Dckt. 56) to show, the Property has a fair market value of $260,000.00. However, the Appraisal was not authenticated. FED. R. EVID. 901. Furthermore, no exemption or exception to the rule against hearsay was argued, therefore making the Appraisal inadmissable. FED. R. EVID. 801, et seq.

Therefore, no evidence authenticated, admissible evidence was presented as to the value of the Property. Movant's arguments for relief under both 11 U.S.C. § 362(d)(1) and (d)(2) relied on there being no equity in the Property.

On Debtor's Schedules, Debtor does not list the Property. Dckt. 15.

Declaration of Justin Roland

The Declaration of Justin Roland, a foreclosure specialist with Compu-Link Corporation dba Celink (attorney in fact for Movant) presents the following testimony:

> 6. According to Celink's books and records, the Loan is evidenced by a promissory note executed by Lucie Amanda Scioli and dated February 13, 2008 . . .
>
> ...
>
> 11. The Debtor subsequently acquired his interest in the Real Property, subject to Movant's Deed of Trust, by a means unknown to Movant.
>
> 12. Celink is informed and believes that on or about October 12, 2017, Lucie Amanda Scioli (the "Borrower") passed away. A true and a correct copy of the Borrower's Obituary is attached to the Exhibits as Exhibit 4.

Declaration, Dckt. 53.

The above testimony does not provide clear, confident testimony that Debtor owns the Property, or that Debtor owned the Property before commencing this bankruptcy case. The testimony does not explain how Mr. Roland has personal knowledge of Debtor acquiring an interest in the Property.

Furthermore, no testimony is provided showing that Lucie Amanda Scioli has passed away. Roland testifies that Celink (not him) is "informed and believes." That declaration is the testimony of a witness presented in writing in lieu of the witness being put on the stand. Non-expert witness testimony must be based on the personal knowledge of the witness. FED. R. EVID. 602. As discussed in Weinstein's Federal Evidence § 602.02:

> A witness may testify only about matters on which he or she has first-hand knowledge. Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences. The witness's testimony must be based on events perceived by the witness through one of the five senses.

In recent years, the Ninth Circuit Court of Appeal addressed this personal knowledge issue, stating:

> Under Rule 602, "[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." FED. R. EVID. 602. Rule 602 requires any witness to have sufficient memory of the events such that she is not forced to 'fill[] the gaps in her memory with hearsay or speculation.' 27 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE Evidence § 6023 (2d ed. 2007). Witnesses are not 'permitted to speculate, guess, or voice suspicions.' *Id.* § 6026. However, '[p]ersonal knowledge includes opinions and inferences grounded in observations

and experience.' *Great Am. Assurance Co. v. Liberty Surplus Ins. Co.*, 669 F. Supp. 2d 1084, 1089 (N.D. Cal. 2009) (citing *United States v. Joy*, 192 F.3d 761, 767 (7th Cir. 1999)). Lay witnesses may testify about inferences pursuant to Rule 701:

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

FED. R. EVID. 701.

United States v. Whittemore, 776 F.3d 1074, 1082 (9th Cir. 2015).

As discussed in Moore's Federal Practice, Civil § 8.04, the use of "information and belief" is a pleading device for the use in a complaint (or motion) to allow a plaintiff (movant) to fill in the gaps of alleging a claim pending discovery.

> [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.
>
> Nothing in the *Twombly* plausibility standard (see [1], above) prevents a plaintiff from pleading on information and belief. A pleading is sufficient if the pleading as a whole, including any allegations on information and belief, states a plausible claim. On the other hand, if the pleading fails to permit a plausible inference of wrongdoing, or if the allegations are nothing more than legal conclusions, the pleading will not survive a motion to dismiss.

This is incorporated to Federal Rule of Bankruptcy Procedure 9011, which repeats the provisions of Federal Rule of Civil Procedure 11(b), stating:

> (b) Representations to the court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable

under the circumstances[,]—

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Though allowed as a pleading device, the certification required by 28 U.S.C. § 1746 does not allow testimony in declaration to be provided under penalty of perjury being true because the witness merely "is informed and believes (or desires because likely it would mean the witness party would prevail) it is true."

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) **under penalty of perjury** under the laws of the United States of America **that the foregoing is true and correct**. Executed on (date).
>
> (Signature)."
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "**I declare** (or certify, verify, or state) **under penalty of perjury** that the **foregoing is true and correct**. Executed on (date).

(Signature)."

28 U.S.C. § 1746 (emphasis added).

Ruling

At the hearing, xxxxxxxxxxxxxx.

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 Bank of New York Mellon Trust Company, N.A., as Trustee for Mortgage Assets Management Series I 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 that the Motion is **XXXXXXXXXX**.

9. **19-23384-A-7** **KELA BELFIELD** **MOTION TO CONVERT CASE FROM**
BEL-2 **Yasha Rahimzadeh** **CHAPTER 7 TO CHAPTER 13**
7-24-19 [12]

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 Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 24, 2019. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice.

The debtor, Kela Lorrae Belfield ("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).

DISCUSSION

Insufficient Notice

35 days' notice was required for this Motion. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition). Only 33 days' notice was given. Dckt. 14.

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 Convert filed by Kela Lorrae Belfield ("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 without prejudice.

Alternative Ruling in the event proper notice provided:

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.

The debtor, Kela Lorrae Belfield ("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).

DISCUSSION

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. No opposition has been filed.

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 Kela Lorrae Belfield ("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 granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

FINAL RULINGS

10.	**17-25882-A-7** **ARF-3**	**JENNIFER RIFFE** **Allan Frumkin**	**OBJECTION TO CLAIM OF CHRIS RIFFE, CLAIM NUMBER 1-1, 1-2** **7-8-19 [41]**

10 thru 11

DEBTOR DISCHARGED:
12/11/2017
JOINT DEBTOR DISCHARGED:
12/11/2017

Final Ruling: No appearance at the August 26, 2019 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on July 8, 2019. By the court's calculation, 48 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). 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 Objection to Proof of Claim Number 1 of Chris Riffe is sustained, and the claim is disallowed in its entirety.

Jennifer Riffe, the debtor ("Objector") requests that the court disallow the claim of Chris Riffe ("Creditor"), Proof of Claim No. 1-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $28,000.00, and the basis of the Claim is stated to be "Domestic Support."

Objector asserts that Claim1-2 is based on a Family Law Dissolution Judgement entered on September 7, 2018 (the "Judgement"), which Judgement is filed as Exhibit B. Dckt. 41. Objector argues, and the Judgement reflects, that the Judgement reserved the issue of spousal support.

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.

Here, Debtor argues that dissolution Judgement between Debtor and Creditor reserved the issue of domestic support. Creditor did not file an opposition or response to the Objection.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Chris Riffe ("Creditor"), filed in this case by Jennifer Riffe, the 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 1-2 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

11. **17-25882-A-7** **JENNIFER RIFFE** **OBJECTION TO CLAIM OF DAVE POPKEN, CLAIM NUMBER 3-1**
ARF-4 **Allan Frumkin** **7-8-19 [45]**

DEBTOR DISCHARGED:
12/11/2017
JOINT DEBTOR DISCHARGED:
12/11/2017

Final Ruling: No appearance at the August 26, 2019 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on July 8, 2019. By the court's calculation, 48 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). 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 Objection to Proof of Claim Number 3-1 of Dave Popken is sustained, and the claim is disallowed in its entirety.

Jennifer Riffe, the debtor ("Objector") requests that the court disallow the claim of Dave

Popken ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $3,390.46, and is based on "Triple Net Commercial Lease Taxes."

Objector asserts that the Claim is based on a debt of the business identified as Nor Cal Auto Body (the "Business"). In Attachment 4 to the Claim, an email is attached from the Business to Creditor discussing a payment plan of the taxes.

Objector filed as Exhibit B a Family Law Dissolution Judgement entered on September 7, 2018 (the "Judgement"). Dckt. 47. Objector argues, and the Judgement reflects, that the Judgement awarded the Business, and its assets and obligations, to Chris Riffe.

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.

Based on the evidence before the court, the Claim is based on a debt of the Business. Furthermore, the Business assets and liabilities were assigned to Chris Riffe, and not the Debtor. Exhibit A, Dckt. 47.

The Objection to the Proof of Claim is sustained, and Creditor's claim is disallowed in its entirety.

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 Dave Popken ("Creditor"), filed in this case by Jennifer Riffe, the 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 3-1 of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by

Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

12. **19-24104-A-7** **JHW-1** | **STEVEN/CLATINA JUTRAS** **Scott Shumaker** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **7-16-19 [15]**

FIRST INVESTORS SERVICING CORPORATION VS.

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2019. By the court's calculation, 41 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.

First Investors Servicing Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Ford Flex, VIN ending in 5095 ("Vehicle"). The moving party has provided the Declaration of Tonya Pinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Steven Lewis Jutras and Clatina Michelle Jutras ("Debtor").

Movant argues Debtor is delinquent prepetition payments, and indicates on the Statement of Intention that the Vehicle will be surrendered. *See* Dckt. 1.

The Chapter 7 Trustee, Douglas M. Whatley, entered a statement of non-opposition on the docket on July 22, 2019.

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 $27,074.45 (Declaration, Dckt. 18), while the value of the Vehicle is determined to be $11,000.00, as stated in Schedules B and D filed by Debtor. Schedule A/B, Dckt. 1.

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 Debtor's expressed intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1).

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 argues this relief is warranted because Debtor is delinquent in payments and the Vehicle is a depreciating asset.

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 First Investors Servicing Corporation ("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 2014 Ford Flex, VIN ending in 5095 ("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.

13. **19-23307-A-7** **FRANK CHAVEZ** **MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT ENTRY OF DISCHARGE**
UST-1 **Mohammad Mokarram** **7-16-19 [19]**

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2019. By the court's calculation,41 days' notice was provided. 28 days' notice is required.

The Motion To Approve Stipulation To Dismiss Chapter 7 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 respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion To Approve Stipulation To Dismiss Chapter 7 Case is granted.

Tracy Hope Davis, the United States Trustee for Region 17 ("US Trustee") filed this Motion To Approve Stipulation To Dismiss Chapter 7 Case Without Entry of Discharge on July 16, 2019.

US Trustee states in the Motion that a Statement of Presumed Abuse was filed on July 8, 2019 (Dckt. 15), and that while US Trustee is prepared to file a dismissal motion, the debtor, Frank John Chavez ("Debtor"), indicated non-opposition to dismissal.

A Stipulation was filed on July 16, 2019 (Dckt. 18), wherein Debtor states he desire to voluntarily dismiss the Chapter 7 case. Dckt. 18.

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 Approve Stipulation To Dismiss Chapter 7 Case filed by Tracy Hope Davis, the United States Trustee for Region 17 ("US 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 Approve Stipulation To Dismiss Chapter 7 Case Without Entry of Discharge is granted, and the case is dismissed.

14. **19-23134-A-7** **MARTELL DANIELS-HATCHER** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
ETL-1 **Erica Loftis** **7-19-19 [18]**

GLOBAL LENDING SERVICES, LLC
VS.

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 19, 2019. By the court's calculation, 38 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.

Global Lending Services, LLC("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Nissan Maxima, VIN ending in 4860 ("Vehicle"). The moving party has provided the Declaration of Atze Gutman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the debtor, Martell Daniels-Hatcher ("Debtor").

Movant argues Debtor is delinquent 1 postpetition payment of $559.56, and that Debtor indicated on the Statement of Intention the Vehicle would be surrendered. *See* Dckt. 1.

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 $24,809.64 (Declaration, Dckt. 22), while the value of the Vehicle is determined to be $22,024.00, as stated in Schedules B and D filed by Debtor. Schedule A/B, Dckt. 1.

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 Debtor's expressed intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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, 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 Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant 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 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 Global Lending Services, 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 2016 Nissan Maxima, VIN ending in 4860 ("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 not waived for cause.
>
> No other or additional relief is granted.

15. **19-22845-A-7** **FRANK/TAMMY VERDUZCO** **MOTION TO AVOID LIEN OF**
BLG-1 **Chad Johnson** **CITIBANK, N.A.**
7-25-19 [22]

15 thru 17

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A.("Creditor") against property of the debtor, Frank Verduzco and Tammy Ilean Verduzco ("Debtor") commonly known as 109 N Grant Street, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,552.60. Exhibit A, Dckt. 28. An abstract of judgment was recorded with Placer County on June 4, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $384,323.00 as of the petition date. Dckt. 16. The unavoidable consensual lien totals $311,491.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C. Dckt. 16.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, 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 Frank Verduzco and Tammy Ilean Verduzco ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Placer County Case No. MCV0053362, recorded on June 4, 2012, Document No. 2012-0049682-00, with the Placer County Recorder, against the real property commonly known as 109 N Grant Street, Roseville, California, 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.

16. **19-22845-A-7** **FRANK/TAMMY VERDUZCO** **MOTION TO AVOID LIEN OF AFC CAL, LLC**
BLG-2 **Chad Johnson** **7-25-19 [25]**

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 32 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 AFC CAL, LLC ("Creditor")against property of the debtor, Frank Verduzco and Tammy Ilean Verduzco ("Debtor") commonly known as 109 N Grant Street, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $22,950.34. Exhibit A, Dckt. 29. An abstract of judgment was recorded with Placer County on January 17, 2012, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $384,323.00 as of the petition date. Dckt. 16. The unavoidable consensual lien totals $311,491.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C. Dckt. 16.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, 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 Frank Verduzco and Tammy Ilean Verduzco ("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 AFC CAL, LLC, California Superior Court for Placer County Case No. MCV0052153, Placer, recorded on January 17, 2012, Document No. 2012-0004037-00, with the Placer County Recorder, against the real property commonly known as 109 N Grant Street, Roseville, California, is avoided in its entirety for all 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.

17. **19-22845-A-7** **FRANK/TAMMY VERDUZCO** **MOTION TO AVOID LIEN OF**
BLG-3 **Chad Johnson** **PORTFOLIO RECOVERY**
ASSOCIATES, LLC
7-25-19 [30]

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 32 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 Portfolio Recovery Associates, LLC ("Creditor")against property of the debtor, Frank Verduzco and Tammy Ilean Verduzco ("Debtor") commonly known as 109 N Grant Street, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,707.37. Exhibit A, Dckt. 33. An abstract of judgment was recorded with Placer County on September 15, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $384,323.00 as of the petition date. Dckt. 16. The unavoidable consensual lien totals $311,491.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 18. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C. Dckt. 16.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, 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 Frank Verduzco and Tammy Ilean Verduzco ("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 Portfolio Recovery Associates, LLC, California Superior Court for Placer County Case No. MCV0060600, recorded on September 15, 2014, Document No. 2014-0063785-00, with the Placer County Recorder, against the real property commonly known as 109 N Grant Street, Roseville, 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.

18. **19-23860-A-7** **SAMUEL/ERICA MOORE** **MOTION TO SELL**
DMW-2 **Richard Hall** **7-29-19 [16]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 26, 2019 hearing is required.

The Chapter 7 Trustee, Douglas M. Whatley ("Trustee"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

19. **13-26162-A-7** **ERIC/RAQUEL ALMASON** **MOTION TO AVOID LIEN OF**
ALF-5 **Ashley Amerio** **CITIBANK, N.A.**
7-23-19 [106]

19 thru 20

DEBTOR DISCHARGED:
08/20/2014
JOINT DEBTOR DISCHARGED:
08/20/2014

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on July 23, 2019. By the court's calculation, 23 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of the debtor, Eric Joseph Almason and Raquel Almason ("Debtor") commonly known as 2792 Remington Way, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $21,839.34. Exhibit A, Dckt. 109. An abstract of judgment was recorded with San Joaquin County on April 7, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $376,363.00 as of the petition date. Dckt. 1. The unavoidable liens that total $411,199.00 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 § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 105.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, 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 Eric Joseph Almason and Raquel Almason ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank (South Dakota), N.A., California Superior Court for San Joaquin County Case No. 39-2012-00247565-CL-CL-STK, recorded on April 7, 2011, Document No. 2011-042422, with the San Joaquin County Recorder, against the real property commonly known as 2792 Remington Way, Tracy, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

20. **13-26162-A-7** **ERIC/RAQUEL ALMASON** **MOTION TO AVOID LIEN OF BANK**
ALF-6 **Ashley Amerio** **OF AMERICA, N.A.**
7-23-19 [112]

ASHLEY AMERIO/Atty. for dbt.
DEBTOR DISCHARGED:
08/20/2014
JOINT DEBTOR DISCHARGED:
08/20/2014

Final Ruling: No appearance at the August 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on July 23, 2019. By the court's calculation, 23 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 Bank of America, N.A., as successor to original creditor FIA Card Services, N.A. ("Creditor") against property of the debtor, Eric Joseph Almason and Raquel Almason ("Debtor") commonly known as 2792 Remington Way, Tracy, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,559.62. Exhibit D, Dckt. 115. An abstract of judgment was recorded with San Joaquin County on October 27, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $376,363.00 as of the petition date. Dckt. 1. The unavoidable liens that total $411,199.00 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 § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 105.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), even without considering superior judicial liens, 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 Eric Joseph Almason and Raquel Almason ("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 Bank of America, N.A., as successor to original creditor FIA Card Services, N.A., California Superior Court for San Joaquin County Case No. 39-2011-00251596-CL-CL-TRA, recorded on October 27, 2011, Document No. 2011-131107, with the San Joaquin County Recorder, against the real property commonly known as 2792 Remington Way, Tracy, 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.